YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur 43: Media-related Pikuach Nefesh (2) – The Halakha in Practice**

**Introduction: The Battle Over Public Opinion in the Ela Valley**

In the previous *shiur*, we surveyed in detail the halakhic questions concerning the activities of the IDF Spokesperson's Unit on Shabbat. We concluded with the suggestion that the way the media covers an event can be seen as part of the victory in a military campaign, based on the law of "until it falls," but we noted that this consideration does not necessarily permit all of the unit's activities.

As with other "new" questions, here too we are drawn toward the Bible. In the *shiur* dealing with national resilience (*shiur* no. 41), we considered the way Ravshakeh attempted to break the people’s spirit in his campaign against Jerusalem (*Yeshayahu* 36), and concluded that psychological warfare and the public dissemination of threatening information are indeed meaningful factors on the battlefield.

The same conclusion can be drawn from a study of the verses describing one of the most famous battles in the Bible – the battle between David and Golyat in the Ela Valley. Golyat, too, engages in "psychological warfare," going out every day for forty days to threaten the Israelite command. The threats are heard by all, and their impact is described by the prophet as follows:

And when Shaul and all Israel heard those words of the Philistine, they were dismayed, and greatly afraid. (I *Shmuel* 17:11)

Young David is well aware of the mood of the people, and when he asks Shaul for permission to go out and fight against Golyat, he emphasizes that this is first and foremost a psychological battle, against a man who "taunted the armies of the living God" (ibid. v. 36). When he then goes out to fight Golyat, the battle opens not with actions, but with words: Golyat scorns David and curses him and his God; David, too, uses words before he uses his sling, and he delivers a wonderful speech of faith and trust in God. David emphasizes that his goal is to change the mindset in the Israelite camp:

And that all this assembly may know that it is not with sword and spear that the Lord saves, for the battle is the Lord's, and He will give you into our hand. (Ibid. v. 47)

Indeed, the victory over Golyat changed the people’s perceptions, and its results found expression not only on the battlefield, but also in the songs and dances that were performed in David's honor (I *Shmuel* 18:6-9).

As has been emphasized in previous *shiurim*, Biblical study of this type cannot lead us to an unequivocal halakhic decision. However, it can provide us with inspiration and a general direction of thought regarding the importance of public opinion in war, and the need not only to win the battle, but also to present matters carefully and publicize them properly.

As I mentioned in the previous *shiur* (*shiur* no. 42), I published an article in *Techumin* in 5770 (vol. 30) titled "*Pikuach Nefesh Tikshorti*" ("*Media-Related Pikuach Nefesh*"). This was the first time I submitted an article to this important Torah journal, and my intention was solely to present the halakhic questions and their complexity, without issuing halakhic decisions.

I fondly remember the journal's editors, the late Rabbis Uri Dasberg and Israel Rosen, who made it clear to me that regarding deep and complex issues such as these, there must be not only questions, but answers as well. They explained that the articles in *Techumin* are meant to offer clarification and decision-making. With their advice, I sent the article to several rabbis to ask for their opinions, and thus I was given a number of principles based on which the issues can be clarified and decided, as follows.

***Safek* *Pikuach Nefesh***

Some time after I began to collect halakhic questions pertaining to the IDF Spokesperson's Unit, I went with Rabbi Eyal Karim (who in those days served as the head of the halakhic branch of the Military Rabbinate, the position that I now have the privilege of filling) to the home of our teacher, Rabbi Avigdor Nebenzahl in the Old City of Jerusalem. We had often consulted with Rabbi Nebenzahl over the years, and wanted to bring this topic to him as well.

I had prepared a page with a list of questions, and began to present them before Rabbi Nebenzahl as usual. His answer to the first question was "I don't know," and so too to the second question, and afterwards he added: "I am undecided." In a childish moment I impertinently asked: "If the Rabbi doesn't know the answers to our questions, who does?!" But the Rabbi looked at me with his special smile and shining face, and replied simply: "Uncertain (*safek*) *pikuach nefesh*."

At that moment I learned an important principle, that if we are dealing with an issue related to the operational activity of the IDF and we don't have a clear answer about it, then we are dealing with a case of possible *pikuach nefesh* and there is room for leniency.

