

Should Israel Attack First? Lessons from the Distinction between Commanded and Discretionary Wars in Jewish Law

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Should Israel have attacked Hamas before October 7, 2023? In the aftermath of Hamas's slaughtering of 1200 and kidnapping of 240 more, we have to wonder what Israel might have done to prevent the Simchat Torah massacre. It's too early to know exactly what went wrong, and a full investigation will need to wait until after the war. But it seems obvious that many mistakes were made on the military, strategic, and political levels.

Amongst many painful questions, we'll need to ask whether Israel should have taken preventative measures to destroy the terror group. After all, Israel and Hamas fought in major battles in 2008-2009 ("Operation Cast Lead"), 2012 ("Pillar of Defense"), 2014 ("Protection Edge"), as well as in flareups of violence in 2010, 2018, and 2021. But in each of these moments, Israel consciously decided not to remove the terror group. Instead, it took a strategy of knocking Hamas back when it seemed to be getting overly belligerent. This restrained approach, known in Israel as "mowing the lawn," was taken partly because of the feared cost in lives from a greater war, but also for concern about potential diplomatic fallout and the question of who would replace Hamas in Gaza. More recently, in August 2022 ("Operation Breaking Dawn") and June 2023 ("Operation Shield and Arrow"), the IDF struck at Islamic Jihad forces in Gaza, but avoided confrontation with Hamas in fear of starting a larger war. Was that a mistake?

This dilemma of anticipatory strikes is not just a Monday morning quarterback question. Israel

needs a plan for combatting the stronger terrorist group, Hezbollah, in southern Lebanon, which has built up its arsenal over many years, and the even more lethal nuclear threat from Iran.

The notion of anticipatory wars against terrorist groups and rogue states makes people nervous, and with good reason. In 2002, not long after 9/11, the Bush administration announced its plan for fighting a “war on terror”: America would go on the offensive to prevent future assaults on her soil. In the words of the National Security Strategy paper, “As a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed.” Later, President Bush told reporter Tim Russert that war in Iraq was a “necessary war” to prevent weapons of mass destruction (WMD) from being used against the United States and its allies. Vice President Dick Cheney stated that when it comes to stopping low-probability but high-impact attacks, we need to act as if they were definitive threats. “If there’s a one percent chance that Pakistani scientists are helping Al Qaeda build or develop a nuclear weapon, we have to treat it as a certainty in terms of our response,” he said.

While supporters of the Iraq War billed it as a no-choice, “preemptive attack” against an imminent threat, critics denounced the Bush doctrine of stopping budding threats before they developed as immoral and dangerous, arguing that this offensive strategy would lead America into perilous battles against unfounded fears. American soldiers would be chasing ghosts. Cheney’s “one percent doctrine,” critics asserted, would lead the United States to torture detainees before trial, order drone attacks against suspicious but unproven enemy sites, and launch unnecessary wars.

In the end, no WMDs were found in Iraq. A trillion dollars was spent, hundreds of thousands were killed or wounded, and the region remains deeply unstable.

By definition, countries take preemptive attacks when they believe that an adversary is about to attack, and they reason that striking first will allow for a better outcome. The action Israel took in the face of imminent Egyptian hostilities in 1967, for example, was a classic preemptive attack, and it led to Israel’s victory in the Six Day War. In contrast, the Iraq War was more of a “preventative” attack than a preemptive one. Preventative attacks are those launched in response to less immediate threats under the belief that it is better to fight an alleged adversary sooner than later, to strike victoriously and effectively before the window of opportunity closes. In Iraq, it turned out, America was preventing a threat that didn’t really exist or, at best, was too distant to justify warfare.

Critics of preventative wars should remember that the Iraq War and other parts of the “war on terror” might never have taken place, had the United States pursued Al Qaeda more aggressively before 9/11. The threat posed by Osama bin Laden was known beforehand. In August 1998, the Clinton administration launched missile strikes on Al Qaeda targets, hitting a suspected chemical weapons plant in Sudan and a training base in Afghanistan. A similar motivation inspired Israeli

targeted strikes on the Iraqi nuclear reactor in 1981 and the Syrian nuclear reactor in 2007. Either of these attacks could have led to a major war but Israel thought (correctly, in those cases) that the risk was worth taking. Saddam Hussein and Bashar al-Assad never gained WMDs.

