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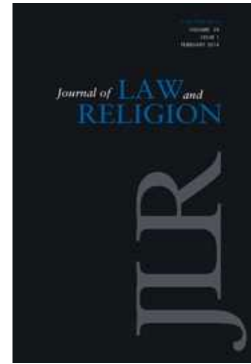

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ARTICLE

NATIONAL MOVEMENTS AND INTERNATIONAL LAW: RABBI SHLOMO GOREN'S UNDERSTANDING OF INTERNATIONAL LAW

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ABSTRACT

Rabbi Shlomo Goren was one of the leading rabbinic figures in religious Zionist circles. As the first chief Rabbi of the Israeli military, he had a unique opportunity to influence the development of the Israeli army and its policies. He needed to deal with questions that had no precedents in Jewish law. One of his challenges was the part international law played in the formation of a modern army. Rabbi Goren wished to give a halachic perspective to questions of international law, and to do that, he had to translate the language of international law, a field developed in the modern period, to halachic language. This process led him to evaluate moral positions that are part of international law and the ability of halacha to be part of the modern world.

KEYWORDS: Shlomo Goren, international law, Jewish law (halacha), religion and international law, military and religion

INTRODUCTION

A leading figure in religious Zionism, Rabbi Shlomo Goren served as the chief rabbi of the Israeli army and the State of Israel. A long career as a military rabbi and his role as the founder of the military chaplaincy placed him in a unique position to formulate Jewish responses to questions of war and military conduct, areas outside the purview of rabbinic literature since the abolition of Jewish sovereignty in 70 CE.

Although Goren was a religious rather than an international jurist, his writings spring from a critical dialogue between a national movement and international law. As chief rabbi of the military, he criticized doctrines of international law he saw as unfavorable to the State of Israel, yet he also integrated elements of *jus in bello* into his legal-religious tradition. His point of view, shaped almost exclusively outside the discourse of international law, was often conflicted, because he was committed, above all, to Jewish religious law (*Halacha*), a system that has no ready mechanism to deal with international law.[1]

1 For discussion of the growing use of international law in national courts, see George Slyz, *International Law in National Courts*, *in* INTERNATIONAL LAW DECISIONS IN NATIONAL COURTS 71 (Thomas M. Franck & Gregory H. Fox eds., 1996); Francesco Francioni, *International Law as a Common Language for National Courts*, 36 TEX.

Establishing the rule of Halacha in the State of Israel—a major political goal of religious Zionism—clashes with an inclusivity shaped by international law. Goren's attempts to ease this tension arose from pragmatism as well as an ideological goal of integrating core principles of international law into the halachic canon.[2] Goren's struggle with international law was also a search for religious meaning within it.

Goren (Hebraized from Goronchik) was born in Poland around 1917.[3] Immigrating to pre-state Israel with his family in 1925, he became known at a young age for his intellectual prowess, publishing his first book at seventeen. After classical studies at Hebrew University, he joined the Hagana, the largest Zionist underground force in the 1930s,[4] and he was later nominated to serve as the first chief rabbi of the Israeli Army. Responsible for the formation of the military chaplaincy, he was instrumental in formulating halachic guidelines for the integration of religious soldiers into the military system. His mission was to create and apply a system of rules to guide the Israeli army—as a whole—according to Halacha. Integration was accomplished by better facilitating religious life in the military, by keeping its kitchens kosher, and by maintaining synagogues at military bases, but also by creating a halachic framework moving the entire military into a Jewish religious context.[5] Later named the chief rabbi of Israel, Goren issued halachic rulings in many political and social debates until his death on October 29, 1994.

Religious Zionism is an ideological stream that sees the Zionist movement arising from the modern concept of nationhood not merely as a secular but as a religious development, one that integrates modern national terminology into a discourse of biblical covenant.[6] Despite differing interpretations of historical events, all factions within Religious Zionism were eager to couch them in religious language, an attempt that faced several challenges, especially the secular nature of Zionism itself. A major theological school of thought coalesced around Rabbi Avraham Yitzḥak Kook, the Chief Rabbi of pre-state Israel. Along with other scholars, Rabbi Kook constructed a theological framework integrating nationalism with religious texts and melding the modern concepts of nationalism and international ethics with the quest for redemption.[7]

Later generations of the Kook circle created both an ideology and political parties that emphasized the religious destiny of the Jewish nation over that of the individual. The Kook circle identified the political changes of the twentieth century and the rise of Zionism as evidence of the approaching messianic era. Key to the advancement of the messianic process was a call for human action, which, they promised, would be followed by divine intervention. The death of Rabbi Kook in

INT'L L.J. 587 (2001); and Christopher A. Whytock, *Thinking beyond the Domestic-International Divide: Toward a Unified Concept of Public Law*, 36 GEO. J. INT'L L. 155 (2004).

2 For a discussion of international law and religion, see RELIGION AND INTERNATIONAL LAW (Mark W. Janis & Carolyn Evans eds., 2004).

3 There are those who claim he was born on February 3, 1918, *see* Yitzḥak Alfasi, *Kavim Lidmutu Shel Rabenu Hagadol*, *in* MA'A LOT LISHLOMO 15 (Yitzḥak Alfasi ed., 1996), but others claim he was born in 1917, *see* Arye Edrei, *Milḥamah. Halacha VeGeulah: Tzava VeMilḥamah BeMaḥshevet HaHalacha Shel Harav Shlomo Goren*, 125 KATEDRA 120 n.2 (2007). For a non-academic biography, see SHALOM FELDMAN, RABBI SHLOMO GOREN: TORAH SAGE AND GENERAL (2006).

4 For a discussion of his political roles, see Shifra Mescheloff, Be'ein Hasa'arah: Dmutu HaTziburit VeYetzirato Hatoranit shel Harav Shlomo Goren (2012) (unpublished Ph.D. dissertation, Bar-Ilan University) (on file with Bar-Ilan University Central Library).

5 Arye Edrei, *Law, Interpretation, and Ideology: The Renewal of the Jewish Laws of War in the State of Israel*, 28 CARDOZO L. REV. 187, 187–227 (2006).

