YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

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**Shiur #01: *Milchemet Mitzva* and *Milchemet Reshut***

In order to discuss the laws of war, we must first define the basic concepts on which the world of the laws of war is founded – *milchemet reshut*, *milchemet mitzva*, and *milchemet chova*.

One might think that the difference between the various types of wars is evident from their very names: A *milchemet reshut* (an optional war) is apparently a war that the people of Israel are permitted to engage in, but they are not obligated to do so; a *milchemet mitzva* (a war by commandment) involves fulfillment of a mitzva but there is no obligation to engage in it; and a *milchemet chova* (an obligatory war)is a war that the people of Israel are obligated to fight. But when we examine the passage in tractate *Sota* which serves as the source of these concepts, we see that the matter is not so simple.

**Is the distinction only between permission and command?**

In *Parashat Shoftim* (*Devarim* 20), the Torah teaches us the laws governing those who are released from military conscription – several groups of people who are exempt from going out to war:

And the officers speak to the people, saying: “Who is the man who built a new house but has not dedicated it…who planted a vineyard…who betrothed a woman…who is fearful… Let him go and return to his house…” (*Devarim* 20:5-8)

The Mishna in *Sota* at the beginning of chapter 8 spells out the details of these laws, but then qualifies them, ruling that these exemptions apply only in the case of a *milchemet reshut* – not in the case of a *milchemet mitzva*. Rabbi Yehuda and the Sages disagree about this qualification and its scope:

To what does all the foregoing apply? To a *milchemet reshut* – but in a *milchemet mitzva*, all go forth, even a bridegroom from his chamber and a bride from her canopy.

Rabbi Yehuda says: To what does all the foregoing apply? To a *milchemet mitzva* – but in a *milchemet chova*,all go forth, even a bridegroom from his chamber and a bride from her canopy. (Mishna *Sota* 8:7)

We find three terms here – *milchemet chova*, *milchemet mitzva*,and *milchemet reshut* – which we will need to examine more closely in order to understand them and the relationship between them.

In order to define these types of wars more precisely, we will try to understand the practical differences between them and what these differences indicate about the nature of each type of war. In particular, we will see how a number of sources indicate that the matter of *mitzva* or *reshut* – command or permission – is actually not what distinguishes between the various types of wars, despite the implications of the names we attach to them.

**A. Exemptions from military conscription and the law of "one who is engaged in a mitzva"**

We saw from the Mishna in *Sota* that one distinction between the different types of wars relates to exemption from military conscription – in which types of wars the exemption does or does not apply. According to the Sages, the exemption applies to a *milchemet reshut*, but in the case of a *milchemet mitzva*, all go out to war; according to Rabbi Yehuda, the exemption applies to a *milchemet mitzva*, but in the case of a *milchemet chova*, all go out to war. The presentation of the dispute, however, is not entirely clear: Do the *Tannaim* disagree only about the terminology, or do they in fact disagree about the essence of the exemption and its applications?

The Gemara presents two explanations of the Tannaitic dispute:

Rabbi Yochanan said: [A war] which is [designated as] *reshut* according to the Rabbis is [designated as] *mitzva* according to Rabbi Yehuda, and [a war] which is [designated as] *mitzva* according to the Rabbis is [designated as] *chova* according to Rabbi Yehuda.

Rava said: The wars waged by Yehoshua to conquer [Canaan] were obligatory [*chova*] according to all; the wars waged by the house of David for territorial expansion were voluntary [*reshut*]according to all. Where they differ is with regard to [wars fought] to reduce the gentiles so they will not come against them: one calls them *mitzva* and the other *reshut*.