Jewish law provides a helpful framework for thinking about the dilemma of preventative and preemptive wars. As I'll show, Jewish military ethics does not distinguish between just and unjust wars as a binary between "no-choice" and "choice" wars. Instead, Jewish law describes a spectrum between "commanded wars" and "discretionary wars," recognizing a murky grey zone in which a country must make complex choices regarding self-defense.

II.

Following the lead of the Talmudic sages, Maimonides divides Jewish warfare into two categories: *milhemet mitzvah*, usually translated as "commanded wars," and *milhemet reshut*, "discretionary wars." The former category includes the two wars against the ancient tribal nation of Amalek and the seven Canaanite nations mandated by God in the Torah. Yet, Maimonides asserts, because these nations no longer exist, these commands are irrelevant. The wars remaining in this category are those fought "to assist Israel with an enemy that attacks it" (Laws of Kings and Wars 5:1). Today, we'd call this a responsive war, or a war of self-defense, i.e., the enemy army has attacked and continues to threaten the country, demanding that Israel respond.

Maimonides, like the Sages, delineated these categories in his writings when the Jewish people had no state. Is there also a type of commanded war that sanctions fighting to retain control of the homeland? Nahmanides thought so. He includes another form of warfare in this category: a war of conquest, or, as he put it, "To take possession of the land that God, blessed and exalted be He, gave our forefathers, Avraham, Yitzchak, and Ya'akov, and not leave it in the hands of other nations or in desolation." There's much speculation about whether Maimonides agreed that there is a commandment to fight for sovereignty over the Holy Land. Yet, once the Jewish people have control over the land, it's clear he holds that they should fight to protect its residents. The current war in Gaza falls into this sub-category of commanded wars. Israel was viciously attacked by an enemy that seeks to destroy the country and has shown that it will do anything it can to achieve that horrific goal. "Operation Swords of Iron" is meant to repel this assault, bring Israeli captives home, and restore security in Israeli towns throughout the country.

Maimonides contends that Israel should prioritize commanded wars before engaging in "discretionary wars," which he describes as wars "fought with other nations in order to expand the borders of Israel or magnify its greatness and reputation." In other words, a king must first address threats to his own territory and secure its borders. Then he may consider expanding beyond his borders and magnifying his imperial might. King David, arguably Israel's greatest military and political leader, enlarged his borders to places like Aram-Damascus (in contemporary Syria). Such imperialist wars were standard throughout history and seem to be

acknowledged in the Bible with equanimity.

Significantly, regarding commanded wars, the king could act on his own because the mission was seen as essential and time sensitive, particularly in the face of an attack. For similar reasons, all capable bodies were required to serve, to protect the greater collective. As the Sages put it, we conscript “even a groom from his room and a bride from her wedding canopy.” (bSota 44b)

Regarding discretionary wars, however, some soldiers could opt out, such as those who were recently married or settled in new homes. The fear was that such preoccupied soldiers would not be eager to fight, making them less attractive as warriors. A more significant exemption was given to those that claimed they were fearful to die in battle or too soft-hearted to kill. According to one Sage, this even included someone who is “a hero among heroes, powerful among the most powerful, but who is at the same time merciful—let him return [from the front lines].” (tSotah 7:14) The intent of the exemption was to weed out those who wouldn’t fight fearlessly; the effect of the law, however, was to allow a certain type of selective conscientious objection for fighters to opt out of unpopular discretionary wars. At the very least, the exemptions provide, in practice, an important check on monarchical abuse by publicly highlighting that these wars were nonessential.

Equally significantly, the king was required in a discretionary war to first consult with the Sanhedrin, a great assembly of 71 Sages. The king was not all-powerful. He needed permission to launch a discretionary war.

