# TOC Finals Neg vs Harker AR

# 1NC

### 1

#### Interpretation and violation: Topical affirmatives may not defend satellites as a form of appropriation.

#### Appropriation requires the exclusive use of property with a sense of permanence - satellites don’t meet that criteria.

Gorove 84 Stephen Gorove, Major Legal Issues Arising from the Use of the Geostationary Orbit, 5 MICH. J. INT'L L. 3 (1984). Available at: <https://repository.law.umich.edu/mjil/vol5/iss1/1> //RD Debatedrills

Crucial to a proper analysis of this issue is an understanding of the concept of "appropriation." The term "appropriation" in law is used most frequently to signify "the taking of property for one's own or exclusive use with a sense of permanence." 12 The word" thus indicates something more than just casual use. The question then becomes whether the continued exclusive occupation by a geostationary satellite of the same physical area is a violation of the ban on national appropriation. While a state may certainly exercise exclusive control over a traditional object, such as a ship, or an aircraft, or a part of airspace, it is not clear that a satellite in geostationary orbit would be able to maintain its exact position and occupy the same area over a period of time. 13 Even if a position could be accurately maintained, and thus possibly constitute an "appropriation" within the meaning of article II, the satellite would have to be kept in that orbit with a "sense of permanence" and not on a temporary basis. It has been suggested that the keeping of a solar power satellite in geostationary orbit for a period of thirty years would not constitute appropriation. 14 In point of fact, thirty years would probably satisfy the "sense of permanence" requirement, unless the geostationary orbit were considered a natural resource as characterized by the International Telecommunication Convention of 1973 (ITC) 15 and as claimed by the equatorial countries. Authority exists to support the view that the ban on national appropriation of outer space does not relate to resources. 16 In view of this and the additional fact that solar energy is an inexhaustible and unlimited resource, its utilization for transmission to earth by satellites does not appear to fall under the prohibition of article II of the 1967 Treaty.

#### Orbital slots are a commons – even exclusive use in a first come first serve system cannot constitute property

Matignon 19 [Louis de Gouyon Matignon, PhD in space law from Georgetown University, “ORBITAL SLOTS AND SPACE CONGESTION,” 06/03/19, *Space Legal Issues*, https://www.spacelegalissues.com/orbital-slots-and-space-congestion/, EA]

Near-Earth space is formed of different orbital layers. Terrestrial orbits are limited common resources and inherently repugnant to any appropriation: they are not property in the sense of law. Orbits and frequencies are res communis (a Latin term derived from Roman law that preceded today’s concepts of the commons and common heritage of mankind; it has relevance in international law and common law). It’s the first-come, first-served principle that applies to orbital positioning, which without any formal acquisition of sovereignty, records a promptness behaviour to which it grants an exclusive grabbing effect of the space concerned. Geostationary orbit is a limited but permanent resource: this de facto appropriation by the first-comers – the developed countries – of the orbit and the frequencies is protected by Space Law and the International Telecommunications Law. The challenge by developing countries of grabbing these resources is therefore unjustified on the basis of existing law. Denying new entrants geostationary-access or making access more difficult does not constitute appropriation; it simply results from the traditional system of distribution of access rights. The practice of developed States is based on free access and priority given to the first satellites placed in geostationary orbit.

#### Past international legal precedent is the only way to resolve applications of space law – lack of condemnation via the non-appropriation principle proves sats aren’t T

**Trapp 13** (TIMOTHY JUSTIN TRAPP, JD Candidate @ UIUC Law, ‘13, TAKING UP SPACE BY ANY OTHER MEANS: COMING TO TERMS WITH THE NONAPPROPRIATION ARTICLE OF THE OUTER SPACE TREATY UNIVERSITY OF ILLINOIS LAW REVIEW [Vol. 2013 No. 4])//DebateDrills RD

As commercial space flight becomes more and more prevalent,153 the question of whether private entities can appropriate property in space becomes very important. Whereas once it took a nation to get into space, it will soon take only a corporation, and scholars have pondered whether these entities will be able to claim property in space.154 Though this seems allowable, since the treaty only prohibits “national appropriation,”155 allowing such appropriation would lead to an absurd result. This is because the only value that lies in recognition of a claim is the ability to have that claim enforced.156 If a nation recognized and enforced such a claim, this enforcement would constitute state action.157 It would serve to exclude members of other nations and would thus serve as a form of national appropriation, even though the nation never attempted to directly appropriate the property.158 Furthermore, the Outer Space Treaty also requires that non-governmental entities must be authorized and monitored by the entities’ home countries to operate in space.159 Since a nation cannot authorize its citizens to act in contradiction to international law, a nation would not be allowed to license a private entity to appropriate property in space.160 While this nonappropriation principle is great for allowing free access to space, thereby encouraging research and development in the field, it makes it difficult to create or police a solution to the space debris problem. A viable solution will have to work without becoming an appropriation. There is, however, very little substantive law on what actually counts as appropriation in the context of space.161 So, the best way to see what is and is not allowed is to look both at the general international law regarding appropriations and to look at the past actions of space actors to see what has been allowed (or at least tolerated) and what has been prohibited or rejected.

#### Precision comes first and link turns predictable limits – the resolution is the only predictable stasis point for dividing ground—any deviation justifies the aff arbitrarily jettisoning words in the resolution at their whim which decks negative ground and preparation

#### Limits and ground— private satellites serve hundreds of distinct purposes, any one of which can be an aff that lack generic neg ground – NC3, ADR, weather observation, advertisements, internet, GPS, space stalkers, etc. The counterinterp also justifies dozens of other non exclusive uses of outer space – probes, weapons, spaceships, etc. Limits ow – it controls the negative’s ability to engage which is a prerequisite to any external benefit of debate.

#### Topicality is a voting issue that should be evaluated through competing interpretations – it tells the negative what they do and do not have to prepare for—there’s no way for the negative to know what constitutes a “reasonable interpretation” when we do prep – reasonability is arbitrary and causes a race to the bottom, proliferating abuse

### 2

#### CP Text: Lunar Embassy should file space property disputes with private entities engaging in appropriation of outer space for the purpose of generating intellectual property protected data collected from remote sensing or observing a country without its explicit permission. When hearing cases over outer space property disputes, courts should rule that the appropriation of outer space for the purpose of generating intellectual property protected data collected from remote sensing or observing a country without its explicit permission constitutes a piratical act under the Law of the Sea and that the nation is obliged to invoke universal jurisdiction against space piracy. Nations should abide by and enforce this ruling.

#### That solves and re-invigorates universal jurisdiction

**Flenniken 20** (Sara Raye, received her J.D. in May 2020 from the University of Florida Levin College of Law where she focused on environmental law. “Ad Astra Per Maris: Using the Law of the Sea to Protect the Space Environment”, 44 Journal of Space Law 250 (2020)DR 22

One of the foreseeable legal issues in space is private companies that refuse to associate with any one nation and claim that, because they are not government agencies, the current laws do not apply to them. In their attempt to evade regulation, however, these companies also surrender the protections afforded to government agencies of a nation. In this respect, private space companies that decline to adhere to the regulations in place are effectively operating as pirates. **Piracy** on the high seas is one of the oldest and most well-attested examples of universal jurisdiction, under which each individual nation contributes to the collective welfare and interests of all nations. 122 Under the law of the sea, pirates are treated as outlaws and are thus denied the protections of the flag State. 123 Without these protections, they may be apprehended and prosecuted by any nation and the prosecuting nation is free to determine the actions taken and the penalties imposed. 124 Private space companies that choose to operate outside of the laws in place should be regarded similarly. In Article 109, the Law of the Sea Convention addressed a similar issue, that of so-called "pirate radio" ships, which illegally broadcast over radio waves from the high seas. 126 While these ships do not meet the traditionally understood definition of pirates, by international authorities, they are considered pirates nonetheless. 126 The United Nations Security Council has urged all nations to criminalize piracy under domestic law to ease subsequent prosecution, and has explicitly recognized piracy as a crime subject to universal jurisdiction.1 27 Moreover, the Law of the Sea Convention places an explicit obligation on every nation to cooperate with the suppression of piracy to the fullest extent that it is able, 128 including the suppression of "pirate radio" ships 129 and this should be mirrored in space law as well.

#### The CP allows for short-term private appropriation so ownership disputes go to court but has courts rule that private entities are pirates

**Listner 3** (Michael, J.D. Regent University School of Law, 2001; B.S. Computer Information Systems, Franklin Pierce College, 1998. The author was a founding member of the Regent University Maritime Law and International Trade Society; a board member of Alternative Dispute Resolution and Client Counseling Board 2001; and a student member of the James Kent American Inn of Court 2000-01. “The Ownership and Exploitation of Outer Space: A Look at Foundational Law and Future Legal Challenges to Current Claims,” 1 REGENT J. INT'l L. 75 2003)DR 22

While the four major space law treaties lay out the law concerning the ownership and activities of nations in space, they have left gaps where individual persons or legal entities are concerned. UNCOPOUS attempted to rectify this through the provisions of the Moon Treaty. However, it is of little value while the U.S. and the Russian Federation continue to refuse to sign it.' 39

The fact that **a loophole** allowing private entities to own extraterrestrial property **still exists** in the Outer Space Treaty has motivated one private corporation to enter into the business of selling real estate on the Moon and other extraterrestrial property within the confines of our solar system.140 Lunar Embassy was founded in 1980 by Dennis M. Hope to sell parcels of celestial property to private entities.' 4 ' To form a legal basis for passing good title to private entities for the property they sell, Lunar Embassy filed a declaration of ownership with the U.S. government. 42 Subsequently, Lunar Embassy also informed the U.N. and the Russian Federation of its claim; a claim which has never been contested. 143

For the price of $19.99 plus a minimal tax and handling fee, a private entity can purchase a one acre parcel of lunar property from Lunar Embassy.' 44 When it first began sales of lunar property, the first 150,000 purchasers of 1777.58 acre lots were guaranteed to receive all minerals rights to their parcel. 1 5 Additionally, the individual will receive a lunar site map, a lunar constitution outlining the laws and rights of an owner of lunar property, and a short story entitled "You Own What?". 46 The company has been selling lunar real estate since 1996. The **legal validity of such ventures** remains untested, leaving the numerous **legal questions** that it evokes **unanswered**. For example, Lunar Embassy believes that by filing a declaration of ownership with the U.S. government, it has a created a legal basis for ensuring its customers can claim ownership of the property it sells to them. 47 However, it is unclear upon which legal theory of property law they are relying.14 8

Since there has been **no legal action** on behalf of any of the signatories of the Outer Space Treaty regarding such a claim, one might presume that **it is considered legitimate**. On the other hand, it may be that no signatory feels the case is sufficiently ripe to file suit. 149 The U.N., the Russian Federation, and even the U.S. government could conceivably file suits challenging the veracity of Lunar Embassy's claims at a future date.

The problem of title could be further complicated in the event that citizens of other countries purchase extraterrestrial real estate from a U.S. corporation, i.e., Lunar Embassy. What happens when this purchaser's home country is not a signatory of the Moon Treaty?1 5 0 Does that country's obligation to the Moon Treaty trump any private ownership right the individual might have, or can the individual still claim title operating under the umbrella of Lunar Embassy's authorization from the U.S.?

