YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Halakha and Israeli History**

**Rav Aviad Tabory**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l

הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ

Steven Weiner & Lisa Wise

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

In memory of Tzirile bat Moshe *z”l* whose *yarhtzeit* is 11 Kislev

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

**Shiur #07: 25 January, 1968**

**Raising the Dead**

**The Loss of *INS Dakar***

On 9 January, 1968, Israel’s newly purchased submarine, the *INS Dakar*, set sail from Portsmouth, England. It was expected to arrive at Haifa on 2 February. On board were sixty-nine sailors of the Israeli Navy. On 25 January, after the submarine failed to deliver its scheduled broadcast, the Israeli Navy declared that it had lost contact with the vessel. As a result, an international search-and-rescue operation began.

On 6 March, Defense Minister Moshe Dayan officially declared that the *Dakar* and its entire crew had been lost. A day of national mourning was announced.[[1]](#footnote-1) The IDF Rabbinate declared the missing sailors dead and instructed the families to sit *shiva*. This decision led Rav Shlomo Goren, Chief Rabbi of the IDF, to declare that all the wives of the missing sailors were permitted to remarry.[[2]](#footnote-2)

The official *yom ha-petira* (day of death) was decided to be 29 Tevet.

On 9 February 1969, a buoy washed up on the shores of Israel. It was examined and was found to be the *Dakar*’s emergency buoy. Everyone hoped that this would help solve the mystery of the disappearance of the ship. Unfortunately, this did not happen.

For the next thirty years, Israel continued searching for the lost vessel.

Many speculations and wild theories circulated about what might have happened to the ship. A rumor about the ship’s sailors being taken as prisoners was just one of many. There was talk of Russian involvement, as they were strengthening their hold in the Middle East after the Six-Day War. Others speculated that Egypt might have been involved, as it recently had sunk an Israeli warship, killing forty-seven sailors.

The official explanation of the Israeli government had always been that a malfunction was most probably the reason for the ship’s disappearance. There was no evidence to prove otherwise.

On 24 May, 1999, a joint US-Israeli search team detected a wreck on the seabed between [Crete](https://en.wikipedia.org/wiki/Crete) and Cyprus, at a depth of some 3,000 meters. On 28 May, the first images were taken*,* and it became clear that the *Dakar* had been found.

A great hole was discovered in the submarine’s hull. Some artifacts were recovered, including the submarine's bridge and many small items.

At the time, top Israeli officials discussed the possibility of raising the submarine. Some argued that although such a complicated task would cost a fortune, no price should prevent the government from doing all it could to bring the bodies of Israeli servicemen to Jewish burial.

**The Mitzva of Burial**

Jewish law is very particular about where and how Jews must be buried, but does Halakha recognize burial at sea as a legitimate religious burial? If the answer is negative, should the mitzva of Jewish burial be kept at any price?

There seems to be two main sources for the mitzva of burial (*kevura)*.

The Torah teaches us that *harugei beit din* (Jews condemned to death and executed by a religious court) must be buried on the same day:

You may not allow his body to remain on the gallows overnight, for you shall certainly bury him on the same day.[[3]](#footnote-3)

The Rambam’s opinion is that although the *pasuk* is referring to *harugei beit din,* the law applies to all Jews.[[4]](#footnote-4) The Rambam writes:

There is a positive mitzva to bury all *harugei beit din* on the day of execution… and not only *harugei beit din,* but whoever leaves his deceased [relative] overnight violates a prohibition as well.[[5]](#footnote-5)

It seems that the Rambam understands that this *pasuk* is not only a source for the prohibition of leaving the dead unburied overnight, but also a source for a positive mitzva to bury the dead. This is proven from the following law mentioned by the Rambam regarding a man who requested that at the time of his death, he should not to be buried in the ground:

If, however, he directed that he should not be buried, we do not listen to his request, for **burial is a mitzva,** as the Torah states: "For you shall certainly bury him.”[[6]](#footnote-6)

