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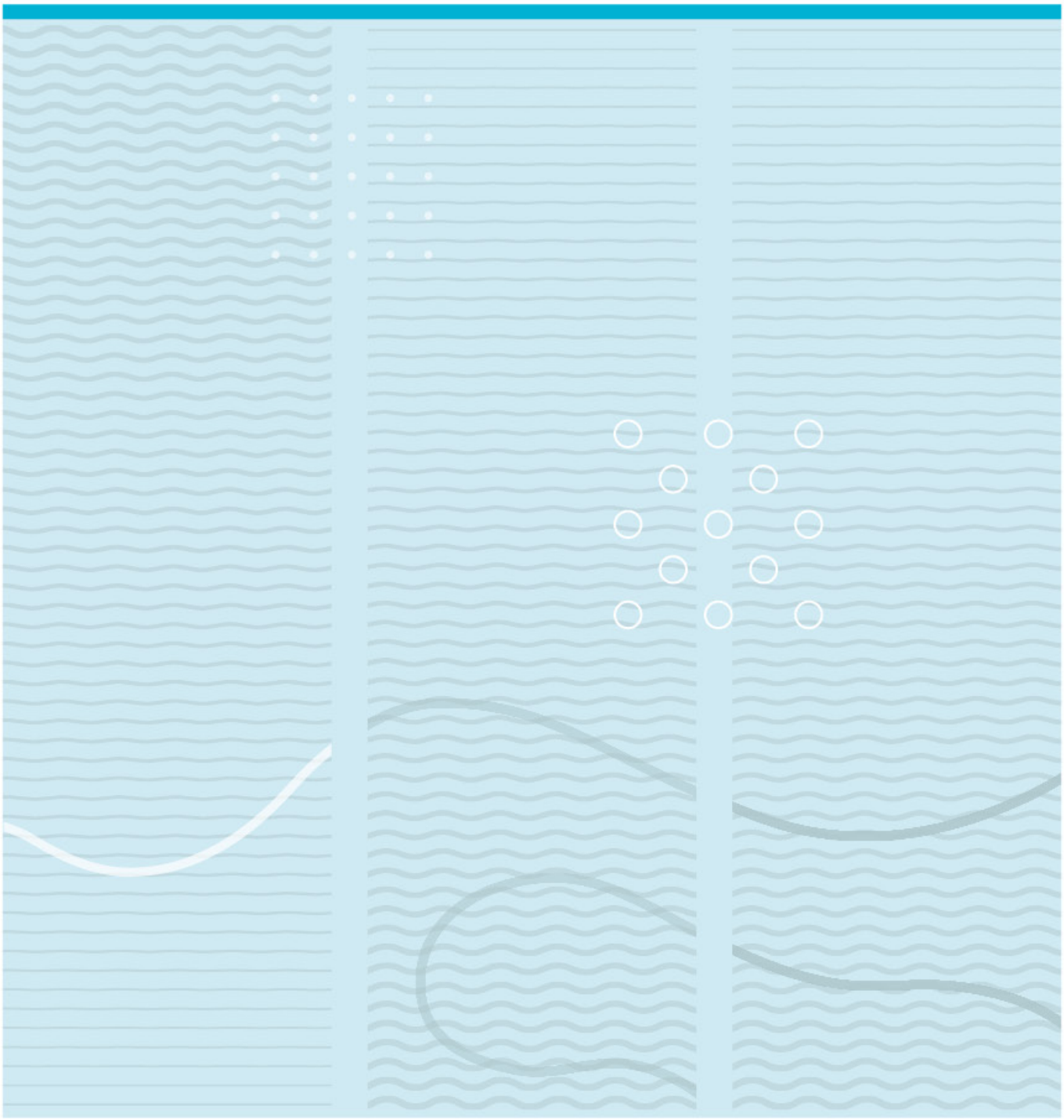
AN AMERICAN IMPERATIVE

THE UNITED STATES OF AMERICA'S POWER IN 21st CENTURY CHALLENGES TO INTERNATIONAL LAW



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This thesis is worth 45 study points

Summary

The thesis will work to define a modern American Imperative, and how it introduces new age challenges to international humanitarian law and international human rights law with the introduction of combat drones in anti-terror targeted killings by virtue of American exceptionalism. It examines the foundation of the United States of America to better understand the cultural ideals rooted in America's rise to a superpower, how America uses that power to achieve its foreign policy goals in the War on Terror, and how those actions affect international law.

