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A RABBINIC EXCHANGE ON THE GAZA DISENGAGEMENT

EDITOR'S INTRODUCTION

The summer of 2005 was a time of darkness and distress for the people of Israel. The nation was divided about the wisdom and legitimacy of the Sharon government's plan for disengagement from Gaza and the evacuation of Jewish settlements. The human cost to the longstanding communities of Gush Katif was wrenching. The pain and division among religious Zionists was even sharper, due to our halakhic and existential commitment to *yishuv Erets Yisrael*, and was compounded by the fact that so many of the dislocated settlers are involved with the larger international religious-Zionist community.

One question, the answer to which will not be known for a long time, is whether the unilateral action on the part of the Israeli government will succeed in strengthening long term security and assuring the Jewish character of the state. Many are doubtful and others are certain that the short-range results, in any event, will be a prohibitive increase in violence and terror. The other great question is whether the benefits, even if they are as hoped by the government, justify the amputation of Jewish settlement and relinquishment of control in parts of *Erets Yisrael*.

The crisis was most intense for the IDF soldiers who were charged with the task of executing the evacuation orders. Several prominent rabbis, including R. Avraham Shapira, the venerable head of Merkaz ha-Rav, and former Ashkenazic Chief Rabbi of the State of Israel, issued halakhic directives prohibiting soldiers to obey orders that contravened their halakhic positions. Instructing soldiers that it is their duty to engage in selective disobedience reflects the severity with which these rabbis regarded the government's decision. In the event, the evacuation took place with relatively little disruption.

The correspondence printed here is a monument to those difficult days. R. Aharon Lichtenstein, head of the Har Etzion *hesder* yeshiva, and

an opponent of selective disobedience in this case, took it upon himself to question R. Shapira about his *pesak*. The primary focus was R. Shapira's opinion on disobedience. A secondary issue was the baleful question of what to do with the synagogues remaining in Gaza: should they be dismantled, as the government had determined, despite the halakhic prohibition of demolishing synagogues, or would it be worse to leave them standing, vulnerable to desecration by enemies of Israel and Judaism?

R. Avraham Sylvetsky, grandson of R. Shapira, responded on his behalf. R. Lichtenstein's response brought forth another letter from R. Sylvetsky and eventually a second letter from R. Lichtenstein, which will be included in our next issue. By the later stages, the practical questions had become moot. Yet this halakhic exchange remains important as an engagement in Torah, intended to clarify doctrine for the sake of correct practice, conducted under the pressure of urgent and painful events.

SHALOM CARMY

RABBI SHAPIRA'S RULING*

Paragraph after lengthy paragraph on the way of the Torah in these important matters can be written, but at this time I will give you as an answer the brief, practical, halakhic verdict—so that the house of Israel will know the way of the Torah and go in the way of its commandments.

A) According to Torah law, it is completely forbidden to give land in Israel to a non-Jew, due to the prohibition of *lo tehanem* (“Do not give them a foothold in the Land,” Deut. 7:2) and due to the nullification of the commandment to settle the land of Israel that is incumbent upon every individual of Israel. This prohibition applies to every Jew, soldier and civilian alike. An order to take part in the evacuation of Jews from their homes in order to give over the land to non-Jews is an order that is against the religion of our holy Torah and forbidden to fulfill. Every order that is contrary to Jewish law and compels one to violate the words of the Torah holds no validity, is forbidden to fulfill and no person has the authority to deliver it. About such instances Rambam

**This translation, by Ezra HaLevi and Yishai Fleisher, appeared in the August 9, 2005 edition of www.israelnationalnews.com, and is reprinted with their permission.*

wrote, “It goes without saying that if an order of the king nullifies a commandment, then it is not listened to” (*Hilkhot Melakhim* 3:9). Anyone who violates this prohibition will not be exonerated, not in this world and not in the world to come.

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.

G) Only great sages of the generation whose decisions are widely accepted in Israel are allowed to adjudicate difficult questions in all parts of the Torah, and are allowed to render such decisions that affect all of Israel. All those who have not reached this level should abstain from rendering decisions on these issues. If he does render decisions on this matter, the

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Rambam has already called him (*Hilkhot Talmud Torah* 5:4), “An evil person, a fool, and haughty,” and it is furthermore said about him, “Many corpses she has made to fall, etc.,” and it says about him, “And many are its dead.” These are the small students which have not studied Torah sufficiently; and they wish to aggrandize themselves before the ignoramuses and the people of their city; and they leap and sit at the head to instruct Israel; and it is they who increase conflict; and they are the destroyers of the world who put out the light of Torah and who ruin the vineyard of the God of Legions. It is about them that Solomon has said in his wisdom, “Small foxes have taken hold of us, small foxes destroying the vineyards.”

H) Those who follow the rulings of rabbis who have not reached the level of rendering decisions in these matters (as was addressed above), are not categorized as inadvertent transgressors, and they too will be judged. (See *Pithei Teshuva*, *Even ha-Ezer* 17:140; *Yoreh De'ah* 99:5 in the name of the *Tsemah Tsedek ha-Kadmon*).

I) From the straits, in the ‘days between the straits’ [the three weeks of increasing mourning culminating with the 9th of Av], God will hear the voice of His nation and will answer us bountifully, and out of suffering and tribulation He will find for us salvation and well-being and He will take away the shame of His nation from the whole earth, because God has spoken.

Rabbi Avraham Kahane Shapira

RABBI LICHTENSTEIN’S QUESTIONS*

11 Menahem-Av, 5765 (August 16, 2005)

To the Rosh Yeshiva of Yeshivat Mercaz HaRav

Ha-Gaon Rav Avraham Shapira, *shelita*:

A halakhic ruling issued a few days ago by your eminent Torah authority has been brought to my attention. Allow me to raise several questions of clarification, in order to understand your position more clearly.