The other source has to do with the mitzva of *gemilut chasadim* (performing acts of kindness). The Gemara discusses the origin of the obligation:

Rabbi Chama son of Rabbi Chanina further said: What does it mean which is written (*Devarim* 13:5): “You shall walk after the Lord your God?”  Is it, then, possible for a human being to walk after the Divine Presence; for has it not been said (ibid. 4:24): “For the Lord your God is a devouring fire”? Rather, [the meaning is] to walk after the attributes of the Holy One, blessed be He…

The Holy one, blessed be He, buried the dead, for it is written (ibid. 34:6): “And He buried him in the valley,” so should you also bury the dead.[[7]](#footnote-7)

**Burial at Sea**

The Jewish custom is to bury the dead directly in the ground. The *Shulchan Arukh* explains:

If one buries the dead in a coffin and not in the ground, he transgresses the law of burial. If the coffin is buried in the ground, he is not transgressing. However, it is preferable to bury the dead directly in the earth.[[8]](#footnote-8)

Accordingly, questions Rav Shabbetai Kohen (*Shakh*, 1622-1663), how does one explain our custom today of burying the dead in coffins?[[9]](#footnote-9) He gives two answers: firstly, the custom today is to scatter earth on the body which is put in a coffin. This practice is considered burial in the ground. Secondly, all coffins have holes in them, which connect the bodies to the earth.

Rav Benayahu Bruner, a *dayan* and *rosh yeshiva* in Tzefat, argues that based on both reasons, the bodies of the *Dakar*’s sailors are halakhically considered to be buried in the ground.[[10]](#footnote-10)

Furthermore, under the circumstances, it is not clear that the sailor’s bodies have to be buried in the ground. By the time the submarine was found, all that might have been left of the bodies were bones. The law of burial in the ground does not apply to bones.

In the past, the Jewish custom was to wait until the body decomposed and only then to collect the bones to be put in a coffin.[[11]](#footnote-11) In fact, the Mishna[[12]](#footnote-12) reports that deceased family members were traditionally placed inside a family burial cave. After some months, when the organs had decomposed, the family performed *likut atzamot* (gathering of the bones) and placed them into a pit within the cave that contained the bones of all their ancestors.

Based on this logic, Rav Yigal Ariel of Nov, in the Golan Heights, argues that Halakha does not require burying the bones in the ground. Additionally, there is no concern of *bizui ha-meit* (dishonoring the dead), as the bodies are resting peacefully on the bottom of the sea.[[13]](#footnote-13)

**Is it permissible to move bodies?**

If the sailors of the *Dakar* are considered, according to Halakha, buried, there might actually be a problem in moving them to another burial site.

The Gemara lists ten *takanot* (decrees) that Yehoshua made as the Jewish people entered the Land of Israel.[[14]](#footnote-14) One of them has to do with a *meit mitzva* (a body that one finds abandoned). The *takana* states that the body should be buried at the site at which it has been found. The reason for this is the concern that moving the body may take time and create *bizui ha-meit*.

The Gemara understands that a soldier killed in action is always considered a *meit mitzva,* even if there are those who can bury him.[[15]](#footnote-15)

Rav David Ibn Zimra (Radbaz, 1479-1589) explains that the reason for this is because of the concern that in war, soldiers are preoccupied with their battle responsibilities, which would again result in *bizui ha-meit*. As a result, he argues that soldiers killed by accident are also considered *meit mitzva[[16]](#footnote-16)* and should be buried at the site at which they died.

Although there seems to be a *machalok*et amongst Rishonim if burying a *meit mitzva* on-site is a *chova* (obligation) or *reshut* (option), Chief Rabbi Ben-Zion Meir Uziel understands that is an obligatory law[[17]](#footnote-17) and a *meit mitzva* must be buried on-site.

