YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur 28: Introduction to the Laws Governing the Army and War – The Challenge of a Lack of Sources, and the Solutions**

**Introduction: The Challenge**

The first half of this series dealt with the parameters of *pikuach nefesh* and the concept of communal *pikuach nefesh*. The second half of the series, beginning with this *shiur*, will focus on applying these parameters of *pikuach nefesh* to *halakhot* governing the army, war, and national security.

The first issue we will address is that of "a town located close to the border," which clearly involves unique and extensive parameters of *pikuach nefesh,* above and beyond situations where there is "a sick person before us," or "a danger before us." The issue of "a town located close to the border" is a prominent example of the fundamental principle that we learned from Rabbi A. Y. Kook (*Mishpat Kohen,* no. 143; *shiur* no. 21) regarding the difference between laws governing individuals and laws governing the community.

As an introduction to the issue of a town located close to the border, and in essence as an introduction to the continuation of the series in general, we will first discuss, in this *shiur* and the next, a significant challenge to the study of and ruling about the laws governing the army and war – namely, the challenge of a lack of sources. During the two thousand years of Israel's exile, halakhic authorities did not deal with laws governing the army and war in actual practice. Explicit Biblical passages, especially those beginning with "When you go forth to battle" (*Devarim* 20:1, 21:10), were categorized as "Messianic laws," and were primarily expounded in midrashic manner as referring to the "war against the evil inclination" and other such matters. Rabbi Sh. Y. Zevin describes this phenomenon as follows:

Regarding war from a halakhic perspective, I read a statement of a certain righteous man, who said: The Torah, as we know, is expounded according to its plain sense and on the level of allusion, but sometimes the plain sense becomes the allusion, and the allusion becomes the plain sense. Surely, regarding the verse: "When you go forth to battle against your enemies, and the Lord your God delivers them into your hands, and you carry them away captive" (*Devarim* 21:10) – while Israel lived in the Land of Israel and the kingdom of Israel existed, the plain sense of "when you go forth to battle" was actual battle, in its simple sense. Only that on the level of allusion, they knew there is also an inner war that takes place in each and every person, a war between the [good and evil] inclinations. As they said: "A person should always incite the good inclination to fight against the evil inclination" (*Berakhot* 5a)…

But when the Temple was destroyed, and because of our sins, we were exiled from our land and distanced from our soil, and no one fights us and we don't fight others, and the nations of the world distress us and do us evil, but do not wage war against us, the allusion became the plain sense: "When you go forth" to battle the evil inclination, "and the Lord your God delivers them into your hands," as they said: "And were it not that the Holy One, blessed be He, helps him, he could not overcome him (i.e., the evil inclination) [e.g., *Sukkah* 52b]. Only that on the level of allusion, we know that this verse also refers to actual war, in the past, when we were in our land…

And behold, we must now continue the line further and say that in our day, the plain sense has once again returned to its original footing. Once again, there is a reality of real war, in its plain sense, in our land, and even the Divine promise exists: "When you go forth to battle… and the Lord your God delivers them into your hands." Only that on the level of allusion, we must know that there is also a war against the evil inclination, and even regarding that war, we are promised: "And the Lord your God delivers them into your hands."

And thus, the halakhic problems of war are actualized in the State of Israel. (*Le-Or ha-Halakha*, *Ha-Milchama*, 2)

When those laws of war became practical once again, already in the days of the underground and the fighting brigades, and even more so after the establishment of the State of Israel, the rabbis in and outside the IDF had to address them without having clear halakhic precedents. Regarding this matter, Major General Rabbi Shlomo Goren wrote:

This must be known. All the laws of the Torah, all the *mitzvot* which are practiced at this time, have an unbroken, continuous tradition, since the Sanhedrin during the period of the Temple… until this day. At the end, we have a *Shulchan Arukh*, in which almost everything, large and small, is stated explicitly… In contrast, we do not have any parallel tradition regarding life in the Jewish army. For two thousand years, we have not had an army. We do not know what obligates us, out of all the *mitzvot* of the *Shulchan Arukh*, in the army. Does the army have a special *Shulchan Arukh*? Does it have special allowances? And if so, what are those allowances?

