

Warfare: May Countries Invade their Neighbors?

Adapted from the writings of Dayan Yitzhak Grossman

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Russia's invasion of Ukraine has met with nearly universal condemnation; the United Nations General Assembly voted overwhelmingly to reprimand Russia, with only five countries voting against the resolution: Russia itself, its close ally Belarus, and Eritrea, North Korea, and Syria.[1] This condemnation is rooted at least in part in the principle, widely held in the modern era, that war is morally and legally unjustifiable except in self-defense.[2] As the United Nations Charter states:

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.[3]

The only exception recognized by the Charter is self-defense:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.[4]

In Western "just war theory," for a war to be morally justifiable it must satisfy two sets of criteria: *jus ad bellum* (the laws governing under what circumstances a country may resort to war) and *jus in bello* (the laws governing the conduct of war, under which some activities are forbidden as war crimes).

But while the horrors of war are undeniable, and the famous vision of Yeshayah looks forward to the Messianic era when "no nation will raise a sword against another nation, and they will no longer study warfare,"[5] our mesorah does not unequivocally condemn even elective war as an absolute moral wrong in all cases. This is obviously a complex topic; in this article, we briefly discuss some important sources on the subject.

Jus ad bellum

The Rambam rules:

A king should not wage other wars before a *milchemes mitzvah*. What is considered a *milchemes mitzvah*? The war against the seven nations that occupied Eretz Yisrael, the war against Amaleik, and a war fought to help Jews against an enemy that attacks them.

Afterward, he may wage a *milchemes hareshus*, i.e., a war fought with other nations in order to expand the borders of Eretz Yisrael or magnify its greatness and reputation.[6]

A possible source for this assumption of the Rambam is the following passage in the Gemara:

The Chachamim said to Dovid Hamelech: Our master the king, your nation requires sustenance. He said to them: Go and make *parnasah* from one another. They said to him: A handful does not satisfy a lion,

and a pit cannot be filled by its dirt. He said to them: Go and take up arms with the troops in battle.[7]

It is not entirely clear whether the permission to wage war for economic or nationalistic reasons extends to contemporary and to non-Jewish governments, because the Gemara continues as follows:

The Chachamim immediately seek advice from Achisophel, and they consult the Sanhedrin (to receive permission to wage war, per Tosfos HoRosh),[8] and they ask the Urim Vetumim.

It is unclear, then, whether elective wars are permitted in the absence of the imprimatur of an Achisophel, the Sanhedrin, and the Urim Vetumim. R' Meir Eisenstadter (the Maharam Ash), however, after citing other precedents for the permissibility of elective war, asserts that the implication is that such wars are permitted even in the absence of the Urim Vetumim (and the context of his discussion is the wars waged by European nations of two centuries ago).[9]

As we have previously discussed,[10] another precedent sometimes adduced for the legitimacy of elective war is the following striking, albeit somewhat obscure, Gemara:

Shmuel says: A monarchy that kills one in six in the world is not punished...[11]

Tosafos explains this to refer to the waging of elective war,[12] and R' Naftali Tzvi Yehudah Berlin (the Netziv)[13] and R' Eliezer Yehudah Waldenberg (the Tzitz Eliezer)[14] accordingly adduce this statement of Shmuel in support of the permissibility of waging elective war. The Netziv applies this doctrine to B'nei Noach, and the Tzitz Eliezer extends it to modern governments, both of which are obviously not consulting the Urim Vetumim or the Sanhedrin.

