

Matan - Great Debates in Jewish History, Philosophy, and Halakha Rav Aharon Lichtenstein, Rav Dov Lior, and Rav Avraham Shapira - Baruch Goldstein and Gaza Disengagement

Jewish Terrorism - Baruch Goldstein

Letter by Rav Lichtenstein to Rav Dov Lior

Therefore, I must vigorously protest against what transpired last night before all of Israel and the entire world. A person, whatever his previous merits may have been, departed this world while engaged in an act of awful and terrible slaughter, *tevah ayom venora*, and thereby, beyond the crime itself, desecrated the name of Heaven, trampled upon the honor of the Torah and *mitzvot*, soiled and sullied the image of *Kenesset Yisrael*, and endangered the future of [Jewish] settlement in Yehudah, Shomron, and Gaza. This man

won praise and honor in the yeshiva of his hometown, in Kiryat Arba, and was eulogized "*ke-halakha*," with full ceremonial honor, by her *Rosh Yeshiva*.

Woe to the ears that hear this! But, if it has been decreed that we must hear it, at least there should be a clear protest which expresses not just disassociation, but also disgust and shock. We must do so, not to protect our public image, but to preserve our self-image.

May He Who, "being merciful, forgives iniquity" [Psalms 78:38], "remove the shame of His people over all the earth" [Isaiah 25:8].

In fear and trembling,
For the sake of the honor of
the Torah and its students,
AHARON LICHTENSTEIN
Rosh Yeshiva, Har Etzion

Dear Rabbi Lichtenstein,
Greetings, *shalom rav*.

Let me note that we are against terrorism of any kind, Arab terrorism against Jews and also Jewish terrorism against Arabs. But the protests made by the rabbi [in his letter] do not sit well with us, in the spirit of "Take the beam from between your eyes" [T.B. *Baba Batra* 15b].

As is well known, your honor supports the political process and all that accompanies it, which includes, if even only *de facto*, the legitimization in the eyes of the entire world of the arch-terrorist (may his name be blotted out), who has spilled the blood of Jews and others like water, and the terrorist ideology he represents, thereby causing a terrible and awful desecration of God's name, a *hillul Hashem nora ve-ayom*, and indescribable damage to the Jewish people everywhere.

Therefore, although it is clear to us that your honor's intentions are for the sake of Heaven, his words in this matter are not to be heard. For where there is desecration of God's name, one does not grant due respect to sages.

With blessings,
AVRAHAM KURWEIL
SHMUEL HABER
Roshei Yeshiva, Karnei Shomron

Rav Dov Lior to Rav Lichtenstein

Indeed, I eulogized the late Baruch Goldstein (may *Hashem* avenge his blood), who was lynched by the non-Jews in the Cave [of Makhpela]. A Jew who is killed because he is a Jew must certainly be called *kadosh*, a holy martyr, just as we refer to the *kedoshei ha-Shoa*, the holy martyrs of the Holocaust, without investigating their previous conduct. How much more so in this case, for we knew him intimately as God-fearing and compassionate, as one who loved humanity and saved lives.

Even if someone holds the opinion that his final act was improper, *lo haya ke-shura*, why should he not be entitled to a eulogy *ke-halakha*? In my eulogy, I intentionally did not address the deed itself, but rather his personality and his achievements, and I did not take a public position on the deed itself.

The eulogy took place in the assembly hall of the yeshiva, not to show our identification with the deed, but rather for other reasons, among them, the wintry and rainy weather conditions that did not allow for the event to be held outside in the public square.

Response of Rav Lichtenstein to Roshei Yeshiva of Karnei Shomron

1. Reading between the lines it is evident that you agree that my reaction, in and of itself, was correct—that, at the very least, there was a “sliver” [T.B. *Baba Batra* 15b] which required attention—but felt that I am not the appropriate person to speak to the issue as I am “publicly known” as a supporter of the process which bestows legitimacy upon terrorist ideology.

Thus, the question begs to be asked: Why were you silent then? Why was no protest heard from those in our community, *mi-pi anshei shelomeinu*, who champion your political views, against the tribute given in a *yeshivat hesder* to (as Rabbi Leor wrote in his response to me) “the late Baruch Goldstein (may *Hashem* avenge his blood), who was lynched by the non-Jews in the Cave [of Makhpela]. A Jew who is killed because he is a Jew must certainly be called *kadosh*, a holy martyr, just as we refer to the *kedoshei ha-Shoa*, the holy martyrs of the Holocaust, without investigating their previous conduct”?