Aside from the problem of title to lunar property, there is the problem of enforcement. For example, suppose that a private individual from a country that has not recognized the Moon Treaty claims the same piece of extraterrestrial property that an individual from the U.S. has purchased from Lunar Embassy. How is the conflict of title resolved? Clearly the U.S. could not enforce the private claim purchased through Lunar Embassy since the U.S. cannot claim territorial jurisdiction. 15 ' Furthermore, any attempt to enforce a private claim through the **private use of force**, (force without the delegated authority of a sovereign government), could be **construed as** the space equivalent of piracy on the high seas.152 Even if the private owners attempted to use force, the U.S., being the nation responsible for Lunar Embassy's activities, could be considered as sponsoring piracy or possibly terrorism by allowing them to do so.' 53

The most obvious threat to Lunar Embassy and its customers would be the ratification of the Moon Treaty or a derivative by the U.S. and other developed countries. 154 The ratified treaty would be the constitutional equivalent of a federal statute. 55 However, the U.S. Constitution could be used in U.S. courts to find that such a treaty provision was unconstitutional 56 based on the action being construed as a "taking" under the Fifth Amendment.157

Alternatively, a federal statute promulgated after ratification of this kind of a treaty would prevail over the treaty itself. 58 Sufficient lobbying could persuade the U.S. Congress to promulgate a statute that would prevail over such a treaty, thereby preserving any title to extraterrestrial property rights that otherwise might be invalidated by the treaty. Presuming that title to extraterrestrial property is valid, and the means become available to reach the moon and other celestial bodies, the jurisdictional issue involved in a legal challenge and the question of which laws to apply to the facts become prominent issues. According to the Outer Space Treaty, while no nation can extend its sovereignty to outer space, 5 9 it does hold member states responsible for overseeing the outer space activities of non-governmental entities. 1 60

Perhaps Dennis Hope and Lunar Embassy are attempting to establish sovereignty for their own self-proclaimed principality 16 ' by providing a constitution' 62 that outlines laws and rights for that particular celestial body claimed by Lunar Embassy. 1 63 However, in the absence of a Lunar Embassy constitution that provides a forum selection clause and remedies for torts, criminal activity, or other infractions committed against extraterrestrial property owners, the question of jurisdiction is still a valid one.

While the Outer Space Treaty vests jurisdiction over space objects in the state of registry,164 the private physical possession of extraterrestrial property was not presupposed in its drafting.165 However, U.S. federal courts, **in cases where U.S. citizens own** extraterrestrial property**,** **could** potentially assume jurisdiction. In deciding a case involving a tort claim that arose in Antarctica, the United States Court of Appeals for the District of Columbia Circuit referred to Article VIII of the Outer Space Treaty and recognized that while "[t]he Space Treaty is obviously not couched in terms of tort claims, the basic principle is that in the sovereignless reaches of outer space, each state party to the treaty will retain jurisdiction over its own objects and persons."' 66 Therefore, it is reasonable to conclude that even if Lunar Embassy provides a forum selection clause or methods of dispute resolution in its laws and constitutions, it, along with those property owners who are U.S. citizens, would likely have to bring their disputes in a U.S. federal court. While such legal action may seem far-fetched given the current realities of space travel, there exists the potential for an action of trespass on, and conversion of, moon property within the next few years that could determine the **veracity** of **the legal title** of the moon held by Lunar Embassy and its customers.

Applied Space Resources is sponsoring the Lunar Retriever I mission,' 67 a commercial venture with the goal of sending a lander to the Moon; retrieving a quantity of lunar soil; and returning it to earth where it would be sold for profit. The company bases the legality of its plans on the precedent set by the former Soviet Union's sale of a small sample of lunar material that it obtained from an unmanned probe.1 68

**Here is how** one scenario might develop. **Lunar Embassy** has claimed ownership of the moon and sold certain parcels of its surface to private entities. Since the validity of the title held by Lunar Embassy has not been challenged, it and its customers could seek an injunction against Applied Space Resources to prevent such **a mission**. They could claim that Applied Space Resources must have the permission of the entity holding constructive title to the applicable parcel of the moon's surface before landing its probe and retrieving lunar material. To do so **without permission** is arguably trespass of land and conversion of property. 69 Such a challenge to Applied Space Resources' mission could gain judicial approval for Lunar Embassy's and its customers' title claims.

Commencement of such a suit could be accomplished in several ways. **Lunar Embassy could file suit** against Applied Space Resources as **a corporate entity** or the entities that purchased property from it could file suit.' 70 The plaintiffs in such a suit would be expected to have standing to appear before the Court. To prove standing, they could claim that there is an imminent threat of irreparable injury from trespass to property and conversion. The court could grant a remedy in the form of an injunction barring Applied Space Resources from carrying out their mission without permission from Lunar Embassy or the entity that holds title.' 7 ' Applied Space Resources could cross file a motion **to challenge the validity** of title to the moon held by Lunar Embassy and its customers, or file a separate motion for a declaratory judgment 172 **to determine** whether Lunar Embassy and its customers hold a valid property right to the land they claim over the moon.

**However**, a legal challenge is always fraught with danger and a case such as this is no exception. Lunar Embassy and its customers face the very real possibility of having their legal claim to the moon and other celestial bodies in the solar system declared void, as well as the possibility that a court may rule that the collection of lunar soil samples for profit runs contrary to international law and is **prohibited**.

Further, if a federal court **denied** the private **ownership claims** of Lunar Embassy and its customers, **it could give** proponents **of the Moon Treaty** a much needed boost towards its ratification and general acceptance of its principles, 73 **or** it may **give the signatories** the incentive to press ahead with legal action of their own.

Specifically, the signatories of the Moon Treaty could bring suit against the U.S. under the Outer Space Treaty in the International Court of Justice and ask for an injunction requiring the U.S. to suspend its authorization 74 to commercial ventures involving the exploitation of outer space in regards to ownership and removal of soil from celestial bodies, including the moon and its soil. Such a suit could lead to a legally binding interpretation of the right to private ownership of real property located in outer space. Conversely, the U.S. might seek an amendment to the Outer Space Treaty to reverse such a finding by the International Court of Justice, or they could simply ignore the ruling as one of the most powerful nations in the world today.' 75 More ominous, is the possibility that the U.N. could declare a moratorium on all commercial ventures that seek to exploit real property in space until a final resolution on space property rights is reached.

**Such a suit could** potentially solidify Lunar Embassy's claim to celestial body titles, provide the first case of space law that deals with the private ownership rights, and would set a much needed precedent. Perhaps an initial firestorm of litigation is necessary to advance the jurisprudence of outer space, as no cases have been brought before the International Court of Justice dealing with the space law treaties; and domestic space law cases in the U.S. have been limited to liability issues surrounding satellite launches.1 76 Furthermore, positive domestic precedent would give the U.S. more leverage in negotiating for a Moon Treaty redraft with its signatories and thwart future suits by other countries.

#### Anti-piracy failing now—new rulings that require universal jurisdiction solve

**Jin and Techera 21** (Jing Jin, Guanghua Law School, Zhejiang University, Hangzhou 310008, China. [Erika Techera](https://sciprofiles.com/profile/author/d2hXNGM2MlNHTWg2YU1XaUxIUnRWSzFnOEY2cXV2dGRncldQc1N5WmVybz0=), Law School, The University of Western Australia, Perth 6009, Australia “Strengthening Universal Jurisdiction for Maritime Piracy Trials to Enhance a Sustainable Anti-Piracy Legal System for Community Interests” *Sustainability* 2021, 13(13), 7268 June 29 2021)DR 22

Somali piracy has revealed the shortcomings of domestic piracy legislation in many States [[113](https://www.mdpi.com/2071-1050/13/13/7268/htm#B113-sustainability-13-07268)]. Naval forces were often forced to **release suspects** without any sanctions, no matter whether there was sufficient evidence to prosecute them or not [[9](https://www.mdpi.com/2071-1050/13/13/7268/htm#B9-sustainability-13-07268)]. That has weakened the international efforts **against** Somali **pirates** [[53](https://www.mdpi.com/2071-1050/13/13/7268/htm#B53-sustainability-13-07268)]. Failure to criminalize piracy and to establish universal jurisdiction in domestic law **directly results in the lack of a basis for combating piracy** at the national level. Even in States that have criminalized piracy and established universal jurisdiction over piracy in their domestic law, there are still various deficiencies in the legislation.

First, the definition of piracy is not uniform among States’ domestic legislation and between domestic law and international law. Scholars have analyzed the definition of piracy in 19 States and regions and found that only 21.2% held two ships requirements; 31.6% required “private ends”; and 26.3% required that piracy occurs outside the scope of national jurisdictions [[114](https://www.mdpi.com/2071-1050/13/13/7268/htm#B114-sustainability-13-07268)]. This inconsistency will lead to operational difficulties in applying universal jurisdiction. Even if an act constitutes “piracy” under domestic law, it does not necessarily mean that universal jurisdiction applies, and there is a need to distinguish whether the so-called “piracy” conforms to the UNCLOS definition. This also means that, if the State signs a new international instrument on piracy with the requirement to implement the instrument in its domestic law, it has to distinguish the applicable part from the existing domestic “piracy” definition first and then amend the domestic law relevant to this part to comply with the instrument. That will increase the difficulty of implementation and can easily confuse.

Second, the sentences imposed on pirates vary greatly between States. The universal jurisdiction prosecutions over piracy are public goods that serve the whole international community [[115](https://www.mdpi.com/2071-1050/13/13/7268/htm#B115-sustainability-13-07268)]. Consequently, it is necessary to analyze the sentences for piracy in different States comparatively. Sentences for similar crimes should not differ largely, otherwise they can lead to unfairness [[116](https://www.mdpi.com/2071-1050/13/13/7268/htm#B116-sustainability-13-07268)]. However, as of 2010, the longest maximum sentence was a life sentence (e.g., in the US, UAE, and Kenya), and the maximum sentence in Seychelles was 30 years, while the ones in Europe were significantly shorter (e.g., 15 years in Germany; 12 or 15 in Holland; 14 or 20 in Italy) [[116](https://www.mdpi.com/2071-1050/13/13/7268/htm#B116-sustainability-13-07268)]. In practice, the sentences for similar piracy offences range from a life sentence to 4.5 or 5 years [[116](https://www.mdpi.com/2071-1050/13/13/7268/htm#B116-sustainability-13-07268)].

