YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

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**Second Lebanon War**

**Part II**

During the Second Lebanon War, Israeli troops found themselves on Lebanese soil without basic equipment required to fulfill their mission. Some of the soldiers were ordered to either carry army rations, which was difficult, or to forage in the villages. Soldiers reported that in some cases they found themselves in situations in which they had to arrange food for themselves. One of my colleagues, a reservist captain in an elite unit, described to me how his unit baked pitas and cooked rice in an Arab village using local facilities.

A serious question came up regarding non-kosher food. Obviously, in a situation of *pikuach nefesh*, one is permitted and even required to eat non-kosher food; however, there are sources in Halakha that indicate that there is a unique leniency in wartime for doing so.[[1]](#footnote-1)

***Heter* to Eat Non-kosher Food**

The Torah mentions that when the Jewish people enter the Land of Israel, they will be allowed to eat from the spoils of war:

And it will be, when the Lord, your God, brings you to the land He swore to your forefathers — to Avraham, to Yitzchak and to Ya’akov — to give you, great and good cities you did not build, houses full of all good things you did not fill, hewn cisterns that you did not hew, vineyards and olive trees you did not plant, that you will eat and be satisfied.[[2]](#footnote-2)

The Rambam understands that these verses are referring to all wars and serves as a source permitting non-kosher food in wartime:

When the army's troops enter the territory of non-Jews, conquering them and taking them captive, they are permitted to eat meat from animals that died without being ritually slaughtered or which were terminally ill, and the flesh of pigs and similar animals, if they become hungry and can only find these forbidden foods.

Similarly, they may drink wine used in the worship of idols. This license is derived by the Oral Tradition, which interprets “full of all good things” as pigs' necks and the like.[[3]](#footnote-3)

However, the Ramban disagrees and read these verses as referring only to when the Jewish people enter the Land of Israel. In his commentary, he writes:

According to the opinion of our Sages, our verse alludes further to their dispensation that while engaged in the conquest of the Land, it is permitted to eat those good things filling the houses. Even if there are items in those houses that are prohibited for consumption by the Torah, such as pig’s necks; or if one finds vineyards that are planted with forbidden mixtures of crops or olive trees that are *orla*, it is similarly permitted to eat those grapes or olives…

The Ramban then quotes the Gemara,[[4]](#footnote-4) which mentions the dispute amongst the rabbis as to when this *heter* applies:

And this dispensation was in effect as long as [the Israelites] consumed the booty of their enemies, i.e. until they finished what they had found.

However, there are those who say that the dispensation was in effect only during the seven years when they conquered the land.

He then quotes the Rambam’s ruling mentioned above and argues with his opinion:

But this is not sound! For it is not only for the reason of saving a life or avoiding hunger that eating such things was permitted during wartime; rather, even after they captured the great and bountiful cities and they settled in them, the Torah permitted them to eat the spoils of their enemies. Furthermore, this law was not said regarding all soldiers, but only in the land that God swore to our forefathers to give to us, as is explicit here in the passage.

It seems that there are three points that the Rambam and the Ramban disagree on:

1. **To what situations does the *heter* apply**?

Rambam: all wars; Ramban: only war in the days of Yehoshua when entering the Land of Israel.

1. **To whom does it apply**?

Rambam: soldiers at wartime, Ramban: all the people entering the Land.

1. **When does it apply**?

Rambam: only in a situation in which people are hungry, Ramban: even when there is no hunger involved.

Rav Yitzchak Zev Ha-Levi Soloveitchik, known as the Brisker Rav (1886–1959) attempts to explain the dispute.[[5]](#footnote-5) The Rambam understands that the Torah’s *heter* is based on war, while the Ramban understands that it is the food itself (the *cheftza* or object) which is permitted at the time of entry to the Land of Israel.

This explanation justifies the Rambam’s application of the *heter* to soldiers only, as well as to logic why this law applies to all wars; however, it does not necessarily explain why the Rambam limits the *heter* to situations when the soldiers are hungry.