6 DOV SCHWARTZ, FAITH AT THE CROSSROADS: A THEOLOGICAL PROFILE OF RELIGIOUS ZIONISM (Batya Stein trans., 2002).

7 DOV SCHWARTZ, RELIGIOUS ZIONISM: HISTORY AND IDEOLOGY (2009).

1935 brought a steady decline in the Kook circle's influence on the politics of religious Zionism. After the Six-Day War and, in particular, after the Yom Kippur War of October 1973, however, the second and third generations of Kook's followers became a major political force. Their crowning achievement was the emergence of the *Gush Emunim*—the religious settlement movement in Judea, Samaria, and the Gaza Strip.[8]

The development of religious Zionism and the later emergence of the settlement movement engendered a discourse concerning the ideal Jewish state, a state that would conduct itself as a modern state but according to the guidelines of religious law. As the first rabbi of the Military Rabbinate from 1948 to 1971, and subsequently as the third Ashkenazi chief rabbi of Israel from 1973 to 1983, Goren dictated policy aiming both to integrate halachic norms into the evolving structure of the new state and to fashion halachic responses to modern concerns.[9] Along with other rabbis, including Isaac Hertzog, Ben Tziyon Uziel, and Shaul Yisraeli, he was forced to deal with topics new to halachic literature such as a democratic government, minority rights, and modern criminal law.[10] With the military chaplaincy came questions of Sabbath observance, dietary laws in army bases manned by non-observant or non-Jewish soldiers, and even proper burial of enemy combatants.[11]

RELIGIOUS ZIONISM AND INTERNATIONAL LAW

The attempt by religious Zionist rabbis to translate democratic foundations into halachic language took place in the larger context of the rise of a modern Jewish nationalism centered on a secular Jewish identity. Before organizing a mass immigration of Jews, the Zionist political movement looked to international law to secure political rights in *Eretz-Yisrael* for the Jewish people.[12] To convince European powers of the need to support Jewish national claims, Theodor Herzl presented Zionism as identical to other national movements demanding recognition through international law.[13]

Some religious leaders recognized the importance of international law, such as Moshe Una, a leading ideologist of the religious kibbutz movement, who held that the relationship of Israel with the Palestinians should acknowledge the demands of international law. Despite a religious-national claim on the land, the State of Israel only came into existence via international law and thus had a moral obligation to acknowledge Arab rights.[14] Yet many other religious Zionist leaders were unable to integrate international law into their value system.

8 Gideon Aran, *From Religious Zionism to Zionist Religion: The Roots of Gush Emunim*, 2 Studies in Contemporary Jewry 116, 116–43 (1986); Gideon Aran, *Jewish Zionist Fundamentalism: The Bloc of the Faithful in Israel (Gush Emunim)*, *in* Fundamentalisms Observed 265 (Martin Marty & R. Scott Appleby eds., 1994).

9 Arye Edrei, *Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces*, 7 Theoretical Inquiries in Law 255 (2005–2006).

10 Asher Cohen, Hatalit Vehadegel: HatziyuNut Hadatit Veḥazon Medinat Hatora Beshnot Hamedina Harishonot (1998).

11 For discussions among religious Zionist rabbis including Rabbi Goren on such questions, see *supra* note 5.

12 Amos Elon, Herzl 270 (1975). For the use of international law by Jewish groups who preceded Zionism, see Moria Paz, *A Non-Territorial Ethnic Network and the Making of Human Rights Law: The Case of the Alliance Israélite Universelle*, 4 Interdisc. J. Hum. Rts. L. 1 (2010).

13 Nir Keidar, Mamlachtiyut: Hatefisa Haezraḥit Shel Ben Gurion (2009).

14 Moshe Una, Beshvilei Hamaḥshava Ve'hama'ase 45–46 (1955).

In a seminal study,[15] Amos Israel-Vleeschhouwer gathered the few scattered halachic perspectives on international law. These texts all stem from the twentieth century, especially from post-1948 Israel, and most are from rabbis identifying as religious Zionists. The rabbis surveyed range from students of the Kook circle to peripheral members of the settlement movement, and most texts are ideological rather than halachic or practical.[16] Some texts take a relatively positive approach to international law, while others show an inherent gap between halachic language and international law. Rabbis like Ḥayyim Hirshenzon, Isaac Hertzog, and Ḥayyim David Halevi saw international law as a system with positive attributes that exemplified the progress of human civilization. These rabbis, however, lacked models enabling them to relate international law to Halacha.

Rabbis opposing the rule of international law perceived it as a tool of Israel's enemies that had little to no normative standing. Contemporary rabbis like Shlomo Aviner, Eli Horowitz, and Eliezer Melamed identified international law as yet another front in the war of the Jewish people against their enemies. In a perfect world it would disappear, to be replaced by a perfect, godly world order:

> Non-Jews also have human morals and the ability to live honest lives governed by laws. They have the wisdom of human laws and civility and even the wisdom of morality, things that sometimes we should learn from them . . . but the desire to do good and build a better world among the gentiles is always too narrow . . . thinkers and philosophers . . . came to the conclusion that defining a moral action is to do something that is good for all, but the "simple question" is what is good for all—this is a very difficult question since humankind cannot come up with a system that is for the equal benefit of all humanity.[17]

Whether international law is framed as a project with good intentions gone wrong or as outright evil,[18] such views are written in ideological-political rather than legal language, because they are limited by an outsider's view of international law and, further, by an absence of a halachic model of an international system of governance. International law is perceived as an extension of global politics similar to General Assembly resolutions condemning Israel.[19]

RECOGNITION AND SOVEREIGNTY

The Montevideo Convention of 1933 defines a state as an international legal person with four main attributes: (1) a defined territory (2) with a permanent population (3) that is under the control of a government, and (4) which has the capacity to engage in formal relations with other states.[20] This last element, while more controversial among international jurists,[21] was crucial to Zionist attempts to attain sovereignty.[22] In 1948, Goren began to write about the future state, urging that Halacha be integrated into this modern system. A major challenge was international law, which put Halacha

15 Amos Israel-Vleeschhouwer, Yaḥas Hahalacha Lamishpat Habeyin Leumi: Nituaḥ Psika Venituḥ Tahalichi (2011) (unpublished Ph.D. dissertation, Tel-Aviv University) (on file with National Library of Israel).

16 *Id.* at 92–200.

17 Eliyaho Horowitz, Milḥmet Hatarbut (2007).

18 *Id.* at 147–52.

19 A claim not without merit: Shai Dothan, *Judicial Tactics in the European Court of Human Rights*, 12 Chi. J. Int'l L. 115 (2011); Andrew T. Guzman, *Reputation and International Law*, 34 Ga. J. Int'l & Comp. L. 379 (2005–2006).

20 *See* Montevideo Convention on the Rights and Duties of States art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.

21 *See* Alain Pellet, *The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples*, Appendix, 3 Eur. J. Int'l L. 178 app. at 182 (1992).

