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A RABBINIC EXCHANGE ON THE GAZA DISENGAGEMENT, PART TWO

(Ed. note: The rabbinic exchange between Rabbis Avraham Shapira and Aharon Lichtenstein included in the previous issue of *Tradition* continued with a further exchange between R. Avraham Yisrael Sylvetsky and R. Lichtenstein. R. Sylvetsky refers to R. Shapira, his grandfather by marriage, as *Mori Zekeni*, and to R. Lichtenstein as *Kevod Torato*. — SC)

R. SYLVETSKY'S RESPONSE TO R. LICHTENSTEIN*

B'SD

To the Gaon, Rav Aharon Lichtenstein, *shelita*.

I am deeply grateful that *Kevod Torato, shelita*, was willing to devote some of his precious time to respond to my letter, even though I myself am unworthy and undeserving. I am but a disciple who repeats words that he heard from his Rav, *Mori Zekeni, shelita*, and who tries to establish the truth of the words of the Torah, having been privileged to be among those who received them from *Mori Zekeni, shelita*. Precisely for this reason, however, I once again see myself obligated to clarify matters before *Kevod Torato, shelita*, until they become completely clear.

To my great regret, it is evident from *Kevod Torato's* letter that my words were not fully understood, perhaps because of my unclear formulation or due to my many other failings. For this reason, I come once again to explain my words to the extent that I am able, repeating once again that I bear sole responsibility for them.

**Translated by David Strauss*

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I will follow in the path of *Kevod Torato* and divide the main topic—the issue of [a soldier] refusing orders—into two sections: 1) the question of assessing the specific situation and its ramifications; 2) establishing hard and fast rules regarding the laws of *pikku'ah nefesh*, the mitzva of settling Erets Yisrael, and [the validity of] permitting the waiving of unquestionable *issurim*—i.e., Torah prohibitions—because of speculative extrapolations and predictions.

I will begin with the second section, that of waiving clear prohibitions because of uncertain predictions, for according to *Mori Zekeni, shelita*, this is the first and foremost issue under discussion. A thorough analysis of this issue will cause the divergent assessments of the actual situation to be of secondary importance (although I will deal with them below), and will establish that it is prohibited to obey an order that violates Torah laws.

In my letter I asserted as obvious that one may not commit an immediate and incontestable *issur*, such as handing over parts of Erets Yisrael to non-Jews—merely because of speculative concerns and uncertainties based on future variables that are not fully clear. *Kevod Torato, shelita*, is disturbed by this, and refers to the talmudic passage in *Eruvin* regarding a border town attacked by non-Jews. There the Gemara states that even if the non-Jews attacked over monetary matters of straw or hay, we desecrate the Sabbath over this issue [and fight them], for fear that they will be able to conquer the land more easily from the border area. Based on this, *Kevod Torato* tries to find fault with what I had written and prove that one may permit [the violation of] Torah prohibitions for speculative considerations. He concludes that in our case, we should set aside the *issur* of handing over sections of Erets Yisrael to non-Jews because of our concern about the *pikku'ah nefesh* that may result from the weakening of the IDF's strength [were the order to evacuate Gush Katif disobeyed].

I cannot but wonder about these words, for perhaps owing to my inadequacy, I completely fail to understand what objection *Kevod Torato* finds in this [passage] against the simple assumption in my letter. Surely *Kevod Torato* concedes that in the absence of a reasonable and realistic concern about *pikku'ah nefesh*, Torah prohibitions may not be set aside.

Indeed, Hazal viewed the capture of a border town by non-Jews as an immediate and tangible danger of *pikku'ah nefesh* rather than a possible one. How, then, do we learn from here that every worry about future *pikku'ah nefesh* suffices to set aside Torah prohibitions? Surely, that very passage in *Eruvin* establishes by contrast the ironclad rule that

as opposed to a border town, if non-Jews come on money matters to a town that is not situated near the border, we do not desecrate the Sabbath [to fight them]. Why shouldn't we worry in such a case that perhaps the plan of those non-Jews is to conquer the country, and that according to their tactical considerations, this town is merely the first step on the road to conquering the entire country more easily? Hazal's ruling that we desecrate the Sabbath for the sake of a border town is based on the assumption that our appraisal of the situation regarding the ease of conquest falls into the category of a realistic concern, in contrast to such an appraisal regarding a non-border town. Concern does exist even with respect to a non-border town (and therefore the Gemara mentions it), but that concern is not immediate and is based on speculations that are not sufficiently grounded in reality to waive Torah prohibitions and allow desecration of the Sabbath.

Furthermore, there is no question that even clear-cut assessments that were made in the past regarding possible *pikku'ah nefesh* must be reexamined and undergo realistic, current evaluation. This is in order to establish whether, in light of altered circumstances, we are indeed dealing with a reasonable concern to the point of setting aside *issurim*, or only with unrealistic speculations. On the basis of the aforementioned passage in *Eruvin*, the author of the *Or Zaru'a* rules that in all cases involving a dispute over money with non-Jews, in a place where Jews are living among non-Jews, the Sabbath should be desecrated because a monetary dispute of this sort is accompanied by killing. Would such a ruling be accepted today without a renewed assessment of each situation? Should we not reevaluate the probability of these concerns and clarify the extent to which they are anchored in current realities, before deciding that they set aside Torah prohibitions?

There are many examples in [the words of] Hazal that indicate that *issurim* are set aside in situations where there is reasonable concern for *pikku'ah nefesh*. Therefore, it is interesting that *Kevod Torato shelita* cited this particular passage, as it is literally relevant to the specific matter under discussion. Moreover, this very passage and its application to current circumstances proves our position that *issurim* may only be set aside on account of *pikku'ah nefesh* where there is a reasonable concern, but not for every concern [of *pikku'ah nefesh*] as *Kevod Torato* apparently wishes to argue. The very fact that regarding the matter under discussion—the expulsion from Gush Katif—*Kevod Torato* ignores (or at the very least fails to assign decisive weight to) Hazal's own appraisal that the conquest of a border town—as were the settlements of Gush

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Katif—may lead to further conquest of Erets Yisrael and must be prevented even at the price of Sabbath desecration, only proves the extent to which the issue depends upon assessments of reality and appraisal of the reasonability of the concerns. Since the words of Hazal in *Eruvin* do not have decisive weight according to *Kevod Torato* (though I do not understand why), I assume that *Kevod Torato* would not permit a person to desecrate the Sabbath by bearing weapons, in the hypothetical situation of Palestinians coming to Gush Katif over monetary matters. Is this not because *Kevod Torato* maintains that at the present time, predictions about the conquest of the land are not sufficiently grounded in reality, and thus do not justify the cancellation of Torah prohibitions like the desecration of the Sabbath?

