

New Generation Warfare

and the

Just War Tradition

by Richard E. Berkebile

Just war traditions establish norms for resorting to and conducting war - otherwise known as *jus ad bellum* and *jus in bello*. Ethicists argue these norms are universal and, excepting occasional and usually lagging adjustments for technology, approach immutability. Considering the employment of *new generation warfare*, are these norms sufficient for the information age? Some argue the application of new generation warfare is a Russian phenomenon that has nearly exhausted its pool of potential victims.¹ However, the emphasis on the information environment and the demonstration effects of its successful employment in the Ukraine and elsewhere suggest the doctrine is only starting to bud. This article examines the intersection of new generation warfare with just war norms through two questions. First, exactly how is *new generation warfare* compatible or incompatible with *jus ad bellum* or *jus in bello*? Second, are just war traditions sufficient for information age warfare - specifically *new generation warfare*? The article concludes *new generation warfare* is incompatible with portions of *jus ad bellum* and *jus in bello* norms and insufficient for modern war.

Defining the Concepts

While the research questions are relatively straight forward, the underlying concepts of *new generation warfare*, *jus ad bellum*, and *jus in bello* are not. There is considerable literature concerning each concept, but enough disagreement to necessitate clarifying exactly what is being compared. Here, *new generation warfare* refers to the description contained in the 2013 *Military Thought* article *The Nature and Content of a New Generation War* by Colonel S.G. Chekinov and Lieutenant General S. A. Bogdanov.² The Chekinov and Bogdanov article was supplemented by the thoughts and writings of the Russian Chief of Staff General Valery Gerasimov and actual 2008 operations in Georgia and 2014-2015 operations in Ukraine.

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Current Russian military thought replaced *new generation warfare* with *new type warfare*.³ I retained *new generation warfare* because it is more established in public discourse. In the original conception, Chekinov and Bogdanov separated new generation warfare into two periods - opening and closing. I followed Transatlantic Academy analyst Andras Racz

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and refer to three phases - preparatory, military, and stabilization.⁴ The three phase conception more closely matches United States military thought on how to group similar activities. The preparatory phase is covert, the military phase is overt, and the stabilization phase consolidates gains. For the purposes of this paper, no further description of phases is necessary.

Interpreting Gerasimov, Chekinov, and Bogdanov is not as simple as it should be. Each author plausibly, with the exception of alleged deep governmental-nongovernmental organization-press conspiracies,⁵ describe American operations in Iraq from the 1990s-2000s and Libya in 2011 as initiating new generation warfare through the use of precision weapons and the exploitation of the information environment. The authors further describe the next steps in new generation warfare in terms of “American”, or its pseudonym aggressor, operations that is far more descriptive of Russian operations than American operational art. Russian operations and theory are the article’s focus. As explained later, denial and obfuscation are central features of new generation warfare.

Operationalizing *jus ad bellum* and *jus in bello* is likewise challenging. There is a fair

degree of consensus on principles of *jus ad bellum*, but their interpretation and justification is contested. *Jus ad bellum* norms are well established in literature and there was little to be gained by referencing the legalisms of the United Nations Charter. Such reference simply transforms the ethical argument into a legalistic one concerning interpretation of the Charter. *Jus in bello* was a different case. The principles of military necessity, distinction, proportionality, and unnecessary suffering are widely accepted but the interpretation of specific actions is not. While recognizing the law and ethics of warfare differ, they overlap considerably. The law of armed conflict is a useful operationalization of warfare ethics.

The *jus in bello* examination was informed by the detailed and legalistic descriptions of the 1910 Hague Convention, Additional Protocols I and II to the 1949 Geneva Conventions, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. They are sources of conventional wisdom regarding *jus in bello*. While helpful, even these references require the exercise of judgment. For example, the United States is a party to The Hague Convention and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques but not to Additional Protocols I and II of the Geneva Conventions. Yet *Field Manual 27-10, The Law of Land Warfare* and the *Department of Defense Law of War Manual* comply with and reference many aspects of the Additional Protocols. Russia is party to all three conventions and the additional protocols but the execution of new generation warfare brings their compliance into doubt. Lastly, it is not always clear when a violation of *jus in bello* norms is a matter of state policy or the unsanctioned action of rogue individuals. Except as evidenced by widespread or repeated occurrences, the theory of new generation warfare was favored over anecdotal events.

Jus ad Bellum

Jus ad bellum literature evaluates war's righteousness in terms of just cause, right intention, proper authority, last resort, probability of success, and proportionality.⁶ Traditionally, these are considerations of state, not the purview of warriors. New generation warfare is, at its essence, a warfighting doctrine - a method to conduct war.

On the surface, military doctrine and considerations of state do not intersect. The military is not generally morally or legally accountable for the decisions of heads of state.⁷ For example, the Nuremberg Military Tribunals found all fourteen former German flag officers, including several from the high command, not guilty of waging aggressive war or violating international treaties because they were not policy makers.⁸ This norm could be evolving. For instance, the British Chief of the Defense Staff Admiral Sir Michael Boyce sought legal advice from the Attorney General over concerns he and other military members could be tried in the International Criminal Court for prosecuting the War in Iraq.⁹ Nonetheless, any evolution in moral responsibility appears at least as much a political as an ethical development.

In any case, neither Russia nor the United States are signatories to the Rome Statute of the International Criminal Court. New generation warfare doctrine, therefore, would only run afoul of *jus ad bellum* norms to the degree its execution inherently impacts them. In other words, except in rare cases where a military officer is also a national policy maker, the moral equality of soldiers is assumed.¹⁰

I peremptorily, but not arbitrarily, dismissed examining new generation warfare regarding right intention, last resort, probability of success, and proportionality. Just cause and proper authority, however, are worth exploring.

