YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #17: Who Decides Halakhot Pertaining to the Army [1] – A Study of the Teachings of Rav Yitzchak Isaac Halevi Herzog**

**Introduction**

The previous *shiur* addressed the question of who is authorized to determine whether a given situation is one of *pikuach nefesh.* As we have seen, when it comes to military and security matters, the authority to determine whether something is an operational necessity that permits the desecration of Shabbat rests with the commander in charge. This decisive definition may raise questions regarding the place and role of the rabbi in general, and of the military rabbi in particular: if indeed it is the commander who determines what is operational and what is not operational, there would seem to be no room for halakhic ruling or consultation on the matter, and it is exclusively up to the commander to decide!

In answer, I would like in this *shiur* to review three responsa of one of the greatest authorities of recent generations – Israel's Chief Rabbi, Rabbi Yitzchak Isaac Halevi Herzog. Rabbi Herzog stepped into the immense shoes of Rabbi Avraham Yitzchak Kook and served for over twenty years as the head of the Rabbis of the Land of Israel, and then as the Chief Rabbi of the State of Israel in its early years. In addition to his tremendous greatness in Torah knowledge, Rabbi Herzog was also known as a man of general wisdom and science and as a firmly established leader of the Torah world; he was accepted by the great majority of factions and denominations both in Israel and in the Diaspora. His responsa and articles in many and varied fields, especially the allowances to remarry that he issued to the *agunot* of the Holocaust, on the one hand, and the running of a Jewish state in light of Halakha, on the other, have become unquestionable assets of the Torah world.

**The Establishment of the Military Rabbinate**

In any discussion of the military rabbinate, the figure of the first Chief Rabbi of the Israel Defense Forces, Major General Rabbi Shlomo Goren, shines brightly. Rabbi Goren shaped the image and character of the military rabbinate, and we enjoy the fruits of his rulings and decisions to this very day. It should be noted, however, that Rabbi Herzog played an important part in founding the rabbinate: it was he who (along with Rabbi Ben-Zion Meir Chai Uziel, who served as Rishon Le-Zion) initially turned to David Ben-Gurion with the demand to establish a military rabbinate and place Rabbi Goren at its head.

The request was made in a letter to David Ben-Gurion dated the 23rd of Sivan 5708 (1948), less than two months after the establishment of the State of Israel. It is amazing to see in that letter the precise definition of the duties of the military rabbinate, which have hardly changed even though more than seventy years have passed:

Kosher food, Shabbat observance, prayers, and synagogues… So too it is necessary to ensure… appropriate arrangements for funerals and burial… and that questions of *agunot* not arise. (Letter of the Chief Rabbis to David Ben-Gurion, 23 Sivan 5708, found in the Israel State Archives, in: [Correspondence with David Ben-Gurion](https://www.archives.gov.il/archives/Archive/0b07170680024756/File/0b0717068103e6f6), p. 8)

And similarly:

It is especially necessary already from this time to concern ourselves with the moral level of the soldier, with education and with culture, and to introduce content into the life of the camp… and to foster proper social relations among the soldiers in the camps. (Ibid.)

For our purposes, note how Rabbi Herzog and Rabbi Uziel explain the need for a military rabbinate – rather than just establishing a professional body that would regulate procedures and commands in religious matters, such as the *Sheirut ha-Dati* (Religious Service) that was headed by Lt. Col. Natan Gardi (who operated in the framework of the Hagana organization and in the early days of the IDF):

From the experience of the short period [that has passed], we have come to know that these are not merely technical roles that can be executed by capable religious people, but that they must be carried out by eminent rabbis who know the Torah and the depth of Halakha and are qualified to issue halakhic rulings. We have faced, and will continue to face[[1]](#footnote-1) on a daily basis, questions of practical Halakha that the rabbi in charge of the army will have to decide, and even if [a question] will be brought before the Chief Rabbinate of Israel, it is important that it be brought by a qualified rabbi who knows how to present the matter before it. (Ibid.)