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Foreword

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Thank you.

For evermore,

Nicholas Eristavi
Drammen, 15 February 2022.

1 Introduction

The United States of America is the leading manufacturer and exporter of weapons in the world according to a fresh report published by the Stockholm International Peace Research Institute (2021). The country has constantly been an innovating force and architect of modern military weapons technology, arguably since the development of the Trinity Project, the program that would birth the first nuclear weapons that would end the Second World War. The obtainment of nuclear weapons and the fact that the American economy remained unaffected by the WWII, secured the United States its position as an emerging superpower alongside the Soviet Union, both igniting the Cold War in a bipolar international global system. As the years progressed, nuclear weapons become superseded in some sense given that the belief in mutually assured destruction made the threat of a nuclear post-apocalyptic dystopia a relic of the Cold War. The new arms race became weapons of autonomous types.

Unmanned Aerial Vehicles, or UAVs, have been in use for reconnaissance purposes for a long time. The use of air-based reconnaissance is not a new concept, neither is dropping explosive armaments from the air. Prior to the invention of war planes, it was airships or blimps that were a common delivery system for bombs. As modern airplanes became more popular, the technology to launch unmanned aerial reconnaissance missions flourished, particularly during the Cold War. A defining characteristic for UAVs came when they were equipped with weapons for use in clandestine operations conducted by U.S. military and intelligence agencies, often mischaracterized colloquially as “predator drones”. A better term would be unmanned combat aerial vehicles, UCAVs, or just combat drones. The use of armed reconnaissance aircrafts was already a thing in the late 1980s-early 1990s.

Consequently, the new vice became weapons capable of deployment without a human pilot. In this area, the United States became a leading force since the 11 September attacks in 2001 that would become the inaugural world event that launched the infamous War on Terror and put international law to the forefront, as the respective invasions and occupations of Afghanistan and Iraq were taking place throughout the first decades of the 21st century. President George W. Bush would lead the increased usage of these weapons by authorizing the use of these weapons to target military leaders within Al-Qaeda (Sterio, 2012, p. 198), the terrorist organization responsible for the 9/11 attacks on the United States. This practice raised several issues when President Barack H. Obama on 30

September 2011 authorized the killing of alleged Al-Qaeda affiliate Anwar al-Awlaki, an American citizen residing in Yemen (Sterio, 2012, p. 198). This marked the first time that an American citizen had been killed by the U.S. government abroad without due process. Extrajudicial killings by semi-autonomous weapons raised not only constitutional issues within the United States, but also serious ethical questions regarding international law.

Thus, it is imperative to examine the founding of the United States to understand the role it is playing, and indeed has played, in the development of international law and human rights discourse. The power of the United States is indeed exceptional, and as a superpower it carries enormous influence towards the international community. Its proliferation of UCAVs has arguably started a new age of warfare in which international law is being challenged in ways it has not before with regard to the nature of artificial intelligence and autonomous capabilities. It is pertinent to understand how the United States obtained this power, what forces lie behind the foreign policy it is developing, and how does elements have exhibited an American Imperative.

1.1 Issue

Given the United States' increasing development and use of unmanned combat drones, the lack of regulation for use on weapons of an autonomous nature, is arguably providing challenges to international law and human rights. One could contend that combat drones and loitering munitions have played a greater role in warfare in recent years. In the 2020 Nagorno-Karabakh war, for instance, Azerbaijan's victory over Armenia is due to their access to combat drones and loitering munitions from Turkey and Israel, respectively (Deutsche Welle, 2021). But their more traditional use is what is usually under most scrutiny by humanitarian organizations. For example, under the administration of President Joseph R. Biden Jr. during the evacuation of American embassy personnel in Afghanistan, a combat drone on 29 August 2021, killed what the U.S. believed to be a terrorist operative looking to attack the evacuation the Kabul International Airport (Savage et al., 2022). This raises serious questions regarding ethical challenges to international humanitarian law and human rights, as well semi-autonomous weapons, and their role in challenging human rights ethics. The United States' role in both the initial and continuing proliferation of combat drones is certainly an important factor.