And what is the practical difference between them? Regarding one who is engaged in the performance of a mitzva, that he is exempt from the performance of another mitzva. (*Sota* 44b)

According to Rabbi Yochanan, the dispute is entirely semantic – the *Tannaim* do not disagree at all about which wars allow for exemptions from conscription, but only about what to call these wars – "*reshut*" or "*mitzva*." In this understanding, the practical difference – regarding the law that “one who is engaged in the performance of a mitzva is exempt from performance of another mitzva” – relates directly to the definition of a war as having the status of a mitzva. In contrast, according to Rava, the dispute is not about whether the category of *milchemet reshut* involves a mitzva, but only about a particular type of war – namely, a preemptive war undertaken to prevent an enemy from attacking in the future. In Rava’s understanding, Rabbi Yehuda says such a war falls into the category of *reshut*, whereas according to the Sages, it is a *milchemet mitzva*.[[1]](#footnote-1)

It seems that according to both *Amoraim*, there is no disagreement regarding the exemption from conscription, or about which wars it applies to. The dispute is only about how to define the wars in which the exemptions can apply. According to Rabbi Yehuda, wars[[2]](#footnote-2) that allow for exemptions are still defined as *mitzva* – and therefore one who is engaged in such a war is exempt from performing another mitzva – whereas according to the Sages, they are *reshut*. This is explicit in the words of Rashi:

It does not teach us anything with this, but rather it is all a matter of *mitzva* and *reshut.* But because the Sages called the one *reshut*, it suffices to call the other *mitzva*, even if it is obligatory, for the point is only to raise it up one level and say “but in this case, all go out.” And regarding *reshut*, it suffices to call that which is above it *mitzva*. (Rashi ad loc., s.v. *mitzva*)

Thus, one distinction between a *milchemet reshut* and a *milchemet mitzva* relates to exemptions from military conscription. But what is the basis for this distinction; why not apply the exemptions in a *milchemet mitzva*?

At first glance, the fundamental difference between the types of wars is the question of commandment: in a *milchemet reshut*, there is no Divine command to go out to war, and therefore it is possible to exempt certain people from the fighting; on the other hand, in a *milchemet mitzva*, where there is a command, there is no room for exemption. This distinction fits in well with the Sages’ view that all wars in which the exemption applies fall into the category of *milchemet reshut.* But according to the position of Rabbi Yehuda, there are wars in which the exemption applies, but which are nevertheless defined as *milchemet mitzva* – so this explanation does not work. As we continue, I will try to suggest another way to explain why the exemptions applies in a war that is defined as a *milchemet mitzva*.

In addition, we have here a source that, at least according to Rabbi Yehuda, there exists a type of war (what we call “*milchemet reshut*,” but he calls “*milchemet mitzva*”)that involves an element of mitzva but that is nevertheless not defined as an obligatory *milchemet mitzva* for the purpose of cancelling the exemption from military conscription. Essentially, we see here that according to Rabbi Yehuda, there are two different dimensions of “mitzva.”

**B. The war against Midyan and the law regarding a siege**

There are several places in the Torah where we find an explicit command to go out to war. One of the most striking examples is the command to fight against Midyan that appears at the beginning of *Parashat Pinchas*:

And the Lord spoke to Moshe, saying: Harass the Midyanites, and smite them. (*Bamidbar* 25:16-17)

The Rambam does not include this in his list of *milchamot mitzva*:

What is considered as *milchemet* [*mitzva*](https://www.chabad.org/library/article_cdo/aid/1438516/jewish/Mitzvah.htm)? The war against the seven nations [who previously occupied the Land of Israel], the war against Amalek, and a war fought to assist Israel from an enemy who attacks them. (*Hilkhot Melakhim* 5:1)

One could suggest that the war against Midyan is missing from this list because it was a temporary command, but fundamentally it *is* considered a *milchemet mitzva.* However, there are those who maintain that this is indeed a *milchemet reshut*.

According to the *Sefer Ha-Chinukh*, included in the mitzva of calling for peace is a rule against laying a total siege; the residents of a besieged city should be allowed to escape from one direction.

