

1. Jeffrey Heller, *U.S. 'excessive force' comment touches nerve in Israel*, Reuters, Oct. 15 2015

At a daily press briefing on Wednesday, U.S. State Department spokesman John Kirby said Israel, which has set up roadblocks in East Jerusalem, where many of the Palestinian attackers resided, has a right and responsibility to protect its citizens.

He added: "Now, we have seen some – I wouldn't call the checkpoints this - but we've certainly seen some reports of what many would consider excessive use of force.

"Obviously, we don't like to see that, and we want to see restrictions that are elevated in this time of violence to be as temporary as possible if they have to be enacted," Kirby said, without citing specific incidents.

Asked at a news conference for the foreign media in Jerusalem about those remarks, Netanyahu said:

"What do you think would happen in New York if you saw people rushing into crowds trying to murder people? What do you think they would do? Do you think they would do anything differently than we are doing?"

But on Thursday, Kirby insisted there had been no U.S. fingerprinting at Israel.

"I want to be very clear that we have never accused Israeli security forces of excessive force with respect to these terrorist attacks," he said.

Use of deadly force during an attack

2. Rabbi Shabbtai Bass (17th century Poland, Amsterdam), Siftei Chachamim to Bereishit 32:8

אם יכול להציל באחד מאיבריו והרגו נהרג עליו, ויעקב היה ירא שמא יהרוג אותן מכח בלבול המלחמה, אע"פ שהיה יכול להציל באחד מאיבריהם.

If one can save via one of the pursuer's limbs, and instead he killed him, he is killed. Yaakov feared that he might kill them in the confusion of war, despite being able to save via one of their limbs.

3. Rabbeinu Asher (13th century Germany, Spain), Rosh to Bava Kama 3:13

הכא [בשוורים] יש רשות לשני לחבול בראשון כיון שהתחיל בו, דאפי' באדם אית ליה רשות לשני... ומיהו צריך לומר דאם היה יכול להציל עצמו בחבלה מועטת וחבל בו הרבה חייב, מידי דהוה איכול להציל באחד מאיבריו והרגו.

[In the case of oxen,] the second ox may attack the first, since he started. Even with people, the second one is permitted to respond... But one must say that where he could have saved himself by inflicting a small wound, and he wounded greatly, he is liable, like the case of one who could have saved via one of his limbs, and instead killed the attacker.

4. "Purity of Arms" (Ministry of Defense, 2006),

<http://web.archive.org/web/20060430031938/http://www1.idf.il/dover/site/mainpage.asp?sl=EN&id=32>

The soldier shall make use of his weaponry and power only for the fulfillment of the mission and solely to the extent required; he will maintain his humanity even in combat. The soldier shall not employ his weaponry and power in order to harm non-combatants or prisoners of war, and shall do all he can to avoid harming their lives, body, honor and property.

5. Rabbi Shlomo Luria (16th century Poland), Yam shel Shlomo to Bava Kama 8:42

אם אחד חירף את חברו בשם רע, וחזר זה והכהו, אף שעבר בלאו ד"לא יוסיף... פן יוסיף", וצריך כפרה, מ"מ אין עליו דין רשע כלל, אלא אמרינן לביה רתח, ואין אדם עומד על צערו...

If one person shamed another with a bad name, and the other responded by striking him, then although the second one violated the prohibition of "He shall not add... lest he add", and he must atone, he does not have the status of "wicked". We say his heart was boiling, and one does not stand by when in pain...

