YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 29: Halakhic Decision-Making Based on Tanakh**

**Introduction**

The previous *shiur* raised the challenge of halakhic decision-making regarding military and security questions that lack clear precedents in halakhic literature. We saw the conventional approach, to resolve these issues based exclusively on the Talmud and *poskim*, as well as the innovative approach of Rabbi Goren, who sought to broaden the scope and examine various historical sources that describe the armies of Israel in ancient times. There, I cited the words of Rabbi Goren in the introduction to *Responsa Meishiv Milchama*, the gist of which he repeats in an article, also included in that collection, entitled "*Tzava u-Bitachon le-Or ha-Halakha*":

The totality of the *mitzvot*, laws, and *halakhot* found in the Talmud and *midrashim* on issues concerning the army and warfare, **and the verses in the Torah, the Prophets, and the Writings, and on top of them the chapters of history recorded and transmitted in the external books** that deal with the wars and army of Israel in the days of the Second Temple, such as the books of the Hasmoneans and the books of Yosef ben Matityahu, known as Josephus Flavius – all of these have the power to impress upon us the greatness of our predecessors with regard to the strength, valor, organization, tasks, problems, and customs of the army of Israel in ancient times, and to give us a complete picture of the Torah laws of war and the army, which were applied in daily life within the ranks of the soldiers…

The systematic work of gathering and arranging this material is extremely important, because it will enable us to decipher the eternal light hidden within the original laws of honesty, truth, and justice of our holy Torah, and this will create the practical possibility of applying these laws and *halakhot* in the holy camp of Israel. **In this way, we will be able to instill the Israeli army in our generation with the original Biblical character,** base its lifestyle and ways of fighting on the principles of morality and Divine justice, and move forward towards fulfilling the vision of the prophets for the future. In this way, we can be the successors of the armies of Israel of ancient times and acquire the crown of the heroism and holiness of the camp of Israel in the ancient generations and the majesty of the glory hovering over its pure flag…

We will therefore try to decipher and glean the sources of the Torah in the Halakha, the Aggada, and the books of history on this sacred subject and raise from the abyss of forgetfulness the laws governing the army and warfare according to the Torah of Israel. And perhaps the infinite light will emanate from these laws of God, and have a great influence on the spiritual life of the nation. (*Responsa Meishiv Milchama*, vol. III, section 5)

We already noted the novelty of learning from the external books in the previous *shiur*. In this *shiur*, I will focus on the central place that Rabbi Goren assigns to the Bible.

Rabbi Goren explicitly states that the Israel Defense Forces must be instilled with the "original Biblical character." Even before the establishment of the state, Rabbi Kook wrote:

We look at the early generations, described in the Torah, in the Prophets, and in the Writings, those generations that were preoccupied with war – they are the great ones toward whom we relate with fellowship and holy greatness… The war of their survival, the survival of the nation – the war of God was fought with internal conviction… Those strong souls come back to live within us as in the days of the past. (*Orot Ha-Milchama* 2)

Indeed, Israel's soldiers in recent generations have fought battles in exactly the same places as our ancestors – Yehoshua bin Nun, the Judges, King David, and others. Many have written about this relationship – "From Tanakh to the Palmach" – from various angles;[[1]](#footnote-1) we will try to examine its halakhic significance.[[2]](#footnote-2)

As a general rule, the authority to expound the verses of the Bible was given to *Chazal* and the Great Sanhedrin that sat in Jerusalem (*Hilkhot Mamrim* 1:1-2). In the words of the *Rishonim* and the *Acharonim*, there are almost no new laws or *asmakhtot* from the Bible regarding issues that are not stated explicitly in the words of the *Chazal*. Rabbi Asher Weiss, *shelita*, with his great knowledge, collected several examples from the words of *poskim* across the generations where they expounded Biblical verses, but he emphasizes that these examples are exceptions that do not teach us about the rule, for according to him:

There is a great principle that we do not expound expositions that we do not find in the words of *Chazal*. ("*Im Yesh Lilmod Halakha min ha-Tanakh*," *shiur* for *Parashat Shoftim*, 5776)[[3]](#footnote-3)

At the end of this *shiur*, I will explain the background to Rabbi Weiss's *shiur* and the context in which his words were stated.

