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14. ABSTRACT Joint targeting requires the application of both science and art, but warfighters currently lack the artistic tools needed to master the subjective and imprecise legal principles applicable to large-scale combat operations. Senior leaders within the geographic combatant commands, Service component commands, theater special operations commands, and other warfighting headquarters must provide more meaningful targeting guidance and direction about collateral damage tolerance before a potential conflict with a peer or near-peer adversary. A Sino-American war, for example, would necessitate dynamic and massive applications of violence in a domain congested with civilians, civilian objects, and commercial ships. If senior-level commanders expect subordinate commanders to destroy the enemy quickly and efficiently <i>and</i> to mitigate civilian harm in accordance with existing Department of Defense policies, they should: 1) engage more regularly on the topic of collateral damage, and 2) publish scenario-based tactical guides for use in training.					
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**Applying Vague Law to Violence: How the Joint Force Can Master Proportionality
Before a High-Intensity War**

There are Mixed Messages About Mitigating Civilian Harm

U.S. military forces deserve clear guidance on collateral damage tolerance.

Unfortunately, there appear to be mixed messages about proportionality as the Department of Defense (DoD) simultaneously applies lessons learned in Afghanistan and contemplates armed conflict with a peer or near-peer adversary. On one hand, senior military officers are stressing the importance of increased offensive capabilities, “rings of fire,” and “unrepentant lethality.”¹ On the other, Pentagon leaders expect the joint force to operate in a manner that is more protective of civilians than is required by the law of armed conflict (LOAC).² In particular, the DoD’s August 2022 Civilian Harm Mitigation and Response Action Plan (CHMR-AP) reinforces several misconceptions as to what the law of proportionality requires.³

In the training environment, many commanders and staffs reflexively refrain from taking

¹ See, e.g., “U.S. Four-Star General Warns of War with China in 2025,” *Reuters*, January 28, 2023; see also, Jon Harper, “Army Leader Warns About Potential Land War with China,” *National Defense*, March 17, 2021; Mallory Shelbourne, “Davidson: China Could Try to Take Control of Taiwan in ‘Next Six Years,’” *USNI News*, March 9, 2021; Sam LaGrone, “CNO Gilday’s New Guidance Sets Clear Goals to Bring Lethality to Surface Force,” *USNI News*, January 11, 2021 and Carol V. Evans, “Providing Stability and Deterrence: The U.S. Army in INDOPACOM,” *Parameters* 51, no. 1 (2021), doi:10.55540/0031-1723.3033. See also, Sydney J. Freedberg, Jr. and Andrew Eversden, “Firepower & People: Army Chief on Keys to Future War,” *Breaking Defense*, October 10, 2022. The term “unrepentant lethality” appears in General Mike Minihan’s March 2023 Air Mobility Command strategy. My inclusion of the term unrepentant lethality is intended to show a need for clearer guidance on collateral damage tolerance from senior leaders.

² Department of Defense (DoD), “Civilian Harm Mitigation and Response Action Plan” (CHMR-AP), Washington, D.C.: DoD, August 25, 2022, footnote 1 (“nothing in this plan is intended to suggest that existing DoD policies or practices are legally deficient or that the actions to be implemented pursuant to this plan are legally required, including under the law of war. The U.S. military routinely implements heightened policy standards and processes that are more protective of civilians than, and supplementary to, law of war requirements, without such standards and processes modifying or creating new legal requirements”).

³ See e.g., Lt. Gen. (ret) David A. Deptula, “In a Dangerous World, New Pentagon Mitigation Plan Would Hobble U.S. Forces,” *Defense Opinion*, September 13, 2022. Unfortunately, even U.S. joint doctrine now reflects an institutional unwillingness to accept any collateral damage. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3162.02 warns that engagements resulting in collateral damage “negatively affect the ability of the joint force to achieve the commander’s objectives.” The instruction assumes that collateral damage results from either: “(1) lack of positive identification (2) munition malfunction (3) secondary explosions and/or (4) human error.” The instruction does not acknowledge that, in some situations, commanders may intentionally kill innocents or damage civilian objects to achieve military objectives.

actions that may be lawful in the large-scale combat operations (LSCO) context.⁴ As Major Jason Young, an Army judge advocate assigned to the Joint Multinational Readiness Center in Hohenfels, Germany recently described for the Lieber Institute for Law & Land Warfare, many commanders and staff officers are unwilling to employ large-caliber or unobserved fires to destroy a high-value enemy asset in the vicinity of a civilian object or in an urban area.⁵ His observations reflect a growing concern that the joint force lacks a fundamental understanding of how the LOAC should apply in a high-intensity war.

This article provides further observations regarding the confusion that sometimes exists when warfighters apply the law to the operational function of fires. It zeroes in on the proportionality rule and the inherent dilemmas associated with applying it during LSCO. It differentiates between how the law of proportionality applied during the wars in Iraq and Afghanistan and how it *should* apply in a future war. Finally, it offers two recommendations that geographic combatant commanders, Service component commanders, theater special operations commanders, and other likely target engagement authorities can implement to mitigate the risks associated with misconceptions about the law. It urges increased engagement between general or flag officers and their subordinates on the topic of collateral damage, and it proposes the issuance of theater-specific, scenario-based tactical guides for use in training.

⁴ John Spencer interview with Col. Michael Simmering, Lt. Col. Andrew Steadman, and Lt. Col. Neil Myers, "Attacking the City of Razish," 29 May 2020, in *Urban Warfare Project Podcast*, 54:07–59:06, <https://mwi.usma.edu/attacking-city-razish/>; John Spencer interview with Col. David Gardner, "Attacking the City of Dara Lam," 10 July 2020, in *Urban Warfare Project Podcast*, 24:03–26:39, <https://mwi.usma.edu/attacking-city-dara-lam/>.

⁵ Major Jason D. Young, "Civilian Harm Mitigation and Response Action Plan: Observations from a Combat Training Center," *Articles of War*, United States Military Academy Lieber Institute, April 21, 2023, <https://lieber.westpoint.edu/chmr-ap-observations-combat-training-center>.