6. Yoav's crime and punishment (Samuel II 2-3, Samuel II 20, Kings I 2)

- Asahel pursued Avner, who tried to warn him off. Asahel continued the pursuit; Avner turned and stabbed him at the fifth rib, killing him.
- Asahel's brother Yoav, general of King David, murdered Avner. Yoav later murdered another general, Amasa.
- King Solomon had his general, Benayahu, execute Yoav

7. Talmud, Sanhedrin 49a

אתיוה ליואב, דייניה. אמר ליה, "מאי טעמא קטלתיה לאבנר?" אמר ליה, "גואל הדם דעשאל הוא." "עשאל רודף הוה!" אמר ליה, "היה לו להצילו באחד מאבריו." אמר ליה, "לא יכיל ליה!" אמר ליה, "השתא בדופן חמישית כיון ליה... באחד מאבריו לא יכיל ליה?" אמר ליה, "ניזיל אבנר. מאי טעמא קטלתיה לעמשא?"...

He brought Yoav and judged him. He said to him: Why did you kill Avner?

Yoav replied: I am the redeemer of Asahel's blood. He said: But Asahel was a pursuer!

Yoav replied: Avner should have saved with one of his limbs. He said: But he couldn't have!

Yoav replied: If Avner could precisely strike his fifth rib... he couldn't strike one of his limbs?

He said: Let's leave Avner. Why did you kill Amasa?

8. Rambam (12th century Egypt), Mishneh Torah, Laws of the Murderer and Guarding Life 1:13

כל היכול להציל באבר מאיבריו ולא טרח בכך, אלא הציל בנפשו של רודף והרגו, הרי זה שופך דמים וחייב מיתה - אבל אין בית דין ממיתין אותו.

Anyone who can save with one of the pursuer's limbs, and does not strain to do that but instead saves at the expense of the pursuer's life, killing him, has shed blood and is liable for death – but the court does not kill him.

9. Rabbi Yitzchak bar Sheshet Perfet (14th century Spain, Algeria), Responsum 238

אפשר שאין הנרדף הבא להציל את עצמו בנפשו של רודף צריך להתרות ברודף, לפי שהוא בהול על נפשו להציל עצמו ולא חייבוהו להתרות, אלא כיון שרואה שבא להרגו, ישכים הוא ויהפך אל הרודף. אבל איש אחר הבא להצילו צריך להתרות ברודף קודם שיהרגנו, אם יש פנאי.

Perhaps the target who saves himself by killing the pursuer need not warn the pursuer, for he is scared for his life, saving himself, and they did not obligate him to warn. Rather, once he sees that this person has come to kill him, he should rise early and turn the tables on the pursuer. But a third party who comes to save him must warn the pursuer before killing him, if there is an opportunity.

10. Rabbi David ibn Avi Zimra (16th century Spain, Israel), Comment to Laws of Kings and their Wars 9:4

והטור כתב וז"ל "ואיני יודע כיון שחייב מיתה למה אין ב"ד ממיתין אותו?" וזו אינה קושיא כלל, דכיון שהוא רודף הפקיר עצמו למיתה שהרי יודע הוא שהנרדף יעמוד על נפשו.

The Tur wrote, "I don't know why the court doesn't kill him, if he is liable for death." This is no question at all; as a pursuer, he has abandoned himself for death, for he knows that the target will defend his life.

Use of deadly force against a subdued attacker

11. Rabbi Yehuda Herzl Henkin (21st century Israel), Bnei Banim III 4:7

אמנם חילול ד' שייך גם במה שמותר מן הדין ואפילו בשעת מלחמה. לגבי הגבעונים בספר יהושע (ט) "ולא הכום בני ישראל כי נשבעו להם נשיאי העדה", אמרו במסכת גיטין מו. שבאמת לא חלה השבועה ומכל מקום לא הרגום "משום קדושת השם", ופרש"י "שלא יאמרו העובדי כוכבים [שישראל] עברו על שבועתם".

In truth, there is desecration of Gd's Name even with actions that are legal, and even during war. Regarding the Givonim in Yehoshua 9, "The Children of Israel did not strike them, for the leaders of the nation had sworn to them," the Talmud (Gittin 46a) says that the oath was not truly binding, but they still did not kill them "because of the sanctity of the Name." Rashi explained, "Lest the idolaters say that [Israel] had violated their oath."

