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### **“He Who is Compassionate to the Cruel Will Ultimately Become Cruel to the Compassionate”**

#### *Contemporary Lessons from an Ancient Midrash*

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#### **Compassion to the Cruel – Harm to the General Public**

The popular folk saying asserts, “He who becomes compassionate to the cruel will ultimately become cruel to the compassionate.” This adage, whose origins are in the Midrash of our Sages (see below), is utilized these days regarding the government’s treatment of Arab terrorism, since the beginning of the present wave of violence, called “*intifada*”, which has lasted more than twelve years with no end in sight. More specifically, the reference is to the government’s treatment of terrorism since the signing of the Oslo Accords, as on the one hand, it declares its commitment to a continued war on terrorism, while at the very same time, supplies weapons to organizations which have not abandoned the path of terrorism and refrains from targeting individuals with whom they are engaged in “peace” negotiations, though those same individuals are responsible for the continued terrorist activity against Israel.

The charge directed at the government is that it does not subdue terrorism resolutely and even surrenders to terrorism by agreeing to conduct diplomatic negotiations with terrorist organizations while “under fire”, encouraging additional terrorism.<sup>1</sup> The utilization of the rabbinic idiom cited in this contemporary context is that he (the government) who acts compassionately, in others words, benevolently, towards cruel people – none other than the various terrorist functionaries – ultimately will become cruel to the general public, which is forced to pay the price of additional casualties for the government’s irresolute behavior. The “compassionate” in this saying, in its practical application is, therefore, the **general public**, for whom compassion to the cruel is cruelty towards them.

This notion, that displaying an attitude of mercy towards the wicked who deserve severe punishment involves acting cruelly towards the general public, can be found in the words of Maimonides in his book *The Guide of the Perplexed*.<sup>2</sup> In reference to the verse (Exodus 21:14), “If a person willfully schemes to kill his neighbor – he shall be (even) taken from my altar and put to death”, Maimonides writes that

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the wicked and calculating person (who killed intentionally and was sentenced to death) – if he seeks sanctuary among us, we must not provide him with asylum and not have mercy upon him...because compassion towards the wicked – is **cruelty to all beings**.

In a number of instances, Israeli courts employed this saying, in the aforementioned folk connotation, in determining the appropriate punishment for a person guilty of serious crimes. In the examples cited below, the general public is liable to suffer as a result of the court's forgiving attitude towards serious crimes and, therefore, the courts must not act compassionately towards one unworthy of such treatment.

The case of several people with criminal records who were convicted of serious crimes – armed robbery and the like – and sentenced to long periods of incarceration was adjudicated before the Supreme Court. In rejecting the appeal regarding the severity of the punishment, the Supreme Court wrote in its decision:<sup>3</sup>

The appellants...all have extensive criminal records indicating that crime has become a way of life for them. Since they declared war on society, society through its institutions – among them the courts, must protect itself from them; there is no recourse other than distancing them from society for an extremely lengthy period, so that they will not be able to cause more damage. No consideration, neither the psychological make-up of the appellants nor the suffering of their families, can stand before the overriding necessity to protect the well-being of the public, a fact which forces the court to harden its heart, because misplaced compassion leads to cruelty to the public.

In another case, a man was convicted of causing severe injuries to his wife and, nevertheless, the court decided not to sentence him to jail. This decision was appealed, and in its decision to accept the State's appeal, the Beersheba District Court asserted<sup>4</sup>:

Severe punishments for criminals like the convicted are a necessity, both in order to protect family members and in order to demonstrate to the abusers and to the general public the gravity of violent behavior even within the family, and in order to negate in the strongest possible terms the position which accepts the possibility that people in dire straits can find an outlet for their problems in a destructive manner through inebriation and through violence within the home. The fact that society cannot come to terms with this sort of behavior and is unwilling to treat it with understanding and forgiveness must be clearly articulated. In the words of our Sages: He who is compassionate to the cruel will ultimately become cruel to the compassionate... Let me add that refraining from meting out a didactic and deterrent punishment in cases of family violence has the potential of generating direct threats in the future to all those powerless people who are liable to find themselves in the path of a violent person's outburst of rage.

A man came before the Magistrate's Court on the charge of possession of narcotics. The accused had a long record of convictions for a variety of crimes: breaking and entering and theft, possession and trafficking of dangerous narcotics, assault and more. In rejecting the defendant's request for a lighter sentence, the Court ruled in the wake of the aforementioned Supreme Court decision.<sup>5</sup>

The Supreme Court has already ruled that no consideration, neither the psychological make-up of the accused nor the suffering of his family can stand before the overriding necessity to protect the well-being of the public, a fact which forces the court to harden its heart, because misplaced compassion leads to cruelty to the public... "He who is compassionate to the cruel will ultimately become cruel to the compassionate." And it also says in Maimonides, "that mercy on criminals is cruelty to all creatures". I believe that one must take stringent action in the case of the accused and prevent the danger which he poses to the public.