Regarding a city under siege in a *milchemet reshut*, they should leave one direction open for the people to flee; *Sifrei*. This is learned from the verse: "And they warred against Midyan, as the Lord commanded" (*Bamidbar* 31:7). (*Sefer Ha-Chinukh*, *mitzva* #527)

The words of the *Sefer Ha-Chinukh* are puzzling: it speaks of a *milchemet reshut*, but derives a law from the war waged against Midyan – which was ostensibly a *milchemet mitzva*. Indeed, the *Minchat Chinukh* disagrees with the *Chinukh* because of this difficulty, applies the prohibition to lay a total siege even to a *milchemet mitzva*, and notes that the Rambam does not distinguish between a *milchemet mitzva* and a *milchemet reshut* regarding this matter:

The Rambam as well does not distinguish between a *milchemet mitzva* and a *milchemet reshut*. Since the law is derived from Midyan, why should we distinguish? The war against Midyan in particular was waged in accordance with a command from God, and so it too was a *milchemet mitzva*. Even though the women and children were spared, that was a Divine decree. In any event, based on what should we distinguish between a *milchemet mitzva* and a *milchemet reshut?* Therefore, the Rambam did not distinguish between them, and the *Chinukh* disagrees – saying that this law applies to a *milchemet reshut*, but in a *milchemet mitzva*,we may surround [the besieged city] from all directions. But I do not know where he learned this from. The matter requires further study. (*Minchat Chinukh*,ad loc.)

In order to reconcile and explain the opinion of the *Sefer Ha-Chinukh,* we must say that the war against Midyan, even though the Israelites were commanded about it by God, is defined from a halakhic perspective as only a *milchemet reshut*. If this is correct, we find an additional difference between the laws of a *milchemet mitzva* and those of a *milchemet reshut*, at least according to the *Sefer Ha-Chinukh* –regarding the laying of a siege. In addition, we find additional evidence that the distinction between a *milchemet mitzva* and a *milchemet reshut* does not depend upon the question whether or not there was an explicit command regarding them.

On the other hand, the author of *Responsa Mekom Shmuel*[[3]](#footnote-3)(no. 8) proves at length that even a *milchemet reshut* involves a mitzva, for a person is permitted to put himself in danger for it and it is even permissible to desecrate Shabbat for its sake; these allowances would surely not have been granted, were it not for the fact that a *milchemet reshut* involves fulfillment of a mitzva.

This being the case, we see that it is difficult to define the question of *reshut* and *mitzva* as the only issue distinguishing between the different types of war – for it is possible that a war that is commanded will nevertheless be considered a *milchemet reshut*.

**Further differences between a *Milchemet Mitzva* and *a Milchemet Reshut***

We have concluded, based on the above sources, that the distinction between a *milchemet mitzva* and a *milchemet reshut* is *not* the question of whether or not there is a mitzvato wage the war – thus we must try to understand what the basis of the distinction truly is.

For this purpose, we will consider several issues regarding which we find differences between a *milchemet mitzva* and a *milchemet reshut.* We have already touched on several such issues: we saw in the *mishna* in *Sota* that the laws governing those who are released from military conscription do not apply to a *milchemet mitzva*, and in the *Sefer Ha-Chinukh* that the law of leaving one direction open when besieging a city does not apply to a *milchemet mitzva.* To these two we can add several other issues, as below.

**III. Waging war on Shabbat**

The *Yerushalmi* cites a *beraita* that prohibits starting a war within three days before Shabbat:

A siege may not be laid around a Gentile city within three days before Shabbat. (*Yerushalmi Shabbat* 1:8)

This law is presented in the *Bavli* (*Shabbat* 19a) without qualifications, but in the *Yerushalmi*, it is assigned exclusively to a *milchemet reshut*:

This applies to a *milchemet reshut.* But regarding a *milchemet mitzva*, even on Shabbat. For so we find that Jericho was conquered on Shabbat, as it is written: "So you shall do for six days" (*Yehoshua* 6:3), and it is written: "On the seventh day, you shall circle the city seven times" (ibid.6:4). And it is written: "Until it falls" (*Devarim* 20:20) – even on Shabbat.

While the Rambam (*Hilkhot Melakhim* 6:11) rules explicitly that this law applies even to a *milchemet mitzva*, the *Yerushalmi's* distinction between the two types of war may still be instructive.