The need for a military rabbi is two-fold: both for deciding practical halakhic questions brought before him, and for presenting and mediating complex and systemic questions before the leading halakhic authorities of the generation. The advantage of the military rabbi lies in his ability to understand the operational reality around which the question revolves, and from that to arrive at an accurate halakhic ruling. Indeed, the officer in charge is authorized to determine the operational need, but in Rabbi Herzog's opinion, it is of great importance that the issue also be analyzed by a Torah scholar who is involved in the matter and understands the need for and the methods of action.

Rabbi Herzog wrote these words as a general, abstract principle. Studying his responsa on military and security matters will help us fully understand them.

**The Fortification of the City of Tiberias**

When determining that a certain situation involves *pikuach nefesh*, two central questions must be considered, namely: what degree of danger defines a situation as one of *pikuach nefesh*, and who is authorized to define what the danger is. The first question is a broad one, and Rabbi Herzog was among those who laid down halakhic foundations for addressing it on both individual and communal levels; with God's help, we will address these matters in future *shiurim*. For now, we will remain focused on the second question.

During the Israeli War of Independence, the Chief Rabbi of Tiberias, Rabbi Asher Ze'ev Werner, turned to Rabbi Herzog with a question concerning the work being done on the fortifications for the defense of the city:

Question: During the days of the War of Independence, in the year 5708, they wanted to erect a security fence around the Kiryat Shmuel neighborhood in the city of Tiberias, for fear of the Arabs attacking this neighborhood – is it permissible in this case to continue the work even on Shabbat? (*Responsa Heikhal Yitzchak*, *Orach Chayim* no. 31)

From Rabbi Herzog's answer, we learn that Rabbi Werner sought to decide this question based on halakhic sources regarding different levels of risk and similar issues. He delved into the Talmudic passage regarding "sounding the alarm" on Shabbat and on a weekday (*Ta'anit* 18-19), determining its implications regarding what may or may not be done in the framework of defense against dangers such as a plague.

Rabbi Herzog replies to Rabbi Werner that his entire thought process is fundamentally wrong, because what is permitted and what is forbidden in these matters is not determined according to Halakha, but according to professional opinion. At first, Rabbi Herzog clarifies his position regarding defense against plague:

And I say that it depends on the expert doctors; if they say that it may spread and the population needs to be immunized with injections, even if that involves a labor forbidden by Torah law – if it was not done before Shabbat, it is permitted on Shabbat. (*Responsa Heikhal Yitzchak*, ibid.)

Later, he proceeds to the issue of fortifications and security preparations:

My learned colleague argues that if there is no imminent danger of an attack, and there is no issue of *pikuach nefesh* today, even if there might be in a few days, it is forbidden. And therefore, in Tiberias it is forbidden, for the situation has not yet come to this, for there has not yet been an attack on the part of the Gentiles…

To this I say that the intention of the Gentiles is something that cannot be directly ascertained by us, for, of course, they will not reveal to us their goals and decisions, and **it is a matter of assessment, and the law is like that regarding a patient who is dangerously ill, where the matter depends on the assessment of the experts.** If the experts in your area receive information from those who are thought to be well-informed about the state of mind of the Gentiles, and it is their assessment that it is likely that they will attack, who can assume responsibility and oppose them? **The matter of this judgment rests with them**. (Ibid.)

 The phrase, "the matter of this judgment rests with them," is a phrase that has been used in halakhic literature across the generations to characterize the power and authority of the sages to determine *halakha*. Here, Rabbi Herzog explains that "the matter of *this* judgment" in such a case rests with the commanders and other officials who have been entrusted with intelligence assessments. They – and only they – are authorized to define the level of danger; their assessment may lead to the conclusion that it is permissible to engage in fortification operations even on Shabbat.

