YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

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**Shiur #**19:

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**The Gulf War: A New Type of Conflict**

On 2 August 1990, Iraq invaded Kuwait. The world condemned the act and a strong international coalition formed, under the leadership of the USA, against Iraq. On 17 January 1991, coalition air forces attacked Iraq. In response, Iraq fired missiles into Israel.

Earlier on, Iraq threatened to attack Israel with various types of weapons, including non-conventional ordnance, with the declared aim of destroying a significant part of the country. For the first time in Israel's history, the entire country faced a real threat of destruction by non-conventional weapons

In view of the unprecedented danger to the home front, the Israeli government instructed the IDF to go ahead with the distribution of gas masks to the entire population and instructed the population to prepare "safe rooms" for use in case the alarm was sounded. Israel became the first country since World War II to provide its entire population with gas masks and protection kits.

Over the next month, approximately 38 Scud missiles fell in 19 missile attacks, each warhead was considered to be a potential chemical weapon. These missiles mainly hit the greater Tel Aviv region and Haifa.

As the sirens went off around the country, millions of Israelis ran to the so-called safe rooms with their gas masks, fearing a chemical attack. No gas or chemicals were found in these missiles.

These attacks caused very few deaths, but there was a lot of damage to property.

In this war, for the first time, the home front served as the main theater of hostilities; and for the first time ever, the IDF devoted its main operational efforts to defending civilians and coordinating wartime activities between government offices and emergency services.

At the urging of the US, which was concerned that it might be deserted by its Arab coalition partners, Israel refrained from active participation in the war.[[1]](#footnote-1)

Because of these attacks, many tourists and Jewish students from abroad left the country. A similar phenomenon occurred during the Six-Day War, when some people fled the country.

As mentioned, most of the targets damaged by the missiles were in the Tel Aviv area and the question arose whether civilians should flee the city or not. Jewish students learning at the time in *yeshivot* debated whether to remain in Israel. Some, pressured by their parents, returned home.

In today’s *shiur,* we will discuss the halakhic response to these dilemmas.

**Fleeing Israel in the face of danger**

Rav Hershel Schacter writes that in 1948, due to the dangers of the war, Rav Yitzchak Ze’ev Soloveitchik, the Brisker Rav, thought of moving to Switzerland. Rav Herzog tried to convince him that he should not leave the Land of Israel, and that there was no need to fear since there is a tradition that there will not be a third Destruction. The Brisker Rav answered that he had a tradition from his father that when there is shooting, one flees.[[2]](#footnote-2)

Theoretically, the Brisker Rav was correct. The mitzva to live in the Land of Israel does not override *pikuach nefesh*.

This may be derived from the laws regarding leaving Israel. The Rambam permits leaving Israel for specific reasons:

It is forbidden to leave the Land of Israel for the Diaspora at all times except to study Torah, to marry or to save one's property from the gentiles. After accomplishing these objectives, one must return to the Land of Israel.

Similarly, one may leave the Land of Israel to conduct commercial enterprises. However, it is forbidden to leave with the intent of settling permanently in the Diaspora unless the famine in the Land of Israel is severe.[[3]](#footnote-3)

If for the purpose of livelihood, it is permitted to leave Israel, then it is obvious that it is permitted to do so when one’s life is in danger. On the contrary, we might argue that in the face of danger, one is actually obligated to flee and save oneself! Is it even allowed to stay in a dangerous area?

The response to that may be found in the words of the Rambam following his permission to leave Israel at a time of terrible famine:

Though it is permitted to leave the Land of Israel under these circumstances, it is not pious behavior.[[4]](#footnote-4)

However, there is a major problem with this conclusion. If we were to adopt this position, would we encourage all citizens to flee the country every time a war or threat to the State of Israel occurs?!

The answer, I believe, is to be found within the distinction between the two components of the mitzva to live in Israel.