The Proportionality Rule is Well-Established in Law but Vague and Difficult to Apply

Articles 51 and 57 of the 1977 Additional Protocol (AP I) to the Geneva Conventions require combatants to refrain from attacks in which the expected loss of life or injury to civilians, and damage to civilian objects incidental to the attack, would be “excessive in relation to the concrete and direct military advantage anticipated.”⁶ In addition, Article 57 of AP I requires combatants to “take all feasible precautions” to minimize the incidental loss of civilian life, injury to civilians and damage to civilian objects.⁷

The United States has not ratified AP I and, therefore, is not bound by it, but U.S. officials acknowledge that both the general proportionality rule and the obligation to “take feasible precautions” reflect customary international law.⁸ For example, the DoD accepts large portions of Additional Protocol I as legitimate statements of customary international law and relies on these rules to train commanders and military lawyers alike.⁹ Further, the DoD Law of War Manual recognizes the duty to “take feasible precautions to reduce the risk of harm to the

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 48, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter AP I].

⁷ *Id.*, at para. 57(2)(a)(ii).

⁸ Stephen E. Preston and Robert S. Taylor. *Department of Defense Law of War Manual*. General Counsel of the Department of Defense Washington United States, 2016, 189. *See also*, Michael J. Matheson, Deputy Legal Adviser, Department of State, Remarks on the United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions at the Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law (Jan. 22, 1987), 2 *American University Journal of International Law and Policy* 419, 426-27 (1987) (stating, “We support the principle that all practicable precautions, taking into account military and humanitarian considerations, be taken in the conduct of military operations to minimize incidental death, injury, and damage to civilians and civilian objects, and that effective advance warning be given of attacks which may affect the civilian population, unless circumstances do not permit.”).

⁹ David Luban, “Opting out of the Law of War: Comments on Withdrawing from International Custom,” 120 *Yale Law Journal Online* 151 (2010), available at <http://yalelawjournal.org/forum/opting-out-of-the-law-of-war-comments-on-withdrawing-from-international-custom> (noting that “a significant consequence of the rules of CIL is that states train their militaries in them. The United States, which did not ratify Additional Protocol I, nevertheless accepts portions of it as legitimate statements of customary international law and build these rules into its law-of-war training and JAG practice”).

civilian population,” but the U.S. considers the word “feasible” to mean “practicable or practically possible.”¹⁰ The obligation does not require everything that is capable of being done.

These highly elastic rules often require subjective and imprecise determinations, and they implicate profound, competing moral obligations. As Professor William Fenrick, the former legal advisor to the International Criminal Tribunal for the former Yugoslavia, observed, “the problem is not whether or not the principle [of proportionality] exists, but what it means and how it is to be applied.”¹¹ Proportionality does not necessarily require a mathematical comparison, nor does the rule demand a balancing test, but the law prohibits attack when “there is a significant imbalance between the military advantage anticipated, on the one hand, and the expected collateral damage to civilians and civilian objects, on the other.”¹² In essence, proportionality acknowledges that unavoidable civilian harm is sometimes legally justified.

The proportionality rule obligates commanders to reconcile humanitarian imperatives with military requirements. As Israeli scholar Yoram Dinstein explained, “proportionality requires pondering dissimilar considerations—to wit, civilian losses and military advantage—[which] is not an exact science.”¹³ The U.S. military incorporates science and technology (*i.e.*, empirical data, probability, and complex modeling) into doctrine and practice to mitigate civilian harm.¹⁴ But lawful targeting also requires substantial operational art (*i.e.*, intuition, moral

¹⁰ Stephen E. Preston and Robert S. Taylor. *Department of Defense Law of War Manual*. General Counsel of the Department of Defense Washington United States, 2016, 190.

¹¹ William Fenrick, *Attacking the Enemy Civilian as a Punishable Offence*, 7 *Duke Journal of Comparative & International Law*, 545 (1997).

¹² The Program on Humanitarian Politics and Conflict Research at Harvard University, *Manual on International Law Applicable to Air and Missile Warfare* 98, commentary to rule 14, paragraph 7 (2009).

¹³ Yoram Dinstein, “The Conduct of Hostilities under the Law of International Armed Conflict,” 122 (1st ed. 2004); *see also*, International Criminal Tribunal for the Former Yugoslavia, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia*, 39 I.L.M. 1257, 1271, ¶¶ 48, 50 (June 8, 2000).

¹⁴ For a sense of how the DoD incorporates science into targeting doctrine, *see, e.g.*, Joint Chiefs of Staff, Publication 3-60, *Joint Targeting*, January 31, 2013, at xiii. *See also*, U.S. Air Force Doctrine Publication 3-60, *Targeting* (November 12, 2021) (noting that “successful dynamic targeting...requires a great deal of prior

reasoning, and experience).¹⁵ For instance, throughout the U.S.-led campaign to destroy the Islamic State in Iraq and Syria, operational commanders continuously balanced the military advantages gained by killing various ISIS leaders in urban centers like Raqqa and Mosul with more tenuous concerns about generating propaganda fodder or creating more jihadists than they eliminated.¹⁶

The proportionality rule and the requirement to take feasible precautions are contextual, and application of the law should differ from conflict to conflict and even from engagement to engagement. In Syria, the death of one ISIS member may not even justify damage to a single civilian object. On the other hand, in an armed conflict between the U.S. and a peer adversary, the destruction of a high-value unit or target (*e.g.*, a Russian TOS-1 rocket launcher or a Chinese DF-17 missile) would justify high levels of collateral damage.¹⁷ In a high-intensity war, commanders and staff officers will “need to intuitively know and confidently apply the actual rules of war, unhindered by the lingering hangover of constrained counterinsurgency rules of engagement (ROE)” that the joint force is most familiar with.¹⁸

planning”). For an example of how the DoD incorporates science in practice, *see* Major Kyle David Borne, “Targeting in multi-domain operations.” *Military Review* 99, no. 3 (2019): 60-67. *See also*, Lt. Col. John Cherry, Sq. Ldr. Kieran Tinkler, and Michael Schmitt, “Avoiding Collateral Damage on the Battlefield,” *Just Security*, February 11, 2021.

¹⁵ James Kraska, “Command Accountability for AI Weapon Systems in the Law of Armed Conflict.” *International Law Studies* 97, no. 1 (2021), 415 (arguing that “some tactical situations pose particularly complex problems that may require exceptionally nuanced trade-offs, special empathy, or choices among seemingly divergent ethics”). *See also*, See Anaïs Maroonian, “Contextualization of the Principle of Proportionality in International Humanitarian Law: Criteria and Examples,” *Articles of War*, March 6, 2023, available at <https://lieber.westpoint.edu/contextualization-principle-proportionality-ihl-criteria-examples/> (describing how the legal principle of proportionality always requires a balancing of two competing interests).