Whatever checks might have been in place, over time, *milhemet reshut* has earned a bad name, and for good reason. The rationale given by Maimonides for such a war could justify almost any war. If you allow for warfare to “expand the borders of Israel or magnify its greatness and reputation,” then it becomes hard to imagine, as ethicist Michael Walzer notes, what is left to prohibit. One might also translate *reshut* as “optional,” raising a broader question: given the vast bloodshed that comes in its wake, what kind of optional warfare could be morally acceptable? Surely, if a war is not needed for self-defense, in which case it would be obligatory, it should be entirely prohibited.

Rabbinic literature expresses some misgivings about King David’s conduct for the same reason. His wars were bloody affairs that cost many lives, including those of Israelites, and further distracted David from essential tasks like uprooting enemies closer to home. His military priorities were misplaced. Moreover, his excessive bloodshed is mentioned in the Bible as an explanation for why he was not worthy to build the Temple, whose rocks could not be hewn by metal—the material of warfare—let alone be assembled by a man who used his sword excessively.

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Indeed, during the war against the Ammonites, a war in which David achieved a “great name” and much fortune, he became embroiled in his infamous affair with a married woman, Bathsheba. He abused his power by sending her soldier husband, Uriah, on a quixotic mission so that he should die. “Place Uriah in the front line where the fighting is fiercest,” he ordered his chief of staff, “then fall back so that he may be killed.” Uriah dies—along with other captains. David dismisses the losses by telling his chief general, “Do not be distressed about the matter. The sword always takes its toll.” (2 Sam 11:25) The sword does indeed take its toll, particularly when monarchs act out of nefarious motivations.

It’s precisely for this reason that our moral sentiments—and with them, Jewish law—have progressed to limit such violent imperialism. Some hold that even in Talmudic times, there were attempts at such limitations. According to Talmudist David Henshke, the concept of *milhemet reshut* only appears in rabbinic writings stemming from the school of Rabbi Akiva. In contrast, literature that emerged from the competing school of R. Yishmael never acknowledged the category of *milhemet reshut*, likely indicating discomfort with the concept.

The question of the permissibility of discretionary wars for Israel, however, remained theoretical for many centuries. By World War I, Jews had become warriors within the militaries of different empires: more than a million Jews served in the Allied forces in the Great War, as it was known then, with another 450,000 in the armies of the Central Powers.

One of the witnesses to this war was Rabbi Abraham Isaac Kook, then the chief rabbi of Jaffa. On the last days of July 1914, Kook traveled from Palestine to Frankfurt with the hope of rousing support for Zionism at a rabbinic conference. The war broke out on August 1. Kook managed to make it to St. Gallen, Switzerland, where he sheltered for the next eighteen months before traveling to London, where he served as a congregational rabbi until returning to Jerusalem in 1919. Stranded in Europe for the war’s duration, Kook had a front-row seat to the “global tempest,” as he called it, “and the horrors in its storm.”

While living in Switzerland, he wrote a treatise arguing that the requirement to get approval for a

Great Court (Sanhedrin) before engaging in expansionist warfare provided an important check-and-balance, moral and political, to the ancient Jewish monarchy. Kook contended that the court would only allow such offensive warfare, as a matter of exigency, if it was truly needed for the nation's physical and spiritual welfare. Most significantly, he concluded that such offensive warfare had not been permitted since the Great Court ceased to function many centuries ago.^[1] The law, under this interpretation, could not apply in his own era.

This is a surprising conclusion since, in the same correspondence, Kook argues that the elected leaders of the people in a democratic system can fill the formal role of the defunct monarchy in representing the polity and fighting licit commanded wars. The notion that any representative leadership of the nation can fulfill the role of the king to launch a war is compelling and has medieval precedents.^[2] That being the case, why can't a legislature or some other body do the same for the defunct Sanhedrin? The answer, it would seem, is that while other contemporary rabbis affirmed that national leaders could legally authorize a *milhemet reshut*, Kook was not interested in making it possible to launch expansionist wars.^[3]

Indeed, several years earlier, Rabbi Kook had expressed hope in his diary that the world would someday reject expansionary battles and understand that "it was illegitimate to spill blood for the sake of achieving political goals."^[4] Utilizing the same strategy, Rabbi Kook similarly asserted that there would come a time when we would no longer tolerate slavery, as accepted in the Bible and throughout much of history, or allow taking a captive enemy woman for a wife (*eshet yefat to'ar*), as permitted in Deuteronomy. Indeed, about this latter law, the Talmudic Sages had already asserted that the Bible was merely "accommodating the evil instinct." Some biblical practices, it seems, were not meant to last forever.

