YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 33: A Border Town – Examples from Contemporary *Poskim***

**Introduction**

We dedicated the previous *shiur* to Rabbi Shlomo Goren’s rulings that were based on the laws of defending a border town. In this *shiur*, with God's help, we will conclude our study of the broader issue and discuss additional halakhic rulings by contemporary *poskim* who answered questions of the day in light of the law of a border town.

**Defensive War**

In Adar 5708, in the midst of the War of Independence and a few months before the Declaration of Independence, Rabbi Eliezer Yehuda Waldenberg wrote a comprehensive responsum entitled "War of Defense or Offense on Shabbat."[[1]](#footnote-1) He begins with the background to the responsum:

I was asked by several God-fearing people who are guarding the people and defending the land here in our holy land, where the forces of light are fighting the forces of darkness to find a resting place for the tired feet of our people in the land of their forefathers and to live independent lives in the purity of the holy, to clarify for them based on the clear Halakha how they are to behave when they are called based on their assigned roles to a defensive or offensive war on Shabbat: Should they at all respond to the order? And if yes, how should they behave in this war, like on a weekday or otherwise? I find it my duty to respond to their request, and so I will commit to writing what I concluded with the help of He who grants knowledge to man regarding these questions. (*Responsa Tzitz Eliezer*, vol. III, no. 9, chap. 1)

Rabbi Waldenberg divides his answer into three parts: a defensive war, returning from the front, and an offensive war. The first part, which deals with a defensive war, is entirely dedicated to clarifying the issue of a border town. In his customary manner, Rabbi Waldenberg lays out the issue in great detail and cites many sources.

In our context, it is not surprising that the initial discussion about the laws of war in the State of Israel, after two thousand years of exile, begins with the issue of a border town.

**Theft of Metals from IDF Training Grounds**

Unfortunately, in recent times there have been many incidents of theft of weapons from IDF bases. The allowance to desecrate Shabbat in order to prevent such thefts is clear and simple, and does not depend on the law governing a border town. Weapons that fall into the hands of criminals or terrorists may directly endanger lives, and therefore it is clear and obvious that it is permissible to desecrate Shabbat to prevent such thefts.

Sometimes, however, it is not the theft of weapons that must be addressed, but the theft of combat waste such as empty bullet casings, tank chassis, and the like. Hostile elements infiltrate the IDF's training grounds and steal objects of this type for the purpose of trading in metals. In this respect, we are dealing with a contemporary example of "hay and straw."[[2]](#footnote-2)

In a responsum to Rabbi Chananya Shafran of the Beit Midrash for Halakha of the Military Rabbinate, Rabbi Dov Lior rules that it is permissible to desecrate Shabbat in order to prevent this type of theft:

It seems that just as in a border town, if gentiles came even for hay and straw, they go out against them on Shabbat, so too here, there is reason to go out even for financial matters, like the chassis of tanks. (*Responsa Devar Chevron*, *Orach Chaim*, no. 395)

This is also how the *halakha* was decided in the book *Torat ha-Machaneh*:

Question: Is it permissible to desecrate Shabbat for the purpose of preventing the theft of agricultural equipment and produce, armored chassis used for training purposes, roadside warning signs, and the like?

Answer: …In principle, Shabbat should not be desecrated for the purpose of rescuing money, but if there is concern that the property crime will lead to a situation of *pikuach nefesh*, and all the more so if it is liable to cause damage to the nation's hold on its land, it is permitted and obligatory to fight against it even on Shabbat. In light of this, it is permitted today to fight criminal elements even on Shabbat, since there is a reasonable fear that any criminal incident will deteriorate into a situation of danger…

It should also be added that the *poskim* of our generation have ruled that today, every place in Israel is considered a "border town," for the terrorists try to attack in all places, and therefore action must be taken against them throughout the country. In light of this, it is obviously obligatory to desecrate Shabbat for the purpose of fighting criminal offenses committed by Palestinians. (*Torat ha-Machaneh*, vol. II, 36, 10)

As mentioned, today's "hay and straw" are those metals or tank chassis, regarding which it is permitted to desecrate Shabbat in order to fight criminal elements who seek to steal them.

