

[00:00:00] Hello, and welcome back to Conflict, Then and Now, Historical and Modern Perspectives on War, created by the Georgetown Global Law Scholars class of 2025. This podcast episode is on the topic of instruments of war. First, you will hear from Alejandro Barrett Lopez on traditional warfare, as well as naval warfare, followed by Matthew Johnson discussing nuclear weapons and the International Court of Justice.

[00:00:27] Then, Lauren McNeil will address social media as a modern instrument of war. Lastly, while they cannot be here today, Alejandro will address economic warfare in the scope of Genevieve McCarthy's paper on the Cuban embargo, as well as Sara Abdul Baki's paper on the International Monetary Fund as a tool of economic warfare.

[00:00:47] We are joined today by Professor David A. Koplow. All right. It is my pleasure to introduce Professor David A. Koplow, who is the Scott K. Ginsburg Professor of Law here at the Georgetown Law Center. Professor Koplow has had quite an illustrious career in the government. In chronological order, he has served as Attorney Advisor and Special Assistant to the Director of the U.

[00:01:09] S. Arms Control and Disarmament Agency, Deputy General Counsel for International Affairs at the Department of Defense, and Special Counsel for Arms Control to the General Counsel of the Department of Defense. At Georgetown, Professor Koplow teaches International Law I, the introductory survey course on public international law, a seminar in the area of arms control and nonproliferation terrorism, which I have the pleasure to say I am currently enrolled in, and a national security law pro seminar for LLM students.

[00:01:37] Welcome, Professor Kocklau, and thank you very much for being here with us today. Well, thank you. It's a great pleasure to be with you, and I want to applaud the creativity and the zeal that has organized this series of programs. Well, thank you very much for agreeing to join us. Um, we, we thought that we'd, uh, start with, in a sort of rough chronological, uh, order in terms of, uh, which weapons we are, we are talking about the weapons that impact global security, um, and, uh, various different, uh, nations.

[00:02:15] So I think firstly, it's, it's been rather, um, an interesting past few years in the sense that traditional warfare. has become in a sense much more relevant and you know we've seen the first European land war in quite some time, um, with Russia and Ukraine and Israel and Palestine have also kicked off, uh, again so to speak.



[00:02:44] But, um, especially in recent years, uh, and months, an increasing level of attack against the notions of freedom of the seas and navigation, um, both by large powers like China and the South China Seas have been hugging away at it for quite some time, but most notably and most recently with the Houthis in the Red Sea attacking, um, Anglo American and European and international, uh, shipping.

[00:03:12] Do you think that this is just going to be resolved? So by the traditional forces, by the U. S., by, um, the E. U. and NATO responses, or do you think that this might actually be codified either to the U. N. Convention or the CEAS or any other new, uh, treaty or protocol, um, relating to the high seas and violence on the high seas?

[00:03:37] Well, you're, let me start by saying you're absolutely right. These are tumultuous and dangerous times, and we're seeing, uh, uh, an upsurge in violence, not just on the oceans, but on land as well. In some ways, what's remarkable is the reduction in interstate armed violence in the post World War II era. Some people refer to this as the Long Peace.

[00:04:05] remarking how unusual it is that the great powers around the world have not engaged directly in armed conflict against each other for now three quarters of a century. And that's, that's a remarkable development. But as you say, we're, we're now in the midst of a period where you look around everywhere and you see armed conflict on land, sea, and air, and it's, it's quite distressing.

[00:04:30] Um, so to, to refer directly to your question, I don't think the UN Convention on the Law of the Sea will turn out to be the right vehicle for addressing the modern armed conflicts on the oceans. UNCLOS is a remarkable document, has been a very successful document, and has been important for allocating resources for dealing with jurisdictional claims for resolving disputes between countries, but it's not really geared for armed conflict.

[00:05:02] That's not the wheelhouse for that arrangement. There are other tools of international law that might be more directly on point. The U. N. Charter. Uh, that's the standard vehicle for dealing with armed conflict. Um, and another one that I might just mention, uh, that is a little different from those is an arrangement called the Proliferation Security Initiative, or PSI, which is a non treaty regime, non binding under international law, but nonetheless very effective.



