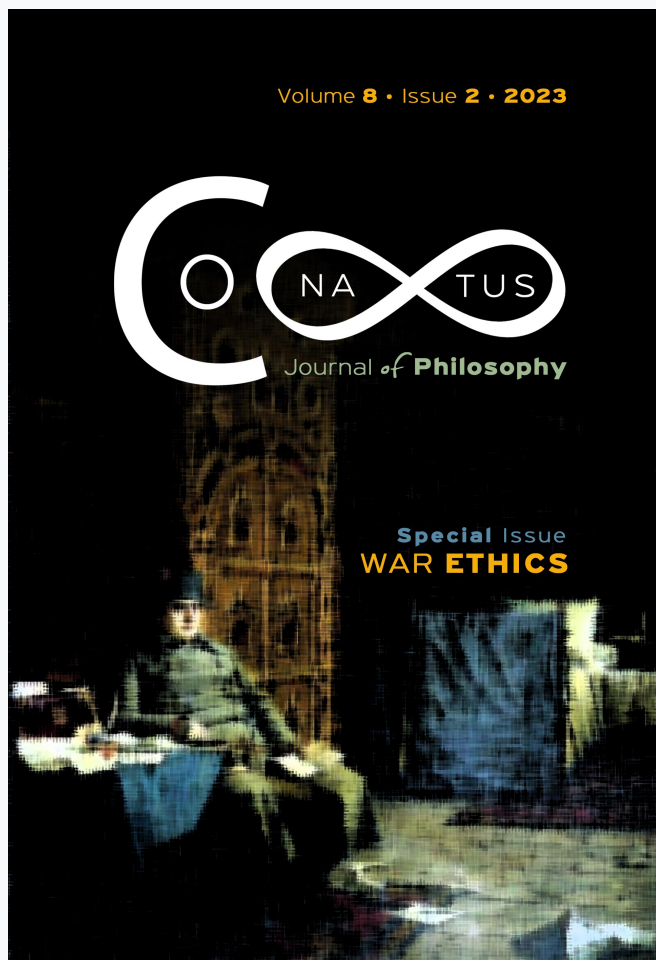


## Conatus - Journal of Philosophy

Vol 8, No 2 (2023)

Conatus - Journal of Philosophy SI: War Ethics



### The Problem of the Legitimacy of War in the Context of Ethical Concepts: The Example of the 44-day War

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doi: [10.12681/cjp.34723](https://doi.org/10.12681/cjp.34723)

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#### To cite this article:

Sargsyan, A. (2023). The Problem of the Legitimacy of War in the Context of Ethical Concepts: The Example of the 44-day War. *Conatus - Journal of Philosophy*, 8(2), 545–563. <https://doi.org/10.12681/cjp.34723>

# The Problem of the Legitimacy of War in the Context of Ethical Concepts: The Example of the 44-day War

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## **Abstract**

*The article analyzes the issues of the legitimacy of war, the relationship between war and morality in the context of different ethical concepts. It is shown that the somewhat 'fashionable' notion of the ethics of war is actually problematic and does not clearly express the peculiarities of the relationship between war and morality. Analyzing the main conceptual discourses about war, it is argued that in some of them the acceptance of the legitimacy of war does not make sense with the logic of the watershed between war and morality. Analyzing the 44-day War separately for the first time in the context of the principles of the conception of just wars, it is argued that Azerbaijan's military aggression against Artsakh was actually accompanied by a gross violation of many of these principles, despite the propaganda efforts of the Azerbaijani side to claim the opposite.*

**Keywords:** *ethics of war; legitimacy of war; pacifism; just war; jus ad bellum; jus in bello; Artsakh; Azerbaijan*

## I. Introduction

Wars have almost always been at the center of attention of various research initiatives. For the majority, they were of interest from the point of view of the tactical and strategic techniques used in military operations, and for some, from the point of view of the effects they left on political, economic, socio-cultural developments, etc. There is no doubt that wars can be studied from different points of view, can be of interest to different branches of science or scientific disciplines, but among the variety of research 'views'

the ethical perspective of the meaning of war has a unique importance and relevance. The above mentioned will become more impartial if we take into consideration that wars, being legitimate or illegitimate, just or unjust, moral or immoral, acceptable or unacceptable, are often derived from specific philosophical, ethical, anthropological concepts or systems. That is, texts about war or the so-called *text*<sup>1</sup> are often the basis for relating to reality in one way or another or creating a new reality.

In the context of the above-mentioned subject, the 44-day War unleashed by Azerbaijan against Artsakh in September of 2020 is of certain interest, which has not yet been thoroughly studied in the context of ethical doctrines about war, as well as the conception of just wars. A fact that makes it urgent to make analyses in this direction, which will provide an opportunity to somewhat overcome the existing research gap in the matter in question, as well as the speculations related to the ‘moralization’ of that war.