**Maintaining Grazing Land – On Shabbat and During the Shemita Year**

As we mentioned in the last *shiur*, Rabbi Goren permitted grazing animals, even at the cost of carrying a weapon outside the *eruv*, in order to strengthen Israel's hold on the land and prevent hostile elements from taking over.

Rabbi Yehuda Herzl Henkin expressed his reservations about Rabbi Goren's allowance with respect to agricultural land in the heart of the country. However, Rabbi Henkin himself stated that in border areas, it is permitted to violate Shabbat, even its Torah prohibitions, in the framework of the struggle over the land:

Before the Six-Day War, a certain settlement was located on the border, and a few meters from the houses, the no-man's land began, and the gentiles took advantage of Shabbat to come closer and cultivate the lands. This settlement is a border town, and there is a danger that it will be captured… It seems that cultivation of the land is more serious than matters of hay and straw, since it involves ownership of the land and in itself is the beginning of conquest… Therefore, they may desecrate Shabbat and go out with weapons to drive out the gentiles, and it is reported that this is the ruling they received from great Torah authorities. (Rabbi Yehuda Herzl Henkin, "*Shemirat Sadot be-Shabbat be-Ir ha-Semukha la-Sefar*," *Techumin*, vol. III)[[3]](#footnote-3)

Another allowance is mentioned by Rabbi Chaim Kanievsky in the name of the Chazon Ish, but it pertains to the laws of the *shemitta* year rather than the laws of Shabbat. We have already discussed ([*shiur* #26](https://etzion.org.il/en/halakha/studies-halakha/in-relation-to-government-monarchy)) the allowance to perform agricultural work during the *shemitta* year because of "*arnona"* (*Sanhedrin* 26a), in order to avoid imposition of punishments by the government as a result of the non-payment of taxes, and we noted the significance of the allowance in the context of "communal *pikuach nefesh*." The Rambam (*Hilkhot Shemitta ve-Yovel* 1:11) codified the law of *arnona*, and Rabbi Chaim Kanievsky writes about it:

And our master [= the Chazon Ish] wrote in a letter:[[4]](#footnote-4)"Regarding territories sharing a border with the gentiles, and the gentile neighbors have already tried to encroach on their land, and this leads to dangerous encounters, and the only way to prevent this is through plowing, and this plowing will not be useful for planting after the *shemitta* year, it is very likely that this situation is considered like the compelling circumstances of *arnona.* (*Derekh Emuna Shemitta ve-Yovel* 1, 11)

It is true that the Chazon Ish and Rabbi Chaim Kanievsky do not explicitly mention the issue of a border town, but it seems that this is what they had in mind in the framework of the allowance to plow during the *shemitta* year in order to ensure control over the land.

It is interesting to note that already in the Tosefta, we find an allowance concerning a border town during the *shemitta* year:

Regarding the towns of the Land of Israel that are close to the border, they station a watch over them so that the gentiles do not break through and plunder the *shemitta* produce. (Tosefta *Shevi'it* 4:7)

Although the Tosefta does not permit working the land (in contrast to the allowance of "because of *arnona*"), it does permit watching over the produce – even though the produce is considered ownerless property – in order to prevent the infiltration of hostile elements. The Chazon Ish expands the allowance even further, permitting plowing during the *shemitta* year. Admittedly, *shemitta* in our time is by Rabbinic law, and therefore the prohibition is less severe than Shabbat desecration; furthermore, the Chazon Ish restricts the allowance to plowing that will not yield benefit in the eighth year. And yet, what we have here is an allowance based entirely on the need to ensure the preservation of grazing areas and the prevention of a hostile takeover in border regions.