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

Let me preface my remarks by saying that I come not, God forbid, to provoke, nor in the role of one who feels insulted or offended. May Heaven be my witness that were it not for the importance and urgency of the matter—many see it as bordering both on a breach of the honor of God’s name and on issues of life and death—I would have kept silent. My objective is merely to clarify positions and draw people closer together.

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

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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 a similar context, a parallel question arises. You determine that whoever fails to obey his ruling “will not be cleared” (*lo yinakke*). This phrase is exceedingly harsh; it is what moved our Sages to include the prohibition of taking a false oath among the most severe transgressions, even though it is technically a simple negative commandment. What are the principles and sources, on the basis of which the evacuation of a settlement in the Land of Israel is included among the most severe transgressions, when both the Sages and Rambam mention only the prohibition of taking God’s name in vain as being exceptional in this regard? Another point on the same topic, I assume that your ruling was given to someone who regards himself as subordinate to his authority. Do you think that the ruling is valid, and to the same degree of severity, for members of other communities, whose leaders have not expressed adopted your view, and may even rule in the opposite manner? For example, what would you recommend to a disciple of my revered teacher, Rabbi Yosef Dov Soloveitchik, *zt”l*, who resolutely and vigorously asserted that there is no prohibition to hand over portions of the Land of Israel to the nations of the world when there are considerations

of saving life, and moreover held that the definition of these considerations must take into account the views of military and political leaders? And if someone thinks that, from a purely political perspective, the prospects of the evacuation are greater than the dangers, anticipating that it will contribute to saving lives, and wishes to participate relying on Rashba (*Responsa*, I, 413): “And even the most pious of the pious are not permitted to do their work by way of trust [in God], but only in the manner of the world”—do you believe that such a person may be permitted to do so?

I am aware that you presumably reject this assessment, and I too am not convinced that it is correct. But is it obvious to say that anyone who adopts it and acts accordingly “will not be cleared”? Is there no room to clear him, even according to the assumptions of your ruling, in line with Rambam (*Hilkhot Shabbat* 2:16): “If a person heard that a child drowned at sea, and he spread out a net to rescue him, but he only caught fish, he is exempt from all liability”—that is to say, that in cases where a person’s actions are motivated by the desire to save life, he can be excused from liability because of his motivation? Or perhaps a distinction must be made between a failure in execution and an error in appraising reality?

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 tebonnem* [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 tebonnem*” 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 tebonnem*”?

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You determine as obvious that whoever demolishes part of a synagogue building or its accessories violates a biblical prohibition. This appears to be the position of Rambam, as noted in his enumeration of the mitsvot (though this point is omitted both in *Sefer ha-Mitsvot* and in the *Mishneh Torah*, as has been discussed at length by the *Aharonim*). But many *Aharonim* have suggested that according to some *Rishonim* this is no more than a rabbinic prohibition, especially according to those who maintain that the very sanctity of a synagogue is a rabbinic decree, but perhaps even according to those who deem the synagogue's sanctity to be Torah law, insofar as the Gemara only mentions demolition of the stones of the Sanctuary or of the Temple courtyard, or burning consecrated wood; and minor sanctuaries, i.e., synagogues, were not explicitly added. Do you ignore these opinions because you accept as obvious the view of the *Sefer Yere'im* that the sanctity of a synagogue is by Torah law? Or that even if the sanctity of the synagogue building itself is only by rabbinic decree, demolishing a synagogue is forbidden by Torah law, because it is intended for Divine service, and its destruction is thus an insult, as it were, against God—this being precisely what is forbidden according to a close reading of the verse, “You shall not do this to the Lord, your God” [Deut 12:4 and *Sifri*]?

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” [*derekh hashbata*] (*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?

Despite Hazal's assertion that at the time of the destruction of the Bet ha-Mikdash, God performed an act of lovingkindness towards the Jewish people when expending His wrath on wood and stones, limiting thereby the human harm, there is no doubt that in our case the fate of the synagogues is especially painful—both because of their own sanctity

and because they symbolize the social and communal fabric that is liable 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 mitsvot 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.

I conclude as I began. I have not come, God forbid, to provoke, but to clarify and seek elucidation. In the event that you consent to address my questions and have the time to respond, it will contribute to

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the understanding of a complicated issue that deeply touches our very souls. Would that the Master of the Universe grant us discussion of more joyful and heart-warming issues, in an atmosphere of calm and tranquility, both personal and communal.

With the blessing of Torah and mitzvot,
and with amity and esteem,

Aharon Lichtenstein

RESPONSE BY R. AVRAHAM YISRAEL SYLVETSKY ON BEHALF OF R. SHAPIRA*

(Ed. note: Throughout the text, R Lichtenstein is referred to as *Kevod Torato*, meaning Honored Embodiment of Torah, and R. Shapira is referred to as *Mori Zekeni*, meaning my Master and Elder, as well as alluding to the writer's relationship with his grandfather by marriage. As the English translation of these titles is unwieldy, the Hebrew transliteration is used instead.)

18 Menahem-Av, 5765 (August 23, 2005)
To Ha-Gaon Rav Aharon Lichtenstein, *shelita*.

Kevod Torato's letter to *Mori Zekeni* [Ha-Gaon Rav Avraham Shapira] *shelita*, containing several requests for clarification, has come to my attention. I see myself obligated as a disciple who discusses matter of law before his masters, but is himself void of Torah and wisdom, to lay before *Kevod Torato* that which I have heard from *Mori Zekeni, shelita*, things that are already well-known in the Torah world. May this serve as yet another opportunity to clarify, illuminate, and publicize the clear approach of *Mori Zekeni, shelita*, on this matter.