Was this the time for the enlightened scholars, with impeccable foreheads, without slivers and without beams, perhaps even foreheads adorned with *tefillin*, to be silent and still?

This is not the place to discuss the peace process itself, concerning which I too, to some extent, am hesitant and perturbed, because of security considerations. But clearly, any *ben Torah* who supports it—and is prepared, in this regard, to forcibly swallow his objections to rewarding one who has spilled Jewish blood—is not acting out of esteem, even most grudgingly, for terrorism, but rather to prevent further bloodshed.

Part II - Disobeying Orders and Destroying Synagogues - Gush Katif

Rav Avraham Shapira's Ruling

https://en.wikipedia.org/wiki/Avraham_Shapira

דברים פרק ז

(א) כִּי יִבְיֹאֵךְ יְקֹנֶךָ אֱלֹהֶיךָ אֶל-הָאָרֶץ אֲשֶׁר-אַתָּה בָּא-שָׁמָּה לְרִשְׁתָּהּ וְנָשַׁל גּוֹיִם-רַבִּים מִפְּנֵיךָ הַחַתִּי וְהַגֵּרְגָּשִׁי וְהָאֱמֹרִי וְהַכְּנַעֲנִי וְהַפְּרִזִּי וְהַחִיטִי וְהַיְבוֹסִי שְׂבַעָה גּוֹיִם רַבִּים וְעַצְמוֹת מִמֶּנּוּ:

רמב"ם הלכות מלכים פרק ג

הלכה ט

המבטל גזרת המלך בשביל שנתעסק במצות, אפילו במצוה קלה הרי זה פטור, דברי הרב ודברי העבד דברי הרב קודמין ואין צריך לומר אם גזר המלך לבטל מצוה שאין שומעין לו.

תורה תמימה דברים פרק ז פסוק ב

(ב) וְלֹא תַחֲנוּם - תִּנְיָא, וְלֹא תַחֲנוּם - לֹא תִתֵּן לָהֶם חֲנִיָּה בִקְרָקָה, דְּבַר אַחֵר וְלֹא תַחֲנוּם - לֹא תִתֵּן לָהֶם חֵן, דְּבַר אַחֵר וְלֹא תַחֲנוּם - לֹא תִתֵּן לָהֶם מִתְּנַת חֵן [ע"ז כ' א']:

תורה תמימה הערות דברים פרק ז הערה א

(א) ר"ל שאין מוכרין להם בתים ושדות בא"י כדי שלא תהיה להם חנייה בקרקע, שאם לא יהיה להם תהיה ישיבתם ישיבת ארעי, ואיירי בשבעה עממין וכפשטות הכתוב הקודם ונשל גוים רבים החתי והגרששי וגו' וכן בהדרשות שבסמוך, והתוס' כתבו דרך איסור כריתת ברית איירי בשבעה אומות, אבל לאוין אלו שוין בכל העובדי כוכבים, וכתבו כן ע"פ הסברא לבד, אבל לדעת זה קשה טובא, אחרי דאין ספק דפסוק זה איירי בשבעה אומות כמש"כ, וממנו הלא יליפין לכל הני דרשות, וגם קשה לדברי התוס' מכ"מ בש"ס שמצינו היתר נתינה לעובדי כוכבים כמו שנביא בסמוך, וכאן דרשין איסור דבר זה, אבל לדברינו יתיישב בפשיטות דאותם הענינים איירי בשאר עובדי כוכבים, וע"ע לפנינו בפ' עקב (ז' כ"ו):

B) In general the prohibition of handing land over to non-Jews includes helping those engaged in the transgression. Therefore, one must not participate in blocking the entrances to Gush Katif or assist, in any other manner, the expulsion of Jews from their homes. Similarly, it is upon every soldier called for reserve duty to refrain from showing up if his service is designated to enable other soldiers to take part in the transgression.

C) A soldier or police officer that harms the holy items of Israel and, God forbid, destroys heavenly articles and holy accoutrements such as Torah scrolls, phylacteries, *mezuzot*—whether it is done within the context of the evacuation transgression or not— he is desecrating the holy articles of Israel and violates the command *lo ta'asun ken la-Hashem Elokeikhem* (Deut. 12:4).

