YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

**Rav Yishai Jeselsohn**

**Shiur #03: The Definition of a War to Assist Israel from an Enemy Attack**

The previous *shiur* sought the basis of the commandment to engage in war to help the Jewish people against an enemy who attacks them. Now we will try to define the circumstances that determine whether Israel is in fact waging such a war. This question is of particular significance in our time, when the IDF's activities are diverse and include – under the official category of defense – many offensive operations designed to prevent the possibility of future damage to the State of Israel. We must consider whether or not such operations, whose purpose is defense but which in practice are offensive actions, are included in the definition of “wars fought to assist Israel from an enemy.”

The Gemara discusses the parameters of such a war in connection with the dispute between Rabbi Yehuda and the Sages (discussed in *shiur* #1), where the Sages define wars in which even those who are sometimes exempt are sent out to battle as *milchemet mitzva*, while Rabbi Yehuda defines them as *milchemet chova.* Rava’s explanation of the dispute relates to the definition of a war fought to assist Israel against an enemy:

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 this *mitzva*, and the other calls it *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)

Rava’s explanation indicates that the practical dispute between Rabbi Yehuda and the Sages is how to define a war in which Israel fights against gentiles so they will not wage war against Israel: according to Rabbi Yehuda, such a war is a *milchemet mitzva*; according to the Sages, it is considered merely a *reshut*.

According to a simple understanding of the Gemara, it is possible to understand that even if the gentiles did attack Israel, the Sages maintain that we are dealing with a *milchemet reshut,* and thus according to them, there is no foundation for any obligation to wage war to assist Israel from an enemy which attacked them. Such an understanding is very difficult, for we saw in the previous *shiur* that there is a halakhic obligation to fight a war to assist Israel against an enemy which attacked them! The problem was well formulated by the *Shayarei Korban*:

Is there anyone who says that fighting a war to assist Israel against an enemy that attacks them is not a mitzva? But surely, even regarding an individual who is being pursued, there is a positive and a negative commandment to rescue him, as it is written: "You shall not stand by the blood of your neighbor" (*Vayikra* 19:16) and it is written: "And you shall restore it to him [or: him to himself]" (*Devarim* 22:2) – this refers to the loss of life. (*Shayarei Korban*, commentary to *Yerushalmi Sota* 8:10)

The commentators to the Mishna were aware of this difficulty, and proposed a variety of readings according to which all agree that – at least in certain cases – a war fought to assist Israel against an enemy is indeed a mitzva*.*

**Rambam – The Dispute Relates Only to a Preventative War**

The Rambam limits the disagreement to the case of a war in which the people of Israel go out to war against their enemy:

They only disagree about a war waged against the nations in order to weaken them so they will not fight against Israel or attack their country. The anonymous first Tanna calls it *milchemet reshut*, while Rabbi Yehuda call such a war a *milchemet chova*. (Rambam, commentary to the Mishna, *Sota* 8:6)

This can be derived from a close reading of the wording of the Gemara: "so they will not come against them," which implies that we are dealing with an attempt to prevent the future arrival of enemies, not defending against an actual assault. But it seems that the Rambam wrote this based mainly on logical reasoning: it is inconceivable that a war in which Israel defends itself against an attack should not be considered a *milchemet mitzva*, and therefore we must limit the disagreement in the *Bavli* to a preventative war, and nothing else. If that is the case, however, we must ask why the Gemara did not refer at all to a war in defense against attack. Perhaps this is because the obligation to fight such a war stems not from the "regular" laws of war, but rather from the laws of *pikuach nefesh*,or from an expansion of the principle of "One who comes to kill you, kill him first," as we saw in the previous *shiur* – and therefore it is clear that the exemptions from military conscription, for example, do not apply.