The Ramban holds the position that there is a mitzva at all times to live in the Land of Israel (*yishuv Eretz Yisrael)*. In a lengthy passage, he elaborates:

We have been commanded to take possession of the land that God gave our forefathers, Avraham, Yitzchak and Ya'akov, and not leave it in the hands of other nations or in desolation…

This is what the Sages called obligatory war…And from what they said "Yehoshua's war of conquest," you understand that this *mitzva*is fulfilled through conquest…

And I say that the *mitzva*about which the Sages expanded greatly, namely, living in the Land of Israel, to the point that they said that anyone who leaves it and lives outside the Land [of Israel] should be regarded in your eyes as an idolater… This is all part of this positive precept, for we have been commanded to take possession of the land and dwell in it. If so, it is a positive precept for [all] generations, binding upon every individual, even during the period of the exile.[[5]](#footnote-5)

Many commentators have understood that this mitzva includes two obligations: one on the individual and the other one on the *tzibbur (*public).[[6]](#footnote-6)

As the Ramban mentioned, the mitzva to fight for the Land of Israel is included in the mitzva of *yishuv Eretz Yisrael*. This means that one is obligated to endanger his life for the conquest of the Land. This mitzva is obviously a mitzva of the *tzibbur*.

However, the individual who has a mitzva to settle the Land might not be obligated to give up his life for this mitzva. This can be proven from the above halakha that at times of severe famine, it is permitted to travel abroad.

However, Chief Rabbi of Ramat Gan, Rav Ya’akov Ariel proves from this halakha otherwise. We have mentioned that the Rambam permits, even in times of danger, remaining in the Land of Israel. Rav Ariel questions the logic of this position. According to the laws of *pikuach nefesh,* one is obligated to save one’s own life, so how does the Rambam permit remaining in Israel during a famine?

His answer is that the mitzva of the individual is connected to the national mitzva of *yishuv Eretz Yisrael*. As mentioned before, Jews are obligated to endanger their lives for the Land of Israel and this “*heter*” applies similarly when the individual fulfills the mitzva.[[7]](#footnote-7)

Rav Shaul Yisraeli discussed our question. His conclusion that it is prohibited to leave the Land of Israel when we are in a state of war. His reasoning is that the laws of war obligate all Jews to participate in the war efforts. The Rambam mentions the different types of wars that are recognized as a *milchemet mitzva* (commanded war). One of them is a war fought to deliver Israel from an enemy which attacks it.[[8]](#footnote-8) All wars today in Israel fit this definition, and thus all are obliged to participate in defending the country.[[9]](#footnote-9)

**Do not fear the enemy**

The Torah teaches us that soldiers mustn’t fear at times of war. The *kohanim* and the officers must enforce this law by warning the soldiers of this prohibition:

When you go out to war against your enemies, and you see horse and chariot, a people more numerous than you, you shall not be afraid of them, for the Lord, your God is with you, Who brought you up out of the land of Egypt.

And it will be, when you approach the battle, that the *kohen* shall come near, and speak to the people. And he shall say to them, "Hear, O Israel, today you are approaching the battle against your enemies. Let your hearts not be faint; you shall not be afraid, and you shall not be alarmed, and you shall not panic because of them…”

And the officers shall continue to speak to the people and say, "What man is there who is fearful and fainthearted? Let him go and return to his house, that he should not cause the heart of his brothers to melt as his heart.”[[10]](#footnote-10)

The Rambam understands that, aside from the prohibition to fear the enemy, this mitzva includes the prohibition to retreat from battle:

The obligation not to become frightened, nor to flee during battle.[[11]](#footnote-11)

In *Sefer Ha-mitzvot*, he quotes *pesukim* that back up his understanding:

The Torah commanded us not to fear or become frightened of the enemy during war, nor to flee from them. Rather, we are obligated to overcome [our fear] and to stand firmly against them, as (*[Devarim](https://www.chabad.org/9971" \l "v21)* [7:21](https://www.chabad.org/9971" \l "v21)) states: "Do not panic before them," and (*[Devarim](https://www.chabad.org/9967" \l "v22)* [3:22](https://www.chabad.org/9967" \l "v22)) states: "Do not fear them."[[12]](#footnote-12)

Does this mitzva apply only to soldiers, or to civilians too? *Sefer Ha-chinnukh* understood that this mitzva applies only to adult men, because only they are obligated to fight.[[13]](#footnote-13)

Rav Yosef Babad (*Minchat Chinnukh*) questions this claim as he argues elsewhere that women are obligated to fight in battle; therefore, this law should apply to them.[[14]](#footnote-14)

It seems that according to both *Sefer Ha-chinnukh* and *Minchat Chinnukh,* the law applies only to soldiers in combat.

During the Gulf War, Rav Ya’akov Ariel was the Chief Rabbi of Ramat Gan. He was asked whether or not civilians were permitted to leave the city and find refugee elsewhere. In his written response, he deals with this question as well as with the question regarding leaving the country altogether in times of danger.