¹⁶ *See, e.g.*, Michael Joseph McNerney, Gabrielle Tarini, Nate Rosenblatt, Karen M. Sudkamp, Pauline L. Moore, Michelle Grisé, Benjamin J. Sacks, and Larry Lewis. *Understanding Civilian Harm in Raqqa and Its Implications for Future Conflicts*. RAND, 2022. *See also*, John Spencer and Jayson Geroux, Urban Warfare Project Case Study #2- Mosul, *Modern War Institute*, September 15, 2021, <https://mwi.usma.edu/urban-warfare-project-case-study-2-battle-of-mosul>.

¹⁷ Robin Geiss, “The Principle of Proportionality: ‘Force Protection’ as a Military Advantage.” *Israel Law Review* 45, no. 1 (2012): 71–89. doi:10.1017/S002122371100001X.

¹⁸ Lieutenant General (ret) Charles Pede and Colonel Peter Hayden, “The Eighteenth Gap.” *Military Review* (2021) (arguing that an institutional misunderstanding of the law of war represents a critical “warfighting capability gap” in the U.S. Army and that, “mastery of the law of war may very well mean the difference between victory and defeat”).

The Problem: The Joint Force is Primed for Restraint

Two decades of low-intensity conflict in Afghanistan, Iraq, Syria, Somalia, Yemen, and Libya generated an intellectual warfighting capability gap.¹⁹ Experts have expressed concerns about “insufficient legal expertise” within the joint force.²⁰ Most commanders and staffs are accustomed to “non-combatant casualty cutoff values” and collateral estimates of zero, an indication that senior leaders would not tolerate *any* collateral damage resulting from offensive strikes.²¹ In recent counterterrorism operations, combatant commanders accepted increased risk to their own forces to prevent incidental harm to civilians. For example, when special operations forces targeted ISIS leader Abu Ibrahim al-Hashimi al-Qurayshi in Syria in 2021, U.S. Central Command (CENTCOM) opted to launch a complex raid instead of a precision airstrike into Qurayshi’s multi-story dwelling.²² The raid was a success, but it resulted in the loss of a highly capable MH-60M Black Hawk helicopter in the Syrian desert.²³

The CENTCOM commander was not necessarily wrong considering the context in which

¹⁹ *Id.*

²⁰ Miranda Priebe, Douglas C. Ligor, Bruce McClintock, Michael Spirtas, Karen Schwindt, Caitlin Lee, Ashley L. Rhoades, Derek Eaton, Quentin E. Hodgson, and Bryan Rooney. *Multiple Dilemmas: Challenges and Options for All Domain Command and Control*. Rand Corporation, 2020, at 16-31.

²¹ Major General (ret) Charles Dunlap, “Civilian Casualties, Drones, Airstrikes and the Perils of Policy,” *War on the Rocks*, May 11, 2015.

²² Statement of General Kenneth F. McKenzie, Jr., U.S. Marine Corps, Commander, U.S. Central Command before the Senate Armed Services Committee, March 15, 2022 (stating, “Rather than target [Abu Ibrahim al-Hashimi al-Qurayshi] with an airstrike, we accepted increased risk to U.S. forces by launching a raid, expressly planned to separate noncombatants in the objective area from the ISIS leader and his subordinates”). *See also*, General Stanley McChrystal, *Tactical Directive* (Kabul: International Security Assistance Force, July 6, 2009), http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf (stating “I recognize that the carefully controlled and disciplined employment of force entails risk to our troops”).

²³ Stefano D’urso and David Cenciotti, “U.S. MH-60M Helicopter Used in Raid to Kill ISIS Leader in Syria Blown Up on the Ground by U.S. Forces,” *The Aviationist*, February 3, 2022, <https://theaviationist.com/2022/02/03/u-s-mh-60m-helicopter-used-in-raid-to-kill-isis-leader-in-syria-blown-up-on-the-ground-by-u-s-forces>.

he made decisions.²⁴ As Professors Michael Schmitt and Sean Watts noted in 2015, international law “imposes obligations and requires precautions that can [sometimes] expose combatants to tangibly greater danger.”²⁵ Operational advantages over non-state actors like ISIS, including air superiority and exquisite intelligence, enabled battlefield precautions, precision warfare, and “zero tolerance” policies for civilian harm. Further, no responsible commander wants to kill civilians even though, under some circumstances, the law permits it.

Civilian harm will be unavoidable in a LSCO, a reality of armed conflict that the DoD Law of War Manual recognizes.²⁶ International law permits belligerents to take innocent lives and destroy civilian property to achieve military objectives.²⁷ But how, exactly, does one decide if or when a particular military aim justifies the taking of innocent lives?²⁸ History reveals how difficult it is to apply the law of proportionality.²⁹ In 1999, divergent views on collateral damage frustrated U.S. and allied efforts to quickly defeat Slobodan Milošević in Kosovo. In describing policymakers’ and partner nations’ conservative interpretations of the law, the NATO Air Commander, Lieutenant General Michael Short, observed after the war that, “concern for collateral damage drove [NATO] to extraordinary degree, and it will drive the next generation of

²⁴ Michael Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. United States: Basic Books, 2015 (arguing that “it is a state’s duty to accept greater risks for its own military forces as a means to limit harm to noncombatants in the course of armed conflict”).

²⁵ Michael N. Schmitt and Sean Watts, “State *Opinio Juris* and International Humanitarian Law Pluralism” (May 11, 2015). 91 *International Law Studies* 171 (2015), *Texas International Law Journal*, Vol. 50, No. 2015, available at SSRN: <https://ssrn.com/abstract=2605309>.

²⁶ DoD Law of War Manual, *supra* note 8, at paragraph 1.4.2.1.

²⁷ *Id.* United States nuclear weapons policy supports the conclusion that even “extensive” incidental harm may not be “excessive.” *See, e.g.*, “Written Statement of the Government of the United States of America,” Jun. 20, 1995, I.C.J., at 23. (stating, “Whether an attack with nuclear weapons would be disproportionate depends entirely on the circumstances, including the nature of the enemy threat, the importance of destroying the objective, the character, size and likely effects of the device, and the magnitude of the risk to civilians. Nuclear weapons are not inherently disproportionate.”)