Just Cause

At its simplest, a just war is a defensive war – a war in response to aggression. Humans and states being deceptive, clever, conspiratorial, and intentional, produce interplay that is often not transparent. Defensive war traditionally expands to include preemptive war, striking first to gain advantage in anticipation of imminent enemy aggression. New generation warfare relies heavily on *ex ante* preparation.

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In new generation war, the attacker¹¹ makes plans in advance and conceals preparations.¹² “*Months* [emphasis added] before the start of a new generation war, large-scale measures in all types of warfare ... may be designed.”¹³ Shortly prior to the conflict, clandestine agents commit or fund “terrorist acts” and “provocations.”¹⁴ Human or technical reconnaissance and surveillance locate potential military, government, and critical infrastructure targets.¹⁵

At a minimum, these precepts suggest new generation warfare is not a reaction to being attacked first in the classical sense. Concealing preparations, committing provocations, and anything short of near real time military unit locations are of little utility for defensive intentions. These covert activities are incompatible with the political and public posturing accompanying any *ex ante* or even *ex post* Security Council authorization. A defensive war could, arguably, exploit many of the prewar new generation tactics. For example, reconnaissance and surveillance of potential enemies is not the same as nor as destructive as actual war. However, months of preparation and the use of provocations, which are by nature aggressive, do not meet the requirements for the

enemy attack to be imminent and of the enemy's own volition. Neither are they a response to an enemy first strike.

Two other schools of thought supplement conventional wisdom on defensive war. Humanitarian intervention theorists posit external intervention is just if a state is committing unjust repression of its own citizens. These theorists devalue state sovereignty, increase the value of individual harms, and increase the likelihood of altruistic foreign discernment and action. Russia has used these very arguments to justify intervention. For example, the August 2008 Russian intervention in Georgia was justified both on humanitarian and legal grounds. They accused the Georgian government of a genocide targeting ethnic Russians in the region of South Ossetia in violation of international human rights norms.¹⁶ Additionally, they legally justified protecting their ethnic diaspora by citing *Russian* federal law.¹⁷

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The same justifications were used for the seizure of Ukrainian Crimea region and subsequently for the Donbass region in 2014.¹⁸ Russia labeled ethnic Russians in both Georgia and Ukraine as “their” citizens. Regardless of the humanitarian arguments, there is little unbiased evidence of large scale prewar abuse of ethnic Russians in either Georgia or Ukraine. There is even evidence most ethnic Russians opposed intervention in the Donbass and provided half of the personnel for Ukrainian volunteer battalions.¹⁹ New generation warfare intentionally exacerbates grievances. It is not intended to dampen them on humanitarian grounds. To date, the humanitarian rhetoric is

mere camouflage for information environment skirmishes. As practiced, new generation warfare is incompatible with the humanitarian intervention argument.

The other supplemental school of thought emerged from the shock of the September 11, 2001 attacks in the United States. Preventive war does not require specific knowledge of a time or even place of attack, only a great threat made even more ominous with the plausible use of weapons of mass destruction.²⁰ The preventive war concept is not as well developed as the other war norms. Its most aggressive version is attributed to former Vice President Dick Cheney and described as, “if there was even a one percent chance of terrorists getting a weapon of mass destruction ... the United States must now act as if it were a certainty.”²¹ Assuming the actual percentage, to the degree such a thing is measurable, to be substantively greater than one percent, preventive war is a version of the precautionary principle justified as a social responsibility to prevent harms.

The other key consideration is its application to nonstate actors – terrorists – not addressed in traditional just war norms. Modern technology enables proficient nonstate actors to become credible existential threats to states and their citizens. Russian President Putin and Chief of the General Staff Baluyevsky (one of General Gerasimov's predecessors) also endorsed the preventive principle with regard to terrorism originating from other states.²² Notably, nonstate terrorists reside in states. This highlights a lacunae among *jus ad bellum* norms, malignant nonstate actors, and their interaction with sovereign states. Nonstate actors are rarely addressed or are dismissed as a law enforcement problem.

Given the relaxed requirement for imminence of attack, new generation warfare can be compatible with the preventive war argument.

Proper Authority

Proper authority connotes public declaration of war by state authorities using established governmental processes.²³ There are harms in failing to do. Committing the entire polity and its resources to pay the costs of war without using the corresponding governmental legitimizing processes turns the state into a tool for the personal gains and desires of elites or even an individual such as the chief executive. Public declaration informs citizens and the international community of the *casus belli* justifying the resort to deadly violence. Bypassing legitimating decision processes subjects military participants to the moral hazards of participation in unjust war. Legitimate collective decision making,²⁴ *ceteris parabus*, relieves the warrior of the moral responsibility to determine war's justice.²⁵ The overwhelming majority of combatants, to include those at high levels, are ill-equipped and ill-informed to substitute their personal judgment for the collective judgment of legitimate authority. Military disobedience to governmental authority potentially introduces harms exceeding those of unjust war.²⁶ Lastly, transparent identification of the warring parties enables negotiations to end the conflict. With no entity to bargain with, no compromises can be reached and unnecessary violence prolonged.