R' Yehoshua Menachem Ehrenberg (the Dvar Yehoshua) also extends the permissibility of elective wars to the context of modern Israel (even insofar as we are contemplating a war which would be considered elective), despite the absence of the Urim Vetumim and Sanhedrin.[15]

Jus in bello

In our mesorah, the classic discussion of *jus in bello* occurs in the context of Shimon and Levi's attack on Shechem. As we have previously noted,[16] the Maharal justifies their conduct with the doctrine that war between nations has its own rules, different from those that apply to individuals. In war, once an enemy nation has committed an atrocity and initiated hostilities with us, any member of that nation, even if he himself was not involved in the crime and casus belli, may be summarily killed, with no further justification necessary.[17]

This doctrine is controversial, though, and the fact that virtually all other *mefarshim*, *Rishonim* and *Acharonim*, that discuss the morality of the Shechem incident offer various other justifications of it may imply that they do not accept the Maharal's novel doctrine and do not consider innocent civilians fair game even in the context of war.[18] Further, even the Maharal explicitly limits his doctrine to a war being waged in response to an outrageous provocation, as in the case of Shechem, as opposed to an

elective war.[19]

[1]Humeyra Pamuk and Jonathan Landay. U.N. General Assembly in historic vote denounces Russia over Ukraine invasion.

<https://www.reuters.com/world/un-general-assembly-set-censure-russia-over-ukraine-invasion-2022-03-02/>.

[2]See, e.g., International law says Putin's war against Ukraine is illegal. Does that matter? The Conversation.

<https://theconversation.com/international-law-says-putins-war-against-ukraine-is-illegal-does-that-matter-177438>.

[3]Charter of the United Nations, Chapter I Article 2 (3-4).

[4]Ibid. Article 51.

[5]Yeshayah 2:4.

[6]*Hilchos Melachim Umlchamoseihem* 5:1.

[7]Brachos 3b.

[8]There are other approaches to the requirement to consult the Sanhedrin; see Ramban Devarim 11:24; Amud Hayemini end of *siman* 14 os 10; and here.

[9]Shu"t Imrei Eish Y.D. *siman* 52.

[10]Living Dangerously: *Pikuach Nefesh* in War. Bais HaVaad Halacha Journal. Sep. 10. 2021.

[11]Shavuos 35b.

[12]Tosafos ibid. s.v. *Dekatla*.

[13]Ha'amek Davar Bereishis 9:5 (and cf. Harchev Davar there) and Devarim 20:8. Cf. Meromei Sadeh Eruvin 45a to Rashi s.v. *Vahalo ba'u*.

[14]Shu"t Tzitz Eliezer *cheilek* 12 *siman* 57 os 2 and *cheilek* 13 *siman* 100 os 7, and cf. *cheilek* 13 *siman* 21 os 11.

[15]Shu"t Dvar Yehoshua *cheilek* 2 *siman* 48. I do not currently have access to the work, but I seem to recall that he explicitly rejects the proposition that consultation with the Urim Vetumim and the Sanhedrin is a sine qua non for the permissibility of *milchemes reshut*.

Cf. Amud Hayemini *siman* 14; Shu"t Tzitz Eliezer *cheilek* 20 *siman* 43 *anaf Milchemes Reshut*.

[16]Marked Men: Are Targeted Killings of Terrorists Justified? Sep. 10, 2020.

[17]Gur Aryeh Bereishis 34:13.

[18]This is not necessarily the case, however, since it is also possible that they do not consider Shimon and Levi to have been operating within the context of a war between nations. See also the following note for another possible interpretation of their view.

[19]R' Chaim Jachter suggests that this may explain why most commentaries do not justify the attack on Shechem as the Maharal does: "Even if the various commentators do not share the Maharal's defense of Shimon and Levi, they do not necessarily imply a rejection of his principle. They could simply believe that killing Shechem and Chamor alone would have sufficed to rescue Dinah, and that waging war against the entire town of Shechem was thus unjustified. In other words, the attack against Shechem was uncalled for, but in a justified war, all would agree that one

may attack without distinguishing between the innocent and guilty members of a nation if it is impossible to effectively wage war in another manner.”

The above appears in Part Two of Rav Jachter’s article “Halachic Perspectives on Civilian Casualties in Gaza”; Parts One and Two include an extensive discussion of the Maharal’s doctrine and a survey of attitudes of contemporary rabbinic thought thereto, and cf. Part Three.