²⁸ Luke A. Whittemore, “Proportionality Decision Making in Targeting: Heuristics, Cognitive Biases, and the Law.” *Harvard National Security Journal* 7 (2015) (noting that “few writers have sought to explain and predict how those commanders actually make decisions as human beings limited by their cognitive capacities in a suboptimal decision-making environment”).

²⁹ Patrick Tomlin, “Subjective Proportionality.” *Ethics* 129, no. 2 (2019): 254-283.

warriors even more so.”³⁰ In November 2001, disagreements over collateral damage disrupted early targeting efforts in Afghanistan. The *Washington Post* reported on a dispute between operational commanders and the U.S. Central Command Staff Judge Advocate who purportedly refused to permit certain strikes against Taliban targets.³¹ Conflicting perspectives about proportionality required General Tommy Franks to resolve disputes and resulted in major delays and missed opportunities.³²

In a LSCO, U.S. commanders and staff will not have the luxuries of time or security to debate the law of targeting.³³ Tactical decision cycles will be more compressed than ever before.³⁴ Peer adversaries will prioritize attacks on long-distance communications systems and

³⁰ Michael Short, “Operation Allied Force from the Perspective of the NATO Air Commander.” *International Law Studies* 78, no. 1 (2002): 40. *See also*, International Criminal Tribunal for the Former Yugoslavia, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, 39 ILM 1257 at para. 19. As described in the “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, “striking an ammunition depot or a terrorist training camp would not be prohibited because a farmer is plowing a field in the area. On the other hand, a very significant military advantage would be necessary to justify the collateral death or injury to thousands of civilians.” *See also*, Wesley K. Clark, “No Formulas: Bosnia, Haiti, and Kosovo.” *Commanding Heights: Strategic Lessons from Complex Operations* (2010): 53. NATO forces intentionally bombed the central studio of the state-owned broadcasting corporation in Belgrade to disrupt command, control, and communications and attacked radio relay buildings, towers, and electrical power transformer stations.” *See also*, Judith A. Miller, Commentary, 78 *U.S. Naval War College International Law Studies* 107, 110 (2002). During Operation Allied Force, General Clark unapologetically assumed responsibility for “inevitable accidents and collateral damage,” including an inadvertent strike on the Chinese embassy, which he believed were lawful in relation to the military advantages gained by striking these targets from the air.

³¹ Thomas E. Ricks, “Target Approval Delays Irk Air Force Officers,” *Washington Post*, November 18, 2001, available at <https://www.washingtonpost.com/wp-srv/nation/Airwar18.html>. *See also*, Schmitt, Michael N. “Target Approval Delays Cost Air Force Key Hits: Law, Policy, Ethics and the Warfighter's Dilemma.” *Journal of Military Ethics* 1, no. 2 (2002): 113-124. *See also*, Anaïs Maroonian, “Proportionality in International Humanitarian Law: A Principle and a Rule,” *Articles of War*, October 24, 2022, available at <https://lieber.westpoint.edu/proportionality-international-humanitarian-law-principle-rule> (describing how the principle of proportionality invites highly open ended legal inquiries).

³² Michael N. Schmitt, “Target Approval Delays Cost Air Force Key Hits: Law, Policy, Ethics and the Warfighter's Dilemma.” *Journal of Military Ethics* 1, no. 2 (2002): 113-124.

³³ Mark F. Cancian, Matthew Cancian, and Eric Heginbotham. “The First Battle of the Next War Wargaming a Chinese Invasion of Taiwan,” *Center for Strategic & International Studies*, January 2023, available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/230109_Cancian_FirstBattle_NextWar.pdf?WdEUwJYWlySMPIr3ivhFolxC_gZQuSOQ at 3 (arguing that, “delays and half measures by the United States would make the defense [of Taiwan] harder, increase U.S. casualties, allow China to create a stronger lodgment, and raise the risk of escalation”).

³⁴ David C. Gompert, Astrid Stuth Cevallos, and Cristina L. Garafola. “War with China: Thinking Through the Unthinkable.” *RAND Corporation*, 2016 (noting that new “capabilities point to the potential for heavier, faster losses among vulnerable forces than at any time in modern conventional warfare”).

U.S. command posts.³⁵ Wargames in the Indo-Pacific repeatedly reveal that the United States would lose dozens of ships, hundreds of aircraft, and thousands of personnel in a matter of days.³⁶

Interviews and interactions with officers currently attending intermediate level education programs reveal the same uncertainties that manifest during CTC rotations.³⁷ For example, during a series of unclassified table-top exercises and wargames at the U.S. Naval War College, many participants from all Services hesitated to strike high-value enemy targets.³⁸ Some students opted for inaction based on relatively dense operating environments and concerns over how tactical decisions resulting in civilian harm could reverberate at the strategic level.³⁹ Many officers are intuitively inclined to exercise restraint and forego a thorough assessment of whether the expected collateral damage would be excessive in relation to the military advantage anticipated.

A future war, regardless of whether it occurs in Europe or Asia, will be defined by lethality and density.⁴⁰ Considering how much firepower the joint force's operational tasks

³⁵ Lt. Gen. Milford Beagle, Brig. Gen. Jason Slider, and Lt. Col. Matthew Arol, "The Graveyard of Command Posts," *Military Review*, March 2023.

³⁶ Mark F. Cancian, Matthew Cancian, and Eric Heginbotham. "The First Battle of the Next War Wargaming a Chinese Invasion of Taiwan," *Center for Strategic & International Studies*, January 2023, available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/230109_Cancian_FirstBattle_NextWar.pdf?WdEUwJYWlySMPIr3ivhFolxC_gZQuSOQ.

³⁷ Commander Sara Plesser Neugroschel, "The Danger of a Perfect Strike: The Unintended Consequences of Restrictive Targeting Regimes," *Naval Law Review* 67 (2021) (arguing that targeting restrictions have unintended consequences including "amplified civilian endangerment").

³⁸ See also, Glenn M. Sulmasy, "The Law of Armed Conflict in the Global War on Terror: International Lawyers Fighting the Last War," *Notre Dame Journal of Law, Ethics & Public Policy* 19, no. 1 (2005): 309-316 (describing the tendency among military leaders and international lawyers to apply obsolete legal principles from previous conflicts to present fights and future scenarios).