Rabbi Nebenzahl noted at that same meeting that the rules the media sets for itself are rules of "*alma de-shikra*," "the world of illusion/lies," which bestow excessive weight to considerations such as image and public opinion. However, in the course of the discussion, he added that alongside the prayer that all of our enemies "leave the world of lies and ascend to the world of truth," we must determine *halakha* in accordance with the data in this world, and if a matter involves a security need, it falls into the category of uncertain *pikuach nefesh.*

I also sent my questions to the head of the yeshiva in Ma'ale Adumim, the late Rabbi Nachum Eliezer Rabinovitch. He examined the questions, but like Rabbi Nebenzahl, had difficulty reaching a clear decision, and wrote to me:

I totally agree with your conclusion: "Deciding the *halakha* in this matter is not at all simple." But as for the matter itself, it is clear that each and every case must be considered on its own merits, and it is impossible to rule in a sweeping manner on all the problems." (Rabbi N. E. Rabinovitch, private letter, published in *Techumin* 30)

So too according to the approach of "uncertain *pikuach nefesh*" that I heard from Rabbi Nebenzahl, which opens a significant window for leniency, it is impossible to issue a sweeping decision, and we must examine each individual case on its own merits.

**Indirect *Pikuach Nefesh* and Halakhic-Technological Devices**

I also sent my questions to Rabbi Dov Lior,[[1]](#footnote-1) whose position was that leniency was acceptable specifically regarding Rabbinic prohibitions. He explained that since we are dealing with an issue of communal *pikuach nefesh*, it is possible to be lenient about Rabbinic prohibitions, such as telephone calls, sending written messages, writing on a computer, and even recording. He pointed out that beyond the explicit sources regarding communal *pikuach nefesh*, it is clear that such *pikuach nefesh* is no less serious than the case of a sick person whose life is not in danger – for whom, according to some *Rishonim*, Rabbinic prohibitions are permitted.

Nevertheless, Rabbi Lior maintains that Torah prohibitions should not be permitted, because it is difficult to define the media threat, in its various forms, as a threat involving *pikuach nefesh*. Sending messages of reassurance, denying false foreign publications, or protecting the image of the IDF – all of these constitute only indirect *pikuach nefesh*, and therefore they only permit the transgression of Rabbinic prohibitions on Shabbat.

To clarify his words, Rabbi Lior explained that media treatment of various pieces of news is like a factory that produces ammunition. In times of peace, and usually in times of war as well, such a plant should not operate on Shabbat, even though there is no doubt that it plays an important role in the war effort.[[2]](#footnote-2)

Rabbi Lior suggested that when it is necessary to perform actions that are forbidden by Torah law, they should be done by non-Jews. This solution is usually not very practical in the IDF, but the principles of his approach were adopted in the framework of the guidelines that were established. Technological progress has brought us to the point that almost no Torah prohibitions must be violated within the framework of media activity. In the past, special trips had to be made to transport a video tape from the scene of the event to the film team of the IDF Spokesperson's Unit, but today all publications are broadcast digitally and all the required actions can be performed remotely by computer. Rabbi Lior's words make it possible to allow broad leniencies regarding Rabbinic prohibitions in the framework of this activity.

The late Rabbi Israel Rosen also wrote the following in response to my article:

The questions raised in this article are classic examples of what the Tzomet Institute has been dealing with for many years. Most of the halakhic-technological applications are intended precisely for this expanse of "gray area," which is very common in the security and medical fields. In order to enable essential activity that is not defined as actual *pikuach nefesh* on Shabbat, the institute has developed a variety of equipment, including aids that can help solve most of the problems raised in this article… It seems that Shabbat-observant soldiers serving in the IDF Spokesperson's Unit can make much use of this equipment. (*Techumin* 30)

Indeed, over the last decade, the Military Rabbinate has developed an independent capacity for the production and installation of such devices. In the set of guidelines published for the IDF Spokesperson's Unit, it was established that Shabbat-observant soldiers and officers should ascertain in advance that they have a "Shabbat phone," a "Shabbat keyboard," and a "Shabbat mouse," which are based on various configurations of indirect action and alternating current; this enables practicing leniency in various operations that require conversation, editing, broadcast, and dissemination of information concerning the operational activity of the IDF.

**Enmity**

A different approach to solving the problems was proposed by my father-in-law, Rabbi Shlomo Levy. According to him, it is possible to permit the activities of the IDF spokesperson on Shabbat based on the halakhic concept of "enmity" (*eiva*). This is not the forum in which to expand upon this broad issue; for our purposes, it suffices to mention that while the Talmudic source in *Avoda Zara* (26a) indicates that the concern about enmity on the part of non-Jews may permit Rabbinic prohibitions, but not Torah prohibitions,[[3]](#footnote-3) later *poskim* adopted the position that when the concern about enmity deteriorates to the point of actual fear for life, it can permit even Torah prohibitions.[[4]](#footnote-4) Indeed, it has been the settled law for hundreds of years that it is permissible to violate Shabbat to save the life of a non-Jew, despite various concerns, because of "enmity" – that is to say, because of the fear that refraining from saving non-Jews will lead to the deaths of Jews around the world.

