

The topic of this shiur is ‘Land for Peace’ in accordance with conventional usage, but that phrase does not precisely reflect the terms of the halakhic discussion of that political topic. Halakhah does not formally place a value on peace, but rather on human life. The initial formal halakhic discussion, then, is whether one can surrender territory within the Land of Israel if doing so will save lives. Nor is it only a one-way question – if it is permitted to sacrifice land for life, it may not be permitted to sacrifice life for land. On this see the general dispute between Tosafot and Maimonides as to sacrificing life for a commandment when one is not obligated to do so.

Four caveats, however:

- 1) I use the phrase “human life” above, but halakhah certainly places a premium on Jewish life. How the special status of Jewish life affects this topic is not discussed in this shiur.
- 2) The calculus of lives involved here clearly does not include those of aggressors. If maintaining land will result overall in more deaths, but fewer among the defenders and innocent bystanders, it is clearly preferable halakhically.
- 3) If it is decided that surrendering land to save lives is permitted, it becomes possible to suggest that surrendering land is permitted to achieve other aims. At that point peace as such may play a halakhic role, as well as “peace dividends”.
- 4) Rabbi Herschel Schachter has argued convincingly that surrendering land is permitted if fighting to maintain it is unlikely to succeed, but will result in more deaths. The legal definition of “unlikely to succeed” is not readily formulatable, however.

1. Nachmanides claims that settling in the Land of Israel is a positive commandment. He formulates it as settling rather than as conquering, but from his conclusion it seems that conquest is certainly contemplated as part of the settling process. This is in the context of the original Jewish conquest.

Note: Maimonides does not list this commandment – see source 3 below for Nachmanides’ response. Some have suggested that Maimonides does not list it because it is the grounding assumption of many, many other commandments rather than a specific commandment in its own right. This suggestion, even if taken as true, requires investigation into the status of such grounding assumptions in halakhah as law.

2. The Talmud provides here a negative commandment against selling non-Jews land in the territory of Israel. Presumably this applies kal vachomer to surrendering land.

Note: The kal vachomer works best if one equates transfer of ownership with transfer of sovereignty. This is a crucial issue in many circumstances, but not within the scope of this shiur.

3. Here Nachmanides explicitly extends the commandment to conquest, and extends the obligation throughout the generations. He formalizes this by declaring it a “commanded war”, with all the legal ramifications of that status.

4. By contrast, Rav Yehudah seems to provide a moratorium against conquering the land of Israel, although R. Zeira disagrees. There have been many suggested ways of making these oaths inapplicable to contemporary Israel. These include denying their halakhic significance to begin with, claiming that they are interdependent and that therefore the world’s violation of the third released us from the first, and claiming that the Balfour declaration and/or UN resolution meant that Zionism was not a rebellion. The Satmar Rebbe and Neturei Karta are essentially alone in seeing these oaths as practically relevant to Israeli military policy.

However, there is obviously a need to explain how such oaths could be rabbinically approved under any circumstances if, as Nachmanides claims, they include an oath to not perform a positive commandment.

5. The Sefer HaChinukh concludes that the obligation to kill members of the Seven Nations who inhabited Israel at the time of the original Jewish conquest applies only if it can be performed without self-endangerment. This seems peculiar, as the original commandment was in the context of war, which is dangerous.

6. This point is made immediately by Minchat Chinukh, who generalizes it to a statement that all commandments that generate obligatory wars definitionally override human life. In other words, the “big three” that the Talmud lists as overriding human life are not a comprehensive list. Minchat Chinukh’s argument would presumably apply to the commandment to conquer Israel as formulated by Nachmanides.

However, Sefer HaChinukh seems to disagree! Perhaps he believes that the commandment to extirpate the Seven Nations can be separated from the commandment to conquer Israel from them. While they were in possession of the Land, the commandment to conquer the Land generated an obligatory war. One finding them outside Israel, however, or perhaps even in Israel but not exercising sovereignty, is commanded to kill them, but that commandment does not generate an obligator war and so is suspended to save human life.

7. Maimonides seems to indicate that all wars of conquest can be fought only with the permission of High Priest and Sanhedrin, neither of which exist today. Perhaps, then, it is not permitted to fight a war of conquest today even if a successful war would fulfill a commandment! On the other hand, perhaps Maimonides means only that the High Priest and Sanhedrin must be consulted if they exist. Furthermore, perhaps he means wars of optional conquest.
8. This reading is supported by his claim here that the war with the Seven Nations is an obligatory war, which does not require the advice of the Sanhedrin. However, Maimonides may believe that the commandment to conquer Israel was addressed only to Joshua's generation, or to all Jews prior to the first exile. Furthermore, he may believe, in exact opposition to Sefer HaChinukh, that the obligatory war was to extirpate the Seven Nations, with the conquest merely a byproduct. Maimonides does clearly state, however, that wars of self-defense are licit nowadays. It seems reasonable to suggest that self-defense includes defense of territory.
10. This idea is supported by the Law of the Furtive Trespasser, in which the householder is not obligated to retreat rather than confront the trespasser. (See, however, my shiur entitled "The "Crime of Passion" Defense in Halakhah".) Furthermore, Rava's endorsement of preemptive self-defense, may allow for wars of "defensive conquest".