**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

**Halakha and Israeli History**

**Rav Aviad Tabory**

**Shiur #30:**

**8 July 2014**

**Operation *Tzuk Eitan***

**The Abduction of the Three Teenagers**

On 12 June 2014, three [Israeli](https://en.wikipedia.org/wiki/Israel) teenagers from Yeshivat Mekor Chaim in Kfar Etzion were kidnapped near [Alon Shevut](https://en.wikipedia.org/wiki/Alon_Shvut). Naftali Fraenkel, Gilad Shaer, and Eyal Yifrach were waiting by the bus stop for a ride to take them home when terrorists abducted them.

Gilad Shaer called the police and whispered: “They kidnapped me.” In the background, the police heard shouting in Arabic and several volleys of automatic gunfire.

At this point, the army assumed the boys were killed; but as this information was kept secret, hope remained amongst the families as well as the entire State of Israel that the boys were still alive.

The IDF launched an operation named Operation ‎*Shuvu Achim* (return of my brothers) in search of the three boys.

In the following days, Israel arrested approximately 350 Palestinians, including nearly all of [Hamas](https://en.wikipedia.org/wiki/Hamas)'s leaders.

The response in Israel society was dramatic. Huge groups gathered to pray all around the country, the largest one at the Western Wall with over 25,000 people.

On 30 June, search teams made up of volunteers and IDF soldiers found the bodies of the three missing teenagers in a field near [Hebron](https://en.wikipedia.org/wiki/Hebron).As had been suspected, they had been shot dead shortly after the abduction.

On 23 September, the IDF reached the hiding place of the terrorists. After they refused to surrender the soldiers stormed the house, killing the kidnappers.

**Operation Protective Edge**

During this time, Hamas continued to shell Israeli cities with rockets. As the attacks from Gaza increased, Israel responded with a ground invasion. The operation, named *Tzuk Eitan* in Hebrew (Protective Edge in English), included two main objectives: destroying [the Gaza tunnel system](https://en.wikipedia.org/wiki/Palestinian_tunnel_warfare_in_the_Gaza_Strip) and stopping the rocket attacks.

After weeks of fighting, on 5 August, the IDF withdrew and a ceasefire was established. During the conflict, 67 soldiers and 6 civilians were killed, and 469 soldiers and 261 civilians were injured.

On the last day of fighting, an elite force of the Givati Brigade was assigned the mission to search out and destroy a tunnel which, the IDF suspected, reached into Israel.

The soldiers were surprised by the terrorists who suddenly came out of the tunnel and opened fire on them. When the rest of the force caught up with their friends, they found their officer and his radioman dead, while a third officer, Lieutenant Hadar Goldin, was missing. Without any hesitation, the soldiers jumped into the dark tunnel to retrieve Hadar. In the tunnel, they found certain articles which proved that Hadar was killed during the abduction.

As soon as the army realized that Hadar was missing, the code name “Hannibal” was broadcasted over the army radio. This code serves as a message to the entire army that a soldier has been abducted and all forces must do all possible to find him. It is unclear how far and to what extent this directive permits soldiers to prevent the kidnapping. Some argue that the directive authorizes the army to prevent the abduction at all costs, even if it puts the captured Israeli soldier at risk.

In any case, “Hannibal” unleashed a dramatic response of the Israeli forces, who turned around and fought their way back into Gaza. This military maneuver included bombing all possible escape routes from the tunnels. In these bombings, civilians, as well as Hamas terrorists, were killed.

Hadar’s body still remains in the hand of the Hamas.

During this operation, as well as in the many wars and battles in Israel’s history, civilians on the enemy side have been killed unintentionally. In today’s *shiur*, we will learn about this sensitive issue and look at our sources for insights on this topic.

**Targeting Civilians**

Before we begin, let us clarify that here are several different wartime scenarios in which armies find themselves facing innocent civilians.

The most extreme case is one in which countries target civilians deliberately as part of putting pressure on the other side to surrender. In World War II, the USA bombed Japanese cities intentionally, killing thousands of civilians uninvolved in combat. We are not discussing this extreme case.

Rav Shelomo Goren, IDF Chief Rabbi and later Ashkenazi Chief Rabbi of Israel, wrote many Torah articles regarding the Jewish attitude towards war. When referring to our issue, he writes:

Although the Torah’s commands us explicitly to fight in war, we are also commanded at the same time to show mercy to our enemies. We may not kill the enemy, even during battle, unless it is required for defensive or offensive purposes.

**It is prohibited to harm civilians who are not involved in the fighting, and obviously we may not harm women and children.**[[1]](#footnote-1)

Rav Goren mentions that although the Torah commands us to destroy the seven nations of Canaan, as it says (*Devarim* 20:16): “However, of these peoples' cities, which the Lord, your God, gives you as an inheritance, **you shall not allow any soul to live,”** one cannot use this as a template, because this was an exceptional case.