I must emphasize that I bear sole responsibility for what I write, in accordance with my limited understanding and intelligence. If error has fallen into my words, attribute the mistake to me. I pray that we should

*Translated by David Strauss

be able to clarify and elucidate other issues out of the joy of study in times of peace and serenity, calm and security.

I shall briefly summarize the issues raised by *Kevod Torato*:

1) The danger posed by the refusal of orders to the strength and fortitude of the Israeli army and the disengagement plan's prospects for success—do these factors suffice to forbid the refusal of orders and permit the transfer of land into non-Jewish hands.

2) The expression, “he will not be cleared” (“*lo yentakke*”), mentioned in *Mori Zekeni*'s ruling, and its appropriateness in this context.

3) The relationship between the “*heter mekhira*” (allowance to sell the Land of Israel during the Sabbatical year) that permits even the prohibition of “*lo tehonnem*” (handing over any part of the Land of Israel to non-Jews) to the prohibition of handing over land to non-Jews in the case under discussion.

4) The parameters of the sanctity of a minor sanctuary, i.e., a synagogue, and whether a soldier's participation in the demolition of a synagogue is regarded as involving “destructive intent” (*derekh hashbhata*).

5) Destroying the synagogues after the Jews have left Gush Katif.

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.

It seems to me that in the case of a definite and absolute prohibition nobody would even consider permitting Torah prohibitions on the basis of assessments and estimations about the future that are subject to

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dispute and not at all necessary. It follows then that *Kevod Torato's* question regarding the refusal of orders—that is wholly based on concern regarding the future strength of the IDF—rests of necessity on the assumption that the prohibitions included in the expulsion order are not absolute prohibitions (at least in the present situation) like all other Torah prohibitions.

This underlying assumption stands in utter contrast to the well-known position of *Mori Zekeni, shelita*, that the prohibitions applying to the handing over of portions of the Land of Israel to non-Jews even in the present situation are no different than all other Torah prohibitions, e.g., the desecration of the Sabbath and prohibitions pertaining to forbidden sexual relations, as will be explained below. Thus, the basic assumption underlying *Kevod Torato's* question falls away, and along with it the entire question as well.

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.

I must point out another factor. Many professionals argue that it is precisely the participation of Jewish soldiers in the expulsion of Jews from their homes, with all that this entails, and their abnormal brushing against innocent citizens of the state, that will seriously impair the psychological strength of our soldiers, leaving them with psychological scars that will clearly impair their future functioning as soldiers. The strength of the IDF stands on solid moral foundations, which fills our soldiers with courage, causing them to “submit their hearts to their Father in heaven,” and allowing them, now as in days of old, to overcome and emerge victorious over our enemies. Fulfilling an expulsion order like this removes this vital foundation, leaving the IDF crushed and broken, without a moral spine. To our great disgrace, the people of Israel have already seen Israeli soldiers plundering some of the houses of the settlers of Gush Katif. All this, without even taking into account the deep psychological scars of those who have been expelled from their homes and those close to them, scars that will lead to a feeling of alienation from the IDF soldiers even among the adults, but especially among the youth. Such an attitude is clearly a recipe for disaster.

Kevod Torato does not relate to these concerns about a blow to the strength of the IDF, which have been voiced by professionals in recent days. In contrast, *Kevod Torato* relates to concerns about the effects of refusing orders with great seriousness. Here the son asks: What is the basis for this absolute reliance on speculations regarding an impairment of the strength of the IDF if someone refuses an order, in absolute disregard for concerns about a blow to the strength of the IDF resulting from the fulfillment of this questionable order? Does *Kevod Torato* incline to accept one assessment of the situation over the other, or perhaps God’s secret is revealed to those who fear Him? (With *Kevod Torato*’s permission, I have used the same wording as in the original letter, in order to clarify that, in my humble opinion, the line of thought adopted in the question is equally valid regarding deciding between these two assessments of the situation.)

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As for *Kevod Torato's* question concerning the disengagement plan's chance of success as a factor to permit the expulsion of Jews from their homes and handing over land to non-Jews:

Many leading *posekim* maintain that the mitsva of conquering and settling the Land of Israel applies even in a situation where individuals are exposed to danger, as long as we are not dealing with a situation of certain *pikku'ah nefesh* to the general community. This position is based, among other things, on the famous words of the *Minhat Hinnukh* (425 and 604) regarding obligatory war—"All mitsvot are set aside by danger. [In the case of] this mitsva, however, the Torah commanded [us] to fight them, and it is well known that the Torah does not rely on miracles, and it is the way of the world that both sides suffer casualties during a war. Thus we see that the Torah decreed to fight them despite the danger. In this situation, the danger is set aside [by the mitsva]." By its very nature, the obligatory war to conquer the Land of Israel involves a dangerous situation of *pikku'ah nefesh*. But nevertheless, the Torah decreed to fight and conquer. From here we see that the mitsva to take possession of the Land [of Israel] applies even in a place of danger to individuals, as long as the community as a whole will continue to exist (see also *Responsa Mishpat Kohan*, no. 143).

This assertion is based on the assumption that the normal existence of a civilized country obligates defense of the country's boundaries, even at the cost of the deaths of individuals. This was the justification for establishing a Jewish homeland precisely in the Land of Israel, in a place of danger, even though it would appear that, realistically speaking, from a security perspective it would have been far simpler to establish a state in another place (e.g., Uganda). This is, among other things, the halakhic justification for the Israeli army's waging defensive wars against our enemies even at the cost of the deaths of our finest sons. This is also the justification for individuals to live in the Land of Israel despite the difficult security situation and the threat of terror hanging over it.

