STRIKING POWER

"We are not arguing for a world without law. It will not be easy to decide what rules should prevail or what applications would be most feasible and desirable. We are arguing for rules that respond to the circumstances of war in the twenty-first century and the opportunities presented by new technologies."[1]

Throughout history, changes in technology have impacted not only on how war is fought, but also how the rules and laws of war are developed. In *Striking Power*, authors Jeremy Rabkin and John Yoo take an in-depth look into how technology is impacting the effectiveness of international rules of war. Jeremy Rabkin is a professor of law at the Antonin Scalia Law School at George Mason University and his co-author, John Yoo, is the Emanuel S. Heller Professor of Law at the University of California Berkley and a visiting professor at the American Enterprise Institute. The book is broken up into three parts: (1) an historical overview of war, weapons, and the laws of war, (2) an argument for why the laws of war are ill-suited to address current risks, and (3) a proposal of how new technology of robots, cyber, and space is the solution. The authors convincingly lay out why, in the words of President Lincoln, "the dogmas of the quiet past are inadequate to the stormy present."

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[1] *See* JEREMY RABKIN AND JOHN YOO, STRIKING POWER: HOW CYBER, ROBOTS, AND SPACE WEAPONS CHANGE THE RULES FOR WAR 14 (2017)

The goal of war, according to the authors, is to coerce the enemy. Accordingly, the laws of war should aim to lower the costs of war, shorten the duration of war, and reduce the unnecessary violence of war. Unfortunately, however, just as armed conflict seems to be a part of the human condition, so too do attempts to regulate and restrict new weapons of war. From the crossbow of ancient times to the drones of today, the introduction of new technology is continuously criticized. Contrary to the hypothesized scenarios described by alarmists, modern technology will not lead to our destruction but instead should be utilized as an effective tool of coercion. In the age of rogue nations, transnational terrorist organizations, and weapons of mass destruction, the laws of war should adapt to include any new technology that could possibly reduce risk.

The authors begin by providing a comprehensive yet concise history of war, weapons, and laws of war. While war was governed throughout the majority of history by custom, with common law standards of "reasonableness" and "totality of the circumstance," a shift in the last century has led to codifications focused more on strict scrutiny standards. While the first official public codes of war created during the U.S. Civil War contained those common law standards of reasonableness, 20th century codes such as the Additional Protocol's to the Geneva Convention and the UN Charter created something new. The UN Charter, for example, created limits for use of force to instances of imminent armed attack or authorization by the UN Security Council. 19th Century analysis of an "imminent" armed attack, however, is simply inadequate in today's technological environment in which nations can strike another with intercontinental ballistic missiles within hours or minutes, terrorists plot covert attacks, and rogue nations build up nuclear weapons. Alternative, UN Security Council authorization is nearly impossible due to the veto ability member states.

According to Thomas Schelling, "conflict situations are essentially bargaining situations," and new weapons provide an effective means to exert pressure in such situations. New technology allows for nations to communicate more clearly with each other through pinpoint strikes and cyber-attacks. While the more restrictive interpretation of international law will lead to nations disregarding the laws, a more permissive understanding will allow for actions to be more effective and less costly.

The second part of the book provides an excellent history of the Laws of War, together with insightful anecdotes demonstrating how the current approach to the laws is inadequate to today's risks. The authors believe that limits of the Additional Protocol I (AP I) to the Geneva Convention prevent new technology from achieving its full potential. Accordingly, they argue that older understandings of the laws of war must be recovered in order to reap the benefits of new technology. Civilian immunity and protection of civilian infrastructure, for example, is a relatively new concept. While the authors do not look to 20th century conflict for moral guidance, they believe that a return to less restrictive laws of war coupled with new technologies will reduce the costs of war, reduce the duration or war, and reduce the amount of casualties in war. By limiting appropriate armed attack to targets with "military objectives," AP I makes escalation more likely, increases the chances of miscommunication, and encourages the development of more destructive munitions.

The law of armed conflict was radically altered in the 1970's with AP I. As a result of the majority of signers being third world nations who rejected the agenda of the West, AP I created new protections for Guerillas and terrorists. Additionally, no longer could violations of the rules deprive a combatant of the right to be considered a combatant. Its ratification by many third world nations demonstrated that liberation ideology was ascendant at the Geneva

Convention, but ultimately the lack of ratification by Western nations prevent AP I from being seen as a solid expression of international consensus. The rules of war were now primarily legal issues rather than moral issues, and complying with the law is more important than doing what is moral. The authors argue that, instead, treaties should be treated as contracts, where the default of one party exempts the other party's obligations under that treaty—a return to the common law understanding of the law of armed conflict.

In response to a complicated world, the law of war should not prevent new technologies from providing new solutions—solutions that provide an evolution in war rather than a revolution in war. Whether in the field of robots, cyber, or space, new technologies can reduce the costs of war for both the users of the technology and the defenders from the technology. New technology does not change the legal question of whether a strike is appropriate, and critics of "drone wars" as "extrajudicial killings" ignore the benefits that such technology provides. Demands for an unattainable perfection in war are misguided, and the authors argue that an increased reliance on new technology will provide benefits.

At its core, war is the intense coercion of an enemy, and a just war need not be fought in an evenhanded fashion. Robots can be utilized to reduce the cost of war and the risk of life on both sides, cyber technology can provide effective ancillary weapons for espionage and sabotage, and new technology in space can enhance the effectiveness of missiles and satellites that also help reduce death and destruction in armed conflict. While certain risks will arise from new technologies, the authors believe that the benefits of new technologies will far outweigh their costs.

In *Striking Power*, Professors Rabkin and Yoo provide an excellent overview of how the laws of war have been, are being, and will continue to be affected by new technology. Instead of

the reflexively alarmist opinion of many, they argue that embracing new technology is the most promising way forward. In the last century, the common-law-developed rules or war were replaced by codified interpretations that stymied the effective and efficient waging of war. For any student of law or layman interested in the history of war, the history of the laws of war, and the new and exciting technology that will likely play a large role in the wars of the future, this book is for you. The authors convincingly make their argument by telling the history, providing anecdotes, and explaining how new technology can be deployed.