Against this background, Rabbi Shlomo Levy wrote the following, which owing to its importance, I will cite almost in its entirety:

I read very carefully the important article regarding the activities of the IDF spokesperson on Shabbat, and I was asked to offer a brief response. The question that arises here is the question of performing actions prohibited by the Torah or by the Rabbis, based on the allowance of enmity. The main discussion of this topic deals with the medical treatment of non-Jews on Shabbat. Due to the seriousness of the matter, the *poskim* formulated their words on this issue very carefully, because on the one hand, there is no immediate threat to life, which is generally necessary in order to permit a prohibited labor on Shabbat, while on the other hand,we are dealing here with a great danger that is liable to threaten an entire community…

Ostensibly, it can be argued that also in the matter under discussion, there is a danger of enmity and communal *pikuach nefesh*, on several levels. First, we have all witnessed the wave of harm to Jews in Europe in the aftermath of Operation Oferet Yetzuka; in France, Jews were even murdered. Israel's enemies, who unfortunately are found everywhere, look for excuses to hurt Jews. The public atmosphere undoubtedly affects both those who inflict the harm and the government that is supposed to protect the Jews.

On another level, we can talk about danger even in the land of Israel, when provocateurs use such stories to incite the crowd and sometimes to carry out terrorist attacks. We all know that a story like this can lead to a stone-throwing attack on Jewish vehicles, which is certainly a situation of *pikuach nefesh*, and also to more serious attacks.

A third level is the political-military level, which is greatly influenced by public opinion and may have very serious consequences, and it seems that there is no need to go into further detail.

Alongside the above, it is clear to us all that the effect on public opinion is cumulative and not usually dependent on a single action; therefore, it is difficult to gauge the effect of a single action on the overall campaign. Still, we find that we must be concerned about *pikuach nefesh* even when we are dealing with a broader struggle, like "matters of hay and straw" and other examples that we will not expand upon in this forum.

The article before us presents various examples, and of course there are great differences between the various cases. Actions that are meant to prevent damage to the IDF or to enable operational activity on Shabbat, such as shooting at civilian enclaves, can be defined as urgent actions.

On the other hand, it seems that actions intended to harm the image of the Arabs, such as the distribution of a photo of an explosives laboratory or an Arab ambulance with a bomb, can wait until after Shabbat…

It stands to reason that there are cases involving uncertain *pikuach nefesh*, but it is understood that a sweeping allowance should not be issued. Despite the fact that each case is different, and it is impossible to foresee all the possibilities, it seems to me that it is necessary to consult with professionals and try to formulate rules regarding the more common cases. As opposed to military operations that require great precision on the practical and technical level, in the matter at hand the main effort is to make the right decision. Therefore, in many cases, the actions themselves can be performed by a non-Jew or in an altered manner, thus preventing the desecration of Shabbat with the performance of labors prohibited by Torah law. Every effort must be made to avoid the transgression of Torah prohibitions. (*Techumin* 30)

On the margin of Rabbi Levy's enlightening words, it should be mentioned that Rabbi Goren, in particular, was inclined to restrict this approach. In a long article dealing with the halakhic aspects of the IDF siege imposed on the terrorists in Beirut during the First Lebanon War, Rabbi Goren also related to the halakhic weight that should be given to "political pressures."[[5]](#footnote-5) According to Rabbi Goren, these pressures are, at most, in the category of "enmity," and the *halakha* is that we only permit Rabbinic prohibitions because of enmity, not Torah prohibitions. Therefore, he concludes that:

We would not have faced a military response against us if we had not lifted the naval blockade on the terrorists, but at most they would have reprimanded us, or the United States would have delayed the grants to Israel for a certain time… In light of this, we certainly should not have had mercy on them, but rather it was our duty to tighten the siege placed on them… (*Responsa Meishiv Milchama*, vol. 3, gate 5)

In my humble opinion, Rabbi Goren's statement is based on an assumption that the "enmity" created as a result of the siege of Beirut was such that it could have been dealt with using various political tools, and therefore did not justify ending the siege and releasing the mass murderers, Yasser Arafat and his men. Indeed, here too there is no option but to examine each case on its own merits, and to distinguish between different levels of "enmity."

**Filming a Demonstration on Shabbat, and the Law of "Until It Falls"**

To complete our review of the various opinions regarding battles in the arena of the media, I would like to turn to the words of Rabbi Yaakov Medan, Rosh Yeshivat Har Etzion.

