YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 36: "Until it Falls" – Practical Applications**

**Introduction**

The previous two *shiurim* discussed the principles underlying the law of "until it falls," which grants special allowances during a time of war. In this *shiur*,we will examine several practical examples of the expansive conception of this law.

When we dealt with the law of a border town, we discussed many practical applications, with an emphasis on the rulings of Rabbi Shlomo Goren. As we will see below, there are fewer practical applications of the law of "until it falls." It is possible that the reason for this is that the principle itself is very expansive, and precisely for that reason, the situations in which it is possible or not possible to rely on it in practice must be examined more carefully.

In the responsum in which he explains the foundation of the law, Rabbi Goren clarified:

Thus far, we have elucidated one category of the allowance to wage war on Shabbat, when the initiative is in our hands and we are laying siege on the towns of the gentiles. **It only permits direct activity against enemy targets,** including siege, assault, combat and conquest, and it is based on the exposition of Shammai the Elder, "’until it falls’ – even on Shabbat.”

But this allowance does not apply to **advance activity**, the purpose of which is preparation for war, such as weapons manufacturing, combat-plan preparation, intelligence gathering, preparation of the various means for combat, or any other activity that is not in the battlefield and not during the time of battle.

So too this allowance does not apply to **defensive operations** against the enemy. (*Responsa Meishiv Milchama*, vol. I, no. 2)

In order to explain the background to the allowance granted for defensive operations, Rabbi Goren goes on to discuss the passage dealing with a border town. However, with regard to the allowance based on "until it falls," Rabbi Goren emphatically restricts its application: Only in the battlefield and only during the time of battle do we say that the prohibitions of Shabbat are completely "permitted," and that any necessary action may be taken, even if it is not a situation of *pikuach nefesh*.

An examination of Rabbi Goren's responsa on this subject indicates that he had reservations: Sometimes he states emphatically that this or that action is not included in the law of "until it falls" because that law is reserved exclusively for situations of war; in other cases, he tends toward expanding the use of the halakhic rule of "until it falls" to include the entire security envelope,[[1]](#footnote-1) as we will see below.

**"Until it Falls" With Respect to Routine Security Activity**

In the *shiur* about a border town, I mentioned the allowances issued by Rabbi Goren to secure mass events on Shabbat, even if they involve Shabbat desecration, and to conduct routine patrols along the country's borders. To a great extent, both allowances are based on the law governing a border town. However, within his remarks, Rabbi Goren also incorporates the law of "until it falls" – but in two opposite ways.

When Rabbi Goren was asked about driving on Shabbat during a routine level of alert, he emphasizes:

Since the case discussed in this question did not take place during an actual time of war, and did not involve clear means of combat regarding which there is an allowance on Shabbat based on the exposition of Shammai the Elder, **"'Until it falls' – even on Shabbat"**… Every case like this is considered on its own merits, in accordance with its mission. (*Responsa Meishiv Milchama*, vol. I, no. 9)

Rabbi Goren concludes in this case that driving is permitted, based on the law of a border town, and he clarifies that the allowance of "until it falls" does not apply here because we are not dealing with a situation of actual war.

On the other hand, regarding the question of desecrating Shabbat in order to secure mass events on Shabbat, Rabbi Goren adopts a different approach:

However, when Shabbat is already arriving and it is known that a crowd will be gathering there, it is certainly permissible to do everything to prevent injury or harm to human life based on the allowance of *pikuach nefesh*, **or for the reason of "until it falls,"** as is explained in chapter 2 in the comprehensive article, "Fighting on Shabbat." This is an allowance based on the mitzvaof waging war against the enemies of Israel who have attacked us, in all places and in all conditions in which they are liable to act against us. (*Responsa Meishiv Milchama*, vol. I, no. 7)

There is no doubt that a football game or a cultural activity held on Shabbat in the heart of Israel is not part of the "battlefield" and is not a "time of battle." Nevertheless, Rabbi Goren sees the duty to ensure the safety and security of the citizens of Israel as part of the mitzva of war.

Rabbi Goren voiced a similar opinion about routine security operations in the naval arena:

Regarding our ships, the operation of which involves many Torah prohibitions, chief among them being igniting a fire and other primary labors, and the entire allowance is based on security reasons – as long as the ship is being operated for a real security need of guarding or any other operational action, which is essential for the security of the land, the coast, or even the free passage of ships at sea, [it is permitted] because any measure taken for the protection of the rights of the state against being harmed by the enemy is considered as an obligatory war for which we may invoke the allowance of "'until it falls' – even on Shabbat.”

And the right of free passage at sea is not less than the protection of property in border towns, which is permitted on Shabbat. We have already explained in a different responsum that all of our ships are considered like border towns for this purpose. Therefore, operational activity for the purpose of protecting our free passage of ships at sea is permitted.[[2]](#footnote-2) (*Responsa Meishiv Milchama*, vol. I, no. 11)

In this responsum, there is some overlap in the use of the laws of "a border town" and "until it falls," but it is evident that Rabbi Goren maintains that the very guarantee of Israel's maritime superiority – even in times of peace – is included in the law of "until it falls."

