YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**War in Halakha**

**Rav Yishai Jeselsohn**

**Shiur #04: A War of Conquest and the Seven Nations**

**Introduction**

When the Gemara enumerates different types of wars and their definitions as *milchamot mitzva* and *milchamot reshut,* it distinguishes between wars of conquest and wars waged for territorial expansion:

Rava said: The wars waged by Yehoshua to conquer [Canaan] were obligatory [*chova*] according to all; the wars waged by the house of David for territorial expansion were voluntary [*reshut*]according to all. (*Sota* 44b)

However, the Rambam formulates his definition differently:

A king should not wage other wars before a *milchemet mitzva.* What is considered as *milchemet mitzva*?The war against the seven nations [who occupied the Land of Israel], the war against Amalek, and a war fought to assist Israel from an enemy that attacks them. (*Hilkhot Melakhim* 5:1)

Why did the Rambam shift from the Gemara's definition, "the wars waged by Yehoshua to conquer [Canaan]," to his own definition, "the war against the seven nations"? On the face of it, both of these wars fall into the category of *milchemet mitzva,* for God commanded about both of them – and in several places, the two commands appear together:

Thus shall you do to all the cities which are very far from you, which are not of the cities of these nations. But of the cities of these peoples, that the Lord your God gives you for an inheritance, you shall save alive nothing that breathes, but you shall utterly destroy them: the Hittite, and the Amorite, the Canaanite, and the Perizzite, the Chivite, and the Yevusite; as the Lord your God has commanded you. (*Devarim* 20:15-17)

Speak to the children of Israel, and say to them: When you pass over the Jordan into the land of Canaan, then you shall drive out all the inhabitants of the land from before you, and destroy all their figured stones, and destroy all their molten images, and demolish all their high places (*bamot*). And you shall take possession of the land, and dwell in it; for I have given the land to you to possess it. (*Bamidbar* 33:51-53)

We can sharpen the question: What defines the conquest of the land in the days of Yehoshua as a *milchemet mitzva* – the destruction of the seven nations who lived there, or Jewish control of the Land of Israel? This question has many implications for our time, when the seven nations no longer exist, but we are certainly fighting for our country.

**The Dispute Between the Rambam and the Ramban**

Many have hung this question on the dispute between the Rambam and the Ramban regarding whether conquering the Land of Israel is considered a mitzva at all*.* The Ramban counts the obligation to settle the Land of Israel as an independent mitzva:

We were commanded to take possession of the land that God, blessed and exalted be He, gave our forefathers, Avraham, Yitzchak, and Yaakov, and not leave it in the hands of other nations or in desolation. This is what He said to them: "And you shall take possession of the land and dwell in it; for I have given you the land to possess it. And you shall divide the land for an inheritance" (Bamidbar 33:53-54). (Ramban, *Hasagot al Sefer Ha-Mitzvot*, positive commandments that were omitted by the Rambam, no.4)

In contrast, the Rambam enumerates two *mitzvot* concerning the destruction of the seven nations (negative precept no. 49 and positive precept no 187), but never states a mitzva to settle the land. Thus, we can certainly infer that the Rambam interpreted the words of the Gemara in *Sota,* "the wars waged by Yehoshua to conquer [Canaan]," as meaning a war waged against the seven nations who occupied the land at that time – and therefore he chose the formulation: "the war against the seven nations."

However, when we dig deeper and try to get to the heart of the matter, it seems that things are not that simple.

**A War of Conquest According to the Ramban**

It would seem obvious that if the Ramban counts a mitzvato settle the Land of Israel, there must also be a mitzvato conquer it. As he writes further:

And the *Sifrei* (*Devarim* 17:14) states: "'And you shall possess it and dwell in it' – by virtue of your taking possession of it, you shall dwell in it." Don't make a mistake and say that this mitzvais the mitzvato wage war against the seven nations, whom we were commanded to destroy, as it is stated (*Devarim* 7:2): "You shall utterly destroy them." This is not so. For we were [only] commanded to kill those nations when they fight against us, but if they want to make peace, we make peace with them and allow them to live on known terms. But we must not leave the land in their hands, or in the hands of other nations, in any generation. (Ramban, ibid.)