I unabashedly admit that, owing to my deficiency, I do not fully understand the position that *Kevod Torato, shelita*, cites in the name of Ha-Gaon Rav Yosef Dov Soloveitchik, *zt"l*, that there is no prohibition to hand over portions of the Land of Israel in a situation of *pikku'ah nefesh*, that is to say, in a situation of danger to individuals. In any event, I assume that, after the fact, even *Kevod Torato* is happy that at critical junctures in the history of Zionism, this position was not accepted (the rejection of the Uganda plan, the declaration of the establishment of the State, the continued occupation of certain areas during the

Six Day War, such as the Temple Mount and the Western Wall, putting our soldiers in danger even after the danger that hovered over the entire State of Israel was removed). However, go out and see what the people are doing. It seems that the Jewish people, those trained to observe God's mitzvot, hold fast to God's inheritance even in the face of danger, and do not take into account "considerations of *pikku'ah nefesh*" as a factor that obligates them to move to a more secure community.

During the period that terrorists were shooting relatively frequently on the Tunnels Road leading to Gush Etzion, and even succeeded in murdering a number of local residents, the road undoubtedly fell into the category of a place of danger (the mortars that fell in Gush Katif resulted in fewer fatalities). But nevertheless, we never heard any of the Rabbis, including *Kevod Torato, shelita*, calling upon local residents or the Har Etzion Yeshiva to move to a safer location. Is this not because of the basic halakhic recognition that the mitzva of settling the Land of Israel applies even in a situation of danger?

The security situation today in the State of Israel is by no means simple. The road leading to Gush Etzion, like the road that led to Gush Katif, is not free of danger, but nobody would suggest that we are dealing with *pikku'ah nefesh* regarding the nation as a whole, but only of individuals. It is clear from all that has been said thus far that, according to *Mori Zekeni, shelita*, and the other *posekim* (mentioned above), the current security situation does not cancel the mitzva of settling the Land of Israel in any of the territories held today by the State of Israel. And thus it follows that the prohibition of "*lo tebonnem*" has also not been cancelled with respect to those territories. Thus it is clear that it is absolutely forbidden by Torah law to expel Jews from their homes in order to hand over the territory to non-Jews, regardless of the chances of success for the disengagement plan. This prohibition is no different than any other prohibition in the Torah, such as the desecration of the Sabbath or forbidden sexual relations.

According to this, we understand why the words of Rashba in his responsum and of Rambam in *Hilkhot Shabbat* (assuming that they relate to our discussion, as argued by *Kevod Torato*) are not at all relevant in our situation. As we have explained, we are not dealing here with the ordinary considerations of *pikku'ah nefesh*.

Moreover, I must say, that even according to the position of *Kevod Torato, shelita*, I fail to understand how his approach to the disengagement plan and the order to expel Jews from their homes follows from it. Firstly, even those defense experts who support the disengagement plan openly

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concede that we are dealing with a risk, based on speculations about the future which they themselves admit are not necessary. It is impossible to ignore the fact that the approval granted to assume risks on the backs of citizens expelled from their homes stems at times from the basic political outlook of these professionals. This outlook downplays, and almost wipes out the value of settlement in Judea, Samaria, and Gaza for reasons that are totally unconnected to considerations of *pikku'ah nefesh*. Indeed, some of these professionals see no security value to settlement in Yesha, but neither do they see any other value in such settlement. This explains why they are not afraid to assume a risk, even if it involves the uprooting of settlements. Are these to be regarded as “considerations of *pikku'ah nefesh*” that suffice to cancel a mitsva and violate Torah prohibitions?

Moreover, assuming that we ignore the political beliefs of these professionals, the issue of *pikku'ah nefesh* in the disengagement plan is subject to dispute. There are security professionals who think that the plan will be beneficial and there are others who maintain the very opposite, that it will cause harm and result in a greater loss of life. This is reminiscent of what emerges from the responsum of Radbaz (vol. I, no. 66) regarding a dangerously ill patient, some of whose doctors maintain that a certain drug will save his life, while others think that that very drug will kill him. Radbaz rules there that *shev ve-al ta'ase adif*—sitting back and doing nothing is the preferred course of action. Applying this principle to our situation means that there is no room to allow the removal of settlements relying on a single school of defense authorities.

Even if we say that in our case there is a “deciding doctor,” namely the Prime Minister, would it be outrageous to suggest that the Prime Minister’s considerations are not, halakhically speaking, “considerations of *pikku'ah nefesh*”? A lack of understanding of the value of mitsvot in general and of the mitsva of settling the Land of Israel in Gush Katif in particular is liable to permit parameters that have no connection to *pikku'ah nefesh*, according to its halakhic definition, to enter into the Prime Minister’s considerations. Even if the Prime Minister is motivated solely by concern for the welfare of the State of Israel, is it clear that he is moved by considerations of *pikku'ah nefesh*? For example, does financial aid from the United States and other countries permit handing over parts of the Land of Israel to non-Jews (on the assumption that the absence of such aid would not constitute a mortal blow that would shake the foundations of the entire country; see *Hullin* 7a)? Is international recognition that would lead to rising stock prices and increased business investment in the State of Israel also an accepted parameter

that would permit Torah prohibitions? Even according to the position of Ha-Gaon Rav Yosef Dov Soloveitchik, *zt"l*, is it not necessary to clarify and ascertain that indeed we are dealing with the halakhic parameters of *pikku'ah nefesh*? And what if the Prime Minister were to decide that because of the depressed economic situation all of Israel's citizens must work on the Sabbath in order to maintain the state's viability? Would *Kevod Torato* accept such a decision without question simply because the Prime Minister decided, without a halakhic examination whether indeed his parameters comply with halakha? Has *Kevod Torato* explicitly heard the Prime Minister's motives; did he ever explicitly mention *pikku'ah nefesh*? Or perhaps he is driven by other factors that are unrelated to the halakhic issue. In my humble opinion, it is possible that even according to Ha-Gaon Rav Yosef Dov Soloveitchik, as long as the matter has not been clarified, and the uncertainties outnumber the certainties, the practical halakhic decision should be that *shev ve-al ta'ase adif*—sitting back and doing nothing is preferable.