Rabbi Shlomo Aviner introduced an even broader allowance. According to him, it is permissible to plant non-fruit-bearing trees during the *shemitta* year, in order to prevent a hostile takeover of the land. Rabbi Aviner bases his allowance on the fact that *shemitta* in our time is by Rabbinic law, and on the views of *poskim* who maintain that even when *shemitta* is in force by Torah law, the planting of non-fruit-bearing trees is prohibited only by Rabbinic law.[[5]](#footnote-5)To this he adds:

But if the land is liable to pass into the possession of an Arab state, the matter is infinitely more severe, both because of the saving of lives and because of the conquest of the land. It is known that when gentiles come to steal hay or straw, we may go out on Shabbat, lest this will give them a strategic advantage from which they can capture our land; even though they come only for hay and straw, in the end they take over the place. All the more so when they literally take over the land.

In a well-known incident that took place before the Six-Day War, gentiles took over the no-man's land opposite Kibbutz Shaalvim, which was located at the time on the border, and the rabbi of the kibbutz, Rabbi Meir Schlessinger, ruled that they should go out and plow the area because of the security need and also because of the mitzvaof settling the land. Therefore, this is a matter of conquest, for which it is possible to desecrate Shabbat. (*Responsa She'eilat Shlomo*, III, 307)[[6]](#footnote-6)

In conclusion, the preservation of grazing land is permitted on Shabbat, and according to several contemporary *poskim*, preservation of the land is permitted even during the *shemitta* year, even by plowing and perhaps even by planting non-fruit-bearing trees – all this, within the framework of the allowances arousing from the issue of border towns.

**Extinguishing Fires That Were Lit for Nationalistic Reasons**

As we saw previously, the *Rishonim* learned from the law governing a border town that it is permissible to put out a fire on Shabbat if there is concern about future consequences involving danger to life (see [*shiur* #31](https://etzion.org.il/en/halakha/studies-halakha/ir-hasemukha-lasefar-leorekh-hadorot)).

A contemporary interpretation of this idea was given with regard to fires that are not directly life-threatening, but that were clearly started for nationalistic reasons. Rabbi Yaakov Epstein discussed the matter at length, explaining:

Ostensibly, there seems to be a significant difference between nationalistic arson and gentiles who came for matters of hay and straw. In the case of gentiles who besieged Jews towns, the enemy is now before us, waging war against them will frustrate their attempts to penetrate for the purpose of stealing money, and the fear exists that if they are not now stopped, they will end up killing people. In contrast, in the case of nationalistic arson, the enemy is no longer before us, and there is only a fire that is liable to damage settlements or IDF camps. Fighting the fire is not meant to defeat the enemies, who have already left, but to prevent them from achieving the result they were hoping for and thereby deny them success.

But on the other hand, if the fire is not extinguished, it is reasonable to assume that it will lead the arsonists to commit additional acts, to the point of endangering lives. Acts of nationalistic arson are not local events for the purpose of causing damage, but are part of a war against Jewish settlement in the Land of Israel and the State of Israel. If we do not fight nationalistic arson, there is a danger that Israel's enemies within the country will raise their heads and harm lives by setting fire to a settlement or a military camp, or attacking transportation routes. If the state does not fight arson on Shabbat, the terrorists will focus their activities on Shabbat, and their success will cause a nationalistic awakening and lead to casualties. Disrupting the enemies' actions from the very start will prevent casualties in the future.