Surely whatever Hazal say on this matter is based on their assessment of reality, and it is clear that setting aside *issurim* in a place of *pikku'ah nefesh* depends entirely on the determination that we are dealing with a concrete, reasonable, and immediate concern, and not with far off, speculative concerns.

There is no new revelation in what I have written; it was established long ago by pillars of halakhic ruling. *Kevod Torato* mentioned the *Noda Bi-Yehudah's* ruling that uncertain *pikku'ah nefesh* only sets aside prohibitions in a case where there is a dangerously ill patient before us, and not in a case where there is concern about some future danger. *Kevod Torato* added that the position of the *Noda Bi-Yehudah* is “novel in itself.” In my humble opinion, however, it is anchored in the words of the *Tosafot* (*Pesahim* 46b, s.v. *Rabba amar*, end) who write that even according to the opinion that accepts the argument called *ho'il* (“since”), we do not permit forbidden labors on the Sabbath [based on *ho'il*], “since” the labor is suitable for a dangerously ill person who is [at present] not before us. *Tosafot* wrote: “Since it is not common whatsoever, we do not say ‘*ho'il*’” (the words of *Tosafot* include more, as will be explained below). This being the case, we are not dealing here with a position that is in any way new or unique (see also *Pithei Teshuva*, *Yoreh De'ah* 363, no. 5, and *Hazon Ish*, *Yoreh De'ah*, 208, no. 7). *Kevod Torato* also claimed that the position of the *Noda bi-Yehudah* is irrelevant, for it is based on the fact that “as long as the foundation is missing, there is no rise of doubt,” as *Kevod Torato* put it. Indeed, it is impossible to conclude more from the words of the *Noda bi-Yehudah*. But see *Responsa Hatam Sofer*, *Orah Hayyim*, I, no. 79, who expanded on the words of the aforementioned *Tosafot*, and set down the rule that even in a place where there is a sick person before us, but we do not

know what medication he needs, we do not violate the Sabbath for each and every medication. If so, even in a place where the foundation exists, *Hatam Sofer* maintains that Torah prohibitions are not set aside for every unsure doubt. In any event, it is clear that even according to the *Noda bi-Yehudah*, the difference between a situation in which a dangerously ill patient is before us and a case involving effects on patients in the future is rooted in the distinction between an immediate danger of *pikku'ah nefesh* and speculative and uncertain concerns regarding future *pikku'ah nefesh*.

What remains is to clarify whether the assessment that refusing orders will impair the strength of the IDF—and that such impairment will lead to a situation of *pikku'ah nefesh* for the nation that dwells in Zion—is a concrete, reasonable, and realistic concern or whether the actual situation is entirely different. If the latter is true, we are dealing with far off speculations about the future which do not meet the halakhic standards for setting aside incontestable *issurim*.

The examples that I brought at the beginning of my previous letter prove beyond the shadow of a doubt that even *Kevod Torato, shelita*, agrees that the concerns relating to the refusal of orders do not constitute sufficient cause to set aside Torah prohibitions. Were an order given to violate a clear-cut Torah prohibition for no [legitimate, immediate] need, e.g., to desecrate the Sabbath or eat non-kosher food, then even if a portion of the public would err in thinking that his ruling is politically based, *Kevod Torato* would not rule to obey the order out of concern for the strength of the army. This proves that not only according to *Mori Zekeni, shelita*, but also according to *Kevod Torato*, we are not dealing with concerns and assessments that reach the level of likelihood that suffices to waive incontestable and immediate Torah prohibitions. This is obvious.

[Perhaps due to my inadequacy, I did not understand *Kevod Torato*'s opinion regarding proof by way of *reductio ad absurdum*. This is a logical argument found countless times in the Talmud and the *posekim* to clarify the positions of the Tannaim and Amoraim. I will mention the halakhic conclusion drawn by Rabbi Shimon from the words of Rabban Gamliel at the beginning of chapter *Ha-Yashen*: “And in our way [of learning] we learn that one who sleeps under a bed does not fulfill his obligation [regarding *sukka*]”—the text there gives a clear example of proof by way of negation, defined by R. Shimon as “our way” in learning. *Reductio ad absurdum* is a defined and accepted logical argument, used, among other purposes, and altogether differently,

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to prove the most basic theorems of Euclidean geometry, as is certainly well known to *Kevod Torato*.]

It seems to me that the aforementioned assumptions underlie Rambam's ruling following the Gemara in *Sanhedrin* (49a)—“And it is unnecessary to state that if the king issued a decree to cancel a mitsva, we do not listen to him.” Why shouldn't we be concerned that if the king is not obeyed, our inner strength and position vis-a-vis our enemies will be impaired, as suggested by *Kevod Torato*? According to *Kevod Torato*'s reasoning, there should be “considerations of *pikku'ah nefesh*” that cause one to obey the king even if he issues a decree to cancel a mitsva. Surely nobody disagrees that the force of a king's commands and his standing are critical for the functioning of the state and the maintenance of its strength. If people disobey him today regarding one thing, tomorrow they will disobey him regarding other things. The king's authority will be destroyed, and his command over the army will melt away—“The phenomenon spreading to a significant minority would be enough to weaken the system to the point that it could no longer depend upon the soldiers in its ranks” (as *Kevod Torato* put it when writing about the IDF). How then does Rambam issue a sweeping ruling not to obey a king who commands that one violate the words of the Torah, without taking into account considerations of *pikku'ah nefesh*? Why does he ignore the concern that if the king's orders are disobeyed, the entire kingdom may be in danger of breakdown and collapse, and the general population may face a situation of *pikku'ah nefesh*?