…I knew, when I entered the position of Chief Rabbi of the army, that I would have to create something out of nothing – I would have to write and rewrite a "*Military Shulchan Arukh*" without having anywhere to take things from. I would have to gather allusions from here and there… It became necessary to solve all the problems because we had no continuity of religious life in a military framework… It was a very, very big challenge. (*Be-Oz u-ve-Ta'atzumot*, autobiography edited by Avi Rath, Tel Aviv 5773, pp. 161-162)

Almost forty years after Rabbi Goren retired from his position as Chief Rabbi of the IDF, Brigadier General Rabbi Avichai Rontsky was appointed to the position, and he too writes in a very similar fashion:

After Israel was exiled from their land, the questions that were brought before the *poskim* revolved mainly around the affairs of the individual and the community, and the members of each generation could base themselves on the answers of the Torah giants who preceded them. But with the establishment of our state and our army, many halakhic problems arose for which it was difficult to find solutions in the books of the ancients. This is because questions of this kind were not brought before the arbiters of the previous generations, and to them they were considered "Messianic laws." Furthermore, even when the sources are known, the halakhic authority must get to the roots of the case in question, so that the Halakha will suit the reality. (*Responsa Ke-Chitzim be-Yad Gibor*, I, Introduction)

Rabbi Goren, and many Torah authorities in his wake, laid the groundwork for issuing halakhic rulings regarding military and security matters. Nevertheless, to this very day, questions arise from time to time that have no clear precedent in the works of the *poskim*. Thus, when we in the military rabbinate had to deal in recent years with questions related to the activities of the IDF spokesman on Shabbat, or the parameters of what is permissible and what is prohibited regarding matters of "civil resilience" for which the Home Front Command is responsible during an emergency, we had to clarify halakhic issues that our ancestors could never have imagined. Over the course of these *shiurim*, we will deal with these issues as well, but it can be said that the challenge of the lack of sources has remained the same to this very day.[[1]](#footnote-1)

**"The King's Way" – The Talmud and *Poskim***

On the face of it, despite the significant challenge posed by the lack of precedent regarding military and security matters, the system of halakhic decision-making and the methodology should not change. That is to say, these issues must be decided in accordance with the halakhic sources that have been committed to writing and handed down to us from generation to generation. Indeed, the sources are scant and there are no clear precedents, but with innovation and ingenuity, and based on comparing one matter to another, it is possible to reach conclusions in these areas as well. We will examine how several authorities have approached this task.

1. **The *Minchat Yitzchak***

Rabbi Yitzchak Yaakov Weiss, who for many years served as the Av Bet Din of the Eida Charedit in Jerusalem, offered strong comments in this context. In the framework of a "Lecture on Practical Halakhic Problems in Our Time Which I Delivered before an Assembly of Rabbis,"[[2]](#footnote-2) Rabbi Weiss deals with three complex issues that occupied the *poskim* of the last generation: electricity and using a microphone on Shabbat; the attitude towards the courts of the Reform movement; and the world of Israeli shipping and seafaring and its operation on Shabbat. Rabbi Weiss defines all of these as unique halakhic issues that result from a "time of emergency":

Furthermore, the questions and problems arising during a time of emergency are different and more difficult and complicated than those arising in peacetime, for when everything proceeds in its usual way, every man under his grapevine and under his fig tree, the problems lessen, and if they occasionally arise, they are not out of the ordinary. This is not the case when they arise in a time of emergency. (*Responsa Minchat Yitzchak*, III, no. 38)

Rabbi Weiss also describes there the complex halakhic questions that arose during the First and Second World Wars, and the great difficulty in answering them after many of the greatest authorities of the generation in Europe “went up in a tempest to heaven”[[3]](#footnote-3) during the Holocaust. He proposes that Rabbi Elazar ben Azarya's argument against Rabbi Akiva in several places in the Talmud, "What have you to do with *aggada*? Devote yourself to *Nega'im* and *Ohalot*!" was meant to ensure that Rabbi Akiva engage in depth with the complex halakhic issues that arose in his time, which was a period of destruction, persecution, and wars, and that he not content himself with the study of *aggada* alone:

All of this should be included in the words of Rabbi Elazar ben Azarya to Rabbi Akiva, that in such a time of trouble in Israel, when the problems that require resolution are very great, and the solvers are few, as most of them fell at the hands of the enemy – there is no allowance whatsoever for one who was graced by God with the knowledge to reach halakhic conclusions from the Talmudic passages to remove himself from this… The entire aforementioned matter has risen up again at this time, when all of the life that we know is a life of war… Furthermore, the conditions of life, and the new inventions in daily life, bring new doubts and problems to solve in practice. The problems are difficult and complicated, and the solvers, after the great Torah authorities have perished, are few. What will happen to the Torah? Therefore, the obligation is cast on everyone who God has blessed with the understanding and wisdom to clarify the law, not to withdraw his hand from it. (*Responsa Minchat Yitzchak*, ibid.)