This understanding is also reflected in the Rambam’s ruling in his *Mishneh Torah*:

A king should not wage other wars before a *milchemet* *mitzva.* What is considered as *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 who attacks them. Afterwards, he may wage 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. (*Hilkhot Melakhim* 5:1)

The Rambam includes all wars "fought to assist Israel from an enemy who attacks them" in one swoop, and apparently does not distinguish between the various types. The *Kesef Mishneh* (ad loc.) implies that he understands the Rambam as ruling in accordance with Rabbi Yehuda, for the Rambam was precise in his formulation and wrote "a war fought to assist Israel from an enemy who attacks them" – i.e., who has already attacked – implying that when Israel go out to fight preventatively, it is not a *milchemet mitzva*. But the *Lechem Mishneh* (ad loc.) disagrees; in his view, the Rambam rules in accordance with the Sages – but even according to them, a defensive war is considered a *milchemet mitzva,* while a preventative war is considered a *reshut* and is included in the category of a war "to magnify its greatness and reputation." According to this, the Rambam codifies the position of the Sages as the law, in accordance with the understanding that we proposed above – that all agree a defensive war is considered a *mitzva* and an obligation.

**Meiri – According to the Sages, Any War Against Enemies Who Threaten Israel is Considered a *Milchemet Mitzva***

The Meiri explains the Gemara in the following manner:

They only disagree about a case in which they fight against their enemies because they fear that they will attack them or because it became known to them that they are preparing themselves for this. According to the Sages, this is a mitzva, and one who engages in it is exempt from performing another mitzva – and needless to say, if they already attacked them. And according to Rabbi Yehuda, as long as they have not yet attacked, it is a *milchemet reshut*, and one who engages in it is not exempt from performing another mitzva. And the law is in accordance with the Sages. (Meiri, *Sota* 42a)

According to the Meiri's interpretation, all agree that going out to war to defend Israel is considered a mitzva – but his words are very difficult. The Meiri reverses the positions of Rabbi Yehuda and the Sages: in the Babylonian Talmud, Rabbi Yehuda expands the definition of a *milchemet mitzva*, and includes in it what the Sages consider a *milchemet reshut*; but according to the Meiri, it is the Sages who expand the category of *milchemet mitzva*. This is very puzzling, and further study is required to understand what brought the Meiri to this understanding.[[1]](#footnote-1) But be that as it may, we see that it is obvious to the Meiri that defense against an actual attack is considered a *milchemet mitzva*, and therefore he interprets the Tannaitic dispute as referring to a preventative strike.

There is a practical difference between the Rambam and the Meiri: according to the Rambam (as understood by the *Lechem Mishneh*), only a defensive war is considered a mitzva; according to the Meiri, even a preventative strike is considered a mitzva according to the Sages, whose position has been accepted as the law.

***Yerushalmi* – Only a Defensive War is Considered a Mitzva**

A third direction emerges from the words of the *Yerushalmi*:

Rabbi Yehuda considers as a *milchemet reshut* where we go out [and attack] them. [And he considers as] a *milchemet chova* where they come [and attack] us. (*Yerushalmi Sota* 8:10)

In contrast to the *Bavli*, where Rabbi Yehuda defines a preventative strike as a *milchemet mitzva*, the *Yerushalmi* considers this a *milchemet reshut* and only a war of defense is considered a *milchemet mitzva* (or as it is called here, a *milchemet chova*).

**The Basis of the Dispute**

Let us try to understand the basis of the dispute about whether or not a preventative attack falls into the category of a war that is fought to assist Israel from an enemy. It seems that the disagreement can be hung on one of two points:

One option is to say that the dispute depends on the basis for fighting a war to assist Israel from an enemy. If we see it as a war of rescue, stemming from the principle of "One who comes to kill you, kill him first," then there is room for such a war only when the danger is present and the enemy is already here; when the enemy poses only a future threat, there is no need for rescue at the moment. On the other hand, if one believes that the obligation to wage such a war follows from its definition as "God's war" and the goal of sanctifying His name in the world – then perhaps every battle against an enemy who intends to destroy Israel involves an element of sanctifying the name of God, since the name of God is exalted and sanctified when those who wish to attack His people are destroyed.