It seems that the matter is obvious. Concern about the survival of the kingdom depends upon so many extrapolations and variables that this claim does not suffice to set aside Torah prohibitions. For this reason, Rambam resolutely asserts, without making any distinctions, that if a king issues a decree to cancel a mitsva, we do not listen to him. [It may, perhaps, be possible to understand this as alluding to what Rashi says in *Sanhedrin* (74a, s.v., *afilu*) regarding the rationale of the law pertaining to *she'at ha-shemad* (times of persecution); that even with respect to a trivial mitsva, one must allow himself to be killed rather than violate the prohibition—“so that the non-Jews should not become accustomed to softening [our] hearts in this manner.” It seems that Rashi means that if non-Jews can issue decrees against our religion and, owing to considerations of *pikku'ah nefesh*, we will automatically be obligated to observe them, we will soon find ourselves sans Torah and subjugated to the authority of flesh and blood. This principle is true about every kingdom and government that has the power to compel

obedience, and thus obligates martyrdom instead of transgression for every mitsva. Might it then be possible to argue that we should not obey the king or any other authority who calls upon us to transgress the words of the Torah, even when there are concrete considerations of *pikku'ah nefesh*? That depends upon whether the law of *she'at ha-she-mad* applies even when a ruler's intention is his personal gain, and not only when he intends to cause people to abandon their religion. (See *Hiddushei ha-Ran, Sanhedrin*, ad loc., who feels that this is the position of Rambam, *Hilkhot Yesodei ha-Torah* and *Sefer ha-Mitsvot*, negative precept 63; many have already treated this subject at length.) Rambam in *Hilkhot Melakhim* makes no distinction, and perhaps this is precisely what is derived from the words of Joshua quoted in *Sanhedrin*: "Only be strong and courageous." Of course, I do not intend for this to be seen as a practical ruling, but only to encourage appropriate halakhic and philosophical discussion of this issue.]

If there is a reason on account of which *Kevod Torato* maintains that we should set aside *issurim* such as the cancellation of the positive precept [of settling Erets Yisrael] or the negative precept of *lo tehon-nem*, it is only because he thinks that we are dealing with a transgression committed "for a need," as written in his letter. This, however, is totally irrelevant to the question of the army's strength as a result of a refusal to obey orders. For it is clear, as follows from *Kevod Torato's* second letter, that were we talking about an unneeded transgression, *Kevod Torato* would unhesitatingly rule in favor of refusing to obey the order, without analysing speculations about long term effects on the army that do not allow one to waive *issurim*. It is precisely here that the tautological error in *Kevod Torato's* argument comes to the fore, as I noted in my previous letter. For *Kevod Torato* does not disagree with *Mori Zekeni* about not waiving *issurim* because of some distant concern, but in calling this order a "need" by definition and therefore not an *issur*.

I come now to the question of the "need" with respect to obeying this order; that is, to an assessment of the likelihood of achieving the stated goals of the disengagement plan and the halakhic ramifications of this assessment. First and foremost, this question touches upon the definitions of *pikku'ah nefesh* and danger as factors in setting aside the mitsva of settling Erets Yisrael. I thought at first that there was no need to discuss this point in my letter to *Kevod Torato*, for the issue has been analyzed at length in the past. *Kevod Torato's* response, however, indicates that my words were not properly understood.

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Kevod Torato understood from my words that there are two situations where the mitzva of settling Eretz Yisrael is not abrogated: 1) one of *safek* (possible) *pikku'ah nefesh* for the entire population; 2) one of certain *pikku'ah nefesh* for individuals. While the second requires clarification as will be explained below, it is essentially correct and follows from my first letter. Nevertheless, *Kevod Torato's* conclusion from my words regarding the first situation, that of *safek pikku'ah nefesh* for the entire population—is mistaken and not at all my intended meaning. It would appear that it is not misunderstanding my words that led to this erroneous conclusion, but rather something far more fundamental relating to the basic halakhic categories of *pikku'ah nefesh* and *mekom sakkana* (dangerous situation). I understand from what *Kevod Torato* says that he maintains as a matter of principle that there are only two halakhic categories relevant here: 1) *safek pikku'ah nefesh*, and 2) certain *pikku'ah nefesh*. It is apparently for this reason that he consistently ignored the additional halakhic category to which I made repeated reference i.e., *mekom sakkana*. It stands to reason that this is also the primary cause for his deriving an erroneous conclusion from my words.

According to *Mori Zekeni, shelita*, the current security situation in the State of Israel is not a situation of *pikku'ah nefesh*. At most it falls into the category of *mekom sakkana*, as I repeatedly noted in my letter. The laws applying to a *mekom sakkana* are totally different from those applying to *pikku'ah nefesh*, and they cannot be included together with “considerations of *pikku'ah nefesh*” as did *Kevod Torato, shelita*.

People who traverse deserts and oceans fall into the category of those who travel in *mekom sakkana* and are obligated to recite the *ha-gomel* blessing. This is because a certain number of desert and ocean travelers die in the course of their trip. Nevertheless, we do not find anyone who forbids journeying through the desert or sailing out to sea when necessary, because of *safek pikku'ah nefesh*. Road accidents have caused an enormous number of fatalities (more than all the soldiers who fell in Israel's wars). Is there anyone who forbids traveling by car because of *safek pikku'ah nefesh*? (Regarding the *ha-gomel* blessing, R. Moshe Feinstein, *zt"l*, and other contemporary *posekim* have already proposed a distinction.) Such situations do not fall into the category of *safek pikku'ah nefesh*, but rather into the category of *mekom sakkana* (a place of danger), and the halakhot in their regard are totally different. In general terms, the determining factor is the probability of the danger threatening each individual within the entire set of people who are in danger. Even if among all the individuals comprising a set of people,

there is a certain percentage who will lose their lives, this does not define the situation as *safek pikku'ah nefesh*, but as *mekom sakkana* because the probability of injury to any specific individual is low.