D) One who destroys an object in a synagogue is like someone who destroys a stone in the Sanctuary [of the Holy Temple] (Mordekhai, *perek Benei ha-Ir, Magen Avraham* 152:6). There is an absolute prohibition for every soldier and every policeman to take part in the destruction of a synagogue and a study hall. And within that prohibition is the prohibition of destroying vessels belonging to the synagogue, for they are like the synagogue itself (*Be'ur Halakha* 152). Woe to him and woe to the soul of a soldier or policeman who takes part in this sin.

E) A soldier or policeman who damages the property of the residents of the region is committing robbery. There is no *dina de-malkhuta* [the concept in Jewish law which gives deference to the actions of a king even over certain ethical values]. In this case rather, the “violent theft of a kingdom” is contrary to Torah law (*Shakh, Hoshen Mishpat* 73:39). It is the right of every person to defend his property from harm or damage that are done through acts that are contrary to Torah law.

F) It is incumbent upon every Jew to do all he can to stop transgression. Moreover, every single Jew is required to protest. Of course, the use of violent means against soldiers of the Israel Defense Forces or the Israeli police is not permitted.

Rav Lichtenstein's Letter to Rav Avraham Shapira

#1 - Disobeying Orders and Giving Away Land

I have some questions regarding a number of specific points, and I hope, towards the end of my remarks, to address several examples. My primary perplexity, however, relates to the general position that characterizes the aforementioned ruling. Many of the determinations in the ruling are clear and obvious to any student—that one is forbidden to steal, to demolish synagogues, to assist in the commission of transgression, and the like—and they are accepted by scholars opposed to soldiers refusing orders. As for the relevancy of these directives to our case, however, two arguments may be raised, which, to a certain degree, have a common denominator.

With respect to values and principles that divide Israeli society, regarding which there is no consensus defining a particular initiative as patently illegal and immoral, selective refusal of orders is impossible. Refusal on the right invites refusal on the left, and vice versa. The result is a divided and disjointed army, part of which dissents and abstains from an initiative in one direction, and the other rejects initiatives in the opposite direction. The damage to the unity and cohesion of the army and to the readiness for mutual dedication and sacrifice is clear. And as a result, the IDF's ability to carry out its missions and its power of deterrence are eroded. One need not be a great general or statesman to understand the possible implications. In short, one argues, looking at the issue from a comprehensive, deep, and long range perspective— and let us not forget, they warn, Rav Hayyim [Brisker] permitted biblically forbidden labors on Shabbat in order to save a person from imprisonment that was liable to cause his death in another twenty years—we are dealing with a concern about the loss of human lives and the weakening of the state and its army.

At the same time, they argue, there are military and political professionals who maintain that there is a reasonable chance that the present government's plan will save human lives— again, in the long run, and/or that it will preserve the Jewish demographic character of the state. There is no certainty about this, but in the opinion of many competent judges, there is also no certainty of the opposite either. It

is difficult to anticipate the future, and only a few days ago we read of prophets whose visions were “vain and foolish” [Lam. 2:14] and who, unlike Jeremiah, fed the public, who thirsted for their words, “burdens of falsehood and deceit.” In any event, according to this argument, we should define the present decision as one involving the possible saving of lives (they obviously admit that there exists a danger to life in the opposite direction, that in the short term it is the disengagement that might be dangerous, but, according to them, the matter remains uncertain), and examine every halakhic ruling on the matter accordingly.

The published ruling totally ignores these arguments. Thus, I come to my first question: Do you simply deny absolutely, that these scenarios are possible, being convinced, beyond any shadow of a doubt, that rightness and logic are to be found exclusively among the professionals who advised him? And if so, one asks respectfully, what is the basis for this absolute certainty? Is it assessment of the situation, faith, and trust, or God's secret revealed to those who fear Him? Or, alternatively, do you agree that the dangers exist, but do not suffice to tilt the balance when deciding the halakha—either because of the prohibitions involved are so severe that they cannot be overridden by possible risk of life, or because the importance of preserving the integrity of the Land of Israel outweighs considerations of life.