***Mishpat Ha-Tzava Be-Yisrael***

To the best of my knowledge, the first halakhic work to deal with "the laws of the army" in the generation of the founding of the State of Israel is *Mishpat ha-Tzava be-Yisrael* (*The Law of the Army in Israel*).[[4]](#footnote-4) This work was authored by Rabbi Alter David Regensburg, a scholar who was born in the United States and immigrated to Israel before the establishment of the state. He merited to learn from Rabbi Kook in Yeshivat Merkaz HaRav, and later headed Yeshivat Tel Talpiot in Jerusalem. The book was published shortly after the establishment of the state, in the year 5709 (1949), and in its introduction the author provides the background for its writing:

With the founding of the State of Israel, new questions and problems arise in the life of our nation, which during the long and prolonged exile disappeared and were forgotten by us… "This people which I formed for Myself, that they might tell of My praise" [*Yeshayahu* 43:21] – because it is the army of Israel that wields the sword of the Torah… because the rule of the holy Torah is unlimited in time or place… at all times and in every situation, for every question and problem that arises, we find a solution and a gateway in the Torah, which encompasses the entire life of the nation and its individuals, in particular and in general. (*Mishpat ha-Tzava be-Yisrael*, introduction)

Just like Rabbi Goren, Rabbi Regensburg notes the challenge of the lack of sources, and emphasizes that a solution to every question can certainly be found in the Torah. However, a quick perusal of his book indicates that the entire book, from beginning to end, is interspersed with biblical quotations. The footnotes contain erudite analyses and sources from *poskim* across the generations, but many of the laws established by Rabbi Regensburg are based on the Biblical verses themselves. Here are several examples:

The army must be trained in all the tactics of war – II *Shmuel* 1:19: "To teach the sons of Yehuda the bow." (no. 2, 1)

To appoint a central command for the army, and so too to appoint local commanders for each company and squad, with different ranks, and so too to appoint a general commander who will serve as the commander of the entire army – II *Shmuel* 23:8: "These are the names of the mighty men whom David had." (no. 6, 1-3)

We must ensure that there is a stock of weapons and that there are people who are experts at manufacturing weapons – I *Shmuel* 13:19: "Now that there was no smith found throughout all the land of Israel." (no. 20, 10)

It seems that Rabbi Regensburg considers the verses of the Bible as a central source on which to base halakhic rulings regarding the laws of the army.

The book *Mishpat Tzava be-Yisrael* received very supportive approbations from two of the greatest Torah authorities in Jerusalem: Rabbi Tzvi Pesach Frank and Rabbi Yaakov Moshe Charlap. Both praise the author for seeking to revive the laws of the army and to ensure that the army of the young State of Israel would be conducted halakhically.

However, a careful study of Rabbi Frank's approbation also shows a certain reservation regarding Rabbi Regensburg's novel method of halakhic decision-making. As is the practice of those who write approbations, Rabbi Frank comments on some of the rulings found in the book. His first comment concerns a chapter devoted to military espionage, where the author says there is an obligation to send spies to gather intelligence – as did Yehoshua in Jericho – and that we must act to prevent counter-espionage – as did Yehoshua when he demanded to know whether the angel standing before him was "for us or for our adversaries." Later in the chapter, he states:

Enemy spies must be punished immediately, even not in wartime. (no. 7, 4)

The source of this *halakha* is in the story related in II *Shmuel* (Chapter 10) about Chanun, king of the Amonites, who humiliated David’s servants, who had been sent to comfort him, by shaving off half of their beards. We have here a "Biblical" proof – this time, however, not from the war practices of Yehoshua or David, but from the practice of Chanun, king of the Amonites. Rabbi Frank writes about this as follows:

On page 17 of the book, it says: "Enemy spies must be punished immediately," and in the sources he cites an explicit source in II *Shmuel.* This proof does not suffice! Do we learn from the Amonites? And the *Yerushalmi* goes further when it says: "We do not learn from the government"; if they said that we do not learn from the government of Israel, all the more so that we do not learn from the government of gentiles. And in general, there is no necessity to say that the nature of the punishment of a spy is different from that of all the other punishments in the Torah.