Alternatively, perhaps all agree that assisting Israel from an enemy is part of an obligation to defend Israel – based on the law of *pikuach nefesh*, or on the principle of "One who comes to kill you, kill him first" – but the *Tannaim* disagree about how far we expand the parameters of what is considered rescuing Israel. Is it like *pikuach nefesh*, where the allowance is limited to cases of "a sick person before us," and therefore only when the enemy is already here is this considered a rescue, or is it possible to expand the parameters of rescue and argue that prevention of a future war also falls into the category of rescue?

**Definition of a Preventative War**

We have seen, then, a practical halakhic difference between a preventative war and a defensive war. We must now examine the precise definition of a "preventative war," and based on that, try to understand why it is not considered a mitzva*.*

Earlier in the Meiri’s commentary, he cites a version of the Rambam's commentary to the Mishna that deals with the definition of a "preventative war":

The dispute is regarding killing those who would kill them and humiliating them until they will not kill anyone of Israel or fight against their country. (Meiri, *Sota* 42a)[[2]](#footnote-2)

The Rambam describes a war that is waged to instill fear and terror in the nations so they will be too afraid to attack Israel – not to contend with a concrete threat, but as deterrence, to "humiliate" them and sow fear in their hearts.[[3]](#footnote-3) The Meiri’s own explanation, which we saw above, is different:

They only disagree about a case in which they fight against their enemies because they fear that they will attack them or because it became known to them that they are preparing themselves for this.

The Meiri defines a preventative war using more practical criteria. In his description, we are dealing with launching an attack against a specific threat that the enemy is preparing for Israel, and the purpose of the attack is to remove that threat.[[4]](#footnote-4) He mentions two possibilities: fear that the enemy is going to attack, or intelligence information that they are indeed planning an attack. The *Shayarei Korban* takes the same approach, because he rejects the possibility of any disagreement about the mitzvato go out to war against an enemy that is presently preparing for war:

That which it says in the Babylonian Talmud, "to reduce the gentiles so they will not come against them" – does not mean to save them from an enemy that attacked them. Rather, it means they make war against their enemies, lest eventually they will go out to war against them; therefore, they make war against them now so they will not have the strength to come against Israel. (*Shayarei Korban*, ibid.)

It may be suggested that the war fought against Midyan falls into this category. A *midrash* defines the war against Midyan as a war of defense:

"Harass the Midyanites" (*Bamidbar* 25:16-17) – Why? "For they harass you" (*Bamidbar* 25:18). From here the Sages said: One who comes to kill you, kill him first. (*Tanchuma Pinchas* 4)

Reading the text of the Torah according to its plain meaning, it seems that the war against Midyan was waged when there was no longer a real threat to Israel, since the plague was over and the sinners in the nation had already been dealt with – but God nevertheless commands Israel to take revenge on the Midyanites. The *midrash*, however, sees this as a defense measure for the future and not just revenge, and thus is able to learn from here the rule that if someone comes to kill you, you should kill him first.

There may be a practical halakhic difference, between the Rambam's definition and that of the Meiri, in a case where Israel wishes to wage war against a nation that is not currently threatening it, solely for the purpose of instilling fear and terror as a deterrence against known enemies.

***Pikuach Nefesh* and Fighting a War “So They Will Not Come Against Them”**

Some have tried to decide between the two positions presented here based on an innovative passage in the *Or Zarua* regarding the laws of Shabbat. The Gemara in *Eiruvin* discusses going out to war on Shabbat when there is concern about *pikuach nefesh*:

Rav Yehuda said in the name of Rav: If gentiles besieged Jewish towns, [the Jews] are not permitted to go out against them with their weapons or to desecrate Shabbat [in any other way] on their account.

