

The problem of ethics in the context of the Russia-Ukraine war

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Abstract. There are many questions surrounding the study of wars, some are related to the very nature of the phenomenon and its implications at the geopolitical environment, and others concerned with the need to limit and adapt its existence within human society, including the problem of ethics, which is often confused with purely normative implications. That said, the problem faced here is related to the current war between Russia and Ukraine, where the assumptions of legality are proving to be insufficient, in particular because there is an unequivocal breach of the prohibition on the use of force as an instrument of international relations, established by the United Nations Charter. What, then, are the ethical parameters applicable to the conflict in question? And what would be their respective foundations? Based on these essential questions, the study seeks to establish the ethical indicators for self-defence, as well as for the idea of justice and the injustice of war through the parameters found in the works of Judith Thomson, Michael Walzer and Jeff McMahan. This is therefore a basic, qualitative research, built on a bibliographic basis, drawn from the study of the authors in question, which concludes that, although it is possible to establish a systematization of ethical reflections involving war, the operationalization of the assumptions arising from this reflection depends largely on the removal of ethical scepticism.

Keywords. Ethics; War; Russo-Ukrainian War.

1. Introduction

The implementation of the UN Charter in 1945 established a normative parameter on war, prohibiting it as an instrument of international relations. According to this document, conflicts must be resolved peacefully, preserving the possibility of an armed response in the case of self-defense.

Although the parameters in question seem clear in normative terms, their practical application requires consideration, given the fact that the legal standard does not always find equivalence in the moral standard. In this regard, the contemporary study of ethics in war seeks to enlighten the problem from a perspective that goes beyond purely normative elements.

Thus, the aim of this study is to analyze the Russia-Ukraine war from this point of view, by means of basic qualitative research, with a bibliographic contribution, starting with the elements that support self-defense, and moving on to the question of ethics

addressed according to the orthodox and individualist positions.

2. The Russia-Ukraine War: legality and morality

2.1 The legal limits imposed by the UN Charter

The issues surrounding war as a phenomenon inherent to human society are not an innovation of the present days, and there have been various debates on the subject throughout history. The problem today, however, is related to the perpetuation of war as a tool used to resolve disputes, despite the prohibitions established by the United Nations Charter. The end of the Cold War did not bring the expected stability and peace to the world, and various conflicts have emerged at the dawn of the 21st century.

The recent conflict between Russia and Ukraine portrays this situation, representing a growing concern at the heart of the international society as it challenges the logic of peace through law, based on the liberal principles guiding the current international order. The system implemented by the UN, by limiting the possibility of war to self-defense, maintains the prerogatives of state sovereignty and establishes a normative framework as a measure of the legitimacy of the *jus ad bellum*.

The hypotheses of war supported by United Nations directives represent the result of the conversion into law of the consensus on the harmfulness of war, with the signatories of the Charter committing themselves to ensuring peace by adopting measures aimed at the peaceful resolution of conflicts. The UN Charter, however, does not represent the victory of pacifism, precisely because it admits the possibility of using force in cases of legitimate defense, imminent threat to world peace, as well as in processes of struggle aimed at achieving self-determination. Furthermore, the various asymmetrical and irregular conflicts present in the current scenario point in the opposite direction to the perpetuation of peace.

Most of these conflicts, it should be noted, do not take place among sovereign states, characterizing what Humanitarian Law classifies as a non-international armed conflict. Conflicts of this nature result in confrontation between the armed forces of a signatory state and dissident armed forces, or among organized armed groups, led by a responsible command, which exercise such control over a part of the state's territory that makes it possible to carry out continuous and concentrated military operations [1].

The Russia-Ukraine war comes as a surprise precisely because it is classified as an international armed conflict in the traditional sense, involving sovereign states, where the violation of sovereignty through territorial invasion directly affronts the scope of the UN Charter. Therefore, it is possible to state that the problem of armed conflicts goes beyond the dynamics of legal limitations, as the ethical problem involved in decisions that result in the possibility of large-scale death invariably persists.

2.2 The self-defense issue

Self-defense can be considered a natural response to a real threat to an individual's physical integrity. This threat must have a high degree of dangerousness in order to justify the violence of the response directed against the aggressor. The justification for killing the aggressor, however, is not unlimited, as the aggressor's reaction must be proportional to the threat.