As mentioned, the criticism is not overt, but Rabbi Frank implies that he disapproves of the method, and he clarifies that the Biblical narrative, in this case the story of the king of the Amonites, is not a real source for establishing halakhic differentiation between the punishment of a spy and the punishment of any another transgressor.[[5]](#footnote-5)

**The Rambam's Rulings "Based on Scripture" in *Hilkhot Melakhim***

We will soon consider the book of an important contemporary author, but first, let us examine some of the rulings in the Rambam's *Mishneh Torah* that were explained by his greatest super-commentators in accordance with the very same approach.

In the list of *mitzvot* at the beginning of *Hilkhot Melakhim u-Milchamoteihem*, the Rambam enumerates twenty-three commandments: ten positive commandments and thirteen negative commandments. As is the Rambam’s way, all twenty-three commandments are rooted in the words of *Chazal.* But when we peruse the laws themselves, we find many additions that have no source in the Torah or Midrash. I will present here several examples of this phenomenon.

**1. Appointing a King and Wiping out Amalek**

*Hilkhot Melakhim u-Milchamoteihem* begins with the three commandments that must be fulfilled upon entering the Promised Land: to appoint a king, to wipe out the descendants of Amalek, and to build the Temple. These three commandments are stated explicitly in the Torah, but the Torah does not address the order in which they should be fulfilled. The Rambam discusses this issue, stating:

The appointment of a king should precede the war against Amalek, as it is stated: "God sent me to anoint you as king… Now, go and smite Amalek." (*Hilkhot Melakhim* 1:2)

The author of the *Lechem Mishneh* is troubled by the fact that the Rambam bases this law on the verses dealing with Shaul's war against Amalek, and explains:

This proof that our Rabbi wrote here that the appointment of a king should precede the war against Amalek, even though this is not brought in the Gemara, seems to be simple… And even though it is not mentioned in our Gemara, our Rabbi's position is already known, that regarding proofs from verses that do not affect the law, he is not particular to bring proofs from our Gemara. Rather he brings the simplest proof from wherever he finds it.(*Lechem Mishneh*, ad loc.)

The *Lechem Mishneh* proposes that the Rambam's approach is to bring proofs from Biblical verses when those proofs do not affect the law itself.

**2. The Rites of the Monarchy**

Regarding the rites of the monarchy, the Rambam brings examples from the stories of Shmuel, Shaul, and David all through chapters 1-2. The Rambam quotes many verses, and the Radbaz consistently comments that Rambam's source is indeed "based on Scripture." Thus, for example, the Rambam rules:

When a king is appointed, he is anointed with oil reserved for this purpose, as it is stated: "And Shmuel took the cruse of oil and poured it over his head. And he kissed him" (I *Shmuel* 10:1). (*Hilkhot Melakhim u-Milchamoteihem* 1:7)

And the Radbaz writes there: “This is explicit from Scripture.”

**3. "He Should Rely on the Hope of Israel"**

One of the most famous laws in the Rambam's *Hilkhot Melakhim* deals with the mental state of a warrior going into 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. He should not worry about his wife or children. On the contrary, he should wipe their memory from his heart, removing all thoughts from his mind except the war… In contrast, anyone who fights with his entire heart, without fear, with the intention of sanctifying God's name alone, can be assured that he will find no harm, nor will bad overtake him. He will be granted a proper family in Israel and gather merit for himself and his children forever. He will also merit eternal life in the world-to-come, as it is stated: "God will certainly make my lord a faithful house, for my lord fights the wars of God and evil will not be found with you… and my lord's soul will be bound in a bond of life with God" (I *Shmuel* 25:28-29). (Rambam, *Hilkhot Melakhim u-Milchamoteihem* 7:15)

The Rambam relates in that *halakha* to the explicitly stated prohibition, "Do not be faint-hearted" (*Devarim* 20:3), but one may still question the source of the Rambam’s views regarding the warrior's trust in the Hope of Israel and their Savior in times of need? About this as well, the Radbaz writes:

This is partly from the Midrash and partly the words of our Rabbi based on the verses.