In conclusion, please allow me to request clarification about two specific points:

You open with the assertion that the evacuation is forbidden by Torah law because of the prohibition of *lo tehonnem* [Deut 7:2]? However, it is a matter of public knowledge that you permit the sale of land in the Land of Israel in order to cope with the problems of the Sabbatical year, and even encourage people to rely on this device. The problem of "*lo tehonnem*" also arises in connection with this sale, and as is well known, leading halakhic authorities have discussed the issue since the days of Rav Kook, *ztz"l*. Among the arguments for leniency, it has been proposed that the prohibition only applies to the seven Canaanite nations, or, at the very least, that it is limited to idolaters, a category that does not include Muslims. It is my impression that some authorities hold, with respect to allowing non-Jews to acquire property, like Ramban and others with respect to a gift, that there is no prohibition when the transferrer is motivated by his own benefits and needs as opposed to the needs of the recipient. Do you reject these views totally, and permit the sale of land for the Sabbatical year for different reasons, or do you rely on these opinions under circumstances of dire need—so that were you of the opinion that a security need exists, you too would rely on these positions to resolve the problem of "*lo tehonnem*"?

#2 - Destroying a Synagogue

3 questions:

1. Is Rambam/Yireim the only perspective?
2. How do you define Rambam's position on "destructive intent"?
3. Should this decision be in the hands of Torah authorities?

תלמוד בבלי מסכת מגילה דף כה עמוד ב

בני העיר שמכרו רחוב של עיר לוקחין בדמיו בית הכנסת בית הציבור לוקחין מטפחות מטפחות יקחו ספרים ספרים לוקחין תורה אבל אם מכרו תורה לא יקחו ספרים ספרים לא יקחו מטפחות מטפחות לא יקחו תיבה תיבה לא יקחו בית הכנסת בית הכנסת לא יקחו את הרחוב וכן במותריהן: גמרא.

בית הכנסת לוקחין תיבה,

1. אמר רבי שמואל בר נחמני אמר רבי יונתן: לא שנו אלא בית הכנסת של כפרים, אבל בית הכנסת של כרכין, כיון דמעלמא אתו ליה - לא מצו מזבני ליה, דהוה ליה דרבים....
2. אמר רבא: לא שנו אלא שלא מכרו שבעה טובי העיר במעמד אנשי העיר, אבל מכרו שבעה טובי העיר במעמד אנשי העיר - אפילו רחוב של עיר - לוקחין בדמיו בית הכנסת, בית הכנסת - לוקחין תיבה, תיבה - לוקחין מטפחות, מטפחות - למישתא ביה שיכרא שפיר דמי.
3. רמי בר אבא הוה קא בני בי כנישתא, הוה ההיא כנישתא עתיקא הוה בעי למיסתריה ולא תווי ליבני וכשורי מינה, ועיולי להתם. יתיב וקא מיבעיא ליה הא דרב חסדא. דאמר רב חסדא: לא ליסתור בי כנישתא עד דבני בי כנישתא אחריתי, התם - משום פשיעותא, כי האי גוונא מאי? - אתא לקמיה דרב פפא - ואסר ליה, לקמיה דרב הונא - ואסר ליה.
4. אמר רבא: האי בי כנישתא, חלופה זבונה - שרי, אוגורה ומשכונה - אסור. מאי טעמא - בקדושתא קאי.

Rava said: With regard to **this synagogue**, exchanging it for a different building or selling it for money is permitted, but renting it out or mortgaging it is prohibited. What is the reason for this? When a synagogue is rented out or mortgaged, it remains in its sacred state. Therefore, it is prohibited to rent it out or mortgage it, because it will then be used for a non-sacred purpose. However, if it is exchanged or sold, its sanctity is transferred to the other building or to the proceeds of the sale, and therefore the old synagogue building may be used for any purpose.

5. מתנה, פליגי בה רב אחא ורבינא, חד אסר וחד שרי.
a. מאן דאסר - בהאי תפקע קדושתה?
b. ומאן דשרי: אי לאו דהוה ליה הנאה מינה - לא הוה יהיב ליה, הדר הוה ליה מתנה כזבני.
6. תנו רבנן: תשמישי מצוה - נזרקין, תשמישי קדושה - נגנזין.