³⁹ Joshua WM. Bunte, "Exploring Organizational Factors Influencing the Moral-Self of U.S. Navy Commanding Officers." Ph.D. diss., Northcentral University, 2018, 146-147. ("According to one rear admiral (lower half) with 38 years of service and ten operational deployments in the surface warfare community, "most guys are quick to give their life for their country, but not their job for a moral dilemma").

⁴⁰ "The Future of the Battlefield," *Office of the Director of National Intelligence*, April 2021, available at <https://www.dni.gov/files/images/globalTrends/GT2040/NIC-2021-02493--Future-of-the-Battlefield--Un sourced--14May21.pdf>.

would require and how congested the likeliest areas of operations are with civilians and civilian objects, tactical commanders and senior leaders alike must grapple with how to evaluate various military advantages and collateral concerns.⁴¹ As Captain Wayne Hughes wrote in *Fleet Tactics*, “nothing about battle can be understood without grasping the impact of its violence.”⁴² Decision makers at all echelons of the joint force need high quality training repetitions with the proportionality rule and meaningful feedback before an international armed conflict erupts.

Some may argue that the Collateral Damage Estimation Methodology (CDEM) is sufficient to govern future targeting decisions.⁴³ The CDEM is excellent for deliberate, precision attacks like the USS *Porter*’s Tomahawk strike on Syrian military bases in 2017.⁴⁴ New technology like the Digital Precision Strike Suite Collateral Estimation algorithm and the Digital Imagery Exploitation Engine tool will improve deliberate targeting.⁴⁵ However, the next war will be marked by fluid battlespaces and a shift from deliberate to dynamic targeting.⁴⁶ In the absence of meaningful guidance from senior leaders, some tactical commanders might kill 100 civilians to destroy a high value enemy target, “while another might...opt for a lesser allowance of killing

⁴¹ See, e.g., Terrence K. Kelly, Anthony Atler, Todd Nichols, and Lloyd Thrall. “Employing Land-Based Anti-Ship Missiles in the Western Pacific.” Vol. 1321. *RAND Corporation*, 2013.

⁴² Wayne P. Hughes and Robert Girrier, *Fleet Tactics and Naval Operations*. United States: Naval Institute Press, 2018.

⁴³ Chairman of the Joint Chiefs of Staff Instruction 3160.01D, “No-Strike and the Collateral Damage Estimation Methodology,” Washington, D.C., *Joint Chiefs of Staff*, May 21, 2021.

⁴⁴ Jim Garamone, “Trump Orders Missile Attack in Retaliation for Syrian Chemical Strikes,” *Department of Defense News*, April 6, 2017, <https://www.defense.gov/News/News-Stories/Article/Article/1144601/trump-orders-missile-attack-in-retaliation-for-syrian-chemical-strikes>.

⁴⁵ For an explanation of these tools, see Annual Report, Joint Technical Coordinating Group for Munitions Effectiveness, *Office of the Secretary of Defense*, 2021, 267-273, <https://www.dote.osd.mil/Portals/97/pub/reports/FY2021/other/2021jtcg-me.pdf?ver=LULhVqxNNzuV9TtWaaEVtQ%3D%3D>.

⁴⁶ Robbin F. Laird, “Training for the High-End Fight: The Strategic Shift of the 2020s.” n.p.: BookBaby, 2021. In accordance with Joint Publication 3-60 (*Joint Targeting*) “the targeting process can be generally grouped into two categories: deliberate and dynamic. Deliberate targeting normally supports the joint force’s future plans effort, which is overseen by the plans directorate of a joint staff. Normally, the future operations directorate focuses on 24 hours out to 72 hours. This is a critical linkage during targeting execution. Dynamic targeting is normally employed in current operations planning because the nature and time frame associated with current operations (usually the current 24-hour period) typically requires more immediate responsiveness than is achieved in deliberate targeting.

ten civilians.”⁴⁷ Still, many others may not attack at all and will assume unnecessary risk to their own forces. Neither the CDEM nor algorithmic warfare tools can substitute genuine human understanding of the laws applicable to dynamic targeting.⁴⁸

As the ongoing war in Ukraine makes clear, a future conventional war will be dynamic, destructive, and deadly for civilians.⁴⁹ In a war between the United States and the People’s Republic of China (PRC) in the Western Pacific, for example, the joint force would presumably seek to destroy enemy surface warships, missile sites, merchant shipping, sea lines of communication, choke points for energy and trade, sea- and land-based logistics, and PRC resupply and sustainment capabilities.⁵⁰ Degraded communications, contested airspace, and imperfect intelligence will challenge the joint force and demand decentralized decision-making in battle.⁵¹ Emerging stealth technology, GPS spoofing, and the presence of maritime militia will further complicate efforts to characterize the environment and increase the likelihood of

⁴⁷ See, Scott Graham, “The Non-Combatant Casualty Cut-off Value: Assessment of a Novel Targeting Technique in Operation Inherent Resolve,” *International Criminal Law Review* (2018), 1-31 (concluding that the NCV methodology is a strategically and legally sound measure to control target engagement and mitigate civilian casualties), 26.

⁴⁸ Frank Wolfe, “Pentagon Removed Non-Combatant Casualty Cut-Off Value From Doctrine in 2018,” *Defense Daily*, June 11, 2021. See also, Vego, Milan. *Joint Operational Warfare: Theory and Practice*. Newport, RI: Naval War College, 2009, at III-25 (noting that, “computers...cannot replace the human mind and the skills and experience of operational commanders and their staffs”). See also, DoDI 3000.09, 2023. See also, Thurner, J. S. (2012). No One at Controls: Legal Implications of Fully Autonomous Targeting. *Joint Force Quarterly* 67 4th Quarter, 77–84. <https://ssrn.com/abstract=2296346> (establishing that human operators will retain control over kinetic targeting decisions for the foreseeable future).

⁴⁹ See, e.g., Guy Faulconbridge, “Ukraine War, Already with up to 354,000 Casualties, Likely to Last Past 2023,” *Reuters*, April 12, 2023, <https://www.reuters.com/world/europe/ukraine-war-already-with-up-354000-casualties-likely-drag-us-documents-2023-04-12/>; see also, Michael Beckley and Hal Brands, “What Will Drive China to War?” *The Atlantic*, November 1, 2021 (noting that “tamping or reversing Chinese aggression in the Western Pacific could require a massive use of force”).