## II. Ethics of war or war and ethics?

Although, in recent years the notion of ethics of war<sup>2</sup> has become popular in the analytical literature. Nevertheless, in this article, the notion of ‘ethical concepts about war’ has not been used randomly. The latter is due to the fact that the notion of ‘ethics of war’ seems to record the subjectivity of war, its competence or ability to define moral or ethical content. A reality that is not at all justified, because it is not war that defines the scope of the moral, but the relevant ethical concepts or doctrines about war that determine the specifics of the relationship between war and the moral. In other words, war does not ‘create’ or mask the moral in its possible variety, but it is masked or, more precisely, determined in the context of morality and its imperatives. Perhaps it is for this reason that the term *ethics of war*, which has become some-

<sup>1</sup> Armen Sargsyan, “War and Peace as ‘Text’ (About Problems Related to Reading),” [in Armenian: “Paterazmy yev khaghaghut’yuny vorpes «tek’st» (ynt’erts’man khndimeri shurj)”] *History and Culture* 18, no. 2 (2022): 8-17.

<sup>2</sup> See indicatively: Anthony Coates, *Ethics of War* (Manchester: Manchester University Press, 2016); Jovan Babić, “Ethics of War and Ethics in War,” *Conatus – Journal of Philosophy* 4, no. 1 (2019): 9-30; Anastasiya Konyukhova, “The Ethics of War and the Ethics of Peace: A Comparative Analysis of Classical and Modern Concepts,” [in Russian: *Etika voyny i etika mira: sravnitel’nyy analiz klassicheskikh i sovremennykh kontseptsiy*] *Bulletin of Krasnoyarsk State Pedagogical University Named after V. P. Astafyev* 19, no. 1 (2012): 5-16; Boris N. Kashnikov, ed., *Ethics of War and Peace: History and Perspectives of Research* [in Russian: *Etika voyny i mira: istoriya i perspektivy issledovaniya: Kollektivnaya monografiya Nauchno-uchebnoy gruppy po izucheniyu filosofii voyny*] (Sankt-Peterburg: Alatheya, 2016), etc.

what ‘fashionable,’ is used in this article in quotation marks, that is, in the context of the specific author’s views or speeches related to them.

The foregoing does not mean at all that the notion of ‘ethics of war’ has become generally recognized in professional literature, since the titles and content of many articles and monographs are intended to state that, although their authors agree on the issue of the connection between war and morality, but they are not being inspired by the ‘fashion’ of the notion of the ‘ethics of war.’

### III. War in the world of moral-philosophical ‘mirrors’

It is not new that wars have received and receive ambiguous treatment in theoretical thought. Their violence, brutality, and human, economic, social, cultural and other losses have often been the basis for the formation and spread of approaches that consider wars demoralizing, demonizing, and absolutely unacceptable. However, along with the anti-war theses of extreme pacifism, approaches legitimizing the permissibility of war or waging war are still spreading today. The latter, however, does not always conform to the logic of consistently advocating war. Even today, in scientific, quasi-scientific, anti-scientific and other discourses we can find approaches, which *a: absolutely reject war, b: consider it somewhat permissible, c: advocate war.*

It is noteworthy that the moral ‘trial’ of wars has occupied a special place in the religious-philosophical mind.<sup>3</sup> In particular, in the works of Russian religious thinkers (N. Berdyaev, L. Tolstoy, I. Ilyin, V. Solovyov, etc.), the meaning of war in the context of Christianity has been of particular importance. Which is natural, since, for example, the Christian ‘Thou shalt not kill’ seems originally supposed to rule out any tolerance for violent and deadly wars? From this point of view, L. Tolstoy’s pacifist<sup>4</sup> and anti-war beliefs should be considered understandable and somewhat legitimate. Tolstoy, also referring to the Sermon on the Mount, was sure that Christ’s commandment ‘Love your enemy’ was meant to exclude any violence and war. Meanwhile, as a result of mutual agreement between the state and the church, according to him, the deviation from that commandment was legitimized. I. Ilyin, who considered the absolute rejection of war unaccept-

<sup>3</sup> Aleksey Skvortsov, “Ethical Problems of War in Russian Religious Philosophy of the 20<sup>th</sup> Century,” *Ethical Thought* [in Russian: “Eticheskiye problemy voyny v russkoy religioznoy filosofii XX v.,” *Eticheskaya mys!*] 2 (2001): 216-230.

<sup>4</sup> It is noteworthy that Tolstoy was excommunicated from the Russian Orthodox Church and anathematized because his views were in conflict with Christian doctrine, or more precisely, the Orthodox understanding of it.

able, came from the position of combative anti-Tolstoyism.<sup>5</sup> He was sure that courage, heroism, and other virtues occupy a special place not only in the secular and military but also in the value system of Orthodoxy. Not considering it a coincidence that many Christian saints were warriors, Ilyin – unlike Tolstoy – not only did not de-Christianize fighting, resisting evil by force, but also in a sense considered it an alternative. Tolstoy’s adamant rejection of war was also opposed by N. Berdyaev, who criticized Tolstoy’s version of the fight against evil and its effectiveness. Moreover, he believed that Tolstoy’s and the ideas of his adherents about war were of a marginal nature. It does not follow from his criticism of Tolstoy that Berdyaev fully agrees with Ilyin. In his analysis of Ilyin’s work “Resisting Evil by Force,” Berdyaev describes above-mentioned work as terrifying and excruciating. Moreover, he is sure that if in the case of Tolstoy, we are dealing with strangulation with kindness, then in Ilyin’s case we are dealing with war.<sup>6</sup>