The need to strictly sentence a criminal who stole from the national treasury and thereby to protect the public at large, is manifest in the sentence of the Magistrate's Court in Petah Tikva<sup>6</sup>:

Our sages stated, regarding the severity of punishment, that he who is merciful to the cruel will become cruel to the merciful, and Maimonides adds that mercy to criminals is cruelty to all creatures. The accused stole from the national treasury and the public (“creatures”), and the nature of the crimes justifies their being disgraced by convicting and incarcerating them. This in no way ignores the restitution factor in its plain sense – the payment of a fine. The purpose of the latter is to punish the accused in his pocket and in doing so benefit the public, as the money collected in fines goes to the national treasury for the use of its citizens and also to ameliorate the damage and appease the “victim” (the citizens – “creatures”).

The Supreme Court addressed the need to refrain from having compassion on a criminal who compromised national security and, as a result, the public at large by negating the parole board’s decision to deduct one-third of a criminal’s jail term for good behavior<sup>7</sup>:

A weighty punishment was meted out to Dotan, however, his transgression is weightier than his punishment. The military tribunal should have suppressed its compassion and similarly we must suppress ours. Our Sages taught us: “He who becomes compassionate to the cruel will ultimately become cruel to the compassionate”...and in another version: “One who becomes compassionate instead of cruel will ultimately become cruel instead of compassionate.” Dotan’s evil actions are those which brought about his punishment and are those which will prevent his discharge after serving two-thirds of his jail sentence.

In modern Israeli jurisprudence in this generation, this adage of our Sages has assumed the connotation that revealing a forgiving attitude towards one unworthy of such treatment, ultimately constitutes a blow against the general public. In this sense, this adage of our Sages is moral in nature, and carries with it guidance to the government and the law enforcement authorities to refrain from acting compassionately towards those undeserving of such treatment, lest the general public suffer the consequences. The aforementioned modern jurisprudence leads one to the following inference: If society is entitled to protection from thieves, possessors of drugs, wife-beaters and those who endanger national security, it is certainly entitled to protection from terrorist organizations and their operatives, whose proclaimed goal is the liquidation of the State of Israel. A government which does not act to totally suppress terrorism, forsakes its obligations towards the public.

### **Compassion to the Cruel – A Blow to the Rule of Law**

Perusal of the Midrashic source of the saying in question reveals that the message emerging from the words of our Sages is completely different. It is not a moral message but rather a juridical principle which our Sages are seeking to articulate through the Midrash, and that principle is: the obligation to obey the law and, especially, the obligation of the government to obey the law. The concrete topic which the Midrash is addressing is extraordinarily topical – the obligation of the government to fulfill its legal obligation to wage an all-out war against anyone who sets the destruction of Israel as its primary goal. This is the explication of the matter:

Regarding the verse located in the chapter discussing Saul’s war with Amalek (I Samuel 15:9), “And Saul and the nation spared Agag,” the Midrash says:<sup>8</sup>

R’ Elazar said: One who becomes compassionate to the cruel will ultimately become cruel to the compassionate, as it is written, “And Saul and the nation spared Agag and the best sheep and cattle.”, and it is written (Ibid. 22:19) “And Nov, the city of priests, he smote with the edge of a sword.”

As we know, King Saul was commanded by the prophet Samuel: “Go and smite Amalek and confiscate all that is theirs” (I Samuel 15:3). This commandment stemmed from the Torah commandment to erase the memory of Amalek (Deuteronomy 25:19), however, in the hearts of Saul and the nation, compassion on Agag, King of Amalek and on the best sheep and cattle, was aroused, and as a result, Saul refrained from completely fulfilling the words of the prophet. In this regard, the

Midrash states that one who becomes compassionate to the cruel will ultimately become cruel to the compassionate as King Saul acted compassionately to Agag (the cruel) and ultimately became cruel to the compassionate, in the guise of the people of Nov, the city of priests, whom Saul killed wantonly because he suspected them of having assisted David.

This is not, therefore, compassion to the cruel which ultimately leads to harming the **general public** and must therefore be avoided; this is rather a psychological process that claims that one who displays mercy towards the cruel will ultimately display a cruel attitude to the compassionate. The Midrash does not elaborate on how the psychological process works.

This Midrash is difficult in many respects. The first difficulty is that the parallel between the cruel and the compassionate does not seem very appropriate; it would have been more appropriate to say: One who becomes compassionate to the **wicked** or the **criminal**, will ultimately become cruel to the **righteous** or the **honest**. The Midrash is based on the assumption that one must act towards everyone according to his own behavior: One should have mercy on those who deserve it and one should act cruelly towards those who deserve it. The reason that one ought not have compassion on the cruel is his **wickedness**, and the reason to have compassion on the honest man is his **honesty and righteousness**, and seemingly, it would have been more appropriate to note man's good or bad character and not whether he is cruel or compassionate.<sup>9</sup>

A second difficulty is found in the words "the cruel" which appear in the Midrash and is appropriate only to Agag, however, in the biblical verse, reference is made to Saul's and the nation's compassion on the **sheep and cattle**. In this regard, it is inappropriate to say, "One who becomes compassionate to the cruel", as what cruelty exists in sheep and cattle?