After having said this, Rabbi Weiss moves on to deal with our issue, and asks: The halakhic arbiters whom he encourages to stand up the task – how will they solve the complex problems that arise in a generation living in a time of emergency and war? On what sources will they base their rulings? To this he resolutely replies:

However, with regard to the aforementioned matters, I wish to emphasize one thing; even if it is unnecessary to mention this detail, nevertheless the scandal of the time requires me to emphasize this – that although the conditions of the time have progressed, and new things are being invented every day, we believe with complete faith that the entire Torah we received from Mount Sinai will never be replaced, nor will there ever be a different Torah from the Creator, may His name be blessed[[4]](#footnote-4)… Therefore, whenever a new question or problem comes before us from the new inventions, we must solve it only according to the Holy Torah, and with the help of God, find the correct source in the Talmud and the *poskim*, to reach the true halakhic conclusion. (Ibid)

On the face of it, Rabbi Weiss's words are clear and simple; could halakhic rulings possibly be issued that are *not* based on the Talmud and *poskim*?But as has been explained, there are a number of areas, chief among them the laws governing the army and war, regarding which we have found almost no sources, such that the traditional decision-making process based on the Talmud and *poskim* becomes very complex. Precisely because of this complexity, Rabbi Weiss emphasizes that there is no other way in the framework of the halakhic process, nor can there ever be one.

1. **Rabbi Shaul Yisraeli**

As mentioned, Rabbi Weiss served for many years as the Av Beit Din of the Eida Charedit in Jerusalem. However, it is important to emphasize that his words do not necessarily reflect a particularly "conservative" approach. Similar statements were also written by Rabbi Shaul Yisraeli, head of Yeshivat Merkaz Ha-Rav and member of the Chief Rabbinate Council of Israel, who was one of the most senior and important people involved with laws governing the community and the state. Among other things, Rabbi Yisraeli founded in the year 5709 the journal "*Ha-Torah ve-ha-Medina*" ["The Torah and the State"], which, as its name suggests, was meant to clarify new halakhic questions that arose in the young State of Israel.

In 5715, Rabbi Yisraeli was interviewed by the *Ha-Tzofeh* newspaper, and he tried to explain the novelty of creating a Torah platform that would deal with laws governing the state. He said as follows:

The halakhic questions that have arisen with the establishment of the state were new in form, though not in their inner essence. These problems, since they had no practical relevance in the Diaspora, were never sufficiently clarified in the primary sources of the Oral Law, and remained obscure even afterwards due to the fact that they were not handled by the *Rishonim* or *Acharonim.* The volumes of responsa of the great Torah authorities across the generations discussed primarily what they were asked, namely, questions relevant to their times. This did not include questions regarding a state in Israel, as these were considered "Messianic laws."

Sometimes it seems even to those standing on the foundation of the Torah that laws governing the state and society do not exist in the Torah at all, and that in this matter our hands are free to establish them according to our own discretion, content with the fact that the course of things accords with the spirit of the Torah. Therefore, it was necessary to clarify that this is not the case, that any attempt to determine laws based on one's own judgment, even in the area of political life, violates the principles of the Torah no less than an attempt of this type in other areas of life. (*Ha-Rabbanut ve-ha-Medina* – *Asufat Ma'amarim me-et Ha-Rav Shaul Yisraeli*, Jerusalem 5775, p. 43)

Rabbi Yisraeli further clarifies that there must certainly be an organized halakhic position on these issues. He disagrees with both the secular approach, which believes that it is impossible for the "outdated" Torah to find solutions to these issues, and with the ultra-Orthodox approach, which sees no value or significance in the state's revival or in its being governed in light of Halakha.

In order to explain how to formulate and fashion an organized halakhic position, Rabbi Yisraeli adopts an approach very similar to that of Rabbi Weiss:

The method of the articles in *Ha-Torah ve-ha-Medina* involves clarification of Halakha in accordance with the sources. First and foremost, as a primary source – the Talmud and its commentators. The articles delve into the depths of the Talmudic passages, clarify the relevant words of the *Rishonim*, and try to reach a conclusion, as far as possible, using the sources in the books of responsa that discuss communal life and the arrangement of social life in those lands where the Jews enjoyed a certain autonomy.