Not having a problem with the detailed analysis of the views of the above-mentioned Russian thinkers, as well as the differences between all the existing discourses on the war, let us only state that the latter can be classified into three conventionally separated groups:

a. War is absolutely unacceptable and impermissible

It is accompanied by violence, brutality, murder, etc., and their inadmissibility makes it imperative to refrain from fighting or, more precisely, from waging war. In other words, getting involved in even just, self-defense wars is unacceptable in the extreme pacifist discourses. Of course, what has been said does not mean that they encourage passion, servitude, absolute compliance with the reality imposed by the enemy/adversary. The point is that in some pacifist discourses (M. Gandhi, M. L. King Jr, etc.) the will to fight by non-violent means is welcomed and emphasized in the context of peace-loving speeches, diplomatic negotiations, various socio-political initiatives that imply a certain spirituality, etc. Although the moral limitations or prohibition of war may be convincing and impressive at first glance, the question of their effectiveness in today’s world remains questionable. Being born in a certain socio-political, historical, and cultural context, they may have proven their effectiveness to a certain extent, but they have not proven their viability in all possible

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<sup>5</sup> Ivan Ilyin, *Collected Works in 10 Volumes*, Volume 5: *About Resistance to Evil by Force* [in Russian: *Sobraniye sochineniy v 10-i tomakh*. T. 5. *O soprotivlenii zlu siloyu*] (Moscow: Russkaya kniga, 1996).

<sup>6</sup> Nikolay Berdyaev, “Nightmare of Evil Good” [in Russian: “Koshmar zlogo dobra”], *Hrono*, accessed May 18, 2023, [http://www.hrono.ru/libris/lib\\_b/berdiaev\\_iljin\\_zlo.html](http://www.hrono.ru/libris/lib_b/berdiaev_iljin_zlo.html).

conditions. We would like to note that the results of a limited experiment cannot be generalized. If Gandhi, being the leader of the Indian independence movement from Britain, was able to achieve serious results through the use of non-violent tools, it does not mean that those same tools would have been equally effective under all possible conditions. Deeply impressed by Tolstoy's pacifist ideas, Gandhi proposed the principle of *satyagraha* in the context of the struggle against the British, which entailed firmness and steadfastness towards the truth. According to him the cleverness and sanity of the enemy can be influenced by non-violent methods. His organized strikes, acts of civil disobedience, and the famous Indian winch symbolized the nation's refusal to buy British goods and its determination to settle for inferior Indian goods. Yes, M. Gandhi's<sup>7</sup> struggle was somewhat successful, but many questions remain open. For example, could the tools of non-violent struggle be effective during the years of the Armenian Genocide, when the Armenians in some places did not resort to existential self-defense, but simply rejected the perpetrator's actions with spirituality and loyalty to their identity? It can be assumed that in that case the genocide committer would have achieved his goal much more easily, and those analyzing what happened in the future would only praise the spirituality of the genocide committer. Would the issue of the Artsakh conflict in the context of the anti-Armenian state policy<sup>8</sup> of Azerbaijan really be settled or would regional peace become a reality if the Armenian side, for example, inspired by the ideas of Tolstoy or Gandhi, fulfilled its demands before the 2020 44-day War unleashed by Azerbaijan? Would the conflict have been resolved if the Armenian side had agreed to Azerbaijan's extreme demands during the 44-day War? The problem is that, if the given collective or state is observed as a 'neutralizing ethnic obstacle' in the way of realizing the enemy's national interests (leaving aside Azerbaijan's 'humanist' propaganda claims about the protection of the rights of Artsakh Armenians, etc.), then the probability of peacemaking becomes significantly lower. And this is especially the case when the collective or the state, which is an obstacle, ignores the need for independence and approaches the policy of responding to existential threats only with pacifist speeches or initiatives. Therefore, it is no coincidence that after the signing of the agreement on November

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<sup>7</sup> It is noteworthy that Gandhi, who said no to violence, leaved this world as a victim of violence. His ideologue M. L. King Jr also suffered the same fate.

<sup>8</sup> Armen Sargsyan, *Armenophobia in Azerbaijan: At the Intersection of Ressentiment and Authoritarianism* [in Armenian: *Hayatyats'ut'yuny Adrbejanum. rresentimenti yev avtoritarizmi khach'merukum*] (Yerevan: Hanrayin kaperi yev teghekatvutyan kentron, 2013); Armine Adibekyan and Angela Elibegova, *Armenophobia in Azerbaijan* [in Russian: *Armyanofobiya v Azerbaydzhanе*] (Yerevan: Hanrayin kaperi yev teghekatvutyan kentron, 2013).

9, 2020, the initiatives to create an 'era of peace' are also accompanied by the loss of the sovereign territories of the Republic of Armenia, and the submission of new territorial and other demands by Azerbaijan.