⁵⁰ Carol V. Evans, “Providing Stability and Deterrence: The US Army in INDOPACOM,” *Parameters* 51, no. 1 (2021), doi:10.55540/0031-1723.3033 at 31.

⁵¹ See, e.g., Dmitry Filipoff, “Fighting DMO, Part 1: Defining Distributed Maritime Operations and the Future of Naval Warfare,” *The Center for International Maritime Security (CIMSEC)*, February 20, 2023. See also, Scott Pence, “Fighting as Intended: The Case for Austere Communications,” *Joint Force Quarterly*, July 1, 2021, available at <https://ndupress.ndu.edu/Media/News/News-Article-View/Article/2679508/fighting-as-intended-the-case-for-austere-communications> (describing a “communications-denied operational environment” as the convergence of anti-space, electronic warfare, cyber warfare, and information warfare effects).

incidental harm.⁵² Commanders and staffs must deliberately prepare to apply proportionality to future targeting dilemmas.

In a LSCO, on-scene commanders will probably lack access to, or the time to seek, legal advice and a higher headquarters' approval to conduct offensive attacks.⁵³ Warfighters will need more than vague legal principles, lengthy handbooks, and generic ROE to navigate future battlefield dilemmas. Tactical commanders need meaningful guidance from senior leaders on how to value military advantages relative to expected collateral concerns.⁵⁴

8	<p>Is the <i>attack</i> expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated?</p> <p>If yes, DO NOT ATTACK If no, proceed to step 9.</p>
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Figure 1: Targeting checklists like the one shown above and generic rules of engagement will not help warfighters to apply the law of armed conflict intuitively. Source: Newport Rules of Engagement Handbook, 2022.

⁵² See Yusuke Saito, "Reviewing Law of Armed Conflict at Sea and Warfare in New Domains and New Measures: Submarine Cables, Merchant Missile Ships, and Unmanned Marine Systems," *Tulane Maritime Law Journal* 44, no. 1 (Winter 2019): 107-124 (noting that "the extensive practice of deception in the past has significantly affected the safety of peaceful shipping"). See also, H.I. Sutton, "This is What a Chinese Stealth Warship Looks Like on Radar," *USNI News*, September 27, 2021, available at <https://news.usni.org/2021/09/27/this-is-what-a-chinese-stealth-warship-looks-like-on-radar> and See, e.g., Brett Tingley, "Scores of 'Dark Vessels' Belonging to China's Maritime Militias are Operating in Contested Waters," *The Drive*, February 22, 2022, available at <https://www.thedrive.com/the-war-zone/44390/scores-of-dark-vessels-belonging-to-chinas-maritime-militias-are-operating-in-contested-waters>. See also, Parry, Chris. "Maritime Operations and Missions: The Falklands Case." In *From the North Atlantic to the South China Sea* (2021), 335 (noting that "the proliferation of high-end modular weapons and sensor systems in an increasing diversity of civilian platforms will further complicate ISTAR (Intelligence, Surveillance, Target Acquisition and Reconnaissance) functions and "The Future of the Battlefield," *Office of the Director of National Intelligence*, April 2021, at 4 (describing how GPS spoofing misdirects platforms).

⁵³ Miranda Priebe, Alan J. Vick, Jacob L. Heim, and Meagan L. Smith. "Distributed Operations in a Contested Environment." *RR2959 (Santa Monica, CA: RAND Corporation, 2019)* 55 (describing how attacks on U.S. long-distance communications systems, including satellites and long-distance fiber, will result in significantly degraded communications). See also, Hon. Jennifer O'Connor, "Applying the Law of Targeting to the Modern Battlefield," Speech to New York University Law School, November 2018, 2016 (describing how, in the last war, judge advocates provided real-time legal advice to target engagement authorities).

⁵⁴ Kevin Varley, "Taiwan Tensions Raise Risks in One of Busiest Shipping Lanes," *Bloomberg*, August 2, 2022.

The Remedies: Personal Engagement and Scenario-Based Tactical Targeting Guides

To alleviate confusion and promote future compliance with the law, senior leaders within the geographic combatant commands, Service component commands, theater special operations commands, and other warfighting headquarters (*e.g.*, corps, divisions, multi-domain task forces, fleets, carrier strike groups) can implement two immediate measures. First, senior leaders can engage more frequently with operational and tactical level commanders and staff officers on the topic of collateral damage. Second, senior commanders can issue scenario-based tactical guides for use in training.

Operational Commanders Need Mentorship on Proportionality

War with a peer competitor will be unlike anything the modern United States military has experienced, and winning will be an absolute necessity.⁵⁵ Thus, senior leaders must cultivate an understanding of how the law applies in high-intensity engagements through focused education at all echelons. In targeting meetings, commanders' roundtables, professional development sessions, town halls, and after-action reviews in training environments, senior commanders should engage with their subordinates on potential targeting dilemmas within their area of operations. As Professor David Glazier, a legal scholar who also spent twenty-one years as a surface warfare officer, noted in 2021, "troops deserve the best possible guidance on the internationally recognized rules governing conflict."⁵⁶ Commanders at echelons must de-

⁵⁵ John A. Warden III, "Winning a Peer War," *The Journal of Strategic Airpower and Spacepower*, Spring 2022, 126, available at <https://www.jstor.org/stable/48651813>.

⁵⁶ David Glazier, "The DoD Law of War Manual: What is it Good For?" *Just Security*, July 28, 2015.

emphasize “legislative” ROE and, instead, challenge subordinates to consider realistic scenarios so that they may internalize principles, not just memorize external, written texts.⁵⁷

While the LOAC provides a sufficient framework to navigate targeting dilemmas, senior leaders must fill the framework with their operational beliefs and expectations.⁵⁸ The commanding general of U.S. European Command, Service component commanders in Europe, Sixth Fleet commander, and Special Operations Command-Europe should address whether the destruction of civilian (or uncharacterized) vehicles would be excessive in relation to the destruction of a Russian tank column with over-the-horizon missiles. In the Indo-Pacific, senior commanders ought to address whether the destruction of a civilian community, airport, tourist infrastructure, or wind turbine would be excessive in relation to the destruction of a land-based People’s Liberation Army missile site with over-the-horizon RGM-84 or UGM-84 Harpoon missiles.