This questionings can be applied in a similar way to war, especially considering that self-defense represents, nowadays, the only possibility of a state's armed response. The difficulty thus arises in establishing the parameters of proportionality

between the threat and the response used, as a measure of verifying the legality and morality of the act of self-defense.

This is because, beyond the assumptions of legality, ethical problems persist, and it is not up to the state to cling exclusively to the normative recognition of self-defense as a justification for attacking or invading a given territory, not least because self-defense, although a right, is subject to restrictions.

The theory developed by Thomson [2] about self-defense, classifies the stance of preserving one's own life as a right directed to other people, in order to establish a possibility of recovery based on an equation between right and duty. The right to claim the preservation of one's own life can be divided into two perspectives, one related to the duty of non-interference and the other to the duty of assistance.

As Frowe explains [3], a duty consists of a moral obligation that binds certain behavior. Thus, if in the established equation, the subject has a duty of non-interference in relation to a person, they must refrain from interfering with that right. On the other hand, if there is a duty of assistance in relation to a person's right, there is a need to ensure compliance. As Thomson [2] observes, this results in the right not to lose one's life unjustly, regardless of the culpability of the agent who threatens the victim's life.

An alternative to Thomson's interpretation of self-defense lies in McMahan's thinking [4], where the idea of moral responsibility is explored. For the author, accepting the possibility of killing someone in self-defense implies agreeing that the killing in question does not violate the rights of the person against whom the defense is directed, since defensive homicide affects an individual who is morally responsible for an unjust threat, understood as a possibility of harmful damage to the one defending himself. The victim is not obliged to bear the harm, while the one who promotes the threat of harm loses the right not to be killed, since he is morally responsible for an unjust attitude.

Both positions are analyzed by Frowe [3] using fictitious examples, taken from Thomson's text, where the theories of the right to claim and responsibility can be tested. The first one proposes a situation where the victim is unjustly pursued by a driver, who deliberately drives his vehicle into her in order to kill. In this case, there is no conflict between Thomson's and McMahan's theories of self-defense, since the right not to be unjustly killed, as well as the moral responsibility arising from the unjust act of the aggressor, meet the demand.

A second example concerns a situation where the victim is in an elevator and is suddenly attacked by a stranger who collapses into schizophrenia. In this case, there is a clear distinction between the positions of Thomson and McMahan. For Thomson, given the stranger's duty not to interfere with the victim's inherent right to life, self-defense is possible, once the victim is recognized as having the right to

preserve his own life against a threat. On the other hand, from McMahan's perspective, since the stranger does not threaten the victim by a voluntary act, there is no moral responsibility for the commission of an injustice, and the victim is therefore not entitled to kill the stranger on the grounds of self-defense.

These two examples are enough to demonstrate the complexity of the problem involving self-defense as a presupposition for an armed response, since it is necessary for the threat to be unequivocally recognized. Once again, the question of ethics is highlighted, as the claim of the legality of self-defense can result in a simplistic argument, in order to hide the true intention of the person who uses it.

3. The ethical perspective applied to the Russia-Ukraine

3.1 Beyond the law

Ethics, also known as moral philosophy, involves understanding what motivates someone to act correctly or not. For this reason, ethics has a broader scope than morality, because while morality deals with the codes and practices of certain acts, ethics encompasses all behavior and moral theories, as an instrument for guiding the lives of individuals. Ethics, thus, involves issues relating to how an individual should act, from the perspective of right and wrong, based on moral knowledge related to the meaning of what is considered "correct".

The ethical problem was introduced to the Western scene by Socrates, where the good represents the supreme end, possessing metaphysical value. As Santos [5] observes, since the supreme good is outside of life itself, philosophy becomes a meditation about death. In Aristotle, since the good is the aim itself, it would be apprehensible by the human intellect through the virtues. After Aristotle, however, philosophy began to take other paths, seeking the supreme good for man in order to broaden the great questions and problems found in Plato and Aristotle.

The idea of the good as the supreme end is related to profound philosophical questions about the origin of the universe, the nature and of man himself, as well as the fate of everything. For a long time, the questions related to origin of the existence of all things led to the acceptance of the idea of a creator. However, this answer implied another fundamental question, because since the creator was perfect, representing the prime mover of all existence, a coherent explanation had to be sought for the presence of evil. Thus, philosophy found two answers, the first stating that evil is the absence of good and the second that good presupposes evil, that is, good can only be perceived and achieved when evil is realized.