At the end of the *shiur* discussing morale of the soldiers (*shiur* no. 40), I mentioned an article that I wrote regarding the filming of violent demonstrations on Shabbat. The article was written against the background of an unfortunate incident that occurred on Shabbat *Parashat Shemini* 5772, when during a violent demonstration in the Jordan Valley, a senior officer in the IDF punched a protester in the face. The video was circulated very quickly in Israel and around the world, and it led to the officer’s dismissal and to a series of apologies, from senior government and IDF officials, for his inappropriate behavior.

In that same article, I argued that the representative of the IDF Spokesperson's Unit was permitted to film the demonstration on Shabbat for three reasons: (a) It would be possible to use the documentation to locate the rioters who behaved violently and prosecute them; (b) If edited or biased documentation would be distributed, as indeed happened, it would be possible to distribute more reliable documentation, which would protect the image of the IDF and its officers in Israel and around the world and present a complete picture of the event; (c) Documentation contributes to the peace of mind of the officer on the scene, enabling him to concentrate on the operational task assigned to him without having to fear that hostile documentation would be circulated against him, as happened in that sad affair.

I published my article in Yeshivat Har Etzion's *Daf Kesher*,[[6]](#footnote-6)and in response, Rabbi Medan wrote his own article, in which he explained:

The important and precious words of Rabbi Avihud Schwartz regarding the allowance of the filming require, in my opinion, an addition, and that is what I come to do…

I am not worthy to rule in practice on questions of Shabbat desecration that involve the transgression of Torah prohibitions, but I will comment on one point: the documentation, the photography, the filming, and the publicizing are today part of the war itself. In the past I wrote that in my humble opinion the leaders of the state and the officers of the IDF have the discretion, and it is correct from a halakhic point of view, to change the strategy of battle and of war due to the consideration of public opinion here in Israel and due to the consideration of public opinion abroad. They may (and must) do this even at the cost of human lives! In many cases the IDF could have bombed houses from the air to eradicate a point of danger, and it preferred to do engage in a face-to-face battle despite the heavy cost. There were cases in which the IDF suffered from over-sensitivity to public opinion, but in many cases, it was the right decision. If questions of image may influence considerations of *pikuach nefesh*, they may also, and rightly so, influence considerations of Shabbat desecration.

The Goldstone Report and the Marmara ship are small examples of the influence of public opinion following distorted photographs of one kind or another on the impact of the media and public opinion on the existential strategy. Let us recall that the bitter side effects of the First Lebanon War and thirty years of war in Lebanon were directly influenced by the public opinion struggles following the Sabra and Shatila affair at the end of the First Lebanon war, which was largely a matter of public opinion…

Therefore, in my humble opinion, the allowance to desecrate Shabbat when it is necessary for the purposes of photography is not based on the allowances of *pikuach nefesh* and public welfare, but on the laws of war, which is permitted on Shabbat. (Rabbi Yaakov Medan, Response: "*Od be-Inyan Tzilum ve-Hasrata shel Eiru'im Mivtza'iyim be-Shabbat*," in: *Daf Kesher*, no. 1305 [*Parashat Behar*, 20 Iyar 5772], pp. 3-4)

Rabbi Medan bases himself on the consideration with which we opened our discussion, basing the allowance to publicize operational activity on the laws of "war" and "until it falls."

**Summary**

Questions about the activity of the IDF Spokesperson's Unit on Shabbat are deep and complex. To a certain extent, the media arena has truly become a war arena, and therefore some of the existing allowances regarding war can be applied to it.

The halakhic conclusion that emerges from all this is that it is possible to permit Torah prohibitions in certain situations based on the considerations of "until it falls," "enmity," and "uncertain *pikuach nefesh.*" Likewise, it is possible to permit Rabbinic prohibitions in broader fashion, when the actions are intended to have a favorable impact on national and international public opinion.

All this, of course, while totally refraining from engaging in non-operational matters on Shabbat. Even when a seemingly "burning question" is received, such as an article attacking the service conditions of soldiers at a particular base, or the food served to them at some other base, and there is concern that the failure to issue a response will have a negative impact on public opinion regarding the way the IDF takes care of its soldiers – there is no allowance to desecrate Shabbat! The allowance of media activity on Shabbat applies only to operational activity, and the various issues connected to it.

I will conclude by quoting a few sentences from the protocol formulated in collaboration with the IDF spokesperson, which, as explained in the previous *shiur*, was written and published after twelve years of consideration, discussion, and clarification:[[7]](#footnote-7)

Activity that directly protects human life – which includes distancing people from the scene of an event, guidelines for safety and defense, and media monitoring that protects the welfare of the forces in the field – is permitted in a sweeping manner and is to be carried out on Shabbat as on a weekday.