[00:05:36] Directed particularly at efforts to restrict the spread of weapons of mass destruction, especially nuclear weapons, chemical, biological as well. And it's been in place for now 20 years, been joined by 100 or so participating countries and has facilitated the international cooperation on intercepting shipments at sea of weapons and precursor materials that could be used for weapons.

[00:06:06] So that's an illustration of the creative use of the tools of international law for dealing with armed conflict. More appropriate, I think, than trying to bend the law of the sea convention itself. To deal with this, this new surge in problems. But in the, in the sense, particularly of these, um, uh, non state actors, um, such as the Houthis existing conventions, um, or existing, um, uh, matters of international law have been amended, but I think such as the, um, Geneva Conventions, but so much of that assumes as a given, you know, it's, it's because they were amended in, in light of, um, conflicts in the Portuguese African possessions or, um, what is now Zimbabwe.

[00:07:01] Um, I don't think that a lot of those envision the possibility that a group like the Houthis, whatever, um, Attack international shipping lanes. So that's just right. Uh, and the law of the sea convention, like the vast majority of international agreements is an agreement among States. It is not subject to being joined by non state actors.

[00:07:25] Such as the Houthis or any other sub national group, and the Law of the Sea Convention itself is, for better or worse, very difficult to amend. It can be supplemented by additional agreements, frequently known as implementing agreements, that function a lot like amendments, but strictly speaking, an amendment to that treaty is, uh, is difficult to deal with.

[00:07:48] And, uh, the world has had other mechanisms for dealing with non state actors on the high seas, that's piracy. Uh, you know, that's, that's the ancient practice of countries uniting against non state actors who pose a threat to the peaceful and orderly use of the high seas. Again, that's, that's not exactly what's going on today, uh, but that's an example of how the tools of international law can be used creatively and vigorously to deal with security and other kinds of problems on the oceans.

[00:08:25] I'm sure, uh, if, if we only had Pompe the great, uh, around he'd, uh, he'd give the Houthis a, a whip, a bit of a whipping. Um, but as sort of aside, aside from the, from the Law of Seas, um, I think, and aside from treaties as well. There are two major and quite contentious, um, ICJ cases going on at the



moment, um, both with, uh, Ukraine and Russia, as well as Israel and Palestine, and especially in the Israel Palestine.

[00:09:04] case. A lot has been talked about proportionality and the standard for proportionality in the international law of armed conflict. And when when a particular military action by the I. D. F. Might spray from being a proper and necessary military action to becoming an internationally wrongful act or war crime.

[00:09:31] Do you think that the present standard is likely to shift, um, by the court at all? Or, uh, do you think that the court will give, um, a bit of a non answer as, as they have done a little bit. So, uh, you're just right to, to, uh, to place front and center, the issue of proportionality. Um, and before I address the court posture on this, Let me just say that my own personal attitude toward the concept of proportionality is that it is simultaneously impossible to apply and essential to imply, to apply.

[00:10:11] The reason it's impossible is that proportionality requires us to make a comparative judgment about which is more important, the deaths of persons A, B, and C, or the deaths of persons D, E, and F. Or the life and death of A, B, and C compared to destroying a bridge or a railroad, uh, uh, communications link.

[00:10:33] And I think in any, even elementary, application of moral philosophy, you just can't do that. It's impossible to say that this person's life is or is not worth As much as that person's life that you just can't go very far down that pathway before you have to throw up your hands in despair and say that's just not something human beings can do.

[00:10:55] We can't measure one life against another. We can't measure one life against the value of a military objective. So I think it's philosophically impossible to do. Nonetheless, we do it all the time, and we have to do it all the time. And it is done both at the senior levels, with commanders directing military forces, and at the most basic level with Those who pull the trigger that you have to make some sort of a judgment as to whether it is worth it, whether it is morally and militarily justifiable to cause this kind of foreseeable but unintended damage to civilians and their property.