The Ramban makes two innovative points: first, that the mitzvaof conquering the Land of Israel is not included within the mitzvato wage war against the seven nations; and second, that this mitzvaapplies in all generations, not just in the days of Yehoshua. Thus, it can be concluded that any war whose goal is preserving the Land of Israel in our hands is indeed a *milchemet mitzva*.

Alternatively, some have understood from Rashi’s comments that any wars waged to conquer the land *after* Yehoshua’s conquest are considered *milchamot reshut.* This is implied by his wording in tractate *Eiruvin*:

“To a *milchemet reshut*” – any *milchemet reshut*, from the war waged by Yehoshua and on, for that one was a *milchemet mitzva*.[[1]](#footnote-1) (Rashi, *Eiruvin* 17a, s.v. *le-milchemet ha-reshut*)

Rashi's comment in *Parashat Masei* also implies that he disagrees with the Ramban, seeing the settlement of the Land of Israel not as an independent mitzva, but rather as a blessing:

"And you shall take possession [*ve-horashtem*] of the land" – [meaning:] you shall dispossess it of its inhabitants, and then, "you will dwell in it" – [i.e.,] you will be able to remain in it. But if not, you will not be able to remain in it. (Rashi, *Bamidbar* 33:53)

Rashi interprets the word "*ve-horashtem*" as denoting the removal of the idol-worshipping inhabitants of the land, whereas the Ramban understands that verse in reference to the conquest of the land, with the removal of the inhabitants merely a preparation:

In my opinion, this is a positive precept: He is commanding them to dwell in the land and inherit it, because He has given it to them, and they should not reject theinheritance of the Lord. If the thought would occur to them to go and conquer the land of Shinar or the land of Assyria or any other country and to settle there, they would [thereby] transgress the commandment of God.[[2]](#footnote-2) (Ramban, *Bamidbar* 33:53)

Thus, it seems that in the opinion of the Ramban, the mitzvaof settling the land does apply in all generations – but this still does not necessarily mean there is a mitzvato wage war in order to protect the land.[[3]](#footnote-3) However, when we continue to read the Ramban's words about his fourth precept, it is difficult to argue that the conquest of the land is *not* considered a *milchemet mitzva* – for the Ramban himself cites our passage in order to prove his position:

… that we were commanded about its conquest and its settlement. And from what they said: "the wars waged by Yehoshua to conquer [Canaan],” you understand that this mitzvainvolves conquest. (Ramban, *Hasagot al Sefer Ha-Mitzvot*, ibid.)

Here, he clearly states that part of the mitzvais waging war in order to settle the land.

What follows then from the words of the Ramban is that there are indeed two different wars. On the one hand, there is the war against the seven nations, which relates to the extermination of idol worship and its worshippers; this applies even outside the borders of the land and is not connected at all to the conquest of the land. On the other hand, there is the mitzvato conquer the land – not only from the seven nations, but from any nation that settles in the land or threatens Israel's settlement in it.

**A War of Conquest According to the Rambam**

The Rambam, as mentioned, does not count settling the Land of Israel as an independent mitzva. However, is very difficult to say that he does not consider settlement of the land as a mitzva in some framework, since it is clear from many places that he attaches enormous importance to living there:

First and foremost, the Rambam rules that it is forbidden to leave the land:

It is forbidden to leave the Land of Israelfor the Diaspora at all times… (*Hilkhot Melakhim* 5:9)

Furthermore, the Rambam goes on at length there (*halakhot* 9-12) about the importance of this mitzvaand the preciousness of the Land of Israel and its settlement.