- a. ואלו הן תשמישי מצוה: סוכה, לולב, שופר, ציצית.
b. ואלו הן תשמישי קדושה: דלוסקמי ספרים, תפילין ומזוזות, ותיק של ספר תורה, ונרתיק של תפילין ורצועותיהן.

ספר המצוות לרמב"ם מצות לא תעשה סה

והמצוה הס"ה היא שהזהירנו מנתוץ ומאבד בתי עבודת האל יתעלה ומאבד ספרי הנבואה ומלמחוק השמות הנכבדים והדומה לזה. ולשון האזהרה שבאה בזה הענין הוא אמרו (ר"פ ראה) לא תעשון כן ליי"י אלהיכם אחר שקדם [שם] הצווי (ע' קפה) לאבד עבודה זרה ולמחות את שמה ולהרוס בתייה ומזבחותיה כולם ובאה האזהרה ואמר לא תעשון כן ליי"י אלהיכם.

וכל מי שעבר על דבר זה כגון שיהרוס שום דבר מן ההיכל והמזבח והדומה להם או שימחה שם משמות יי"י לוקה.

דברים פרק יב

(ג) וְנִתְּצֶתֶם אֶת־מִזְבְּחֹתֶם וְשִׁבְרֶתֶם אֶת־מִצְבְּתֵיכֶם וְאֲשֵׁרֵיכֶם תִּשְׁרֹפוּן בְּאֵשׁ וּפְסִילֵי אֱלֹהֵיכֶם תִּגְדְּעוּן וְאִבַּדְתֶּם אֶת־שִׁמְלֵם מִן־הַמָּקוֹם הַהוּא:

(ד) לֹא־תַעֲשֶׂוּן כֵּן לִיקָקָא אֱלֹהֵיכֶם:

תורה תמימה דברים פרשת ראה פרק יב פסוק ד

לא תעשון כן וגו' - תניא, מניין לנותץ אבן אחד מן ההיכל ומן המזבח ומן העזרות שהוא בל"ת ת"ל ונתצתם את מזבחותם לא תעשון כן לה' אלהיכם [ספרי]:

רמב"ן דברים פרשת ראה פרק יב פסוק ד

(ד) לא תעשון כן לה' אלהיכם - להקטיר לשמים בכל מקום, כי אם במקום אשר יבחר. דבר אחר ונתצתם את מזבחותם ואבדתם את שמם לא תעשון כן, אזהרה למוחק את השם ולנותץ אבן אחת מן המזבח או מן העזרה. אמר רבי ישמעאל וכי תעלה על דעתך שישראל נותצין המזבחות, אלא שלא יעשו כמעשיהם ויגרמו עונותיכם למקדש אבותיכם ליחרב, לשון רש"י. ודברי רבי ישמעאל סמך של אגדה הם. אבל הכתוב כדעת רבותינו אזהרה למוחק את השם, ומפורש במסכת מכות (כב א), והא איכא מוחק את השם דלקי, ואזהרתיה מהכא לא תעשון כן לה' אלהיכם:

ולשון ספרי (ראה ז) מנין לנותץ אבן אחת וכו', רבי ישמעאל אומר מנין למוחק אות אחת מן השם שעובר בלא תעשה שנאמר ואבדתם את שמם לא תעשון כן, רבן גמליאל ברבי אומר וכי תעלה על דעתך וכו'. **ודברי רבי ישמעאל אינם במחלוקת, אבל הם ביאור כי מוחק את השם כנותץ אבן מן המזבח.** ואם כן יהיה פירוש הכתוב, ונתצתם את מזבחותם ואבדתם את שמם מן המקום ההוא ולא תעשון כן לה' אלהיכם לנותץ את מזבחו ולאבד את שמו, אבל תנו כבוד לשמו ולמזבחו, **ואל המקום אשר יבחר בו לשום שם מזבח לשמו תדרשו ותביאו עולותיכם לפניו:**

ספר יראים סימן תט [דפוס ישן - שכד]