22 Yosef Goldstein, Bein Tziyunut Medinit Letziyunut Maasit (1991).

in danger of becoming irrelevant to the Zionist project by demanding the implementation of broadly defined human rights.[23]

Only a few months after the United Nations voted in favor of the founding of a Jewish state, Goren published the extensive essay "A Constitution for Israel," in which he suggests a model for the relationship between the law of the future state and Halacha.[24] The religious establishment cannot merely demand on general principle that the law of the nascent state be based on Halacha; therefore, the rabbis must put forward a proposal that would cover all issues extensively. "The Constitution of the State," he writes, "will not be in conflict with International Law."[25] His approach here has a utilitarian element: he was aware not only of possible criticism of Israel by the UN, but also that many Jews could not accept a proposal of statehood without guaranteed equality before the law regardless of ethnic origin, gender, or religion. In light of a commitment to these values:

> The main goal is to uphold the laws of the Torah in state life. Be it in the life of individuals or of the nation . . . since national and international considerations are overwhelming, we will have to safeguard the rights of all parts of the population.[26]

Sovereignty is thus dependent on international law. The national narrative—and also, in this case, a religious narrative—is not enough to justify the quest for sovereignty and must be accompanied by de facto recognition of the norms of international law on which sovereignty is contingent. The mere capacity to govern and defend a territory does not translate into international legitimacy—a truth clear to Goren, whether because of his political instinct, or because of his understanding of the doctrines of international law.[27] Only de facto recognition is of interest here, since de jure recognition was given by God in the covenant with Abraham.

Early in the postwar era, such links between recognition and the rejection of inequality were prevalent among jurists,[28] and the importance of recognition was clear even to those unfamiliar with the intricacies of international law.[29] Goren understood that to be part of the international community, however vaguely defined, the new state would need to fulfill certain criteria, specifically the "standard of civilization."[30] His declaration that the future state would be governed by a principal of equality resulted from his having internalized this principle.

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23 Shlomo Goren, *Ba'ayot Hamedina Le'Or Hahalacha*, OR HAMIZRAḤ 8–9 (September 1959) (the whole article is on pages 8–11).

24 For a broad discussion of Rabbi Goren's jurisprudential perceptions, see Aviad Yehiel Hollander, The Halakhic Profile of Rabbi Shlomo Goren: Studies in the Adjudicatory Deliberations and Modes of Substantiation in his Halakhic Writings 256–342 (2011) (Ph.D. thesis, Bar-Ilan University) (on file with Bar-Ilan University Central Library).

25 SHLOMO GOREN, THE CONSTITUTION OF THE STATE, *reprinted in* YITZḤAK HERTZOG, 1 THUKA LEYISRAEL AL PI HATORAH 146 (1989).

26 *Id.* at 152.

27 For early twentieth-century discussions of recognition of governments, see, for example, the Arantzazu Mendi case of 1938, in which the nationalist government in Spain asked to squash a writ that gave the republican government of Spain authority over ships registered to the port of Bilbao. The British court ruled that exercising effective administrative control may lead to de facto but not to de jure recognition. Arantzazu Mendi, [1939] A.C. 37. *See also* Haile Selassie v. Cable and Wireless Ltd. (No. 2) [1939] 1 Ch. 182.

28 Hans Georg Schwarzenberger, *The Rule of Law and the Disintegration of the International Society*, 33 AM. J. INT'L L. 56, 64 (1939).

29 HERSH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 1–6 (1947).

30 Georg Schwarzenberger, *The Standard of Civilisation in International Law*, 8 CURRENT L. PROBS. 212 (1955); GERRIT W. GONG, THE STANDARD OF "CIVILIZATION" IN INTERNATIONAL SOCIETY (1984). For later developments of this doctrine, see David Fidler, *The Return of the Standard of Civilization*, 2 CHI. J. INT'L L. 137 (2001).

Emerging among international jurists in the nineteenth century, this "standard" was a fluid criterion for entering the international community and differentiating between a savage and a civilized nation.[31] While the term has fallen out of favor because of its colonialist baggage,[32] Goren understood that the promise of equality is a prima facie demand for international recognition: "Since overwhelming national and international consideration will mandate us to uphold the full rights of all parts of the population . . . ."[33] Thus whoever wishes to take part in a national discourse cannot afford to disregard international law.

NATIONAL MINORITIES AND THEIR RIGHTS: A CONDITION FOR RECOGNITION

Tension between the Zionist movement and the Arab minority is viewed as the fulcrum of the Arab-Israeli conflict. Statements concerning minority rights were part of the early diplomatic attempts to resolve the conflict and were based on doctrines of international law.[34]

The UN General Assembly resolution of November 29, 1947, supporting partition dictated a clear message of equality in civil matters but did not recognize community rights for minorities in the future Jewish and Arab states. Chapters two and three of the resolution drafted boundaries based on international legal values of equality, anti-discrimination, and minority rights that had become mainstream concepts in the postwar era.[35]

Though not even mentioned in the 1933 Montevideo Convention, such minority rights have become increasingly relevant in international law, and today, some jurists see adherence to the UN charter coupled with a guarantee of minority rights as a criterion for statehood.[36] While not a common understanding of statehood theory in 1948, this position dictated the demands the international community set before the parties in the partition resolution.

Some scholars have interpreted Israeli government policies toward Arab citizens of Israel as furthering harmony and integration, while others have seen them as an organized policy of discrimination.[37] For the national religious movement the tension has been even greater, since commonly accepted interpretations of religious texts do not in themselves promote equality.

The identification of the state as an institution with religious goals contradicts the attempt to integrate non-Jewish minorities into an institution that defines itself as Jewish. Rabbis active during the early formation of Israel suggested legal doctrines including non-Jews in political roles within the government while trying to maintain its religious identity.[38] Bowing to international pressure, Rabbi Hertzog advocated for the abolition of racial and gender inequality, since without a

31 Jack Donnelly, *Human Rights: A New Standard of Civilization?*, 74 INT'L AFF. 3, 3–4 (1998).

32 For a current assessment of the field, see STEFAN TALMON, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW (1998).

33 GOLDSTEIN, *supra* note 23, at 152.

34 J. M. LANDAU, THE ARABS IN ISRAEL, A POLITICAL STUDY (1969); YITZḤAK REITER, NATIONAL MINORITY, REGIONAL MAJORITY: PALESTINIAN ARABS VERSUS JEWS IN ISRAEL (2009).

35 G.A. Res. 181(II) 29 November 1947.

36 Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, Dec. 16, 1991, 31 I.L.M. 1486–87.