[00:11:38] in order to accomplish the military objective of destroying military property and personnel. You just have to make that calculation, even though at some level it cannot be done. And that's why I think that the, the legal standard itself Is unlikely to change. I think the current rule on, uh, requiring that



balancing and saying that, uh, that if the foreseeable collateral damage that is the harm to civilians and their property is clearly excessive, compared to the value of the military objective that is being, uh, being sought, then you can't do the strike, or you can't do the attack in that way, or at that time, or with that weapon.

[00:12:25] Got to modify it so the, the harm is not clearly excessive. I think that's standard, reasonably well accepted, uh, and would be applied in all the different conflicts. But what that means is that in each individual circumstance, there's this wholly indeterminate assessment of, is it worth it? How much damage to civilians is appropriate in order to accomplish the military objective?

[00:12:52] And that's one where people will intensely disagree and, uh, and, and there is no, uh, authoritative, uh, possible answer, uh, other than a case by case analysis. of seeing what, what's been accomplished. And it's important to remember that the test here is, uh, is, uh, as ex ante. That is, you assess the foreseeable or anticipated military gain and civilian harm, not what actually happened.

[00:13:22] Uh, the, the assessment is, is not derived based on how things turned out, but on the knowledge and intentions of the actor at the time the attack is being undertaken. And things often don't turn out as, uh, as intended or planned. So, so bottom line, I would not expect the rule to change. I would expect every application of the rule to be intensely controversial.

[00:13:46] Because I, I think that's the, um, the, the sort of public relations quandary, um, Law of war lawyers where people issue outcries, um, about what they rightfully see as rather horrendous, um, losses of civilian life, and it can seem rather, um, heartless to, to respond to that with, well, actually, there's a legal standard here for, uh, proportionality and quote sort of Rosalind Higgins about what that standard is.

[00:14:22] Well, yes, and in fact, the law of armed conflict is quite clear that, uh, the rule is not that a military campaign must cause no civilian harm. That is not the rule. The rule is that you cannot aim at civilians. You cannot direct your attack at noncombatants. That's the principle of discrimination or distinction.

[00:14:46] You can direct your attack only against military objectives. very much. But that is not the same as saying that the standard is that no civilians can be harmed. The fact is that in any war, and maybe more so in modern wars that are intensely fought in built up areas, in urban areas, there, there's gonna be substantial harm to civilians and to their property.



[00:15:11] And the question is not can you, that you must avoid all of it. The question is how much is too much. And that's where the public and the lawyers and the courts will be applying their own personal judgments as to what is clearly excessive. And that's a very individual fact by fact, fact by fact, case by case determination based on what's achievable.

[00:15:37] Thank you, uh, I think Matthew's going to pick up from there. Thank you, Alejandro, and uh, thank you for bringing up the International Court of Justice, because that is a theme that we're going to be continuing with, with uh, my portion. Now, the particular instrument of war that I chose to write about in this uh, paper series is nuclear weapons.

[00:16:00] And the paper that I wrote is titled Turning Forward the Doomsday Clock, the International Court of Justice's 1996 advisory opinion and its repercussions for modern conflict. For those who are tuning in for the first time and is not aware of this material, the International Court of Justice is essentially the world's court, and they have the ability to issue an advisory opinion that is, in a sense, not binding.

[00:16:27] It's purely advisory. And now, I was really captured, uh, Professor Kaplow by this idea of the Doomsday Clock, and I chose to include it in my, uh, title of my paper. And for those who were not aware, uh, Bolton of the Atomic Scientists, they publish yearly something called the Doomsday Clock. And it's essentially a metaphor for the apocalypse.

[00:16:48] It's how many seconds is it currently Uh, until the apocalypse last year when I wrote this paper, it was 90 seconds to midnight and it currently has been reset to again, 90 seconds to midnight about a week or two ago. If I recall, do you feel like 90 seconds to midnight is an accurate reflection of the world's current geopolitical climate in regards to nuclear weapons, or is it perhaps just an overstatement?

[00:17:13] Well, these are indeed scary times, uh, and no one can rest easily knowing how many thousands of nuclear weapons there are in the world and how many of them are in the hands of unstable dictators such as Vladimir Putin. This is, this is a scary time. And if you ask people in general, what do you think is the probability that a nuclear weapon will be detonated?