מורא מקדש. ויראת מאלהיך צוה בהכנס אדם למקדש או בבית הכנסת או לבית המדרש שינהג בהם מורא וכיבוד דכתיב בפרשת בהר סיני את שבתותי תשמרו ומקדשי תיראו לא ממקדשי אתה ירא אלא ממי שהזהיר על המקדש פי' מן הב"ה ומצינו בית הכנסת ובית המדרש שנקראו מקדש דתניא בת"כ והשימותי את מקדשיכם מקדש מקדשי מקדשיכם לרבות בתי כנסיות ובתי מדרשות ואמרי' במגילה פרק אחרון ואהי לכם למקדש מעט בארצות אשר הדחתים שם ואמר שמואל בר רב יצחק אלו בתי כנסיות ובתי מדרשות [שבבבל] למדנו כשאמר תורה את מקדשי תיראו שבת כנסיות ובתי מדרשות בכלל והמורא מה הוא אינו מפורש במקרא ופירשו חכמים כל אחד לפי סברתו לפי חומר קדושתו

הר"ן על הרי"ף מסכת מגילה דף ח עמוד א

ועוד שהרב אלפסי ז"ל כתב מתנה משבעה טובי העיר במעמד אנשי העיר פליגי בה רב אחא ורבינא וכה"ג אפילו למשתי בהו שיכרא שרי לפיכך נ"ל דבהכ"נ ודכוותיה כיון שעיקרו עשוי לומר בו דבר שבקדושה הטילו בו חכמים קדושה מדבריהם ואפילו התנו עליו ז' טובי העיר במעמד אנשי העיר אי אפשר שתפקע קדושתו בכדי מפני כבוד הקדושה שיש בו מיהו לאחר שהטילו קדושתו על הדמים קדושת דמים קלישא מקדושת בהכ"נ לפי שדמים אלו לא עמדו מעולם לדבר שבקדושה

ועוד דהויא לה קדושה שניה וקלישא מקדושה ראשונה.... הלכך בין שמכרו שבעה טובי העיר במעמד אנשי העיר או שלא במעמד אנשי העיר לעולם דמים נתפסים בקדושת בית הכנסת ומפקע קדושתיה גבייהו אלא דשבעה טובי העיר לחודייהו לא מצי לאפקועיה ההיא קדושת דמים אף על גב דאיקלישא אבל במעמד אנשי העיר יכולין להפקיע לקדושת בהכ"נ להפקיע בכדי

רמב"ם הלכות יסודי התורה פרק ו

הלכה ז

הסותר אפילו אבן אחת דרך השחתה מן המזבח או מן ההיכל או משאר העזרה לוקה שנאמר בעבודת כוכבים כי את מזבחותם תתוצון וכתוב לא תעשון כן לה' אלהיכם, וכן השורף עצי הקדש דרך השחתה לוקה שנאמר ואשריהם תשרפון באש וכתוב לא תעשון כן לה' אלהיכם.

שולחן ערוך אורח חיים הלכות בית הכנסת סימן קנב

סעיף א
 אין סותרים בית הכנסת כדי לבנות בית הכנסת אחר, שמא יארע להם אונס שלא יבנו האחר; אלא בונים אחר תחלה, ואח"כ סותרים הישן (ואפי' לא רצו לסתור רק מחיצה א' להרחיבו, נמי דינא הכי) (רבי' ירוחם נ"ג ח"ה וב"י בשם הרמב"ם). והני מילי, שהיה הראשון חזק; אבל אם חרבו יסודותיו או נטו כותליו ליפול, סותרים אותו מיד ומתחילין לבנות במהרה ביום ובלילה, שמא תדחק השעה וישאר חרוב.

הגה: ואסור ליקח אבנים מבהכ"נ הישנה כדי לבנות חדשה (הגהות אשר"י פ' בני העיר). ואסור לסתור דבר מבהכ"נ, אלא אם כן עושה על מנת לבנות. (מרדכי פרק בני העיר).

מגן אברהם סימן קנב

ו (פמ"ג) (מחה"ש) ואסור לסתור - דהוי כנותץ אבן מן ההיכל...