Rabbi Herzog references a similar situation regarding which he himself had issued a halakhic ruling:

And we here permitted the making of armored cars on Shabbat, based on the assessment of the military command, which was based on information that had been received, that [the enemy] was preparing to attack Jerusalem on Shabbat or on Motzaei Shabbat, and they did not finish making them before Shabbat… Therefore, in a situation where according to the experts' opinion, it is likely, based on their assessment, that Gentiles will attack one of the cities of Israel, it is permissible to build defensive positions on Shabbat, when the assessment is that time is pressing and it is risky to postpone the matter to Motzaei Shabbat. Everything depends on their discretion and judgment. (Ibid.)

We see, then, that Rabbi Herzog unreservedly accepts professional determinations and issues his rulings on matters of *pikuach nefesh* based on those assessments.At the end of his responsum, he clarifies once again that in these matters, we – the rabbis – don’t understand at all:

And regarding the very usefulness of wire fences, and the reason that they may attack the Old City first, we the rabbis do not have the expertise to decide, because this is a matter of strategy. (Ibid.)

Later in the responsum, Rabbi Herzog clarifies both the obligation to do everything possible to prepare ahead of time, so as not to engage in forbidden activity on Shabbat, and his principled view that the War of Independence, as well as the wars that followed in its wake, were "obligatory wars," which involve special parameters for *pikuach nefesh*.[[2]](#footnote-2) But for our purposes, we see his view that the fundamental principle established by *Chazal*, that a dangerously ill patient is fed in accordance with the instructions of medical experts, applies to military and security activities as well; therefore, it is only the authorized defense officials who can determine which missions are necessary for reasons of *pikuach nefesh.*

However, within his clear and emphatic words, Rabbi Herzog slips in an additional requirement by way of a parenthetical comment and an allusion:

However, the committee that decides on these matters must also include Jews who observe Shabbat in accordance with the Halakha, who are sensitive to the severity of the prohibition of Shabbat desecration, because only the local rabbis are authorized to issue halakhic rulings. And it is enough to understand. (Ibid.)

Rabbi Herzog conceals even as he reveals; despite everything he wrote above, now he says that the authority to issue halakhic rulings rests on “only the local rabbis." He emphasizes that this is only an allusion, and it seems to me that he means to say as follows: reaching an accurate halakhic decision on these questions requires a qualified rabbinic authority who is aware of the details and understands the reality.

Indeed, it is the experts who determine whether a situation is defined as one of *pikuach nefesh*, and Rabbi Herzog strongly disapproves of "operational" debates as to whether this or that wire fence is important or not. At the same time, it seems that the most accurate ruling will be issued by one who, on the one hand, is proficient in the details and is a member of the "deciding committee," but on the other hand, is sensitive to and aware of the observance and sanctity of Shabbat. As mentioned in the previous *shiur*, regarding the Yom Kippur fast – when the expert does not take into account the importance of the fast, or in our case the sanctity of Shabbat, it is not always possible to accept his decision. It is precisely for this reason that a rabbinic-military figure is needed, who will be able to examine the operational and halakhic picture in the broadest way, and thus also in the most accurate way.

**The Fortifications of the City of Jerusalem**

Rabbi Herzog voiced a similar position in another fundamental responsum, regarding activities that were necessary for the defense of Jerusalem. This responsum was addressed to Tuvya Beer from the Ezra organization, who in the middle of the War of Independence founded the "Tuvya Battalion" – the first battalion composed of yeshiva students and religious and ultra-Orthodox fighters, which engaged in fortification and defense missions relating to Jerusalem. Most of the soldiers in the battalion studied Torah during the day, and at night engaged in security missions in Jerusalem. Many see the Tuvya Battalion as the first "*hesder*" framework – combining Torah study with defense and security tasks.