37 For a jurisprudential discussion of the tension between nation-state and national minorities, see ALEXANDER YAKOBSON & AMNON RUBINSTEIN, ISRAEL AND THE FAMILY OF NATIONS: THE JEWISH NATION STATE AND HUMAN RIGHTS (2008), and DAVID KRETZMER, THE LEGAL STATUS OF THE ARABS IN ISRAEL 166–67 (1990). For a different historical account, see ALISA RUBIN PELED, DEBATING ISLAM IN THE JEWISH STATE: THE DEVELOPMENT OF POLICY TOWARD ISLAMIC INSTITUTIONS IN ISRAEL (2001).

38 Ariel Picard, *Ma'amad Hanokhri Bemdinat yisrael Bepsikat Rabaney Htziyunot Hadatit*, 1 RESHIT 187 (2009).

declaration of equality, the international community would not support the establishment of a Jewish state.[39] Overcoming halachic impediments to equality was a political necessity. Thus Rabbi Hertzog found halachic mechanisms that allowed him to adjudicate accordingly, either as ad hoc legislation by the community or by rereading traditional rabbinic texts.[40]

Others urged that a reinterpretation of halachic texts concerning non-Jews was a moral imperative. Rabbi Uziel held that ethnic inequality raised a moral challenge: "[I]f in all of the enlightened world a law has been accepted that a testimony will be believed without differentiating according to religion or race, how will we make such a difference?"[41]

Goren answered this challenge in harmony with international law:

> The minority problem in the Jewish state requires a comprehensive religious solution. Their [the minorities'] legal status, legal or social rights should be determined taking into account international laws on the rights of minorities. The nature of each country and the morality of any nation are determined and measured by their attitude to the minorities in their midst. The Jewish people, suffering for all the days of exile for being always a minority, will have to set an example to the world.[42]

This text sounds a moral imperative, both from the standpoint of international law and the history of the Jewish people. "Exile" evokes the return to the homeland of the biblical saga, but the results of both theological considerations and employing the tenets of international law will result in the same inclusiveness and respect for minorities that Jews had longed for elsewhere.

When discussing initiating the death penalty in the Jewish state, Goren writes that although Talmudic and post-Talmudic sources also apply in theory the death penalty to non-Jews, halachic decision makers must refrain from applying such theoretical debates:

> The Halacha regulating the death penalty of non-Jews has been discussed in the Talmud and in some of the Rishonim [medieval Talmudic authorities], but for constitutional and practical reasons we shall have to annul halachically all death penalties in the Jewish State, as do most of the advanced nations.[43]

The reasons for abolishing the death penalty are constitutional and practical: Israel cannot act according to halachic tradition that always remained in the realm of theory due to extra-halachic considerations.[44] Moreover, Goren welcomes the abolition of the death penalty as a sign of moral advancement among the nations of the world, echoing the "standard of civilization" of international law.

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39 *Id.* at 188–93.

40 YITZḤAK HERTZOG, TḤUKA LEYISRAEL AL-PI HATORAH, vol. 1, 18 (1989).

41 BEN-ZION UZIEL, MISHPATEI UZIEL, vol. 4, HM section 17; *see also* Tzvi Zohar, *Aḥrayut Hakneset Leitzuv Hahalacha-Iyun Bema'amaro shel Harav Uziel Behagdarat Pesuley Edut*, *in* RAVTARBUT TIYUT BEMEDINAH DEMOKRATIT VEYEHUDIT: SEFER HAZIKARON LEARIEL ROZEN-TZVI Z'L (Menaḥem Mautiner *et al.* eds., 1998), 301–39; Binyamin Lau, *Vet Haovdim Lo Bikashtem: Musar Haneveem Beshikuley Psikato shel Harav Uziel Benose Giyur*, 21 AKADAMOT 96–109 (2008).

42 HERTZOG, *supra* note 40, at 152–53.

43 Id. at 155–56.

44 In one case, involving terrorists, Goren did support the use of the death penalty. But he suggested that the legal basis for the death penalty in this case would be not halacha but ad hoc legislation that halacha assigns to the sovereign (*mishpat hamelech*) and, even more, the laws of pursuit; in other words, he considered all terrorists active pursuers that can be killed to save the innocents. Laws of pursuit are, of course, an offshoot of self defense and are extrajudicial by definition. *See* SHLOMO GOREN, 3 MESHIV MILHAMA: SHE'ELOT VETSHUVOT BE'INYANEI TZAVA, MILHAMA UVITAHON 303–26 (2d 1994).

Goren understood that acknowledging at least some of the foundational premises of international law was essential to the integration of Israel into the world community. Religious ideals had to be reinterpreted in light of these premises since the Zionist project could not proceed without them. Issues of equality or minority rights could not be overlooked or dismissed because of religious tradition. The will to create a modern state based on religious law meant integrating international law into the religious system.

JUST WAR: RABBI ISRAELI AND DINA DEMALCHUTA DINA AND INTERNATIONAL LAW

In 1953 an Israeli military operation in the Jordanian-controlled village of Kibiya resulted in civilian casualties. International and domestic criticism of the operation led to a public debate about international law and the moral obligation to adhere to its norms. Rabbi Shaul Israeli, a leading figure of religious Zionism and a *Dayan* (judge) in the state rabbinical court system,[45] published an article on the halachic legitimacy of harming civilians in times of war.[46]

He also included a discussion of an halachic obligation to adhere to international law. The basis for the discussion is a statement from Rabbi Shneur Zalman of Liadi (Russia 1745–1812) in Shulḥan Aruch Harav concerning laws of war and their relationship to *Dina Demalchuta Dina*. Literally, "The law of the land is valid," the Talmudic concept defines situations when there is a halachic/religious duty to obey legal edicts from a foreign legal system.[47]

Rabbi Shneur Zalman distinguishes between two aspects of *Dina Demalchuta Dina*, the first being domestic, whereby inhabitants of a country accept the rule of a sovereign power and its use of legitimate force, and the second governing the relationship between countries, including laws of war.[48] Rabbi Israeli disagrees with this distinction, since it does not appear in earlier sources, and he claims that international law is also a result of the people's consent and, therefore, that international conventions that regulate warfare are halachically binding. While some see Rabbi Israeli implying that a lacuna in Halacha can and should be filled by external sources,[49] others note that he exempts compulsory wars (*milĥemet mitzvah*) from the realm of international law.[50] Rabbi Israeli also defines the wars of modern Israel as compulsory through the halachic category of *Ezrat Yisrael Miyad Tzar*, that is, saving the people of Israel from the enemies who besiege them.[51]

Rabbi Israeli, who wrote the most extensive treatise on *jus in bello* in Halacha, has no clear approach to international law. While he agrees that international law regulates military actions and constructs a comparable halachic model of *jus in bello*, he takes no fixed stance on the extent

45 SHAUL ISRAELI, AMUD HAYEMINI § 16 (2d ed. 1992).

46 G. J. Blidstein, *The State and the Legitimate Use of Force and Coercion in Modern Halakhic Thought*, 18 STUDIES IN CONTEMPORARY JEWRY 3, 3–22 (2002); G. J. Blidstein, *The Treatment of Hostile Civilian Populations: The Contemporary Halakhic Discussion in Israel*, 1 ISRAEL STUDIES 27, 27–44 (1996).