[00:17:40] In war someplace around the world in the next year or the next five years or the next 10 years If you ask people that question, you get some pretty pessimistic answers. And the consequences of even one nuclear weapon, let alone an exchange of nuclear weapons, the consequences are so severe that if



there's even a substantial probability that that might happen in the next year or five years or ten years, that's pretty close to apocalypse.

[00:18:08] I think that's, that's not an overstatement of how dangerous the situation is. From my perspective, the Bulletin of the Atomic Scientists. Uh, setting the hands at 90 seconds, the, the, from my perspective, the problem is they've sort of boxed themselves in to the second, the minute hand moving ever closer toward midnight and very rarely moving back in the other direction.

[00:18:33] Uh, they are so sensitive. Appropriately sensitive to the growing dangers and on their list. It's not just nuclear weapons, but chemical weapons and conventional forces. And for that matter, climate change and a number of other very dangerous circumstances around the world. They see those those trends.

[00:18:55] rising and very rarely abating, so they don't have much occasion to say, okay, we can relax now. Let's move the hands back a substantial amount. Instead, they feel the need to sound the alarm and continuously move the hands forward. And now they've gotten to 90 seconds, which means that they don't have a lot of wiggle room to make it even closer.

[00:19:21] in the years to come. So I think that's that's the situation. I think if you could start all over again, it'd be it'd be a better dynamic if we were now at 10 minutes to midnight so that you could reasonably move the hands to nine minutes to signal that there's been a major adverse direction, development, and then maybe move it back to 10 or move it to eight and then to 11.

[00:19:46] But when you're already so close, it constrains the ways that you can, can move the hands in years to come. Thank you for that. And, uh, I think following this episode, I'm going to Google the history of the doomsday clock. Now I'm actually curious to know about maybe the Cuban missile crisis and so forth.

[00:20:02] What exactly was set to at that time? Um, it's been a tremendously valuable, uh, device. in attracting attention. People do pay attention to the, the hands of the doomsday clock and the bulletin of the atomic scientists has gotten some, uh, important, uh, public notification, uh, notice about it. But I think they're now, um, uncomfortably poised in a way that gives them less wiggle room in future years than, than they would, would like to have.

[00:20:34] Now, in the 1996 advisory opinion of the International Court of Justice, the ICJ did not declare the use of nuclear weapons per se illegal. More



or less, now there's many things out of that opinion, but more or less the advisory opinion said, sort of folded the use of nuclear weapons into the principles of the law of war.

[00:20:52] Given the numerous conflicts that have erupted since the start of the 2020s, you yourself just brought up Russia, can you envision a nuclear weapons state or even a non state actor resorting to nuclear weapon use? Well, can I envision it? Absolutely. Yes. Um, it doesn't take a very fertile imagination to foresee the world turning in a very dangerous direction in any of several circumstances, whether it's Ukraine or Taiwan.

[00:21:22] Um, or the Middle East. There, there are a lot of dangerous circumstances, and there are nuclear armed countries that remain very close to the, to the hair trigger, so it is a very serious danger, and that's why the legal efforts, such as the advisory opinion from the ICJ, could be very important.

[00:21:42] Potentially play some role in injecting elements of sanity back into the dialogue and moving the world back away from Midnight a little bit. The 1996 advisory opinion, in my view, is both tremendously important and valuable and tremendously confusing and frustrating, and, uh, and it's difficult to, to determine which of those is a more important residue of the ICJ advisory opinion, uh, because, uh, it has been a major landmark and it has not clarified what the rules ought to be.

[00:22:20] Someone who spent an entire semester about this topic, I can confirm how confusing it is. There's, um, multiple dissents as well. And some of those dissents are just incredibly, incredibly lengthy and having to, uh, decipher a lot of, um, The wisdom in each of them. Well, and let me just say, I think your starting point is just right.

[00:22:39] That is the first message from the ICJ and the advisory opinion is that nuclear weapons are fundamentally weapons. And that therefore the corpus of international law applicable to weapons governs the use of nuclear weapons the same as it governs chemical and biological and missiles and tanks and anti personnel landmines.