The main question that troubled the commander of the Tuvya Battalion relates to determining the limits of permissible defensive actions on Shabbat, and whether it is permissible to volunteer in the first place for actions that could be done by others. Rabbi Herzog's answer to the last question is short and unequivocal, and it guides the military rabbinate to this very day: permitted tasks are permitted to everyone, and forbidden tasks are forbidden to them all. Rabbi Herzog even clarifies that during the years of exile, when Jews were forcibly recruited into foreign armies, the preferred solution was to evade the task and assign it to a non-Jewish soldier instead. But in the Israel Defense Forces, there cannot be a situation in which a secular Jew performs any type of activity in place of his Shabbat-observing friend; on the contrary, anything that is necessary for the sake of *pikuach nefesh* should be done by "the great men of Israel and their Sages," as we already learned in earlier *shiurim.*[[3]](#footnote-3)

Regarding the fundamental definition of operational necessity, Rabbi Herzog reiterates his position as outlined above:

The assumption is that in such a case, one must rely on the commander, for otherwise there would be no end to the matter, and there would be no possibility of defensive operations at all… Even though offensive actions for the sake of defense are not directly matters of *pikuach nefesh*, and if the allowance rests exclusively on the principle of *pikuach nefesh*, it is not so clear, nevertheless, since the expert calculated and found that by way of this attack a nearby Jewish settlement would be saved, it is a type of *pikuach nefesh* or saving Israel from the hand of an enemy rising up against it (for after all, we did not start the war, but rather they rose up against us, and all of our actions are essentially for the sake of defense). (*Responsa Heikhal Yitzchak*, *Orach Chayim* no. 37)

Once again, Rabbi Herzog asserts that the commander decides the matter, and any future calculation or assessment of the situation should be carried out specifically by him. However, he also once again states that Shabbat must still be taken into account:

However, the religious Jews must demand from the military command that whenever they decide to launch an attack in order to weaken the enemy, as well as for defense, a careful calculation should be made in advance, whether this attack could be carried out before Shabbat, or whether it could be postponed to Motzaei Shabbat, in which case they are forbidden to schedule it specifically on the Holy Shabbat, and the same is true even with respect to an act of fortification and the like for protection. (Ibid.)

At the same time, he goes on to emphasize that alongside the importance of being sensitive to the sanctity of Shabbat, and carrying out only that which cannot tolerate delay, at the end of the day the commander's decision is **binding**, and there is an unequivocal duty of obedience:

But if the order is issued on Shabbat, and it may be assumed that time is pressing, and it is impossible not to obey, for if not, military discipline would be undermined and the entire struggle would fall apart – one must obey. It is understood that it is necessary to stand firm, that whatever can be done before Shabbat or can be postponed until Motzaei Shabbat, the military command is forbidden to schedule on Shabbat. (Ibid.)

Rabbi Herzog also writes about the obligation of obedience in another responsum, in which he corresponds at length with Rabbi Meshulam Rata (author of *Responsa Kol Mevaser* and a member of the Chief Rabbinate of Israel Council at the time of the establishment of the State), who expressed reservations about Rabbi Herzog's innovations regarding defining various situations as matters of *pikuach nefesh*:

Indeed, it is understood that this depends on the opinion of the commanders, and if the attack is just to weaken the enemy in general, we must consider the matter, if we do not classify this struggle of ours as an obligatory war, since it was not declared by king – and this principle must be explained to the commanders so they can take it into account. In most cases, however, they do not waste forces on an attack, unless its purpose is to prevent an enemy attack on a nearby Jewish point of settlement, over which danger lurks.