These hypothetical dilemmas are not unrealistic. Chinese cruise ships like *The Coconut Princess* regularly ferry hundreds of passengers from the port city of Sanya to places like tiny Woody Island to sunbathe, dive, and fish.⁵⁹ An additional 1,500 civilians live on Woody Island alongside the PLAN’s “Unit 92155,” an air defense brigade armed with HQ-9 surface-to-air missiles featuring a 200-kilometer range.⁶⁰ Senior commanders should address whether it would

⁵⁷ Martins, Mark S. “Rules of Engagement for Land Forces: A Matter of Training, not Lawyering.” *Military Law Review* 143 (1994): 1.

⁵⁸ See Colonel Andrew M. McKee & Lieutenant Colonel Jason M. Elbert, “Azimuth Check,” *Army Lawyer*, Issue 2, 2022 (describing how experts agreed that the LOAC is sufficient at the Major General John Fugh Symposium, Center for Law and Military Operations, The Judge Advocate General’s Legal Center and School, June 15, 2022).

⁵⁹ Vietnam Demands China Stop Cruises in South China Sea,” *Reuters*, March 13, 2017, <https://www.reuters.com/article/us-vietnam-china-southchinasea-idUSKBN16K0CD>. See also, Taylor M. Fravel, “China’s Strategy in the South China Sea.” *Contemporary Southeast Asia* 33, no. 3 (2011): 292–319. <http://www.jstor.org/stable/41446232>.

⁶⁰ Greg Torode and Manuel Mogato, “One Thing People Don’t Realize About the Disputed Islands on the South China Sea,” *Business Insider*, May 29, 2015.

be reasonable to bombard Unit 92155 with naval fires or whether precision missiles are required.



Figure 2: Warfighters deserve to know how their senior commanders value concrete military advantages (e.g., the destruction of highly capable enemy vessels) and the expected incidental harm (e.g., the loss of innocent life or the destruction of civilian infrastructure).

As the Newport Rules of Engagement Handbook notes, “[s]cenario based ROE training will ensure that ROE are understood and applied properly by all units and members of the force.”⁶¹ Some tactical units already conduct scenario-based training exercises supported by tactical aids developed by command judge advocates.⁶² Scenario-based training events led by judge advocates are helpful, but they typically reveal the judge advocate’s opinions on proportionality, not the senior commander’s guidance and intent. As retired Brigadier General Mark Martins once noted, “understanding of the LOAC is a matter of training, not of

⁶¹ Newport Rules of Engagement Handbook, *International Law Studies* 98, no. 1 (2022): Appendix 1 to Annex A, 13.

⁶² “TACAIDS,” J06 Office of the Staff Judge Advocate, U.S. Indo-Pacific Command, retrieved April 28, 2023, available at <https://www.pacom.mil/Contact/Directory/J0/J06-Staff-Judge-Advocate>.

lawyering.”⁶³ Personal engagements between senior-level commanders and warfighters will facilitate a deeper understating of the law and its contextual nature. The opportunity to regularly ask senior leaders about collateral damage will stimulate confidence in the practical application of theater ROE, which do not, and should not, delineate specific tactics.

Scenario-Based Tactical Guides Will Enrich Training

Additionally, senior-level commanders should develop scenario-based tactical guides for the employment of force in LSCO. Scenario-based tactical guides will operationalize key legal principles for training purposes and will promote intuitive application of the law on future battlefields. In July 2009, General Stanley McChrystal issued a Tactical Directive in his capacity as the NATO commander in Afghanistan.⁶⁴ Subsequent commanders updated the directive to account for changes in the operating environment. In those directives, the commanders described specific tactical expectations to illustrate broader operating principles (*e.g.*, prohibitions on entering Afghan houses without Afghan National Security Forces to promote the local government’s legitimacy; a preference for foot patrols over mounted patrols to signal humanity and care). Senior commanders serving today should not wait for a future war to clarify their expectations regarding the conduct of kinetic strikes in Europe or Asia.

Forward-looking, scenario-based tactical guides that specifically address LSCO targeting dilemmas will stimulate necessary debate, facilitate meaningful planning, and establish a

⁶³ Brigadier General (ret.) Mark S. Martins “Rules of Engagement for Land Forces: A Matter of Training, not Lawyering.” *Military Law Review* 143 (1994) (noting that by 1993, soldiers in Somalia were conducting regular, scenario-based ROE training in anticipation of similarly complex targeting problems).

⁶⁴ McChrystal, *Tactical Directive*, *supra* note 22, at 1.

foundation for competent judgment.⁶⁵ Theater specific, scenario-based tactical guides should address issues relating to the employment of unobserved fires in urban terrain, the destruction infrastructure (e.g., bridges, dams), subterranean threats, and other targeting predicaments.⁶⁶

Digital versions of tactical guides can hyperlink to video footage from previous U.S. attacks in urban areas, media coverage of airstrikes against high-value terrorist targets in which civilians were killed, and even news reports about Russian missile attacks in Ukraine to provoke thinking and promote genuine understanding within their organizations. In the same way that Army Doctrine Publication 6-22 (*Army Leadership and the Profession*) links leadership philosophies to historic applications of core principles, senior commanders can define the command's collateral damage expectations by endorsing past targeting decisions and condemning others.⁶⁷

Even experts in the law of targeting typically fail to reach “judgment consensus” when faced with hypothetical targeting dilemmas.⁶⁸ Grappling with theater-specific vignettes will increase the likelihood that warfighters will incorporate the law and commander's intent in executing future strikes. Warfighting commands can leverage advances in modeling and

⁶⁵ Joint Chiefs of Staff, Publication 3-60, Joint Targeting, January 31, 2013, at xiii. *See also*, U.S. Air Force Doctrine Publication 3-60, Targeting (November 12, 2021) (noting that “successful dynamic targeting...requires a great deal of prior planning”).

⁶⁶ *See, e.g.*, Haley E. Mercer, *Shaping the Deep Fight: Operational Implications for the 21st Century Subterranean Conflict*. U.S. Army Command and General Staff College, 2019. *See also*, Michael N. Schmitt, “Attacking Dams – Part I: Customary International Law, *Articles of War*, United States Military Academy Lieber Institute, January 31, 2022 and Janine Fetchik and Matt Montazzoli, “Unobserved Fires and the Law of Armed Conflict, *Articles of War*, United States Military Academy Lieber Institute, March 3, 2023.

⁶⁷ U.S. Department of the Army (2019). *Army Leadership and the Profession*. Army Doctrine Publication 6-22.