In *Gittin* 57b, Rabbi Yehoshua ben Levi expounds the verse, “For your sake we are killed all the day” (Psalms 44:23)—saying that this refers to circumcision. Rashi explains there: “Sometimes he dies.” Would anyone suggest that the mitzva of circumcision differs from the rest of the mitzvot and that we should not say the words we say about all the commandments “and he shall live through them”—*va-hai ba-hem*—about it? Surely all the mitzvot are waived because of *safek pikku'ah nefesh*, but this is not the category here.

Thus, in addition to the categories of *pikku'ah nefesh* and *safek pikku'ah nefesh*, there is another category generally defined by Hazal (and by Rambam; see *Hilkhot Rotse'ah* 12:6) as “*sakkana*” or “*mekom sakkana*.” On the one hand, *mekom sakkana* does not negate the rule of “and he shall live through them” where there is a mitzva or a need; on the other hand, it requires caution and effort to avoid danger. See also *Responsa Mishpat Kohan* (no. 143), who discusses this category at length, and brings a proof from *Pithei Teshuva* (157, no. 3) who writes in the name of *Tif'eret Yisra'el* that a person is permitted to enter into a situation of possible danger for any mitzva. [He also brings a proof] from the Gemara in *Bava Metsi'a* 112a—“And he sets his soul upon it” (Deut 25:15). Why did this [worker] go up the ramp [and hang on a tree] and risk his life? Was it not for his wage?” And with this he explains the *Sifri* regarding the negative precept, “Do not be afraid” (Deut 1:17); see there (and see also *Noda Bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 10).

The security situation in the State of Israel today is no worse than the classic situation of danger—a category including crossing deserts and automobile travel which claim a number of victims every year. Since the probability of injury to any particular individual is far from certain, the category of *safek pikku'ah nefesh* is not the case. *Mori Zekeni* has stated on several occasions that even outside of Israel, a security situation that defines a *mekom sakkana* does not constitute grounds to obligate moving from one place to another because of *safek pikku'ah nefesh*. Living in an area defined as a *mekom sakkana* is permitted, because such residence is regarded as a need, just as a person is permitted to enter a *mekom sakkana* in order to earn his livelihood (see *Bava Metsi'a* 112a).

Regarding the mitzva of settling Eretz Yisrael, the matter is simple. According to *Mori Zekeni, shelita*, and many great halakhic authorities,

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the mitsva of settling Erets Yisrael is not waived due to its being a *mekom sakkana* (even when that danger intensifies to the point of an obligatory war, as commanded in the Torah). The possibility of reducing the danger by surrendering territories that we are obligated to conquer does not waive *issurei Torah* such as the positive mitsva of settling Erets Yisrael and the negative mitsva of *lo tebonnem*. Perhaps owing to my inadequacy, I fail to understand how it is possible that *Kevod Torato* is ready to surrender a portion of Erets Yisrael in order to reduce danger, when we were obligated by Torah law to enter into danger in order to conquer and possess that very territory.

The price that every country in the world must pay for its existence as a ruling sovereignty over its territory includes the readiness to defend its independence in dangerous situations that exact the heavy price of loss of life (soldiers and in the case of terror, civilians), while the probability of injury to the entire population is low. All over the world, the national boundaries in which nations are prepared to live and define themselves despite danger depend not only upon practical considerations, but also upon a collective social compact, based upon, among other things, historical and national values or upon some sentimental common denominator. (There is no need for me to bring examples from ancient or recent history of nations valiantly fighting for sovereignty over a piece of land, regardless of practical considerations). The borders of our country, Erets Yisrael, in which we are commanded to live and define ourselves as a sovereign people, do not depend on a social compact of one kind or another. As opposed to other nations, the borders of our land were delineated by the Torah. The Torah has determined exactly where we are obligated to live as a sovereign nation, even in the face of danger, like any other nation living within its borders.

I, therefore, find *Kevod Torato's* metaphor of the apartment and the room very puzzling. It does not appear to meet any halakhic standard, for surely there is an equal mitsva to conquer each of the rooms, and no room has priority over another. We are commanded to hold on to the entire apartment even in the face of danger, and it makes no difference whether the room is in Jerusalem or in the Gaza strip.

Kevod Torato writes, "it is clear as day that the system, on its part, must consider the number of potential casualties in determining priorities and choosing channels of action." This is certainly true in a case where there are conflicting opinions on how to conquer or hold on to this territory. In that case, it is clear that those in charge must choose the way that most reduces the number of casualties. This assertion,

however, has no relevance in the present situation, where the decision makers wish, ostensibly for the same reason, to relinquish the mitsva of conquest. The Torah commands us to enter into the dangerous situation of an obligatory war in order to conquer Erets Yisrael. Reducing the dangers involved in the conquest is of course necessary and important, but totally giving up the mitsva of conquest, out of a desire to reduce this danger, constitutes an expropriation of the essence of the mitsva. Surely the obligation of the mitsva to fight for Erets Yisrael remains applicable even when it is impossible to reduce the dangers inherent in observing it.

In summation of this part of the letter, I wish to relate to that which, in my humble opinion, is “the source of faith and the source of disobedience” (in the words of the *Kuzari*) in this matter, and in it lies the essence of the question and its rebuttal. When *Kevod Torato* asked *Mori Zekeni* how he relies with certainty on one assessment and not another (as *Kevod Torato* had initially thought), *Kevod Torato* concluded his words by asking whether “God revealed His secret to those who fear Him.” This wasn’t an expression of wonder regarding the prophetic powers or holy spirit of *Mori Zekeni shelita*, but rather a fundamental halakhic question concerning a *posek’s* capacity to assess a given situation. Regarding the two issues under discussion—the ramifications of refusal to obey orders and the results of the disengagement plan—*Kevod Torato shelita* attempts to argue that the element of deciding between the various speculations of professionals can be a critical factor in the halakhic decision-making process. This raises a question regarding the authority of a *posek* to decide such matters, a matter of great significance. Each case must be decided on its own merits, but this is not the place to do so. In any event, in my response, I explain that in these two matters, the different assessments of the situation are irrelevant to the decision-making process. Our clarifications of the law regarding waiving *issurei Torah* in the face of *safek pikku’ah nefesh* and vis-a-vis the mitsva of settling Erets Yisrael led to the same conclusion with respect to *Kevod Torato’s* question—i.e., the irrelevance of the differences in opinion on these issues, at this time, to halakhic decision-making. We have shown that the divergent assessments regarding the ramifications of refusing orders are irrelevant, for in any event, we are not dealing with a concern that meets the halakhic standard for waiving *issurei Torah*. Similarly, we argued that the differences in opinion regarding the benefits of disengagement are irrelevant, for the mitsva of settling Erets Yisrael is not waived in a *mekom sakkana*.