47 For discussions of Dina Demachuta Dina, see Eugene Borowitz, *Judaism and the Secular State*, 48 JOURNAL OF RELIGION 22, 22–34 (1968) and SHMUEL SHILO, DINA DEMALKHUTA DINA (1975).

48 SULHAN ARUCH HARAV, ḤOSHEN MISHPAT HILCHOT HEFKER KUNTERES AḤRON.

49 Edrei, *supra* note 9, at 296.

50 For the definition of compulsory versus non-compulsory wars, see Yitzchak Avi Roness, *Halakha, Ideology and Interpretation: Rabbi Shaul Yisraeli on the Status of Defensive War*, 20 JEWISH L. ASS'N STUD. 184, 184–95 (2010).

51 SHAUL ISRAELI, AMUD HAYEMINI § 16, 196–99; Yitzchak Roness, The Halakhic Legacy of Rabbi Shaul Yisraeli 80–104 (2012) (unpublished Ph.D. dissertation, Bar-Ilan University) (on file with Bar-Ilan University Central Library) (arguing specifically with Edrei's interpretation on page 26, footnote 125).

to which norms of international law are binding, if at all, according to Halacha. While only a theoretical issue for Rabbi Yisraeli, for Goren, the question was fundamental to his enterprise of creating halachic laws of war for the Israeli army.

GOREN ON THE BORDERS OF THE JEWISH STATE AND THE VALIDITY OF INTERNATIONAL LAW

In his analysis of the status of territories acquired by Israel in the 1967 war, Goren addressed the normative value of international law in the religious system. The regulation of borders and international sovereignty is a fundamental of international law with special importance for the Arab-Israeli conflict, especially regarding the post-1967 status of the West Bank and Gaza Strip. Contemporary international law only allows the acquisition of territory by occupation in a case of *terra nullius,* territory that is not under any other sovereign control. With growing emphasis on the right of self-determination, the prevalent opinion among jurists is that an area inhabited by people with an existing social and political order cannot be considered *terra nullius*. Formulated by the International Court of Justice in the advisory on the Western Sahara, this opinion puts Israel on the defensive regarding the West Bank.[52] At the same time, it raises a basic question about the status of international law in halachic discourse: Does the interdiction of certain actions by international law have any halachic significance?

Although Goren's halachic writings recognize certain rights of Arabs living in Israel, he viewed the Israeli presence in Judea, Samaria, and the Gaza Strip not as occupation but as rightful possession based on Jewish tradition, which considers these areas part of the Jewish homeland lost generations ago to foreign armies. Goren locates the origin of Jewish sovereignty in the biblical account of Abraham:

> Jewish sovereignty over the Land of Israel is not merely an issue of national values. It is a basis for all of the Torah, Torah values, commandments, and prohibitions, as we observe that the first commandment of God to Abraham—already in Haran, before he came to the Land of Israel—did not relate to any other commandment besides to go and live in the Land, to take possession of the Land and to settle the Land of Israel, for himself and for his descendants . . . The first commandment was to go to the Land of Israel, to take possession thereof, and to settle there.[53]

This is the core of Goren's belief that Jews have a religious obligation to be a sovereign nation. As such language is foreign to the discourse of international law, Goren was often caught between his religious beliefs and the categories of international law.

After the Six-Day War in 1967, Jewish settlers raised the question of the applicability of the *Shmitta*[54] in Judea and Samaria. This commandment requires leaving fields fallow every seventh year but applies only to the land of Israel. According to the Torah, Goren explains, it is the

52 Advisory opinion on the Western Sahara ICJ Rep. 12 [1975] para. 80.

53 SHLOMO GOREN, TORAT HAMEDINAH: MEHKAR HILCHATI HISTORI BANOŚ'IM HAOMDIM BERUMAH SHEL MEDINAT YIŚRAEL MEAZ TEKUMATAH 68 (1996).

54 Halachic debates over the Sabbatical Year carry heavy ideological freight in the modern era. Arye Edrei, *From Orthodoxy to Religious Zionism: Rabbi Kook and the Sabbatical Year Polemic*, 26–27 DINE ISRAEL—STUDIES IN HALAKHAH AND JEWISH LAW 45 (2009–2010); Asher Cohen & Bernard Susser, *The Sabbatical Year in Israeli Politics: An Intra-Religious and Religious-Secular Conflict from the Nineteenth through the Twenty-First Centuries*, 52 J. CHURCH & STATE 454 (2010).

right of the Jewish people to settle in all of the land of Israel, including Judea and Samaria. For the obligation of *Shmitta* to apply, there must be Jewish ownership of the land. Ownership could be national, meaning Jewish sovereignty, or it could merely be private ownership by Jews, in this case, settlers. This, however, is a question for international law. He is aware that according to international law, which was accepted de facto by the Israeli government, Judea and Samaria are not part of the State of Israel:

> It is a source of great sorrow that these areas have not yet been annexed by the State of Israel, neither from the standpoint of international law nor from the standpoint of Israeli law . . .[55]

If this is indeed a binding issue, then there is no Jewish ownership over lands in Judea and Samaria and thus no obligation to observe the Sabbatical Year. Here, however, Goren follows Maimonides's[56] view that the exile did not interrupt Jewish claim to the land of Israel and that Halacha does not recognize non-Jewish ownership.[57]

The issue of sovereignty, however, depends solely on the Israeli government:

> If we had intended to take possession of Judea and Samaria in the Six-Day War . . . all the liberated area would have automatically become part of the State of Israel, under Jewish sovereignty.[58]

Jewish sovereignty never ceased de jure, merely de facto, its formal implementation awaiting an Israeli government willing to fulfill its divine role.