New generation warfare practices avoid the principle of proper authority through deliberate deception and subterfuge. New generation warfare's key innovation is its emphasis on the information environment.²⁷ It depresses "the opponent's armed forces personnel and population morally and psychologically."²⁸ A key and desirable effect is the reticence to act in defense of the state and its citizens. Confusion erodes the moral certitude necessary to overcome the soldier's natural reluctance to use force, particularly against fellow "citizens." Reticence is exploited to seize objectives quickly against timorous resistance to create

fait accompli conditions. In the information environment, this forces the original defender to take offensive action just to return the status quo – actions inhibited by the creation of local self-determination movements and threatened nuclear escalation.²⁹ For example, between Georgia and the Ukraine, Russia established the proto-states Republic of South Ossetia, Republic of Abkhazia, Crimean Republic, Donetsk People's Republic, and the Lugansk People's Republic. President Putin's speeches are frequently laced with nuclear sabre rattling, particularly with reference to newly autonomous Ukrainian regions.³⁰

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In addition to promoting local separatism, new generation warfare disguises or simply denies participation in the conflict. Imperatives include misleading political and military leadership through "large-scale carefully coordinated measures carried out through diplomatic channels by government-controlled and private media and top government and military agencies by leaking false data, orders, directives, and ... public statements"³¹ The initiating state infiltrates military forces and covert agents before the outbreak of an armed putsch. Target state governmental, military, and security service officials are intimidated, tricked, or bribed "to abandon fulfillment of their service duties."³²

With some exceptions, the use of infiltration, agents, bribery, and defectors is consistent with the law of armed conflict.³³ Denying direct participation in a war, however, creates harms. For example, on December 17, 2015, after 22 months of denials, President Putin admitted Russian troops were in Ukraine albeit

with a quixotic distinction between those forces and regular Russian forces.³⁴ These denials had the insidious effect of giving the Ukrainians no negotiating partner with which to sue for peace aside from the separatists - who assumedly had little autonomy without the acquiescence of Moscow. The harms are not only to the target state. The grievances of the Russian nongovernmental organization, The Committee of Soldiers' Mothers, include the lack of information provided families of service members killed in action and public acknowledgement of their service.³⁵

Jus in Bello

The ethics of warfighting are framed by the principles of military necessity, proportionality, distinction, and unnecessary suffering.³⁶ The key to conflict ethics is distinction between combatants and noncombatants. The law of war addresses combatant/noncombatant rules, but the eligible players are limited by a state centric exclusivity and a binary, outdated distinction between international and civil armed conflict.

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New generation warfare exploits the rigid categorizations of both the law and traditional *jus in bello* ethics. This analysis ignores any legal requirements for combatants to be associated with a state and uses only the combatant/noncombatant ethical framework. I further used the relaxed requirements of Additional Protocol I, Article 44(3) to the Geneva Convention, a stance the United States rejects. The protocol only requires openly carrying arms visible to the enemy while deploying to and during engagements and discards the requirement for fixed, distinctive symbols recognizable from a

distance.³⁷ This avoids preemptory condemnation of the disguised combatants used in the preparatory phase, and often maintained well into the stabilization phase, of new generation warfare.

Military Necessity

“Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”³⁸

As outlined by Chekinov and Bogdanov, the first hours of the military phase “disorganize the defender’s air force and air defense system.”³⁹ Other targets are “government and military objectives.”⁴⁰ The lack of further description of government and military objectives suggests they should be understood in accordance with traditional definitions. Initial targets would include “military and industrial capabilities, government and military headquarters, civil and military leaders, communications centers, and power and water supplies.”⁴¹ While water supplies could be a prohibited target if “indispensable to the survival of the civilian population,”⁴² it is unclear if Chekinov and Bogdanov are referring to military or civilian water supplies, permanent or temporary damage, or a prohibited attack technique such as poisoning. Actual operations in Georgia nor Ukraine do not indicate civilian water supplies were unreasonably interrupted.

Preparatory and military phase operations in Crimea and Eastern Ukraine targeted military, governmental, or informational objects. The latter two categories are at least indirectly military. For example, the seizure of Crimea began with increasingly strident protests on February 20, 2014.⁴³ Beginning February 26th, openly armed operatives seized or blockaded

parliamentary and executive buildings, military installations, Simferopol airports, media outlets, and broadcast towers.⁴⁴ In Georgia, Russian and separatist operations were largely directed against Georgian land and naval forces. In both Crimea and Georgia, anti-Russian noncombatants fled but refugee flows were more plausibly explained by anticipation of future conditions than by widespread targeting of civilians or civilian infrastructure. As civil property was equally valuable to the newly installed pro-Russian regimes, there were practical disincentives to targeting it. Given the military advantages pursued, new generation warfare is compatible with military necessity in both theory and practice.

Proportionality

Proportionality requires balancing military advantage against expected collateral damage.⁴⁵ Like military necessity, this principle presupposes the distinction between combatant and noncombatant objects. Here, I address solely the balancing aspect. Distinction is addressed under the principle of distinction.

New generation warfare precepts do not directly address the proportionality or balance of military advantage weighed against collateral damage. By implication, current Russian military training on proportionality applies. Actual military instruction was unavailable. However, the 1993 Russian Constitution repeats most *jus in bello* provisions of The Hague and Geneva Conventions and Defense Ministry orders require corresponding training.⁴⁶ Of note, new generation warfare posits nonmilitary measures can neutralize or at least reduce resistance “without resorting to weapons.”⁴⁷ Nonlethal “genetically engineered biological weapons” can likewise disrupt resistance⁴⁸ and by implication reduce the overall number of casualties. Theorists suggest the overall numbers of casualties, combatant and noncombatant, will be fewer than they otherwise would be. Lacking

evidence to the contrary, and the theoretical reduction in aggregate damage and casualties, it is hard to condemn new generation warfare based on proportionality.