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However, a close reading of *Kevod Torato's* words indicates that according to his way of defining the issues, the question regarding the capacity to decide such matters remains in force. According to his understanding, he is forced to adopt positions based on assessments of the situation that are subject to controversy. This runs through the entire course of *Kevod Torato's* response, whether we are dealing with disregard for certain assessments or with analyses of the facts of the situation. It is therefore obligatory upon him, due to his understanding of the situation, to clarify whether the government's decision is based on considerations of *pikku'ah nefesh* or if we are dealing with entirely different considerations, which have no halakhic basis. Aside from the assertion that the government is endowed with the authority to decide, this question is not at all addressed in *Kevod Torato's* letter. *Kevod Torato* certainly concedes that in a place where the king issues a command to violate the words of the Torah we do not listen to him. Thus a clarification of the situation is necessary precisely according to *Kevod Torato's* position. How is it so clear to him that we are dealing with the halakhic parameters of *pikku'ah nefesh*, and not with alien considerations, e.g., fundamental opposition to "occupation" or the desire for international support, considerations which even according to *Kevod Torato* do not set aside *issurei Torah*? I understand that *Kevod Torato* feels that the Prime Minister is indeed motivated solely by the halakhic considerations of *pikku'ah nefesh* (I don't know how *Kevod Torato* knows this, especially in light of recent statements). Is there no room to examine and clarify this assumption, before issuing an unequivocal and sweeping ruling to violate Torah prohibitions? [And we haven't even yet touched upon the destruction of the lives of hundreds of families and those around them as a result of that decision.]

In addition, *Kevod Torato* entirely ignores the possibility of harm to the might of the IDF resulting directly from its obeying this questionable order. Were *Kevod Torato* to give equal weight to the predictions regarding the harm to the army resulting from obeying this order, he would instruct his students to refrain from fulfilling it (*shev ve-al ta'ase*). I understand from *Kevod Torato's* words that he feels that the possibility of psychological damage to IDF soldiers resulting from their participation in the expulsion of Jews, or alternatively, a dulling of their sensitivities towards the settlers in particular and private citizens in general, the product of pre-campaign psychological training that characterizes totalitarian regimes (two ramifications pointed out by professionals from the very beginning) are trivial matters compared to speculations concerning

the possible results of refusing orders to expel Jews. Should the letter written by hundreds of idealistic high school students who have great potential to make a significant contribution to the army, in which they declare that they will not enlist in an army that expels Jews from their homes, and which creates a snowball effect of alienation from the IDF and objection to any type of army service, also be likened to “a cold,” as *Kevod Torato* put it? Who has the authority to decide when we are dealing with a destructive danger, the risks of which are likely to be realized? Will *Kevod Torato* decide or rely on professionals who are close to his outlook? *Kevod Torato* fervently believes that one danger is more significant than the other, and perhaps that is true. However, as opposed to *Mori Zekeni*, who issued ironclad rulings that are independent of assessments of one type or another, here the obligation of proof of his correct assessment of the situation falls on *Kevod Torato*, precisely according to his own understanding, before it may be determined that the violation of Torah prohibitions is permitted in our situation.

According to *Kevod Torato*, the divergent assessments and the considerations of *pikku'ah nefesh* regarding the matter under discussion require resolution and clarification. I understand that, according to *Kevod Torato*, the concerns about *pikku'ah nefesh* resulting from refusing orders are greater and more concrete than concerns about *pikku'ah nefesh* resulting from an implementation of the planned expulsion and disengagement. Were it not so, *Kevod Torato* would not have decided in favor of obeying the expulsion order. What, however, is the basis of this certainty?

Kevod Torato's amazement regarding what I said about drawing an analogy between refusing orders for religious reasons to refusing orders in other contexts, is also incomprehensible to me. Must we be residents of Shefar'am or Usafiya in order to recognize the legitimacy of a Druze soldier refusing an order that violates something that is holy in his eyes? Had all the Rashei Yeshivot and all the great Rabbinic authorities (including *Kevod Torato*) stood as one, explaining and ruling that there is a clear-cut religious issue at hand, as in any other *issur*, would *Kevod Torato's* concern still not have been dispelled? Would it be a mistake to assert that it was precisely *Kevod Torato's* ruling not to refuse orders that created the concern that the refusal of orders would not be understood as religiously motivated?

Beyond this, however, we must touch upon the moral issue faced by all the soldiers serving in the IDF that does not depend on respect for religious motives of one kind or another. Does the fear of insubordination in other contexts and for other reasons justify obeying every order,

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even one that is inherently immoral and corrupt? According to *Kevod Torato*, we would not have expected a British soldier who participated in the forced expulsion of the *ma'apilim* to Cyprus to refuse the order that he received, for the refusal of one order could have led to the refusal of other orders, and thus to the diminishment of the strength of England and its standing vis-a-vis its enemies. Is such a position tenable?

It seems that no one would argue that there are times, when out of responsibility for the future of the army and the state, there is an obligation to refuse an order that contradicts morality and justice (not to mention Halakha), and precisely in that way to establish and reinforce the inner strength of the country and its standing up to its enemies.

