

U.S. Wars: Are They Lawful?

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[War Is A Crime](#)

Region: [USA](#)

Theme: [Law and Justice](#), [US NATO War](#)

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Remarks at the biennial general meeting of the War and Law League in San Francisco on Armistice Day 2012.

I'll try briefly to make five points.

First, there are clear laws on the books that make U.S. wars unlawful, along with U.S. threats of war and U.S. propaganda for war. The laws are either forgotten, ignored, evaded, or cleverly reinterpreted to reverse their meaning. But they could be enforced someday.

Second, U.S. wars are evolving in ways that make them violate additional laws without bringing them into compliance with any of the laws already violated.

Third, participants in U.S. wars face occasional prosecution at home or abroad for their specific actions, although those actions do not stray from the basic purpose of the wars.

Fourth, other nations are prosecuted for or would be prosecuted if they attempted the same behavior engaged in by the United States.

And Fifth, U.S. wars are launched and conducted by officials elected in an illegitimate system dominated by open bribery.

On the original Armistice Day in 1918, much of the world ended a four-year war that served no useful purpose whatsoever while costing the lives of some 10 million soldiers, 6 million civilians, 21 million soldiers wounded, an outbreak of Spanish influenza that took another 100 million lives, environmental destruction that is ongoing today, the development of new weapons — including chemical weapons — still used today, huge leaps forward in the art of propaganda still plagiarized today, huge setbacks in the struggle for economic justice, and a culture more militarized, more focused on stupid ideas like banning alcohol, and more ready to restrict civil liberties in the name of nationalism, and all for the bargain price, as one author calculated it, of enough money to have given a \$2,500 home with \$1,000 worth of furniture and five acres of land to every family in Russia, most of the European nations, Canada, the United States, and Australia, plus enough to give every city of over 20,000 a \$2 million library, a \$3 million hospital, a \$20 million college, and still enough left over to buy every piece of property in Germany and Belgium. And it was all legal. Incredibly stupid, but totally legal. Particular atrocities violated laws, but war was not criminal.

The Outlawry Movement of the 1920s — the movement to outlaw war — sought to replace war with arbitration, by first banning war and then developing a code of international law and a court with the authority to settle disputes. The first step was taken in 1928 with the

Kellogg-Briand Pact, which banned all war. Today 81 nations are party to that treaty, including ours, and many of them comply with it. I'd like to see additional nations, poorer nations that were left out of the treaty, join it (which they can do simply by stating that intention) and then urge the greatest purveyor of violence in the world to comply.

It's easier to comply with the U.N. Charter because of the two big loopholes it opened up, allowing wars that are either defensive or simply U.N. approved. As you know, the United States fights wars against unarmed impoverished nations halfway around the planet and calls them defensive. The U.S. fights wars never approved of by the U.N. and claims that they were. When the United States chose never to end World War II, never to demilitarize, de-tax, or de-mobilize, when the U.N. Charter, NATO, the Geneva Conventions, and the CIA made war normal and supposedly civilized it, we lost the ability to think of abolition, or even to award Nobel prizes to those who worked for it. However, the U.N. Charter made *threatening* war illegal, and while the Kellogg-Briand Pact is forgotten, the U.N. Charter must be intentionally ignored, as the United States is constantly threatening wars.

There has been an International Criminal Court for 10 years now, but it only prosecutes particular atrocities, and only those committed by Africans. The idea seems to be that African war makers should get civilized and learn to melt the skin off children and radiate neighborhoods and burn down houses the way the enlightened war makers do. The ICC is years away from possibly prosecuting the crime of making war, and then only for nations that have chosen to subject themselves to its authority, only in cases approved of by the permanent members of the U.N. Security Council, and only in cases of aggressive war (as if there were some other kind).

Since 1976, the International Covenant on Civil and Political Rights has made war propaganda illegal. The argument that our First-Amendment right to freedom of the press and of speech overrides this is severely weakened, I think, by the fact that our major media outlets routinely shut out the viewpoints of the vast majority of us, to the point where people holding majority opinions on most political questions can be expected to believe they are part of a small minority. If we had freedom of the press we would have the ability to effectively counter war propaganda. As it is, we largely lack that freedom, and war propaganda is so pervasive we barely recognize it.