1.1.1 Research Question

How does American power provide 21st century ethical challenges to international law and human rights with the emergence of semi-autonomous weapons technologies for use in anti-terror operations?

1.1.2 Abbreviations

- 9/11 – 11 September 2001 Terror Attacks on the United States of America
- AI – Artificial Intelligence
- ICC – International Criminal Court
- U(C)AV – Unmanned (Combat) Aerial Vehicle
- UN – United Nations
- US(A) – United States (of America)
- WWI – World War I
- WWII – World War II

1.2 On the Foundation of the United States of America

1.2.1 The New World: Native Americans and Arrival of Europeans

The story of the United States began at a time where no such country yet existed. Before the arrival of any European, North America was just inhabited by indigenous Native Americans. Only by the end of the 15th century did a Genoese sailor by the name of Christopher Columbus became the first European to stumble across the West Indies (Axtell, 1992, p. 26). This happened to be the first step to becoming acquainted with both the land and its indigenous inhabitants. The actual Native American population remains a matter of debate but is estimated to have been between 10 million and 75 million, of which 2 million to 10 million resided within the territory now known as the United States (Delâge, 1993, pp. 43-44; Grant, 2012, p. 21).

White English migrants would ultimately start migrating to North America to establish colonies on the East Coast in the early 17th century, as British merchants in West coast ports on the British Isles dreamed of making their fortunes in America (Delâge, 1993, p. 243). It was then that the New World shifted from being seen as a source of profit to a place of settlement. The English went from observing the land and its peoples to inserting themselves into that environment, i.e., their ambitions, aspirations, and imaginations, to the reality of America as a lush and fertile land (Grant, 2012, p. 41). This marked the start of the process that would ultimately disinherit, if not entirely destroy, America's indigenous societies by virtue of a colonial culture predicated on Old World values (Grant, 2012, p. 32).

The Virginia Company of London, a joint-stock venture created by royal decree to establish colonial settlements in North America, began distributing land to settlers arriving from Europe in what is today known as the Commonwealth of Virginia in the United States. This proved to be problematic as the land that they had distributed to the new arrivals was already occupied, and the settlers were not entirely convinced if it was within their legal rights to acquire it (Grant, 2012, p. 41). A quote by Robert Gray from *A Good Speed to Virginia* (1609) ponders; "by what right or warrant can we enter into the land of these savages, take away their rightful inheritance from them, and plant ourselves in their places, being unwronged or unprovoked by them" (Grant, 2012, p. 41). Between 1619 and 1625 there had settled 4800 emigrants in Virginia, and by 1640 their numbers had risen to 8000 (Delâge, 1993, p. 244).

A stark competition began to gain traction to seize control of the land and flow of resources in America amongst the colonial powers of the Old World. The English had established themselves strongly in the New World for decades, and the Dutch Empire had taken notice. By the 1630s, the Dutch realized that the sharp rise in emigration from the British Isles to North America might cost them dearly (Delâge, 1993, p. 244). The Dutch instituted reforms to their policies that allowed for an escalation of settlement in in their colonial possessions North America, New Netherland, situated on the territory of present-day New York State, particularly on the island of Manhattan in New York City. The Dutch were geographically sandwiched between the French and the English, however. The French had established New France north of the Dutch in the modern-day Canadian provinces of Québec and Ontario and spanned Southwest towards the French Louisiana territories, spanning from the Great Lakes to the Gulf of Mexico, and from the Appalachian Mountains to the Rocky Mountains. The British colonies were located both in the North and the South, i.e., New England and the Chesapeake colonies.

The Dutch attempts to further colonize New Netherland didn't seem to halt the emigration from the British Isles (Delâge, 1993, p. 245). The Dutch were therefore demographically overwhelmed by the mere fact of their late reaction to the rapid expansion of migration from the British Isles. British people were emigrating under different circumstances then the Dutch, and thus were granted an advantage in a mass exodus by the peoples of the British Isles. There were several motives for the British exodus to America. These included economic depression between 1615 and 1630, the colonization of Ireland, cumulative impositions on the peasantry by enclosure in the 1620s, and religious persecution (Delâge, 1993, p. 246; Draper, 1996, p. 29). This made it easier for folks to seek new adventures by their own accord as opposed to the Dutch who had to incentivize people to leave for the New World. As such, where the Dutch usually gained the upper hand in their enterprises, they found themselves on the losing ends of things in the New World (Delâge, 1993, p. 245).