b. Wars are not only permissible, but inevitable

Wars should not be understood in moral terms, in a dual system of 'good and evil.' They are in a sense beyond good and evil. Violence is inevitable; it has its roots in human nature and in order to secure one's place 'under the common sun for all,' one must have the power to counter violence with violence and, why not, to be the first to attack. In the conditions of the struggle for existence (also according to the logic of social-Darwinism), advocacy of peace as an end in itself does not exclude war but makes its negative outcome more realistic for the standard-bearer of peace. In the world of real politics, peace seems to be a 'rustling voice' devoid of ontological foundations, often a propaganda 'drug' meant to soothe people's spirits or renew their will before the start of another active phase of war. In other words, *peace* is a word describing a state of war characterized by inactive military operations; it is just a name, a nomina, which has no ontological basis in reality. Therefore, being constantly ready for war, creating a balance of power against potential enemy ambitions is not only necessary but can also have a beneficial effect in preventing or delaying the start of active military operations. The danger of such talks is that they seem to reject *anthropological optimism* from the threshold, that people, nations or collective humanity can ensure its moral step forward, can gradually reduce the probability of wars by developing morally. In other words, they seem to proceed from the premise 'man is a wolf to man,' in the context of which consistent efforts aimed at the 'humanization' of man and creation of a tolerant profile become meaningless. According to this approach, war is not an evil in itself, it is an insurmountable necessity from which people cannot avoid but can benefit. They can, for example, have a beneficial effect in maintaining the moral health of people or nations, keeping them free from decay (Hegel).<sup>9</sup>

c. Wars are permissible to a certain extent, but they are not principally unalterative

Approaches based on the logic of this provision are among the most popular. They were developed by the representatives of different phil-

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<sup>9</sup> See Tarik Kochi, "Considering Hegel's Account of War," *Griffith Law Review* 15, no. 1 (2006): 49-73.



osophical, ideological and moral systems. The latter, conventionally speaking, were mainly guided by the logic of ‘not ignoring reality but not giving up the desire for a new reality.’ In this sense, it can be said that the permissibility of wars is a certain concession to the imperatives of reality, while the acceptance of their fundamental alternativeness is the evidence of faith in the possibility of creating a new reality. This is the reality that should be presented as less warlike through the gradual moral development and improvement of people, peoples or collectivities. For example, V. Meyers was sure that we should try our best to reduce violence, but we cannot give it up completely, because the ideal of anti-violence, the perfect type, is unattainable.<sup>10</sup>

The thinkers, who consider war as an evil, but considering it somewhat permissible, mainly tried to present or outline the limits of its permissibility, to determine the scope of legitimacy. The already cited Ilyin and Berdyaev also advocated a partial rejection of war but it would be a mistake to think that they consistently advocated this phenomenon. Berdyaev stated that war is a dire necessity. It is evil, but not an ‘indulgence’ for abstract pacifism, for war can sometimes appear as the lesser evil (especially self-defensive war) by being just and holy.<sup>11</sup>

At first glance, the above-mentioned approach may not be problematic, but the reality is that, depending on the notions of justice, almost any war can – in principle – be legitimized, can be ‘packaged’ with the justification of self-defense or neutralizing imminent threats. For example, one can demonize the image of a potential victim, portray him as a barbarian, usurper of other people’s achievements, an enemy of human rights and democracy, the greatest threat to international or regional peace and, accordingly, justify war and violence against him. The 2<sup>nd</sup> Artsakh War unleashed by Azerbaijan in 2020 is one of the eloquent testimonies of what has been said, which Azerbaijan arbitrarily declared as inevitable and just. Carrying out anti-Armenian state policy at various levels for decades, generating the demonic image of the Armenian and the thesis that the Republic of Armenia is an aggressor, presenting the sovereign territory of the Republic of Armenia as a historical Azerbaijani land, the Azerbaijani authorities created their own myth of a *just war*, which they put into practice during the 44-day War. It was not by chance that Azerbaijan presented the war

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<sup>10</sup> William Meyers, “Nonviolence and its Violent Consequences,” *III Publishing*, accessed May 5, 2023, <https://www.iiipublishing.com/nonv.htm>.

<sup>11</sup> Nikolay Berdyaev, “Existential Dialectic of the Divine and the Human,” [in Russian: “Ekzistentsialnaya dialektika bozhestvennogo i chelovecheskogo”] *Phantastike*, accessed May 16, 2023, [https://www.phantastike.com/philosophy/existential\\_dialectic/html/?page=53](https://www.phantastike.com/philosophy/existential_dialectic/html/?page=53).



waged with the active support of Turkey, Pakistan and other states as an irreplaceable 'just' operation aimed at establishing historical justice, restoring its 'territorial integrity,' preventing Armenian 'separatists' or 'incitement actions by illegal Armenian armed groups,' etc. Meanwhile, that war was legitimately self-defense for Artsakh, which aimed to prevent the depatriation and possible genocide of Artsakh Armenians, and the realization of the internationally recognized right of nations to self-determination, ensuring their own security, etc. In other words, that existential and self-defense war for Artsakh Armenians was just and sacred. And if that self-defense war was also an evil, then it was less evil, because it was, as Berdyaev would say in such cases, meant to liberate from a greater evil. Moreover, if Nazi Germany also considered the unleashing of the Second World War justified by its provisions regarding living spaces, the states fighting against it considered their right to self-defense by violent means to be righteous and sacred.