This is also evident from Rabbi Goren's answer to a soldier in the Communications Corps who was uncertain about sending and handling various telegrams on Shabbat, in situations in which it is difficult to accurately determine the extent of their operational necessity. Rabbi Goren argued that the orderly maintenance of the communication network, and the continuity of ongoing security broadcasts, should be considered part of "the state's defense measures... the law applying to them is like the law of warfare that sets aside the prohibitions of Shabbat based on the verse 'until it falls'" (*Responsa Meishiv Milchama,* vol. I, no. 39). Later in that responsum, he emphasizes that the handling of any telegram should be treated at the very least as a case of possible *pikuach nefesh*, "and all the more so when the allowance is based on security, and for the reason of “'until it falls' – even on Shabbat,” regarding which we are certainly lenient even in a situation of uncertainty" (ibid.).

**War, Military Operation, and State of Alert**

In another responsum to a soldier in the Communication Corps, Rabbi Goren's deliberations regarding the scope of the application of the law of "until it falls," in accordance with different states of alert, are significantly more evident.

The soldier who raised the question had been asked to send empty transmissions during normal times, based on the operational perception that the enemy is capable of monitoring the transmissions, and in this way can ascertain whether the IDF is planning some significant activity. When transmissions are sent all the time, during the week and on Shabbat, the enemy is unable to detect a change in the army's state of alert.

Even though the operational need is clear, and it undoubtedly forms part of the army's preparation for emergencies and war, Rabbi Goren ruled against doing so on Shabbat:

Even though we have already clarified above that the military allowance of “until it falls” has more force in a time of need than the force of *pikuach nefesh* to set aside Shabbat, this is only when they are already engaged in a siege or warfare. But we do not find any apparent source that indicates that it is possible to invoke the allowance of fighting on Shabbat in times of peace or during an established truce for preventive security operations when there is no security activity of any kind, but only to ensure that during war or tension we might perhaps gain some advantage…

Therefore, it is clear that the allowance of "until it falls" applies only in a time of war itself, or to advance military operations, but not to a type of actions that are not inherently military, but whose special function is to achieve some security advantage for when that becomes necessary. (*Responsa Meishiv Milchama*, vol. I, no. 52)

In Rabbi Goren's opinion, it is impossible to apply the allowance of "until it falls" in a time of routine alert. Later on, however, he qualifies his position, distinguishing between different states of alert:

On the other hand, it stands to reason that in a state of special readiness for war, or regarding security operations with broad relevance to the state, when the assessment of the situation has determined that there is a fear of imminent activity and all preparations must be made to be ready in time, it is of supreme importance to maintain the alertness of the army's communication systems. Then it would be possible to allow increased empty activity of the communications system on Shabbat, in order to prevent the enemy from sensing our alertness when it comes, since it is considered like a situation in which a sick person is before us. But we will not allow this to be done during normal times, when there is no special preparation for the resumption of operations. Even though the enemy is always at our gate and plots to destroy us, nevertheless, a distinction must be made between a time of war or tensions and a time of relative peace or quiet that prevails at the borders, as this also manifests itself in the normal civil life of the state. (Ibid.)

In the military reality, there are many times when orders of "raised alert" are issued in the framework of routine operational orders. Rabbi Goren teaches us here that even though he made it clear that routine activity is not included in the law of "until it falls," he does apply the law in a time of raised alert, and here too, not only on the battlefield and in a time of battle, but in a wider operational context. Rabbi Goren himself distinguishes between "tension" on the one hand and "relative quiet" on the other, and of course the lines are not clear-cut in these matters.

As we know, the IDF engages in offensive and defensive operational activity all year round. From Rabbi Goren's words, it may be concluded that even if an all-out war has not broken out, nor even a large-scale military operation, certain states of alert may require application of the law of "until it falls." The coming *shiurim* will present examples.

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

In the *shiur* regarding the special allowances granted in a border town (no. 33), I mentioned the rulings of several contemporary *poskim* that it is permissible to extinguish a fire that was deliberately set for nationalistic reasons. This included a long section of a responsum written by Rabbi Yaakov Epstein, which is based primarily on the law of a border town. In the course of his argument, he notes that the struggle over our control of the Land of Israel amounts to a real war, and perhaps should be subject to the law of "until it falls."