12. Rabbi David Stav (21st century Israel), <http://mizrachi.org/eliminating-a-neutralized-terrorist/>

These days, when the boiling blood is mixed with civilian willingness and resourcefulness, it's important to maintain our moral superiority: To avoid harming a person who is not involved in murderous activity, and to avoid harming those who have already been neutralized and no longer pose a danger. It's not because they are innocent. They deserve to die, but that is not our way. Harming a terrorist who has been neutralized causes double damage: The collateral damage is when these images are distributed, and the main damage is harming our moral norms. We will not stoop down to our enemies' despicable behavior, and we will not contaminate ourselves with a moral breakdown.

13. Rabbi Yaakov Ariel (21st century Israel), <http://www.yeshiva.org.il/ask/96644>

באיסלם מצות גאולת דם היא מצווה גדולה, ואין צורך להוסיף שמן למדורה. הריגה לא בהכרח מרתיעה, משום שההרוג הופך לשהיד. צריך לשקול היטב עם המומחים לביטחון.

In Islam, the commandment to redeem blood is a great commandment, and one need not add fuel to the fire. Killing them will not necessarily deter, because the executed person becomes a martyr. One must weigh this well, with security experts.

14. Rabbi Dov Lior (21st century Israel), *Striking a Neutralized Terrorist*, http://pisrael.com/giluy_daat/2015/275/index.html#p=5

מחבל מפגע בא בשם עמו, ומטרתו לפגוע בכל יהודי באשר הוא, ולכן אין זה נחשב כמעשה עבריינות אלא כמלחמה נגד עם ישראל.

An attacking terrorist comes in the name of his nation, and his goal is to strike any Jew in any way, and therefore this is considered not a criminal act but a war against the Jewish nation.

15. Rabbi Yehudah Loeb (Maharal) (16th century Poland, Moravia, Prague), Gur Aryeh to Bereishit 34:13

ואף על גב דאמרה התורה (דברים כ, י) "כי תקרב אל עיר להלחם עליה וקראת אליה לשלום", היינו היכי דלא עשו לישראל דבר, אבל היכי דעשו לישראל דבר, כגון זה שפרצו בהם לעשות להם נבלה, אף על גב דלא עשה רק אחד מהם - כיון דמכלל העם הוא, כיון שפרצו להם תחלה - מותרים ליקח נקמתם מהם.

Deuteronomy 20:10 says, "you shall call to it for peace", but that is where they have not acted upon Israel. Where they have acted toward Israel, such as here [Shechem] where they had broken forth, doing this repellent thing, then even though only one of them had done it, since they had attacked first, Israel was permitted to respond. So, too, for all wars, even where only one of them had acted, he is part of the nation. Since they attacked first, we were permitted to go to war against them...

16. Rabbi Avraham Shapira (21st century Israel), *War and Ethics*, Techumin 4, pg. 182

כל עוד אין סכנה ממשית לחיילינו אין היתר לפגוע בנפש ואף לא ברכוש. אולם כאשר הסכנה היא מוחשית, הרי שיש לזכור שעל כף המאזניים אין עומדת רק היחידה הלוחמת מול האוכלוסיה האזרחית, איבוד של יחידה אחת או חלק ממנה עלול לפגוע במערכת המלחמה כולה.

When there is no substantive risk to our soldiers, there is no permission to strike lives or property. However, when there is a discernible risk, one must remember that it is not only a matter of weighing one unit opposite a civilian population on the scale. The loss of one unit, or part of it, can affect the entire battle...

17. Rabbi Aharon Lichtenstein (21st century Israel), *Ethics and War*, Techumin 4, pg. 185

המחיר נתבע גם מהאויב, שאף הוא נחון בצלם אלוהים, ויש לדאוב בכל מקרה שמעשה ידיו של הקב"ה טובעים בים. בנקודה זו מהווה הגורם הכמותי גורם בעל משמעות, ויש בהחלט לשקול את מידת הצידוק שבפגיעה ברבים על מנת להציל את היחיד.