[00:23:02] They're all weapons in the same body of law, same corpus of principles applies. In addition, nuclear weapons are special weapons because they have such huge effects and such an array of different kinds of effects, and therefore, a user, a potential attacker with nuclear weapons has to take into account the full array of the potential weapons, the potential weapons effects in all the different dimensions that need to be assessed.



[00:23:31] Absolutely. And, uh, in reference to the importance of the opinion, which you mentioned, uh, I was just reminding myself about, um, in most nuclear weapon states, I believe in all actually, they have a law of war manual, U. S. has one as well. And, um, the advisory opinion is often cited in those law of war manuals.

[00:23:49] Absolutely. And in fact, that's a, a major. Modern era development is the injection of law into the innermost sanctums of national decision making on military security. You know, it wasn't that long ago that lawyers did not have so much input into nuclear and other very important national security decisions, and now lawyers footprints are everywhere.

[00:24:18] And I think that provides a kind of guardrail, not a very secure guardrail, not an absolutely reliable one, but it's at least something that can help try to retain some elements of control over what could otherwise be a runaway situation. So if I may interject, just with one brief question. Considering though that Nuclear weapons are seen as being so outside the norm of other, uh, weapons, uh, that a, a nation has at their disposal.

[00:24:53] And considering the fact that advisory opinions are ultimately advisory and not binding on, on any parties, um, do you think that part of the danger is that the ICJ revisit, revisits its advisory opinion, perhaps, says that nuclear weapons are, per se, illegal, and that they're just Well, I have not seen any international pressure to get the ICJ to address this topic again.

[00:25:23] Um, There's certainly plenty of scope for, uh, for turning again to nuclear weapons. Uh, and it's possible that the ICJ would be asked again to update or renew or expand its advisory opinion. I have not seen any pressure toward getting the ICJ to do that, and the court has been as indicated in some of your previous questions, some somewhat timid in dealing with these issues that go to the heart of national security.

[00:25:53] in the more recent case brought by the Republic of the Marshall Islands against the countries that possess nuclear weapons, the court found a way to avoid dealing with the merits in that case too. And I think the court was timid in doing that, but maybe discretion is the better part because for the court to weigh in and to attempt to give binding orders about nuclear weapons, that's an invitation for the countries to just ignore what the court does.

[00:26:28] And it may have been that the court was frightened about not overstepping the authority that the countries were willing to give to it. Alejandro actually perfectly teed up my next question. One of the reasons the



ICJ ruled the way they did is that the international court of justice can't articulate law that doesn't exist, whether that be in positive law or in custom.

[00:26:55] In 1996, the court could not find in conventional customary law that there exists any prohibition on nuclear weapon use. Now, 20 years have passed since the decision and we've seen document or excuse me, treaties such as the 2017 treaty on the proliferation of nuclear weapons, which fully bans nuclear weapon use.

[00:27:15] We've also seen additional regional bans. Do you feel maybe that customary international law is beginning to crystallize that prohibits nuclear weapon use, or is that just too far off in the distance still? Well, I, I gotta say, I do not see much evolution, much growth in customary international law regarding nuclear weapons.

[00:27:35] It is still the case today, as it was back then, that the countries that possess nuclear weapons have stayed away. For many international agreements that constrain or reduce or impede their continued possession. And the countries that have joined those treaties are already, for the most part, obligated not to ever possess nuclear weapons.

[00:27:58] So one way of characterizing what's happened in the last 20 years is a further division, a further hardening of the division between the nuclear weapons And the nuclear weapons have nots and criticism, in my view, justified criticism from the countries that did not possess nuclear weapons to the countries that do possess them, that they haven't done enough.

[00:28:24] To fulfill their obligations to move toward curbing the nuclear arms race and toward nuclear disarmament, but I don't see this as a growth of a customary international law that would, in fact, intrude a new binding rule on the countries that are Possessed nuclear weapons. They have stayed away from the relevant treaties.

[00:28:46] They have authoritatively confirmed that they are not participating in any kind of an emerging consensus toward abolition of nuclear weapons, that they might move in that direction by uh, judicious stepwise treaties, but not by a sudden burst of customary international law. So I think you're just right that that the world as a whole has increased the tempo and pressure of of their demands for nuclear disarmament.