2) Regarding *Kevod Torato*'s question regarding the formulation used by *Mori Zekeni, shelita*—“*lo yentakke*,” “he will not be cleared,” which according to *Kevod Torato* relates exclusively to false oaths:

Owing to my deficiency, I do not understand what *Kevod Torato* means to say. Does *Kevod Torato* not recognize the distinction between the wording of the Torah from which the rabbinic inferences are drawn and other formulations, whether scriptural or rabbinic? It is impossible that the verse in Proverbs (6:29) has escaped *Kevod Torato*—“So too he that goes in to his neighbor's wife; whoever touches her shall not be cleared (*lo yinnake*)” and what Ibn Ezra says there: “This means ‘he will be destroyed,’ as in ‘I will not leave you altogether unpunished’ (*nakke lo anakkekha*)”, and so too *Metsudat David*: “For whoever touches her will not be cleared of the fitting punishment.” And there in the continuation (Proverbs 17:5): “One who mocks the poor insults his Maker and one who is glad at calamity shall not be cleared (*lo yinnake*).” And again (Proverbs 19:5): “A false witness shall not be cleared (*lo yinnake*), and he that utters lies shall not escape.” Should we also come to King Solomon with the question, how could he use the expression, “*lo yinnake*,” that is reserved exclusively for false oaths?

We see then that the expression “*lo yentakke*” is not restricted to false oaths; all that it means is that a person will not escape punishment, that is to say, eventually punishment will arrive. When, indeed, the Torah used this term in an exceptional manner, it allowed the Sages to

learn about the severity of the prohibition of false oaths. But I fail to understand how it follows from this that the expression is reserved exclusively for false oaths.

I am absolutely certain that *Kevod Torato* is far more fluent than I am in the literature of the codes and the responsa of the *Rishonim* and the *Aharonim*, in which innumerable examples of the use of the expression “*lo yenakke*” may be found, not necessarily in the context of false oaths, but rather in connection with the simple meaning of the expression—he will not escape punishment, as the term was used by *Mori Zekeni, shelita*. I will suffice with a few such examples: *Responsa Maharalbah* (no. 147, *s.v. od siyyem*) brings this expression regarding the prohibition of spreading gossip; *Responsa Maharitatz* (vol. I, no. 11) uses this expression with respect to the prohibition of Gentile wine; *Responsa Havvot Ya’ir* uses this expression in connection with those who waive obligations not in accordance with Torah law; *Responsa Yehudah Ya’aleh* (vol. I, *Orah Hayyim*, no. 5) uses this expression in the context of insulting Torah scholars; and in *Responsa Mishpat Kohen*, Rav Kook, *zt”l*, uses this expression in connection with those who wish to do harm to those who refrain from agricultural work during the Sabbatical year. In his *Mishna Berura*, the *Hafets Hayyim, zt”l*, also uses this expression with respect to one who touches the little finger of a woman (sec. 75, no. 7). These are just a few of the many examples of an expression commonly used by the Sages to describe a punishment that awaits one who violates the Torah. Thus, I fail to understand *Kevod Torato*’s question.

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

Kevod Torato asked how *Mori Zekeni, shelita*, can rely on leniencies regarding the prohibition of “*lo tehonnem*” 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 tehonnem*” 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

far-fetched grounds for leniency, as the *posekim* have explicitly stated in their responsa. This argument is so simple that it is unnecessary to explain it at length; it is clarified in the words of the *posekim* who permitted the sale. I shall cite from what they say. In *Yeshu'ot Malko* (*Yoreh De'ah* 55)—“It is obvious that the prohibition of ‘*lo tehonnem*’ does not apply here particularly when he sells on condition that it be returned.” In the letter of the *Aderet* (printed in *Eder ha-Yakar*)—“And what is all this if he sells them for several years in such a manner that we are confident that it will be returned to us later, for it seems that “*lo tehonnem*” should not apply to this at all.” See also the words of Rav Yitshak Herzog, *zt”l* (*Tehumin*, vol. 2)—“Ha-Gaon Rav Yitshak Elhanan, *zt”l*, the rabbi of Israel, initiated the *heter mekhira* of selling to a non-Jew, and it is primarily based on the fact that a sale for a fixed period of time is not included in the prohibition of giving them an encampment in the land.”

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.

4) Regarding *Kevod Torato*’s suggestion that “destructive intent” is a subjective matter, depending upon the individual’s intent, and that when there is no malicious intent to cause damage because it is part of a larger project, there is no “destructive intent”:

I understand that even *Kevod Torato* is not suggesting that the destruction of the synagogues in Gush Katif should be defined as destruction for the sake of construction. Indeed, we find the idea of destruction for the sake of the construction of another object with respect to fruit trees which may be cut down in order to preserve other trees (see *Bava Kamma* 92a, and Rambam, *Hilkhot Melakhim* 6:8. And according to Rosh [*Bava Kamma*, ad loc.], even destruction necessitated by a need for the place itself is not regarded as “destructive intent,” because it is for construction; see *Taz*, *Yoreh De’ah* 116, no. 6. And see the *Taz* who notes that the *Tur* omitted this law. Already the *Aharonim* asked a question based on *Tosafot*, *Bava Batra* 25a, *s.v.*, *ana*, who disagree with Rosh on this issue). It is clear, however, that in the case under discussion, even according to *Kevod Torato*’s understanding, the destruction of the synagogues involves no con-

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 *Hilkhot 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.

