

Yom Ha'atzmaut and the Disappearance of The Three Oaths: An Analysis of Rav Shaul Yisraeli's Approach

When we look back gratefully on the many obstacles that Am Yisrael has overcome on the way to Jewish statehood in Eretz Yisrael, one of the most intriguing to the student of Torah is the Three Oaths:

ר' זירא הוה קמשתמיט מיניה דרב יהודה, דבעא למיסק לארץ ישראל, דאמר רב יהודה: כל העולה מבבל לארץ ישראל עובר בעשה, שנאמר (ירמיהו כז, כב): "בבלה יובאו ושמה יהיו עד יום פקדי אותם נאם ה'". ורבי זירא? ההוא בכלי שרת כתיב. ורב יהודה? כתיב קרא אחרינא (שיר השירים ב, ז): "השבעתי אתכם בנות ירושלים בצבאות או באילות השדה אם תעירו ואם תעוררו את האהבה עד שתחפץ". ורבי זירא? ההוא שלא יעלו ישראל בחומה. ורב יהודה? השבעתי אחרינא כתיב (שם ג, ה; שם ח, ד). ורבי זירא? ההוא מיבעי ליה לכדרכי יוסי ברבי חנינא, דאמר: ג' שבועות הללו למה? אחת, שלא יעלו ישראל בחומה; ואחת, שהשביע הקדוש ברוך הוא את ישראל שלא ימרדו באומות העולם; ואחת, שהשביע הקדוש ברוך הוא את העובדי כוכבים שלא ישתעבדו בהן בישראל יותר מדא.

Rav Zeira was avoiding Rav Yehuda, for [Rav Zeira] wanted to move to Eretz Yisrael, and Rav Yehuda said: Whoever moves from Bavel to Eretz Yisrael violates a positive commandment, as it says: "They will be brought to Bavel and they will be there until the day I recall them, says Hashem" (Yirmiyahu 27:22). [How does] Rav Zeira [learn this verse]? This is written about the vessels of the Beit Hamikdash. [How



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does] Rav Yehuda [respond]? There is another verse: "I administered an oath to you, Daughters of Jerusalem, by deer and gazelles of the field lest you arouse and lest you awaken the love until it is desirable" (Shir Hashirim 2:7). [How does] Rav Zeira [respond]? That verse teaches that they should not go up in a wall (or as a wall) [in force (Rashi)]. [How does] Rav Yehuda [respond]? There is another such verse (actually two—*ibid* 3:5, 8:4). [How does] Rav Zeira [respond]? That is needed for the statement of Rabbi Yossi b'Rabbi Chanina, who said: "Why are there these three oaths? One, that they should not go up in force, and one, that Hashem administered an oath that they not rebel against the nations, and one that Hashem administered an oath on the nations that they not overly enslave Israel."

Ketubot 110b

We see that Rav Yehuda posited that the verses that rejected prematurely renewing the loving relationship between Hashem and Bnei Yisrael precluded even individuals from leaving the exile of Bavel for Eretz

Yisrael. We also see that Rav Zeira disagreed, and reasoned that it was permitted for him as an individual, but he conceded that it did preclude going there "as a wall," for which we accept Rashi's explanation as by force, or perhaps, en masse.

While there were groups of Jews who came to Eretz Yisrael throughout the ages, there was no attempt to come en masse from the time of Rav Yehuda and Rav Zeira until the era of Modern Zionism. At the time that the religious community and its rabbinic leadership were debating the merits and dangers of Zionism, the Three Oaths were among the issues at the fore. Perhaps the most extreme position and most systematic treatment of the topic was that of the Satmar Rebbe, who championed the opinions of those who opposed the establishment of a Jewish state before the time of Mashiach as an affront to the divine will. His book, *Vayoel Moshe*, came out well after the establishment of the State, and in his view, the success in the establishment and initial survival of the State did nothing to change his mind.

Several explanations have been given to justify the actions of the Zionist movement, which strove and succeeded to bring large masses of Jews to Eretz Yisrael to establish a fully viable state, including a powerful standing army.¹ One is to deny that the Gemara of the Three Oaths was meant to be an operative halachic statement but a theoretical aggadic one.² Some point out that the main decisors of halacha, such as the Rif, Rambam, and Rosh, do not mention them in their halachic works. Another is to say that it only is binding when the nations keep their related oath of not enslaving the Jewish people too harshly, but when peaceful survival became untenable in the exile, the Jews may take refuge in Eretz Yisrael.