"The words of our Rabbi based on the verses" – this is an important and frequent principle in the Rambam's rulings in *Hilkhot Melakhim.*

**4. Delaying the Burial of Enemy Soldiers**

One sensitive question related to war, that arises from time to time in practice, relates to the treatment and burial of the corpses of terrorists and enemy soldiers.[[6]](#footnote-6)

Of course, the IDF has for generations behaved humanely and taken care of the bodies of terrorists, and here too, Rabbi Goren clarifies:

As for our treatment of the enemy's corpses, we have decisive proof of the humane level and the admirable degree of piety that prevailed in the army of Israel from ancient times on this issue, as we read in the Bible. (*Responsa Meishiv Milchama*, vol. 1, end of no. 1)

Indeed, the great military commanders in the Bible treated enemy corpses with respect, as we find with Yehoshua bin Nun (in the war of Ai and in the war of the five kings) and King David (in his war against Edom), and as is prophesied by the prophet Yechezkel about the war of Gog and Magog.

Despite this ruling, the Rambam states that there is sometimes justification for delaying the burial of the enemy's dead:

He may execute many on one day, hang them, and leave them hanging for many days in order to cast fear into the hearts and destroy the power of the wicked of the earth. (*Hilkhot Melakhim u-Milchamoteihem* 3:10)

Rabbi Isser Zalman Meltzer in *Even ha-Ezel* (ad loc.) refers to a passage in tractate *Yevamot* (79) that discusses at length David's decision to give of Shaul's descendants to the Givonites so they could punish them. *Chazal* there saw in that decision "an uprooting of a letter from the Torah so that the name of Heaven not be desecrated in public." Rabbi Isser Zalman adds:

Even though the Gemara offers the reason of sanctifying the name of God, the Rambam learns this from the plain sense of the verse, that the king as well has reason to cast his fear, as he wrote. (*Even ha-Ezel* on the Rambam, ad loc.)

The Malbim wrote similarly in his commentary to II *Shmuel* 21:8, and even quoted the words of the Rambam that we saw, commenting: "This matter came to him from the incident involving the Givonites here."

Thus we have learned that the verses of the Bible are very present in the Rambam's rulings in *Hilkhot Melakhim u-Milchamoteihem*, especially regarding the reasons for the laws and their sources in Scripture.

***Sefer Chasidim***

To conclude this topic, I will mention an example from the writings of a contemporary of the Rambam, who is as far from him as is east from west, in more than one sense. Two years after the Rambam was born in Spain, Rabbi Yehuda He-Chasid, author of *Sefer Chasidim*, was born in Ashkenaz. Thus it is reported in his name:

It is written: "Then said Yonatan: My father has troubled the land; see, I pray you, how my eyes are brightened, because I tasted a little of this honey. How much more, if the people had eaten freely today of the spoil of their enemies which they found? Would there not then have been a much greater slaughter among the Philistines?" (I *Shmuel* 14:29-30). We see that when the nations surround a city, we do not fast, lest we be weak and unable to fight. (*Sefer Chasidim* 618)

In times of war, there is a natural desire to fast as part of our prayer and supplication to God that He should have mercy on His people and allow His warriors to succeed. But Rabbi Yehuda He-Chasid objects to this idea and establishes that soldiers are required to eat. The source of this "ruling" is the story of the hunger that struck Yonatan during the war with the Philistines.

It should be noted that not everything permitted to the Rambam or Rabbi Yehuda He-Chasid is permitted for contemporary Torah scholars when they come to rule on laws of the army and warfare. The Rambam with his greatness and power could derive laws from Scripture, but this authority was not given to everyone. Nevertheless, a possible approach is presented here, which may contribute to and sharpen halakhic decision-making regarding issues that do not have clear sources in the Talmud and *poskim*.