Third, the domestic legal basis for universal jurisdiction over piracy is not well established. Many States have not fully adopted domestic legislations and a jurisdictional framework based on the concept of universal jurisdiction stipulated in UNCLOS [[117](https://www.mdpi.com/2071-1050/13/13/7268/htm#B117-sustainability-13-07268)]. Some States tend to exercise universal jurisdiction only when certain links exist [[61](https://www.mdpi.com/2071-1050/13/13/7268/htm#B61-sustainability-13-07268)]. In this respect, it seems that other traditional jurisdiction principles are enough to meet the needs of States to combat piracy, if they are not interested in punishing piracy that has no nexus with them. According to Jack Lang, in light of general international law, the State of nationality of the pirates, the State of nationality of the victims, and the flag State of any ship concerned can claim jurisdiction over the suspected pirates [[23](https://www.mdpi.com/2071-1050/13/13/7268/htm#B23-sustainability-13-07268)]. However, as ships on the high seas are generally considered to be under the exclusive jurisdiction of the flag State, with the universal jurisdiction over piracy and a few other circumstances as exceptions [[103](https://www.mdpi.com/2071-1050/13/13/7268/htm#B103-sustainability-13-07268)], whether there is still the space for other traditional jurisdiction is confusing. Moreover, by using a flag of convenience, the flag State may not be the State of the company that genuinely owns or operates the ship. The legal link between the latter State and the piracy incident may be weak. Therefore, some States prosecute pirates having nexus with them on the ground of universal jurisdiction. For example, Japan’s first piracy trial, which involved an attack on a Bahamian ship operated by a Japanese company, applied universal jurisdiction [[118](https://www.mdpi.com/2071-1050/13/13/7268/htm#B118-sustainability-13-07268)]. A similar but confusing situation existed in the Republic of Korea v. Araye, the first trial of Somali pirates in Korea related to the piracy attack on a Maltese ship operated by a Korean company [[119](https://www.mdpi.com/2071-1050/13/13/7268/htm#B119-sustainability-13-07268)]. The jurisdiction ground of the case is controversial. The court ruled that, according to the domestic criminal procedure law, it has territorial jurisdiction over the case due to the current location of the defendant [[19](https://www.mdpi.com/2071-1050/13/13/7268/htm#B19-sustainability-13-07268)]. One scholar believes that Korea does not recognize universal jurisdiction, and only when the suspected pirates are Korean nationals or the piracy takes place on a Korean ship can they be prosecuted for piracy in its domestic courts [[120](https://www.mdpi.com/2071-1050/13/13/7268/htm#B120-sustainability-13-07268)]. However, other scholars regard the trial as a typical case in which Korea exercised universal jurisdiction over piracy [[19](https://www.mdpi.com/2071-1050/13/13/7268/htm#B19-sustainability-13-07268)]. This issue is important because if there is a positive conflict of jurisdiction, the jurisdiction principles the State applies may affect the priority of different jurisdictions because universal jurisdiction is often considered to be subsidiary [[121](https://www.mdpi.com/2071-1050/13/13/7268/htm#B121-sustainability-13-07268)]. Moreover, if the seizing State does not recognize the jurisdiction ground proposed by other States, it will not cooperate [[122](https://www.mdpi.com/2071-1050/13/13/7268/htm#B122-sustainability-13-07268)]. For example, if the seizing State believes that only flag State jurisdiction and universal jurisdiction are applicable to piracy, and does not recognize other traditional jurisdiction claims, it will not transfer pirates. However, in the current situation of the overall negative conflict of jurisdiction over piracy, regardless of the jurisdiction ground applied, it usually will not incur protests from other States. In special circumstances, it may restrain interested States from asserting jurisdiction over a whole case. In the Republic of Korea v. Araye, because the criminal law of Korea does not clearly provide for universal jurisdiction, there was a debate about whether the criminal acts against foreign crew can be applied under Korean law [[123](https://www.mdpi.com/2071-1050/13/13/7268/htm#B123-sustainability-13-07268)]. Those acts against foreign crew were not ultimately prosecuted [[119](https://www.mdpi.com/2071-1050/13/13/7268/htm#B119-sustainability-13-07268)]. From a global perspective, universal jurisdiction is a justice-based measure [[124](https://www.mdpi.com/2071-1050/13/13/7268/htm#B124-sustainability-13-07268)] and an important means to protect global public goods [[121](https://www.mdpi.com/2071-1050/13/13/7268/htm#B121-sustainability-13-07268)]. Although it is not a legal obligation to establish and exercise universal jurisdiction over piracy, as Cedric Ryngaert claims, there are many jurisdiction principles so that at least one can be applied in any given situation [[121](https://www.mdpi.com/2071-1050/13/13/7268/htm#B121-sustainability-13-07268)]. Positively asserting jurisdiction can be regarded as a responsibility of States in some circumstances [[122](https://www.mdpi.com/2071-1050/13/13/7268/htm#B122-sustainability-13-07268)]. Without a clear stipulation of universal jurisdiction over piracy, **negative conflicts** of jurisdiction will undoubtedly occur, which is **not conducive** to the solution of global problems and the realization of SDG 16 (Peace, Justice and Strong Institutions). Fourth, domestic legislation lacks procedural provisions on extraterritorial law enforcement. For instance, in the Republic of Korea v. Araye, the pirates claimed that their transfer to Korea lacked a proper procedural basis [[19](https://www.mdpi.com/2071-1050/13/13/7268/htm#B19-sustainability-13-07268)]. Generally speaking, the essential procedural elements, such as time of detention, the treatment and the rights of pirates in the transfer, the procedures for boarding, and visiting and evidence collection processes, have rarely been included in the domestic law. Failure to deal with those issues may lead to violations of human rights. In the case of Hassan and Others, France was charged with illegality due to the extent of time the alleged pirates were kept in detention [[125](https://www.mdpi.com/2071-1050/13/13/7268/htm#B125-sustainability-13-07268)]. The French courts tried to explain this with “wholly exceptional circumstances”, but the European Court of Human Rights decided that there had been a violation of the right to liberty and security in that case [[125](https://www.mdpi.com/2071-1050/13/13/7268/htm#B125-sustainability-13-07268)].

Fifth, domestic legislation may be unable to meet new trends in exercising universal jurisdiction. The separation of seizing, prosecuting, and imprisoning stages, the proposal of new piracy trial options, and enhanced international cooperation all mean that the exercise of universal jurisdiction is no longer limited to the conduct of a single State. Therefore, cooperation with other States and other international entities (including international organizations and international or regional tribunals) is hindered by differing domestic legislative regimes. Harmonizing the law between States will assist with maritime law enforcement cooperation, the transfer and reception of pirates, the identification of evidence collected by other States, and the application of law before and after the transfer of pirates, which are rarely reflected in existing domestic legislation. Efforts to harmonize laws between jurisdictions can have the further benefit of enhancing global best practice.

5. Balanced Relationships to Be Sought in Strengthening Universal Jurisdiction over Piracy to Enhance a Sustainable Anti-Piracy Legal System

In order to sustain a strong anti-piracy legal system, incremental enhancements are needed to support universal jurisdiction over piracy, including the achievement of a better balance in the three key areas explored below.

5.1. Balance between Benefits and Costs

The exercise of universal jurisdiction over piracy is regarded as a public good [[**115**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B115-sustainability-13-07268)]. Although repressing pirates, the hostis humani generis [**126**], benefits all humankind, for the States that exercise universal jurisdiction over piracy, their benefits may be indirect and limited. Many States have a low passion for **prosecuting pirates** who do not directly harm their nationals or national interests [**127**] since exercising **universal jurisdiction over piracy** does not directly safeguard the interests of the **States**. Even the flag State of the attacked ship and the State of nationality of the kidnapped crew may be not active in intervening or prosecuting piracy [**23**,**128**]. In the international community, a State **rarely** receives **financial reward** for providing such public good. The State’s gains in other areas are not significant either. The data show that the exercise of the legislative jurisdiction of universal jurisdiction over piracy—namely, the domestic anti-piracy legislation—does not protect the ships flying the State’s flag from pirate attack [**113**].

The high costs of exercising universal jurisdiction is an important aspect. All the costs for piracy prosecutions, including but not limited to the costs of the trial and imprisonment, evidence and witnesses, translation and logistics, shall be borne by the State exercising universal jurisdiction, unless there are special arrangements on external assistance. The State exercising universal jurisdiction may also have to bear other risks alone, such as Kenya’s intention to withdraw from the handover agreement to receive pirates in March 2010 when it claimed that it was threatened with retaliation from pirates’ allies [**23**]. In this regard, a large number of regional States that exercise universal jurisdiction over pirates in combating Somali piracy have proposed that they need to share the burden of imprisonment with third States [**46**] or hope to send pirates back to Somalia to serve their sentences [**128**] and do not bear the costs of repatriation of suspected pirates who have not been convicted [**46**]. However, the State of nationality of the pirate does not always cooperate effectively on the imprisonment issue. Somaliland, a region in Somalia that was dominated by its own authorities, once withdrew from the agreement on accepting convicted pirates from Seychelles and released the pirates in Hargeysa prison without explanation [**128**].

The imbalance of cost-sharing is another important reason. At present, universal jurisdiction over piracy is usually understood as a kind of right, **rather than an** obligation. Therefore, the subject of responsibility for exercising the jurisdiction to fight against pirates is not clear. Although all States have the right to exercise universal jurisdiction over piracy, they often **take a negative attitude because** of the convenience of giving up their rights and their belief that they are not the most appropriate providers of the public goods. This, in turn, **undermines** the enthusiasm of States that have already provided public goods, thus forming a vicious circle. In 2010, Moses Wetangula, then Kenya’s foreign minister, said, “We discharged our international obligations. Others shied away from doing so. And we cannot bear the burden of the international responsibility [[**129**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B129-sustainability-13-07268)].” If only a few States continue to work hard without sharing the burden, problems will inevitably arise [[**23**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B23-sustainability-13-07268)].

It can be predicted that **it is unrealistic to expect** the State to actively invest too much in exercising universal jurisdiction over **piracy** before the status quo of benefits and costs **changes**. From the perspective of benefits, the States that have relatively more benefits from universal jurisdiction over piracy are those with interests in pirate attacks. In addition to calling on all States to exercise universal jurisdiction over piracy and to prosecute and imprison pirates [[**56**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B56-sustainability-13-07268)], the UNSC further points out the more appropriate States to exercise universal jurisdiction, which are particularly the flag, port, and coastal States; States of nationality of victims and perpetrators of piracy; and States with relevant jurisdiction under international law and domestic legislation [[**53**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B53-sustainability-13-07268)]. However, the UNSC can only use the non-mandatory phrase “call upon”, and whether to respond to the call depends on States themselves. Additionally, great powers also have a certain advantage in gaining benefits from providing public goods. Great powers are often the key factor in determining war and peace, and they also bear greater responsibility for regional and world peace and development [[**130**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B130-sustainability-13-07268)], and therefore, they should make greater contributions to global governance. Although there may not be a direct interest relationship between a specific pirate attack and a great power, and there is no direct economic benefit, the exercise of universal jurisdiction over piracy helps the State to show its power and manners, so as to enhance its international image and voice. Therefore, it is necessary to **encourage** more interested **States** and great powers to provide the public goods needed in **exercis**ing universal jurisdiction over piracy.