It is noteworthy that the critical references to the approaches documenting the permissibility of wars are often characterized by speculations. Modern days 'Tolstoyism,' self-proclaimedly claiming the status of the most advanced and humanitarian ideological phenomenon, considers even the steps to prepare for self-defensive wars as an anti-peace initiative, as an attempt at militarization bordering on tyranny. And the paradox of the problem is that the participants of the ideological 'crusade' against wars and violence, with the zeal of Spartacus who rebelled against Crassus, seem ready to stick to their commitment to the exclusion of violence, and with a stoic attitude, to put up with the war and violence unleashed by the enemy (in this context, it is perhaps not accidental that according to Berdyaev, Tolstoy could inspire disgust for the good). However, the real struggle against violence and the real advocacy of peace cannot be 'indifferent' to the successes of the potential abuser. Otherwise, the fight against all violence will paradoxically turn into the unwitting encouragement of external violence. In other words, the adherents of Tolstoy, for some reason, are sure that they will build the 'earthly kingdom of peace' with peace sermons and peace-loving 'generosity.' And that belief, unfortunately, becomes questionable especially when the walls of the kingdom of peace are destroyed by the "not peaceful" blows of an external conqueror. Adherents of Tolstoy seem not to want to admit that the many calls to be prepared for the evil called war are not intended to abort a possible peace, but to establish it. It is no coincidence that the birth of the weakness of the spirit in wars, which are the result not of the power of the spirit, but of faith in the spirit of power, Berdyaev still recorded

the existence of a sinful, but all-powerful, spirituality. “Guilt,” writes Berdyaev not by chance,

is morally higher than purity. This is a moral paradox that should be seriously considered. The exclusive pursuit of one’s own purity, the preservation of one’s white clothes, is not the highest moral state. It is morally higher to assume responsibility for one’s neighbors by accepting collective guilt.<sup>12</sup>

Taking into consideration the diversity of ideas about just wars and the danger of artificially legitimizing any war accordingly, it is appropriate to specifically refer to the conception of ‘just wars.’ It will provide an opportunity to analyze and make sense of the 2<sup>nd</sup> Artsakh War from certain theoretical and methodological positions, to raise a number of issues related to it.

#### IV. The 44-day War in the context of the conception of just wars

##### a. Jus ad bellum principles and the 44-day War

It has already been hinted that if in the context of pacifism, wars are demoralized, and in the context of militaristic approaches, they are considered to be supra-moral or, conventionally speaking, ‘beyond good and evil’ realities, then they are ambiguously evaluated within the framework of the conception or theory of just wars. The point is that according to that conception, some wars are immoral, unjust, and some are morally justified.

There are many studies devoted to just wars in the professional literature. In this row, the approaches to just wars in ancient Greek (Plato, Aristotle, etc.), ancient Indian (*Laws of Manu*), ancient Chinese (Mo Tzu, Meng Tzu), as well as medieval, Renaissance, and other eras have been presented and analyzed.

Nowadays interest in the moral ‘judgment’ of wars is not at all accidental because wars occupying a unique place in the history of mankind are still accompanied by on the one hand manifestations of the humanly noble and heroic, and on the other hand vileness and misanthropy. This paradoxical duplicity of wars is becoming more worrying these days, because the modern world, which claims to be identified with the value ‘brands’ of tolerance, human rights protection, and hu-

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<sup>12</sup> Nikolay Berdyaev, *The Fate of Russia* [in Russian: *Sud’ba Rossii*] (Moscow: Filosofskoe Obshchestvo SSSR, 1990), 182.

manity, is often proudly satisfied with the low-quality patents of these brands. That is, at the ideological level, it declares its commitment to be guided by the algorithm of standardization of high values, but in the context of realism and satisfaction of interests, it often demonstrates its determination to be satisfied with their 'shadows.' This is not an exception in the case of military aggression or war unleashed by Azerbaijan against Artsakh in 2020, which was also accompanied by serious deviations from the logic of the concept of a just war.

Before analyzing that war in the context of the conception of just wars, it is necessary to present certain clarifications regarding the noted conception. Of course, the discourse on just wars is diverse, the views of different authors on the matter in question may be divided, but some principles are distinguished in the professional literature, which determine the conceptual approaches of just wars.

Based on the approaches of many theorists of just wars, N. Fausin, B. Koppiters, and R. Apresyan distinguish *jus ad bellum* and *jus in bello* principles. The first of these refers to the right to wage war, the justification of war, and the second to the rules of conducting war. In short, *jus ad bellum* (if we do not express it in the language of international law) refers to the legal and moral justification of engaging in war and waging war and *jus in bello* refers to the moral assessment of the ways, methods, and means by which the war is conducted.

The above-mentioned authors state that there are generally six principles related to *jus ad bellum*, and two in the case of *jus in bello*.<sup>13</sup> The first is the principle of 'just cause' or 'serious grounds,' according to which the use of military force by a given state is just and morally justified if a state has resorted to aggression against itself or an allied state, etc. Of course, the 'serious grounds' are not limited to those mentioned, but if we refer to the second Artsakh War in the context of those mentioned, then it is no coincidence that before resorting to large-scale aggression, the Azerbaijani propaganda machine tried to legally and morally justify the military operations sanctioned by the authorities by circulating the thesis of 'provocations by the Armenian side.' This applies both to the large-scale attack launched by Azerbaijan on September 27, 2020, as well as to cases of border tension in the face of subversive infiltrations and other actions in different periods. Meanwhile, the Armenian side, taking into consideration the large-scale aggression that began on September 27, had all the moral

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<sup>13</sup> Bruno Koppiters, Nik Foushin, and Ruben G. Apresyan, eds., *Moral Restrictions of War: Problems and Examples* [in Russian: *Navstvennyye ogranicheniya voyny: problemy i primery*] (Moscow: Gardariki, 2002).

grounds to conduct a self-defense war. And it is not accidental that in the Armenian and Artsakh media, the talk about being just and waging a holy war gained some popularity.

