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BATTLE GROUNDS: WHEN IS WAR JUSTIFIED?

Adapted from the writings of Dayan Yitzhak Grossman

The US attack on Iranian nuclear facilities has been assailed in some quarters as a violation of international law. The condemners often cite the idea, widely held in the modern era, that war is morally and legally unjustifiable except in self-defense. 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.¹

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.²

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 "nation will not lift sword against nation, and they will no longer study warfare,"³ our mesorah does not unequivocally condemn even

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¹Ibid. Article 51.
²Yeshayah 2:4.

¹Charter of the United Nations, Chapter I Article 2 (3-4).

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PARSHAS BALAK HEARING THINGS

Excerpted and adapted from a *shiur*
by Rav Yaakov Meir Levi

One of the activities customarily avoided during the Three Weeks is listening to music. But Chazal prohibited listening to music in some cases year-round in mourning for the *churban*. According to the Shulchan Aruch (O.C. 560), one may neither sing nor listen to live music while drinking wine. The Rama limits the prohibition to listening to music regularly (*ragil*), like kings who wake up and go to bed accompanied by instruments. The Bach is even more strict, prohibiting singing except in specific cases (like *zmiros* and at a *simcha*). According to R' Moshe Feinstein, a *ba'al nefesh* should follow the Bach.

The Sheivet Halevi writes that even according to the Rama, most people today have the status of a *ragil* and may not listen to live music. He forbids recorded music as well, maintaining that the device playing it qualifies as an instrument. Others hold that this entire *gzeirah* of Chazal does not apply to recorded music. In addition, some contemporary *poskim* (Lehoros Nasan and others) say that today's generation cannot abide being without music, so we may rely on the standard *heter* of the Rama. Additionally, some *poskim* note that the Me'iri (Gittin 7a) writes that songs praising Hashem are not included in the prohibition. Music is also permitted at a *seudas mitzvah*.

R' Moshe and others explain that the minhag
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Beware of Dog

Q A pet-shop owner made a donation to our shul. May we use the money?

A The Torah says, "You shall not bring a harlot's fee (*esnan zonah*) or the price of a dog (*mechir kelev*) to the house of Hashem, your G-d" (Dvarim 23:19). These items may not be offered as a *korban* in the Bais Hamikdash, nor may they be used in its structure (Rambam Hil. *Isurei Mizbeich* 4:18).

If your donor sells dogs, payments he received for them are *mechir kelev* and unfit for use in the Bais Hamikdash.

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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 *milchemess mitzvah*. What is a *milchemess mitzvah*? The war against the seven nations that occupied Eretz Yisrael, the war against Amaleik, and a war fought to help save Jews from an enemy that attacks them.

Afterward, he may wage a *milchemess hareshus*, which is a war fought with other nations in order to expand the borders of Eretz Yisrael or increase its greatness and reputation.⁴

A possible source for the Rambam is this Gemara:

When the light of dawn rose, the Chachmei Yisrael entered into the presence of Dovid Hamelech. They said to him: Our master the king, your nation, Yisrael, needs 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 own earth. He said to them: Go and stretch forth your hands against the foreign legions in our land.⁵

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:

Immediately, the Chachamim took counsel with Achisophel, consulted the Sanhedrin (to receive permission to wage war, per Tosfos HaRosh),⁶ and asked 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.

The Maharam Ash (R' Meir Eisenstadter), 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. (The context of his discussion is the wars waged by European nations two centuries ago.)⁷

As we have previously discussed,⁸ 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...⁹

Tosfos explains this to refer to the waging of elective war,¹⁰ and the Netziv (R' Naftali Tzvi Yehudah Berlin)¹¹ and the Tzitz Eliezer (R' Eliezer Yehudah Waldenberg)¹² accordingly adduce this statement of Shmuel in support of its permissibility. The Netziv applies this doctrine to Bnei No'ach, 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 Eretz Yisrael today, despite the absence of the Urim Vetumim and Sanhedrin.¹³

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,¹⁴ the Maharal justifies their conduct with the doctrine that war between nations has its own rules, which differ from those that apply to individuals. In war, once an enemy nation has committed an atrocity and initiated hostilities, 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.¹⁵

This doctrine is controversial, though, and the fact that virtually all other *Rishonim* and *Acharonim* that discuss the morality of the Shechem incident offer various other justifications of it may imply that they do

7 Shu"t Imrei Eish Y.D. siman 52.

8 Living Dangerously: Pikuach Nefesh in War. Baishavaad Halacha Journal. Sep. 10, 2021.

9 Shvuos 35b.

10 Tosfos ibid. s.v. Dekatla.

11 Ha'ameik Davar Bereishis 9:5 (and cf. Harchev Davar there) and Dvarim 20:8. Cf. Meromei Sadeh Eruvin 45a to Rashi s.v. Yeholo ibid.

12 Shu"t Tzitz Eliezer cheilek 12 siman 57 as 2 and cheilek 13 siman 100 as 7, and cf. cheilek 13 siman 21 as 11.

13 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 *milchemess reshut*. Cf. Amud Hayemini siman 14; Shu"t Tzitz Eliezer cheilek 20 siman 43 and *Milchemess Reshut*.

14 Marked Men: Are Targeted Killings of Terrorists Justified? Sep. 10, 2020.

15 Gur Aryeh Bereishis 34:13.

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The *deOreisa* prohibition is limited to *korbanos* and does not include other sacred uses.

However, the Rama (O.C. 153:21), citing Rabeinu Yerucham, says that *mideRabanan*, *mechir kelev* may not be used for any mitzvah purpose, including parchment and accessories for a sefer Torah, and even construction materials for a shul (Mishnah Brurah ibid. 107-108).

But the prohibition on *esnan* and *mechir* applies only to the actual object that was exchanged. If what was traded was money, it may be used to purchase mitzvah items, even a *korban* (Rama ibid.). Therefore, there is no problem accepting *mechir kelev* money and using it for the shul. (There would only be a problem if someone *bartered* something for a dog; that item would be unfit for mitzvah use.)

An interesting application of this is where partners in a pet shop terminate the partnership and divide the merchandise. The division is considered an exchange, so if a dog is involved, merchandise traded for it is *mechir kelev* (Tmurah 30a). The Mishnah and Gemara (ibid.) discuss how to determine which merchandise is considered *mechir kelev* in that case.

not accept the Maharal's novel doctrine.¹⁶ Moreover, even the Maharal explicitly limits his doctrine to a war waged in response to an outrageous provocation, as in the case of Shechem, as opposed to an elective war.¹⁷

16 This is not necessarily the case, however, because it is also possible that they do not consider that case to be a war between nations. See also the following note for another possible interpretation of their view.

17 R' Chaim Jachter suggests that this may explain why most *mefarshim* 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 thereto of contemporary authorities, and cf. Part Three.



RAV ARYEH
FINKEL

4 Milchos Melachim Umlachoseihem 51.

5 Brachos 3b.

6 There are other approaches to the requirement to consult the Sanhedrin; see Ramban Dvarim 11:24; Amud Hayemini end of siman 14 as 10; and here.

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to avoid music during the Three Weeks includes even music that is permitted during the year (according to each opinion respectively). Therefore, even

recorded music and music at a *simcha* would be forbidden during this period. A cappella music is also forbidden according to the Sheivet Halevi (because the device playing it has the status of an instrument), though he says that the practice

of those who listen to it can be justified. R' Moshe would seem to allow recorded a cappella music. Contemporary *poskim* say that beatboxing would pose a problem.

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