The Christian doctrine regarding just war, possessing an eminently ethical character and embracing the

idea of evil as the absence of good, presupposes that the justification for killing during a war is only valid when supported by the right intention, ultimately corresponding to the struggle to make good triumph over evil.

In contemporary times, the theory of just war, although not abandoning the fundamental precepts found in the tradition shaped by Christianity, seeks to explain the question of the justice of war from an ethical perspective, through philosophical arguments not closely linked to the conception of good and evil. However, since war is limited, essentially, to acts of self-defense, the primary question lies in verifying the legality and morality of this argument, added to the way in which ethical choices result in the conduct of war.

In the highlighted case, the invasion of Ukrainian territory by Russia, in 2022, constitutes an international armed conflict, where the right to self-defense by Ukraine is unequivocally justified. Recalling the examples mentioned before, it is possible to frame the conflict's situation on both Thomson's theory, supported by the idea of the right of claim, and on McMahan's proposal, guided by responsibility account.

If we compare Russia to a driver who deliberately hits a victim, the idea of self-defense naturally arises as a legitimate ethical response. This is because states have a duty to respect the sovereignty of others, and such duty arises to refrain from states committing offenses against other sovereign territories. This duty is accompanied by the right of the invaded state not to bear the effects of the attack, to which it can respond through self-defense.

3.2 The *jus ad bellum* and the *jus in bello* in the face of the Russia-Ukraine conflict

If there is no doubt about the ethical backing for Ukrainian self-defense against the Russian attack, according to the approach outlined in the previous section, it remains to verify the situation involving the combat as a whole, where two essential positions can be pointed out. The first, of an orthodox nature, is defended by Walzer through an approach based on historical examples. The second, of a revisionist/individualist nature, is presented by McMahan, according to the aforementioned idea of moral responsibility.

Michel Walzer [6] considers that the moral reality of war is judged twice, with the first judgment related to the reasons alleged by the state for going to war, where it is determined whether a war is just or unjust, and the second one, related to the means adopted during the fighting. Thus, a war can have a claim to justice, observed exclusively from the point of view of legality, but not be morally just, especially if the reaction to the aggression does not meet the traditional requirements for the moral justification of war.

From Walzer's [6] perspective, war is a relationship between states, so the responsibility for the choices made during this process is attributed to the decision-makers and not directly to the combatants. In this way, the *jus ad bellum*, or the right to war, is observed independently of the *jus in bello*, with the result that the injustice of the motivation for war does not determine the injustice of the acts during the war. An unjust war can be fought justly, just as a just war can be fought unjustly.

On the other hand, for McMahan [4] war is a relationship between individuals and responsibility for acts is therefore individual, considering the capacity for moral judgment of the subjects involved. Therefore, in ethical terms, the *jus ad bellum* is not apart from the *jus in bello*, and there is an indelible link between the two. As a result, if a war is unjust, the acts carried out in its context will, in ethical terms, necessarily be unjust, once by intentionally choosing to attack, the aggressor loses the right not to be harmed by the victim, and the situation is resolved according to the relationship established between the protected good and the damage caused.

It is therefore important to distinguish between the terms of the "law of war", recognized in the norms that make up Humanitarian Law as a mechanism for regulating armed conflicts, and the ethical perspective, present in analyses based on the theory of just war, as is the case with studies situated in the context of the contemporary theory of just war. In legal terms, once the existence of an international armed conflict is confirmed, the rules of Humanitarian Law apply, and it is up to the combatants to comply with the legislation in force regarding the conduct of the conflict, such as assistance to the sick, respect for the rights of prisoners of war and the protection of civilians.

On the other hand, in ethical terms, the analysis has a deeper bias, not least because, when it comes to the problems involved in a war, it is not possible to state categorically that legality corresponds to morality. In this sense, David [7] comments that although Walzer demonstrates the usefulness of just war principles when discussing historical examples, he does not provide any systematic justification for the principles themselves. This attitude is attributed by David to the moral skepticism observed throughout the 20th century, as well as in the present 21st century, where the possibility of finding any rational or objective foundation to support morality is questioned. Moral skepticism, having spread throughout society, represents the catastrophic failure of the development of a secular morality, so that, with skepticism in all areas of thought, it remains difficult to think about war on the basis of a rational morality.