It should be noted that in the conception of just wars, the existence of ‘serious grounds’ is considered a necessary but not sufficient condition for the realization of the right to war, the moral justification of war.<sup>14</sup> It becomes necessary and sufficient when the other 5 principles of jus ad bellum are also taken into consideration:

1. legitimacy of the government,
2. good intentions,
3. the probability of a successful outcome,
4. symmetry,
5. last resort.<sup>15</sup>

The requirement of the principle of the legitimacy of the government is that the subject of the decision to get involved in the war or to withdraw from it may not be private individuals or organizations, the military or intellectuals, but depending on the form of government of the state, high-ranking officials, relevant institutions (president, prime minister, legislative body). Sometimes, international structures (UN Security Council).

From the point of view of the 44-day War, the principle of good intentions is of great interest. The latter, as shown by the course of the war and post-war developments, was best ignored by Azerbaijan. If, sinning against the truth, we even accept strictly conditionally that by unleashing aggression against Artsakh, Azerbaijan ‘did not violate’ the 1<sup>st</sup> principle of the conception of just wars, the principle of “serious grounds,” did not contribute to the torpedoing of the negotiation process for the peaceful settlement of the Artsakh conflict. For decades it has not carried out anti-Armenian state policy, did not glorify R. Safarov, who axed an Armenian officer in Hungary, did not kill civilians with the help of his military, did not commit war crimes aimed to restore its ‘territorial integrity;’ then even in that case it is difficult not to notice the violation of principle of ‘good intentions.’ According to that principle states and their soldiers: a. should not enter into war with hatred in

<sup>14</sup> Ibid.

<sup>15</sup> This principle implies resorting to war only when all possible means of avoiding it or not resorting to it (negotiations, political maneuvering) are exhausted or pointless. In fact, the principle of last resort is also problematic, because it is very difficult to demonstrate exhaustively and convincingly that all possible measures have been discussed and their non-viability has been proven. Theoretically, one can always assume the existence of another possible means.

their hearts; b. should fight exclusively for their righteous cause, which means that the party responding to the aggression must stop the aggression and possibly punish the aggressor. But the victory should not be considered as an opportune factor for the conquest of the territory of the opponent or the enemy, which has been a cherished dream of for a long time.<sup>16</sup>

It should be noted that due to the anti-Armenian state policy implemented at the state level for decades, which also included the education system, Azerbaijan has done almost everything possible to form generations filled with hatred for Armenians.<sup>17</sup> It is clear that after the defeat in the first Artsakh War unleashed by itself, Azerbaijan would need to generate or deepen the image of the enemy due to revanchist reasons, but what is remarkable is that this enemy did not have so much an institutional as an ethnic profile. It is no coincidence that in one of his official speeches I. Aliyev declared all Armenians as the enemy of Azerbaijan,<sup>18</sup> making a clear transition from institutional xenophobia to ethnocentric xenophobia. It is also not a coincidence that many of the young people whose mentality was shaped within the educational system of Azerbaijan (where you can find many facts of presenting Armenians as the disaster of the century, with dirty blood, thief and other labels) and then many of the young people who went to military service during that same 44-day War had hatred in their hearts for the Armenian military and proudly filmed that process, brutally killed old people, etc.<sup>19</sup> We are also dealing with an obvious violation of the principle of 'good intentions' in the post-war period. If, as we have already mentioned, we conditionally accept that Azerbaijan's case was just, that their struggle was for the 'restoration of territorial integrity' against the 'aggressor' Republic of Armenia and 'separatists,' then the post-war developments prove that Azerbaijan consistently and with certain efficiency uses the victory created or given to

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<sup>16</sup> Ibid.

<sup>17</sup> Armen Sargsyan, "Armenophobia in the Educational System of Azerbaijan," [in Armenian: "Hayatyats'ut'yuny Adrbejani krt'akan hamakargum"] in *Armenian Identity Issues: Collection of Scientific articles of Yerevan State University*, Volume 2 [in Armenian: *Hayots' ink'nut'yan harts'er*, Prak 2], ed. Seyran Zakaryan, 58-81 (Yerevan: Limoush, 2014).

<sup>18</sup> "Ilham Aliyev Declared all Armenians of the World 'Enemies' of Azerbaijan," [in Russian: "Il'kham Aliyev obyavil vsekh armyan mira 'vragami' Azerbaydzhana"] *Regnum*, accessed April 04, 2023, <https://regnum.ru/news/1504750>.

<sup>19</sup> Read the following reports of the RA human rights defender: The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report – Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives: Evidence-Based Analysis – The 2020 Nagorno Karabakh War* (Yerevan, 2021); The Human Rights Defender of the Republic of Armenia, *Ad Hoc Public Report – A Park of Killed Armenian Soldiers and Chained Prisoners of War Opened in Baku: A Museum of Human Sufferings and Promotion of Racism* (Yerevan, 2021).

him for the gradual conquest of the sovereign territories of the Republic of Armenia. From this point of view, it is no coincidence that in the post-war period, Aliyev repeatedly put into active circulation the previously frequently voiced propaganda statement that a part of the territory of Armenia (Zangezur, Yerevan, Lake Sevan, etc.) is historical Azerbaijani land with the consequences arising from it.<sup>20</sup> It is clear that with the ‘Azerbaijanization’ of the sovereign territories of Armenia, Azerbaijan is trying to formulate and legitimize a new ‘just cause or the most serious basis,’ making future possible military aggression as justified.