5) Regarding the sanctity of a synagogue:

I will not discuss the definitions of sanctity according to *Mori Zekeni, shelita*, since there are no halakhic ramifications regarding the prohibition of demolishing a synagogue. I will only say that the words of *Mori Zekeni, shelita*, (as he explained them to me when he issued his ruling) were directed first and foremost to the prohibition of demolishing synagogues while the community was still populated by Jews. I myself saw how the police brutally broke into the synagogue in Kefar Darom, showing no mercy to anything standing in their path. From my vantage point in the Bet Midrash, I could not see whether they were destroying or demolishing stones of the synagogue, but they certainly had tools in their hands that could have been used for that purpose. In any event, I saw with my own eyes, not those of a stranger, how close matters came to execution, while the sounds of Torah and prayer were still coming from that miniature sanctuary.

This letter is sealed with tears, while our brothers, the residents of Gush Katif have been expelled from their homes, cast out from place to place, without finding rest for their feet. There is a breach and a loud cry in our streets, but no one speaks out. The voice of Jacob that had been heard from synagogues and study halls has been silenced, and the voices of children that had risen from their classrooms have been quieted. Woe to us, for we have sinned, that such a thing has transpired in our day, that our land has been turned over to strangers, our homes to non-Jews.

I close with prayer and hope for the dawn of a speedy salvation, when God will comfort Zion and its ruins. Our cities shall again overflow with prosperity; and the Lord shall yet comfort Zion, and shall yet choose Jerusalem.

With blessings of Torah and great esteem,

Avraham Yisrael Sylvetsky

R. LICHTENSTEIN'S RESPONSE*

Monday, *Parashat Shofetim*
1 Elul, 5765 (September 5, 2005)

To Ha-Rav Avraham Yisrael Sylvetsky,

Many thanks for your reply to the letter I sent your wife's grandfather, Ha-Gaon ha-Rav Avraham Shapira, *shelita*. I wish here to address your comments in general. I infer from your words that you are the author, but that the content reflects views that you heard from your revered grandfather. I assume that you absorbed the message and that you present it faithfully—that is to say, the fundamental outlook, though not necessarily the specific response to my letter. Nevertheless, I shall respond to your letter, as requested, as your own, and I shall address the system of ideas elaborated therein, including what you state and what you omit.

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

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Let me begin with your closing remarks—commiserating in the pain and distress of those uprooted from the settlements, and along with that, the prayer and hope that their light will yet break forth like the morning, when from on high God will pour His lovingkindness and goodness upon them and upon His people the house of Israel, with His good and overflowing hand. The pain and agony are genuine, and let us hope that our prayers are genuine as well; but it is not our connection to the distress that is the subject of controversy. That connection is our shared heritage, and if there is a debate, it involves fundamental issues—halakhic, ideological, and factual.

Your letter may be divided into two—the first half that deals with the issue of refusing orders, with its various ramifications, and the second half that attempts to rebut some of the specific points that I had raised. It seems proper that I should begin with and focus upon the essential, and then proceed to the secondary details, some of which also have not insignificant weight.

The central issue itself divides into two. I had remarked that there are those who claim that your revered grandfather's ruling ignores the reasons advanced by opponents of refusing orders in connection with the disengagement plan: out of concern that even if we agree to view the government's plan as a poor initiative, the damage to the IDF's strength and cohesion as a consequence of selective refusal of orders is even worse; and the possibility that the government views the plan as contributing to the long-term security of the state and its inhabitants, so that from its perspective it is promoting of *pikku'ah nefesh* that justifies actions that in other circumstances would be forbidden by Torah law.

You offer two rejoinders:

There is no element here of possible *pikku'ah nefesh* whatsoever. For “it is almost an insult to the intelligence of the IDF soldiers to fear that they would draw an analogy from refusing orders on religious grounds to refusing orders in other contexts.”

Even if we assume that the element of possible *pikku'ah nefesh* exists, it need not be taken into consideration, whether because we know that “many leading *posekim* maintain that the mitzva of conquering and settling the Land of Israel applies even in a situation where individuals are exposed to danger, as long as we are not dealing with a situation of certain *pikku'ah nefesh* to the general community,” or because “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.”

The two arguments relate, of course, to different areas—the first, to the assessment of reality, and the second, to the determination of halakhic decision. As for the factual plane, when I read and heard these things, “I was astonished for an hour” [Daniel 4:16]. Is the entire IDF made up of residents of Zikhron Meir and Kiryat Moshe? Are the great majority of them students in *hesder yeshivot* and graduates of the Torah *mekhivot*? Let us remember that the concern about increased refusing orders is not limited to widespread insubordination. It is enough that the phenomenon spreads to a significant minority to weaken the system to the point that it could no longer depend upon the soldiers in its ranks. And furthermore, it must be noted that I did not predict with certainty that the affliction would spread; for my purposes, it suffices to recognize that the possibility exists, and this very possibility impairs our inner strength and our position vis-a-vis our enemies. Do you deny even the plausibility of the phenomenon? If so, from where do you derive your unequivocal certainty? It was only a few days ago that we were all witness to the results of an erroneous factual assessment, when, on the one hand, the government’s determination was inadequately appreciated, while on the other hand, the expectation that the national-religious community would respond to the various calls directed at it was highly exaggerated. Is there anything in the difficult scenes that encourages renewed risk-taking on the assumption that there is no basis whatsoever for concern?