The U.S. Constitution not only makes treaties, along with itself, the supreme law of the land. It also requires that Congress pass a declaration of war. We haven't had one since 1941. Congress is to decide on lesser military actions that might not count as war. Congress is to raise armies as needed, but not to fund them for longer than two years. Most wars in history have lasted less than two years — a fact worth considering as we credit Obama with supposedly ending a war in Afghanistan over the next two (or is it 12?) years. The War Powers Act legislated exceptions to the Constitution, allowing presidents to launch wars or other military actions for short periods of time prior to gaining Congressional authorization. The authorizations to use force that preceded the attacks on Afghanistan and Iraq went even further, handing presidents the power to declare wars — which is why even the one for Iraq has never been repealed despite the announcement of that war's end. Obama's lawyer Harold Koh famously told Congress that attacking Libya was neither war nor hostilities (the language the War Powers Act used to include all military actions).

So-called "special" forces, the CIA, and our brave drones are engaged in military action in dozens of nations, none defensively or U.N. authorized, none in a manner that escapes the

Kellogg-Briand Pact, none with a Constitutional declaration, many without any sort of authorization from Congress, most without the knowledge of Congress. Civil cases brought against U.S. military actions are shut down by claims of secret powers, or authorized by secret laws that we are not permitted to read, including secret sections of the PATRIOT Act, which we must comply with without seeing. Obama famously announced that he would review all of Bush's secret laws in the form of memos from the Office of Legal Counsel, but never announced the results of that review, what all the laws were, which were kept, which tossed, what new ones added, or what would prevent the next president from reworking all of that. While Constitutionally, Congress is required to make every law, the Congressional Research Service has been reduced to speculating on what sort of twisted logic the White House could use to make something like its assassination program look legal, were the White House inclined to bother.

While many have continued, even after the 1928 ban on war as mass murder, to think of war as an exception to the ban on murder, U.S. wars are now evolving to more closely resemble most people's conception of what murder looks like. Balanced against that is, of course, the power of racism and xenophobia. War techniques that supposedly reduce the murders of U.S. troops are acceptable to those who don't mind murdering the other 95% of humanity. But drones and night raids and other assassinations don't escape the ban on war, they simply add to their criminality by violating prohibitions on assassination. Nor do they fall under the protection of the barbaric U.S. laws of capital punishment. Drones provide no charges, trials, or due process. Our government has intentionally avoided arresting a 16-year-old boy in Pakistan, only to target and murder him with a drone when he tried to film the damage done by earlier drone strikes. This is not law enforcement, but lawless force.

On May 4th, the Congressional Research Service released a memo that attempted to guess at how drone killings of U.S. citizens or other mere humans geographically far removed from other warfare, not engaged in warfare on behalf of any nation, and residing in independent sovereign nations could be legal. According to the *New York Times* there is a secret memo from the Office of Legal Counsel that concludes, rather as John Yoo and Jay Bybee concluded that torture is not torture, that murder is not murder. But even Congress is not allowed to see the memo, so the Congressional Research Service was reduced to guessing what could be in it. Yet, the CRS was unable to guess anything clearly coherent. And the incoherence of the various public comments from the White House obscures the fact that the victims are not all suspected of plotting attacks on the United States. Most of the victims are simply innocent people in the wrong place. Others are targeted without so much as knowing their names, based on behavior that supposedly suggests, not that they are attacking the United States, but that they are aligned with those defending a foreign nation against U.S. attack. And that's not counting the children and adults traumatized by the threatening buzz overhead. The U.N. special Rapporteur has called drone strikes extrajudicial killing. The U.S. response was that it was none of his business.