⁶⁸ Daniel Statman, Raanan Sulitzeanu-Kenan, Micha Mandel, Michael Skerker, and Stephen De Wijze. “Unreliable Protection: An Experimental Study of Experts’ In Bello Proportionality Decisions.” *European Journal of International Law* 31, no. 2 (2020): 429-453 (showing that “groups of experts [in international humanitarian law] failed to reach judgment convergence when faced with proportionality dilemmas”).

simulation technology to expose tactical commanders to the proportionality dilemmas described in the guide and to reinforce the commander's guidance on incidental harm.⁶⁹

Tactical guides might even raise completely fictional dilemmas, so long as warfighters would readily comprehend the essential, underlying guidance. Senior leaders can borrow from P.W. Singer and August Cole's concept of "useful fiction" to pose plausible, hypothetical dilemmas.⁷⁰ By expressing collateral damage expectations through narrative and scenario-based tactical guides, senior leaders can also bridge the gap between generations. As Second Lieutenant Allison Annick wrote for the U.S. Naval Institute, "the use of [fictional intelligence or FICINT] in schoolhouses allows for a broader assemblage of knowledge and creativity in considering possible threats."⁷¹

Conclusion: Senior Leaders Must Create Shared Understanding

Generals and admirals "cannot prescribe the appropriate use of force for every condition that a complex battlefield will produce," but senior commanders are obligated to manage uncertainty and to create shared understanding.⁷² Joint targeting doctrine requires senior commanders to "articulate risk tolerance sufficiently to let on-scene commanders understand

⁶⁹ Steven C. Gordon and Douglas D. Martin. "Modeling and Simulation for Collateral Damage Estimation in Combat." In *Enabling Technologies for Simulation Science IX*, vol. 5805, pp. 309-317. SPIE, 2005. *See also*, Lauren C. Williams, "Navy Wants Simulators that Measure Learning, Not Just Reps," *Defense One*, April 3, 2023, <https://www.defenseone.com/defense-systems/2023/04/navy-wants-simulators-measure-learning-not-just-reps/384773>.

⁷⁰ August Cole and P. W. Singer. "Thinking the unthinkable with useful fiction." *Journal of Future Conflict* 2 (2020) (defining "useful fiction" as the deliberate blending of narrative and nonfiction in packages that range from books and short stories to bespoke illustrations, videos, and graphic novellas").

⁷¹ Second Lieutenant Allison Annick, *FicInt: Anticipating Tomorrow's Conflict*, U.S. Naval Institute, March 2021.

⁷² McChrystal, *Tactical Directive*, *supra* note 22, at 2. *See also*, U.S. Department of the Army (2019). *Mission Command. Army Doctrine Publication 6-0* at viii.

intent.”⁷³ There is currently a lack of clarity at various echelons about how much incidental harm to tolerate in a high-intensity conflict.⁷⁴ Some believe that restraint and legitimacy will not be decisive factors in a LSCO.⁷⁵ Others argue that preventing collateral damage is “one of the most important military objectives in contemporary warfare,” regardless of the conflict’s intensity.⁷⁶ Increased engagement on the topic of collateral damage and scenario-based tactical guides will alleviate confusion and promote confidence in targeting.

In his 1884 short story *A Premature Burial*, Edgar Allen Poe wrote, “the boundaries which divide Life from Death are at best shadowy and vague. Who shall say where the one ends, and where the other begins?”⁷⁷ The law of proportionality implicates these same shadowy and vague boundaries. In the absence of meaningful targeting guidance from senior leaders, warfighters will continue to demonstrate the dangerous symptoms of counterterrorism and counterinsurgency hangover – reluctance, hesitation, and uncertainty. Mastery of the proportionality rule may not be possible unless senior leaders establish logical parameters.

⁷³ Joint Chiefs of Staff, Publication 3-60, Joint Targeting, January 31, 2013, at II-21.

⁷⁴ See, e.g., Luke N. Condra and Jacob N. Shapiro, “Who Takes the Blame? The Strategic Effects of Collateral Damage,” *American Journal of Political Science* 56, no. 1 (2012): 167–87. <http://www.jstor.org/stable/23075150> (arguing that “the consequences of mistreating civilians are a first-order policy concern”). See also, Congressman Michael Gallagher, “Prepare Now for War in the Pacific,” U.S. Naval Institute Proceedings, July 2021 (arguing that “we must communicate often and honestly with the American people about the stakes [of a war with China]”).

⁷⁵ Lieutenant Colonel Paul Lushenko, “The Pentagon’s Reckoning with Civilian Casualties is a Good Start – But It’s Only a Start,” *Modern War Institute*, September 12, 2022, available at <https://mwi.usma.edu/the-pentagons-reckoning-with-civilian-casualties-is-a-good-start-but-its-only-a-start> (arguing that legitimacy is always central to U.S. military operations). See also, Stephen E. O’Rear, “Legitimacy as an Operational Factor: An Alternative Analysis,” Naval War College, October 23, 2006 (arguing that legitimacy should be considered a principle of war and not an operational factor). See also, O’Connell, Daniel Patrick. *The Influence of Law on Sea Power*. United Kingdom: Manchester University Press, 1975, 177. See also, McMahon, Christopher J. “Maritime Trade Warfare: A Strategy for the Twenty-First Century?” *Naval War College Review* 70, no. 3 (2017): 14-38 (describing the “two very different views” on whether maritime warfare is a viable strategy in the twenty-first century). See also, Hughes, Wayne P., Girrier, Robert. *Fleet Tactics and Naval Operations*. United States: Naval Institute Press, 2018, 19 (noting that “considering the death and destruction wrought by naval warfare, it may be that the very decisiveness of battle at sea, which so often leads tacticians to try to avoid it, is actually a virtue for which the civilized world can be grateful”).

⁷⁶ Lushenko, *supra* note 78; See also, Geoffrey Corn and Robert Ashley, “LOAC and Legitimacy: When Combat Becomes a Supporting Effort to Information,” *Articles of War*, United States Military Academy Lieber Institute, January 18, 2022, <https://lieber.westpoint.edu/loac-legitimacy-combat-supporting-effort>.

⁷⁷ Edgar Allan Poe, *The Premature Burial*. Lindhardt og Ringhof, 2020.

Warfighters certainly deserve legal maneuver space, but senior commanders should articulate where that space begins and ends.

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