As for the principles of the probability of a successful outcome and the principles of proportionality, then they are interrelated, because in both cases we are dealing with the consequences of the decisions made. The proportionality principle is problematic. It assumes that war losses should not exceed the received/expected benefits. According to the above-mentioned authors, it is not clear, for example, how to accurately assess the ratio of benefits and losses of engaging in a war to deter an aggressor, whether it is possible to accurately predict the duration of a war and, accordingly, find out the proportionality of possible benefits and losses. Despite the problematic moments, the principle of proportionality still implies not getting involved in war if it is obvious that the possible losses will seriously overshadow the gains. According to S. Lazar:

Achieving your just cause, is not enough. The aftermath of the war must also be sufficiently tolerable if the war is to be proportionate, all things considered. It is an open question how far into the future we have to look to assess the morally relevant consequences of conflict.<sup>21</sup>

According to the principle of the probability of a successful outcome, a state should not be involved in a war if the latter has bad consequences or does not ‘predict’ good consequences. And this is especially so if the opponent or enemy is significantly superior in terms of military power. In the context of this principle, the second Artsakh war gives reason to think. Leaving aside the justified or unfounded political assessments that the RA authorities’ way of conducting negotiations ‘from zero or their

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<sup>20</sup> “The President of Azerbaijan called ‘the Return of Yerevan’ the Goal,” [in Russian: “Prezident Azerbaydzhana nazval tsel’yu ‘vozvrashcheniye Yerevana”] *RBC*, accessed May 22, 2023, <https://www.rbc.ru/politics/08/02/2018/5a7c806c9a7947e74c640063>.

<sup>21</sup> Seth Lazar, “War,” *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition), ed. Edward N. Zalta, <https://plato.stanford.edu/archives/spr2020/entries/war>.

own point' and other factors (according to the assessment of various experts, improper attention to the violation of the military balance since the summer of 2020, etc.) became the reason for Azerbaijan's predictable military for aggression, we can only state that, if the Armenian side did not ignore the principle of the probability of a successful outcome, then it should have done the maximum possible to abort or at least postpone the war. Even if we are guided by the assumption that 'the authorities of the Republic of Armenia strive for and believe in the best or successful outcome,' then the combination of the victorious events in Tavush in the summer of 2020, the regular military exercises conducted by Azerbaijan and Turkey, the 'accumulation' of Turkish Bayraktar drones in Azerbaijan and other factors should have become for them an appropriate impulse to initiate actions. Moreover, if the outcome of the war was not predetermined for the RA authorities and Artsakh, there was a reasonable probability of a successful outcome in stopping the possible military aggression of Azerbaijan, then the readiness to be involved in the war becomes somewhat understandable. And if the possible negative outcome was predictable, then it was necessary to do everything possible to stop the war, delay it as much as possible or stop it as soon as possible. That maximum refers to the activation of the negotiation process, as well as to the implementation of works aimed at overcoming the broken military balance, etc. However, the problem is that the various post-war Armenian speeches and different theses seemed to justify the following: successful outcome was unlikely. This is evidenced, for example, by not stopping the war at an opportune moment under the pretext of not being accused of treason and by the propaganda provisions according to which the army has been mercilessly looted for decades, due to which we did not have the necessary and sufficient weapons to face the enemy (and this is when Aliyev surprisingly and proudly mentioned the destruction of Armenian weapons worth more than 5 billion dollars) etc. Having no problem analyzing the outcome of the war causally (let us leave that task to the relevant experts), let us just state that we seem to be in a very strange situation when it comes to the principle of the probability of a successful outcome. If we initially accepted the possibility of that outcome, then why did we consistently try to justify its improbability (remember the speeches begging the army to loot), and if we considered a successful outcome unrealistic from the beginning, why did our actions make an unsuccessful outcome probable?

It is obvious from the above that the unleashing of the 44-day War by Azerbaijan did not at all follow the principles of *jus ad bellum*, did not meet the requirements for starting or initiating a just war. It is dif-



difficult to say exactly what were the reasons behind starting the war in September 2020 and violating the principles of just wars. This question can be the subject of a separate scientific study because a systemic approach is needed to reveal the etiology of the war, in the context of which geopolitical, economic, socio-cultural, and other factors will be taken into consideration. However, it can be noted that these violations were mainly due to the imperative to ensure the possible desired result, as well as the fact that in the case of overlapping interests of different states or entities in the world of real-politic, sometimes a double standard of political expediency is applied in case of violating the principles of just wars. In other words, the feeling of possible impunity and the conviction of the international community's insufficiently harsh response also contributed to Azerbaijan's actions.