**Attacking Non-combatants in the Course of War**

One of the most sensitive questions relating to the morals of war is the question of attacking non-combatants. For many years, our enemies have hidden behind a "human shield," creating great complexity on the battlefield.[[7]](#footnote-7) This issue was and is being dealt with by many in and outside the *beit midrash*. Rabbi Prof. Nerya Gutel wrote a comprehensive summary article on the subject, in which he writes at the beginning:

Thousands of years of exile from soil-land-state have brought about a paucity of halakhic sources that deal directly with these matters, and have led to [1] the argument of a lack of sources and the search for a foreign alternative, may God protect us, and to [2] seeing the Bible, as it is, as a resource for decision-making – God forbid, until the establishment of a Sanhedrin in the Chamber of Hewn Stone… To be precise: to decide – but to enrich is possible and even desirable. ("*Lechima be-Shetach Ravui Ukhlusiya Ezrachit*," in: *Techumin* 23)

Rabbi Gutel categorically rejects two approaches: the one that looks for foreign sources and an alternative outside of the Torah, and about this he states "May God protect us"; and the other, the approach that looks for sources in the Bible. Here, too, he writes "God forbid" that one should search for such sources before the re-establishment of the Sanhedrin in its place; at best, these sources can be used for "enrichment." Indeed, Rabbi Gutel acts on his words: he discusses the parameters of the prohibition, "You shall save alive nothing that breathes" (*Devarim* 20:16), the precise definitions of the mitzvaof a war fought to "assist Israel from an enemy" (see *Hilkhot Melakhim u-Milchamoteihem* 5:1), and other such issues, without availing himself of Biblical sources.

Rabbi Asher Weiss, *shelita*, addresses the same issue in response to a question raised by a Ministry of Foreign Affairs employee after the Second Lebanon War, in the summer of 2006. Rabbi Weiss begins his answer as follows:

Regarding the controversy that has arisen around the world regarding the many deaths among the Arab population in the obligatory war (*milchemet mitzva*)fought to save the people of Israel from those rising up against them during the Three Weeks in the year 5766…

It seems that even if we do not find an allowance for the matter under discussion in the general laws governing a pursuer and rescue, the laws of war are different, and according to the law of war, it is permitted to harm innocent civilians when it is impossible [to conduct the war] otherwise. It is true that this *halakha* is not found in the words of the Gemara or in the *poskim*, but in the Bible and its commentators. This is because, since the destruction of our Temple and the abolition of the Kingdom of Israel, these questions have not been relevant to practice and the issues of war and the way it is conducted were rarely dealt with. Perforce we must base ourselves on the wars of Israel as they are explained in the Bible and in the words of the commentators across the generations when we come to set rules about these issues.(*Minchat Asher Devarim*, 32)

Rabbi Weiss proves his point from the patriarch Yaakov, who, in anticipation of his meeting with Esav, "feared that he would kill others" (see Rashi, *Bereishit* 32:8), from Shaul's warning to the Kenites that if they do not separate themselves from the Amalekites, they might be destroyed with them (see I *Shmuel* 15:6), and other sources.

Thus, in contrast to Rabbi Gutel, who said "God forbid" we should bring proofs from the Bible, Rabbi Weiss clarifies that with respect to the laws governing the army and warfare, sometimes we simply do not have any other choice.[[8]](#footnote-8)

**Conclusion – "Regarding what ‘one of the rabbis’ learned"**

A few years ago, I gave a class on this subject of deriving *halakhot* from the Bible, and I cited the sources brought here, including Rabbi Weiss's ruling. One person thought that what I said about deriving *halakhot* from the Bible was "heresy" (?!), and he asked one of Rabbi Weiss’s students to contact him and "blame" him for the fact that his words led "a certain rabbi" to inappropriate conclusions.