The Poskim understand that any discussion as to whether or not this law would apply today is based on the Rambam’s opinion. However, Rav Yosef Babad understands that our halakha would apply, even according to the Ramban, to all wars in which the Land of Israel is occupied by Israeli forces.[[6]](#footnote-6) He raises a dilemma regarding the Land of Israel after it has been captured, lost and recaptured.

**The Rambam’s Rationale**

Rav Yosef Karo points out that it is obvious that the Rambam’s *heter* is not limited to soldiers who are starving, because in that case *pikuach nefesh* would override the prohibition of eating non-kosher food.[[7]](#footnote-7)

Rav Naftali Tzvi Berlin, the Netziv, understands that the *heter* for all soldiers to eat non-kosher food is based on the well-known principle of *pikuach nefesh.* In his Torah commentary, he writes:

Being stringent concerning [non-kosher] food in wartime can bring [a soldier] close to danger.[[8]](#footnote-8)

This idea may be used to explain the rationale of the Rambam. It may be true that soldiers are able to “survive” physically by eating basic food; but in wartime, soldiers need to be in top form, both spiritually and physically. One cannot afford to wait for a situation of *pikuach nefesh* to allow the soldiers to eat non-kosher food. In this context we can quote the famous phrase "An army marches on its stomach," which emphasizes the importance of nutrition for the military.[[9]](#footnote-9)

However, there is an alternative explanation for this *halakha*. It is possible that our unique *halakha* is a special *heter* of the Torah in wartime, based on the assumption that such a period requires desperate, radical measures. This explanation would probably lead us to the conclusion that this *heter* is not ideal, but rather *be-diavad*.

To understand this possibility, we will mention a similar *heter* in wartime, *eishet yefat to’ar*. This law, under specific circumstances, permits soldiers during wartime to engage sexually with captives and marry them. The rabbis understand that this *heter* is not *le-khatechilla*, but rather based on the principle of “*Lo dibbera Torah ela ke-neged yetzer* *ha-ra,” “*The Torah is only responding to the evil inclination.”[[10]](#footnote-10)

The Rambam mentions this law together with the *halakha* permitting non-kosher food in wartime.

**Likewise**, he may have intercourse with a non-Jewish woman if he is overwhelmed by his desire.[[11]](#footnote-11)

The Rambam’s comparison indicates that both are only to be applied *be-diavad*.

Furthermore, the connection between these *halakhot* is proven by the Rambam’s words regarding a person who had relations with a non-Jewish maid. Addressing this issue, the Rambam proclaims:

It is definite that according to the law of the Torah he must divorce this maid, for the Torah is relating itself to the evil inclination **the same way** it permits non- kosher food…[[12]](#footnote-12)

It is thus a strong proof that the Rambam’s *heter* is based mostly on *“Lo dibbera Torah ela ke-neged yetzer* *ha-ra.”*

**Application in the Past**

Rav Yisrael Meir Kagan, the *Chafetz Chayim* (1839 –1933), wrote the first halakhic work for Jewish soldiers, *Machaneh Yisrael*. His audience was Jewish draftees in the army of Czarist Russia. In his book, he strongly opposes the idea of eating non-kosher food during military service.[[13]](#footnote-13) He argues that one can survive without eating non-kosher meat. He also encourages the Jewish communities to open their homes to the soldiers and offer them kosher food.

During World War II, Chief Rabbi Herzog was asked whether the soldiers of the Jewish Brigade were allowed to eat non-kosher food. In his responsum, he quotes the above sources and argues that even according to the Rambam’s opinion, there is no room for leniency.[[14]](#footnote-14) His reason is that the Rambam’s *heter* applies only in war conducted completely by Jews; however, in World War II, Jewish soldiers were only part of a coalition fighting a global war.

He then adds an important remark that I find it important to mention. Although World War II was not a “classic” Jewish war, Rav Herzog argued that it was still important to participate in it as the enemy was a cruel one aiming to destroy the Jewish people.