Distinction

Distinction requires distinguishing military/combatant persons and objects from civilian/noncombatant persons and objects. New generation warfare is specifically designed to disguise the combatant status of warriors. Alternatively, when combatant status may be surmised such as when troops carrying arms openly while wearing uniforms, efforts are made to disguise or mislead on the national origin of combatants. For example, armed and tactically trained “demonstrators” – almost certainly Russian military personnel – in

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civilian clothes seized government buildings, civilian infrastructure, and media outlets during the preparatory phase of operations in Ukraine.⁴⁹ The ruse was deliberately made more plausible because of the presence and support of russophone Ukrainian collaborators and repeated Russian governmental and media reference to them as the “resistance.”⁵⁰ Openly armed and militarily equipped combatants, using sterile uniforms, equipment with markings removed, and often with balaclava concealed faces established roadblocks and checkpoints.⁵¹ Most infamously, “polite green men” seized the Crimean parliament building on February 27, 2014.⁵²

The immediate effect exploits professional military norms inhibiting using force against “civilians.” In other words, new generation warfare undermines the spirit of the principle of

distinction in order to gain an advantage. It is not unlike the prohibition on perfidy contained in The Hague Convention and Additional Protocol I.⁵³ It misleads the defending armed forces to believe they are obligated to refrain from attacking the disguised or unidentified troops because they may be fellow citizens. Importantly, undermining of the spirit of distinction does not violate current armed conflict laws because the law presupposes compliance with the proper authority principle of *jus ad bellum*. It does, however, illustrate a gap in the law. While the employment of military forces in domestic policing is not unknown, the military's *raison d'être* and primary self-conception is as protector against foreign threats. The desire for separation from domestic politics runs deep⁵⁴. The harm of violence to noncombatants is a potential consequence of disguised or unidentified combatants.

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Russian theorists posit new generation warfare, *ceteris paribus*, is less bloody.⁵⁵ Operations in Ukraine and Georgia did not disconfirm this hypothesis. Interstate combatant casualties among state parties are not the issue. Rather, harms emerge from the perfidy logic and the likely countermeasures to prevent surprise attack. If troops from an aggressor state induce undue restraint, the net effect is to punish the just behavior of defending forces. The demonstration effect of such behavior encourages defending forces to be more forceful, more quickly against noncombatants and fellow citizens because of the inability to distinguish them from invaders. True noncombatants are at greater risk. Effects

could even manifest in states not party to the conflict. For example, linguistic, ethnic, or religious minorities sharing these characteristics with a proximate state could be subjected to repressions due to the fear they are a fifth column or disguised invaders. New generation warfare's prewar infiltration of provocateurs during the preparatory phase is likely to generate this response.

An additional harm results from the intersection of the proper authority principle, the distinction principle, and rigid conceptual division of interstate from civil conflict. New generation warfare supports and even creates separatist militias and sympathetic racketeers unaccountable to a state party. Separatist, independent groups generate countervailing independent groups on the other side. The inevitable result of untrained and rogue combatants is increased victimization among noncombatants and other vulnerable groups such as prisoners of war.

The preparatory phase before the August 7, 2008, Russian invasion of Georgia is illustrative. Police officers, ordinary citizens, and a pro-Georgian government official were killed or injured by pro-Russian and separatist Abkhazian organized crime groups and paramilitary militias.⁵⁶ In Crimea and the Donbass, pro-separatist and pro-Ukrainian militias include neo-Nazi and other extremist militias on both sides. Unsurprisingly, these groups have been condemned for war crimes involving the abuse of noncombatants and prisoners of war.⁵⁷ Prime Minister Sergey Aksyonov, the newly "elected" leader of the Republic of Crimea, was a known organized crime figure.⁵⁸ The People's Republic of Donetsk amnestied and armed up to 150 convicts⁵⁹ which will predictably lead to additional unjust suffering. With its emphasis on disguised combatants and independent groups, combined with the disregard of proper authority from *jus ad bellum*, new generation warfare is incompatible with distinction.

Unnecessary Suffering

Unnecessary suffering concerns weapons causing superfluous or gratuitous injury.⁶⁰ Additionally Protocol I adds environmental considerations against widespread, long term, and severe damage not contained in The Hague Convention.⁶¹ The adjectives superfluous and gratuitous relate this principle to harm unnecessary for or unrelated to the achievement of conflict objectives. These are injuries for injuries sake - assumedly motivated by unbridled animus. Nothing in new generation warfare suggests gratuitous violence unrelated to the achievement of political objectives.

On the other hand, theorists do advocate the employment of inherently indiscriminate environmental weapons prohibited by law.⁶² New generation precepts suggest human induced earthquakes, severe winds, and severe rainfall could be used to cause economic and sociopsychological damage in target states.⁶³ Left unstated by theorists, such weapons have indiscriminate effects among combatants, noncombatants, their respective resources, animals, and the environment. There is little evidence Russia used such weapons in Georgia or Ukraine. Laying aside doubts such weapons are even fielded, one may also be skeptical of their military utility and therefore compatibility with the related military necessity principle.

For example, the United States' *Operation Popeye*, a rain manipulation program to degrade Ho Chi Minh trail trafficability during the Vietnam War,⁶⁴ was hardly a success. It had no strategic or operational effect. Its substantive tactical effect on North Vietnamese and Viet Cong logistics is equally doubtful. Legally, the Environmental Modification Convention of 1977, which includes state parties China, Russia, and the United States, prohibits "... environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury

to any other State Party."⁶⁵ Short term offensive use of environmental manipulation lasting a season or less⁶⁶ and defensive environmental modification are unaddressed by the convention, but new generation warfare does not theorize defensive use.

