YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

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Dedicated by the Etshalom and Wise families in memory of

Mrs. Miriam Wise z"l, Miriam bat Yitzhak veRivkah, 9 Tevet.

Yehi Zikhra Barukh

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**Shiur #11: 4 July 1976**

**The Entebbe Operation, Part II**

The events in Uganda in July 1976 were unfortunately not new to our people. In recent decades, as well as in contemporary times we have faced the same dilemma: should one redeem prisoners at any cost? What price is considered reasonable?

Many articles and *teshuvot*[[1]](#footnote-1) have been written referring to a *mishna* in *Gittin* (4:6) that states: "Captives may not be ransomed for more than their value.”

This *mishna* explains that this *halakha* is because of *tikkun olam* (changing the world for the better). In other words, we must act responsibly for the entire Nation of Israel and not necessarily think only about the individual. We must consider the welfare of the community against the welfare of the captive.

The Gemara gives two reasons for this ruling:

1. Preventing a "burden on the community," since collecting large sums of money to free a captive causes great strain on the community.
2. Discouraging extortion, since paying exorbitant sums of money in exchange for captives inevitably leads to more kidnapping.

The Rishonim disagree about which of the above two reasons is the primary one. The practical consequence of this disagreement emerges in a case where the captive’s life is in danger. Would the Mishna’s decree hold up in the face of *pikuach nefesh*? Although the first reason would not stand up to it, the second reason might.

Modern hostage situations like Entebbe raise an additional question within this millennia-old dilemma: is the discussion of redeeming captives relevant to terrorist incidents?

In 1970, Rav Yitzchak Hutner boarded a plane which was hijacked and forced to land in Jordan. This might have been the first time since the kidnapping of the Maharam of Rothenburg that the Jewish community debated the application of the rule referenced in the above Gemara, that for a *talmid chakham* there is no limit to what ransom may be paid. Rav Hershel Schachter quotes Rav Yaakov Kamenetsky arguing that what happened in Jordan is considered halakhically an act of war and falls under the halakhic definition of “*milchemet mitzva*.”

…Although generally in a case of *pidyon sh'vuyim* (rescue of captives) the Jewish community is forbidden to ransom a captive for an exorbitant sum, the ruling in the case of a great scholar is that he should be ransomed even for a sum that exceeds his "worth." Thus, many Rabbis were of the opinion that every effort should be made to secure Rav Hutner's release. Rav Yaakov Kamenetsky dissented, however, arguing that the mitzvah of *pidyon sh'vuyim* only applies in peacetime, but surely not during hostilities, when the delivery of ransom money to the enemy would strengthen their position! He continued to explain that although a cease-fire existed at the time, the 1948 War of Independence had never really ended, for the Arabs' avowed goal to destroy the State of Israel and drive the Jews into the sea had never been renounced. In his view, although Israel was not then engaged in active battle, in the eyes of the halacha it was considered to be experiencing a mere lull in the ongoing original 1948 War of Independence.[[2]](#footnote-2)

Similarly, Rav Yisrael Rosen, editor of the proclaimed series *Techumin*, wrote an article questioning the heavy price which Israel paid for the release of Gilad Shalit, an Israeli soldier taken captive in 2006. After quoting the many articles throughout Israel’s history of kidnappings, he concluded that one cannot use the Gemara in *Gittin* as a reference in cases where the ransom is not money but rather freeing live terrorists. In these cases, he argues that

Halakha remains neutral and leaves room for tactical decisions to be made by the government.[[3]](#footnote-3)

There have been two lengthy halakhic articles written and published specifically about what happened in Entebbe. However, there is a major difference between them.

One article, composed by Rav Shaul Yisraeli, a *dayan* and *rebbe* in *Yeshivat Mercaz Harav,* discusses the halakhic implications which came up at the time. However, this article, which was published later in his book *Chavat Binyamin*, was written after the events took place, while the second one by Rav Ovadya Yosef was written as the events were happening.

Rav Ovadya Yosef, Sephardic Chief Rabbi of Israel at the time, published an article in the *Torah she-be’al Peh* journal entitled “Operation Entebbe in Halakha.” The article was later published in his responsa collection Yabia Omer (Vol. 10, *CM* 6). It is there, in an added footnote, that we learn that the *teshuva* was actually written during the crisis; Rav Ovadya was planning to advise the government as to his conclusions:

And when we were gathered together with the Torah sages to discuss this issue in terms of Halakha, in the midst of the discussions, the prime minister, Mr. Yitzhak Rabin, came to us and informed us of the news that the IDF had already succeeded in killing the evil terrorists and their assistants in Uganda, and releasing the kidnapped Jews, and that they were on their way to *Eretz Yisrael*.

I have read testimonies[[4]](#footnote-4) that other rabbis, Rav Shach and Rav Kanievsky (the Steipler) met during those days and put together a *pesak halakha* to be sent to the prime minister, urging him to go ahead with the prisoner exchange.

Besides the famous discussion in *Gittin* about redeeming prisoners, Rav Ovadya discusses another question at great length: Is one permitted to put his life in danger in order to save others?

As it relates to our case, this question has two separate components: the first is whether or not the release of terrorists, which will definitely put other lives in danger, is permitted. The second asks whether soldiers are permitted to put their lives in imminent danger to save others.