The English seemed to be the most successful in terms of the number of people they had settled in the New World. The French, as the Dutch, struggled in terms of settling people in their colonial territories in North America. French emigration remained minimal between 1608 and 1639, with only 296 colonists reaching New France, as the French were more interested in trade than in settlement (Delâge, 1993, p. 247; Grant, 2012, p. 49). However, by 1663 there was a total 3035 French living in

the Saint Lawrence valley of the French northern colonies, surpassing that of the Dutch, and thus gaining an advantage in the region (Delâge, 1993, p. 247).

The New World inevitably saw war come to its shores as bickering between the colonial powers of the Old World, on matters not necessarily about colonies, broke out into outright hostilities. The French, English, and the Dutch allied themselves with different Native American tribes to war against their respective colonial possessions in the New World, while conventional war was being fought in Europe. The wars were costly for the Dutch and its Dutch West India Company (Delâge, 1993, p. 290), which was fighting wars not only in its New World namesake, but also in its home territories as the English and French invaded in a joint effort. To end the war, the Dutch Republic agreed to cede its colony of New Netherland to the English following the 1674 Treaty of Westminster (Aarebrot, 2016, pp. 15-16). It was promptly renamed New York. The English had with this acquisition cemented its power in the New World and ousted the Dutch Republic, leaving only the French as the sole true contender for the battle of North America. The English had shortly thereafter, begun stripping the colonists of their rights to colonial assembly (Grant, 2012, p. 76). The beginning of many affronts that ultimately would lead to rebellion in the colonies.

> Hindsight advises us that the American Revolution, or War of Independence, did end with the separation of Britain's colonies from the 'mother country' in 1783. Not gifted with foresight, the colonists in the early 17th century were hardly preparing to declare independence in 1776, nor gearing themselves up for the war necessary to achieve it. Yet in some senses they were doing precisely that, because there were two dominant features to American colonial life: change and war. (Grant, 2012, pp. 78).

1.2.2 Build-up to Independence: Foundations for Discontent and Rebellion

By the turn to the 18th century, the newly formed Kingdom of Great Britain had control over almost the entire Eastern seaboard, except for Spanish Florida. Between 1700 and 1770, the population of the British colonies soared from 265.000 to 2.3 million. North America was still a theater of war in terms of colonial politics among the powers of Europe. Britain and France would constantly contest each other's position in America. This culminated in the Seven Years War, a war ultimately fought for global supremacy between the British and the French. In North America, the colonies of England and France fought over contested land. The war went badly for the British for several years, but a string

of victories on the American continent turned the tide for the British, as they managed to capture Guadeloupe, a French Island in the West Indies, and Québec, the crown jewel of French Canada in late 1759 (Draper, 1996, pp. 4-5). As such, the British were well positioned to determine the future in North America.

Both the British and the French were tiring of the war, and even though peace seemed elusive, it would come only three years later early in 1763 (Draper, 1996, p. 5). In the meantime, the British launched a so-called "pamphlet war", the subject being centered around whether to cede Canada or Guadeloupe back to France in a potential peace deal because the British saw it as unlikely that the French would agree to cede both territories (Draper, 1996, p. 5). This evolved to a rather profound discussion among top British government officials and citizenry as to the advantages and disadvantages of the two territories, and how it would shape the future. These pamphlets often argued the value of either territories or attempting to predict consequences. The arguments in favor of keeping Guadeloupe, was commercially more desirable for the British as it was the most lucrative of the French sugar islands. Some predicted, however, that the removal of the French threat for the colonies would ultimately provide British America with the ample motivation to seek independence. This notion was not a new one, in fact, colonists had predicted this several years prior.