A third difficulty is that there is apparently no logic in the assertion that one who becomes compassionate to the cruel will ultimately become cruel to the compassionate. Seemingly, the conclusion should be the opposite: If man is so compassionate that he has mercy even on the cruel, he will most certainly have mercy on the compassionate, and why would he ultimately be cruel to them? And if that is what happened to King Saul, does the fact that he was cruel to the people of Nov stem from the fact that he was compassionate to Agag?

It seems that these difficulties disappear in light of a different version of the Midrash of our Sages, located in Kohelet Rabba; this version apprises us as to the real meaning of the Midrash and of the lessons which can be learned from it. And so we learn:<sup>10</sup>

One who becomes compassionate **instead** of cruel, will ultimately become cruel **instead** of compassionate, as it is written (I Samuel 22:19): "And Nov, the city of priests, he smote with the edge of a sword." Is Nov any worse than the descendants of Amalek?!

We are, therefore, not referring to compassion to the cruel nor cruelty to the compassionate – and as a result, all of the above difficulties fall by the wayside – but rather of compassion **in circumstances which require an attitude of cruelty** and cruelty **in circumstances which requires an attitude of compassion**. According to the context, the meaning is that if in the circumstances of the matter **the law** requires an attitude of cruelty, then one must not act compassionately because **the law** rather than one's feelings should dictate one's actions, and on the contrary, if in the circumstances extant, **the law** requires an attitude of compassion, the one may not act cruelly according to his feelings but rather should act according to the requirements of **the law**.

The full and precise meaning of the saying of our Sages in question can be culled from the context in which it is written. This is the Midrash in its entirety:

"Be not righteous overmuch: nor make thyself overwise" – be not righteous overmuch more than your Creator who spoke to Saul, as it is written, "And Saul came to a city of Amalek, etc." (I Samuel 15:5).

Rav Huna and Rav Benaya say: He began negotiating against his Creator and said, The Holy One, blessed be He, said, “Go and smite Amalek.” If the men sinned what is the women’s sin and what is the children’s sin and what is the sin of the cattle, the ox and the donkey? A heavenly voice (*bat kol*) emerged and said: “Be not righteous overmuch” – more than your Maker. And the rabbis say that he began discussing in terms on the beheaded calf and said: The verse says “And they shall behead the calf in the ravine” (Deuteronomy 21:4) – he kills and she is beheaded, if man sinned, what is the animal’s sin? A heavenly voice (*bat kol*) emerged and said: “Be not righteous overmuch.” R’ Simon ben Lakhish says: One who becomes merciful instead of cruel will ultimately become cruel instead of merciful, as it is written, “And Nov, the city of priests, he smote with the edge of a sword” (I Samuel 22:19); is Nov any worse than the descendants of Amalek?! And the Rabbis said: “One who becomes merciful instead of cruel will ultimately be smote by the Divine Attribute of Strict Justice (*midat ha’din*), as it is written, “So Saul died and his three sons”(Ibid 31:6).

The message emerging from these words of our Sages is that one must fulfill the dictates of the law even if the dictates of the law are inconsistent with human sentiment. Therefore, one must fulfill the commandment of the obliteration of Amalek even if in terms of his feelings, it seems cruel, and one must fulfill the commandment of the beheaded calf even though the animal did not sin and in terms of his emotions, it seems cruel. The rabbinic adage with which we are dealing comes to teach us that if one places sentiment over the law out of considerations of mercy and does not fulfill the directives of the law because, in his opinion, they are cruel, ultimately he will place emotion above the law also when the law requires compassion while according to his subjective feeling, the situation calls for cruelty.

This Midrash is a clear expression of the principle of the rule of law, and in its more concrete meaning, the obligation of the government to obey the law. According to the Jewish point of view, even the King of Kings is subordinate to the law<sup>11</sup> and this is most certainly true of a worldly king.<sup>12</sup> The Torah even instituted a special commandment for the king that he write a Torah scroll and study it all his life in order to remove from his heart any thought that, perhaps, he, as king, stands ostensibly above the law.<sup>13</sup>

This outlook is also an established fundamental in the legal system of the State of Israel. “The principle of the rule of law is directed both to individuals and to the governmental authorities, and is manifest on the legislature itself in the sense of the dominance of the law over the legislator.”<sup>14</sup> In one place it is written in a Supreme Court decision that “taking the law into one’s hands – in other words, violation of the law – is forbidden for every man and even more so it is forbidden for a public figure who is supposed to serve as an example and a role model to the general public.”<sup>15</sup>

The implication of the Midrash at hand is that if the law imposes on the government to act in a certain way, the government may not refrain from the implementation of its legal obligation by claiming that it is cruel and that it runs counter to its sense of justice; the government must implement both the spirit and the letter of the law. That is the essence of the principle of the rule of law – a principle valid both in the Jewish and Israeli legal systems. The message emerging from the Midrash is that if the government places any consideration above the law – even if it is a humanitarian consideration – ultimately it will place other considerations – even anti-humanitarian ones – above the law, and the possibilities are limitless. The only criteria according to which the government is required to act are the criteria of law, and no consideration – weighty though it may be – can prevail over the law.