Goren considers the application of the Talmudic rule *Dina Demalchuta Dina* as giving validity to international law. At first glance, says Goren, one can compare the relationship between a country and the community of countries to the relationship between a citizen and the state in which the citizen lives:

> The principle of the validity of the law of the land is applicable in the Land of Israel . . . and this rule applies also to International Law which is accepted by all nations, and which we also have committed ourselves to comply with, thus it could seem that we have no claim to Judea and Samaria! . . . Thus if we were to follow the existing law, and the rule of "the law of the land" as accepted by the Knesset, which takes international Law into consideration, it is not at all necessary to sell the areas of Judea and Samaria temporarily to a non-Jew to avoid transgression of the laws of *Shmitta*, because, according to this argument, the law applicable to these areas are as if they were in non-Jewish hands.[59]

Goren implies that Israel as a nation entered the international community and that its parliament, as the people's representative, accepted all obligations of international law. This agreement has halachic results. The rabbinic dictum *Dina Demalchuta Dina* also applies to international law because the Israeli parliament acknowledges it as legitimate. Adherence to international law then becomes a religious duty.

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55 Shlomo Goren, Mishnat Hamedina: Mehkar Hilchati History Benos'im Ha'omdim Beruma Shel Medinat Israel Me'az T'kumata 281 (1999).

56 Mishne Torah, Shluhim Veshutafim 3, 7. There are several ways to interpret his position; Rabbi Goren is using that of Rabbi Avraham Karelitz, Ḥazon Ish – Shvee't 21, 5 (1952).

57 Goren, *supra* note 55, at 282.

58 *Id.* at 281.

59 Id. at 281–82.

The halachic authority Goren gives to international law conflicts with the national agenda. Goren suggests, however, that the gap between universalism and regionalism[60] is not unbridgeable. *Dina Demalchuta Dina* can incorporate international law but not such that it delegitimizes Jewish sovereignty,[61] because the rights of the Jewish people to all of the Promised Land are doubly valid. Torah relativizes the halachic legitimacy of international law granted through *Dina Demalchuta Dina* and thus the disparity is resolved in Halacha, but not, unfortunately, on the international stage. The historical rights to the land are an inheritance from Abraham. The Torah promises the land to the people of Israel, a right that should be considered a moral one. These two rights supersede international law:

> Therefore it seems that it is not possible that any law—not a national law nor an international law—can change this situation, can sever our rights and our relationship with our inheritance from our forefathers. Thus even if the State of Israel did not formally annex Judea and Samaria, and did not apply Israeli Law to them, nevertheless, according to the Torah, the Law of these areas is as parts of Israel, and the Jewish sovereignty and rights of possession are eternal, and no law can sever us from the lands of our forefathers . . . . Even according to the Rambam and his followers . . . that even in the Land of Israel the rule of the validity of the "Law of the Land" applies, this rule only relates to civil law, whose purpose is only to arrange monetary relations between people and between citizens and the State; but one cannot, by the empowerment of International Law, annul, abrogate or cancel the sovereignty and rights of possession of the Jewish people to the land of their forefathers. It is against the Torah, it is inconceivable, and this idea should be forgotten.[62]

Dina Demalchuta Dina is limited by the contradiction between foreign law and religious laws.[63] The sovereignty of the Jewish people over the Promised Land is a biblical imperative not subject to *Dina Demalchuta Dina*. Thus the Israeli government's position is irrelevant.

In a letter from Goren to Prime Minister Yitzḥak Rabin dated November 4, 1992, Goren urges a peace treaty with Syria that would include a full withdrawal from the Golan Heights. Goren gave several reasons for his position, most of them geopolitical, arguing that peace with Syria would help to mitigate the Iranian threat and—perhaps more importantly for Goren—would ease the pressure to forge a deal with the Palestinians. One of his claims was that the Golan is not part of the Promised Land and is therefore an occupied territory that should be returned to the Syrians according to both international law and Halacha.[64] Goren mentions both reasons simultaneously, suggesting that international law should play a part in policy decisions where there are no overriding halachic issues.

Goren attempts to give halachic meaning to the culmination of the Zionist project: the establishment of the Jewish state. The desire for a state did not merely demand complicated theological constructs but also gave way to a serious halachic challenge. To participate in international politics means to play by the international set of rules that are not aligned with the ideal vision of Jewish sovereignty in rabbinic literature. For Goren, these texts represent a raison d'être for his life's work: the ability to create a modern state without forsaking Halacha.

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60 Nathan Feinberg, Studies in International Law 182–262 (1979); J. H. W. Verzijl, International Law in Historical Perspective 302–03 (1968).

61 This position concerning Dina Demalchuta Dina can be found in medieval sages' literature. *See, e.g.*, Shemuel Shilo, *supra* note 46.

62 Goren, *supra* note 55, at 283.

63 Shach ḤM 73:39.

64 A copy of the letter was supplied by the Goren family and will be discussed in depth in the future.

BURIAL OF ENEMY SOLDIERS AND TREATMENT OF PRISONERS OF WAR AND HUMANITARIAN LAW

Goren's position as the chief military chaplain included caring for the needs of non-Jewish soldiers and sometimes of enemy combatants as well. One of the major debates concerning *jus in bello* is the question of the treatment of enemy combatants who are no longer a present danger, such as prisoners of war and wounded enemy soldiers, and the burial of the dead.[65] This forced Goren to discern the ultimate source for such duties in his role as chief military chaplain: whether mere adherence to international conventions or commanded by Halacha.

Goren's basis for *jus in bello* is the value inherent in all creatures created by God, a theological point cryptically raised in the Talmudic exchange between Rabbi Akiva and Ben Azai about the most important rule in the Torah.[66] Rabbi Akiva holds that it is: "[A]nd you shall love your neighbor as yourself" (Leviticus 19:18). But Ben Azzai cites the verse: "This is the book of the generations of Adam" (Genesis 5:1). Goren infers from Ben Azzai a common ancestry of all humanity, mandating a universal sense of brotherhood not limited to ethnicity or nationality.[67] Goren claims that this would be an eschatological state of universal harmony that would take place after Rabbi Akiva's vision of love among Jews becomes realized. However, he still finds practical implementations for this vision[68] as a fundamental rule of human relations, even in the case of enemy combatants. He acknowledges that his interpretation is novel and even runs counter to traditional commentators.[69] He is acting with full awareness that he is blazing a trail into new realms of halachic policy.

Goren's role in the formative years of the Israeli army compelled him to deal with the implementation of Halacha in a predominantly Jewish army, a situation without legal precedent in canonical sources. He thus turns to biblical interpretation, an unusual action among contemporary rabbinical adjudicators, as scripture had not been used as a direct source for extrapolating legal rules since the Talmudic era.[70] He cites the following verse concerning the war of Ben-Hadad and Ahab: "His servants said to him: 'Behold, we have heard that the kings of the house of Israel are merciful kings; let us put sackcloth on our loins, and ropes upon our heads, and go forth to the king of Israel; perhaps he will let us live'" (1 Kings 20:31). The kings of Israel were known for merciful treatment of prisoners of war. Even though the narrative continues with the prophet's ordering the king to destroy Aram, Goren explains this as an exception because of God's specific order, not the rule.