In 1748, a Swedish botanist, Peter Kalm, had already made the same observation. He had been told by Englishmen, both in America and in Europe, that in the space of thirty or fifty years, one could see the transformation of British colonies in North America into a state entirely independent from Old England, and coincidently, thirty years from 1748 happened to be 1778, three years into the American Revolution (Draper, 1996, p. 10). The notion of ceding Canada back to the French only to check British America's ambitions seemed to anger many, particularly an American colonist residing in England. That man was Benjamin Franklin, who had arrived in London in 1757 as a diplomatic agent for the colonial Province of Pennsylvania (Draper, 1996, p. 11).

Ironically and cunningly, Franklins published pamphlets attempted to convince the British that American independence was far-fetched. Ironic and cunning, only because years prior he had argued that British America should unite in a confederation with tax raising powers, to finance a colonial army to combat French and Native American aggression during the Seven Years War. Franklin argued that American expansion should not be considered a threat, but rather as a commercially beneficial

venture for British manufacturing, ultimately messaging that Britain should favor Canada, and that the uneasiness for American secession is unwarranted (Draper, 1996, pp. 13-14). In the end, the pro-Canada party prevailed, as by 1761 the French were resigned to cede Canada for keeping Guadeloupe, even so, the peace would come two years later (Draper, 1996, p. 17).

The colonists themselves had done nothing to warrant fears of independence, Franklin in fact did his best to avert the very idea from public discourse (Draper, 1996, p.24). What finally began to draw colonial groups together was not warfare itself, but rather the long-term effects of the rural settlements, particularly in Pennsylvania and Virginia, such as devastated communities, widows, and orphans (Grant, 2012, p. 90). Following the end of the Seven Years War, the colonial communities also faced economic depression and inevitable tax raises. Generally, this led to discontent among the colonists as some began feeling disenfranchised from Great Britain. England, as it turned out, lacked the machinery of government to supervise the colonies closely early on (Draper, 1996, p. 30). Therefore, there were several reorganizations of the colonial system throughout the colonial period, which allowed for some forms of local governments in the colonies. In the beginning there were Charters issued by the English Government, stating that colonial subjects in the New World would be afforded all the same rights as that of an Englishman residing in England. Later, the colonial charters became vaguer on the rights of people living on colonial land in North America, which permitted for colonists to fill in the gaps by their own accords. In Massachusetts, for example, their Charter decreed that the Governor was to be elected by a general court and a convocation of freemen, paradoxically granting residents of that colony far greater liberties than that of Englishmen in England (Draper, 1996, pp. 33-34). In general, all colonies had a Governor, a council, and an assembly of some sorts, though it varied from colony to colony (Draper, 1996, p. 34). And by 1770 the number of colonists, so-called Americans, living in British colonial territories in North America had doubled to two million from the one million it was in 1750, and thus population gave Americans their first demonstrable sense of present and growing power (Draper, 1996, p. 103, 107).

By this time, the British Empire had doubled their national debt, and following their gains ceded to them by the French from the Seven Years War, had new colonial territory to defend in the New World, which was costly. To remedy this, the British had barraged the Americans with a series of Acts, Proclamations, and legislation which was unprecedented, and made the Americans naturally concerned by the sudden increased interest in their affairs (Draper, 1996, p. 209; Grant, 2012, p. 92).

The Americans had voiced strident opposition to the increase of duties on imports, and the attempts to control credit by banning the production of paper money in the colonies pursuant to the Sugar Act and the Currency Act of 1764, respectively (Draper, 1996, p. 209; Grant, 2012, p. 92).

The stamp Act of 1765, decreeing special stamps to be affixed to all documents and newspapers, managed to upset everyone and father the Stamp Act Congress, a meeting among representatives from the colonies, that managed to repeal the Act (Grant, 2012, p. 92). The British answer was to take things one step further, and seemingly punish this act of insolence by the Americans. The Declaratory Act of 1766 accorded the British parliament "full power and authority to make laws and statues of sufficient force and validity to bind the colonies and people of America, subjects of the Crown of Great Britain, in all cases whatsoever", and was imposed in place of the Stamp Act (Grant, 2012, p. 92). The Stamp Act however, had spawned unrest in many of the largest settlements, particularly in Massachusetts as the group which would become known as the Sons of Liberty, started translating hostile words into action. The violence proved to be contagious and would reach Rhode Island and New York shortly after (Draper, 1996, p. 250).