The most widespread and arguably most satisfying answer is that, as Rashi says, the oath only precludes acting by force, in other words, against the will of the relevant nation(s). In the case of Modern Zionism, the settlement of Jews was (at least for the most part) done with the agreement of the possessors of the Land. In the early stages, that was the Ottoman Empire. Later on, it was with the British, who conquered the country during World War I, along with other World War I allies and with the world bodies (League of Nations, United Nations), under whose auspices the British held their Mandate of Palestine. Those who subscribe to this view, including Rav Shaul Yisraeli, posit that the opinions of the majority of residents of Eretz Yisrael and of the neighboring countries—Arabs who were hostile to Zionism—were not relevant because they did not enjoy any type of political or military control over Eretz Yisrael.³

One of the interesting and arguably unique elements of Rav Yisraeli's

presentation (in *Eretz Hemdah* I:1:6) is that he deals with the giving and receiving of this permission of the nations in halachic terms and guidelines. In this chapter, Rav Yisraeli discusses the above thesis within an analysis of the *Avnei Nezer*⁴ based on the aforementioned opinion of Rashi.

The fact that the relevant powers allowed Jews to move to Eretz Yisrael made this move a halachic possibility. However, reasoned Rav Yisraeli, there was not necessarily anything that prevented the non-Jews from changing their mind, which would return the status of the Three Oaths to its place. We will now discuss when this precarious situation ended.

In *Eretz Hemdah*,⁵ Rav Yisraeli posits that the events of 5708 (1947-8) prevent the non-Jewish nations from rescinding their permission to Bnei Yisrael to possess Eretz Yisrael as a nation. On November 29, 1947 the United Nations, upon British request to decide the matter, agreed to the establishment of a Jewish state in parts of "Palestine." Rav Yisraeli views this permission as applying to us vis-à-vis national *control* of the Land (not merely permission for people to settle in Eretz Yisrael). As such, finalizing our rights to the Land needed to be done in the same way that one finalizes any agreement regarding property—by means of an act of *kinyan* (acquisition). One of the forms of *kinyan* for land is *chazaka* (acting toward the land as an owner would).⁶ Regarding the right to create a sovereign state, the way to perform *chazaka* was by declaring sovereignty. This was done by the leaders of the yishuv on that memorable and joyous (if tense) 5th of Iyar 5708. Thus, posits Rav Yisraeli, our full rights to Eretz Yisrael, for the first time in thousands



Rav Shaul Yisraeli *z.t.l.* (1909-1995) was born in Russia, where he learned Torah clandestinely, escaping to become a talmid of Rav A.Y. Kook *z.t.l.* He went on to be the rav of Kfar Haroeh, a dayan in the Supreme Rabbinical Court in Jerusalem, Rosh Yeshiva at Merkaz Harav, and founder of the Eretz Hemdah Kollel (where this writer learned under him). He was a prolific writer and important leader, including on matters of the Torah in a renewed Jewish State.

of years, occurred specifically on the first Yom Ha'atzmaut. The acting on the permission given by nations to take control of Eretz Yisrael concretized our rights to it and caused the Three Oaths to no longer be a concern. This, Rav Yisraeli argued, made the 5th of Iyar a day that is worthy of celebration, irrespective of if and when miraculous events took place on the battlefield.

This basic construct, of combining the permission of the nations with the *chazaka* the Jewish people made on Eretz Yisrael in its aftermath, arises again in the writings of Rav Shaul Yisraeli in another context.⁷ Rav Ovadia Yosef posited that one of the reasons why an agreement that includes Israeli ceding to the Arabs significant land in Judea, Samaria, and Gaza is theoretically proper is that

holding on to these sections of the Land at such a time is in contradiction to the Three Oaths. These areas, after all, were conquered by Israel and held against the stated policy of virtually every country and international organization. Rav Yisraeli questioned the cogency of Rav Ovadia's mode of invoking the Three Oaths by widening the practical scope of Rav Yosef's position. Rav Yisraeli asked: if the Three Oaths are a problem regarding land seized in the Six Day War, then why should ceding be conditional on a viable peace settlement? We should give them up to desist from violating the Oaths. Second, if international approval is necessary, then shouldn't the problem apply to many sections of Jerusalem which have not been recognized as Israel's by world powers?⁸ What, then, is Rav Yisraeli's rationale to apparently ignore the Three Oaths in regard to land not given to us by the nations of the world in 1947-8?