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Although theorists are silent on the subject, one may speculate they foresee value in using environmental effects as a pretext for hostile intervention under a humanitarian banner. Gerasimov posits humanitarian operations, governmental or nongovernmental, are effective means to achieve state objectives up to and including regime change.⁶⁷ The use of seemingly natural occurrences to justify intervention and conflict is both aggressive and unjust. Such use is not unlike the staged Gleiwitz attack by SS operatives to justify a *casus belli* for the 1939 German invasion of Poland.⁶⁸ Subterfuge is only necessary if the *jus ad bellum* is unjust. For *jus in bello*, environmental manipulation is ineffective against specific military targets and indiscriminate when used as area weapons. Disguising attacks as natural occurrences would become all too transparent when followed by invasion in short order. Because it is indiscriminate and militarily ineffective, environmental manipulation creates unjustifiable harms.

Information Age Warfare

In the Western World, just war theory traces its deontological roots to Thomas Aquinas's 13th century works. Politically, Europe was a collection of rump empires and nascent states.

The civilian was essentially a bystander or perhaps victim, but otherwise uninvolved in war. The Napoleonic era sparked the rise of nationalism and tied citizens to the state and its wars. The Hague Convention of 1910 codified *jus in bello* rules oriented largely on combatants while the Geneva Convention of 1949 added rules oriented on civil populations. The information age, however, technologically enables the weaponization of direct communication between groups - state, nonstate,

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or cross-level – to create social harms an order of magnitude more effective and rapid than previous eras. The deontology of dichotomies – combatant/noncombatant distinction, civil/interstate war, and war/peace – are breaking down. In the very near future, human agency will begin to disappear from the tactical application of violence. Conventional just war wisdom, let alone the law of armed conflict, has not adapted to the democratizing and atomizing effects of information age politics. Deontological approaches, popular among just war ethicists and jurists alike, can no longer ignore utilitarian outcomes. The state and its military cannot do so without risking grave and perhaps permanent social harms for their citizens.

Combatant/Noncombatant Distinction

The rules on noncombatant targeting must adapt. While intentionally killing or maiming noncombatants is unconscionable, nonlethal targeting ethics are underdeveloped. For example, several ethicists view the employment of nonlethal weapons by military forces as unjustifiable.⁶⁹ If nonlethal weapons could save

noncombatant lives, is the use of lethal weaponry producing deadly collateral effects truly a more just outcome simply because *jus in bello* norms are already established? Conventional wisdom reasons noncombatants do not consent to participate in war and therefore harming them in any way is immoral.⁷⁰ The harm criteria are not stringent. They include such things as relocating civilians, warning them, restricting their movement, or compelling them through the use of nonlethal weapons.

New generation warfare's emphasis on the information environment places a premium on both its social and individual psychological effects - particularly the political framing and interpretation of information. Mental or psychological effects are not featured in just war literature but they are inherent to new generation doctrine. For example, infrasound, psychotronic, or new chemical and biological weapons can weaken military and civilian resistance.⁷¹ It is unclear whether such weapons are even under serious development let alone fielded. It is equally unclear what effects such weapons could achieve and whether the injuries are temporary or permanent. Assuming the referenced infrasound, chemical, and biological weapons are transient and nonlethal there must be some *jus in bello* distinction between violent and nonviolent targeting.

One might argue psychological warfare, creating mental effects, and undermining political will are not new. Currently, just war theory does not anticipate enough harm to even deign addressing it. What has changed is psychological warfare no longer supplements traditional war but traditional and irregular war supplement psychological warfare.⁷² This is different from more basic mental effects. For example, nonlethal area denial weapons such as the M5 Modular Crowd Control Munition produce discomfort and disorientation causing people to depart an area.⁷³ Leaflets encourage combatants to defect - plausibly only effective

when combined with battlefield reverses. Enemy civil populations are subjected to disinformation or malignant sophistries to demoralize them with the hope of an eventual political effect. New generation warfare attempts to induce these effects prior to overt hostilities. Both civilians and combatants are targeted - the former more so. These are not idiosyncratic harms limited to states deeply divided along ethnic, linguistic, or religious lines.⁷⁴ They are powerful information weapons threatening established liberal orders to include the United States itself. Any American should recognize the damaging effect of histrionic and uncompromising politics. For example, Russian election meddling combined with what RAND researchers term “truth decay” - the discarding and devaluing of facts and analysis in public discourse - harmed democracy.^{75,76} Harming democracy is a social harm. Russia certainly takes information threats to their civil populace seriously. They devote considerable effort to inoculating against them.⁷⁷ Given the democratization and complexity of human communication, deontological *jus in bello* norms are unlikely to prove effective without incorporating more abstract utilitarian perspectives.

Civil/Interstate War

New generation war blurs the categorization of wars as civil or interstate. Once again, exploiting the dichotomy is not new. Foreign supported insurgencies have been features of statecraft for hundreds of years and particularly since the end of World War II. What is new is the concentrated effort to create information effects prior to overt hostilities. Soldiers are disguised as civilians or sterilized of national identity. Unaccountable militias and organized crime allies are spawned with predictable harmful outcomes. “Legitimacy” is conferred on separatist states with second order ethnic cleansing effects. Grievances are created or exacerbated among minorities. Deliberate

provocations attempt to stoke tensions. In short, new generation warfare assaults just cause, proper authority, and distinction principles. Perhaps more ominously, it undermines Treaty of Westphalia sovereignty norms.⁷⁸ Ethicists and statesmen alike should balance the harms created by strict Westphalian noninterference in domestic affairs norms against the harms created by allowing it. The Treaty of Westphalia was, after all, a peace mechanism to end the Thirty and Eighty Years Wars bloodletting due in no small part to interference in others’ domestic affairs. Little in the law of war addresses, let alone prohibits, new generation preparatory phase precepts. Neither does ethics literature. With just intentions, professional military norms embrace the civil/interstate dichotomy. Without reforms, they continue to do so at considerable risk.