### **The Amalek War and the Struggle Against Arab Terrorism**

It is amazing to what extent the words of our rabbis in the Midrash under discussion are topical – not only on the theoretical plane, in manifesting the fundamental principle of the rule of law, but also on

the concrete plane of the topic which our rabbis are discussing – and to what degree they are applicable to the reality of our times.

The subject of the Midrash is King Saul's disobedience of the Torah commandment to wage a war to the end against Amalek. It is not that Saul avoided war, he waged war against Amalek, but he pitied Agag and failed to kill him (just as he pitied the sheep and cattle and refrained from destroying them, in contravention of the commandment).

Amalek, at the time, was the standard bearer of terrorism against the Jewish nation since its inception. He did not wage war with Israel, he "smote the hindmost of thee, all that were feeble in thy rear" (Deuteronomy 25:18). Therefore, the Torah commanded *vis-à-vis* Amalek something which it did not command *vis-à-vis* any enemy which waged war against Israel. Israel was commanded three commandments regarding Amalek: the obliteration of Amalek, remembering what Amalek did and the negative commandment of not forgetting what they had done.

The commandment to obliterate Amalek – in modern terms, suppression of terrorism into extinction – is **the first** which Israel was commanded upon entering the Land of Israel and the establishment of its monarchy.<sup>16</sup> The reason for this is that it is impossible to maintain a proper society when terrorism is raging, and the commandment is to "eliminate its memory from the face of the earth and to eradicate them to oblivion".<sup>17</sup> The legacy for the generations is that there can be no compromise with terrorism and it must be battled **into nonexistence**.

The Torah was not satisfied with merely obliterating Amalek – it commanded for all generations to remember and not forget that which Amalek wrought. The reason for this is – "that it not be forgotten, lest our enmity towards them weaken and be removed from our hearts over time."<sup>18</sup> It is human nature to forget the travails of the past and, as a result, the feelings of enmity towards Amalek are liable to be blunted, leading to a laxity in the desire to wage war against them. As time passes, people are liable to think that it is not so terrible to live with an enemy who "smites our hindmost", and in any case the solution in today's vernacular need not be military but perhaps diplomatic.

Saul's sin was that he placed his humane feelings above the law and, in contravention of the Torah's commandment, spared Agag's life and decided not to destroy the sheep and cattle. Saul was destined to pay for this sin not only with his throne but also in the withdrawal of the kingdom from him and his descendants, as the Torah's admonition is "any king of Israel who sits on the throne, who wages God's war against Amalek..." The Torah tied the integrity of the throne to the revenge against Amalek, and since he was not vigilant in his revenge, he was therefore punished and lost the title and the throne...and his throne collapsed.<sup>19</sup>

There are those who believe that "Amalek" belongs to our distant past, and that the commandment to obliterate Amalek similarly belongs to history. Rav Joseph Dov Soloveitchik, the preeminent Jewish philosopher of the last generation, disagrees. He proves that, according to Maimonides, Amalek exists in our day and the commandment to obliterate Amalek exists as well. How so? Regarding the commandment to destroy the seven nations who resided in Canaan at the time of Joshua's conquest, Maimonides notes:<sup>20</sup> "And their memories have passed from being." This phrase was omitted by Maimonides when citing the law regarding the obliteration of Amalek.<sup>21</sup> Rav Soloveitchik writes<sup>22</sup>:

From his words, it seems that Amalek still exists in the world while the seven nations have been doomed to oblivion. Scripture testifies that Amalek is still in existence. Note what the Torah states: "The Lord will have war with Amalek from generation to generation", it is therefore impossible that Amalek be completely destroyed before the coming of the Messiah. As the Sages state: "The [divine] throne will not be whole and the [divine] Name will not be whole until the descendants of Amalek are completely obliterated." But – where is he? I once heard the answer from my father and master, of blessed memory,

namely that any nation that conspires to destroy Knesset Israel becomes, according to the halacha, Amalek.

A similar idea was articulated by Rav Elchanan Wasserman, one of the outstanding Yeshiva heads in Europe before the war<sup>23</sup>:

And it is written, “The Lord will have war with Amalek from generation to generation” and the Torah attested to the fact that this war will continue in all the generations until the coming of the Messiah.

And Rav Soloveitchik continued:

The proclamation, “the Lord will have war with Amalek from generation to generation”, does not only translate into the communal exercise of waging obligatory war against a specific race, but includes as well the obligation to rise up as a community against any people or group that, filled with maniacal hatred, directs its enmity against Knesset Israel. When a people emblazons on its banner, “Come and let us cut them off from being a nation, that the name of Israel may no longer be in remembrance”, it becomes, thereby, Amalek.