How to assess reality also touches upon, though in a different form and on a different level, the second point that I mentioned—the argument that it is possible that the disengagement plan will save lives and contribute to the security of the country in the long run. I understand that you categorically reject such a possibility, yet it cannot be denied that there are well-informed people of balanced judgment who do think so. This fact alone removes the sting from the rhetorical and hypothetical questions that you raised in order to expose a logical and tautological defect in my letter: “Were a legal order given to all IDF soldiers obligating them to violate the Torah, would there be room to obey it? Were an order given to unnecessarily desecrate the Sabbath, etc.” The effort to topple a position by dragging it to extreme and utterly unrealistic cases constitutes the well-known tactic of *reductio ad absurdum*. In our case, however, it is only effective if we add the assumption that we are dealing here with an initiative that parallels arbitrary Sabbath desecration. Other-

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wise, the assertion of “*Mori Zekeni, shelita*, that the prohibitions applying to the handing over of portions of the Land of Israel to non-Jews even in the present situation are no different than all other Torah prohibitions, e.g., the desecration of the Sabbath. . . .” will not decide the issue. Surely forbidden Sabbath labors are performed in the army when deemed necessary; if we come then to compare our situation with the Sabbath desecration, on the contrary, let us draw the comparison to the end. At the very least, let us agree that even one who is not concerned that the army will disintegrate due to refusal of orders should admit that if a need exists (and that need requires definition), there is no room for refusing orders. Hence support for refusing orders is based on a certain way of looking at things—factually, politically, and militarily—and is conditional upon it.

Moving to the second area, I am not embarrassed to admit that to me your halakhic assertions are no less radical and astonishing. You claim that because of the mitzva of settling and conquering Erets Yisrael we may not retreat from a single settlement in the land, “as long as we are not dealing with a situation of certain *pikku’ah nefesh* to the general community.” An explanation of your explanation—two scenarios are excluded: 1) a case of possible but uncertain *pikku’ah nefesh* with respect to the general community; 2) a case of certain *pikku’ah nefesh* with respect to individuals. My ears are ringing! If the choice must be made between the certainty of retreating from a particular settlement and handing it over to non-Jews, on the one hand, and the possibility, at some level or another of likelihood, of the destruction of the entire state and its inhabitants, men, women, and children, God forbid, on the other hand—is it conceivable that we should prefer the second option, merely because the dreaded outcome is only possible but not certain? And if it is conceivable to the mind, is it acceptable to the conscience, halakhic and moral? As to the second scenario, here too your position is puzzling. I accept the *Minbat Hinnukh’s* objection to the position of the *Hinnukh*, that obligatory war is only obligatory in a situation free of danger. But does this mean that there is no room for considerations of *pikku’ah nefesh* with respect to individuals when making political and military decisions? The *Minbat Hinnukh* argues that the risks of battle do not exempt an individual from going out to war, as similar risks would exempt him from eating matsa. But it is clear as day that the system, on its part, must take into account the number of potential casualties, in determining priorities and choosing channels of action. The fact that war permits and/or obligates a breach of the barrier of “You shall live with them,” does not in any shape or manner lead to the conclu-

sion that the government may totally disregard the fate of individuals and allow the wholesale letting of blood in order to achieve its goals. Since the subject is the quantification of human life and varied scenarios, it is certainly difficult, and at times perhaps cruel, to set hard and fast rules and numbers in the matter under discussion, but there is no escape from considering this factor in the framework of operative decisions. No civilized country ignores it; should the world of halakha wipe it out completely? Achieving the objective is not the only thing that must stand before our eyes, but also the human cost.

Likewise, I am surprised by your belittling attitude towards setting aside or overriding Torah prohibitions on the basis of “speculative fears and uncertainties based on future variables that are insufficiently clear.” The Talmud states plainly that if non-Jews come to “a border town, even if they do not come to take lives, but for straw and hay, we go out against them with weapons, and we desecrate the Sabbath on their account” (*Eruvin* 45a). Rashi explains this ruling on the spot: “Lest they capture it, and from there it will be easier to conquer the land.” Are these not “speculative assessments based on future variables that are insufficiently clear”? Are these enemies who have deposited their future plans in the hands of the residents of the border town? If not, who can guarantee that the enemies intend to capture the town and use it as a spearhead towards conquering the entire district and country? Surely it is possible that they will be satisfied with the booty of straw and hay and return to their base. It is clear, and this is how every Jewish community conducted itself from antiquity, on both the public and the individual planes, that we certainly consider possible developments, even to permit Torah prohibitions that are certain and immediate, even when those developments are insufficiently clear, and that we view the very exposure to risk as ground for permitting prohibitions. These are the very words of Rava who preferred Shemuel’s source for setting aside prohibitions for reasons of *pikku’ah nefesh* to the other sources (including those of Tan-naim), because “all of them apply to certain [*pikku’ah nefesh*], but regarding possible [*pikku’ah nefesh*], only Shemuel’s has no refutation” (*Yoma* 85a). (This is unconnected to the view of the *Noda Bi-Yehudah* who requires “a particular case before us” because in his opinion, novel in itself, doubt cannot arise without a foundation in reality.).

I move now from what you say to what is absent. Essentially, two things are missing. First, the awareness of variables and the readiness to take them into account. You tend to include all uncertainties and risks in one single class, as if they were all alike and at the same level. Clearly,

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however, this is not the case; there is no monolithic phenomenon here. When we assess risk, is there no significance to the likelihood of its actualization, on the one hand, and its content, on the other? Should we not distinguish between the threat of catching cold and the risk of contracting AIDS, and between what parallels them on the national level? When defining objectives that may justify risk-taking, should we not differentiate between purchasing an apartment and adding a room—and between what parallels them on the national level? The Sages testify that the returnees from Babylonia gave up many towns, deliberately not reoccupying them, in order to benefit the poor during the Sabbatical year. Were they too prepared or permissive to give up on the entire idea of reestablishing the kingdom of Israel for the sake of this noble objective? A complex situation must be dealt with in a complex manner, and at times, in a manner that is also flexible; the situation in which the State of Israel finds itself today is exceedingly complex and complicated.