From the perspective of costs, the absolute costs of exercising universal jurisdiction over piracy are almost fixed. It seems more appropriate to reduce the relative costs and share the costs. The same costs will put more pressure on weaker States, such as Somalia and regional States, than on more powerful States. This is not only because the same costs account for a larger proportion of the economic aggregate in weaker States but also because these States lack the infrastructure needed to exercise universal jurisdiction over piracy, such as a comprehensive legal system, qualified judicial personnel, adequate prison facilities, etc., which are needed to meet the corresponding requirements through new or large-scale improvement, with a large marginal cost. In the more powerful States, such infrastructure is usually relatively fit for purpose and need only be directed or slightly adjusted to be used for exercising universal jurisdiction over piracy; thus, the marginal cost is smaller. In terms of cost-sharing, providing financial and capacity-building support to States exercising universal jurisdiction over piracy can directly reduce and distribute the costs. During the period of countering Somali piracy, the support of the international community to Somalia and regional States, the Trust fund to Support Initiatives of States Countering Piracy off the Coast of Somalia under the auspices of the Contact Group on Piracy off the Coast of Somalia, and the IMO Djibouti Code Trust Fund initiated by Japan are all types of arrangements that objectively and effectively promoted the piracy trials in Somalia and regional States. Moreover, enabling more States to exercise universal jurisdiction over piracy can spread the burden on a global scale and avoid concentrating the costs of activities benefiting the whole international community on a few States. Jack Lang, the Special Adviser to the Secretary-General of the UN on legal issues related to piracy off the coast of Somalia, said in his report that only with the participation of all States can the commitment of each State be strengthened, and he affirmed that the Netherlands still exercises universal jurisdiction over piracy without directly involving its national interests, saying that “**continuing such mobilization is essential**” [[**23**](https://www.mdpi.com/2071-1050/13/13/7268/htm#B23-sustainability-13-07268)]. Although it is not realistic to require all States to exercise universal jurisdiction over piracy in the short term, it is an effective direction to take to increase the providers of such public goods as much as possible.

5.2. Balance between Right and Obligation

To a certain extent, increasing the costs of refusing to exercise universal jurisdiction over piracy will enhance the willingness of States to **exercise such jurisdiction**. To regard **universal jurisdiction over piracy** as an obligation is an approach. Different from the pure welfare rights, the necessity and urgency of exercising universal jurisdiction in anti-piracy activities is obvious. The high seas have the characteristic of not belonging to the jurisdiction of a single State “but within the collective responsibility of all States”; thus, crimes on the high seas must be properly dealt with through a coordinated and comprehensive approach [**131**]. In other words, as far as a single State is concerned, **it has no legal obligation to exercise universal jurisdiction over piracy;** however, as far as the international community as a whole is concerned, the exercise of such jurisdiction is an essential measure to safeguard the common interests, which cannot be avoided blindly. While recognizing that the exercise of universal jurisdiction over piracy is an optional right, Jack Lang also pointed out in his report that although UNCLOS uses the phrase “to the fullest possible extent” to limit the obligation of cooperation in combating piracy, such flexibility should not be used as an excuse for not prosecuting [**23**].

However, such implied obligation attribute is not conducive to the effective implementation of universal jurisdiction over piracy. SUA has provisions on compulsory jurisdiction and facultative jurisdiction. In the case of compulsory jurisdiction, each State Party has the obligation to establish the corresponding jurisdiction. In the case of facultative jurisdiction, State Parties can decide whether to establish the jurisdiction for the corresponding offences [[102](https://www.mdpi.com/2071-1050/13/13/7268/htm#B102-sustainability-13-07268)], which is more similar to a right enjoyed by State Parties. According to the Legal Committee of IMO, **most** of the State **Parties** of SUA **incorporate** compulsory jurisdiction into their domestic legislation **but lack provisions on facultative jurisdiction** [[117](https://www.mdpi.com/2071-1050/13/13/7268/htm#B117-sustainability-13-07268)]. This comparison shows **the importance** of explicitly stipulating that it is an obligation to exercise jurisdiction.

Although a SUA offence does not always coincide with piracy, to some extent, the establishment of compulsory jurisdiction in domestic law still reflects the willingness of States to bear the responsibility of combating maritime crimes at sea. The increase and then reduction of Somali piracy makes the international community more aware of the importance of participating in international cooperation against piracy and undertaking corresponding international responsibilities. The signing of regional anti-piracy legal instruments, such as ReCAAP, DCoC, Yaoundé Code of Conduct, and MOWCA MOU, further reflects the initiative of the international community in combating piracy. On this basis, it is feasible to set the exercise of universal jurisdiction over piracy as an obligation under certain conditions.

In terms of the content of the obligation, there are differences in the exercise of legislative jurisdiction, law enforcement jurisdiction, and judicial jurisdiction. There is a view that the national legislation on piracy is an obvious prerequisite for the implementation of “the obligation to cooperate in the suppression of piracy” in Article 100 of UNCLOS [[132](https://www.mdpi.com/2071-1050/13/13/7268/htm#B132-sustainability-13-07268)]. The obligation of legislative jurisdiction is very common in international legal instruments, such as SUA, International Convention against the Taking of Hostages, and UN Convention against Transnational Organized Crime, which all require State Parties to take necessary measures to establish jurisdiction over related crimes. Therefore, if a new anti-piracy international legal instrument is concluded, there is no technical difficulty in establishing universal jurisdiction over pirates in domestic law as the obligation of State Parties.

The enforcement of universal jurisdiction over piracy has its particularity. It usually occurs on the high seas or in any other place outside the jurisdiction of any State. The vast geographical scope makes it unrealistic to obligate a State to exercise law enforcement jurisdiction over every piracy case as it exercise jurisdiction over criminal offences committed within its territory. Whether law enforcement can be actually carried out on the high seas or in any other place outside the jurisdiction of any State and its enforcement effect depends on many factors, such as the strength of a State’s Navy or Coast Guard, the comprehensive strength of the State, the specific situation of the pirate attack, etc. Additionally, in the absence of a unified and authoritative global governance institution, it is obvious that there is no international treaty, customary law, and legal basis for requiring any State to undertake the obligations of “international police” on the global commons such as the high seas or any other places outside the jurisdiction of any State. Therefore, the enforcement jurisdiction should still exist in the form of rights.

The judicial jurisdiction over piracy can be **compulsory** in the form of “extradition or prosecution”. The primary purpose is **to put an end to** the phenomenon of “capture release” or “only drive but not capture” and **ensure** that pirates are subject to judicial trials. Secondly, the “extradition or prosecution” of pirates is in line with the current State practice of transferring pirates to a third State for trial in the process of fighting against Somali pirates.

5.3. Balance between Innovation and Stability

The global governance of the ocean needs to respond to changing, new, and emerging issues through the creation of new **governance rules** according to new circumstances, new requirements, and new trends in ocean affairs. The development of law should be a continuous and dynamic process. The better way to protect common interests through international law is to adapt rather than to abandon the **existing legal systems**, and revolutionary new concepts should be constituted consistent with the recognized legal frameworks [[133](https://www.mdpi.com/2071-1050/13/13/7268/htm#B133-sustainability-13-07268)]. Turning to the reform of the legal system of universal jurisdiction over piracy, it is mainly reflected in the balance between the innovative anti-piracy legal measures and the existing relevant provisions of UNCLOS, as well as the balance between the exercise of universal jurisdiction and respect for national sovereignty.

#### Piracy crushes trade and creates failed states– terrorist coordination cuts off key chokepoints

**Murphy 12** (a senior strategic analyst at the University of Reading, where he is writing a doctoral dissertation on maritime irregular warfare and related criminal activity at sea under the supervision of Professor Colin S. Gray. He holds degrees from the universities of Wales and Reading. He has published widely on maritime terrorism, piracy, and riverine warfare; an Adelphi Paper on modern piracy and maritime terrorism is forthcoming. U.S. Naval War College Digital Commons CIWAG Case Studies 8-2012 “Piracy” <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1003&context=ciwag-case-studies> Images (map) omitted. August 2012)DR 22

Somali piracy cannot be seen in isolation from the wider geostrategic importance of free movement and safe passage to trade between Europe and Asia and energy movements outbound from the Arabian Gulf to much of the world. This importance has been brought into sharper focus by the growing political turmoil in Yemen, which has drawn attention on the fact that both sides of the Gulf of Aden constitute a single geo-strategic entity. The eighteen-mile-wide Bab el-Mendeb is one of the world’s vital chokepoints. It is the gateway to the Suez Canal, and **its closure would** block off the sea route upon which this huge trade depends. Any realistic threat of complete **closure** would provoke a major political and military response. However, the same effect could be achieved using low-level attacks to persuade the international shipping industry that the transit **risks are too great** and maritime traffic would have to divert around Africa, adding ten to twelve days to a voyage. That threat would be one step nearer to realization if one shore of the Gulf were to fall into hostile hands, and it would increase substantially if both coasts were to fall under the sway of organizations with a common purpose. Britain occupied Aden in the 19th century to guard the vital sea route to India and took control of what is now Somaliland when France, its leading imperial rival, threatened to expand its influence beyond the borders of the French Coast of the Somalis, today’s Djibouti. It is worth at least noting that al Qaeda’s two forays into maritime terrorism were both launched from Yemen: the attack on the USS Cole in Aden harbor in 2000 and the attack on the MV Limburg off the oil port of Ash Shihr al Mukallah in 2002.

Yemen’s situation is not as desperate as Somalia’s. It is not a failed state but is nonetheless politically fragile and economically weak. The government is confronted by a rebellion by the Shi’ite Houthi faction in the north adjoining the Saudi Arabian border, a separatist movement in the south, and an al Qaeda faction, al Qaeda in the Arabian Peninsula (AQAP), which appears **ready** to exploit whatever breakdown occurs. The militant group **Al-Shabaab** has sworn to support AQAP and to exploit the **opportunity** **for** the conflicts on either side of the Gulf of Aden to become “increasingly intertwined,” according to their Somali spokesman Mukhtar Robow. Although the use of a reductionist lens to conflate two separate conflicts needs to be resisted, contact has occurred between AQAP and al-Shabaab and coordinated action cannot be ruled out in the future. If al-Shabaab controlled the southern shore of the Gulf of Aden, the interchange between the two groups would become easier.

#### Trade breakdown causes civil and proxy conflicts that draw in Iran, Russia, and North Korea---nuclear war.

Kampf ’20 [David; June 16; PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University; World Politics Review, “How COVID-19 Could Increase the Risk of War,” https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war]

But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended.

If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling.

Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing.

The Pessimists Strike Back

More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.”

Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before.

In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.”

But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will.

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

### 3

#### CP: On the first instance of appropriation of outer space for the purpose of generating intellectual property protected data collected from remote sensing or observing a country without its explicit permission by private entities, the United Nations General Assembly should request an advisory opinion with binding force stating that this form of appropriation violates international law, specifically the Outer Space Treaty, and pass a concurrent resolution that non-compliance with the International Court of Justice’s opinion constitutes an enforceable violation of Charter obligations.

#### The United Nations International Court of Justice should convene and rule that the dispute should be legislated by the UNCOPUOS under the proposed Additional Protocol per Ishola et al. The UNCOPUOS should rule that appropriation of outer space for the purpose of generating intellectual property protected data collected from remote sensing or observing a country without its explicit permission by private entities violates the Outer Space Treaty.

#### Private entities should comply with this ruling.

#### ICJ has the jurisdiction to determine interpretation of the OST now -- exclusive UNCOPUOS jurisdiction enforces and causes follow-on AND re-invigorates and solves complexity of functioning space law.