You know whose business it is? It's the big business of some major campaign funders / job creators. Of course, military spending creates fewer jobs than any other kind of spending, but they are jobs easily eliminated. At one Congressional hearing not long ago, the Director of National Intelligence was asked what foreign nation might attack the United States, and he was unable to name one. War that is limited to nations, rather than individuals, is not good for business. Generating hostility abroad is. So is arming foreign groups and dictatorships. The U.S. sells 85% of international weapons sales, much of that also illegal,

and all of it immoral. With no cover of law, Obama is arming Syrian terrorists, training Iranian terrorists, engaging in cyber attacks, and imposing what he calls so proudly crippling sanctions, all arguably illegal acts of war.

The UK Attorney General has decided that attacking Iran would be illegal. Top Israeli officials, according to one view of events that occurred two years ago, have refused orders to prepare an attack on Iran, in part because of the illegality. Yet, the United States continues to threaten Iran, to lie about Iran, to propagandize for war, to prepare for war, to arm Israel at our expense, and to protect Israel from any consequences for its crimes. At best, the United States has reached the conclusion that attacking Iran would be wrong if a Republican did it. After years of refusing, U.S. residents now tell pollsters they favor an attack on Iran, and — not coincidentally — that they now believe the lies about Iran that the U.S. government had been peddling for years unsuccessfully.

And the law be damned. The United States now allows spying without a warrant, imprisonment without a trial, rendition, torture, and murder. And that's for U.S. citizens, the people we supposedly slaughter the world to protect. Bahrain, that good human-rights-loving friend of the U.S. Navy, recently stripped protesters of citizenship. Apparently Bahrain didn't get the memo on how to strip citizens of all their rights.

Bradley Manning, tortured and held for years without a trial, and at risk as are other whistleblowers now of the hideous thing we call the death penalty, is trying to take a plea bargain, pleading to the crime of blowing the whistle on murder. The government is not eager to take the deal because Obama and gang have bigger fish to fry, hoping to prosecute Wikileaks for journalism. Manning's struggle, and that of every whistleblower and of every person who refuses illegal orders, is our struggle.

So are the legal struggles in courts of law still interested in the law. In Turkey, Israelis are being prosecuted *in absentia* for the murder of those trying to bring aid to Gaza. In Italy, two dozen CIA agents have been convicted *in absentia* for kidnapping a man to torture him. In the U.S. we've seen occasional court martials of low-ranking soldiers accused of torture, rape, murder, or — oddly enough — mistreatment of corpses they've murdered in an acceptable manner.

The last time Barack Obama was elected president, his transition team asked for proposals to be voted on through their website. The top vote getter was this:

“Will you appoint a Special Prosecutor – ideally Patrick Fitzgerald – to independently investigate the gravest crimes of the Bush Administration, including torture and warrantless wiretapping?”

Obama refused to answer the question. The dean of the University of California at Berkeley Law School Christopher Edley, Jr., said that he'd been party to very high level discussions and Obama's transition team had decided that the CIA, NSA, and military would revolt, and that Republicans would retaliate by blocking every piece of legislation. Wow, wouldn't that have been different? Now the question isn't even asked, and John Conyer's threat to impeach a president who attacked Iran is universally understood not to apply to Democrats.

We should remember at a time like this that when the slightly less funded of two corporate funded candidates wins, we don't. Obama publicly and illegally instructed the Attorney General not to prosecute the CIA for torture. We accepted that. Obama told environmental

groups not to talk about climate change. Most of them obeyed. Obama told unions not to say “single payer” and they didn’t. Now we’re being told we must not demand military spending cuts or the prosecution of war crimes or the immediate withdrawal of forces abroad.

I propose that we pledge instead to protest and vote against and consider the impeachment of (I’ve listed plenty of grounds for that already) anyone in Congress or the White House who gives an inch on protecting Social Security and Medicare, who votes for current levels of military spending or anything above 75% of current levels, or who fails to oppose wars or to act against climate change. No more honey moons. No more veal pens in which the public servants tell the public organizations how to serve them. And no more promises to vote for you no matter what you do to us or to our brothers and sisters around the world. We need to use nonviolent action not only to end war but also to provide an alternative path for our young people who might otherwise sign up to kill and die. Nonviolence requires more bravery, more commitment, more morality, and is far more satisfying than joining the war machine. The Declaration of Independence says we have the right to institute new government. It’s getting to be about that time.

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