The custom today, explain the Poskim, is to bury a *meit mitzva* in a proper cemetery. The reason is that burying them on site would not protect the bodies from robbers who might dig up the bodies and create *bizui ha-meit.[[18]](#footnote-18)* In the case of the *INS Dakar,* this logic doesn’t seem to apply, as there is no fear that the bodies will be disturbed. Furthermore, removing the bones might entail more *bizui ha-meit.*

**At what price?**

If it were possible to raise the vessel, it would involve huge expenses. Even then, there is no assurance that body parts would be found. Does the mitzva of *kevura* justify spending such vast amounts of money?

Rav Kook was asked about renovations for the military cemetery on Mount Scopus. In his responsum, he addresses a similar dilemma to ours. Although he encourages the renovations, he raises concern that the budget should be limited to the minimum because of the principle “The Torah is sparing with Israel’s money” (BT *Yoma* 39a). He also concludes that the custom of the Jewish people is not to spend large expenses on the dead but rather to use the money on the living.[[19]](#footnote-19)

Others might argue that the we are not merely dealing with the mitzva of burial but rather with a highly sensitive issue that has major ramifications for the morale of Israeli soldiers. We shall, God willing, discuss this topic in the future.

***Techiyat Ha-meitim***

Some might be concerned that bodies which have not been buried properly in a Jewish cemetery will not experience *techiyat ha-meitim***,** the resurrection of the dead.

I believe it is only appropriate to end this highly sensitive discussion with the powerful words of Rav Kook:

It is obvious that the mitzva of burial strengthens our faith in *techiyat ha-meitim,* which is one of the thirteen principles of our faith.

However, it is clear that in situations in which people have not been properly buried, the Almighty will collect all scattered body parts… [Therefore] all the martyrs of Israel will one day arise from the dead…[[20]](#footnote-20)

1. Admiral Shlomo Erell, Commander of the Israeli Navy, wrote a summary of the events. See his book *Lefanekha Ha-yam,* pp.298-305. [↑](#footnote-ref-1)
2. Rav Goren’s *teshuva* appears in *Meshiv Milchama,* Vol.3, pp. 99-213. [↑](#footnote-ref-2)
3. *Devarim* 21:23. [↑](#footnote-ref-3)
4. For a detailed discussion regarding this source see HaRav Aharon Lichtenstein, “The Mitzva of Burial,” available at: https://etzion.org.il/en/mitzva-burial. [↑](#footnote-ref-4)
5. *Hilkhot Sanhedrin* 15:8. [↑](#footnote-ref-5)
6. *Hilkhot Avel* 12:1. [↑](#footnote-ref-6)
7. BT [*Sota* 14a](https://www.sefaria.org/Sotah.14a?lang=he-en). [↑](#footnote-ref-7)
8. *YD* 362:1. [↑](#footnote-ref-8)
9. Ad loc. [↑](#footnote-ref-9)
10. *Techumin* 20, pp. 181-187. [↑](#footnote-ref-10)
11. Ramban’s explanation is quoted in *Beit Yosef YD* 363. [↑](#footnote-ref-11)
12. Mishna *Moed Katan* 1:5. [↑](#footnote-ref-12)
13. *Techumin* 20, pp. 171-180. [↑](#footnote-ref-13)
14. BT *Bava Kama* 81a. [↑](#footnote-ref-14)
15. *Eruvin17a*. [↑](#footnote-ref-15)
16. Radbaz’s commentary on Rambam, *Hilkhot Melakhim* 6:13. [↑](#footnote-ref-16)
17. *Piskei Uziel*, p. 190. [↑](#footnote-ref-17)
18. Shakh in name of Maharshal, *Shulchan Arukh, YD* 364:3, 10. [↑](#footnote-ref-18)
19. *Da’at Cohen* 212. [↑](#footnote-ref-19)
20. *Da’at Cohen* 197. [↑](#footnote-ref-20)