Ishola et Al 21, Feyisola Ruth, Oluwabusola Fadipe, and Olaoluwa Colin Taiwo. "Legal Enforceability of International Space Laws: An Appraisal of 1967 Outer Space Treaty." New Space 9.1 (2021): 33-37. (Department of Private Law and Jurisprudence, School of Law and Security Studies, Babcock University, Ilishan-Remo, Nigeria.)//Elmer

As earlier examined, the 1967 Outer Space Treaty provided general principles to govern space activities of states: mandating peaceful uses of the outer space. As the first body of law for regulating space activities, it provided a legal framework for space exploration for the benefit of all states. A primary failure of this treaty is the lack of enforceability, that is, the provisions of the treaty are not legally enforceable, thus technically nonbinding on state parties. The 1967 Outer Space Treaty relies on the ancient principle of international law, “pacta sunt servanda,” which states that agreements must be kept by state (referring to Article 26 of Vienna Convention on the Law of Treaties, 1968).9 This general principle of international law places a responsibility on state to comply with treaty agreements as well as fulfill responsibilities arising from this obligation. However, law is not law without procedures to enforce compliance and/or sanctions for violations that makes the treaty a mere recommendation to state parties.

This article proposes an amendment to the 1967 Outer Space Treaty as the parent law on the use of outer space. In rectifying the aforementioned problem, there is a need to create a procedural system for legal enforcement under the existing framework. Thus, our proposition relies on the inclusion of an Additional Protocol to the 1967 Outer Space Treaty, giving powers to the UNCOPUOS to function in quasi-judicial capacity.

Under the current UN system, the International Court of Justice (ICJ) has the sole responsibility of resolving legal disputes as well as providing advisory on international legal questions. However, with the complexity of international politics and the challenges posed by continuous exploration of space resources as it relates specifically to environmental protection and sustainability, the need for an institutional regime cannot be ignored. The international space legal instruments are designed under the auspices of the UNCOPUOS; however, none of the treaties made mention of the committee in its content. As a result, UNCOPUOS continues to function as a mere international forum with no enforcement powers.

Although UNCOPUOS at creation was “set up by the UN General Assembly to govern the exploration and use of space for the benefit of all humanity,” the committee currently functions as an international forum with merely administrative powers. This has seen the birth of 5 treaties alongside series of research and documentation on development in space technology. However, without ability to enforce provisions set out in the treaty, it will be seemingly impossible to deliver on this mandate especially with sovereign powers of states and the pursuit of national interest to establish scientific and technological advancement in the outer space.

The amended functions of UNCOPUOS under the proposed Additional Protocol will consist of special legal powers that include but are not limited to: 1. Determination of remedies and sanctions due for breach of provisions of the 1967 Outer Space Treaty, extending to other 4 treaties namely: The Rescue Agreement; Convention on International Liability for Damage Caused by Space Objects; Convention on Registration of Objects Launched into Outer Space, and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. 2. Provision of adjudicatory procedures for the determination of appropriate sanctions for different category of violation of space laws. 3. Liaising with UN Security Council to enforce decisions of the committee on erring state parties using various instruments. 4. Amendment of existing legal framework to suit new realities and developments in space exploration. In addition, the legal subcommittee of UNCOPUOS shall have exclusive tribunal status to carry out the mentioned functions that shall exist to enforce provisions of the Outer Space Treaty. Adlai Stevenson10 while addressing the UN General Assembly in 1963 explained, Article 38 of the ICJ Statute clearly defines the legal status of UN General Assembly Resolutions that to a large extent represent a consensus of opinion by states on a particular matter and may not have any binding force because resolutions do not establish rules of law. Therefore, states determine their adherence to treaties or the resolutions and declarations that produce them on the floor of the UN.11 For instance, Article VI of the 1967 Outer Space Treaty clearly states that “States shall be responsible for damage or injury caused by the launching or attempted launching into outer space of objects” but does not specify the legal procedure for adjudicating or determining damages with spelt out sanctions. Furthermore, for a proper functioning of space laws, UNCOPUOS must reserve extraterritorial jurisdiction, serving as the international space tribunal for enforcing provisions codified in space treaties. The Additional Protocol as proposed should include a provision for decisions reached by UNCOPUOS legal subcommittee to be documented at the ICJ. Also, municipal courts of competent jurisdiction of the parties concerned must enforce these decisions or awards within 60 days after which the UN Security Council will take actions ranging from trade embargo, diplomatic boycott, and so on to enforce compliance. It is highly essential for the Security Council to become involved in the enforcement process being the most powerful organ in the UN system but much more for the fact that unchecked space exploration could jeopardize global peace and security in the long run. We must begin to rethink the extent sovereign immunity influences critical global issues such as the use of outer space especially where there are far reaching consequences that can put the world in a dismal state. Laws exist to regulate human behavior, international laws to regulate state actions delineating legal boundaries where necessary but without enforceability, laws are nothing but “a toothless dog who can only bark but never bite.” A justification for granting UNCOPUOS quasi-judicial status as an extraterritorial entity is found in Article 104 of the UN Charter that states, “the organization (United Nations) shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.” Thus, UNCOPUOS as a committee under the broad UN structure in this case can equally benefit from this clause to achieve its goals. Although Article 92 of the UN Charter states that “the ICJ shall be the principal judicial organ of the United Nations,” the complexity of space activities require a special legal institution of which the UNCOPUOS is a ready fit since it was intentionally created “to govern the exploration and use of outer space.”

#### Credible OST solves Space War.

Johnson 17 Christopher Johnson 1-23-2017 “The Outer Space Treaty at 50” , <http://thespacereview.com/article/3155/1> (graduate of Leiden University’s International Institute of Air and Space Law and the International Space University)//Elmer

As mentioned, many of the provisions of the Outer Space Treaty were borrowed from previous UN General Assembly resolutions. But as resolutions alone, these documents were non-binding and did not require states to alter their behavior. And while UN General Assembly resolutions are not normally law-making exercises, they do record the commonly-held expression of intentions by the states in the General Assembly, and make political recommendations to UNGA Members (or to the UN Security Council). UNGA Resolutions can also set priorities and mold opinion for inclusion in subsequent treaties. The prohibition on the placement of nuclear weapons and other weapons of mass destruction in outer space or their installation on celestial bodies was taken from UNGA Resolution 1884 of 1963. The resolution: [s]olemnly calls upon all States… [t]o refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner. This prohibition was transferred to the Outer Space Treaty, and thereby remade into international treaty law. As President Johnson pointed out in his recommendation to Congress to ratify the Outer Space Treaty, “the realms of space should forever remain realms of peace.”5 He continued: We know the gains of cooperation. We know the losses of the failure to cooperate. If we fail now to apply the lessons we have learned, or even if we delay their application, we know that the advances into space may only mean adding a new dimension to warfare. If, however, we proceed along the orderly course of full cooperation we shall, by the very fact of cooperation, make the most substantial contribution toward perfecting peace.6 The agreement contained in Article IV of the Outer Space Treaty reflects an agreement between the US and the USSR, as obligations restricting their freedom of action. Why would a state intentionally place a restriction on itself? Isn’t it better to merely keep outer space as unregulated as possible? Since there were only two states then capable of venturing into outer space, why did either state agree to rules governing its actions? It may seem counterintuitive, but the deeper rationale behind security arrangements like this is that the parties actually benefit in the long-term from placing mutual restrictions on their behavior. Agreeing to restrict your freedom of action has deep links to the usefulness or utility of law itself. Consider driving a car: in order to get a license, you agree to observe certain rules, and the license signals your obligation to obey these rules. However, sometimes adhering to those rules is not only inconvenient (such as stopping at stop signs when there’s nobody else at the intersection), it is also against your short term-interests (you have an appointment or will otherwise suffer from observing the rules.) However, agreeing to operate within a system where your freedoms are sometimes restricted can have the effect of actually increasing your freedom over the long term. Wouldn’t you rather live in a state where traffic laws exist, and other drivers agree to observe them? Isn’t that system preferable to living in a state without traffic rules? Indeed, a system with traffic rules increases not just freedom in general, but overall safety and orderliness. Consequently, because the system with rules is preferable to the system without rules, your willingness to use the roads allows you to travel with greater security and ease. You are better assured of the likelihood that you will get to your intended destination without some other driver crashing into you. Knowing that safe travel is likely, you are more willing to take trips more often, and to farther destinations. Your freedom is actually increased over the long term because you are willing to suffer temporary, short-term restrictions such as inconvenient red lights. Long-term rationality warrants adherence to efficient systems of law. Correctly-balanced rules help increase long-term benefits (like safety and security) that would otherwise be unattainable without a system of rules. It is this rationale that also underpins international treaty-making. Today, the current absence of nuclear weapons or other weapons of mass destruction in outer space attests to the bargain struck in the Outer Space Treaty being a successful one, where security (and the liberty and freedom possible with security) were furthered by the mutual exchange of restrictions that states placed upon themselves. The more than 50 years of peaceful uses of outer space, including cooperation between states who remain rivals elsewhere, are the rich long-term gains resulting from the Outer Space Treaty.

#### Space War cause Nuclear War.

Gallagher 15 “Antisatellite warfare without nuclear risk: A mirage” <http://thebulletin.org/space-weapons-and-risk-nuclear-exchanges8346> (interim director of the Center for International and Security Studies in Maryland, previous Executive Director of the Clinton Administration’s CTBT Treaty Committee, an arms control specialist at the State Dept., and a faculty member at Wesleyan)//Elmer

In recent decades, however, as space-based reconnaissance, communication, and targeting capabilities have become integral elements of modern military operations, strategists and policy makers have explored whether carrying out antisatellite attacks could confer major military advantages without increasing the risk of nuclear war. In theory, the answer might be yes. In practice, it is almost certainly no. Hyping threats. No country has ever deliberately and destructively attacked a satellite belonging to another country (though nations have sometimes interfered with satellites' radio transmissions). But the United States, Russia, and China have all tested advanced kinetic antisatellite weapons, and the United States has demonstrated that it can modify a missile-defense interceptor for use in antisatellite mode. Any nation that can launch nuclear weapons on medium-range ballistic missiles has the latent capability to attack satellites in low Earth orbit. Because the United States depends heavily on space for its terrestrial military superiority, some US strategists have predicted that potential adversaries will try to neutralize US advantages by attacking satellites. They have also recommended that the US military do everything it can to protect its own space assets while maintaining a capability to disable or destroy satellites that adversaries use for intelligence, communication, navigation, or targeting. Analysis of this sort often exaggerates both potential adversaries’ ability to destroy US space assets and the military advantages that either side would gain from antisatellite attacks. Nonetheless, some observers are once again advancing worst-case scenarios to support arguments for offensive counterspace capabilities. In some other countries, interest in space warfare may be increasing because of these arguments. If any nation, for whatever reason, launched an attack on a second nation's satellites, nuclear retaliation against terrestrial targets would be an irrational response. But powerful countries do sometimes respond irrationally when attacked. Moreover, disproportionate retaliation following a deliberate antisatellite attack is not the only way in which antisatellite weapons could contribute to nuclear war. It is not even the likeliest way. As was clearly understood by the countries that negotiated the Outer Space Treaty, crisis management would become more difficult, and the risk of inadvertent deterrence failure would increase, if satellites used for reconnaissance and communication were disabled or destroyed. But even if the norm against attacking another country’s satellites is never broken, developing and testing antisatellite weapons still increase the risk of nuclear war. If, for instance, US military leaders became seriously concerned that China or Russia were preparing an antisatellite attack, pressure could build for a pre-emptive attack against Chinese or Russian strategic forces. Should a satellite be struck by a piece of space debris during a crisis or a low-level terrestrial conflict, leaders might mistakenly assume that a space war had begun and retaliate before they knew what had actually happened. Such scenarios may seem improbable, but they are no more implausible than the scenarios that are used to justify the development and use of antisatellite weapons.