In response to this appeal, Rabbi Weiss delivered the *shiur* on *Parashat Shoftim* mentioned above, and opened it as follows:

Regarding what one of the rabbis learned from what I wrote in *Minchat Asher* on the Torah (*Devarim*, 32) concerning the question of harming civilians during a war, where I brought proofs from the Torah and the Prophets, and he proved from this that in my opinion, it is possible to learn practical *halakha* from the Bible – you asked me whether indeed I have a fundamental position about this, and you wrote that perhaps the laws of war are different, and that one may not learn from this regarding the other laws in the Torah. In truth, I emphasized in the *shiur* that I gave on this matter that since the destruction of the Second Temple, the kingdom has been abolished from Israel, and the people of Israel did not wage wars, and therefore we do not find the laws of war in the *poskim*, and even in the words of *Chazal* we do not find the laws of war spelled out in detail, and perforce there are laws of war that have no other source but holy Scripture.

As for the matter itself, we do in fact find that the Rambam derived various *halakhot* from verses, without any source in the Mishna or the Gemara, whether regarding the laws of war, or civil law, or ritual law, and so too we find in the *poskim.* I will mention a few examples. But I will preface by saying that in my humble opinion, we should not derive *halakhot* from the Bible, and all we have for the clarification of a *halakha* are the words of *Chazal* and the *poskim*, and wherever we find that great *poskim* derived *halakhot* from the Bible, it is only regarding what they learned by way of rational argument, and they came only to find support and a hint in the Written Law. ("*Im Yesh Lilmod Halakha min ha-Tanakh*," *shiur* for *Parashat Shoftim* 5776, cited above)

On the one hand, Rabbi Weiss does not back down from his fundamental assertion that there is often no alternative to expounding a Biblical passage. On the other hand, he maintains that we should not introduce new laws directly from the Bible, except where there is a "rational argument" that is actually what determines the *halakha*, and we can find support for it in the Biblical wars of Israel.

Further along in this series, with God's help, we will examine additional examples of halakhic issues where it is possible to try to outline a basic approach inspired by various Biblical passages, even if they do not serve as the sole sources of the halakhic rulings. I will try to show, with God's help, that these words emerge from "rational argument" and from analysis of the military or security challenge in need of a practical answer and an orderly halakhic teaching, regarding new questions for which there are no clear precedents.

In the next *shiur*, we will turn to one of the basic issues in the laws governing the army and warfare – the issue of "a town close to the border." As we shall see, it too, to one degree or another, begins with an incident in the Bible which *Chazal* saw as the basis for taking defensive actions on Shabbat.

(Translated by David Strauss)

1. As an example, I will cite a passage from the writings of David Ben Gurion: "None of the commentators to the Bible, Jewish or non-Jewish, in the Middle Ages or in our times, could interpret the chapters of the book of *Yehoshua* like the adventures of the Israel Defense Forces could. Only a people living in their country and standing under its authority can read with an open eye and intuitive understanding the book of books that was created in that country and by that people. Only a generation that has risen up in its ancient homeland can understand the spirit and soul of those who came before them, who worked, fought, captured, created, suffered, contemplated, sang, loved, and prophesied within the borders of that homeland." (Cited by Anita Shapira, "*Ben Gurion ve-ha-Tanakh*: *Yetzirato shel Sefer Histori*," in: *Yehudim Chadashim Yehudim Yeshanim*, Tel Aviv 5757.) [↑](#footnote-ref-1)
2. Here is the place to cite an interesting comment by Rabbi Yehoshua Hagar-Lau in the introduction to his book *Ha-Chayil ve-ha-Chosen.* He too explains that since the destruction of the Temple, the sages of Israel have not dealt with "state affairs that concern the entire people," but he points out that two of the great Biblical commentators of more recent generations – the Netzivof Volozhin and Rabbi Meir Simcha of Dvinsk, author of the *Meshekh Chokhma* – strongly emphasized the national aspects, and thus also the military matters that arise from the Bible and their significance for the armies of Israel in the generation of Israel's revival:

"What is strikingly unique in their commentaries is their repeated serious treatment of the affairs of the people of Israel, and their perspective that penetrates the far reaches of the nation's historical horizon, into its past, and from there – into its future… They treat security and defense matters with unprecedented vigilance, and turn their attention to all kinds of military issues down to the smallest detail: recruitment, classification, and organization of the army; the psychology of the fighter; the importance of discipline and the duty to keep a secret; military methods and tactics; matters of occupation and capture; the living conditions of the soldiers; command hierarchy; and many other issues... The authors aim at all this, guiding and educating the people returning to their homeland, while explaining the verses of the Torah in their plain and midrashic senses."