The media coverage that accompanies the operational activity may be carried out on Shabbat with focus placed on those actions that cannot be postponed to after Shabbat.

Shabbat devices are to be installed in the operations rooms of the IDF Spokesperson's Unit so that it will be possible for soldiers who are so inclined to use them, thus reducing the Shabbat desecration required for operational activity.

All topics and queries that are not related to operational activity are not to be handled on Shabbat. The public's right to know does not permit Shabbat desecration, with the exception of those issues that have an interface with the operational activity and whose orderly publication will enable the continuation and success of the activity.

Damage to the image of the IDF outside of an operational context, such as an article about an impairment of the service conditions of the soldiers (spoilt food in a military kitchen), does not permit Shabbat desecration and is to be dealt with after Shabbat or the festival.

(Translated by David Strauss; edited by Sarah Rudolph)

1. I wrote Rabbi Lior's words as I heard them, and showed them to him before they were published in *Techumin.* [↑](#footnote-ref-1)
2. Later in this series, we will discuss the production of weapons and ammunition on Shabbat. [↑](#footnote-ref-2)
3. See *Tosafot*, ad loc. (s.v. *savar*), and more firmly in *Chiddushei ha-Ritva*, ad loc. (s.v. *shari*). See also *Tosafot*, *Avoda Zara* 2a (s.v. *asur*), and *Responsa Da'at Kohen* (*Yoreh De'a* no. 176). [↑](#footnote-ref-3)
4. See about this *Responsa Divrei Chaim* (vol. 2, no. 25), *Responsa Chatam Sofer* (vol. 5, no. 194, and vol. 2, no. 131), and a summary of the matter in *Responsa Tzitz Eliezer* (vol. 8, no. 15, chap. 6), and in *Responsa Yabi'a Omer* (*Orach Chaim*, vol. 8, no. 38). [↑](#footnote-ref-4)
5. Even before the establishment of the state, Rabbi Yaakov Berman, one of the most prominent rabbis and educators in the Mizrachi movement, published a collection of articles entitled "*Torat ha-Medina be-Yisrael*"(with the help of Mossad ha-Rav Kook, 5748; available at the *Otzar ha-Chokhma ha-Mekuvan* website, [here](https://tablet.otzar.org/#/b/181728/p/1/t/1674654755746/fs/UNS1UcqBZJgCqQ4Ijn2Zdo5dfmwDF7WFQdMitb0e978a/start/0/end/19/c) and [here](https://tablet.otzar.org/#/b/634185/p/1/t/1674654755746/fs/0/start/0/end/0/c)). After explaining in detail that the laws of a Jewish state are "laws that were forgotten in Israel" (ibid. p. 11), he discusses various issues, and among other things he tries to clarify the halakhic attitude toward international law. He does not explicilty relate to political "pressures" by name, but his words there definitely constitute a preliminary discussion of this extensive issue of international relations in the light of *halakha*.

It should be noted in this context that this issue of "political pressures" was given weight with respect to halakhic questions that were asked with regard to the coordination and liaison units of the IDF operating in Judea and Samaria. These units are responsible for liaising with international aid organizations operating in the field, and at times they are required to operate on Shabbat as well, in order to prevent diplomatic incidents and to ensure the optimal cooperation of the international parties with the IDF. There is no doubt that with regard to these questions as well there is much room for considerations of "enmity," which in certain situations even permit Torah prohibitions. [↑](#footnote-ref-5)
6. "*Tzilum Hafganot be-Shabbat*," in: *Daf Kesher*, no. 1303 (*Parashat Acharei-Mot-Kedoshim*, 6 Iyar 5772), pp. 3-4. [↑](#footnote-ref-6)
7. As is the way of the world, even after the publication of a binding protocol, the rules are not applied (and enforced) in perfect manner, and sometimes there are also cases of uncertainty. For example, on Shabbat ha-Gadol of 5782, in the midst of Operation Shover Galim for the eradicaiton of Palestinian terrorism in Judea and Samaria, the Chief of Staff visited one of the IDF bases in Ugdat Ayosh and participated in the soldiers’ Friday night meal. A visit by a senior officer in an operational area to talk with the soldiers and brief the officers is a routine event, but that meal developed into a sort of "press conference" when military reporters were permitted to film the Chief of Staff's words to the soldiers, and even ask him questions.

It stands to reason that even though the matter touched on operational activity, it did not merit an allowance. Indeed, the office of the Chief of Staff apologized for the incident, and it was determined that the protocols would be sharpened. [↑](#footnote-ref-7)