Therefore, it seems that based on the fear of a situation of communal *pikuach nefesh*, the concern regarding nationalistic arson is similar to the concern regarding gentiles who come for matters of hay and straw. In both cases, there is no immediate fear of *pikuach nefesh*, but military action is required to prevent a future situation of *pikuach nefesh.* If this is indeed considered a war, then it is also permissible to carry out actions involving labors that are prohibited by Torah law, such as driving fire trucks, using firefighting planes, and extinguishing the fire. (Rabbi Yaakov Epstein, "*Kibui Hatzatot Le'umaniyot be-Shabbat*," *Techumin* 33)

A similar allowance was issued by Rabbi Dov Lior (*Responsa Devar Chevron*, *Orach Chaim* 393). He emphasizes there that it is permissible to put out a deliberate, nationalistic act of arson anywhere in the country. He bases his ruling on the fact that the entire country is considered a border town, as Rabbi Goren already argued. This is also the ruling found in the book *Torat ha-Machaneh*:

The *poskim* of our generation have ruled that when it comes to arson committed by hostile elements whose aim it is to impair Israel's sovereignty in its land, the fire must be extinguished, even if there is no concern about danger to life, and even in the heart of the country, for today, everywhere in the country is considered like a border town. (*Torat ha-Machaneh* 36, 9)

**Infiltrators and Asylum Seekers**

Rabbi Prof. Neriah Gutel devoted an in-depth and comprehensive article to the halakhicperspective regarding the appropriate attitude of the State of Israel toward infiltrators and migrant workers from various countries in Africa. A large part of that article is devoted to clarifying the Torah's commandment (*Devarim* 23:16-17): "You shall not deliver to his master a slave… he shall dwell with you, in the midst of you." Among other things, Rabbi Gutel cites the words of the *Sifrei*:

"He shall dwell with you" – and not in the city itself; "in the midst of you" – and not on the border. (*Sifrei Devarim*, 259)

The *Meshekh Chokhma* explains:

"In the midst of you" – and not on the border. Meaning, that there he can connect with the enemy. See *Eiruvin* 45 that with regard to a town near the border, even if [the gentiles] come only for matters of hay and straw, they go out with their weapons on account of them and desecrate Shabbat because of them. And similarly, a border town cannot be declared an *ir ha-nidachat* [an Israelite city that was led astray to idolatry and is now designated for destruction]. (*Meshekh Chokhma*, *Devarim* 27:17)

In the light of the words of the *Meshekh Chokhma*, Rabbi Gutel concludes:

Another point that needs to be mentioned relates to those situations in which an immigrant population – or at least part of it – creates situations of crime, endangers the population, the city, and all the more so the state, or is harmful in any other way. The truth is that the halakhic *midrashim* and the Bible commentators have already considered the matter…

Hence, even if it is true that we are commanded to help him, it must still be remembered that there is a limit. The border passes in the place where the fleeing slave poses a security risk and is liable to turn into a fifth column. It seems that this detail comes to teach about the entire rule: Wherever there is a well-founded fear of crime and injury on the part of the refugee-immigrant, one should not have compassion for him. (Rabbi Prof. Neriah Gutel, *Geirush Mistanenim*, *Techumin*, vol. 39)

Thus, we have before us an example of a question of "national security" that is not at all connected to the laws of Shabbat, but which is also based largely on the law governing a border town.

**Conclusion – Sovereignty as a Halakhic Consideration**

In a previous *shiur* ([#23](https://etzion.org.il/en/halakha/studies-halakha/ember-of-metal-2)), we discussed at length what contemporary *poskim* say regarding internal security and Israel Police operations on Shabbat. I mentioned there the wonderful work of the chief rabbi of the Israel Police in recent years, Rabbi Rami Rachamim Barkhayahu, who continues to establish procedures, orders, and instructions regarding police activity on Shabbat and holidays.

A few years ago, Rabbi Barkhayahu published an in-depth and comprehensive article related to the fundamental role of the Israel Police in ensuring sovereignty in our country. His principal argument is that the role of the police in ensuring public order and the rule of law is an essential condition for the observance of the mitzvaof settling the Land of Israel. That is to say, settlement of Israel depends on sovereignty, and sovereignty can only be realized with the help of the imposition of law and order by way of the Israel Police.