Meanwhile in Britain, the news from America plunged British politics into turmoil, as the British establishment had become obsessed with what transpired across the Atlantic Ocean (Draper, 1996, p. 276). As it happens, the governments at the time of these crises were considered weak, and in fact were weak (Draper 1996, p. 276), as evidenced by the actions committed by the British governments thus far, because

> to the British, each of the measures made good sense. No one decision stood by itself; each created the necessity for the next. All seemed to follow reasonably and inexorably from the legacy of the Seven Years' War. The greatest military triumph of the century had in no more than a few months given rise of the greatest British crisis of the century. If there had been no war and no victory, there would have been no newly acquired western territory and no problem of what to do with it. If there had been no vast new territory, there had been no Proclamation of 1763, there would have been no need for an army on the spot to enforce it. If there had been no increase of the British Army in North America, there would have been no incentive to make the colonists pay for at least part of its cost. If the cost had not been so high, the additional revenue from the Sugar Act would not have been needed. If the revenue

> from the Sugar Act had been enough, there would have been no need to get additional revenue from the Stamp Act. Throughout this period the huge debt built up during the war haunted the British ministers and made them almost desperate for means to cut it down or at least not add to it. (Draper, 1996, pp. 209-210).

As such, the consistent succession of weak and unstable British governments came at the worst possible time for British rule in America, and the extreme disorder in the British political body made it possible for the next stage of the American crisis to take the form of three notorious Acts, commonly known as the Townshend Acts of 1767 (Draper, 1996, p. 298). These Acts were the prelude to what eventually gave birth to the expression "no taxation without representation". There were three main Townshend Acts; 1. the Restraining Act, aimed at punishing New York's refusal to provide for British troops by nullifying all their legislation, 2., the Commissioners of Customs Act, which allowed for administrative changes to tighten British control of American commerce, and finally 3., the Revenue Act which imposed import taxes on glass, lead, paints, paper, and tea (Draper, 1996, p. 299). This of course led to more civil unrest in Boston, Massachusetts, which did not come as a surprise to Benjamin Franklin, who was still residing in London at the time.

The one thing missing thus far, was blood in the streets, as the colonists had only resorted to bloodless victories, such as the repeal of the Stamp Tax and most of the Townshend Acts, but both Brits and Americans knew that nothing had fundamentally changed and that they were on course for further clashes (Draper, 1996, p. 356). In British America, Boston was predominantly well known as the main instigators of riots and unrest at this point, and naturally the next stage would also play out here. The resentment among the population of Boston towards the British army garrison stationed there was high. Benjamin Franklin had predicted in 1768 that British military presence would ensure that first blood would be drawn and once that happened that "there is no foreseeing how far the mischief may spread" (Draper, 1996, p. 356). In early 1770, his fears came to fruition, as the public and soldiers clashed in terms of exchanging unpleasantries, and a mob had attacked a British sentry. A British relief party had arrived led by Captain Thomas Preston, and the crowd taunted them to fire, someone, seemingly not, Capt. Preston shouted to fire, and shots rang out from the outnumbered soldiers (Draper, 1996, p. 358; Grant, 2012, p. 93). This became known as the Boston Massacre. However inflammatory, the Boston Massacre was not the catalyst for a mass uprising against the British, especially as John Adams had vindicated Captain Preston in court (Draper, 1996, p. 358; Grant,

2012, p. 93). What actually would instigate the Revolutionary War, was strangely enough tea, and of course in Boston, Massachusetts.

The British government had become dedicated to the policy of forestalling the movement for American independence. And if the American radicals prayed for the British government to make the wrong move, their prayers were about to be answered (Draper, 1996, p. 388). With the repeals of the Stamp Act, and most of the Townshend Acts, a threat had emerged for the British as its East India Company was nearing bankruptcy. In May 1773, Parliament passed the Tea Act, which was designed to undercut American smuggling of tea, and as it happens, five-sixths of the tea consumed in Massachusetts had been smuggled (Draper, 1996, p. 390). As the news had reached the colonies by October of that same year, the colonists had denounced the Act in many of the colonies. On 5 November 1773, three East India Company ships had docked in the Boston harbor and were boarded by colonists disguised as Native American Mohawks to spill tea worth £10.000, approximately £1.5 million in 2020, into the bay (Draper, 1996, p. 393; Grant, 2012, p. 94). By December, Boston in practice was lost to the British Empire from here on.