The Rambam also rules, in accordance with the Gemara (*Ketubot* 110b), that one can force a spouse to move to the Land of Israel, but not to leave the land:

When a husband desires to move to the Land of Israel and [his wife] does not desire to do so, he may divorce her without paying her [the money due her by virtue of her] *ketuba*. If she desires to move [to the Land of Israel] and he does not desire to do so, he must divorce her and pay her [the money due her by virtue of her] *ketuba*. (*Hilkhot Ishut* 13:20)

Similarly with regard to slaves:

When a slave asks his master to move to the Land of Israel, we compel his master to move there with him or to sell him to someone who is moving there. When a master living in the Land of Israel desires to move to the Diaspora, he cannot compel the slave to move with him against his will. (*Hilkhot Avadim* 8:9)

The Rambam there emphasizes:

This law applies in all times, even in the present era, when the land is ruled by gentiles.[[4]](#footnote-4)

From this law as well, we learn that living in the Land of Israel involves a mitzva*.*

In addition, the Rambam rules, based on the Gemara in tractate *Gittin* (8b), that settlement of the Land of Israel constitutes grounds for leniency regarding the laws of Shabbat:[[5]](#footnote-5)

One who buys a house in the Land of Israel from a gentile,he is permitted to tell the gentile to compose a deed of sale on Shabbat, for verbalizing to a gentile [to perform a forbidden labor on Shabbat] is a Rabbinic prohibition, and because [of the importance] of settling the Land of Israel, the Sages did not apply their decree in this instance. (*Hilkhot Shabbat* 6:11)

And in yet another source, the Rambam explains why a border town is not to be condemned (and destroyed) as an *ir ha-nidachat* (a city whose inhabitants were led astray to idolatry):

A border city is never condemned as an *ir ha-nidachat*, so that gentiles will not enter and destroy the Land of Israel. (*Hilkhot Avoda Zara* 4:4)

The concern here is not about the danger to the lives of the people of Israel, but about the potential destruction of the Land of Israel.

It seems clear from all these sources that the Ramban certainly attaches virtue and importance to living in the Land of Israel. Moreover, his words regarding an *ir ha-nidachat* prove that this importance is a matter of Torah law, for it influences the parameters of a positive Torah law. And indeed, it is very difficult to say that settlement of the Land of Israel is not included among the Torah commandments, since there is an entire set of commandments that depend on the land and relate to living in it; it is obvious that it is God's will and the will of the Torah that the people of Israel settle in the Land of Israel, even if there is no explicit command directing them to do so.

Some have suggested that according to the Rambam, the mitzvaof settling the Land of Israel is included in the mitzvato destroy the seven nations of Canaan. As the author of the *Avnei Nezer* writes:

This itself seems to me to be the reason regarding the settlement of the Land of Israel. For the mitzva of "You shall utterly destroy them" is so that we may settle in the land. For Yehoshua sent out letters saying: Whoever would like to leave should leave. The Girgashi left, and he did nothing to them (*Yerushalmi Shevi'it* 16b). Therefore, destroying the nations and settling the Land of Israel are not counted as two *mitzvot*, and he counted only the mitzvaof destroying the nations. (*Avnei Nezer*, *Yoreh De'a* 454: 6)

But this argument is difficult, for in the Rambam's formulation of the mitzvato destroy the seven nations, there is no mention whatsoever of a mitzvato settle the land. In fact, he instead emphasizes that this mitzvais connected to idol worship:

Commandment no. 187 is that He commanded us to kill the seven [Canaanite] nations and to destroy them, since they are the root of idol worship and its first foundation. This is what is stated: "You shall surely destroy them." And it is explained to us in many verses (*Devarim* 20:18; *Shemot* 23:33; *Devarim* 7:4) that the reason for this is so that we do not learn from their heresy.[[6]](#footnote-6) (Rambam, *Sefer Ha-mitzvot*, positive commandment #187)

It seems possible to offer a much simpler explanation for the absence of this mitzva from the Rambam’s list. The Rambam lists the practical commandments in his *Sefer Ha-mitzvot*, but he does not list "concepts" or "goals" that the Torah sets for the people of Israel. Settling the Land of Israel is not a defined mitzva, but rather the purpose and destiny of the people of Israel. Even if settling the Land of Israel is not a practical mitzvacast upon each and every person, according to the Rambam, each of us must certainly be influenced by this destiny that God has set for Israel.

But so far, we have only proven that according to the Rambam, there is a mitzvato settle the Land of Israel. From where do we know that there is a mitzvato wage war for the sake of conquering the land?