III.

There's no doubt in my mind that Jewish law today rejects launching warfare for the sake of glory or imperialism. Those battles may once have been seen as optional, but they were never obligatory, and today should be seen as prohibited. If we think Iraq was wrong to attack Kuwait in 1990 to conquer its oil fields, and Russia was wrong to attack Ukraine to restore its empire, then we, too, must reject imperialist warfare.

Yet the category of *milhemet reshut* might also be expanded to include a more complex form of discretionary warfare, in which Jews are neither expansionist aggressors nor passive victims. In the Talmud, the Sages consider a sort of war in which, in anticipation of an upcoming battle, a military moves to meet the enemy on the enemy's side of their shared border. The motivation for such anticipatory warfare is, in the words of the Sages, for the Jews "to reduce their enemies so that they [the enemies] will not come and wage war against them" (Sota 44b). Are these "commanded" or "discretionary" wars? The Sages aren't sure.

In one presentation of the debate, a prominent Sage deemed *any* anticipatory strike as

discretionary. But most Talmudic Sages seem to disagree with that clear-cut distinction and render some anticipatory action as “commanded.” Unfortunately, they don’t specify where to draw the line separating discretionary from commanded anticipatory wars, leaving the later commentators to debate which type of anticipatory warfare was under discussion in the first place.

Were the sages referring to an incipient attack with enemy soldiers gathering on the border, akin to what we’d call a “preemptive strike”? Or were they talking about a more distant threat that might be brewing but was still somewhat ambiguous? Some alternatively suggest that the debate was about utilizing aggressive military might to deter hostile enemy activity despite the absence of any clear threat, i.e., a “preventative strike.” According to one medieval interpretation, favored by many 20th century rabbinic scholars, this was what Maimonides had intended when he found it allowable for a king to “expand the borders of Israel,” i.e., to cross the border and stop a nascent threat.

The rabbinic discourse understands there to be a spectrum of legitimate anticipatory attacks. Some preemptive actions may be obligatory, while more preventative actions are generally discretionary (the proper way to translate *reshut* in this context). This latter category of wars, when not for the purpose of imperialist expansion, remains permissible. Yet as a *milhemet reshut* rather than a *milhemet mitzvah*, it requires additional deliberation and approval, as well as limitations on conscription. Leaders will need to convince their advisory circle that launching a discretionary war is the right move, and they must ensure their soldiers believe in the cause. Significantly, self-defense is the only acceptable motivation behind such discretionary warfare, not imperial expansionism.

How should we evaluate potential threats to determine when fighting is truly necessary or more discretionary? The Talmud famously asserts, “If one comes to slay you, rise and kill first.” Yet, what if it’s not so clear that they are coming to slay you—or that even if they are planning to come to slay you, it is imminent? The wisdom and morality of an anticipatory attack is greatly contingent on the risk evaluation— regarding both the imminence of the threat and the ability to gain military advantage by acting now.

The State of Israel has struggled with the question of anticipatory strikes throughout its history. In 1956, the leaders of the Mapam party were against attacking Egypt before it received a large shipment of Czechoslovakian weapons that might change the arms balance in the Middle East. David Ben-Gurion, however, pushed to defeat the threat before it got out of control. Before the Six-Day War, ministers in the National Religious Party were at first adamantly opposed to preemptively attacking Egypt. Others prevailed, however, and Israel achieved its greatest military victory. Shimon Peres warned Menachem Begin in 1981 against striking the Iraqi nuclear plant in Osiraq. “What is meant to prevent [disaster] can become a catalyst [for disaster].” Begin moved forward anyway, and that preventative strike worked out.