Rav Ovadya explains that this question is debated amongst the *Poskim* and may even reflect an argument between the Talmud Bavli and Talmud Yerushalmi.

Rav Yosef Karo[[5]](#footnote-5) cites the *Hagahot Maimoniyot* (based on the Yerushalmi), which states that one is obligated to take a risk, even putting one’s life in danger, to save others. Rav Karo explains that if the impending loss of life is certain (*vadai*), while the danger (*sakana*) to the would-be rescuer is subject to doubt (*safek*), the "certainty" of one's fellow takes precedence over the "doubtful" loss of one's own life. Rav Ovadya argues that normative Halakha follows the Bavli’s opinion: one is prohibited to endanger his own life to save others. Despite this, his conclusion is that under these circumstances, freeing terrorists for hostages is permitted since the danger to the hostages who face imminent execution is certain and immediate, while the danger to others as a result of the release of terrorists is merely doubtful.

Regarding the operation itself, the rabbis discussed its halakhic legitimacy. Under the special circumstances, where a potential alternative solution was to pay a ransom to free prisoners, two questions arose:

Normally a soldier may endanger his life in war. However, in our case how can one justify putting the lives of soldiers and hostages in danger when an alternative “peaceful” solution exists? Freeing terrorists **may** (*safek sakana*) endanger lives but fighting terrorists is without doubt putting lives in direct danger (*vadai sakana*)?

Another halakhic question mentioned in the *Poskim* has to do with fighting a war on Shabbat. Even though the actual operation took place on Motza’ei Shabbat,[[6]](#footnote-6) the preparations and flight to Entebbe occurred on Shabbat. The government hesitated in approving the mission. By Shabbat afternoon, the IDF army gave an order for the planes to make their way to the Sharm el Sheikh airfield. The operation was given the green light only afterwards. Under the circumstances, was the IDF allowed to violate Shabbat?

Regarding the latter question, Rav Ovadya discusses the *heter* (halakhic allowance) to fight on Shabbat. He mentions the Gemara (*Eruvin* 45a) that discusses fighting bandits on Shabbat. The Gemara differentiates between the purposes of the enemies attacking the city. If their aim is to steal money and property, then it is forbidden to violate Shabbat. However, if their goal is to kill Jews, then one must violate Shabbat and fight. Furthermore, if the city under attack is near the nation’s border, Shabbat may be violated despite the absence of an immediate threat to life. The reason for this is that the conquest of border cities may ultimately result in loss of lives. The Rambam (*Shabbat* 2:33) rules that all Jews who are capable of doing so are obligated to help their fellow Jews in the besieged city.

Rav Ovadya then quotes Rav Yisrael Isserlan,[[7]](#footnote-7) an important rabbi and halakhic authority (Europe, early 15th century), who rules that nowadays one may fight on Shabbat even if the ultimate motive of the enemy is to seize property because these attacks tend to turn quickly into acts of murder.

Rav Ovadya argues that besides the danger to the hostages, seizure of the airliner is considered an act of war. Were the hijackers allowed to succeed, it is quite possible that their initial success would have spurred them to further acts of aggression with more loss of life. Therefore, concludes Rav Ovadya, the war efforts, fighting, and rescuing may be done even on Shabbat.

Rav Yisraeli also addresses the halakhic legitimacy of the operation. He explains that the operation is surely defined as a *milchemet mitzva,* even though it includes a small group of soldiers and even though the war is conducted far away from home. On the other hand, he argues, in this unusual situation, the army had an option to hand over prisoners and pay the ransom. Even if this is considered putting others (Israeli citizens) in potential danger, fighting a war which also endangers soldiers and hostages is permitted and even required.

Rav Yisraeli explains that the legitimacy of war is based upon the concept of *kiddush ha-shem*. The laws of *kiddush ha-shem* have a special place in the halakhic hierarchy, overriding even the laws of *pikuach nefesh*. His argument is that fighting a war, which is obligatory, does not need to be based upon cold calculation regarding human life. The alternative in this case, to give in to the demands of the terrorists, even if it would be saving lives, would be an act of surrender and would bring disgrace and humiliation to our people which ultimately is a *chillul ha-shem* (desecration of the name of God).

Therefore, the IDF’s surprise attack on Ugandan soil was an act of *kiddush ha-shem* and was the correct course of action under the circumstances.

1. For a list of all responsa, see Michael Vigoda, <http://www.justice.gov.il/Units/MishpatIvri/HavatDaat/Pages/Shonot.aspx> [↑](#footnote-ref-1)
2. Rav Schachter, “Land for Peace: A Halachic Perspective,” *RJJ Journal of Halacha and Contemporary Society*, Vol. 16. [↑](#footnote-ref-2)
3. *Techumin,* Vol. 29, Page 100. [↑](#footnote-ref-3)
4. See Uriel Banner, *Ha-ma’ayan,* *Tammuz* 2016. [↑](#footnote-ref-4)
5. *Beit Yosef, CM* 426. [↑](#footnote-ref-5)
6. I remember listening to a soldier speaking to us in high school about reciting *Havdala* on the Entebbe airfield’s runway. He told us that he made the *berakha* of “*Meorei Ha-esh”* on the burning wreckage of the Ugandan air force [↑](#footnote-ref-6)
7. *Terumat Ha-deshen* 156. [↑](#footnote-ref-7)