Rabbi Barkhayahu also relates extensively there to the issue of a border town. Despite the wordiness, I have chosen to quote him in full, because in my opinion his words are a fitting conclusion to these four *shiurim* on the topic:

According to the Gemara in *Eiruvin*, the inhabitants of a border town desecrate Shabbat even to fight enemies who came only for matters of hay and straw… From the law governing a border town, we learn that the mitzvaof settling the land from a communal perspective is fulfilled not only through military combat against an enemy that threatens to breach the country's borders and conquer it, but also in security activity within the country's borders against terrorists. That is why it is permissible to act even on Shabbat in order to preserve the peace of the citizens and the sovereignty and internal security of the country, and this not only because of the fear of danger to life, but because of the mitzva of settling the land on the communal level…

Is the work of the police connected to the mitzvaof settling the land in the sense of establishing sovereignty? It is true that the main role of the police is to enforce law and order. For this reason, it handles complaints about excessive noise, blocked parking spaces and roads, demonstrations, drug and alcohol offenses, etc. – which are routine civil offenses. However, the police are also involved in preparing for terrorism within the State of Israel, terrorist incidents, collecting weapons, securing public events, and securing places associated with state institutions. In addition, the police are also involved in preventing agricultural theft and property theft, and quite often the thieves' tracks lead to villages housing residents who are hostile to the State of Israel. It seems that this activity of the police is no different from the activities dealt with by Rabbi Goren – securing the National Water Carrier, public events, sports events, and demonstrations by members of minorities, etc. Today, the security of these events and places is not the responsibility of the army or the soldiers of the civil defense, but the responsibility of the Israel Police. If so, the halakhic allowance for IDF activity on Shabbat, due to the fact that the entire State of Israel is defined as a border town, applies today also to the Israel Police, which is responsible for the internal security of the State of Israel…

In the modern era, there is a division between the army, which is responsible for the fight against threats coming from outside the country, and the police force, which is responsible for internal security within the country. However, when it comes to the mitzva of sovereignty and conquest, it seems that there is no difference between the army and the police. The status of the internal security of the State of Israel is no different from the status of external security, and both security bodies are tasked with maintaining the stability of the government and the exercise of sovereignty. And if they permitted military activity aimed at maintaining security within the State of Israel based on the law of conquest and sovereignty, the same applies to the activity of the police who are responsible for the internal security of the State of Israel.

Therefore, when the Israel Police secure places and events that are sensitive from a political, security, or religious perspective, which the terrorist organizations seeking to undermine the status of the State of Israel are liable to attack in order to kill innocents and slander the State of Israel before the nations of the world, there is room to permit securing these places and events even on Shabbat because of the mitzva of settling the land and exercising the sovereignty of the State of Israel. It seems that this halakhic principle is valid even when discussing the protection of gentile houses of worship, for example, securing the Sabbath of Lights celebration in the Church of the Holy Sepulcher in the Old City of Jerusalem – a place where the nations of the world still don't recognize the sovereignty of the State of Israel. The allowance given to the Israel Police to secure this event against terrorist activity is not only because of enmity or *pikuach nefesh*, but also because of the mitzvaof settling the land and exercising the sovereignty of the State of Israel.

Were I not afraid, I would say that not only is the Israel Police obligated, based on the mitzvaof settling the land and exercising sovereignty, to secure events that are sensitive from a security or political point of view, but the very work of the police in enforcing the law and maintaining public order has a place in the exercise of Israeli sovereignty, and it therefore constitutes fulfillment of the mitzva of settling the land in its communal sense. (Rabbi Rami Rachamim Barkhayahu, "*Ha-Ribbonut ke-Shikul ha-Tziburi*," *Techumin* 39)

These words constitute a fitting conclusion to our discussion of the issue of a border town. This Talmudic passage, which was discussed by the great *poskim*, both early and modern, outlines a clear policy regarding the halakhic attitude toward national security, and it has the potential to establish important laws both regarding the matter of Shabbat observance in the IDF and the police, and regarding other issues that we dealt with in this *shiur*, such as *shemitta*, the attitude toward infiltrators, and the exercise of sovereignty, in light of *halakha*.