Interesting examples of this can be found: (1) in the *Meshekh Chokhma's* original interpretation of the prohibition "You shall keep yourself from every evil thing" (*Devarim* 23:10) as referring to an obligation to maintain "information security" and prevent the leaking of secrets to the enemy; and (2) in the Netziv's *Rina shel Torah* on the book of *Shir ha-Shirim* regarding understanding the parables in the book as referring to, among other things, the armies of Israel. There are also additional examples, but this is not the forum to expand upon the matter. [↑](#footnote-ref-2)
3. Available [here](https://minchasasher.com/he/shiur/%D7%A4%D7%A8%D7%A9%D7%94-%D7%A9%D7%99%D7%A2%D7%95%D7%A8%D7%99%D7%9D/%D7%90%D7%9D-%D7%99%D7%A9-%D7%9C%D7%9C%D7%9E%D7%95%D7%93-%D7%94%D7%9C%D7%9B%D7%94-%D7%9E%D7%9F-%D7%94%D7%AA%D7%A0%D7%9A-%D7%AA%D7%A9%D7%A2%D7%95/) at the *Minchat Asher* website. [↑](#footnote-ref-3)
4. The book is available [here](https://beta.hebrewbooks.org/reader/reader.aspx?sfid=39054#p=1&fitMode=fitwidth&hlts=&ocr=) on the HebrewBooks website. [↑](#footnote-ref-4)
5. For more about Rabbi Regensburg's novel approach, and about Rabbi Frank's approbation, see Yosef Achitov, "*Min ha-Sefer el ha-Sayif*," in *Shenei Evrei ha-Nahar*, Jerusalem 5762. Prof. Stuart also saw Rabbi Regensburg's book as "revolutionary"; see his article: "*Sifra ve-Saifa u-Ma she-Beineihem: Itzuv Hilkhot Tzava u-Milchama be-Yisrael 1948-2004*," in: *Iyunim bi-Tekumat Yisrael*, no. 15, Be'er Sheva 2005. [↑](#footnote-ref-5)
6. On this issue, see the Ramban’s commentary to *Devarim* 21, and *Responsa Tzitz Eliezer* (vol. X, no. 25, chap. 9). It has also been addressed several times by the Israeli Supreme Court, in the course of which the position of Jewish Law was mentioned on several occasions, but this is not the forum to expand on the matter. [↑](#footnote-ref-6)
7. *Editor’s note*: In light of the particular pain we feel at these words due to circumstances in Gaza at the time this *shiur* is being translated and edited, it feels appropriate to repeat this note for the benefit of readers who may have missed it in *shiur* #27: This *shiur* was originally written in Hebrew in 2022. The extra resonance of the topic now, in the wake of the October 7th, 2023 attack, is a devastating reminder that indeed…[various difficult matters of war and security] have raised practical questions too many times in our history. May our study of the halakhicsources surrounding the efforts of the State of Israel and the IDF serve as a merit for their success. [↑](#footnote-ref-7)
8. It is interesting to compare the wording of Rabbi Asher Weiss in this context with the wording of Rabbi Shaul Israeli in his discussion about harming innocent people in the course of actions to eradicate murderous groups (*Amud ha-Yemini*, 16, chap. 4). Rabbi Israeli also cites Shaul's appeal to the Kenites, but it is evident that he focuses primarily on halakhic aspects rather than specifically on these Biblical texts. This accords with his fundamental approach, as it was presented in the previous *shiur.*  [↑](#footnote-ref-8)