Rabbi Yehonatan Simcha Blass, the rabbi of Neve-Tzuf in the region of Binyamin, which suffered severe damage from fires that were deliberately set by terrorists in the fall of 5777, wrote decisively on the issue. In the course of his argument, he notes the need to base his ruling on the law of "until it falls," and not only on the law of a border town:

In recent years, Israel's enemies have been waging a real war against us, and not a siege just for "matters of hay and straw." Injuries to the body and soul have become a matter of routine throughout the country. *Chazal* learned from the verse, "until it falls," that a real war is by definition a situation of danger, and any action that is needed for the war is permitted on Shabbat, even if it is not apparent that abstaining from such action would increase the danger to life. (Rabbi Yehonatan Simcha Blass, "*Hatzalat Nefashot u-Rechush be-Shabbat mi-Serefa she-Hitzitu Mechablim*," *Techumin*, vol. 37)

Here, too, we are not dealing with a real "battlefield," yet the perception that we are in the midst of an ongoing campaign – and in fact a war – allows for extensive allowances.[[3]](#footnote-3)

**Conclusion – "Build a Fence Around the Torah"**

In *shiur* no. 33, in connection with the special allowances granted in a border town, I mentioned an article written by the rabbi of the Israel Police, Rabbi Rami Rachamim Berakhyahu, regarding the halakhic significance of sovereignty. Rabbi Berakhyahu as well, though he bases himself primarily on the law of a border town, also incorporates into his discussion the law of "until it falls."

Rabbi Asher Weiss responded to Rabbi Berakhyahu's article, and wrote:

His honor argued at length that the proper administration of national and political systems in the State of Israel sets aside the prohibitions of Shabbat based on the law of "'until it falls' – even on Shabbat,” even when there is no concern about *pikuach nefesh*.

In my humble opinion, one should be very careful about expanding this new fence beyond war itself, for apart from the uncertainty regarding the very assumption that war sets aside the prohibitions of Shabbat even when there is no concern about *pikuach nefesh*, whether we rule in this manner in actual practice, it seems that this applies only to a real war, not to day-to-day administration and routine governance in times of peace.

I see great danger and great concern in the sweeping expansion of such a new law in relation to the strictest laws of the Torah, which are the laws of Shabbat, the violation of which is punishable by *karet*. (Rabbi Asher Weiss, "*Chilul Shabbat al Yedei Shotrim li-Shemira al Notzrim bi-Keneisiyat ha-Kever*," *Techumin*, vol. 39)

Rabbi Weiss maintains that the very broad allowance based on the law of "until it falls" is the subject of a dispute among the commentators, and the interpretation of the Rivash is not necessarily the correct one. Moreover, as clarified above in detail, there may be room to rely on this allowance only in the situation of a real war.

Beyond the halakhic arguments, Rabbi Weiss expresses his concern about sweeping and excessively broad allowances in the laws of *pikuach nefesh*, and in general. Indeed, in many instances, there is a fear of a slippery slope, especially when use is made of all-inclusive formulations, such as "the prohibitions of Shabbat are permitted [*hutra*].”

Even the military rabbinate often prefers not to use phrases such as *hutra* regarding Shabbat, because they are liable to be misinterpreted and lead to overly expansive conclusions. There is no doubt that caution is necessary in such areas. But in my humble opinion, it is also important to follow the words of Rabbeinu Bachye that "it is part of prudence not to be overly prudent" (introduction to *Chovot ha-Levavot*)*.* As we have already mentioned, there are certain actions whose operational necessity is not in doubt, and yet there are no clear halakhic sources that deal with them. In such areas, it is necessary to apply – in measure and with discretion – the expansive parameters of the law of "until it falls."

(Translated by David Strauss)

1. A practical question that is often raised is whether one's personal weapon is considered *muktzeh*, and whether it is permissible to carry it on Shabbat without an operational need. Rabbi Goren's opinion was that a personal weapon falls into the category of an object whose primary function is permitted on Shabbat, because it is meant to be used in a time of war, and during a time of war the prohbitions of Shabbat are permitted based on the law of "until it falls." This is a rather novel application of the law of "until it falls," and requires a more in-depth investigation of the laws of *muktzeh*, but this is not the forum for that (see *Responsa Meishiv Milchama*, vol. II, no. 1; and in greater detail in *Torat ha-Machaneh*, vol. II, 47, 2). [↑](#footnote-ref-1)
2. Later in the responsum, Rabbi Goren explains that every vessel in the Israeli navy is defined as "a military camp," regarding which there is no prohibition of going beyond one's Shabbat boundary, in accordance with his fundamental position that the law of Shabbat boundaries does not apply at all to military camps (*Responsa Meishiv Milchama*, vol. IV, no. 4). For a detailed dicussion about this, see *Torah ha-Machaneh*, vol. II, 46, 3. [↑](#footnote-ref-2)
3. [Editor's note: It is possible that an additional rationale should be added to this statement: Since its foundation, the State of Israel has been officially in a state of emergency. It is important to emphasize that this is not an empty declaration, as it directly affects the applicability of various regulations and orders that are still in use. In light of this, perhaps it can be argued that the continuation of the official state of emergency defines the country as one that is indeed in a state of ongoing war (or at least constitutes proof of that).] – A.B. [↑](#footnote-ref-3)