Furthermore, Rambam states that a person guilty of these offenses is not liable to lashes, both with respect to demolishing a stone of the sanctuary or the courtyard and with respect to burning consecrated wood, and hence, presumably, does not even violate a biblical prohibition, unless he acted "with destructive intent" [*derekb hashbhata*] (*Hilkhot Yesodei ha-Torah* 6:7). This term appears in several areas of halakha, and its precise definition is unclear. Do you think that it comes only to exclude one who demolishes in order to build? Or perhaps, that whenever there is no malicious intent to inflict damage, it is not called "with destructive intent"? If we adopt the second understanding, is it unreasonable to suggest that a soldier who destroys a synagogue, innocently thinking that his action is part of a positive mission, is not defined as acting "with destructive intent," even if he is indeed objectively mistaken, so that the halakhic conclusion on this point as well revolves around one's appraisal of reality?

to be destroyed as a result of the evacuation. The problematic aspects stem especially from the fact that on the face of it, according to all opinions—including those who maintain that the disengagement will in the long term have a positive outcome—the desired results can be achieved even if the synagogues remain standing. Thus there arises a halakhic and emotional perplexity that is not simple. If the evacuation plan is indeed executed—a scenario that you understandably prefer not to consider—and if we assume that the future of the synagogues of Gush Katif has no security or political implications, what is the right way, which of the two difficult options, each bitter as wormwood and gall, is to be preferred? From a purely halakhic perspective, if there is no third alternative (for example, agreement regarding the fate of the synagogues after they are transferred, similar to what is stated in *Megilla* 27b regarding the sale of a synagogue), and there exists a reasonable danger that if they remain standing they will turn into mosques, in which will be sounded words of incitement and blasphemy against God and His anointed one—is it preferable to destroy them—and especially so that "they tell it not in Gath" and "the daughters of the uncircumcised rejoice"? Or perhaps, out of fear of violating the prohibition of demolishing a synagogue, mentioned by His Honor, it is preferable to abstain and do nothing (*shev ve-al ta'ase*), despite the emotional difficulty of witnessing desecration, which, especially in this area, encourages a scorched earth policy?

And what weight should be given in this situation, one way or the other, to the view of Ramban that a synagogue that no longer serves its purpose loses its sanctity, like an *etrog* after the holiday of Sukkot, and other things used for mitzvot that may be thrown away after their time has passed? From your ruling regarding the prohibition of demolishing synagogues in our case, I infer that you did not take this position into account. It is not clear to me, however, whether this is because you maintain that this view was not accepted as normative law, or because you hold that even according to Ramban, the matter depends upon the will of the townspeople, and not the vicissitudes of a brutal reality. I do not know the extent to which the decision-making process regarding this matter rests today in the hands of the halakhic authorities. I do, however, see importance, both halakhic and ideological, in articulating the Torah's position on this complicated and painful matter.

Response of Rav Avraham Yisrael Sylvetsky On behalf of Rav Avraham Shapira

#1 - disobeying Orders

Regarding the question of refusing orders and the future of the IDF:

First, I would like to touch upon the logical problem that seems to rise from the very presentation of the question. There is no escape from mentioning that this first question involves a certain tautology. *Kevod Torato* appears to have included his fundamental assumption, which is subject to dispute, in his question. It is no surprise then that he has reached a conclusion that is consistent with his initial assumption.

Were a legal order given to all IDF soldiers obligating them to violate the words of the Torah, would there be room to obey it? Were an order given to unnecessarily desecrate the Sabbath, e.g., to remove the settlements of Gush Katif on the Sabbath, or were our soldiers compelled to serve together with female soldiers, in such a manner that necessitates the violation of Torah prohibitions—would *Kevod Torato* fear for the strength of the IDF and forbid the refusal of orders in such cases as well? Allow me the reasonable assumption that *Kevod Torato, shelita* (like the rest of the rabbis of Israel), would leave no room in his halakhic deliberations for speculations regarding the future of the IDF, but rather he would instruct his disciples to refuse such orders.

According to *Mori Zekeni, shelita*, the halakhic prohibition to fulfill an order calling for the violation of Torah law, e.g., to unnecessarily desecrate the Sabbath, to violate the prohibitions of forbidden sexual relations, or to hand over portions of the Land of Israel to non-Jews, is clear and understandable. Beyond the simple assumption firmly planted in the heart of every believer, that an army that disobeys God's commands and violates His laws will not succeed in defeating its enemies, and that this is the truly mortal blow to the strength of the IDF—surely on the halakhic level there is no question that speculative fears and uncertainties based upon future variables that are not sufficiently clear to us and upon assessments that are subject to dispute, do not constitute grounds to permit definite and immediate Torah prohibitions.