This was written regarding the threats of the then ruler of Egypt, Gamal Abdel-Nasser, to destroy Israel. The threat to destroy Israel is emblazoned today, especially on the banners of the Arab terrorist organizations, who serve as the vanguard for those plotting to liquidate us through their well-known step-by-step stratagem. In the constitution of the Fateh, of which Yasser Arafat is the supreme leader (alongside his other positions as Chairman of the PLO and Chairman of the Palestinian Authority), it is written black on white that the armed struggle to liberate Palestine in its entirety (to the sea) will not end until the absolute liquidation of the Zionist state and the liberation of Palestine in its entirety (paragraph 19). This constitution which Arafat saw fit to publicize on the Fateh website in 1998 also stipulates that there is no place for any diplomatic solution as an alternative to the termination of the Zionist occupation of Palestine (paragraph 22). There is, therefore, no doubt, that the Arab terrorist organizations – of which the Fateh is its backbone – which emblazoned on their banner the goal of destroying Israel, are this generation’s Amalek, against whom war must be waged to completely eradicate them.

### **The Government’s Obligations in the Struggle Against Terrorism**

The struggle against Arab terrorism – like the struggle against any enemy – is, of course, the responsibility of the government, and the question which must be asked is: Has the State of Israel succeeded, as the standard-bearer in the struggle against Arab terrorism – the modern-day Amalek – in extracting the appropriate lessons from the chapter of Saul’s war against Amalek?

Much to our chagrin, it seems that the answer is negative. Legally, the State is equipped with all the necessary tools to wage a war to the end against the Amalek of our time. One of the first legislative acts of the fledgling State of Israel was the Order for the Prevention of Terrorism 5708-1948, in which there are clear instructions regarding the methods of dealing with terrorist organizations (there is no need to elaborate upon this issue here). Under the authority of the law, the terrorist groups were declared terrorist organizations and over many years, the State waged an unequivocal war against them, a struggle whose goal was to prevent the terrorist organizations from functioning in any sphere – certainly in the military realm – in order to annihilate them completely. For this reason, government pronouncements based on this law included not only the terrorist organizations listed by name, but also their subdivisions and coalitions. The purpose of the law was well-defined by the Supreme Court in the following statement<sup>24</sup>:

...to uproot existing terrorism and to prevent new terrorism from sprouting from the same root. In terms of the goal, it is not enough for a group of people who opted for the path of terrorism to change their name, their composition, their organization or their symbols, unless they change their very essence. Otherwise a terrorist organization could deceive the law and continue along its path while just making superficial changes. In terms of the aims of the Order for the Prevention of Terrorism and in order not to thwart these aims, the essence is decisive and not the appearance. The order was designed to prevent bloodshed and not to deal with pedantry, to disarm terrorist organizations and not to enable them, under the guise of a different mantle, to continue bearing arms. As a result, the government is entitled to designate a certain group of people as a terrorist organization because the declaration also includes combinations and offshoots of that group of people, if they act to achieve similar ends with similar means.

As long as the government conducted an uncompromising struggle against terrorism, and by doing so fulfilled the direction of the legislation, it had the advantage. The turning point occurred with the start of the *intifada* in 1988, when the decision was made not to react with full intensity against the gradually escalating violent activity in the Arab sector – activity which was manifest in “just” throwing rocks and was gradually exacerbated as terrorist organizations came to the realization that the IDF was not responding with severity. The forgiving attitude and the softhearted tactics implemented by the government led the way to constantly escalating terrorism.

The apex of these manifestations of violence was reached in the wake of the Oslo Accords, in which Yasser Arafat accepted upon himself as representative of the PLO, an absolute commitment to halt acts of violence. It was specifically these agreements which were supposed to constitute – according to the perception of Oslo’s engineers – an opening to a new period of tranquility, which brought upon the Jewish population in the Land of Israel the most brutal period in terms of terrorist attacks upon them, especially due to the government’s willingness to supply tens of thousands of weapons to the “Palestinian police”. These arms were supposed to serve the “police” in their war against anti-Israel terrorism, but ultimately these massive amounts of weapons were directed to the escalation of terrorism against the Jews. All of the basic assumptions of the Oslo Accords dreamers were publicly shattered with the recent total collapse of the entire process (in what was characterized as the “*Al-Aqsa intifada*”, which began on the New Year of 5761/September 2000). It is clear that it was naive to think that terrorist organizations would use weapons given to them by Israel in order to fight their brethren who are members of other terrorist organizations (the Hamas and the Islamic Jihad), while they are all devoted to one common cause: the destruction of Israel.

What is the source of the mistake of **all** of the partners of the process called the “Oslo process”?