Another very different scenario is the case in which terrorists (who are launching rockets at civilian targets) are hiding behind their own people, using them as human shields. Is it ethically correct to bomb these terrorists, taking into account that civilians might be killed? Must our soldiers endanger their own lives in these situations?

**The Dispensation to Conduct War**

Firstly, we must establish the halakhic legal dispensation for killing soldiers in battle. In other words, what is the difference between the severe prohibition of *“Lo tirtzach,”* “You shall not murder,” which is a capital crime; and the mitzva of participating in a war, an act which is encouraged?

The obvious answer would be the famous Talmudic rule which we have quoted in the past: *“Ha-ba le-horgekha hashkem le-horgo,”* “Rise to kill whoever comes to kill you.”[[2]](#footnote-2)

However, the Torah permits us to declare war in various situations in which *pikuach nefesh* is not necessarily at issue, e.g. in the case of a *milchemet reshut* (optional war). Clearly killing people in battle is not necessarily based on the principle of rising to kill those who come to kill us!

Rav Naftali Tzvi Yehuda Berlin is often quoted in this context, making the following argument:

There is no prohibition to engage in war (because of the possible issue of *pikuach nefesh*), just as the king is not cautioned against waging a *milchemet reshut.* The situation of war is different… In war, one is allowed to endanger himself.[[3]](#footnote-3)

This idea of the Netziv appears in his commentary on *Sefer Bereshit* as well. The Torah teaches us the prohibition to murder immediately after the Flood:

But your blood, of your souls, I will demand [an account]; from the hand of every beast I will demand it, and from the hand of man, from the hand of each man, his brother, I will demand the soul of man.

Rav Berlin limits the prohibition of murder to apply only

at a time when it is otherwise appropriate to act with brotherhood. But this is not the case during war, when it is a time to hate. Then it is a time to kill, and there is no punishment whatsoever for so doing; for this is the way of the world. The king of Israel is allowed to conduct even an optional war, although people will be killed.[[4]](#footnote-4)

His understanding is based on the argument that war is an accepted phenomenon that legitimizes killing.

Can this principle act as a logical argument for the killing of innocent bystanders (unintentionally of course)?

Rav Neriya Guttel,[[5]](#footnote-5) in his meticulous article on our topic, concludes that it may.[[6]](#footnote-6) His argument is that the soldiers of Israel who follow the king into battle in a *milchemet reshut* are no more or less innocent than the bystanders of the enemy.

**The Story of Shimon and Levi in Shekhem**

In *Sefer Bereishit*, Chapter 34, we read about the kidnapping and the rape of Dina by Shekhem, the son of the city’s king, Chamor. The response of Ya’akov’s sons Shimon and Levi is harsh. They deceive the people and convince them to circumcise all the males among them; then they kill the males of Shekhem and free their sister from captivity.

Rav Shimshon Raphael Hirsch (1808 – 1888) sees fault in the actions of the two sons. In his commentary ad loc. he explains:

Now the blameworthy part begins which we need in no wise excuse. Had they killed Shekhem and Chamor there would be scarcely anything to say against it. But they did not spare the unarmed men who were at their mercy, yea, and went further and looted, altogether made the inhabitants pay for the crime of the landowner. **For that there was no justification**.

The Rambam and the Ramban argue as to whether Shimon and Levi’s actions are justified in this instance. The Rambam explains that all the residents of the city are guilty of sins that justify death:

How must the non-Jews fulfill the [Noahide] commandment to establish laws and courts? They are obligated to set up judges and magistrates in every major city to render judgement concerning these six [other Noahide] commandments and to admonish the people regarding their observance.

A non-Jew who transgresses these seven commands shall be executed by decapitation. **For this reason, all the inhabitants of [the city of] Shekhem were obligated to die:** [Prince] Shekhem kidnapped; they observed and were aware of his deeds but did not prosecute him.[[7]](#footnote-7)

The Ramban, in his commentary ad loc., questions the Rambam’s view. His understanding is that Shimon and Levi’s attack is an act of revenge.

The Maharal of Prague justifies the killings by explaining that the battle in the city of Shekhem is not a conflict between individual families but rather a war between nations[[8]](#footnote-8). In such circumstances, a nation is allowed and perhaps even obligated to respond to another nation’s provocation. In responding to another nation’s provocation, a nation need not distinguish between the guilty members and the innocent members of that nation.