Thus it was also taught [in a *beraita*]: If gentiles besieged etc. – in which circumstances does this apply? Where they came with regard to monetary matters. But if they came with regard to lives, they [are permitted to] go out against them with their weapons and desecrate Shabbat on their account. But in the case of a border town, even if they did not come with regard to lives, but with regard to matters of hay and straw, they go out against them with their weapons and desecrate Shabbat on their account. (*Eiruvin* 45a)

It is clear that in a situation of *pikuach nefesh*,it is permitted to go out to war even on Shabbat. But a great novelty is found in the words of the *Or Zarua* on this passage, which the Rema cites as *halakha* (*Shulchan Arukh Orach Chaim* 329:6):

And there is no distinction between where they are already besieging [the Jewish towns] and where they say they want to come to plunder. Rather, when it becomes known that they want to come to plunder, even if they have not yet come, it is permitted to put on their weapons, to guard, and to make noise in the town so that they not come. For we are not exacting in matters of *pikuach nefesh*. As it is stated regarding an amulet with which one is permitted to go out [on Shabbat] – not [only for] a person who has already had an epileptic fit, but [even merely] to ward it off. And he may tie it and untie it even in the public domain. (*Or Zarua* II, *Hilkhot Shabbat* 84)

The novelty in the *Or Zarua's* ruling is far-reaching. The Gemara itself speaks of gentiles who "besieged" Jewish towns, implying that the siege has already begun – in which case it is clear that we are dealing with a situation of *pikuach nefesh.* But the *Or Zarua* expands the law and adds that even when it becomes known that the gentiles *want* to attack Israel, it is permitted to go out against them on Shabbat.

As mentioned, some have wanted to apply this ruling to current circumstances. Rabbi Yitzchak Ha-levi Herzog was asked whether it was permitted to participate in defensive operations on behalf of the young State of Israel on Shabbat, and he explains at length that it is permitted to participate even in offensive operations, because they too are included in the category of *pikuach nefesh*:

[To question 3] This is a separate question, that is, purely offensive actions, and this depends on the basis of the allowance, whether it is the narrow framework of *pikuach nefesh* or the wider framework of a war of Israel, as stated above… In my opinion, this struggle has the law of a *milchemet mitzva*… And even those who disagree with this assumption and maintain that we are not dealing here with a war of Israel, but with a struggle to save Israel – communal *pikuach nefesh* – must concede that every significant attack weakens the enemy and leads to the salvation of Israel. (*Responsa Heikhal Yitzchak*, *Orach Chaim* 37)

Rabbi Herzog also addresses the Gemara in *Sota*, which implies that such a situation is a *milchemet reshut*,and explains it as follows:

You might ask: Surely [a war fought] to reduce the gentiles so they will not come against them is a *milchemet reshut*! Behold – when does this apply? When the gentiles are quiet for now, and we go out to war against them to reduce and weaken them, lest in the future they will come and attack us. But when they have already come upon us to destroy and to drive us out of our holy inheritance, at that point all actions directed against them are included in the category of a *milchemet mitzva.*

According to Rabbi Herzog, a comparison can be drawn between the laws of *pikuach nefesh* on Shabbat and the definition of a *milchemet mitzva.* If this is true, we can apply the novel ruling of the *Or Zarua* to the matter at hand and define a situation in which we know the enemy is planning to go out to war, and the IDF launches a preventative strike,[[5]](#footnote-5) as a *milchemet mitzva*. In that case, the definition of a preventative war, fought "to reduce the gentiles so they will not come against them," must refer to a more distant threat, as argued by the Rambam.

However, one must examine carefully any application of a law stated with respect to *pikuach nefesh* to the matter of *milchemet mitzva* and *milchemet reshut,* because these are two different issues. Even if we assume that the obligation to fight a war to assist Israel from their enemy stems from the laws of *pikuach nefesh*, still, not every halakhic detail in the laws of Shabbat will be related to the definition of the mitzva. The passage in *Eiruvin* deals with the question of when it is permissible to desecrate Shabbat, when the necessary halakhic definition is *pikuach nefesh*, and as we know, this definition is very broad in the laws of Shabbat; we desecrate Shabbat even for a very distant concern about *pikuach nefesh.* It seems that this is also the reason the *Or Zarua* expands the allowance to desecrate Shabbat, for he writes: "For we are not exacting in matters of *pikuach nefesh.*"

On the other hand, the definition of a *milchemet mitzva* is not necessarily related to the question of *pikuach nefesh.* It is clear that launching an attack against a future threat is not included in the category of *pikuach nefesh* that would permit violating Shabbat, as there is no "sick person before us" in such a case. And even when we expand this definition to include a case where "we know" there is a danger to lives, such an expansion does not necessarily obligate going out to war. Of course, the opposite case is also possible, that the definition of a war fought to "assist Israel from their enemy" would be broader than the narrow law of *pikuach nefesh –* for once again, we are dealing with two separate realms of *halakha*.