He mentions that the Ashkenazi Chief Rabbi of Israel, Rav Avraham Shapira, on his visit to Ramat Gan during the Gulf War, claimed that the Rambam in *Sefer Ha-mitzvot,* as mentioned above, deliberately quotes verses from the Torah that are addressing directly all Jews, rather than soldiers only. He therefore concludes that the mitzva applies to the entire Nation of Israel.[[15]](#footnote-15)

However, Rav Ariel questions this claim by comparing the Rambam’s choice of verses he quotes elsewhere. In *Mishneh Torah*, when the Rambam describes the importance of showing no fear in the face of the enemy, he chooses *pesukim* that are recited to the soldiers as they prepare for battle:

Once a soldier enters the throes of battle, he should rely on the Hope of Israel and their Savior in times of need. He should realize that he is fighting for the sake of the oneness of God's Name. Therefore, he should place his soul in his hand and not show fright or fear. Anyone who begins to feel anxious and worry in the midst of battle to the point where he frightens himself violates a negative commandment, as it is written (*[Devarim](https://www.chabad.org/9984" \l "v3)* [20:3)](https://www.chabad.org/9984" \l "v3): “Let your hearts not be faint; you shall not be afraid, and you shall not be alarmed, and you shall not panic because of them.”

Furthermore, he is responsible for the blood of the entire Jewish nation. If he is not valiant, if he does not wage war with all his heart and soul, it is considered as if he shed the blood of the entire people, as *ibid.* 20:8 states: “Let him go and return to his house, that he should not cause the heart of his brothers to melt as his heart.”[[16]](#footnote-16)

This halakha and the source mentioned in it contradict Rav Shapira’s conclusion and suggest that the prohibition applies only to soldiers!

Rav Ariel offers an answer which solves the contradiction. His understanding is that the essence of the Torah’s prohibition is the concern that fear at time of war will lead to despair and demoralization, which will lead to defeat.

In times of war, the entire nation must stand strong against the enemy. The maintenance of national morale is a duty placed upon the individual whether or not that person is personally engaged in war. That explains why the Rambam quotes *pesukim* which warn the people that they must not fear the enemy. However, there is a more specific command to the soldier who actually fights the enemy, who is probably more likely to be frightened, as he directly engages the enemy.

Based on this understanding, he suggests that our question whether or not civilians are allowed to flee the city would depend on the question of whether or not this would bring despair amongst the people and the army. On the contrary, Rav Ariel argues, if all the people were to stay in the city and then be injured by missiles, this might lead to a greater feeling of despair!

Thus, he concludes, if people wish to move to another city, they are permitted to do so. However, those who feel that their presence in the city will strengthen the morale of the community may remain even in the face of danger.

1. Taken from Netanel Lorch, *The Arab-Israeli Wars*, available at: https://mfa.gov.il/MFA/AboutIsrael/History/Pages/The%20Arab-Israeli%20Wars.aspx [↑](#footnote-ref-1)
2. *Be-ikvei Ha-tzon,* pp. 115-116. [↑](#footnote-ref-2)
3. *Hilkhot Melakhim* 5:9 [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Ramban, *Commandments Omitted by the Rambam*, Positive #4. [↑](#footnote-ref-5)
6. See Rav Eliezer Waldenberg, *Kovetz Torah she-be’al Peh,* Vol. 32, p.111. [↑](#footnote-ref-6)
7. *Be-ohalah shel Torah*, Vol. IV, Ch. 11. [↑](#footnote-ref-7)
8. *Hilkhot* *Melakhim* 4:1. [↑](#footnote-ref-8)
9. *Eretz Chemda,* pp. 49-52. [↑](#footnote-ref-9)
10. *Devarim* 20:1-3, 8. [↑](#footnote-ref-10)
11. Introduction to *Hilkhot Melakhim.* [↑](#footnote-ref-11)
12. *Sefer Ha-mitzvot,* Negative #58. [↑](#footnote-ref-12)
13. Mitzva 425. [↑](#footnote-ref-13)
14. *Minchat Chinnukh,* ad loc. [↑](#footnote-ref-14)
15. Rav Ya’akov Ariel, *Techumin* 12, pp. 193-199. [↑](#footnote-ref-15)
16. *Hilkhot* *Melakhim* 7:15 [↑](#footnote-ref-16)