Under this perspective, it is necessary to seek an ethical parameter for the analysis of the conflict between Russia and Ukraine, because the Russian argument of NATO's advance on Eastern Europe, as a justification for the attack on neighboring territory,

is first and foremost the fruit of the moral skepticism that underpins the maneuvers of *realpolitik*.

Thus, as a starting point, it should be noted that for the just war theory there are seven indispensable elements for the configuration of the *jus ad bellum*, the first and most elementary being just cause, since its absence means that the others are illegitimate. The second requirement is proportionality, determining that the means employed must be weighed against the gains obtained. Thirdly, there is a reasonable chance of success, so that no military operation should be undertaken when there is a flagrant possibility of failure. The fourth requirement is the outbreak and command of hostilities by a legitimate authority. The fifth element is right intention, and war cannot be waged for an ulterior motive, transfigured as legitimate and legal. The sixth requirement relates to the reasonable chance of success, as it concerns the use of war as a last resort. Finally, the ultimate requirement is represented by the formal declaration of hostile intent.

Therefore, two perspectives emerge with regard to the Russia-Ukraine conflict. From the perspective of the Russian actions, since the first element, or just cause, is missing, it is possible to say that the general context of the war appears ethically corrupted, since nothing justifies the attack and invasion of Ukrainian territory. With regard to the Ukrainian counter-offensive, since the ethical analysis of self-defense also applies, it is plausible to consider that, despite the recognition of just cause in the scope of preserving sovereignty and population and territorial integrity, the other requirements continue to demand due compliance. Consequently, although initiated by a just cause, defense actions, especially considering the potential damage to the civilian population, must follow proportionality, a reasonable chance of success and the right intention.

Remember that, according to Walzer's orthodox position, since the Russian state is responsible for the injustice of the war, the breach of ethics cannot be extended to its combatants, because they only follow orders. On the other hand, according to McMahan, the injustice of the cause is shared by the individuals taking part in the conflict, each of whom is responsible, in ethical terms, individually for the damage caused. This latter position also considers that the demand for morality in war is no different from everyday morality, since killing someone is always a morally repulsive act, and war does not represent a different status in ethical terms, where killing becomes an acceptable act.

McMahan's position, as we can see, is not entirely in line with the idea of strict legality, as a result of an assumption of correspondence between ethical reflection and the existing norm. The orthodox law of war in vogue does not promote the separation between the *jus ad bellum* and the *jus in bello*, with just and unjust combatants occupying the same level. In addition, it is considered that, in the event of the Russia-Ukraine war, especially as it is an international armed conflict between sovereign

states, it's necessary to think about morality from a middle ground under the orthodox and individualist perspectives because, although respect for the rules of humanitarian law is essential, the reasoning for the use of such rules must be based on an ethical framework with a solid foundation, where skepticism can be removed.

4. CONCLUSIONS

As we have seen throughout this study, the problem of war has no easy solutions, especially as it involves the possibility of resulting in the death and mutilation of several people. The idea of just and unjust, therefore, beyond the simplistic view that attributes to the norm the consecration of the idea of justice, depends on an ethical backing for it to be valid.

Once it is plausible to agree, on one hand, that there are no entirely just wars, on the other hand, it is also possible to say that such acknowledgment does not invalidate the possibility of just wars, because for a war to be considered just or not just depends upon whether the moral rules involved in the problem are accepted.

Thus, the positions adopted by Walzer and McMahan regarding the just or unjust quality of wars are not completely excluded, especially in the case of the Russia-Ukraine war, the subject of this analysis.

The difficulty, therefore, lies in the application of moral precepts, since even when faced with a systematic perspective, such as the one elaborated by Thomson regarding self-defence, one must bear in mind the disintegrating potential exerted by ethical scepticism. Scepticism, denying the possibility of making veracity judgments about phenomena, in general does not defend dogmas, disregarding assertions about the legitimacy or falsity of facts. Obviously, if the ethical perspective applied to war has a sceptical bias, not even the standardization proposed by Humanitarian Law will persist as an effectively legitimate support.

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