Regarding the responsum of Radbaz who asserts that where there is diametric disagreement regarding the assessment of a situation, as in our case, the halakhic decision is *shev ve-al ta'ase* (do not act), *Kevod Torato* asks: "Is doing nothing preferable even when the probabilities are not equal?" Who exactly has the authority to decide that they are not of equal weight, and if indeed they are not, who decides which side has greater weight?

Even *Kevod Torato* would agree that one's personal inclination to accept a particular opinion has no halakhic significance if it lacks an uncontested factual basis based on reality. A halakhic position on this issue cannot be based upon one professional school of thought, or upon an analysis of facts that is subject to controversy.

As opposed to *Mori Zekeni*, who issued his halakhic rulings without having to resort to selective reliance on particular assessments of the situation, *Kevod Torato's* letter is replete with assessments of the situation and evaluations of various concerns and dangers, which undoubtedly, even according to *Kevod Torato*, require proof and clarification.

Regarding specific points that *Kevod Torato* raised in his letter:

a) Sanctity of the synagogue. When I stated in my letter that according to *Mori Zekeni's* opinion regarding the sanctity of a synagogue, there are no considerations regarding the *issur* to destroy a synagogue, I was relating to *Kevod Torato's* questioning the source of this sanctity, whether from the Torah or by Rabbinic decree. Either way, destruction is prohibited according to *Mori Zekeni*, and the question of permissibility is irrelevant as long as the settlement is populated. As for destroying the synagogues after the departure of the residents of Gush Katif, *Mori Zekeni* has already expressed his view in a letter to the Israeli Supreme Court—"there is no need to write at length, for it is clear and simple that according to halakha

it is forbidden to destroy a synagogue, as it is written: ‘This you shall not do to the Lord your God’ (Deut 12:4), and all the more so in Erets Yisrael. They must be fittingly preserved and maintained, so that they not be desecrated, as is customary regarding other holy places in Erets Yisrael and outside of it. If, God forbid, there is no possibility of preserving them as they are, there is no way to remove their sanctity other than through redemption, as is explained in *Shulhan Arukh, Orach Hayyim*.” To our great sorrow, the vandals have already come and desecrated our places of worship, *mikdashai me’at*, defiled them, and set them on fire. “Because of these things our eyes are dim.”

b) Use of the expression, “*lo yentakke*” (“He will not be cleared”). I am sure that it is owing to my inadequacy that *Kevod Torato*’s response is astounding to me. *Kevod Torato* writes that soldiers are familiar with the Ten Commandments, and, therefore using the expression “*lo yentakke*” is threatening to them when after all, “Hazal reserve such a threat for the prohibition of taking God’s name in vain.” Did I not list sufficient citations from the responsa literature of generations showing that the expression is used in different contexts, not necessarily that of taking God’s name in vain, with one sole objective—that of threatening the recipient of the responsum to refrain from violating the words of the Torah? [May I add that the line preceding the responsa citations was omitted from my previous letter. That line cites two places where Hazal themselves used this expression—*Berakhot* 61a regarding one who counts out money to a woman, and *Sota* 4b regarding one who has relations with a married woman.]

c) The prohibition of “*lo tehonnem*.” *Kevod Torato* writes that the dissenting opinions on this issue could have been brought. I accept the words of *Kevod Torato*, but had I acted in this manner, I would have deviated from the objective of my letter. I did not intend to bring the views of the *posekim* or to make inferences from the words of Rambam on the topic. All that I came to do was to clarify the view of *Mori Zekeni* and many other great *posekim*, in accordance with my limited understanding.

d) Regarding *derekh hashbhata*, i.e., destructive acts. *Kevod Torato* wishes to distinguish between destructive acts in general, an objective category with regard to the destroyed object—whether it was destroyed with no intention to rebuild it or not—and destructive acts regarding the demo-

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lition of a stone of the Sanctuary or in a synagogue. [In the latter case], according to *Kevod Torato*, even if the destruction was not accompanied by intention to rebuild, if the destroyer had no evil or malicious intentions, it is not a “destructive act” and therefore permitted. This is not the place to discuss this at length. I refer only to the *Taz* (151, no. 3) who forbids digging a hole in the wall of a synagogue in order to erect a bookstand. He states explicitly that the destruction of a synagogue is forbidden and considered as being *derekh hashbata*, a destructive act even when the act is intended to benefit prayer in that very synagogue. All the more so is it forbidden when it is done not for the sake of the synagogue (see *Peri Megadim*). Indeed, many of the *Aharonim* disagree with the *Taz* on this matter and cite the *Eliyahu Rabba* who allows the work to take place in such a case, but this is only because the excavation is intended for the benefit of the synagogue. Were it not so, all would agree that it is *derekh hashbata*. See *Avnei Nezer* (*Orah Hayyim*, no. 33, sec. 3), who while accepting the *Eliyahu Rabba*, forbids opening windows into the women’s section, because women are not essential to synagogue functions such as a quorum. He says as follows: “It is clear, however, that even according to the view of the *Eliyahu Rabba*, the allowance only applies when needed for some holy purpose, for in such a case it is not considered destruction” (see inside). All this seems to contradict what *Kevod Torato* wrote on the issue.

With great respect and esteem,

Avraham Yisrael Sylvetsky

P.S. I gave *Kevod Torato*’s greetings to *Mori Zekeni, shelita*, as *Kevod Torato* requested. *Mori Zekeni, shelita*, inquired about *Kevod Torato*’s welfare, and responded with wishes for peace and blessings for a good year.

Aharon Lichtenstein

R. LICHTENSTEIN'S RESPONSE*

B”H Sunday, *Parashat Toledot*, 25 Heshvan, 5766 (November 27, 2005)
To Rav Avraham Yisrael Sylvetsky, *shelita*,

I received your letter from the 14th of Elul, 5765, and I am sorry about the delay in my response. When I began the discussion of these issues, it was the beginning of the summer recess, and I was able to find time to write. As the days of judgment and mercy approached, my ongoing intellectual and educational occupations became heavy, and I found it difficult to respond in a timely manner. It seems to me, however, that some of the issues, both theoretical and practical, are still relevant. And so I add this layer to our correspondence, on the assumption that anyone who reads it will be able to follow what I say with renewed investigation of the previous components.