The second element that—to my sorrow and surprise—is lacking is the national dimension. Recognition of the government’s authority to decide matters, to choose among alternatives, and to assess the state of the country, its opportunities and risks, is almost entirely effaced from your letter. You discuss differences of opinion among security experts, using tools that are meant to guide halakhic decision-making when disagreement erupts between physicians, and you conclude with a comparison to the Radbaz’s discussion who recommends that “it is better to do nothing” when doctors disagree about the benefit or harm caused by a particular medicine. Beyond the question regarding the Radbaz’s position in and of itself—is doing nothing preferable even when the probabilities are not equal—and beyond the question of comparing the risk of murder to that of expropriating property, there emerges an attitude toward the decisions of state institutions which disregards the government and its status. With great difficulty, you are ready to bestow upon the Prime Minister the status of “deciding physician”—but does a physician have the authority to decide, or is he merely a reliable source of information? It is precisely from your school of thought, in light of its past record, that one might have expected greater emphasis on the national state-oriented dimension.

Before concluding, I wish to relate to some of your responses to the points that I raised in my letter to Ha-Gaon ha-Rav Avraham Shapira, *shelita*:

Regarding the sanctity of a synagogue: I do not begin to understand why you—and perhaps also Ha-Gaon ha-Rav Avraham Shapira—

refuse to discuss the question I raised regarding the lesser evil with respect to the future of the synagogues. I can understand that Ha-Gaon ha-Rav Shapira may think that I am not the appropriate address for the transmission and explanation of his position on this matter, and that he deems it right to express his position in a different forum. But this is not what you say. You simply state, without explanation, that according to him, “there are no halakhic ramifications regarding the prohibition of demolishing a synagogue.” Why? You merely add that what you said in the published ruling was “directed first and foremost to the prohibition of demolishing synagogues while the community was still populated by Jews.” But is this limitation to be understood by every soldier who read the ruling? And is it implied that indeed Ha-Gaon ha-Rav Avraham Shapira maintains that there is no prohibition to destroy synagogues after the inhabitants have been uprooted?

Regarding my astonishment concerning the use of the expression “He will not be cleared”—factually, you are right in pointing out, based on Scripture and certain responsa, that the use of the term is not limited to the stringent prohibition of taking God’s name in vain. I suspect, however, that your response ignores the significance of the communication process regarding this matter, that reflects what is heard and understood, not only what is said. Not every soldier did what I assume you did—that is, run a computer check to determine where the phrase appears, and in what context. The verses at the end of Proverbs and the citations from *Responsa Rabbah* are not familiar to him. He is, however, familiar with the Ten Commandments. He, therefore, grasps the expression *lo yentakke* in its stringent and menacing context—and presumably it was intended to threaten him (in the halakhic sense, of course) accordingly. Hazal reserve such a threat for the prohibition of taking God’s name in vain, as is explained in *Shavu’ot* 39a (see there).

Regarding the prohibition of *lo tehonnem*—you assert as obvious that the prohibition does not apply to land sold for a limited period of time. This is, indeed, the position of some of the authorities who are lenient about the sale of land in Erets Yisrael in order to circumvent the prohibitions connected to the Sabbatical year. By no means, however, is there general agreement on the matter, and this point should have been noted. *Minhat Hinnukh* (mitsva 426) is in doubt about the issue, and so too apparently some *posekim*, including those lenient with respect to the *heter mekhira*, who sought other solutions to this problem, struggled with the issue. As for the matter itself, I will merely note that it is reasonable to assume that Rambam permits the sale of land for a limited

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period of time, for he explained that the sale of land is forbidden because “if they have no land, their residence is temporary” (*Hilkhot Avodat Kokhavim* 10:4). On the other hand, the plain meaning of the passages at the end of the first chapter of *Avoda Zara*, according to which only renting is permitted, implies that selling for a limited period of time is also forbidden.

The meaning of “with destructive intent”—I did not go into all the intricacies of the definition of this expression, in all its applications, nor is it my intention to do so here. I will limit myself to two short comments:

You deal with destructive work on the Sabbath, the prohibition of destroying things of value (*bal tashbit*), and the prohibition of demolishing a stone of the Sanctuary all in one stroke. This, however, may involve a mixing of things that are essentially different. Regarding the Sabbath, the term is mentioned by Rambam as grounds for exemption, whereas regarding the demolition of a stone of the Sanctuary, as also regarding the rending of priestly garments, it constitutes a condition for culpability. Clearly, then, an analogy may not be drawn from one use of the term to another.

Even in the areas where the idea of destruction leads to culpability, one must examine whether there exists full uniformity in the definition of the term, or whether one can distinguish between the prohibition of *bal tashbit*, regarding which the destructive aspect lies at the core of the prohibition, and the prohibitions of demolishing a stone of the Sanctuary and rending the priestly garments, where it appears as a condition. There is more to discuss here.

In light of events, the urgency of the discussion has of course diminished. I believe, however, and I hope that you agree, that it still has significance and value—halakhic, intellectual, and educational—as an attempt to clarify issues on our national agenda.

Please send my warmest greetings to Ha-Gaon ha-Rav Avraham Shapira, *shelita*.

With the blessing of Torah and mitsvot,

Aharon Lichtenstein