Before we revisit the idea of permission and *chazaka*, we shall present two other ideas that Rav Yisraeli promotes which answers the questions.⁹ First, the oath of not going up by force applies to the force used to move to Israel and establish a national entity here. However, once this is accomplished with permission, the national entity is like any other, and the Oaths do not create any limitations on what sections of the Land can be subsumed under the authority of these auspices.

A second answer assumes that even if it were improper to expand the borders of the country by means of military conquest, that would only apply to initiating a war for that purpose. However, if a war was forced upon the Jewish State (as it

was in 1948 and 1967), then the State and its citizens are expected to protect themselves. If in the context of a defensive war, the borders of the State are expanded, neither the Three Oaths nor any other halachic mandate prevent us from defending our control of those lands.

A third answer that Rav Yisraeli offered is strikingly reminiscent of his 5 Iyar construct. As part of the decision of world powers meeting at the San Remo Conference in 1920,¹⁰ all of Palestine (including large areas of the east bank of the Jordan) was given to the Jewish people as a homeland. Rav Yisraeli cites the famous words of the Ohr Sameiach, Rav Meir Simcha of Dvinsk, who saw in the San Remo agreement a removal of the impediment of the Three Oaths:

אולם זה במאה הזאת זרחו קוי אור ע"י גדולי המעש, כמו מונטיפיורי וכיו"ב בהתעוררות רבה, ומהרבנים ר' צבי הירש מטאהרן ור' אליהו מגריידיץ, לבנות ולשכלל ירושלים ולהסיר שוממותיה... ורבנים הרבה עמדו מנגד, ואף אותם שהיה בלבם לקרב את הדבר שמו יד לפה, מפני כי חרדו... מהג' שבועות שהשביע לבנות ירושלים... אמנם כעת הסבה ההשגחה אשר באספת הממלכות הנאורות בסאן רעמא, ניתן צו אשר ארץ ישראל תהיה לעם ישראל, וכיון שסר פחד השבועות וברשיון המלכים קמה מצוות ישוב ארץ ישראל ששקולה כנגד כל מצוות שבתורה (ספרי פ' ראה) - למקומה. ומצוה על כל איש לסייע בכל יכולתו לקיים מצוה זו.

In this century, rays of light shone forth with a great awakening by people of action such as Montefiore and rabbis such as R. Tzvi Hirsch [Kalischer] of Torun and R. Eliyahu [Gutmacher] of Grodzesk to build and restore Jerusalem and remove its destruction ... Many rabbis opposed their efforts and even those who wanted to join, placed their hand over their mouth because they feared ... [violating] the Three Oaths

of the daughters of Jerusalem ... Now, however, [we have experienced] Divine providence in the gathering of the League of Nations in San Remo and a pronouncement was made that the Land of Israel will belong to the Jewish people. Since the fear of the oaths has passed with permission of the nations, the mitzvah to settle the Land of Israel — which is equal in weight to all other mitzvot in the Torah combined — is now restored. Everyone should do what they can to help fulfill this mitzvah.

The Jewish people acted upon this agreement by welcoming it and by the Jewish community in Palestine expanding their settlement activity in the agreement's aftermath. This too was a *kinyan chazaka* on all of "mandatory Palestine." This is because one of the laws of *kinyanim* is that performance of *chazaka* on part of the land upon which there is agreement serves to acquire all the land. Thus, all of mandatory Palestine was reacquired by the Jewish people as their homeland. Any subsequent actions, whether by Arab neighbors or even by the same international powers that bequeathed the Land, are acts of thievery, which the Jewish People does not have to accept. Thus, from the San Remo agreement on, posited Rav Yisraeli, the Three Oaths did not apply to any of the Land of Palestine, which includes Judea, Samaria, and Gaza.

One can ask whether the two similar constructs that Rav Yisraeli presents of permission followed by *chazaka* do not contradict each other in the following way: If all of Mandatory Palestine, which exceed the territory included in the 1947 Partition Plan and 1949 Armistice Agreements, belonged to the Jewish people as of

1920 and removed the Three Oaths issues, then what is the significance in this regard of the events of 1947-8? It is not possible to say that Rav Yisraeli changed his mind during the close to four decades between the writing of the two articles, because the later article also mentions the significance of the establishment of the State of Israel in 1948 in regard to the Three Oaths.