In your reply, you rightly point out the importance of assessing reality—establishing criteria on the theoretical level, and applying them on the practical level. Regarding this approach, I cannot and do not wish to disagree; on the contrary, I am quite satisfied with it, for it leads to the fundamental conclusions that I had presented. But I am not at all pleased with the particulars of your formulation. When you discuss the possible political scenarios about which we had spoken, you insist on calling them “speculative concerns and uncertainties.” To my regret, this is a manipulative and unfair use of language. The term “speculation” has connotations of conjectures floating in the air, lacking any basis or anchor in conceptual or factual reality. This is true in the world of philosophy, and equally true in the world of financial investments. If that is the subject of discussion, it is relatively easy to dismiss concerns with the wave of a hand. The issue that crouches at our door, however, with both its opportunities and its dangers, does not belong to the world of airy speculation, but to the realm of realistic uncertainties. We surely have no certainty here, but it is equally clear that we are not dealing with castles in Spain or quixotic daydreams.

Beyond the question of formulation, the substance of what you say is amazing. The high praises of holding fast to reality are in your mouth, but the realization of this idea is quite surprising. I will offer two examples, both connected to the same point. You assert the need to update assessments of reality, since allowances made on the basis of the reality of

*Translated by David Strauss. This translation was not reviewed by R. Lichtenstein.

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the past are no longer valid in our current situation. “Shall we not reevaluate the reasonableness of the concerns and clarify the extent to which they are anchored in today’s circumstances, when we consider overriding Torah prohibitions?” I agree, but for some reason you turn your back on the reverse possibility that parallels this one—that updating will in fact broaden the canvas, rather than narrowing it, since the range of concerns have expanded. You lean on the words of the *Noda Bi-Yehudah* that uncertain *pikku’ah nefesh* only overrides prohibitions when “the dangerously ill patient is before us.” Authorities greater and better than me, however, have already clarified that in an age of information explosion and dissemination—when vital knowledge that may cure dangerously ill patients reaches the far ends of the world in lightening speed—the definition of “before us” requires a radical revision. Parallel to this, your comments regarding a border town, which I had related to only on the theoretical level, create the impression that ballistic missiles and fighter jets have yet to be invented. Can an update of the situation and the corresponding application of halakha ignore these phenomena? Already a decade and a half ago Israel experienced on its very flesh the extent to which, in a certain sense, Ramat Gan is a border town. I do not come here to establish ironclad halakhot that all of the allowances in the passage in *Eruvin* should be applied today to the entire country. But I do wish to emphasize the extent to which an examination of the situation requires a broad and long-term perspective that has tactical and strategic depth.

Second, you anchor your position and your claim that there is no need to be concerned about future political and security developments on the words of Tosafot in *Pesachim*, that there is a limit to the allowance and exemption of *ho’il*, and that not every patently implausible scenario, e.g., that at the end of Yom Tov, in some tranquil, quiet town, a dangerously ill person will suddenly appear. This comparison makes me rub my eyes. On one side stands a passing phenomenon that will last a few hours or perhaps only a few minutes, concerning which there is no reason to assume that it will even arise, though it is not impossible. Surely, a person cooking on Yom Tov for an ordinary weekday might himself suffer a sudden heart attack [that would justify the act of cooking], but the likelihood of this happening is minuscule. On the other side, a scenario may erupt and last for years against the background of an international struggle spanning generations. Can a logical examination equate these two situations? To be sure, it is clear that in both cases there is no way to know whether the proposed initiative, preparation of food in the passage in *Pesachim* or the disengagement process of our generation, will resolve

the problem under discussion. You, however, are discussing the very existence of the problem, even before we reach the solution.

By the way, in this connection I am afraid that your words regarding another point, close but different, are also liable to be misleading. You refer to *Responsa Hatam Sofer (Orah Hayyim, I, no. 79)*, where he rules that “even in a place where there is a sick person before us, but we do not know what medication he will need, we do not violate the Sabbath for each and every medication.” The naive reader will presumably understand that if the doctor has not yet decided which treatment protocol to employ, one is not allowed to prepare a number of drugs by way of forbidden labors, since it is not clear which one will be used. Such a conclusion appears to me as patently impossible (this, without any connection to the Tannaitic controversy regarding *ho'il*, that each one is suitable for him, in *Pesachim* 48a), and I am sure that this never entered Hatam Sofer’s mind. His words are directed at an entirely different issue, that we do not desecrate the Sabbath in order to prepare just any “medication,” untested and unscientific, that some charlatan presents as healing and curative. Such a position is anchored in the ruling of Rema (*Yoreh De'ah* 155:3): “Whenever we feed a sick person something that is prohibited, its medicinal quality must be known or it must be prescribed by an expert.” While both rulings require definition in and of themselves, they are irrelevant to our discussion.

I will not discuss the logic of your proposed analogy regarding the harm to the robustness of the army and the state, between refusing a totally arbitrary, unnecessary, and perhaps even patently immoral order and refusing an order that is presented by its proponents, and also understood by a large portion of the public, as motivated by security considerations, which, if their view corresponds to reality, will save many lives. In this context, I will merely address your claim that your approach and that of your teachers is based on Rambam’s assertion, “Needless to say, if the king issued a decree to violate a mitzva, we do not listen to him,” without stipulating that this law does not apply if the disobedience will undermine the security of the state by diminishing the standing of the king. Here too, your words are astonishing. Do we expect that when Rambam asserts in *Hilkhos Hamets u-Matsa* that one is forbidden to eat *hamets* on Pesah and that one who does so is liable for excision, that he should add that if he is dangerously ill the eating of *hamets* is permitted? Shouldn’t he and we rely on the principles that he had set down in *Hilkhos Yesodei ha-Torah* and apply them in each and every situation as is fit? It is indeed possible to argue that were it the

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case that refusing an arbitrary royal order would endanger the lives of many citizens by undermining his sovereignty, then it too must be obeyed. It is, however, also clear that regarding the prospect of impairing a regime, there is no comparison between challenging the government's right to legislate and act in an arbitrary manner, tyrannically trampling the principles and conscience of its citizens, on the one hand, and undermining the government's ability to do what it is supposed to do—make political decisions and execute them—on the other.