Goren follows a similar line of thought in the case of burying enemy combatants. He once again adduces biblical verses such as: "It has happened when David was in Edom, when Joab the commander of the army, went up to bury the slain" (1 Kings 11:15),[71] with commentaries of Rashi

65 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Aug. 22, 1864, 25 Stat. 1885; Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135, 6 U.S.T. 3316. For the early stages of this field, see Hersch Lauterpacht, *The Grotian Tradition in International Law*, XXIII Bri. Y. B. Int'l L. 1 (1946).

66 Y. Ned. 9, 3–4.

67 Shlomo Goren, *Musar Haleḥima Leor Hahalacha*, *in* 1 Meshiv Milhama: She'elot Vetshuvot Be'inyanei Tzava, Milhama Uvitahon 5–6 (2d ed. 1994).

68 For his discussion of Rabbi Akivas's position, see Shlomo Goren, Torat Hamoadim: Meḥkarim Umamrim Al Moadey Yisrael Leor Hahalacha 45–47 (3d ed. 2001).

69 The neo-Kantian philosopher Hermann Cohen had a similar understanding of this text. *See* Hermann Cohen, Religion der Vernunft aus den Quellen des Judentums pt. 8, § 11 (1919).

70 For the use of unusual sources to create halachic laws of war, see Stuart A. Cohen, *The Quest for a Corpus of Jewish Military Ethics in Modern Israel*, 26 J. Isr. Hist. 35 (2007).

71 *See also* 2 Samuel 8:13.

(eleventh-century France), concluding, even on shaky textual grounds,[72] that there is a natural moral obligation to treat prisoners of war and the remains of enemy combatants with respect. Goren does not explicitly base his ruling on international law, but the use of extra-halachic sources is a sign that what has become a foundation of civilized nations must be integrated in the halachic system.

ENEMY CIVILIANS

Beginning with the Hague Treaty of 1907, and especially with the Geneva Conventions and the additional protocols from 1977, several basic principles were articulated concerning civilians during wartime. The Fourth Geneva Convention excludes civilians from hostilities and demands that they be protected.[73] The conduct of modern warfare in areas with significant civilian populations requires criteria to identify acceptable military targets, the basic principle being that

> [i]ndiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective, (b) those which employ a method or means of combat which cannot be directed at a specific military objective, or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol.[74]

Rabbi Yisraeli did not see protection of civilians as a broad duty or in a case of compulsory war acknowledge protection of enemy civilians at all. Goren, however, has a very different approach. In the biblical account of the settlement of Canaan, God commands the total annihilation of the seven nations of the land, including non-combatants. The reason, Deuteronomy 20:18 says, is that idolaters will spread their superstition among the Israelites. Here, Goren sees ancient history, not a paradigm:

> We are commanded to spare the enemy, not to kill even in a time of war, only when there is a necessity of self-defense to conquer and win. But not to harm the non-combatant population,[75] and certainly not to harm women and children who are not part of the warfare. Only in the wars that we were commanded in the Torah in ancient times were we explicitly commanded "thou shall not leave any who breathes" [Deuteronomy 20:16] since the enemies at that time were cruel and that is why the Torah was stringent with them. But we should not, heaven forbid, learn from this about other wars and in our times.[76]

Goren's understanding that the Torah commanded total war not because of idolatry, but as a response to the unusual cruelty of the seven biblical nations, means that in our day total war is forbidden as an act of unjust killing. While he could have just as easily reached the same conclusion by pointing out that there is no idolatry today, he chose a reason gleaned from the discourse of international law. He is willing to take such an unusual position in order to present Halacha as a system compatible with the core values of modern legal systems.

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72 SHLOMO GOREN, 2 MESHIV MILHAMA: SHE'ELOT VETSHUVOT BE'INYANEI TZAVA, MILHAMA UVITAHON 460 (2d ed. 1994). Similar ideas are addressed in vol. 1 39–40.

73 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, 6 U.S.T. 3516.

74 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 51, 1125 U.N.T.S. 3.

75 Later, he mentions that combatants who lay down their arms cannot be harmed. Goren, *supra* note 67, at 15.

76 *Id.* at 14.

Goren also seeks a solution in Genesis 34. After Shechem's rape of their sister Dinah, Simeon and Levi feign agreement to wed her to Shechem if all the men of the town agree to be circumcised but then attack the city and slaughter them. According to Maimonides, their action was just since the town should have judged Shechem for his crime, complying with the universal commandment of *Dini* (literally, "laws"). According to rabbinic literature, this commandment is binding upon all nations of the world, requiring that every society have a system of laws and legal enforcement.[77] The Shechemites' disregard of the crime demanded punishment.

Nahmanides, however, saw the action as immoral, since the brothers punished the entire city rather than the specific leader. Goren concludes that Maimonides pronounces the binding adjudication while Nahmonides engages in a moral discourse. An army choosing to follow such a measured policy is praiseworthy, and even though not binding as normative, it is the choice expected from an army governed by the Torah, which includes not only laws but ideals that go beyond the letter of the law:

> We learn that when dealing with human lives there are two criteria: one is Halacha and one is the law of the pious. In such a case one must follow the law of the pious that is also Torah and in issues of life and death is a meta-halacha [core halachic principals].[78]

Goren felt that humanitarian demands also apply to unlawful combatants. In an article about the first Lebanon war, he supported ending the siege on Beirut because of its effects on the civilian population. After terrorists lay down their arms they cannot be harmed.[79]

Goren's position is compatible with the principle of civilian exclusion from warfare jointly upheld by international law and the Zionist ethos.[80] While international law may conflict with the Genesis account, for Goren, the biblical reinterpretation is a natural, not an apologetic, one, as his primary hermeneutical assumption is that rabbinical texts are always morally correct even if the surface meaning of the text suggests otherwise.

INTERNATIONAL LAW AS IDEAL OR AS REALPOLITIK?

Throughout his works, Goren holds that international public opinion does not immediately translate into an halachic-moral imperative. In the case of fighting between Syria and Fatah led by Yasser Arafat in 1983, for instance, Israel allowed the withdrawal of Arafat and his men from Tripoli in December 1983 under UN supervision. Great pressure had been exerted on Israel to relax the Tripoli blockade to allow Arafat to retreat by sea.