There are those who have criticized us that the articles do not go directly to the point and present a clear ruling. However, it is lost on them that the matters under discussion are not found explicitly in the Talmud and the *poskim*. To draw inferences, there is no other option but to analyze, distinguish, and compare, in order to find the principles that will guide us in the reality of our day…

It seems to us that this will be the special character of the Torah of the Land of Israel, which will include within it the various shades of learning that developed in the various Jewish communities in the Diaspora. What is required here is a fusion of the yeshiva method of study with a method that focuses on the halakhic ruling, in such a way that achieving a deep understanding of the Talmudic passage will join with the pursuit of the extraction of opinions and of clear practical halakhic conclusions. (Ibid. p. 44)

In conclusion, the challenge is utterly clear both to Rabbi Weiss and to Rabbi Yisraeli, and their firm position is that its solution will come only through the traditional ways of Torah study and halakhic decision-making, based on the Talmud and the *poskim*.

1. **Rabbi Goren's Method – Historical Study**

Rabbi Goren's unique and original approach to dealing with the challenge stands out against the words of Rabbi Weiss and Rabbi Yisraeli. Of course, Rabbi Goren as well investigated the sources of the written and handed-down *halakhot* in the Talmud and the *poskim*, and even expanded the scope with lesser-known sources such as the Jerusalem Talmud and various halakhic and aggadic *midrashim*.

But in addition to all of this, Rabbi Goren sought to establish an even broader concept of military and war laws, for which purpose he sought to outline the ways of Israel's armies in ancient times, with an emphasis on the days of the Hasmoneans and the Second Temple Period. To this end, Rabbi Goren incorporated into his halakhic discussion not only clearly halakhic sources, but also historical sources.

We saw above the words of Rabbi Goren in his book *Be-Oz u-ve-Ta'atzumot* regarding the challenge of halakhic decision-making in the absence of sources. In the introduction to his book of responsa, *Meishiv Milchama,* he repeats the same points but also notes his unique way of dealing with the challenge:

These rulings are different from ordinary civil halakhic rulings, and this book is different from any other book of responsa, in that the topics dealt with in this book do not have a continuous tradition of halakhic decision-making from generation to generation, nor do they have a corresponding section in the *Shulchan Arukh* or in the books of the *poskim.* Since the Bar Kokhva Revolt, 65 years after the destruction of the Second Temple, the laws governing the army, war, and national security have not been topical in the lives of the nation. For nearly two thousand years, these problems have appeared as "Messianic laws." Even the *Laws of Kings* of the Rambam do not suffice to establish a way of life for the army of Israel at this time, as they too are primarily aimed at the days of the Messiah.

In order to find authoritative halakhic and historical sources for the resolution of the thousands of halakhic problems arising in the IDF, it was necessary to collect and gather the fragments of *halakhot*, customs, and practices that were observed in the armies of Israel in ancient times, to raise them from the abyss of forgetfulness under the ruins of the Kingdom of Israel, and to collect them from the Holy Scriptures; from the oceans of the two Talmuds, the Babylonian and the Jerusalem; from the *midrashim* of the *Tannaim* and the *Amoraim*; and from the rest of halakhic literature from days of old and from ancient years. **We also used the books of Maccabees and other external books and the books of history accepted by us.** (*Responsa Meishiv Milchama*, Introduction)

Rabbi Goren practiced what he preached. Already in the second section of *Responsa Meishiv Milchama*, which deals with "Fighting on Shabbat in Light of the Halakha," we find extensive and lengthy discussions of various historical episodes. Among them: the Hasmonean wars as they are described in the book of Maccabees, and the wars at the end of the Second Temple as they are described in the books of Josephus Flavius (*Antiquities of the Jews*, *Wars of the Jews*, and *The Life of Josephus Flavius*). Rabbi Goren's mastery of these books is extremely impressive, and as mentioned, he conducts a real discussion of the details and minutiae concerning the fighting that took place on Shabbat in these wars.

This is repeated not only in that foundational essay dealing with fighting on Shabbat, but also regarding specific questions. Thus, for example, when Rabbi Goren was asked whether it is permissible to service Air Force planes on Shabbat in a routine manner, not necessarily for the purpose of concrete operational activity, he discussed various halakhic issues as well as the war of Hyrcanus and Aristobulus as it is described in Josephus' *War of the Jews*, and concluded that we can learn from the "historical fact" that only direct defensive actions are permitted on Shabbat, and not those that require preparation for a future war (*Responsa Meishiv Milchama*, no. 19).