In fact, this too is explicitly stated – when the Rambam refers to the law that Israel's conquest of other lands confers upon them the sanctity of the Land of Israel, only when their conquest comes after the conquest of the Land of Israel:

And what forced us not to make Syria like the Land of Israel regarding all its laws, is what I will explain: It is that it is forbidden to fight in any of the lands before you conquer all the land whose borders the Holy One, blessed be He, marked in the Torah, namely, the land of Canaan with its borders, and because David conquered that land, Aram Naharayim and what is around it, before he finished conquering the Land of Israel. (Rambam, Commentary to the Mishna, *Demai* 6:11)

The Rambam speaks here[[7]](#footnote-7) of a “prohibition” to conquer other lands prior to the full conquest of the Land of Israel. Thus, there is an area that Israel is commanded to conquer before it conquers other places. It is possible that a proof could be brought from here that a war waged to conquer the Land of Israel is also a mitzva according to the Rambam – but it seems that it is still not defined as a *milchemet mitzva*.

**Definition of a *Milchemet Mitzva* According to the Rambam and the**

**Ramban**

It seems to me that the dispute between the Rambam and the Ramban can be explained as follows: Even if the Rambam recognizes the mitzvaof settling the Land of Israel, war may not be a necessary part of this mitzva*.* When it comes to the mitzvato destroy the seven nations of Canaan, the mitzvato wipe out Amalek, and the mitzvato assist Israel against enemies, the action that the people of Israel are commanded about is waging war. This is not the case regarding the mitzvaof settling the Land of Israel. According to the Rambam, the main mitzvais the settlement of the land, not its conquest; therefore, he does not define a war to conquer the Land of Israel as a *milchemet mitzva.*[[8]](#footnote-8)

In the wake of this understanding of the Rambam's position, the dispute between the Rambam and the Ramban can be explained in two ways:

It is possible that the dispute relates to the definition of the mitzva of settling the Land of Israel. The Ramban, who learns it from the phrase, "And you shall take possession (*ve-horashtem*),” sees a commandment to wage war for the land as part of Yehoshua's commandment to conquer the land. In contrast, the Rambam sees the main mitzvaas settling the land, even without conquering it.

Another possibility, which seems more likely to me, is that the dispute here is about the definition of *milchemet mitzva.*" Even the Rambam assumes that part of the mitzvaof settling the land depends on waging war; after all, he writes in *Hilkhot Terumot* (1:2) that the borders of the Land of Israel for the purpose of *terumot* and *ma'aserot* are based on the conquest of the land. There is, however, disagreement regarding which wars fall into the category of *milchemet mitzva* and are defined as such. According to the Ramban, any mitzvathat is performed through war falls into this category, while according to the Rambam, only a mitzva whose essence involves the actual going out to war falls into this category. The mitzvaof settling the land can be fulfilled even without war, if the nations cede to us their claim to the land, except that the reality does not allow this. On the other hand, the mitzvaregarding the seven nations is to "utterly destroy them"; although it is possible to make peace with them, the essence of the mitzvais still to wage war against them, and therefore the Rambam chose to name that war, and not a war of conquest of the Land of Israel, as a *milchemet mitzva*.

**The Position of the Meiri**

The Meiri offers an interesting and unique position regarding the relationship between a war against the seven nations and a war to conquer the Land of Israel. The Meiri sees in the conquest of the land not just another *milchemet* *mitzva*, but that which defines and characterizes all *milchamot mitzva*:

[The king] may not take [Israel] out to a *milchemet reshut*, that is to say, to any wars that are not to conquer the Land of Israel, which are a war waged against the seven nations, or a war waged against Amalek, or where enemies come against Israel for any reason, for all these are *milchamot mitzva*.(*Beit Ha-bechira Sanhedrin* 16a).