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War/Peace

Western thought, just war ethics, and The Hague and Geneva Conventions conceive of peace and war as a binary variable. States are either at war or at peace. Russian military thought, realists, and Clausewitz conceive of a continuum, and constancy, of war.⁷⁹ While the realists and Clausewitz are also state centric, the Russians recognize the potential, and from their perspective perhaps inherent, threats from nonstate actors. The latter theorists are more correct and the Army appears to be adopting this view.⁸⁰ Especially in the information age with its low barriers to creating substantive social harms, continuous conflict is the case. While easier to understand, the strict war/peace dichotomy inhibits formulating foreign

policy and explaining it in public discourse. As new generation warfare forcefully intrudes on political argumentation in targeted states, this is no small problem. Just war ethics and the law of armed conflict do not substantively address the conflict continuum occupying the space between pure peace and overt war.

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Three asymmetries prevent development of new international law. First, there is no credible case for information environment bargaining reciprocity between aggressors and defenders. The side with overwhelming information superiority is the aggressor.⁸¹ Second, the civil populations of democratic states are considerably more vulnerable to disinformation and agitation than those of strong autocracies. Autocratic control of communication venues is increasingly effective.⁸² On the other hand, communication control is illiberal on its face and a social harm to democracy. Third, Western traditional war advantages are unlikely to be matched by Russia absent their exploitation of the information environment. The lack of law elevates the need for ethical approaches for conflict short of war. Political and military leaders are already beginning to grapple with new generation warfare. Attempting to contain or reverse it through appeals to current principles is ineffective and risky. Ethically embracing its reality is the only responsible alternative.

Human Agency

Just war theory appeals to human decency. What Aquinas and others never considered was the self-directed application of violence by artificial intelligence. This condition is rapidly

becoming reality. Once again, attempting to prohibit it through appeals to existing norms is forlorn. For example, new generation warfare advocates the employment of autonomous “walking, crawling, leaping, and flying robots.”⁸³ According to the U.S. Army Training and Doctrine Command, human decision making will be hopelessly overmatched by future autonomous systems.⁸⁴ At what level should humans make decisions? Prohibiting autonomous weapons risks defeat – possibly crushing defeat – with potentially existential social harms to liberal polities. Allowing unexamined and unrestrained development could likewise result in social harms. There is a tremendous need for ethics to adapt to the technological advance of artificial intelligence.

Conclusion

New generation warfare was examined using traditional just war principles from *jus ad bellum* and *jus in bello*. Concerning the justice of war, new generation warfare is incompatible with just cause principles with the possible exception of preventive war. Its precepts are totally incompatible with proper authority principles. There are no inherent incompatibilities with right intention, last resort, probability of success, and proportionality principles. That does not mean these principles cannot be violated, only that new generation warfare does not necessarily encroach on them. With regard to justice in war, military necessity and proportionality principles are compatible. Distinction is necessarily violated, in spirit if not necessarily under the law of armed conflict. Unnecessary suffering is not violated in practice, but the theoretical use of environmental weapons would result in unjust harms.

In their current state, ethics and the law of armed conflict provide insufficient insight for the just statesman and warrior. The distinction between noncombatants and combatants is being deliberately blurred. Disguised combatants are perfidiously exploiting the interstate/civil

war framework and ignoring proper authority strictures. Nonlethal weapons, both physical and psychological, are targeting civilians as never before, yet ethicists and the law cling to outdated frameworks. Likewise, the strict war/peace dichotomy inhibits defense against conflict short of overt war. Finally, the era of autonomous machine violence is rapidly emerging.

New generation warfare diverges from several aspects of just war norms. That has not, however, deterred its employment. Deontological rulemaking cannot rein in unjust information age practices in isolation. The technology changes too fast and without a reciprocity basis, rules will not be observed by at least one side. Broader consideration of utilitarian outcomes is necessary to prevent widespread social harms. As Hans Morgenthau observed, “there can be no political morality without prudence; that is, without consideration of the political consequences of seemingly moral action.”⁸⁵ **IAJ**

NOTES

- 1 Andras Racz, “Russia’s Hybrid War in Ukraine: Breaking the Enemy’s Ability to Resist,” (Helsinki: The Finnish Institute of International Affairs, 2015), 90.
- 2 S. G. Chekinov and S. A. Bogdanov, “The Nature and Content of a New-Generation War,” *Military Thought*, no. 4 (2013).
- 3 Timothy L. Thomas, *Kremlin Kontrol: Russia’s Political-Military Reality* (Fort Leavenworth, KS: Foreign Military Studies Office, 2017), 143.
- 4 Racz, 58-66.
- 5 Charles Bartles, “Getting Gerasimov Right,” *Military Review* 96, no. 1 (2016): 32; Valery Gerasimov, “The Value of Science is in the Foresight: New Challenges Demand Rethinking the Forms and Methods of Carrying Out Combat Operations,” *Military Review* 96, no.1 (2016 [2013]): 24; Chekinov and Bogdanov, “New-Generation War,” 17.
- 6 Brian Orend, “Overview of War, Ethics and Just War Theory,” (Fort Leavenworth, KS: Army Command and General Staff College, 2013), 1; Brian Orend, “War,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, CA: Stanford University, 2005).
- 7 McPherson rejects this view. Lionel K. McPherson, “Innocence and Responsibility in War,” *Canadian Journal of Philosophy* 34, no. 4 (2004): 492.
- 8 The United Nations War Crimes Commission, “Law Reports of Trials of War Criminals: Volume XII The German High Command Trial,” (1949): 67, 69.
- 9 Antony Barnett and Martin Bright, “British military chief reveals new legal fears over Iraq war,” *The Guardian*, May 1, 2005.
- 10 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed. (New York: Basic Books, 2015), 39.
- 11 I considered *attacker* to refer to the operational level of war. I did not rule out the possibility of the attacker being part of a strategically defensive war.
- 12 Chekinov and Bogdanov, 18.
- 13 *Ibid.*, 19.
- 14 Racz, 39.