In my humble opinion, their mistake stems, first and foremost, from the failure to learn the lessons of historical experience which teaches us time and again, that one must not compromise with an enemy who seeks to destroy you but rather you must fight him until the end. This human existential obligation is manifest in our sources in the legal obligation to eradicate Amalek. As was mentioned, Saul’s sin was in his placing humanitarian considerations above the law. (Did he perhaps have “political” considerations as well?) Saul was obligated by law to give Agag, King of Amalek, his just deserts – to kill him unmercifully. Instead, Saul pitied Agag and spared him, and by doing so, sealed his fate and that of his kingdom and ultimately was stripped of his throne and his kingdom. In other words, Saul’s willingness to resolve the dispute with Amalek diplomatically, while the law required him to completely and unequivocally destroy Amalek, cost him his throne and his kingdom.

Saul was not the only one of the kings of Israel who lost his throne due to the fact that he did not pursue the war against the enemy until its liquidation. Another example is Ahab, King of Israel, who emerged victorious from a war against Ben-Haddad, King of Aram (modern day Syria), who attacked him with a coalition of thirty-two kings and attempted to defeat him. After the victory, Ahab was convinced to spare Ben-Haddad’s life after he – as a defeated enemy – made various promises to him,

and even agreed to sign a treaty with him (I Kings 20:34). The prophet notified him (Ibid., 42) that for freeing Ben-Haddad, whom he was supposed to kill, he is destined to pay with his life. The return engagement was not long in coming, and Ahab died in that battle (Ibid., 22:23). The lesson to be learned from this episode as well is that an enemy who seeks to destroy Israel must not be spared or pitied but rather one must do unto him as he himself plotted to do, certainly not to enter into treaties with him as they have no chance to be fulfilled.

The sin of all Israeli governments since the onset of the *intifada* was the incomplete fulfillment of the directives of the law concerning the uncompromising struggle against terrorism – a law which for us, as a Jewish state, is an **existential** necessity. The beginnings of the sin are in the manifestations of tolerance towards rioters and stone throwers (as they were only non-lethal weapons), and its conclusion in the stationing of “peace” as a supreme value which supercedes the obligation to battle terrorism **until its demise**. Let there be no mistake: The PLO, on whose behalf Arafat signed the Declaration of Principles on September 13, 1993 (the first Oslo Accords), and the subsequent agreements, is a legally declared terrorist organization, and the signing of those agreements was tantamount to supporting a terrorist organization, which is, apparently, a violation of the Order for the Prevention of Terrorism. The government’s willingness to establish relations with a terrorist organization, legally declared as such, was in direct and intentional contravention of its legal obligation to “uproot existing terrorism and prevent the development of new terrorism from the same roots”, to quote the Supreme Court.

The government, instead of acting to completely destroy terrorism (and there is no other way to deal with someone who threatens a Jew), contributed to the formation of a new body, “that bears gall and wormwood”, the “Palestinian Authority”, because it delivered to it significant amounts of weapons while it maintained its ignominious Nazi Covenant which openly calls for the destruction of the State of Israel. The aforementioned Fateh Constitution came to politically reinforce the Palestinian Covenant.

The justification for the violation of the government’s legal obligation to take steps to completely eliminate terrorist organizations was the aspiration for peace as a supreme value which overrides any other consideration. In stationing the value of peace above the law, the government acted against the principle of the rule of law, which forbids any authority, including the government itself, from placing any consideration above the law. Justice Yitzhak Zamir commented on the matter<sup>25</sup>:

The ruling authority is liable to raise a claim which could justify a deviation from the law by saying: The law is supposed to serve the country. The law is merely one consideration, there are additional considerations which are no less important; the good of the country is one such consideration and it could possibly override the law...Considerations of national security have been raised periodically to justify various actions with no foundation in law. Seemingly, this is a reasonable claim. What could be more important than the good of the country? However it is easy to prove that in practice, this is a very dangerous claim. The saying that patriotism is the last refuge of the charlatan is well known. This argument, taken alone, is liable to topple the principle of the legality of government and the rule of law together with it.

Similar ideas were expressed by the Supreme Court. Justice Haim Cohen said<sup>26</sup>:

There are many countries in which national security, or the sanctity of religion, or the accomplishment of the revolution and the dangers of the counterrevolution and various other similar values, provide cover for any crime and absolution for any action performed without authority and against the law. There are those who invented “natural law” superior to any other law and which overrides it in terms of need... These are not the ways of the State of Israel. Its paths are the paths of law, and the law is given by the Knesset or as a result of its explicit empowerment.

Concerning the situation which is liable to develop if the government authorities do not follow the principle of the rule of law, Prof. Yitzhak Zamir wrote<sup>27</sup>:

If we allow that the exigencies of the hour, as they appear to one component or another in the governmental system, will justify the violation of law by that component, as a result of a claim of national security or the public good, we are liable to find ourselves on the path from a country ruled by law which protects citizens' rights to a different sort of country.

The value of "peace" is no more important than other values, such as national security, the sanctity of religion or the public good, which also cannot override existing laws. If the government's obligation is to battle terrorism, as per the law, in order to totally extirpate it, and to prevent the development of new terrorism, no value, including the value of "peace", has the ability to overcome the government's legal obligation. Certainly this value is not significant enough to justify entering into agreements with terrorist organizations – which grants them legitimacy and enables them to continue their activity and further their goals.