### 4

#### Understanings of IR through clear cut rational self interest embody the perspective of a neutral, rational calculator divorced from the gendered nature of nationalism and international relations – their account of state behavior props up hegemonic masculinities and just isn’t accurate

Sjoberg 12 Laura Sjoberg, 3-15-2012, Gender, structure, and war: what Waltz couldn't see. International Theory, 4, pp 1-38 doi:10.1017/S175297191100025X mvp

Seeing gender hierarchy in international structure

One element of a gender-hierarchical international system would be that that assumptions about gender underlie the structure and ordering principles of the international system and provide commonsense ground for theorizing them. This is an observation consonant with feminist observations of global politics, which have characterized the global political arena as a ‘patriarchal structure of privilege and control’ (Enloe 1993, 70). Others see the global political arena a place where ‘the structure of political communities has assumed gendered forms’ (Steans 2003, 43), and ordered by ‘gender relations [which] structure social power’ (Pettman 1996, 43). These observations are rooted in feminist work which shows gender operating in how political leaders are chosen (Tickner 1992), how state governments work (Peterson 1992), how militaries function (Enloe 1989), and how economic benefit is distributed (Pettman 1996). States have been shown their relative military prowess, judged and asserted their relative power, and demonstrated and adjusted their relative economic status through gendered competition using gendered language (e.g. Cohn 1988). The gender hierarchy in the world ‘out there’ can be read as replicated in the ‘commonsense ground’ or traditional theorizing in IR, which feminist theorists (e.g. Tickner 1988) have characterized as partial at best and unrepresentative at worst because it often analyzes the perspectives and lives of only a small, elite, male portion of the global population.

This theme in feminist theorizing in IR suggests that there might be something to the idea that international structures are theorized as genderneutral because men take their perspectives to represent the human. Feminists have characterized conventional knowledge in IR as problematic because it is constructed only by those in a position of privilege, which affords them only distorted views of the world.14 As such, it has been a crucial part of the feminist project in IR to ‘not only add women but also ask how gender – a structural feature of social life – has been rendered invisible’ by working to ‘distinguish ‘‘reality’’ from the world as men know it’ (Peterson and True 1998, 23). Often, in disciplinary knowledges, ‘gender’ is seen as a proxy for ‘women’ because ‘women’ are perceived to have gender, where men are not.

Another element of a gendered international system structure would be that, when it is acknowledged that gender plays a role in global politics, it is often discussed as a corruption of a gender-neutral system rather than a product of a gendered system. For example, work like that of Inglehart and Norris (2002) and Hudson et al. (2009)15 argues that it is states that treat their women the worst that corrupt not only the gender order but the potential for interstate peace, cooperation, and development. This logic is replicated in many discussions of gender in the policy world as well. For example, ‘gender mainstreaming’ agendas (see True and Mintrom 2001; Shepherd 2008) engage in a process of integrating gender concerns into the structures that already exist in governments and organizations. The scenario derived from Acker’s theorizing suggests that when gender subordination is characterized as the exception, rather than the rule, in international political interactions, gender is difficult to see because the masculine is at once assumed and invisible. The recurrent focus in feminist work on the need to ask IR theory ‘where are the women?’ (Enloe 1983) and ‘where is gender?’ (Bell and O’Rourke 2007) suggests that it is plausible that gender is difficult to see in IR because the masculine dominates our visions of the international system. It is important to note that the masculine here involves and implicates, but is not reducible to, men.

Waltz ‘tests’ his idea of structure primarily by its predictive power and its indirect manifestations (1986, 72). He argues that, since the anarchical nature of the international system is invisible and thus cannot be directly verified or proven, it must be verified by its manifestations and implications (Waltz 1986, 73). This verification, to Waltz, comes by examining unit function, distribution of capabilities across units, and political processes of unit interaction. The remainder of this section considers whether there is evidence in those three observable parts of global politics that the international system may be gender-hierarchical.

Unit function: does state identity have gendered components?

In Waltz’s account, ‘a system is composed of a structure and of interacting units’ where ‘the structure is the system-wide component that makes it possible to think about the system as a whole’ and ‘the arrangement of units is a property of the system’ (1986, 70, 71). Waltz sees the system as an anarchy, which by definition specifies that units have the same function. Still, Waltz gives a sense of what would be different if the system was a hierarchy, since ‘hierarchy entails relations of super- and subordination among a system’s parts, and that implies their differentiation’ (1986, 87). Calling states ‘like units’ in Waltz’s terms is ‘to say that each state is like all other states in being an autonomous political unit’ (Waltz 1986, 89). Waltz sees states as performing fundamentally similar tasks in similar ways, and argues that the differences between states are in capabilities not in function or task (1986, 91).

This section explores two arguments about gender and the function of the units of the international system. First, it argues that gender can be seen as constituting unit ‘function’ in the international system, whether the units are ‘like’ or differentiated. Second, it proposes that gender hierarchy actually differentiates unit function in the international system.

The argument that gender constitutes the function of all units in the international system is supported by the degree to which states define their identities (and therefore the tasks of domestic and foreign policy) in gendered ways. A growing literature on ontological security (e.g. Mitzen 2006; Steele 2008) characterizes state identity in terms of ‘sense of self,’ a language that has long been used in feminist accounts of nation and nationalism. Feminists who have worked on nationalism have argued that national identity and gender are inextricably linked, and that ‘all nationalism are gendered, all nationalisms are invented, and all are dangerous’ (McClintock 1993).16 Feminists have shown that gendered imagery is salient in the construction national identities, particularly when, often, women are the essence of, the symbols of, and the reproduction of state and/or national identity (Yuval-Davis 1997; Wilcox 2009).

A number of examples illustrate the link between national identity and gender. Feminist studies have demonstrated that gender has been essential to defining state identity in Korea (Moon 1997), modernizing Malaysia (Chin 1998), Bengal (Sen 1993), Indonesia (Sunindyo 1998), Northern Ireland (Porter 1998), South Africa (Meintjes 1998), Lebanon (Schulze 1998), Armenia (Tachjian 2009), and a number of other states. For example, Niva has noted that, during the First Gulf War, the United States’ identity was understood as a ‘tough but tender’ masculinity where it was expected that the United States military would courageously defeat the Iraqi military, but would at the same time rescue the feminine state of Kuwait from the hypermasculine clutches of the Iraqi state (1998). On the other hand, responding to the United States’ and United Nations’ threats of military intervention in Kuwait, Saddam Hussein’s Iraq consistently used gendered references to hypermasculine understandings of state identity (Sjoberg 2006b). Gendered nationalisms, however, do not just arise in conflict situations. Bannerji has noted that Canadian national identities are constructed through ‘race,’ class, gender, and other relations of power, where subordinate classes and ‘races’ are feminized in relation to the dominant image of Canadian identity, not only within the Canadian state but also in Canada’s external projection of nationalist identity (2000, 173). Taylor’s analysis of the ‘Dirty War’ in Argentina characterizes identity in the conflict as ‘predicated on the internalization of a rigid hierarchy’ of gender and argues that ‘the struggle, as each group aimed to humiliate, humble, and feminize its other, was about gender’ (1997, 92, 34).

A brief look at one example recently used in the literature might further illustrate the point. In his book, Ontological Security in International Relations, Steele (2008) notes that honor and shame shape states’ selfperception of their identities. Contrary to the realist logic that state prioritizes prudence and survival over honor and justice, Steele sees honor as a universal part of state self-identity, where states look for honor even sacrificing physical integrity. To illustrate the role of honor in state selfidentity, Steele uses the example of the Belgian choice to fight a losing war against the Germans in 1914 rather than allow Germany access to Belgian territory and avoid the casualties and terror involved in their inevitable defeat. Steele notes that honor was implicated in Belgium’s response to Germany’s ultimatum, given that most policy statements stressed their need to ‘fight for the honor of the flag’ and ‘avenge Belgian honor’ (Steele 2008, 112).

Feminist analysis suggests that we cannot understand the role of honor in state self-identity without reference to both masculine and feminine conceptions of honor in the state (Jowkar 1986). Masculine conceptions of honor vary between chivalric and protection-oriented and aggressive and prideful, while feminine conceptions of honor often focus on the purity and innocence of the territory of the state and/or the women and children inside (see Elshtain 1985). Through gender lenses, the Belgian discussion of national honor in 1914 was one where the leaders’ (masculine) honor was tied to not giving in to, and even resisting, the would-be violators of the territory’s (feminine) honor, which was tied to purity. The ‘honor’ of the Belgian government then was tied to unwillingness to sacrifice the ‘honor’ of the innocent, neutral, vulnerable, and untouchable identity and position of Belgium vis a vis its neighboring Germany. It is no coincidence that the following attack was referred to as the ‘Rape of Belgium’ (Niarchos 1995). In the ‘Rape of Belgium’ narrative, the German invasion spoiled the feminine elements of Belgian state identity, and emasculated Belgian leaders as protectors of its feminized territory. Survival or prudence cannot account for Belgium’s actions in 1914; in fact, as Steele pointed out, Belgium acted contrary to both. Honor can explain the behavior, but neither the form nor function of that honor is clear without accounting for the gendered elements of Belgian state identity. The story about gendered state identity can also be read onto Germany (as a hypermasculine aggressor) and Britain (as a chivalrous protector).

While some might see the influence of gender on state or national identity as a ‘second-image’ or unit-level explanation,17 Waltz explains that a factor is structural if it is not influencing state identity (and therefore state function) in states individually, but instead influencing the identities (and therefore functions) of states generally. In other words, forces that define one state’s identity or five states’ identities are secondimage; forces that influence all states identities are third-image. Feminist scholars have shown that ‘nationalism is naturalized, and legitimated, through gender discourses that naturalized the domination of one group over another through the disparagement of the feminine’ (Peterson 1999). These gender hierarchies are always present even if specific genders and their orders in hierarchies are fungible. In other words, it is not particular nationalisms that are gendered (and some nationalisms that are not), it is that gender hierarchy as a structural feature of global politics defines the properties and functions of the system’s constituent units, including their national identities. All nationalisms being gendered does not mean that all nationalisms are the same, however.