The point of no return was reached in 1774, when the British as a punitive measure, enacted the Boston Port Bill, instructing all halt to Boston's naval commercial traffic, in effect imposing a blockade on the harbor (Draper, 1996, p. 416). As a response, representatives from twelve of the thirteen colonies (Georgia was fighting a Native American uprising and could not send representatives), were dispatched to convene the first Continental Congress on 5 September 1774 in Philadelphia, Pennsylvania. This Congress did force the issue of uniting against a common enemy, only how that would be done was uncertain. The result was a Declaration of Rights, affirming the Congress' loyalty to the Crown, but disputing British Parliaments right to tax it, and should their grievances not be addressed in a timely manner, the Congress would reconvene, and the colonies would seize export to Britain (History, 2020). It disbanded on 26 October 1774 and would reconvene on 10 May 1775.

In the meantime, the Americans expected an attack from the British, and the different colonial local assemblies instructed towns to restock on military munitions, such as gun powder, balls, and flints (Draper, 1996, p. 491). In Britain, Prime Minister Frederick North, 2nd Earl of Guilford, better known by his courtesy title Lord North, had come under increasing pressure from King George III himself. The King had told Lord North in November 1774 that he was to treat the New England colonies as

rebellious, and that “blows must decide whether they are to be subject to this country or independent” (Draper, 1996, p. 484). Lord North instructed his cabinet to authorize a plan of conciliation. Basically, the government had rewound the debate to the Stamp Act, and offered to end the taxation of the colonies, with some exceptions. At this point in time however, the issue was not just the taxation itself, but whether the British Parliament had a right to levy it at all. Lord North insisted on the suspended taxation to be looked upon as Britain agreeing “to the suspension of the exercise of our right” (Draper, 1996, p. 485). A notion surely to be outright rejected by the Americans, purely based on the matter of principle when worded in such a manner. By then, it was inevitable. War was imminent.

The break in the deadlock came when the British had tasked General Thomas Gage, the military appointed Governor of Massachusetts, to launch a preemptive strike and seize the colonies of Massachusetts, Rhode Island, and Connecticut (Draper, 1996, p. 494). The general had pleaded for 20.000 men to be able to wage war on the colonies for years, but was never heard, and told to make do with his 4000 men. The message was dispatched from London in late January of 1775 and arrived in America in mid-April of the same year. General Gage had decided to launch an attack to destroy a colonial arms and supply depot in Concord, Massachusetts, and had hoped to carry out this mission before the Americans became aware (Draper 1996, p. 496). General Gage dispatched 700 men to attack Concord, but they were met with stark resistance. 450 colonial militiamen, or Minutemen, were managed to repel the British force, and would have wiped them out had they not retreated to Lexington and called for 1000 reinforcements, which promptly arrived (Draper, 1996, p. 497). This later became collectively known as the Battles of Concord and Lexington and marked the start of hostilities between what would become the United States of America, and the British Empire. The Revolutionary War had thus begun. It would result in a completely independent state from the British Crown. Ultimately, the existential threat generated by the British Empire became a contributing factor to what drove the colonists to free America, and in many ways why a collective ethos of “us against the world” has been engrained in the soul of the United States.

1.2.3 The American Revolution: Declaration of Independence and Formation of a Republic

Delegates from the thirteen colonies reconvened on 10 May 1775 in Philadelphia as the Second Continental Congress. They had not yet taken a stance on either independence from or reconciliation

with the British, and thus far only ordered the different militias to act defensively rather than offensively. However, the capture of Fort Ticonderoga in New York, on Ethan Allan and Colonel Benedict Arnold's own initiative, coincided with the convening of the Second Continental Congress, and news of the Fort's capture arrived seven days later, on 17 May (Middlekauff, 2007, pp. 195-197). An action no one could endorse as a defensive act. This, among other things, demonstrated the need for a centralized military force, rather than having separate militias roam the colonies. According to Middlekauff (2007), on 14 June the Congress issued a resolution forming the Continental Army, banding together rifle companies from different colonies, and appointed a delegate from Virginia to lead this new army; George Washington. Only days after General Washington's appointment, on 17 June, British forces clashed with New England militias in the Battle of Bunker Hill, which turned out to be a bloody and indecisive victory for the colonies (Grant, 2012, p. 110; Middlekauff, 2007, p. 201).