The price [of war] is also paid by the enemy, who is also graced with the Divine image, and one should grieve whenever G-d's creations drown in the sea. On this point, the issue of quantity is meaningful, and one certainly must weigh the justifications for harming many in order to save an individual.

18. Tosafot (12th-13th century Western Europe) Avodah Zarah 26b **ולא**

וא"ת הא אמרינן במסכת סופרים [פ"ט'] כשר שבכנענים הרוג ו"ל דבירושלמי דקדושין מפרש דהיינו בשעת מלחמה ומביא ראיה מ"ויקח שש מאות רכב בחור", ומהיכן היו? מ"הירא את דבר ד".

And if you will ask, Sofrim 15 says, "The kosher among the Canaanites, you shall kill," one could note that the Talmud Yerushalmi (Kiddushin) explains that this is during war, and it brings proof from "And he took 600 choice chariots (Shemot 14:7)", and where were they from? From "Those who revered the word of Gd. (ibid. 9:20)"

19. Rabbi Shemuel Eliyahu (21st century Israel), <http://bit.ly/1O639tS>

אסור לקחת סיכון על אדם, לא מסכנים חיים של יהודי. לא צריך לקחת סיכון. אנחנו צריכים שהבן אדם הזה לא יצא חי מכל סיבה בעולם. One may not risk people's lives, we do not endanger Jewish life. There is no need to take risks. We must make sure that this person does not escape alive, for any reason in the world.

20. Rabbi Levi ben Gershom (Rabag) (14th century France), Commentary to Kings I 22:38 #34

ראוי לאדם כשיפול בידו במלחמה מי שהוא תמיד לו ולעמו לקוץ מכאיב, שלא יחמול עליו, אך יבער אותו מן הארץ פן ימצא לו מקום אחר זה אם ימלט להשחית הוא ועמו לפי היכולת.

If someone who was always a painful thorn for him and his nation should fall into his hands in war, it would be appropriate not to have mercy on him, but to eliminate him from the land, lest he find another opportunity, should he escape, to destroy him and his nation as he is able.

21. Rabbi David Kimchi (Radak) (12th-13th century France), Commentary to Kings I 20:35

והחמלה על הרשעים אכזריות, כי ידוע כי סופם לעשות מלחמה.
Mercy on the wicked is cruelty, for it is known that they will wage war in the end.

22. Rabbi Moshe Feinstein, Igrot Moshe (20th century USA), Choshen Mishpat 2:69:2

להרוג את העובר יהיה אסור עד שתהיה האומדנא להרופאים גדולה קרוב לודאי שתמות האם, דמאחר דהוא מצד שנחשב רודף צריך שיהיה כעין ודאי שהוא רודף.

Killing a fetus is prohibited until the doctors have great reason, close to certainty, that the mother will die. Since the permission is due to the fetus's status as a pursuer, it must be near-certain that he is a pursuer.

23. Rabbi Shlomo Zalman Auerbach (20th century Israel), Minchat Shlomo 1:7

מה שמותר בימות החול לקום על ישראל הבא במחתרת ולהורגו ולא אמרינן שיניחנו ליטול ממונו, היינו משום דהריגת הרודף היתר גמור הוא אף כשאינו אלא ספק שהרי כל הבא במחתרת אינו ודאי רודף

The fact that one may rise up against a Jewish invader on a weekday and kill him, and we don't say to let the invader take his money, is because killing a pursuer is entirely permitted even where his intentions are only uncertain. Anyone who tunnels in is not definitely a pursuer.

24. Attributed to Golda Meir, *A Land of Our Own: An Autobiography*, pg. 242

When peace comes, we will perhaps in time be able to forgive the Arabs for killing our sons, but it will be harder for us to forgive them for having forced us to kill their sons.