**IV. The Sanhedrin, and the *Urim* and *Tumim***

We find in a number of places in Tanakh that before our forefathers went out to battle, they inquired of God by way of the *Urim* and *Tumim*, asking whether or not they should wage the war. The Gemara describes such consultation in the time of King David:

After the break of dawn, the Sages of Israel came in to see him [David] and said to him: Our lord, the king, Israel your people require sustenance! He said to them: Let them go out and make a living one from the other. They said to him: A handful cannot satisfy a lion, nor can a pit be filled up with its own clods. He said to them: Then go out with troops and attack [the enemy for plunder]. They at once took counsel with Achitofel and consulted the Sanhedrin and questioned the *Urim* and *Tumim*. Rav Yosef said: What verse [may be cited in support of this]? "And after Achitofel was Benayahu the son of Yehoyada, and Evyatar; and the captain of the king's host, Yoav" (I *Divrei Ha-yamim* 27:34). "Achitofel" – this is the adviser [they asked first]. And thus it is stated: "Now the counsel of Achitofel, which he counseled in those days, was as if a man inquired of the word of God" (II *Shmuel* 16:23). "Benayahu the son of Yehoyada" – this means the Sanhedrin. "And Evyatar" – these are the *Urim* and *Tumim* [i.e., Evyatar was a *kohen* and would inquire of the *Urim* and *Tumim*]. And thus it is stated: "And Benayahu the son of Yehoyada was over the *Kereti* and over the *Peleti*" (II *Shmuel* 20:23) – Why are they [the Sanhedrin] called "*Kereti*" and "*Peleti*"? *Kereti*, because their words are decisive [*koretim*]; *Peleti*, because they are distinguished [*mufla'im*] through their words. And after [this series of consultations], "the captain of the king's host, Yoav" [would prepare for battle]. (*Berakhot* 3b-4a)

The halakhic authorities disagree as to whether the necessity of consulting before waging war applies even to a *milchemet mitzva*, or only to a *milchemet reshut*. The Rambam rules that it applies only to a *milchemet reshut*:

There is no need to seek the permission of the court to wage **a *milchemet mitzva***. Rather, he [=the king] may go out on his own volition at any time and compel the nation to go out with him. In contrast, he may not lead the nation out to wage **a *milchemet reshut*** unless the court of seventy-one judges approves. (*Hilkhot Melakhim* 5:2)

On the other hand, the Ramban suggests in his strictures to the Rambam’s *Sefer Ha-Mitzvot* that this law applies even to a *milchemet mitzva*:

And I am uncertain about a certain mitzva, namely, that it seems to me that a mitzva is cast on the king or the judge, or anyone who wields authority to take the people to war, **in the case of a *milchemet reshut* or a *milchemet mitzva***,to inquire of the *Urim* and *Tumim* and act accordingly. This is what is stated: "And he[[4]](#footnote-4) shall stand before Elazar the priest, who shall inquire for him the ruling of the *Urim* before the Lord; in accordance with this shall they go out, and in accordance with this shall they come in, he and all the children of Israel, even all the congregation" (*Bamidbar* 27:21).” He commands Yehoshua, who was the first ruler appointed over the congregation, that he should inquire about their matters by way of the *Urim* and *Tumim*, and in accordance with their ruling, he should take them out and bring them in. And so too with all the judges and kings across the generations. (Ramban, *Hasagot al Sefer Ha-Mitzvot*)

Thus, in the Rambam's opinion, there seems to be another difference between a *milchemet mitzva* and a *milchemet reshut* – whether war can be waged independently, or whether is it necessary to get permission first.[[5]](#footnote-5)

**V. Calling for peace**

Another mitzvain the laws of war is the obligation to call for peace:

When you draw near to a city, to fight against it, you shall call to it for peace. (*Devarim* 20:10)

Here too, we find that the *Rishonim* disagree as to whether this law applies even to a *milchemet mitzva.* The *Sifrei* states:

"When you draw near to a city" – the verse speaks of a ***milchemet reshut***. (*Sifrei Devarim* 199)

Rashi cites the *Sifrei* in his commentary to *Devarim* and demonstrates how its ruling is derived from a precise reading of the verse:

"When you draw near to a city" – the verse speaks of a *milchemet reshut*, as it is explicitly stated in this section: "Thus shall you do to all the cities that are very far off from you [that are not of the cities of these nations]" (*Devarim* 20:15). (Rashi, *Devarim* 20:10, s.v. *ki tikrav el ir*)