15 Ibid.

16 Peter Roudik, “Russian Federation: Legal Aspects of War in Georgia,” Library of Congress, <https://www.loc.gov/law/help/russian-georgia-war.php#Russia%E2%80%99s%20%E2%80%9CProtection%20of%20Citizens%E2%80%9D%20Justification>.

17 Ibid.

18 Racz, 80.

19 Ibid., 80-81.

20 George W. Bush, “The National Security Strategy of the United States of America,” (2002): 15.

21 Ron Suskind, *The One Percent Doctrine: Deep Inside America’s Pursuit of Its Enemies Since 9/11* (New York: Simon & Schuster, 2006), 62.

22 Interestingly Georgia and Ukraine served as Putin’s examples. Matthew Evangelista, *Law, Ethics, and the War on Terror* (Cambridge, UK: Polity Press, 2008), 124.

23 Orend, “War,” Sec 2.1; Seth Lazar, *ibid.* (2017), Sec 3.3.

24 Some theorists, e.g. Estlund (2007) only grant legitimacy to democratic polities.

25 David Estlund, “On Following Orders in an Unjust War,” *The Journal of Political Philosophy* 15, no. 2 (2007): 224; Walzer, 39.

26 Richard E. Berkebile. “Secession and Jus Ad Bellum,” in *Special Report: The Ethics of Future Warfare*, ed. Elizabeth Ditsch. Fort Leavenworth, KS: CGSC Foundation Press, 2018.

27 Thomas, 137; Tom Wilhelm and Boris Vainer, “Considering Information War,” *OE Watch* 8, no. 3 (2018): 51.

28 Chekinov and Bogdanov, 16.

29 Ibid., 22.

30 Gordon G. Chang, “Putin Threatens Nuclear War Over Ukraine,” (2014), <https://www.thedailybeast.com/putin-threatens-nuclear-war-over-ukraine?ref=scroll>.

31 Chekinov and Bogdanov, 18.

32 Ibid., 19; Racz, 61.

33 Robert S. Taylor, “Department of Defense Law of War Manual,” (2015 (2016)): 318-319, 330, 333.

34 Shaun Walker, “Putin admits Russian military presence in Ukraine for first time,” *The Guardian*, December 15, 2015.

35 Terrence McCoy, “What does Russia tell the mothers of soldiers killed in Ukraine? Not much.,” *The Washington Post*, August 29, 2014.

36 Raymond T. Odierno and John M. McHugh, “Army Doctrine Reference Publication 1: The Army Profession,” (2015): 3-5; Orend, “Overview of War, Ethics and Just War Theory,” 1; Orend, “War.”; Dustin Kouba, ed. *Operational Law Handbook*, 17th ed. (Charlottesville, VA: The Judge Advocate General’s Legal Center and School, 2017), 9-12.

- 37 Kouba, 15; “Protocol Additional 1 to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts,” in Volume 1125, I-171512 (New York: United Nations, 1978), 23.
- 38 “Additional Protocol I,” 27; Fred C. Weyand, “Field Manual 27-10: The Law of Land Warfare,” (1976 [1956]): 23-24; Kouba, 9; “The Hague Convention Respecting the Laws and Customs of War on Land,” in 36 Stat. 2277, ed. Department of State (The Hague, Netherlands 1907), 648.
- 39 Chekinov and Bogdanov, 20.
- 40 Ibid.
- 41 Ibid., 21.
- 42 “Protocol Additional 2 to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts,” in Volume 1125, I-17513 (New York: United Nations, 1978), Art 14, 615.
- 43 The Russian *For the Return of the Crimea Medal* designates February 20 as the initiation date. Will Cathcart, “Putin’s Crimean Medal of Honor, Forged Before the War Even Began,” *Daily Beast* (2014), <https://www.thedailybeast.com/putins-crimean-medal-of-honor-forged-before-the-war-even-began>.
- 44 Racz, 60; “About 50 armed men in military uniform seize Simferopol Airport in early hours of Friday,” (2014), <http://en.interfax.com.ua/news/general/193305.html>.
- 45 “Additional Protocol I,” 26; Kouba, 11; Weyand, 5, 19.
- 46 Bakhtiyar Tuzmukhamedov, “The implementation of international humanitarian law in the Russian Federation,” *Current Issues and Comments* 85, no. 850 (2003): 393-396.
- 47 Chekinov and Bogdanov, 16.
- 48 Ibid., 18.
- 49 Racz, 60.
- 50 Ibid.
- 51 Ibid.
- 52 Ibid.; Mark Galeotti, “‘Hybrid War’ and ‘Little Green Men’: How It Works, and How It Doesn’t,” in *Ukraine and Russia: People, Politics, Propaganda and Perspectives*, ed. Agnieszka Pikulicka-Wilczewska and Richard Sakwa (Bristol, UK: E-International Relations Publishing, 2016), 152.
- 53 “Additional Protocol I,” Art 37, 21; “The Hague Convention Respecting the Laws and Customs of War on Land,” in 36 Stat. 2277, ed. Department of State (The Hague, Netherlands 1907), Art 23, 648; Kouba, 13; Weyand, Field Manual 27-10: The Law of Land Warfare, 22; Taylor, Department of Defense Law of War Manual, 320.
- 54 Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge: Harvard University Press, 1957), 83-84; Richard D. Hooker, “Soldiers of the State: Reconsidering American Civil-Military Relations,” *Parameters US Army War College Quarterly* 23, no. 4 (2003): 6-7.
- 55 Chekinov and Bogdanov, 16, 18; Gerasimov, 24.