Another example is the proof he brings from the book of Maccabeesthat ideally, one should not evacuate the dead from the battlefield on Shabbat (*Responsa Meishiv Milchama*, no. 117) – though there he concludes that from the modern battlefield, this is permissible. With God's help, we will address this issue in the future.

A third example can be found in a short responsum that Rabbi Goren devoted to the question of whether, before going into battle, shofars are blown or trumpets (*Responsa Meishiv Milchama*, no. 135). Rabbi Goren testifies there that he studied the Book of Maccabees in the original Greek, and that he found that there was a mistake in the accepted translation: The translator wrote that Yehuda the Maccabee commanded that *shofarot* be blown, but in the original it says they were trumpets.

At the end of that long historical discussion, spanning dozens of pages, about fighting on Shabbat, Rabbi Goren wrote:

With this we conclude the first three chapters devoted to this topic, which relate to the position of the various *midrashim*, and the position of the external books, and the opinion of Yosef son of Matityahu[[5]](#footnote-5) regarding defense and fighting on Shabbat. Now we must clarify the position of the Talmud and the various halakhic books upon which we rely, and in their light, we shall go forth. (*Responsa Meishiv Milchama*, no. 2)

There is no doubt that it is completely clear to Rabbi Goren what the main sources of Halakha are. At the same time, it is difficult to ignore his innovation in expanding the discussion to include in-depth historical study, especially when comparing his approach to that of Rabbi Weiss and Rabbi Yisraeli.

Of course, if we have come to deal with Israel's wars in ancient times, then there is a much more important source than the books of Josephus, and that is, of course, the Bible. In the next *shiur*, we will deal with the question of whether and how it is possible to learn laws regarding the army and war from the Bible.

(Translated by David Strauss)

1. It should be noted that "new" questions also arise in other areas of our lives. Some of them relate to issues we are addressing in this series, part of "the laws governing the state" (such as the question of managing national resources, which we dealt with in *shiur* no. 27); others relate to scientific and technological breakthroughs, with an emphasis on the fields of medicine. Thus, for example, questions concerning organ donation, advanced fertility treatments, and many more, are new issues for which it is difficult to find clear precedents in halakhic literature.

   For a simple example, I will cite the words of *Responsa Teshuvot ve-Hanhagot* (V, no. 318) regarding surrogate motherhood: "And it should be known that all the rulings of the *poskim* regarding the matter of surrogacy are based on logical arguments. Their proofs and opinions are not decisive, for the matter of surrogacy is new, and there are no sources from the Talmud or from the early arbiters on this matter, and therefore we are forced to rule on such serious issues as these based on logical arguments and by bringing proofs that are not decisive, by comparing one matter to another." He goes on to emphasize that because it is a "new" question, any decision should be treated as a questionable decision, not as a certain decision. As mentioned, there are many and varied examples of this, but in this framework we will focus exclusively on laws relating to the army and war. [↑](#footnote-ref-1)
2. The responsum does not indicate the date of the lecture, but in light of one of the sources cited in the continuation (no. 39, s.v. *plugta ba-metzi'ut*), it seems that it took place after the year 5719, that is to say, more than a decade after the establishment of the state. [↑](#footnote-ref-2)
3. Editor’s note: An allusion to the description of Eliyahu’s passing from this world; see II *Melakhim* 2:11. [↑](#footnote-ref-3)
4. Editor’s note: number 9 of Rambam’s Thirteen Principles of Faith. [↑](#footnote-ref-4)
5. In one place I found that Rabbi Goren raises doubts about relying on the historical testimony of Josephus, as his abysmal hatred for Yochanan of Gush Chalav, who revealed his treachery, could have led him to cast malicious accusations against him (*Responsa Meishiv Milchama*, III, gate 5, regarding the death penalty for terrorists). However, despite this reservation, which as we know is shared by many, Rabbi Goren tends to accept Josephus's testimony. Even in the aforementioned responsum, in which Rabbi Goren raises doubts as to the reliability of Josephus' words concerning the civil wars in Jerusalem, his conclusion is that those words are supported by the words of *Chazal*, and therefore we can rely on them. [↑](#footnote-ref-5)