[00:29:17] But the nine countries that possess nuclear weapons have continued to resist. And in those circumstances, I don't see a new customary international



law emerging. Well, thank you for that, Professor Koplow. I think on this note, I'm going to transition over to Lauren McNeil, who will take it out from here.

[00:29:35] Hi, Professor Kaplow. Thank you again for joining us today. We are so thankful to have you here and to hear your thoughts and your expertise. Um, so this is a real pleasure. Uh, so as you mentioned earlier, nations are engaging less and less in direct armed conflict. So I wanted to ask you about a more recent weapon of conflict, or at least something that I view as a weapon.

[00:29:56] And I'm also interested in your thoughts on that, um, which is social media. Uh, my. Paper was over the weaponization of social media by non state actors specifically. And, um, it just discussed the role of social media in conflict and how it could be manipulated by, uh, non state actors. But also I'm interested in your views, maybe on a broader perspective, uh, in a broader perspective.

[00:30:20] Um, so I guess my, my first question for you would be, do you view social media as a modern instrument of war? And can you think of any Examples in your career where it's been used as a weapon in conflict or, or if you've ever seen it as a threat to national security. Good. So, uh, thank you for, for raising this because it is absolutely a complicated and, uh, very cutting edge issue.

[00:30:46] Something that the world is still struggling to try to figure out how to characterize. the hostile use of a variety of social media, and for that matter, cyber technologies, and, uh, and has not figured out exactly how to pigeonhole them within the legal system. For me, one useful category is the term lawfare, which generally refers to the use of the tools and techniques of law to accomplish objectives that are ordinarily pursued through warfare.

[00:31:20] And there's a wide variety of tactics and tools of lawfare, and social media, in some circumstances, could fit into that category. For me, the starting point is that the law of armed conflict deals with weapons that are used for making certain kinds of attacks. And those terms, weapon and attack, can be used colloquially.

[00:31:43] and loosely to cover a wide variety of things. You know, somebody might make a verbal attack on somebody, but that's not the kind of way that the word attack is supposed to be used in the law of armed conflict. There it has a more particular meaning and it refers to kinetic force that can cause death and destruction in a way that words or electrons cannot.



[00:32:11] And so I think for some purposes, it's okay. It's useful. It's instructive to study the analogies and to study the ways in which social media and more generally, the tools of lawfare can be used to influence countries and to accomplish solutions to their views. so much. missions that are otherwise accomplished by physical force, but it's also important to, for other purposes, to separate them.

[00:32:39] The one example that comes vividly to my mind is that, uh, a familiar tactic. in many military campaigns, sometimes referred to as psychological operations. And that includes the effort to try to persuade the adversary to stop fighting, to surrender, to give up as, as their position is hopeless. And there are a variety of mechanisms where you could try to accomplish something like that.

[00:33:07] In the olden days, it would be dropping leaflets. On the adversary that explain how desperate their situation is and remind them if we can drop paper leaflets on you, we could drop bombs on you. And that's what we're going to do soon. So you should surrender now. And that could have a substantial effect.

[00:33:25] in motivating the adversary to surrender. And that's been done in many campaigns. That was a big element in the first Gulf War, when the United States tried to persuade the Iraqi military to surrender. And many of them did. In more recent wars, you can accomplish a similar sort of objective through electronic means.

[00:33:45] Uh, rather than through dropping paper, you can broadcast through the TV and news, uh, outlets. And the United States has a capability under some circumstances for commandeering the adversary's radio transmission capabilities and broadcasting our messages instead of theirs, including a message that your situation is hopeless.

[00:34:08] You should stop fighting. Uh, and another tactic that's been used sometimes is to send direct messages. Through email or through text messaging to tell adversary leaders, especially, uh, You know, we know who you are. We know where you are. We could target you individually. Your life is in peril. You should stop fighting.

[00:34:33] And sometimes that could have an important effect in reminding the adversary what's at stake for them personally, how vulnerable they personally are, even if they are located some distance from the front and may have a positive effect on, on the campaign. At the same time, it's also got to be noted



that social media can be used in a way that's adverse to the interests of the United States and its allies.