In any case, it must be considered, if it has already been decided to attack on Shabbat, even if the commander's intention is not clear, and it is possible that it is only for the purpose of weakening the enemy in general, since most of the company will surely obey without thinking about the order, we can say that it is a mitzvato join them in order to increase their strength so that they not fall before the enemy or into his hands, for then they will certainly end up killed…

And as for the capture of Arab villages in the Arab sector, if the goal in this is not for complete conquest, but rather to weaken the enemy's forces, this is itself included in the capture of Jerusalem, so that we can at least hold the part that in the end will be ours, with the help of God. And regarding this we must trust the experts who understand the war as a whole. (*Responsa Heikhal Yitzchak¸ Orach Chayim* no. 39)

Rabbi Herzog repeatedly emphasizes the absolute obligation to obey and accept the opinion of the appointed commanders, relating to it as an expert and knowledgeable opinion – which determines *halakha* in matters of *pikuach nefesh*.

When I learned these two responsa dealing with defense missions in Jerusalem, I wondered why Rabbi Herzog omitted the important requirement to which he alluded in his response to Rabbi Werner, about the importance of integrating qualified religious figures in the command hierarchy and in the decision-making. But then I found that this responsum to Tuvya Beer is cited in *Responsa Heikhal Yitzchak* with several sentences missing. It appears in its entirety in Rabbi Herzog's *Pesakim u-Khetavim*, which reads:

I firmly stand by this, that God-fearing rabbis who are qualified to issue halakhic rulings must be appointed for the purpose of overseeing the religious matters and strengthening our eternal spiritual values and strengthening morals, etc. Please make efforts to implement this and the merits of the community will help you. For now, it is given to the young *gaon*, Rabbi Shlomo Goronchik, *shlita*, one of the men of the guard in the city, to check all the positions in order to arrange *kashrut* in general and for Pesach which will be coming upon us in particular. I see this as a good start, and it is in your hands to strengthen the good start with God's help. (*Pesakim u-Khetavim* *le-Ri'a Herzog*, I, 48)

Here, Rabbi Herzog returns to his principled position, and even introduces us for the first time to "the young *gaon* Rabbi Shlomo Goronchik,” whom he would recommend half a year later, in the month of Menachem Av 5708, for the position of Chief Rabbi of the IDF. Rabbi Herzog is indeed consistent in his position that a qualified rabbinic figure should be integrated into and connected to the decision-making process concerning these issues.

**Conclusion**

It is interesting to note that when you look at Rabbi Goren's halakhic rulings in his book *Meishiv Milchama*, you do not find the same tone of self-cancellation to the opinion of the appointed commander. Rabbi Goren, being a senior officer in the IDF, believed that he fully understood the operational reality, no less well than any other commander, and therefore his responsa focus on the halakhic discussion, with the operational explanation placed in the background.

Without a doubt, Rabbi Goren well understood that in certain situations there is no substitute for the commander in charge in the field, and in such situations, he does in fact leave the decision in his hands. Thus, for example, when Rabbi Goren was asked (*Responsa Meishiv Milchama*, II, 91) when it is permissible to practice shooting or carry out a weapons' test on Shabbat in preparation for an operational activity, he lays down general principles according to which one must prepare as much as possible before Shabbat, but in practice he writes that it all depends on the opinion of the commanders and especially on the conditions in the field and the question of the suitability of the equipment for the operational activity (stemming from weather conditions, the quality of the equipment, and more). In this matter, no figure – appointed officer or rabbi – can ever replace the commander in charge of his sector.

Over the years, disagreements arose here and there between Rabbi Herzog and the Chief Rabbinate, on the one hand, and Rabbi Goren as the Chief Rabbi of the IDF, on the other. Rabbi Goren himself speaks about this in his autobiographical book, *Be-Oz ve-Ta'atzumot*,"[[4]](#footnote-4) but it is evident that there was nothing in these disagreements to detract from his admiration for Rabbi Herzog. Indeed, when Rabbi Herzog passed away in the year 5719, Rabbi Goren wrote the following about him:

I was granted the privilege to stand at his right hand and frequently spend time in his shadow during those terrible days, when the terrible wrath of the seven enemy nations surrounding the Land of Israel was unleashed against the people living in Zion. The entire country was placed in the danger of the war, and the city of Jerusalem came under siege and distress with the lives of about a hundred thousand people in grave danger. At these critical moments in the history of the War of Independence and the siege of Jerusalem, when it seemed as if all hope of holding out was lost due to the lack of food and weapons, Rabbi Herzog stood with his head held high, full of hope and confidence in God and His Torah. He himself passed under the rain of shells that fell on the city from neighborhood to neighborhood and from position to position, bringing the message of impending redemption to the fighters and the besieged by proclaiming that there would not be a third destruction. (*Mishnat ha-Goren*, p. 251)

Rabbi Goren knew very well that beyond all of Rabbi Herzog's achievements and actions, he himself was prepared to "go out into the field," in the center of battle, to visit the soldiers and strengthen their spirits.

We will conclude our remarks with the blessing that Rabbi Herzog issued to the soldiers of the IDF in preparation for Rosh Ha-Shana 5709. After he blessed them from the bottom of his heart and even wrote to them, "Blessed are you that you have been granted this, that the beginning of the flowering of our redemption will come through you," and even "our hearts are full of true love and respect and dearness towards you,” he concludes by saying:

Remember our holy Torah at all times and at every hour, and keep its commandments and laws as all who hold fast to the Torah instruct you, and let it be fulfilled through you, "And your camp shall be holy." And God will fulfill His good word that He spoke to Moshe His servant: "For the Lord your God is He that goes with you, to fight for you against your enemies, to save you."(Blessing to the soldiers of the IDF at the end of 5708, published in: *Masu'a le-Yitzchak*, II, p. 286)

Here too, in an emotional blessing coming from the bottom of his heart, Rabbi Herzog seeks to establish the status of those "who hold fast to the Torah," who deal with the laws governing the army, and thus are partners in the success of the Israel Defense Forces and in the success of the State of Israel, the beginning of the flowering of our redemption.

(Translated by David Strauss)

1. [Editor's comment: In *Hitkatvut be-Inyanei ha-Hagana ve-Tzahal* in the [Israel State Archives](https://www.archives.gov.il/archives/Archive/0b07170680024756/File/0b07170680fb3fc8), we find a letter from religious soldiers, beginning on p. 37, in which it is written (p. 38): "We will turn also to the military rabbinate, but from there we cannot be quickly helped until the matter passes the necessary procedure. Therefore we ask you to act on our behalf with the greatest speed, because it is of great importance to us." This attests to Rabbi Herzog's involvement in military matters even **after** the establishment of the military rabbinate. – Aviad Brestel] [↑](#footnote-ref-1)
2. Rabbi Prof. Neriah Gutel noted that it was Rabbi Herzog who laid the foundations for defining Israel's wars as obligatory wars. See his article, "*Hagdaratan ha-Hilkhatit shel Milchamot bi-Medinat Yisrael be-Mishnat ha-Rav Herzog*," in: *Masu'a le-Yitzchak*, II, p. 311-322. [↑](#footnote-ref-2)
3. Later in the series, when we deal with public and national *pikuach nefesh*, we will study *Kuntrus ha-Vikuach*, written by Rabbi Moshe Tzvi Nerya in the framework of a dispute with Prof. Yeshayahu Leibowitz. In the introduction that Rabbi Herzog wrote to this work of Rabbi Nerya (published in the book "*Tzenif Melukha*"), Rabbi Herzog emphasizes that he never signed on a ruling that a soldier who does not observe Shabbat should carry out a mission in place of another soldier who observes Shabbat. [↑](#footnote-ref-3)
4. Edited by Rabbi Avi Rat, Tel Aviv 2013, pp. 238ff. For a comprehensive survey of the topic, see Dr. Shifra Mishelov, "*Bisus Ma'amadah ha-Atzma'i shel ha-Rabbanut ha-Tzeva'it*: *Mei-ha-Rav Goren ad Ha-Rav Peron*," in: *Sifra ve-Saifa*, pp. 366ff. [↑](#footnote-ref-4)