(Translated by David Strauss)

1. A few years after the establishment of the State, Rabbi Waldenberg published his book, *Hilkhot Medina*. The book is divided into three volumes, and the second volume is dedicated to laws pertaining to the army. In the tenth section there, Rabbi Waldenberg repeats what he wrote in this responsum. [↑](#footnote-ref-1)
2. *Editor’s note*: The *beraita* at the root of these discussions states: “In the case of a border town, even if they did not come with regard to life-and-death matters, but with regard to matters of hay and straw, they may go out against them with their weapons and desecrate Shabbat on their account” (*Eiruvin*45a). See [*shiur* #30](https://etzion.org.il/en/halakha/studies-halakha/ir-hasemukha-lasefar) in this series for the full passage and introductory analysis of this law.  [↑](#footnote-ref-2)
3. [Hebrew editor's note: This is most likely referring to an incident that took place in Kibbutz Shaalvim, which Rabbi Aviner also mentions in a responsum that will be discussed below. For further elaboration on the incident, and the allowance issued by "great Torah authorities," see: Moshe Oren, "'*Ve-tziviti et Birkhati*' *Miderabbanan u-Milchemet ha-Traktorim Tashka"v*," *Ha-Ma'ayan,* Tamuz 5766; available here), which describes the incident in detail, and relates that this was the ruling of the kibbutz's rabbi, Rabbi Meir Schlessinger, after consulting with his teacher, Rabbi Sh. Z. Auerbach, and with the chief rabbi of the IDF, Rabbi Shlomo Goren; he also explicitly mentions the issue of a border town as the basis of his allowance. Similarly, Shimon Cohen, in his report, "*Milchemet ha-Traktorim? Pa'am Haya Kan Davar ka-Zeh*" (*Arutz* 7, 2 Cheshvan 5776; the report is available [here](https://www.inn.co.il/news/307805)), cites in the name of Yehuda Freudiger, deputy director of the Shaalvim Educational Center, a slightly different version of the change that occurred in Rabbi Goren's position on the matter. – A.B.] [↑](#footnote-ref-3)
4. Note 191 there states that this is found in a manuscript. [↑](#footnote-ref-4)
5. It is true that the Rambam explicitly states (*Hilkhot Shemitta ve-Yovel* 1:5) that even the planting of non-fruit-bearing trees is prohibited, but according to the *Shulchan Arukh he-Atid* (*Shemitta* 19:5), the prohibition is only by Rabbinic law. (See, however, *Responsa Shevet ha-Levi*, vol. III, no. 158, who disagrees.) Maharil Diskin (*Responsa*, no. 27) rules that in very pressing circumstances, it is permissible to have non-Jews plant non-fruit-bearing trees. [↑](#footnote-ref-5)
6. For an extensive summary of similar allowances, including the controversy regarding planting that arose in the Negev in the *shemitta* of 5782 as part of the struggle over the land, see Rabbi Netanel Auerbach, "*Neti'a ve-Charisha bi-Shemitta le-Tzorkhei ha-Yishuv*," *Emunat Itekha* 136 (available [here](https://www.toraland.org.il/91710#_ftnref56)).

   It is interesting to note that Rabbi Auerbach cites many examples of the allowances granted by Rabbi Goren to the residents of Yehuda and Shomron during the *shemitta* year, which were intended to deepen their hold on the land. But I examined all these citations, and in none of them did I find that Rabbi Goren based his ruling on the law governing a border town, or on the matter of occupying and conquering the land, which served as his guiding light in his rulings on matters relating to the army. A source that is mentioned there several times is the *Yerushalmi* in *Moed Katan* (4:2), where it is stated that the allowance to have a non-Jew write a bill of sale on Shabbat – because of the importance of redeeming the Land of Israel – may be learned from the laws of war derived from the verse "until it falls" (*Devarim* 20:20). [↑](#footnote-ref-6)