I would like to suggest that Rav Yisraeli's intention was as follows: While the San Remo Agreement gave more land than the Partition Plan regarding borders, the events of 1947-8 added significant elements that were missing in San Remo. San Remo spoke of the establishment of a Jewish homeland, which included the rights of Jews to emigrate to Eretz Yisrael and settle it. However, this did not totally remove the Three Oaths, in that we would still not be authorized to take this settlement to the point of an independent entity that had all the rights of a state. Only in 1947-8 did we receive and seize the rights to control the settlement of the Land and the administration of it, create an army, and enjoy all rights of a national entity. The idea of a *pekida* (liberation as found in the verse Rav Yehuda referred to), which Rav Yisraeli, following the *Avnei Nezer*, believed in, came to fruition much more qualitatively on the original Yom Ha'atzmaut.

In areas such as those discussed in this article, where we do not find clear halachot in such classic sefarim as the *Shulchan Aruch*, and practical ramifications did not exist until modern times, it is hard to apply the same rules for determining: "How do we *paskan*?" On the question of whether and how to celebrate Yom

Ha'atzmaut, there are many religious Jews who celebrate it¹¹ and many who do not. Those who celebrate do not always know (nor do they need) to define precisely the elements of the historical events to celebrate most intensely.

However, regarding the assumption that it is permitted to settle in Judea and Samaria despite protests of the world, we have a fascinating phenomenon within the religious community on an ostensibly difficult halachic question. It is well known and discussed that the Religious Zionist community believes it is permitted and even a special mitzva and *z'chut* to settle in Judea and Samaria. But a very broad spectrum of the Charedi community¹² have no halachic compunctions about living over the "Green Line." Whether discussing Ramot and Ramat Eshkol, in Jerusalem, or Beitar and Kiryat Sefer, tens of thousands of Charedim form a consensus that this is permitted. It is further interesting that the matter is not even a point of halachic discussion, and I have been unable to find a Charedi *posek* who is the "father of the leniency." Is the silent majority assuming along the lines of Rav Shaul Yisraeli? It is presumptuous for me to make such a claim. However, for one reason or another, the disappearance of the Three Oaths as a halachic concern is a fact on the ground among a broad consensus of the religious community.¹³

Endnotes

1 One short work that surveys many of these is Rav Menachem Kasher's article, "*Da'at Torah al Hashevuah Shelo Ya'alu B'choma L'Eretz Yisrael*," from *Shana B'Shana* 5737.

2 Rav Yisraeli (in *Eretz Hemdah* 1:1:4) posits that the Three Oaths do not represent a prohibition that Bnei Yisrael accepted upon

themselves. Rather, they are a warning that Hashem made to them lest they go beyond their proper bounds before the proper time. However, one way or another, Rav Yisraeli agrees that the oaths are a force to be reckoned with, and it would be a dangerous mistake to "violate" them.

3 This situation is parallel to the granting of permission to resettle Eretz Yisrael after the Babylonian exile, by King Cyrus, of the relatively distant Persia, who controlled the Land politically and militarily.

4 *Yoreh Deah* 454.

5 *Ibid.*

6 *Kiddushin* 26a.

7 See *Techumin*, Vol. X, in his rebuttal of the article of his colleague, Harav Ovadia Yosef (*ibid.*), in which the latter encouraged a political settlement that would include ceding land to the Arab World should peace be possible (which Rav Ovadia did not see as a viable option at the time he wrote the article). Rav Yisraeli's article was reprinted in *Chavot Binyamin* vol. I, 13.

8 Rav Ovadia did not suggest ceding those sections of Jerusalem as part of a peace treaty.

9 *Ibid.*

10 At this conference, the World War I victors confirmed the idea of a Jewish homeland in Palestine, as promoted in the Balfour Declaration, while earmarking Syria and Mesopotamia to the Arabs. This agreement was then accepted by the League of Nations.

11 Many of the practices were actually instituted by Rav Yisraeli, both through his recommendations for the Chief Rabbinate (see appendix to *Zeh Hayom Asa Hashem*) and in his community of Kfar Haroeh.

12 This includes "non-Zionists" like the Litvish and the Chasidish, and the followers of Rav Ovadia Yosef. Only the Satmar-oriented are missing from these "over-the-green-line" communities.

13 I am proud to have studied under a *posek* who wrote extensively on such topics from both a halachic and hashkafic perspective.