- 56 Nickolas Zappone, "Using What is Available: Criminal Auxiliaries of Russian Statecraft," *Red Diamond Threats Newsletter* 7, no. 6 (2016): 9.
- 57 Marc Williams, "Militia Battalions in the Ukrainian Conflict Part 1: Pro-Ukraine Units," *Red Diamond Threats Newsletter* 7, no.7 (2016): 30-32; Marc Williams, "Militia Battalions in the Ukrainian Conflict Part 2: Pro-Russia Units," *Red Diamond Threats Newsletter* 7, no. 8 (2016): 8-11.
- 58 Zappone, 10; Mitch Potter, "Meet 'Goblin' — Moscow's man in Crimea," *Toronto Star*, March 4, 2014; "Ukraine's criminal gangs thrive on separatism," *Jane's Intelligence Review*, <http://janes.ihs.com/Janes/Display/1738931>.
- 59 "Ukraine's criminal gangs thrive on separatism".
- 60 Kouba, 12; "Additional Protocol I," 21; "Hague Convention," 648.
- 61 "Additional Protocol I," 21.
- 62 Taylor, Department of Defense Law of War Manual, 341-342; "Additional Protocol I," Art 51, 26.
- 63 Chekinov and Bogdanov, 14.
- 64 "Operation Popeye," Global Security.Org, <https://www.globalsecurity.org/military/ops/popeye.htm>.
- 65 "Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques," United States State Department, <https://www.state.gov/t/isn/4783.htm#treaty>, Article 1.
- 66 Short term defined as lasting less than a season or approximately 3 months. See "Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques", Understandings Regarding the Convention.
- 67 Gerasimov, 24; Charles Bartles, "Getting Gerasimov Right," 34; Tom Wilhelm and Boris Vainer, "Russian General Staff's Military Thought on "Color Revolutions" and the Changing Nature of War," *OE Watch* 8, no. 2 (2018): 47.
- 68 Richard Hargreaves, *Blitzkrieg Unleashed: The German Invasion of Poland, 1939* (Mechanicsburg, PA: Stackpole Books, 2008), 82.
- 69 e.g. Chris Mayer, "Nonlethal Weapons and Noncombatant Immunity: Is it Permissible to Target Noncombatants?," *Journal of Military Ethics* 6, no. 3 (2007): 229; Pauline Kaurin, "With Fear and Trembling: An Ethical Framework for Non-Lethal Weapons," *Journal of Military Ethics* 9, no. 1 (2010): 108.
- 70 Chris Mayer, 223; Walzer, 25-26.
- 71 Chekinov and Bogdanov, 13.
- 72 Wilhelm and Vainer, "Considering Information War," 51; Chekinov and Bogdanov, 16.
- 73 "M5 Modular Crowd Control Munition (MCCM)," PdD Combat Armaments and Protection Systems, <http://www.pica.army.mil/pmccs/CombatMunitions/NonLethalAmmo/M5-Modular.html>.
- 74 Racz, 78 suggests these prerequisites.
- 75 Jennifer Kavanagh and Michael D. Rich, "Truth Decay: An Initial Exploration of the Diminishing Role of Facts and Analysis in American Public Life," (Santa Monica, CA: RAND, 2018), 1-2.

- 76 I am not attributing the emergence of truth decay to Russia.
- 77 Wilhelm and Vainer, *Russian General Staff's Military Thought*, 47.
- 78 Alan G. Stolberg, "The International System in the 21st Century," in *U.S. Army War College Guide to National Security Issues*, ed. J. Boone Bartholomees, Jr. (Carlisle Barracks, PA: U.S. Army War College, 2012), 138.
- 79 Carl Von Clausewitz, *On War*, ed. Michael Howard and Peter Paret (New York: Alfred A. Knopf, 1993), 89; Wilhelm and Vainer, *Russian General Staff's Military Thought*, 47; Thomas, 149; Kenneth N. Waltz, "Anarchic Orders and Balances of Power" in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), 98; Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 4th ed. (Caledonia: McGraw-Hill, 1967), 34.
- 80 David G. Perkins, "Multi-Domain Battle: The Advent of Twenty-First Century War," *Military Review* 97, no. 6 (2017): 11.
- 81 Chekinov and Bogdanov, 21; Gerasimov, 27.
- 82 Adam Segal, December 12, 2017, <https://www.cfr.org/blog/why-chinas-internet-censorship-model-will-prevail-over-russias>.
- 83 Chekinov and Bogdanov, 20-21; Gerasimov, 24-25; Thomas, 116-117.
- 84 Ian Sullivan, Matthew Santaspirt, and Luke Shabro, "Visualizing Multi Domain Battle 2030-2050," in *Mad Scientist Conference* (Washington, D.C.: U.S. Army Training and Doctrine Command, 2017), 9-10.
- 85 Morgenthau, *Politics Among Nations*, 10.



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