The mechanism through which gender hierarchy can be seen to influence national identity and state function is through the link between any given state’s national identity and the ‘hegemonic masculinity,’ or particular ideal-typical gender that is on top of the gender hierarchy that state ‘units’ are situated in at any given time and place (Hooper 1998, 34). The argument that states’ structures and functions are often defined by masculinities (see Peterson 1992) is not based on the observation that states are (mostly) governed by men. Instead, as Connell explains, ‘the state organizational practices are structured in relation to the reproductive arena’ (1995, 73). Some states’ hegemonic masculinities are aggressive and projected, others are tough but tender, and still others are stoic and reserved. All hegemonic masculinities relate to a feminized other, but they do so in different ways: some encourage violating it, some define themselves in opposition to it, some understand it as treasured and to be protected, and some mix elements of all of the above. The gendered nature of national identities influences the function of states, particularly in the areas of warmaking and war-fighting, but also in terms of citizenship, economic organization, diplomatic relations, and involvement in international organizations.18 For example, feminists have catalogued throughout the history of the modern state system a relationship between military service, masculinity, and full citizenship (either de jure or de facto) in states (Moscovici 2000).

Though the relationship between gender and nationalism generally (and genders and nationalisms specifically) influences the function of units whether they are like units (in anarchy) or not like units (indicative of a hierarchical system in Waltz’s terms), evidence of different gendered nationalisms suggests that gender hierarchy in global politics differentiates between functions of units in the system rather than dictating that all units function similarly. Units in the system (even defined in the narrow realist terms where only states count as units) do have many similar functions in terms of governance, education, health care, and the like. But especially in their external relations, states also have a number of differentiated functions. Some states were/are colonizers, some states were colonized and still deal with remaining markers of colonization. Some states are aggressors, while other states are the victims of aggression. Some states are protectors, while other states require protection. Some states provide peacekeeping troops, international humanitarian aid, and other public goods, while other states do not serve those functions, depending on state identity (e.g. Savery 2007). Some states serve to facilitate international cooperation while others act as cogs in cooperation’s wheels. Some states see their masculinity as affirmed in the interstate equivalent of rape and pillage, while other states see it in chivalry, honor, and a sense of the genteel.

While Waltz might classify these differences as merely capabilities gaps, different state functions in the community of states do not map one-toone onto capabilities. Instead, I propose that they map onto the ways that gender shapes state identities and functions. As Peterson (2010) notes, ‘not only subjects but also concepts, desires, tastes, styles, ways of knowing y can be [masculinized or] feminized,’ such that states’ ontological security is related to their gendered identities. For example, a number of feminist analyses of the United States during the first Gulf War identify its policy choices and military strategies as consonant with a new, post-Cold War ‘tough-but-tender’ image of the United States’ masculinity, which maintained the Cold War-era projection of strength, but added an element of sensitivity and a chivalric conception of protecting the weak (e.g. Niva 1998; Sjoberg 2006a). Seemingly inconsonant functions for the US military as at once an attack force and a tool for protection then make sense, because the state does function differently based on its self-perception of identity, which might be seen as (at least in part) a product of structural gender hierarchy in the international arena.

#### Focus on flashpoint escalatory conflict to come is not neutral - prefer a view of war on a continuum that understands violence in the home and on the battlefield as co-constitutive: gender violence is the consistent causal variable of warfare - best social science data votes neg

We need to focus on existential events – but doing that requires analytizing proximate causes which THEIR model fo IR papers open

Prugl, PhD, 2014

(Elisabeth - Professor of International Relations; Director, Programme on Gender and Global Change, Graduate Institute of International and Development Studies, Feminist Interventions in International Relations in Under Development: Gender edited by Christine Verschuur, Isabelle Guérin, Hélène Guétat-Bernard )

For feminists, assertions that war-making has nothing to do with gender has always sounded hollow in light of the predominance of men in the security apparatus. The masculinity of war thus is a starting point for a number of feminist studies, yet there is contestation about what exactly the relationship is between gender and war. It is possible to identify three fault-lines in the feminist literature. The first focuses on the premise that associates men with war and women with peace: Is it correct to say that men for the most part support war and that women are more likely to favour peace? The second divide pertains to levels of analysis and addresses causality: Does the relationship between gender and war belong at the individual or systemic/structural level? Finally, the third fault-line pertains to the relationship between hegemonic masculinity and war: Does militarist masculinity have a substantive content or are masculinity and war empty signifiers that derive their potency from their formal qualities? The first disagreement amongst feminists is whether women should be thought of as outside war or inside war. On the surface, the evidence is striking: historically and cross-culturally men have accounted for the vast majority of soldiers and fighters. Women have participated in fighting wars, but they have invariably made up only a small minority of fighters (Goldstein, 2001). While this puzzle has given rise to interesting theorising, feminists have been uncomfortable with universalist assertions that reproduce the association of women with peace and men with war and that fail to take into consideration historical and cultural contexts.1 Against the empirical record that associates men with war and women with peace, feminists thus have put forward evidence that contradicts the idea that women do not fight. In part they have done so by broadening the types of militarised conflicts they look at to include non-state actors, and by taking seriously the various supporting roles that women play in conflicts. This has allowed them to bring into view the fact that women participate in violence and wars extensively: they cheer on men to engage in violence and shame them into participation (Goldstein, 2001); they have appeared as suicide bombers in the Middle East, in terrorist activities in Chechnya, and as participants in the Rwandan genocide (Sjoberg and Gentry, 2007); they have a long record of fighting in liberation movements and militias, in African, Asian and Latin American revolutions of the 20th century, in loyalist militias in North Ireland, in militant movements in Kashmir and Sri Lanka, and in recent African conflicts from Sierra Leone to the Congo (T£treault, 1994; Puechguirbal, 2003; Sjoberg and Gentry, 2007; McEvoy, 2009; Parashar, 2009; MacKenzie, 2009). Women do not constitute a majority of fighters in these contexts, but they make significant contributions, accounting for over 30% of insurgents in some instances. Moreover, women increasingly are integrated in regular militaries; they now account for almost 15% of the US military (The Women's Memorial, 2011), the highest amongst NATO member states.2 The second disagreement amongst feminists focuses on the question of the causal or constitutive relationship between gender and war, and whether this relationship needs to be explored at the individual or the systemic/structural level of analysis. In other words, is masculinity a cause of war or are war and masculinity co-constituted? And do these causalities arise from socialisation and individual identities or from the masculinisation/militarisation of societies, cultures and global structures? These are amongst the most contested issues with far-reaching implications for how feminist scholarship can connect to security studies more broadly. The difference between approaches largely hinges on the understanding of gender. A series of quantitative studies has made a link between a country's propensity to go to war and the degree of gender equality within a country. They have shown a strong and consistent correlation between domestic gender inequality and a tendency of states to resolve conflicts violently. Using different indicators for gender equality (such as the percentage of women in the labour force and in parliament) and for violent conflict (militarised interstate and intrastate disputes and a "global peace index") and drawing on different databases, these studies agree that gender inequality is a significant predictor of conflict that in some models even outweighs the key explanatory variable of democracy (Tessler and Warriner, 1997; Caprioli, 2000, 2003, 2005; Caprioli and Boyer, 2001; Regan and Paskeviciute, 2003). Although empirically operating at a state level of analysis, scholars have drawn on arguments at the individual level to explain this correlation, evoking evolutionary biology and psychology. They have argued the adaptive advantage of male violence and its diffusion over time and drawn a causal relationship between resulting male characteristics and war fighting (Hudson et al., 2008). But the argument is difficult to sustain. Goldstein's comprehensive survey of evidence finds no support for simplistic causalities based on human biology and psychology, emphasising the interaction of biology with culture. Ultimately, he explains, the cross-cultural uniformity in the association of warfare with men is a result of "small, innate biological gender differences in average size, strength, and roughness of play" which combine with the "cultural modeling of tough, brave men, who feminize their enemies to encode domination" (Goldstein, 2001, p. 406). Biology and culture interact to produce a universal pattern and, in a startling reversal of general wisdom, biology emerges as more malleable than culture. Goldstein's survey thus gestures towards levels of analysis beyond the individual. A more thoroughly constructivist understanding than his leads to explanations at systemic or structural levels. A long tradition of feminist literature has located the relationship between war and gender at the systemic level and postulated a connection between patriarchy and "the war system" (Reardon, 1985). This type of literature has found the reasons for militarism in various forms of misogyny and suggested that fighting patriarchy is imperative in order to overcome war (e.g., Wasmuht, 2002; Mathis, 2002; Zwingel, 2003; Sjoberg, 2012). Cynthia Cockburn (2010) recently has provided a re-statement of this argument that takes into consideration new developments in feminist theory, including a focus on intersectionality. Taking the standpoint of anti-war feminist movement activists, she suggests that gender relations are one important root cause of war. She rejects individual-level arguments, emphasising that this causality cannot be put on the backs of what individual men and women do. Instead, war is a system in which everyday violence operates on a continuum with military violence, in which militaries and governing ideologies are systemically intertwined, and in which economic power and ethnic and national power intersect with gender power. She conceptualises militarised masculinities and femininities as emerging from social practices and discourses, insisting that these constructions can be thought of as causal. Similarly operating on a systemic and structural level, Cynthia Enloe (1989, 1993, 2000, 2010) has perhaps most extensively explored the structuring logic of masculinity and militarism in her large body of writings, making both causal and constitutive arguments. Relentlessly pursing the question "where are the women" in international affairs, she provides a forceful narrative of the power that is necessary to keep women in their subordinate place and enable militarist and exploitative international politics. Like Cockburn, Enloe takes her cues from feminist anti-militarist networks and talks about patriarchal social orders as "engines of militarization" (2007, p. 15). Yet her single-minded focus on women also leads her beyond simple causality to observe the parallel imbrications of economic and political orders with masculinist and militarist values and the perverse effects of these on marginalised populations. (151-4)

#### Each link implicates the accuracy of their advantages at every level – the aff’s failure to integrate gendered analysis dooms their predictions and prescriptions through masculine error replication

Hawkesworth 10 (Mary Hawkesworth is Professor and Chair of Women’s and Gender Studies and a member of the Graduate Faculty in Political Science at Rutgers University., (2010) Policy discourse as sanctioned ignorance: theorizing the erasure of feminist knowledge, Critical Policy Studies, 3:3-4, 268-289, DOI: 10.1080/19460171003619691, JKS)

Feminist accounts of objectivity offer rich resources for identifying, understanding, and rectifying error. Given the advantages of analytical strategies that dispel the myth of the given, probe the tacit presuppositions of dominant discourses, challenge the naturali- zation of oppressive relations, engage difference and plurality, and avoid reductive expla- nations, one might well ask why these analytic tactics have not gained wider purchase within dominant academic disciplines, which embrace a conception of science as critical, non-dogmatic, committed to falsification, and open to correction through intersubjective contestation. Feminist attunement to the politics of knowledge suggests an answer to this question which challenges the openness of mainstream approaches to systematic critique. Few mainstream scholars read feminist work. Even fewer PhD-granting institutions offer courses that incorporate feminist scholarship or require familiarity with feminist methodology in qualifying examinations. Mainstream scholars refusal to engage feminist scholarship individually and collectively violates the norms of scientific inquiry that they purportedly embrace, norms that require engagement with conjectures, refutations, and counterevidence (Popper 1972a, 1972b, Lakatos 1970). Far from rooting out distortion and error, bias is replicated as erroneous accounts of the world are accredited. In this way, whether wittingly or unwittingly, mainstream scholars reproduce and legitimate particular modes of raced and gendered power. In marked contrast to their claims of neutral, objective inquiry, mainstream scholars are complicit in fostering a mode of evidence blindness better understood as sanctioned ignorance. Indeed, precisely because of mistaken notions of value-neutral inquiry, they insulate certain power hierarchies from investigation. In his essay on ‘The Uses and Disadvantages of History’, Nietzsche (1983, p. 76) offered an explanation of this mode of intellectual complicity with sanctioned ignorance: ‘It requires a great deal of strength to be able to live and to forget the extent to which to live and to be unjust is one and the same thing.’ In contrast to an ‘inability to perceive’, Nietzsche suggests that evidence blindness may involve an active process of forgetting, social amnesia as a protective camouflage that confers strength. Nietzsche’s insight is richly evocative of disciplinary dynamics in mainstream knowledge production. By assuring themselves that they offer neutral descriptions and explanations of empirical events, mainstream scholars insulate themselves from recognition of modes of injustice embedded in their own research technologies, while affording themselves a means to forget the injustice constitutive of life. Erasure of feminist knowledge within mainstream studies of politics and policy, then, may be part of the infrastructure of forgetting, sanctioned ignorance that masks and perpetuates constitutive power relations. To the extent that this is the case, social amnesia should not be allowed to masquerade as scientific knowledge.