Some Poskim argue that this opinion may serve as a halakhic precedent to permit fighting battles in populated areas in which civilians may be harmed.[[9]](#footnote-9)

Rav Yaakov Medan suggests a new approach to the story. In his view, Shimon and Levi are not committing an act of revenge or punishment; rather, it is part of a rescue mission. As part of their attempt to rescue their sister, they

Kill every adult male; what this appears to mean is that they kill all of the available fighters in Shekhem. Any male who could raise his sword against them is killed. Shimon and Levi could not extricate Dina from the house of Shekhem and return to their father's house without killing Shekhem and Chamor, all of their bodyguards, and the rest of the soldiers who stood in their path**. This is what happens in a rescue operation: innocents are killed as collateral damage**.

Rav Medan compares the biblical story to modern days:

In modern terms, the people of Shekhem should be considered a non-combatant population that cooperates with and protects the enemy. These are people whom the army fighting the enemy does not want to kill but is ready to kill in order to rescue its people from a clear danger. Were they not cooperating with the enemy, the fighting army might refrain from killing them, even if this involves putting themselves at risk.[[10]](#footnote-10)

**The Unique Opinion of Rav Shaul Yisraeli**

On 12 October 1953, terrorists from Jordan murdered a Jewish woman and her two children in the city Yehud.

Israel responded with an attack on the village of Qibya. The soldiers who participated in the attack did not inspect the homes in the village for the presence of residents, and when the army blew up the homes in the village, many civilians were killed.

This attack raised many questions regarding retaliation to terrorists’ attacks and the place of revenge in our response.

Rav Shaul Yisraeli wrote a detailed article on the halakhic angle of this tragic event.[[11]](#footnote-11) In this article, Rav Yisraeli expands the Netziv’s idea that war is a universally recognized method of resolving conflicts.

Rav Yisraeli understood that the ethical allowance for fighting all wars today is also based on the norms which the world we live in accepts. He concludes that, based on this theory, if at any given time the world would agree that there is no justification for any sort of military conflict, then the Jewish people would not be allowed to fight!

Basically, Rav Yisraeli argues that ethical and moral questions that arise during war, must **also** be judged by the standards and values of the rest of the world.

He mentions the famous rule of *dina de-malkhuta dina* (the law of the land is the law), which is usually used in monetary law, and applies it to our case. Combining both principles (that of the Netziv and that of *dina de-malkhuta dina)*, he argues:

The outcome of this is that there is room to permit missions of revenge and reprisal against our enemies, and this is considered a *milchemet mitzva*. Any tragedy that occurs to our enemies, their partners and their children is their responsibility and they carry the weight of these consequences. There is no reason to refrain from action against the enemy because of the concern that innocents will be harmed, for they are the reason for these results. Obviously, there is no room to permit harming children intentionally, and one should take care not to harm them.

Rav Neria Guttel concludes his article with the following conclusion:

…it seems to me that the [targeted killings](https://en.wikipedia.org/wiki/Targeted_killing) )*sikul memukad*) that occur amongst the civilian population, the destruction of a house on top of terrorists and other inhabitants, the bombing of civilian territory in which the enemy has deliberately chosen to reside, etc. — as long as such actions are not carried out with the premeditated goal of killing civilians, but rather with operational consideration, these acts are permitted according to Jewish law.

1. *Meshiv Milchama,* Vol. 1, Chapter 14. [↑](#footnote-ref-1)
2. BT *Sanhedrin* 74a. [↑](#footnote-ref-2)
3. *Ha’amek Davar*, *Devarim* 20:8. [↑](#footnote-ref-3)
4. *Ha’amek Davar*, *Bereishit* 9:5. [↑](#footnote-ref-4)
5. A Torah scholar who served until recently as the dean of the woman’s college Orot Yisrael. [↑](#footnote-ref-5)
6. *Techumin*, Vol. 23, p. 35. [↑](#footnote-ref-6)
7. *Hilkhot Melakhim* 9:14. [↑](#footnote-ref-7)
8. Gur Aryeh, Bereishit 34:13 [↑](#footnote-ref-8)
9. Rav Chaim Jachter of Teaneck lists the authorities who have based their view on the commentary of the Marahal:

Rav Ya’akov Ariel (Arachim BeMivchan HaMilchamah p. 83), Rav Dov Lior (Techumin 4:186), Rav Hershel Schachter (BeIkvei HaTzon p. 207), and Rav Asher Weiss (Minchat Asher, Devarim pp. 217-222) all rely upon the Maharal’s interpretation of the Shekhem episode to allow harming anyone who belongs to an enemy nation during wartime when there is no viable alternative to achieve a military victory.

His article can be found at: <https://www.koltorah.org/halachah/halachic-perspectives-on-civilian-casualties-in-gaza-part-one-by-rabbi-chaim-jachter>. [↑](#footnote-ref-9)
10. Available at: <https://www.etzion.org.il/en/incident-shekhem>. [↑](#footnote-ref-10)
11. *Amud Ha-Yemini,* Chapter 16. [↑](#footnote-ref-11)