#### b. *Jus in bello* principles and the 44-day War

As for *jus in bello*, the latter, as we have already mentioned, mostly refers to the instruments of war, the rules of conduct. If the principles of *jus ad bellum* are 'pre-war,' those of *jus in bello* operate after the outbreak of war. Two principles of *jus in bello* are distinguished in the professional literature: *proportionality* and *difference*. The first, in contrast to the *jus ad bellum* principle of *proportionality*, refers to the ratio of benefits to gains during specific military operations. If the corresponding military operation is accompanied by heavy losses on both sides and does not have a very high significance, then it should be avoided and guided by a more rational plan.<sup>22</sup> The principle of *difference* requires distinguishing between civilians and military personnel, not targeting the former, especially when they do not, for example, work in military-industrial enterprises engaged in the production of weapons and various armaments. This principle is also consistent with the Geneva Convention, which defines the regulations required for the conduct of war, the treatment of captured soldiers, etc. It is noteworthy that during the 44-day War, the principle of *difference* was repeatedly grossly violated by the Azerbaijani side, whose eloquent testimonies include violence against captured Armenian soldiers, numerous documented cases of beheading and torturing them, murders of elderly civilians, etc. It is clear that inhuman atrocities during war operations are not excluded, but the problem is how the warring parties react to the actions of their own: do they legitimize or demoralize these atrocities and criminal violence?

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<sup>22</sup> Koppiters, Foushin, and Apresyan, 37.

From above-mentioned point of view, Azerbaijan not only did not shy away from violating the principle of difference, but also took the position of legitimizing it. Aliyev's awarding of an Azerbaijani soldier who beheaded an Armenian soldier in the 44-day War, favorable attitude towards those who committed war crimes, etc. are proofs of this. In this context, it is noteworthy that Nzhdeh, described by the Azerbaijani propaganda machine as a 'Nazi and a war criminal,' who more than 100 years ago took over the leadership of the armed struggle against the annexation of Syunik to Azerbaijan with the psychology of a determined alone, did not give up the idea of subjecting the war to moral restrictions. We would like to mention that G. Nzhdeh had told his soldiers to remain faithful to the imperative of nobility and humanity during the war several decades before this concept was set in the 1950 Geneva Convention. Nzhdeh has written the following:

There is no more divinely magnanimous and beautiful deed than to bandage the enemy's wounds inflicted on him by our swords and bullets, just as there is no more barbaric action than to wound the wounded again.<sup>23</sup>

Moreover, reminding his soldiers of the brutal killing of Armenian women and children by the Turks in the not-too-distant past, Nzhdeh demands the following: "Remember that and be merciless towards those who resist you, *be a knight and a man towards women, children and the elderly.*"<sup>24</sup> In other words, even war atrocities were not able to damage the soul of the Armenian thinker, statesman, and mask his inner world with xenophobia. From this point of view, it can be said that Nzhdeh would have agreed with the following thought of Berdyaev: "Humanity must be established even in the terrible conditions of war."<sup>25</sup>

Thus, although there is no unequivocal approach to the relationship between war and morality, the necessity of moral limitation of war is still on the agenda of many discussions nowadays. In the context of the modern conception of just wars, the analysis of the 44-day War made it possible to highlight and outline the problems and violations related to the justice or moral justification of wars, as well as the principles of justice in wars. Violations from which Azerbaijan, despite its efforts to

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<sup>23</sup> Garegin Nzhdeh, *Selected Works* [in Armenian: *Hatyntir*] (Yerevan: Amaras, 2006), 137. The emphasis is mine.

<sup>24</sup> *Ibid.*, 420. The emphasis is mine.

<sup>25</sup> Nikolay Berdyaev, *About the Appointment of a Human* [in Russian: *O naznachenii cheloveka*] (Moscow: Respublika, 1993), 310.

falsify the contrary, not only did not avoid, but sometimes consistently continued.

## V. Conclusion

The theoretical interest towards war in the 21<sup>st</sup> century is quite logical. Along with the initiatives carried out in the direction of the protection of human rights and the dissemination of humanitarian values, wars continue to accompany humanity today. Of course, wars can happen for geopolitical, religious, economic, and other reasons but one of the most profound reasons is how war is thought about in general, how the 'text' called war is created and read. And this means that

Emerging challenges surrounding war deserve to be carefully and diligently analyzed, not just from the standpoint of Just War Theory, but also from other perspectives, including the ECO one.<sup>26</sup>

Analyzing the discourses about war (philosophical, moral, religious, etc.), the article identifies and clarifies the main conceptual approaches, which are conventionally presented in the following formulas:

- a. war is absolutely unacceptable and impermissible,
- b. wars are not only permissible, but inevitable,
- c. wars are permissible to a certain extent, but they are not principally unalternative.

In the article, for the first time, 44-day Artsakh War in 2020 is separately discussed in the framework of the concept of just wars. Analyzing the 44-day War in the context of the fundamental principles of *Jus ad bellum* and *Jus in bello* known in specialized literature, it is justified that the military aggression carried out by Azerbaijan against Artsakh was actually accompanied by violation of the fundamental principles of *jus ad bellum* ('serious grounds,' good intentions, the probability of a successful outcome, symmetry, last resort etc.) and *jus in bello* (proportionality, difference). It means that attempts to legitimize and morally justify that war are false and do not meet the requirements for just wars. Although the article did not specifically discuss the various reasons underlying the

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<sup>26</sup> Dragan Stanar, "War Machines and Orthodoxy Unmanned Combat Vehicles and Autonomous Weapons Systems in Eastern Christian-Orthodox Understanding of War," *Journal for the Study of Religions and Ideologies* 21, no. 63 (2022): 76.

violation of these principles (it can become a separate and noteworthy research topic), it should be noted that these violations were mainly determined by the imperative to ensure the possible desired result. Otherwise, if the principles of just wars were to be adhered to, the war could not have started because the grounds for it were missing.

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