However, the Ramban disagrees with Rashi. He applies the law to a *milchemet mitzva* as well, while offering a different explanation of the *Sifrei*:

"When you draw near to a city, to fight against it" – “The verse speaks of a *milchemet reshut*…”These are the words of Rashi… The Rabbi [Rashi] wrote this based on the *Sifrei*… But the intent of our Rabbis regarding this verse is only that the section later [i.e., regarding the sparing of women and children] differentiates between the two kinds of wars. **But the call for peace applies even to a *milchemet mitzva***, that we are obligated to “call for peace” even to the seven nations [of Canaan] – for behold, Moshe called for peace to Sichon, king of the Amorites, and he would not have transgressed the positive and negative commandments in this section: "But you shall utterly destroy them" (v. 17) and "You shall save nothing that breathes" (v. 16). (Ramban ad loc., s.v. *ki tikrav el ir le-hilacheim aleha*)

The Ramban learns from Moshe Rabbeinu that this law of calling for peace applies even to a *milchemet mitzva.* According to him, it seems that there is no difference regarding this matter between a *milchemet mitzva* and a *milchemet reshut*.

**What is a *milchemet mitzva*?**

Having seen that what differentiates a *milchemet mitzva* from a *milchemet reshut* is not the question of whether waging the war involves fulfillment of a mitzva, and having seen several practical differences between the two types of war, we will try to infer from those differences a particular approach to differentiating between them.

First, let us review the list of *milchamot mitzva* with which we are familiar:

The Gemara in *Sota* (44b), followed by the Rambam,[[6]](#footnote-6) list the wars that are defined as *milchemet mitzva*:

What is considered as a *milchemet mitzva*?The war against the seven nations [who occupied the Land of Israel], the war against Amalek, and a war fought to assist Israel from an enemy which attacks them. Afterwards, he may fight in a *milchemet* *reshut*, i.e., a war fought with other nations, in order to expand the borders of Israel or magnify its greatness and reputation. (Rambam, *Hilkhot Melakhim* 5:1)

First, let us note that unlike a *milchemet reshut*, regarding which we saw that it is possible that a person who is engaged in it is considered to be occupied with a mitzva – regarding a *milchemet mitzva*, not only is engagement in the war itself considered *a* mitzva, but even the going out is a mitzva. In other words: with regard to a *milchemet reshut*,there is no mitzva to go out to war, but once the war has started, there is a mitzva to participate in it; with regard to a *milchemet mitzva*, going out to war is itself a mitzva. However, this distinction still does not account for the fact that the war against Midyan, regarding which there was an explicit command, is absent from the list.

At the simplest level, the answer to this question lies in the fact that the wars the Rambam mentions are perpetual *mitzvot*, while the war against Midyan, even though it was a war fought on God's command, is not a perpetual mitzva, but only a mitzva for that time. If we focus on this common denominator, we can define a *milchemet mitzva* as a war commanded for all generations – or in other words, only a war that is included in the 613 *mitzvot* is considered a *milchemet mitzva*, and not just any war concerning which there is a command.

If we want to go a little deeper into this definition and understand why these wars have remained for generations and why their definition is fundamentally different from that of other wars that were also waged at God's command, we must add a conceptual layer to this distinction.

It seems that there is another dimension that is not found in the other wars which were waged at God's command (such as the war against Midyan) and that is unique to the wars defined as *milchemet mitzva*.We are dealing here with wars that concern the essence of the people of Israel and are necessary for its physical and spiritual survival. This is not the case with wars defined as *milchemet reshut*, which are not as urgent or essential. They do not touch the very core of the people of Israel, but rather are intended to achieve additional goals and objectives beyond what is necessary for the existence of the nation.

The war against Amalek, the war against the seven nations of Canaan, the war of Yehoshua to conquer the land,[[7]](#footnote-7) and a war fought to rescue Israel from an enemy – these are all wars that relate to preserving the most basic matters of the people of Israel. A war to rescue Israel from enemies is a war to protect the body of Israel from an attempt to destroy it. The war against Amalek symbolizes the war against evil in the world, and the war against the seven Canaanite nations has the sole purpose of protecting the people of Israel spiritually, establishing them in their country and preventing them from being drawn into idolatry. Likewise, Yehoshua's war of conquest aims to establish the land of Israel for the people of Israel, and the land of Israel is certainly the basis for the spiritual world of the entire people of Israel.