Even if we disregard the underlying assumption upon which *Kevod Torato*'s question is grounded, surely in the case at hand the matter is even simpler. For *Kevod Torato*'s concern regarding an impairment of the strength of the IDF is shrouded in fog and not at all clear. Surely, *Kevod Torato, shelita*, would agree that it is almost an insult to the intelligence of the IDF soldiers that we should be concerned that they will draw an analogy from refusing orders on religious grounds to refusing orders in other contexts.

Moreover, irrespective of the religious aspect, is it not demeaning to our soldiers to assume that they are incapable of distinguishing between an order given during wartime as part of the defense efforts against the enemy and an order calling for an assault upon the property and lives of their Jewish brothers? Every soldier understands the difference between an order given in the context of the fulfillment of the role

and mission of the Israeli army—defending the citizens of Israel against the enemy, regardless of the soldier's personal political views—and an order that would not normally fall upon the IDF, and had never been included in the purpose for its establishment, and only because of technical difficulties was given over to the IDF, which is serving in this context as a manpower agency. It is exceedingly difficult for me to accept this diminution of the moral and intellectual level of our soldiers, as if they are incapable of making such simple and elementary distinctions.

#2 - Destruction of a Beit Knesset

רמב"ם הלכות שבת פרק י

הלכה טו

הסותר כל שהוא חייב, והוא שיסתור על מנת לבנות, אבל אם סתר דרך השחתה פטור, הסותר אהל קבוע או שפרק עץ תקוע הרי זה תולדת סותר וחייב והוא שיתכוין לתקן.

struction whatsoever of other synagogues or for any other purpose. I understand, therefore, that *Kevod Torato* wishes to define “with destructive intent” regarding the stones of the sanctuary as a matter that depends on malicious and evil intent, even if in practice the object is destroyed for a purpose other than for the sake of construction.

Rambam defines the concept of “with destructive intent” in *Hilkhos Shabbat* 10:15: “One who destroys any amount is liable, provided that he destroys for the sake of building. If, however, he destroys with destructive intent, he is exempt.” We see then that destruction that is not for the sake of construction is regarded as having “destructive intent.” The definition of destruction is an objective matter regarding the article—is it destroyed or not—and is not connected to evil and malicious intentions of one sort or the other. I am sure that *Kevod Torato* would not have discussed the matter of destroying synagogues in Gush Katif on the Sabbath, based on the assumption that the destruction is not carried out with destructive intent. This matter needs no explanation, because the term “with destructive intent” in the area of Sabbath law and other realms of halakha, like the chopping down of fruit trees, is not connected in any way to the malicious intentions of the destroyer, but rather to the objective state of the article being destroyed. *Kevod Torato* wishes to distinguish between the meaning of “destructive intent,” stated with respect to one who destroys a stone of the sanctuary, and the meaning of that expression in all other contexts, and I don’t understand what this is based on.

#3 - Lo Tichaneim/Shemitah

3) Regarding *Kevod Torato*’s question concerning the prohibition of “*lo tichonem*”:

Kevod Torato asked how *Mori Zekeni, shelita*, can rely on leniencies regarding the prohibition of “*lo tichonem*” with respect to the “*heter mekhira*” (the allowance to sell the Land of Israel during the Sabbatical year), whereas in this connection he refuses to rely on any leniency. This question has a ready answer. Beyond the various differences between the *heter mekhira* and the matter at hand, surely all the *posekim* who accepted the *heter mekhira* joined together various grounds for leniency, but the primary argument underlying the allowance is that we are dealing with a temporary sale. Selling the Land of Israel for a fixed period of time guarantees the long-term settlement of the country, even in the areas being temporarily sold to non-Jews. Thus, the prohibition of “*lo tichonem*” does not apply. This is the main reason that great efforts were made to find allowances and that the rabbis came to rely on even

The disengagement plan is not a sale for a fixed period of time. It is the government’s intention to give non-Jews a free gift of encampment in the Land of Israel and permanent rule over it. Thus, it is clear why even according to those *posekim* who permit the temporary sale of the Land of Israel during the Sabbatical year, this is absolutely forbidden, and there is no room to draw a comparison between the two cases.

For next time

1. Rav Sylvetsky vs Rav Aharon on Saving Life vs Holding onto Land
2. Rav Yaakov Ariel’s Teshuva about destroying Batei Knesset
3. Rav Aharon vs Rav Shmuel Eliyahu - Selling Land to Arabs