Goren took the Israeli government to task for capitulating to international opinion. It was morally preferable to let the fighting between Arafat and the Syrians continue, weakening Arafat, a leader who had launched terrorist attacks against Israel. Goren rejects the notion that in such a case international consensus has any halachic or moral validity.

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77 Maimonides, *Laws of Kings*, 9:14.

78 Goren, *supra* note 67, at 28.

79 Goren, *supra* note 53, at 402. In another version of this article he chooses not to emphasize the humanitarian motif of his ruling. 3 Goren, *supra* note 72, at 239.

80 On the Zionist ethos of *tohar haneshek* (purity of weapons), see Moti Shalem, Tsava Meḥapes Mashma'Ut: 'Erkhe Irgun Ha-Haganah : Beḥinah Hisṭorit Shel Tahalikh Hitgavshutam Ṿe-Darkhe Hanḥaltam 1939–48 (2004) and Dan Yahav, Ṭohar Ha-Nesheḳ : Etos, Mitos U-Metsi'Ut 1936–56 (2002).

The basis for his opinion is once again a reading of the war on Shechem by Jacob's sons (Genesis 34). This time, however, Goren focuses on Jacob, who fears revenge from the "people living in the land." The brothers dismiss the potential for trouble, defending their drastic action as saving the honor of their sister. Goren sides with the brothers: international pressure is not an overriding reason to refrain from committing a deed the Torah commands:

> When we come to do justice with criminals, one should not take into consideration "what will the Nations say," and how they are likely to react, but we must act by the commandment of the Torah and the ethics of the prophets, and God will do what he thinks right![81]

Goren maintains that this principle should have been applied to Arafat and his men. Here, Goren follows Maimonides, while in the former ruling, he advocates the righteous choice of Nahmanides.[82]

In the Tripoli scenario there was no danger of harming civilians, therefore, there could be no moral objection to allowing the Syrians to annihilate the forces of the Palestinian Liberation Organization. In a case where pressure is put on Israel, however, and depending on its severity, Israel should heed the requests of foreign powers. Not that the requests have any moral force; rather, the question is merely how much pressure they exert and the extent of the damage if Israel does not acquiesce. For Goren, the question resolves itself into one of power politics. The value of international law is directly proportional to the sanctions it can exert.

A responsum dealing with an incident during withdrawal from the Sinai in 1956 strengthens this characterization of Goren's position. As part of the armistice agreement with Egypt, it was agreed that Israel would abandon military outposts in the Sinai. The pullback of some of the soldiers was scheduled for Shabbat and required many violations of Halacha. After the event, one of the soldiers asked Goren if the pullback was done according to Halacha. In his response, Goren says that the diplomatic pressure exerted on Israel was equivalent to military pressure.[83] Therefore, the pullback in the midst of the Sabbath was justified.

In essence, Goren viewed international law as another form of military challenge, not as a normative imperative. Yet at times, he did stress the moral element of adhering to international law.[84] Apparent contradictions can be explained not only by the specifics of a given situation, but also by Goren's willingness to enter into a dialogue with international law, by all means a critical one, but a dialogue nonetheless. Goren is willing to discuss what he identifies as universal moral norms. In an article dealing with morality in times of war,[85] he cites Maimonides: "Whoever destroys a soul, it is considered as if he destroyed an entire world. And whoever saves a life, it is considered as if he saved an entire world."[86] While some canonical sources present this phrase as dealing only with fellow Jews,[87] other sources make no distinction.[88] Goren sees this as a policy decision regarding universal morality and human norms of conduct.[89]

81 Goren, *supra* note 44, at 300.
82 Goren, *supra* note 67, at 25–29.
83 *Id.* at 244.
84 *See supra* note 43.
85 Goren, *supra* note 67, at 3.
86 Maimonides, *Sanhedrin* 12, 3.
87 M., *Sanhedrin* 4:5, BT, *Sanhedrin* 37a.
88 T., *Sanhedrin* 4:1 (22a).
89 Goren, *supra* note 67, at 3–6, 38–40.

CONCLUSION

Goren makes two claims: first, that Jewish morality as expressed in Halacha is in no way inferior to the "morality of the Nations" underlying the decisions of the United Nations. Such an assertion includes reading into halachic sources policies crucial to modern international law. If international law is rejected on a moral basis, then it becomes a matter of realpolitik: if there is a threat to the State of Israel, it is permitted to accede to the demands of international bodies.

Perhaps the dual attitude of Goren toward international law stems from his feeling that Halacha and international law are so foreign to each other that their relationship can only be coercive, not complementary. International law acquires authority not because of a normative change in the value system but because of a power structure. The dialogue that began with a power-based relationship, however, evolved into something more. Goren served in a mostly secular military environment. As an officer making decisions with wide ramifications, he had no choice but to internalize some of the legal norms of modern warfare. It led him to try to reduce the gap between his particularistic tradition and a universal system. To do so, he used texts without normative significance in halachic literature, because he recognized in them some of the core values of the international law system.

Goren operated in more than one community and within different value systems. He was a student of the Orthodox yeshivas, yet he spent all his adult life as part of the Zionist establishment. Thus it was natural for him to translate the Zionist ethos into halachic language. Goren's writings attempt to create a halachic framework for modern Israeli public life—a mediation between particularism and universal values that continues to dominate Israeli public discourse.

The evolution of international law parallels the emergence of modern politics and nationalism. Beyond historical and cultural ties to a territory, international law has been applied to justify demands for independence and self-determination. Arnulf Becker Lorca has discussed the development of international law in the nineteenth century and its influences on national movements outside the western hemisphere that employed it in their attempts to achieve sovereignty from colonial powers. Non-Western jurists, whom he calls semi-peripheral, adopted international law and, although internalizing European legal thought, also contributed to the evolution of nineteenth-century international law, adding to it a non-Western legacy.[90] Rabbi Goren took a similar course of action. He could have remained a purist and rejected outside influences on Jewish law, but doing so would have meant remaining outside the Zionist enterprise as a mere bystander.

The international arena has seen many confrontations with non-liberal regimes. At times, it seems impossible to bridge the gap between the western powers and movements not centered on modern notions of human rights. Yet the advantages associated with international legitimacy are a significant incentive to adhere to the norms of international law and perhaps also lead to an (at least partial) adoption of these norms by national movements initially hesitant to take part in the discourse of international law.

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90 Arnulf Becker Lorca, *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*, 51 HARV. INT'L L.J. 477–78 (2010); *see also* Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999).