It seems that for these reasons, these wars are considered permanent *mitzvot.* Ostensibly, both the war against the seven nations and the war against Amalek are no longer practiced today, for Sancheriv mixed up all the nations; nevertheless, the Rambam counts them as permanent *mitzvot*, because they are part of the permanent protection of the people of Israel and touch upon the root of their existence.

According to this, it seems we can explain the various differences that we saw between the two types of wars:[[8]](#footnote-8)

Release from military conscription is possible only when it comes to wars waged for side reasons, while in the case of a war that touches upon the existential foundation of the people, the urgency of the war and the need for all of Israel to participate does not allow for exemption. The allowance to start a war within three days before Shabbat is also understandable according to this, for the urgency of such a war stems from the essential need for the preservation of the people.

This concept also allows us to understand the Rambam's words at the beginning of the aforementioned *halakha*: "A king should not wage other wars before a *milchemet mitzva*” (*Hilkhot Melakhim* 5:1). Such a war is essential for the survival of the nation, and therefore it must come before wars whose purpose is to magnify the greatness and reputation of Israel.

When it comes to a *milchemet mitzva*, there is a fundamental need for the war itself, thus laws such as calling for peace or leaving an opening in the siege do not apply. These laws apply to a war where the main thing is the *outcome* of the war; there is no need for the war per se, and therefore it is possible to "bypass" the war and achieve the result in other ways. This is not the case with a war that is connected to the very nature of the nation; such a war cannot be waived.

To summarize, in this *shiur* we covered the basic definitions of *milchemet mitzva* and *milchemet reshut*, definitions that will accompany us throughout this series. We have seen that the distinction between the two categories is not based only on the question of whether there was a Divine command to go out to that war, or on whether waging the war involves a mitzva, since there are wars concerning which there is an explicit command but that are still not defined as a *milchemet mitzva* with all the laws that apply thereto.

Finally, I suggested distinguishing between a war that is defined as a mitzvaamong the 613 *mitzvot*, which apply for all generations, and a war whose command is temporary. A war that is commanded for all generations involves an essential religious-national need, and therefore it is defined as a *milchemet mitzva* with laws that differ from those applying to a war waged for the temporary and changing needs of the people. We saw how some of the differences between the different wars can be explained based on this distinction, thus reinforcing the distinction.

(Translated by David Strauss; edited by Sarah Rudolph)

1. See Rashi, who understands Rava as explaining the words of Rabbi Yochanan, such that there is actually no disagreement between them. [↑](#footnote-ref-1)
2. All of them, according to the plain understanding of the words of Rabbi Yochanan, or only a preemptive war, as argued by Rava (and perhaps Rabbi Yochanan agrees with him, as in the previous note). [↑](#footnote-ref-2)
3. Rabbi Shmuel ben Elkana of Altona. [↑](#footnote-ref-3)
4. Editor’s note: In context, the pronoun refers to Yehoshua, as indicated several verses earlier: “And the Lord said to Moshe, ‘Take for you Yehoshua the son of Nun, a man in whom there is spirit, and lay your hand upon him…’” (*Bamidbar* 27:18). [↑](#footnote-ref-4)
5. Rabbi Moshe Feinstein (*Iggerot Moshe*, *Choshen Mishpat*, vol. 2, no. 78) distinguishes between the wars against Amalek or the seven nations, on the one hand, and a war to rescue Israel from the hands of an enemy, on the other. We will address this distinction in a later *shiur* on the topic of rescuing Israel from an enemy. [↑](#footnote-ref-5)
6. With certain additions and changes. [↑](#footnote-ref-6)
7. In the coming *shiurim*, we will discuss the relationship between the war against the seven nations and Yehoshua's war of conquest of the Land of Israel. [↑](#footnote-ref-7)
8. Even if the differences are not accepted by all, they are all connected by a single idea. [↑](#footnote-ref-8)