According to this novel perspective, the foundation of all *milchamot mitzva* is conquest of the Land of Israel; as part of the conquest of the land, there are also "ancillary" objectives – destroying the seven Canaanite nations, wiping out Amalek, and preventing other enemies from taking control of the land. All of these wars have one purpose: conquering the Land of Israel. According to this, a war waged to conquer the land is in itself not a *milchemet mitzva*, but it is essentially the basic common diameter that stands at the foundation of all *milchamot mitzva.*

(Translated by David Strauss; edited by Sarah Rudolph)

1. See also Rashi, *Sanhedrin* 2a, s.v. *be-milchemet ha-reshut.* It is possible to reject this understanding and say that Rashi means all wars waged after the conquest of the land are considered *milchamot reshut*, but there can be a *milchemet mitzva* in any generationif the land is being conquered. See below in connection with the position of the Rambam, where we will discuss such an understaning. [↑](#footnote-ref-1)
2. See *Or Ha-Chaim* (ad loc.), who decides in accordance with Rashi in understanding the plain meaning of the verses. [↑](#footnote-ref-2)
3. Indeed, Rabbi Nachum Rabinowitz made this distinction; see *Responsa Melumadei Milchama*, no. 2. [↑](#footnote-ref-3)
4. This emphasis is important in light of the *Megillat Esther*’s explanation (commentingon the Ramban’s positive commandments omitted by the Rambam, positive precept no. 4) for why the Rambam did not count the mitzvaof settling the Land of Israel as a mitzva: "It seems to me that the reason the Rambam did not count it is that the mitzvaof taking possession of the land and settling it only applied in the days of Moshe, Yehoshua, and David, and as long as they did not go into exile. But once they were exiled from their land, this mitzvadoes not apply in later generations, until the time of the arrival of the Messiah. For on the contrary, we are commanded in accordance with what they said at the end of *Ketubot* (111a) that we are not to rebel against the nations to go and conquer the land by force. And they proved this from the verse: 'I adjure you, O daughters of Jerusalem.' And they expounded about this that Israel should not go up [to the Land of Israel] as a wall. That which the Ramban said, that the Sages said that the conquest of the land is a *milchemet mitzva* – that is when we are not subject to the nations. And that which he further said, that the Sages went on at length in praise of living in the Land of Israel – that was only in the time when the Temple stood, but now there is no *mitzva* to live there." The words of the Rambam here clearly contradict the *Megilat Esther*, for indeed, according to the Rambam there is a *mitzva* to settle the Land of Israel even when the Temple is not standing. [↑](#footnote-ref-4)
5. It is true that the Rambam speaks here only about a Rabbinic prohibition, but see *Iglei Tal*, *tochen*, 38, 6: "Since the actual conquest of the Land of Israel sets aside Shabbat with respect to labors forbidden by Torah law, therefore acquisition, which is slightly similar to conquest, as stated by the Ra'avad (*Hilkhot Terumot* 1), that it is similar to the conquest of an individual – sets aside the prohibition to ask a gentile to perform a labor." [↑](#footnote-ref-5)
6. From the words of Rashi (*Sota* 35b, s.v. *katvu*), it is possible to understand that there are two laws relating to a war waged against the seven nations: One law applying to those who live in the Land of Israel, who are subject to the mitzva of "You shall surely destroy them," and it is forbidden to leave any of them alive; and another law applying to those who live outside the boundaries of the land, who can make peace with Israel. There might have been room to suggest that there is indeed a dimension of the mitzvadealing with the seven nations that is connected to settlement of the land (as implied by Rashi in his dispute with the Ramban in *Parashat Masei*), but after closer examination of Rashi’s wording, it seems that this is incorrect, for Rashi gives a different reason for distinguishing between those members of the seven nations who are living in the Land of Israel and those who are living outside of it: "To inform [those members of] the seven nations who are living outside the boundaries of Israel, for they were only commanded to destroy those living within the boundaries, so that they not learn from their corrupt actions." The reason then is the concern about their influence on the people of Israel, and not the sanctity of the land. [↑](#footnote-ref-6)
7. In contrast to what he says in *Hilkhot Melakhim* 6:6, where there is no mention of a prohibition, but only the result regarding the inapplicability of the laws of the holinesss of the land to the conquered areas. [↑](#footnote-ref-7)
8. In the first *shiur* in this series, we discussed at length the possibility of defining a *milchemet* mitzva as a war regarding which there is a mitzvain the very act of embarking on it; see there. [↑](#footnote-ref-8)