**All Offensive Attacks Fall into the Category of *Milchemet Reshut***

A very narrow definition of *milchemet mitzva* is found in the words of Rabbi Meshulam Rata,[[6]](#footnote-6) in his response to the aforementioned responsum of Rabbi Herzog. Rabbi Rata understood the Gemara in *Sota* differently, as teaching that even when it is clear that the enemy is planning an attack, launching a preventative strike is not considered a *milchemet mitzva*, but falls into the category of a war fought "so they will not come against them":

You further write: "And even those who disagree with this assumption and maintain that we are not dealing here with a war of Israel, but with a struggle to save Israel – communal *pikuach nefesh* – must concede that every significant attack weakens the enemy and leads to the salvation of Israel." But surely it is stated in the *Yerushalmi Sota* 8:10 (according to the text of the commentators there): "According to the Sages, a *milchemet reshut* is, for example, where we attack them, and a *milchemet chova* is where they attack us." This is also the intent of the Babylonian Talmud in *Sota* 44b: "to reduce the gentiles so they will not come against them," that is, to reduce and weaken them so that they not come and fight against us, as is explained in the *Shayarei Korban*, ad loc. And thus it is explicit in the words of the Rambam, in his commentary to the Mishna, ad loc., that in such a case it is a *milchemet reshut*.

Rabbi Rata also relates here to attacks launched in the course of a war. He maintains that *any* attack that is not defensive is considered a *milchemet reshut*. According to him, we have to say there is no correspondence between the laws of *pikuach nefesh* and *milchemet mitzva,* for according to Rabbi Rata, a situation the *Or Zarua* would define as *pikuach nefesh*, for which it would be permitted to violate Shabbat, is not included in the category of *milchemet mitzva*.

**Summary**

We have seen that the *Tannaim* disagree about the definition of *milchemet mitzva*. I tried to suggest that all agree a *defensive* war is included in that category; the status of a *preventative* war, however, is open to discussion, and we saw different interpretations of the dispute and different halakhic rulings among the *Rishonim*. I proposed basing the dispute on one of two elements: (1) on the question of what the foundation is for the obligation to fight a war to assist Israel against an enemy attack – whether this obligation stems from the need for defense (in which case it applies only in the face of an existing and present danger), or from the *mitzva* to sanctify God’s name (in which case it applies even to a preemptive war, against enemies who intend to attack) – or (2) on the question of how far we expand the definition of "defense" to include non-immediate threats.

Studying this issue teaches us about *Chazal's* perception of war. The primary purpose of a *milchemet mitzva* is defense; even if we include offensive operations in the category of *milchemet mitzva*, their purpose is still defense. The Israel Defense Force that we merit to see in our days is based – already in its name – on the same concept: Its role is to protect and preserve our country, even when it engages in offensive operations, and thus its actions are directed toward the goal of assisting Israel from an enemy who attacks them.

(Translated by David Strauss; edited by Sarah Rudolph)

1. It is possible that he had a version of the Gemara which reversed the positions of the *Tannaim*, but I have not been able to locate a manuscript that preserves such a reading. [↑](#footnote-ref-1)
2. See the edition of Rabbi Kafih, which reads "killing those who would fight against them," instead of "who would kill them." [↑](#footnote-ref-2)
3. Like attacking open areas in enemy territory in order to deter future action. [↑](#footnote-ref-3)
4. Like attacking the nuclear reactors in Iraq and Syria. [↑](#footnote-ref-4)
5. Such as Operation Focus, which began the Six Day War. [↑](#footnote-ref-5)
6. Author of *Responsa Kol Mevaser* and a member of the Chief Rabbinate Council in the early years of the State of Israel. He corresponded extensively with Rabbi Herzog about matters connected to the state and the army. [↑](#footnote-ref-6)