#### The alternative is to perform an ontological revisionism of the 1AC that deconstructs the universality of the masculine subject and the way it coheres applications of mainstream IR – your role as a judge is to interrogate the core gendered assumptions of the aff to find and build new ethical frames through which we can view the world.

Youngs 04

(Gillian, Professor of Digital Economy at the University of Brighton, Feminist International Relations: a contradiction in terms? Or: why women and gender are essential to understanding the world ‘we’ live in\*, International Affairs, 80, pgs 77-80, JKS)

This discussion will demonstrate, in the ways outlined above, the depth and range of feminist perspectives on power—a prime concern of International Relations and indeed of the whole study of politics. It will illustrate the varied ways in which scholars using these perspectives study power in relation to gender, a nexus largely disregarded in mainstream approaches. From feminist positions, this lacuna marks out mainstream analyses as trapped in a narrow and superficial ontological and epistemological framework. A major part of the problem is the way in which the mainstream takes the appearance of a pre- dominantly male-constructed reality as a given, and thus as the beginning and end of investigation and knowledge-building. Feminism requires an ontological revisionism: a recognition that it is necessary to go behind the appearance and examine how differentiated and gendered power constructs the social relations that form that reality. ¶ While it may be empirically accurate to observe that historically and contemporaneously men have dominated the realms of international politics and ¶ economics, feminists argue that a full understanding of the nature of those realms must include understanding the intricate patterns of (gendered) inequalities that shape them. Mainstream International Relations, in accepting that because these realms appear to be predominantly man-made, there is no reason to ask how or why that is the case, stop short of taking account of gender. As long as those who adhere to this position continue to accept the sufficiency of the appearances and probe no further, then the ontological and epistemological limitations will continue to be reproduced. ¶ Early work in feminist International Relations in the 1980s had to address this problem directly by peeling back the masculinist surface of world politics to reveal its more complex gendered (and racialized) dynamics. Key scholars such as Cynthia Enloe focused on core International Relations issues of war, militarism and security, highlighting the dependence of these concepts on gender structures—e.g. dominant forms of the masculine (warrior) subject as protector/conqueror/exploiter of the feminine/feminized object/other—and thus the fundamental importance of subjecting them to gender analysis. In a series of works, including the early Bananas, beaches and bases: making feminist sense of international politics (1989), Enloe has addressed different aspects of the most overtly masculine realms of international relations, conflict and defence, to reveal their deeper gendered realities.3 This body of work has launched a powerful critique of the taboo that made women and gender most invisible, in theory and practice, where masculinity had its most extreme, defining (and violent) expression. Enloe’s research has provided one of the most comprehensive bodies of evidence for the ontological revisionism required of mainstream International Relations, especially in relation to its core concerns. ¶ When Enloe claimed that ‘gender makes the world go round’,4 she was in fact turning the abstract logic of malestream International Relations inside out. This abstract logic saw little need to take theoretical and analytical account of gender as a social force because in practical terms only one gender, the male, appeared to define International Relations. Ann Tickner has recently offered the reminder that this situation persists: ‘During the 1990s, women were admitted to most combat positions in the U.S. military, and the U.S. president appointed ¶ the first female secretary of state, but occupations in foreign and military policy- making in most states remain overwhelmingly male, and usually elite male.’5 ¶ Nearly a decade earlier, in her groundbreaking work Gender in International Relations: feminist perspectives on achieving global security,6 she had asked the kinds of questions that were foundational to early feminist International Relations: ‘Why is the subject matter of my discipline so distant from women’s lived experiences? Why have women been conspicuous only by their absence in the worlds of diplomacy and military and foreign policy-making?’ Tickner, like Enloe, has interrogated core issues in mainstream International Relations, such as security and peace, providing feminist bases for gendered understanding of issues that have defined it. Her reflection on what has happened since Gender in International Relations was published indicates the prominence of tensions between theory and practice. ‘We may have provided some answers to my questions as to why IR and foreign policymaking remain male-dominated; but breaking down the unequal gender hierarchies that perpetuate these androcentric biases remains a challenge.’7 ¶ The persistence of the overriding maleness of international relations in practice is part of the reason for the continued resistance and lack of responsiveness to the analytical relevance feminist International Relations claims. In other words, it is to some extent not surprising that feminist International Relations stands largely outside mainstream International Relations, because the concerns of the former, gender and women, continue to appear to be subsidiary to high politics and diplomacy. One has only to recall the limited attention to gender and women in the recent Afghanistan and Iraq crises to illustrate this point.8 So how have feminists tackled this problem? Necessarily, but problematically, by calling for a deeper level of ontological revisionism. I say problematically because, bearing in mind the limited success of the first kind discussed above, it can be anticipated that this deeper kind is likely to be even more challeng- ing for those in the mainstream camp. ¶ The second level of ontological revisionism required relates to critical understanding of why the appearance of international relations as predominantly a sphere of male influence and action continues to seem unproblematic from mainstream perspectives. This entails investigating masculinity itself: the nature of its subject position—including as reflected in the collective realm of politics— and the frameworks and hierarchies that structure its social relations, not only in relation to women but also in relation to men configured as (feminized) ‘others’ ¶ because of racial, colonial and other factors, including sexuality. Marysia Zalewski and Jane Parpart directly captured such an approach as ‘the “man” question in international relations’.9 I would like to suggest that for those sceptical about feminist International Relations, Zalewski’s introductory chapter, ‘From the “woman” question to the “man” question in International Relations’, offers an impressively transparent way in to its substantive terrain.10 Reflecting critically on the editors’ learning process in preparing the volume and working with its contributors, both men and women, Zalewski discusses the various modifications through which the title of the work had moved. These included at different stages the terms ‘women’, ‘masculinity’ and ‘feminism’, finally ending with ‘the “man” question’—signalling once again, I suggest, tensions between theory and practice, the difficulty of escaping the concrete dominance of the male subject position in the realm of international relations. ¶ The project’s starting point revealed a faith in the modernist commitment to the political importance of bringing women into the position of subjecthood. We implicitly accepted that women’s subjecthood could be exposed and revealed in the study and practice of international relations, hoping that this would also reveal the nature of male dominance and power. Posing the ‘man’ question instead reflects our diminishing belief that the exclusion of women can be remedied by converting them into subjects.11 ¶ Adding women appeared to have failed to ‘destabilize’ the field; so perhaps critically addressing its prime subject ‘man’ head-on could help to do so. ‘This leads us to ask questions about the roles of masculinity in the conduct of international relations and to question the accepted naturalness of the abundance of men in the theory and practice of international relations’ (emphasis added).12 ¶ The deeper level of ontological revisionism called for by feminist Inter- national Relations in this regard is as follows. Not only does it press beyond the appearance of international relations as a predominantly masculine terrain by including women in its analysis, it goes further to question the predominant masculinity itself and the accepted naturalness of its power and influence in collective (most significantly state) and individual forms.

#### The K comes first - policies are constituted by and produce subjects, not blanket assessments of outcomes and impacts.

Bacchi 16 (Carol, University of Adelaide, Adelaide, South Australia, Australia, (2016): Policies as Gendering Practices: Re-Viewing Categorical Distinctions, Journal of Women, Politics & Policy, DOI: 10.1080/1554477X.2016.1198207, JKS)

One important constitutive effect is how we are produced as subjects through the problematizations implicit in such texts, a process described as “subjectification” (Bacchi 2009, 16–17). For example, Foucault (1980) argues that specific problematizations of sexuality (e.g., sexuality as moral code, sexuality as biological imperative) create “subject positions” that enjoin people to become particular kinds of sexual subjects (see Howarth and Griggs 2012, 308). Marston and McDonald (2006) describe how individual subjects are produced in specific policy practices “as worker-citizens in workfare programs, as parent-citizens in child and family services or consumer-citizens in a managerial and marketized mixed economy of welfare” (3). Given the proliferation of practices, the formation of one’s subjectivity is an ongoing and always incomplete process: “the doer/subject/person is never fixed, finally as a girl or a woman or whatever, but always becoming or being” (Jones 1997, 267). Subjectification effects therefore are neither deter- mined nor predictable. People sometimes take up subject positions in ways that challenge hierarchical relations. For example, the discourse of rights creates as one possible positioning that of the human rights advocate. Moreover, as practices “through which things take on meaning and value” (Shapiro 1988, xi), policies have material (lived) effects, shaping the possibilities for people’s and peoples’ lives (Bacchi 2009, 16–18). Policies achieve these constitutive effects through discursive practices, which comprise the “conditions of emergence, insertion and functioning” of discourses (Foucault 1972b, 163), and hence bridge a material-symbolic distinction (Bacchi and Bonham 2014). A particular conception of power underpins an understanding of policies as constitutive practices. Power is conceptualized as productive rather than as simply repressive. Power is not considered to be something people possess (e.g., “he or she has power”) but as a capacity exercised in the production of subjects and objects (Heller 1996, 83). This productive or generative view of power does not conclude that power and resistance are necessarily equal in their effects, however. Such a conclusion would deny the hierarchies by which the organization of discourse takes effect (see Howarth and Griggs 2012, 310). This understanding of policy as constitutive of subjects and objects sits in sharp contrast to conventional views of the policy process, which, in the main, can be characterized as reactive. That is, in general, policy is considered to be a response to some condition that needs to be ameliorated or “fixed.” Policies are conceived as “reactions” to “problems.” By contrast, the understanding of policy offered in this article portrays policies as constitutive or productive of (what are taken to be) “problems,” “subjects,” and “objects” (Allan 2010, 14). It follows that it is no longer adequate to think in terms of conventional policy “outcomes,” understood as the results or “impacts” of government actions. New questions are required, such as the following: What does the particular policy, or policy proposal, deem to be an appropriate target for intervention? What is left out? How does the shape of the proposal affect how people feel about themselves and the issue? And how does it produce them as particular kinds of subjects?

### Case