[00:34:58] And we've seen plenty of disinformation and misinformation in the fighting in Ukraine that has been truly terrible. So yes, it's a, it's a very powerful tactic. And I think we are only now seeing the first iterations. of what I would expect in the years to come will be an even more powerful marshalling of social media for hostile purposes.

[00:35:25] Uh, thank you so much, Professor Koppel. I completely agree. Um, in my paper, I'm also curious, Um, as to your thoughts about any possible legal solutions, um, to deal with this recent weaponization of social media. I mean, it's such a new type of technology. It's only been here for what, 20 years, maybe even less.

[00:35:46] Um, and so I, um, was considering, I was considering different types of, um, solutions that there might be. And. I, do you think it would ever be possible for a treaty to come out over this issue or, I mean, I know it would be so difficult in the United States considering the first amendment in section 230 for there to be any type of content moderation for extreme content.

[00:36:16] Um, but do you see anything in international law that could help curb this issue? Well, I got to start by saying good for you to try to wrestle with those kinds of legal dimensions on social media, uh, and that's, uh, and the difficulty that you encountered mirrors precisely the difficulty the world has encountered in coming up with any kind of a feasible solution, a solution that would be politically and morally acceptable, legally acceptable and technologically feasible that would actually work.

[00:36:48] I am not optimistic. I certainly don't have a solution at my fingertips that would resolve the problem. And part of it is because different countries, uh, economic and legal systems deal with social media in such very different ways. Inside authoritarian states, such as Russia and China, the censorship is extreme and it has become a social media could be a tool that can be mobilized by the protesters, the dissidents, the disaffected, but there it's been co opted by governments and they have used it more often as a mechanism for cracking down and repressing freedom.

[00:37:31] And when the United States tries to speak up. for freedom on, uh, on social media and tries to oppose government interventions, those authoritarian states say, well, you do it too. In the United States, you've got rules against, they



always cite child pornography, uh, on the internet as, as an example of where the U.

[00:37:51] S. government does a crackdown. On that, um, malicious use of social media. And so Russia and China say, well, you crack down on some things. We crack down on other things. Nobody is advocating completely unrestrained use of social media. Everybody has some restraints and it should be up to each country to decide for itself where you, where you draw the line.

[00:38:13] And that's proven to be a very difficult barrier to get past in trying to come up with any kind of international agreement or even generally accepted principles for how the world ought to moderate hostile use of social media. You know, I just want to interject on this topic. I think one thing that really scares me too is in regards to deep fakes, just how easy it is.

[00:38:39] to make a deep fake. I mean, truly, whether it is, uh, photo based, uh, image based, excuse me, rather, or video based, it's not actually that difficult, and it's easy to disseminate this very misleading information. Yeah, we've seen that coming, uh, and up until now, there's been sort of an arms race between those who would get better and better deep fake capabilities.

[00:39:05] versus those who would try to detect and uncover deepfake capabilities. And in the long run, I'm going to bet on the fakers. Rather than the detectors and as one indicator of how this pernicious activity is, is with us to stay. One big source of interest in this is the pornography industry, and they've got a big stake in being able to come up with new and better capabilities, and there's so much money behind that industry that that side of the arms race has built in advantages.

[00:39:45] It's possible that the detectors, the, the law enforcement side, will catch up sooner or later, but it's a, it's a tough race to win. And, um, just for, uh, notice, uh, two of our cohort can't, uh, make it to this recording, um, Sarah Abdelbaki. and Genevieve McCarthy. Sarah's paper was about IMF conditionality as a tool of economic warfare and Genevieve's was about, um, imperialism.

[00:40:18] the Cold War and the Helms Burton Act relating to the Cuban, uh, embargo. And so these, these two sort of closing questions are just adapted from, from each of the, the papers. And you, you spoke very well about, um, social media and lawfare. And as perhaps a more traditional, um, element of non armed warfare is economic warfare, stretching from the Cuban embargo,



the Venezuelan sanctions, and now, Activities against, uh, Russia and trying to cordon them off, um, economically.