All this is true, even if it was real peace being discussed, and it is many times more the case after it has finally become clear that all of this talk about peace is nonsense and that the terrorism is escalating to the point of all-out war. It is gradually becoming clearer to all, how foolish the faith of Oslo's engineers was, as if signing a peace agreement with a terrorist organization – which by definition is committed to continuing their terrorist activity until the absolute liquidation of the State of Israel – would effectuate peace.

Had the leaders of Israel grasped that no compromises with terrorism is possible, and that it certainly must not be supported and assisted with a supply of weapons, it is possible, perhaps – and close to certain – that the struggle with terrorism would have continued to this day, but it is perfectly clear that it would have maintained a totally different character. The struggle against terrorist organizations which do not, for the most part, have weapons at their disposal as was the situation before the Oslo process, is in no way comparable to the struggle against terrorist organizations who have abundant weapons at their disposal which were supplied by the government, and who control safe cities of refuge to which murderers who kill our citizens daily can easily flee, with no fear that they will be apprehended. The struggle today against terrorism is extremely difficult and no solution other than the solitary legal solution – to conduct a war of annihilation in order to eliminate terrorism – will succeed.

### **Advice to the Prime Minister Elect**

The newly elected Prime Minister is faced with two possible modes of operation, the first one being to continue along the path of Oslo, while trying to limit or minimize damages. The ramifications of this path are continued cooperation with terrorist organizations, which will enable them to continue to exist and even thrive and to continue to work to further their goals to destroy the State of Israel, step-by-step. The terrorist organizations have no interest other than achieving that ultimate goal, even if it is step-by-step. In the short term, this path might seem attractive, as in the first stage meetings that will take place, there will be contacts and deliberations in which various friends from lands near and far will participate, and it is entirely possible that at this stage the terrorist organizations will agree to take a days-long, weeks-long or even months-long hiatus during which there will be no murders, but it will be undertaken with the clear threat that if Israel does not ultimately accede to the Arab dictate in its entirety, terrorism will be renewed with even greater vigor. If the Prime Minister opts for this path, it will quickly become clear that he has reached a dead-end, as there is no chance to reach an understanding with the terrorist organizations rising up against us to annihilate us, and who have just one goal emblazoned on their banner: the destruction of the State of Israel.

The second path – that which seems more difficult in the short-term – is to totally dissociate from the Oslo framework, which anyone with any sense understands – and the leaders of the terrorist organizations also declared – that it has totally collapsed under the weight of the events of recent months. This path believes in a return to the good old method of a war of annihilation against terrorist organizations until their demise, as the Torah stated, “The Lord will have war with Amalek from generation to generation.” True, it is a long and exhausting war, but if we want to live – there is no alternative; the job of the Prime Minister is to articulate this basic truth to the public. Courageous leadership is obligated to tell the nation the truth and stop feeding delusions to the public.

If, heaven forbid, the Prime Minister does not choose this path, he will prove, like his predecessors, that he did not learn the requisite lessons, neither from the experience of the last hundred years, nor from the words of our prophets and Sages quoted above, in which the warning to leaders lest they place any value at all – including values which in their opinions are considered humanitarian or possessing political importance of the highest order – above the law is latent. If the law requires a war of annihilation against the Amalek of our generation in order to uproot it totally, that is the path which he must take. Only the option of taking that path holds out hope for a new course, which will extricate Israel from dire straits.

To remove any doubt, it is worth emphasizing that the war of annihilation that is incumbent upon the Prime Minister and the government which he heads, is not, heaven forbid, directed against the general Arab public which resides among us; all that was said obviously relates only to the terrorist organizations seeking to destroy us. Even regarding Amalek – the commandment is to battle against those who retain their Amalekite identity, however, one who genuinely and sincerely wants to live in peace with us – it is forbidden to harm him.<sup>28</sup> The effort to reach peace can be based on contacts with those Arabs of the Land of Israel who genuinely and sincerely want to accept us and our existence as a Jewish state. Anyone who is not willing to do so – and that includes all the terrorist organizations – cannot be a partner to any steps towards peace, and war should be waged against him until his demise.

At the end of the Midrash of our Sages quoted above, it says that “one who becomes compassionate instead of cruel” – and in our vernacular, one who places supposedly humanitarian values above the law, which orders him to act appropriately towards the cruel – “eventually the Divine Attribute of Strict Justice (*midat ha’din*) will afflict him.” Whatever the meaning of the “Divine Attribute of Strict Justice” is, the experience of the recent past proves that the persistence of previous Prime Ministers to continue the Oslo process did not serve any of them well, and ultimately, the whole process disintegrated over the last few months. It can only be hoped that the new Prime Minister will learn the lessons from both the distant and recent past, and will avoid the mistakes of his predecessors. If he does so, the possibility exists that a new and promising page in our nation’s history will be opened.