Rav Avraham Avidan, Deputy Chief Rabbi of the IDF, addressed a question which came up during the First Lebanon War. He was asked by soldiers whether they were allowed to eat the fruits and vegetables growing in the local villages of Lebanon. Although his responsum deals with different questions than ours, he does mention our *halakha*. He quotes the above view of the *Kesef Mishneh* together with Rav Yitzchak Ze’ev Soloveitchik’s explanation of the Rambam, and he concludes that these opinions lead us to the ruling that the special needs of war permit soldiers to eat non-kosher food even if they are not in life-threatening situations.

Rav Mordechai Halpern, an expert in medical ethics and a former IDF chaplain, discusses in his book a situation in which an elite unit which was deep behind enemy lines found a warehouse of non-kosher food. In this specific case, the soldiers had their own army rations with them. Would they still have been allowed to eat the non-kosher food?

Firstly, he mentions that this question exists only according to the Rambam’s opinion. According to the Ramban, the rule doesn’t apply today. This fact makes our question a *machaloket Rishonim*.

The matter before us is of a biblical nature. In cases in which we face a halakhic dilemma due to a *safek* (doubt), the rule is to follow the more stringent opinion for biblical issues. This itself is reason to prohibit eating the non-kosher food. However, Rav Halpern argues that even according to the Rambam, it would be prohibited; he understands (as explained above) that the Rambam’s *heter* is only *be-diavad*.

He thus concludes that, according to all opinions, the soldiers are not allowed to eat the non-kosher food unless they are in a situation of *pikuach nefesh*.[[15]](#footnote-15)

However, in the year 2006, after the Second Lebanon War, because of its special circumstances, he added a note to this article:

All of the above is true regarding eating the food when the war is over**; however, during the fighting itself,** we should follow the words of Rav Naftali Tzvi Yehuda Berlin that any stringency regarding [*kashrut* of] food might create a life-threatening situation!

Let us end with the words of the Rambam describing the messianic future:

In that era, there will be neither famine nor war, neither envy nor competition, for good will flow in abundance and all the delights will be as freely available as the dust. The pursuit of the entire world will be solely to know God[[16]](#footnote-16).

May these days come soon.

1. Over the course of the State of Israel’s many wars, this question has been addressed and discussed again and again. See Rav Shilo Refaʼel in *Mishkan Shilo,* pp. 303-309; and Matan Glidai in *Techumin* 27, pp. 399-407. [↑](#footnote-ref-1)
2. *Devarim* 6:10-11. [↑](#footnote-ref-2)
3. ## *Hilkhot Melakhim* 8:1.

   [↑](#footnote-ref-3)
4. BT *Chullin* 17a. [↑](#footnote-ref-4)
5. *Chiddushei Ha-Gaon Rabbeinu Chayim, Chullin* 17a. [↑](#footnote-ref-5)
6. *Minchat Chinnukh* 527:6. [↑](#footnote-ref-6)
7. *Kesef Mishneh*, *Hilkhot Melakhim* 8:1. [↑](#footnote-ref-7)
8. *Ha’amek Davar, Devarim* 6:10. [↑](#footnote-ref-8)
9. This explanation does not explain why the Rambam permits wine which was poured in the service of idolatry, as such a serious prohibition would not be discounted for *pikuach nefesh*. See the rest of the Netziv’s comment, in which he addresses this question. [↑](#footnote-ref-9)
10. BT *Kiddushin* 21b. [↑](#footnote-ref-10)
11. Ibid. 8:2. [↑](#footnote-ref-11)
12. *Teshuvot Ha-Rambam* 154 [↑](#footnote-ref-12)
13. Chapters 23-25. [↑](#footnote-ref-13)
14. *Heikhal Yitzchak, OC* #42. [↑](#footnote-ref-14)
15. *Refua, Metziut Ve-halakha,* pp.137-142. [↑](#footnote-ref-15)
16. *Hilkhot Melakhim* 12:5. [↑](#footnote-ref-16)