Discretionary preventative wars endangering the lives of soldiers and citizens alike require a well-reasoned justification. It is precisely for this reason that the Sanhedrin's approval was necessary in ancient times. Their approval gave moral support for enlistment in just causes, while serving as a check on the potential abuse of monarchical power. I would argue that the necessity of gaining and retaining popular support for anticipatory warfare has only increased in the modern era. As the historian Victor Davis Hanson contends, democratic societies will not lend support to extensive preventative wars. "A controversial gamble," he notes, "cannot garner continued domestic public support if the attack instead leads to a drawn-out, deracinating struggle, the very sort of quagmire that preemption was originally intended to preclude."

This is not just a strategic consideration but a moral one. When gambling with an anticipatory attack, one must prefer courses of action that prevent the extensive bloody warfare one is seeking to avoid. Accordingly, an optimal preventative strike should be short; it should quickly incapacitate the threat and hopefully also induce political concessions. The state must focus on eliminating the direct threat and buttressing the immediate security interests of its citizens.

Yet, in my view, the most important element of a discretionary war is recognizing that there is a choice to be made. The concept of a "no-choice war" (*milkhamot ein bereira*) emerged even before the Israeli state was founded, to express the notion that Zionists had no alternative but to fight wars that were imposed upon them. In such situations, many would even say that Jews were "forced" to fight for their survival, or that war was "forced upon them." This claim was crucial to the ethos of the Haganah and later the IDF: the implied claim is that Jews wage war only as an absolute last resort.

Frequently, an honest assessment indicates that war is the best resort but not the only resort. In the absence of an imminent invasion, other options remain available. This choice doesn't make the war any less necessary or less moral. All strategic decisions are based on imprecise calculations. As ethicists Brian Orend and Helen Frowe argue, "last resort" means that we seek first the least-violent method of neutralizing a threat and that we not hastily resort to force. Yet there is no formula for determining the "least-violent method" or what constitutes "hastiness," leaving room for reasonable discretion. One must account for both short-term and long-term costs and benefits.

It's much easier to gather support for patriotic self-sacrifice when one has no option but to fight. Soldiers are certainly more enthusiastic about going into battle when they feel that their homeland is threatened. It's not surprising that President Bush repeatedly asserted that the second Iraq War was a war of necessity. As a sound bite, a "no-choice" war certainly sells better than a "best-guess-option-under-the-circumstances" war.

Yet the "no choice" rhetoric distorts the moral framework for debating such decisions. The choice/no-choice dichotomy leads both opponents and proponents of force to overstate their

case in absolute terms. As the British military strategist Lawrence Freedman has noted, it was the Sages who recognized that this was an overly simplistic binary. In the absence of armed invasion, it's not clear whether one should launch an anticipatory attack. That doesn't mean that going on the offensive is unjust or that it wasn't done for the sake of self-defense. It does require great deliberation. With good reason, preventative attacks are called "discretionary wars."

The time to strike Hamas preemptively has passed. Given the threats it is likely to face in the future, Israel will need to learn the lessons from its triumphs and mistakes, including the risks taken and the roads not travelled. It has decisions to make. There's nothing unethical, per se, about a discretionary war. It could be a very moral decision. We just need to be honest that it is a choice.

Endnotes

[1] *Responsum Mishpat Kohen*, nos. 144, 145.

[2] See Meiri to Sotah 42a, Nahmanides' addenda to Maimonides' *Sefer ha-Mitzvot* (negative commandment #17); and R. Isaac Abarbanel's comments to I Samuel 8:4-6 and Deuteronomy 20:10.

[3] See R. Haim Hirschensohn, *Malki Ba-Kodesh*, Vol. 1, p. 149; R. Isaac Herzog, *Têhuka LeYisrael al pi HaTorah*, Vol. 1, p. 129 and Vol 2, p. 33; and R. Shaul Yisrael, *Amud HaYemini*, siman 16; and R. Yehuda Gershuni, "Milhemet Mitzvah u-Milhemet Reshut," *Torah She-Ba'al Peh* 13 (5731), p. 149-150. See also R. Eliezer Waldenburg, *Hilkhos Medina*, Vol. 2, p. 119.

[4] *Pinkasei HaRaayah*, vol. 1 (Boisk), #34, p. 29-30.