As to the foolish ideas, as if Israel’s willingness to relinquish additional tracts of the Land of Israel into the hands of Arab terrorist organizations will somehow lessen or silence the terrorism, the Prime Minister should be directed to the immortal words of the Torah regarding Israel’s enemies who seek to destroy it: “For those of whom you allow to remain of them shall be thorns in your eyes and stings in your sides and shall vex you in the land wherein you dwell” (Numbers 33:55). The meaning of those words of warning is: “Not only will they occupy those parts of the land which you haven’t acquired, but even those parts which you have acquired – they will vex you there saying, get up and leave.” In modern language: One who flees terrorism – terrorism will pursue him everywhere. This was the interpretation of Rabbi Haim ben-Atar in his commentary *Or HaHayim* on the Torah. This sage, who lived in North Africa in the 18<sup>th</sup> century and moved to Israel towards the end of his life, displayed a profound understanding of the souls of those who seek to destroy us, much more than some Orientalists, intelligence experts and diplomats who live among us today. This basic verity has not and will never change.

How wonderful it will be for us all if the Prime Minister will pay heed to the wisdom of our sages and draw from them the inner strength to stand before the difficult undertakings facing him. This is one of the characteristics of the Jewish state – that the leaders of the country will shape their political mode of leadership in Israel, in the light of the eternal values which were bequeathed to us by our prophets and our sages throughout the generations for whom the truth alone – and not fleeting political considerations – was their guiding light.

## Endnotes

- <sup>1</sup> See B. Netanyahu, “Terrorism- From Tactical Annoyance to Strategic Threat”, in *Political Strategy in an Era of Anarchy*, Editor, Arie Stav, Modan 1977, 134, p. 140.
- <sup>2</sup> Part 3, Chapter 39. See also Me’am Loez Anthology on Exodus, 21:14.
- <sup>3</sup> C.A. 414/76 Ohana v. State of Israel, P.D. 32 (1), 295, p. 305.
- <sup>4</sup> C.A. (Beersheba) 14/96 State of Israel v. John Doe, Takdin-District, Volume 96(2) 5756-57 – 1996, 312.
- <sup>5</sup> C.F. (Hadera) 1477/97 State of Israel v. Agbaria Ibrahim, Takdin – Magistrate, Volume 98 (1), 5758/59 – 1998, 1441.
- <sup>6</sup> C.F. (Petah Tikva) 1298/95 State of Israel v. Eli Gal Importers, Takdin – Magistrate, Volume 98 (1) 5758/59 – 1998, 3233.
- <sup>7</sup> High Court of Justice 3959/99 Movement for the Quality of Government v. Parole Board, Takdin – Supreme Volume 99 (2) 5759/60 1999, 296.
- <sup>8</sup> Tanhuma, Parashat Mezora,1; Yalkut Shimoni, I Samuel, Chapter 121.
- <sup>9</sup> See *Sha’arei Teshuva*, Rabbi Jonah of Gerona, Gate 3, Chapter 37.
- <sup>10</sup> Midrash Rabba, Ecclesiastes 7:16.
- <sup>11</sup> See M. Zilberg, *Kach Darko shel Talmud*, Jerusalem 5722, pp. 68-70.
- <sup>12</sup> See Maimonides, *Hilchot Melachim*, 3:7.
- <sup>13</sup> Deuteronomy 17:18-19; See *Sefer Ha’Chinuch* 503.
- <sup>14</sup> High Court of Justice 652/81 MK Yossi Sarid v. Speaker of the Knesset, P.D. 84 36 (2), 197, p. 202.
- <sup>15</sup> High Court of Justice 1843/93 Pinhasi v. State of Israel P.D. 48 (4), 492, p. 504.
- <sup>16</sup> Maimonides, *Hilchot Melachim*, 1:1.
- <sup>17</sup> *Sefer Ha’Chinuch*, 503.
- <sup>18</sup> Ibid.
- <sup>19</sup> Commentary of Rabbeinu Bahye, Exodus 17:16.
- <sup>20</sup> Maimonides, *Hilchot Melachim*, 5:4.
- <sup>21</sup> Ibid., 5.
- <sup>22</sup> “*Kol Dodi Dofek*”, in: *Divrei Hagut Ve’Ha’aracha*, Jerusalem 1983, pp.49-50.
- <sup>23</sup> *Kovetz Ma’amarim*, Tel Aviv, 1986, p. 92.
- <sup>24</sup> High Court of Justice 6897/95 Kahane v. Deputy Commander David Kreuzer, P.D. 49 (4), 853, p. 863.
- <sup>25</sup> Y. Zamir, “The Attorney General and the Struggle for the Rule of Law”, *The Tel Aviv University Law Review*, Volume 11 (1986-87), 413.
- <sup>26</sup> Election Appeal 1/65 Yardor v. Central Elections Commission of the Sixth Knesset, P.D. 19 (3), 382.
- <sup>27</sup> Cited by Moshe Negbi, *Mashber Shilton Ha’Chok*, Tel Aviv 1987, p. 10.
- <sup>28</sup> See the Kesef Mishne commentary on Maimonides, *Hilchot Melachim*, 6:4; *Sefer Ha’Chinuch*, 604.