[00:41:02] So, with all of that, do you think that economic warfare will only become more rampant? Or do you think that, as perhaps it can become more targeted, more specific against certain individuals, that it will actually decline in terms of its overall effect on large populations? Thanks. So, uh, economic power is one of the key attributes of national power, and we should not be surprised when countries like the United States or Russia or China, uh, when they're involved in serious disputes about national security, they're going to use all aspects of national power, diplomatic, intelligence, military, economic, they're, they're going to do whatever they can to try to influence the situation.

[00:41:49] The, uh, the legal starting point for this is that under the U. N. charter system, the most grave problems involve the use of force. And the definition of the treaty, the UN Charter, does not define what it means by force. And right from the beginning, some participants wanted to include in the concept of the Charter's prohibitions, not just a prohibition against military force, but against economic force too, which can be just as coercive and can be resented by the target countries just as much.

[00:42:27] That effort to include economic pressure as well as military pressure basically failed. The world at the time of the drafting of the charter and thereafter was preoccupied with military matters, and that's not a surprise. The charter came right after World War Two, which was the most horrific explosion of military might that the world had ever seen.

[00:42:54] That's what was on their minds. That's what they wanted to deal with. That's what they set up the charter to try to avoid. And if you're exclusively focused on that, That's a reasonable choice, but it means that there's some other disputes that you're going to leave to the side, and economic pressure was one of those.

[00:43:13] If we're drafting a new charter today, now that it's been so many years since World War II, we might have a broader frame of reference. We might include economic sanctions as well as military sanctions within the realm of activities that would be regulated by the UN Charter. That's not where the countries were in 1945, and therefore we see frequent reliance upon military, about economic pressure, and it's often effective.

[00:43:42] Uh, there been times when it has been a telling tool of national policy. It's hard to put sustained economic pressure on a big country. Today, the



world has extreme military pressure on Russia because of the fighting in Ukraine, and it has not deterred Russia. It has not stopped Russia. It has not made them withdraw, but nothing else has either.

[00:44:06] And therefore, uh, the problem is not that economic sanctions are inherently insufficient. It's just that when you target a big, powerful country, it's hard for the world to make anything stick. So that's, that's the way I would see. That continuing to evolve in international life in the future. And with smaller, again, uh, sanctions against smaller countries, um, that is, that frequently are decried in, um, international public fora, like the Cuban embargo, um, in the UNGA.

[00:44:41] Do you think that there might ever be, um, a future where the international community tries to adopt a mechanism by which to determine if such sanctions are ever illegal under international law and, um, have to be, uh, scaled back? Well, you're just right that for economic sanctions to work, they've got to be broadly multilateral.

[00:45:06] The pressure the United States has tried to place on Cuba has not been very effective because so many other countries are not supportive. And if trade between Cuba and the United States is impeded, but trade between Cuba and Mexico, or Cuba and the European Union, or Cuba and Canada proceed without those same kinds of restraints, the pressure that Cuba feels is greatly abated.

[00:45:32] So for economic sanctions to have real impact, they've got to include the major economies around the world, and that's very difficult to do. Uh, and so I would expect that to continue to be the problem, that just as the world has a grave difficulty in speaking with one voice, On military matters, it has the same sort of difficulty coming to a global consensus on economic matters, and I would not anticipate that a treaty negotiation that brushes that aside.

[00:46:06] The fundamental problem is not that the law is defective. The fundamental problem is that international politics are defective. And that as long as the world is experiencing what some call a new Cold War, there's no magic solution that law can exercise to surmount that difficulty. All right. It sounds like that is the end of the podcast episode.

[00:46:28] Thank you very much, Professor Koplow. We really appreciate you being here and offering your insightful thoughts about all of these diverse topics on the instruments of war. Well, thank you very much for inviting me to participate. As I said at the outset, I applaud this enterprise, and now I applaud



the seriousness of purpose and the very important and challenging questions you've asked throughout the last hour, so, I think this series is a real contribution.

[00:46:58] Thank you very much, Professor. Thank you for listening. If you are interested in reading the project that inspired this podcast, finding the transcripts of the episodes, or learning more about the GLS program at Georgetown Law, visit our website at the link in the show notes.