In the continuation of your letter, you relate to the degree of “need”—that is to say, the contribution to the security of the state—that is involved in obeying the disengagement order. I have already clarified in various forums and on various occasions that I am not absolutely convinced in this regard. Only time will tell whether this was a positive initiative or, God forbid, a political and security fiasco. But I claim that it does not fall upon me, and those who think like me, to prove with certainty that the initiative is beneficial, but rather it falls upon those who deny the government's authority to prove that the opposite is true. Of course, in this context, there is a question of defining the contribution and its price, and determining criteria for what would justify such an initiative. Here you raise points that are simply not that clear and evident to me. You go on at length about the distinction between “danger” and “*pikku'ah nefesh*,” and you argue that according to the Gaon R. Avraham Shapira, *shelita*, today in Erets Yisrael we live in danger, but not in a situation of *pikku'ah nefesh*, not even uncertain *pikku'ah nefesh*. Even if we assume for a moment that the distinction and the assessment are true, that is not the question. I did argue about the existing situation, but about tendencies and potential developments—and they might include situations that even according to your position are defined as possible *pikku'ah nefesh*. Thus, the discussion comes back to the question of the gravity of future risks; what then have you added to what you had already argued in this regard?

Secondly, however, the distinction itself and its significance are not clear to me. I surmise that you do not mean to say that only *pikku'ah nefesh* sets aside prohibitions, but not danger. For surely it has not escaped you that Hazal, the greatest *Rishonim*, and the *posekim* in their wake all speak about a sick person who is in danger (*sakkana*) as a factor that permits the violation of prohibitions. On the other hand, I agree with you that not every situation described as a place of danger permits such violations. But are these different categories or different levels within the same category? Similarly, I do not fully understand your position regarding the relation between this distinction and the mitsva

of obligatory war and conquest. Does it follow that this mitsva obligates the individual and the community to enter into war only when such entry is accompanied merely by danger, but not when it involves uncertain *pikku'ah nefesh*? And what is the meaning of your distinction between recoiling from suffering casualties and “totally giving up on the mitsva of war and conquest”? Were it true, God forbid, that conquering a particular strip of land or maintaining an isolated settlement would exact losses equal in number to those who left Egypt, would we—would you—recommend such action, in order to avoid “giving up on the mitsva of war and conquest”? On the assumption that even according to your position this question is rhetorical, the question of assessing the situation—in accordance with what you said above, and as opposed to the summary that you make later—is indeed extremely significant. The question regarding the authority to establish it is, as you rightly noted, both complicated and important, and I will not exhaust it now. I will only note, as opposed to what you say, that it is indeed relevant to our discussion. And it is surely appropriate to examine the qualities and content and level of training that are necessary in order to take a clear, and perhaps even rigid stand on these issues.

In conclusion, I will respond briefly to your specific comments:

Regarding synagogues—your master and grandfather’s ruling is absolutely understandable and acceptable to me. I was merely surprised, at a certain stage, by your statement that it was unnecessary.

The use of the expression *lo yentakke*—I already noted that I am well aware of the widespread use of the term, but I stand firm in my view that in our case there was an element of threat that I did not view as desirable.

The prohibition of *lo tehonnem*—your response is acceptable to me.

Regarding “destructive intent”—I will conclude with a clear-cut matter of halakha. You dismiss with the wave of a hand any need to discuss the question that I raised regarding the possibility of distinguishing between the destruction of a synagogue with wicked and malicious intent and destruction that, while lacking the intention to rebuild, is motivated by positive intentions. It seems, however, that your response was hasty. You based yourself on the *Taz* that one is forbidden to dig a hole in the wall of a synagogue in order to place there a shelf for a book; and you added that the *Eliyahu Rabba* and *Aharonim* who came in his wake also allowed only such “destruction” because of its contribution to synagogue use. Thus, it is clearly proven, so you thought, that positive intention has no significance.

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At first glance, your argument is irrefutable, for the words of the *posekim* were clearly spoken. You ignored, however, one important point, which, in my humble opinion, sets the discussion in a different light. As you will remember, when I addressed my question to the Gaon R. Avraham Shapira on this matter, I opened with the introduction that Rambam clearly establishes that a person guilty of violating “This you shall not do” is not liable to lashes, unless he acted “with destructive intent.” This point is not mentioned in the Gemara, and it is possible that the other *Rishonim* disagree. In any event, this constituted the foundation of my question. Rambam means, as is reflected in his precise formulation, that even though demolition without destructive intent is defined as demolition, not every act of demolition imposes liability, or is, perhaps, even forbidden. It was against this backdrop that I addressed my question regarding this side condition, how should it be limited and defined. The *Taz*’s position, however, is taken from the *Mordekhai* at the end of *Megilla* (no. 826), who has a different approach:

A synagogue is called a miniature Temple, as stated later in our chapter. Therefore, one is forbidden to demolish anything in a synagogue, as it was taught in the *Sifri*: “From where do we know that one who demolishes a stone from the Sanctuary or from the altar or from the courtyard violates a negative precept? For it states: ‘And you shall demolish their altars . . . this you shall not do to the Lord your God.’” And if one demolished in order to build, it is permitted, for such demolition is called construction.

A precise reading of the words of the *Mordekhai* is that every act of demolition is forbidden, without exception, and therefore he is forced to assert that demolition in order to build is not regarded as demolition. According to this opinion, it is clear that intent has no significance, so long as it is called an act of demolition, and from here follows the *Taz*’s conclusion. According to Rambam, however, that there exist forbidden and also permitted demolitions, there is certainly room to define the conditions for prohibition and allowance. My question, then, remains in place.

Please be so kind once again to serve as a faithful messenger to send my heartfelt greetings to your master and grandfather, the Gaon Rav Avraham Shapira, *shelita*.

With the blessings of Torah and mitsvot,

Aharon Lichtenstein