In April 1775, months before the appointment of George Washington as commander-in-chief of the Continental Army, New England militiamen had laid siege to Boston in order to halt any British advances. Upon General Washington's arrival in Cambridge on 2 July, two weeks after the Battle of Bunker Hill, he discovered that the British Army had garrisoned itself in Boston (Middlekauff, 2007, p. 208). To lift the siege and liberate Boston, General Washington knew he needed heavier artillery than what he had at his disposal at the time. In November 1775, he ordered Colonel Henry Knox, a military officer under his command, to bring to Boston the captured artillery from Fort Ticonderoga in Upstate New York to help the Continental Army free Massachusetts Bay of the British (Middlekauff, 2007, pp. 223-224). Colonel Knox arrived with the artillery in January 1776. By now, General Washington had at his disposal a substantial number of men, approximately 16.000, and more than fifty pieces of heavy artillery (Middlekauff, 2007, p. 223).

It was lengthy siege indeed, almost eleven months would pass before any decisive resolution would come. In February 1776, his War Council proposed to fortify Dorchester Heights with the captured artillery and canons brought to Boston by Colonel Knox (Middlekauff, 2007, p. 224). Dorchester Heights was chosen due to its strategic overview of the Massachusetts Bay, consequently managing to establish a threat against British supply lines arriving in Boston. While the equipment was being readied by soldiers in Dorchester Heights, Gen. Washington began assembling his troops in Cambridge for an assault on Boston in case the British would launch troops against Dorchester Heights (Middlekauff, 2007, pp. 224-225). Nothing happened as the British sat tight in Boston,

allowing the artillery to be set up overlooking Boston and its bay. Everything was ready on 1 March 1776 and over the next fortnight, General Washington commenced a series of bombardments on Boston. Colonel William Howe, 5th Viscount Howe, who had been dispatched from London to break the siege of Boston, and to relieve General Gage of his command, saw by now that there was no choice but to evacuate the city and embarked his troops and equipment on their ships in the Bay (Middlekauff, 2007, p. 225). By March 17, the last ships were loaded and departed Boston.

While the British Army was withdrawing from Boston, the second Continental Congress was amidst deliberations of whether it would seek independence. They had received word of Parliaments enactment of the American Prohibitory Act, which halted all trade with the colonies, and described them as "traitors", "rebels" and "enemies" (Middlekauff, 2007, p. 229). The notion of reconciliation seemed far-gone, and the Continental Congress acted accordingly. In several of the colonies, they began issuing new authorities to old local colonial governments, allowing for the reinstatement of old charters, essentially emboldening the colonies to declare themselves self-governing (Middlekauff, 2007, p. 229). The Continental Congress already had, in the early months of 1776, begun referring to the colonies as "these United Colonies", when issuing orders to outfit vessels with armaments to defend the coast against the enemy (Middlekauff, 2007, p. 234). During the spring of that year, some colonial legislatures handed out permissions for their delegates to the Continental Congress to vote for independence if need be. By this time, the notion of independence seemed inevitable, as news from Great Britain suggested that German mercenaries were being added to the force sent to bring the colonies to their knees.

Congress decided to hold any decisions on independence until July 1776, and appointed John Adams, Benjamin Franklin, Roger Sherman, Robert R. Livingstone, and Thomas Jefferson to a committee tasked with drafting a declaration of independence if the need should arise, and by June 28 all colonial legislatures, but that of New York's, had authorized their delegates to vote for independence (Middlekauff, 2007, p. 236). On 4 July 1776 the delegations from the thirteen colonies approved the Declaration of Independence. Its famous line from the preamble is what is generally most remembered; "we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness" (Grant, 2012, p. 96; Middlekauff, 2007, pp. 238-239). The Declaration laid at

the feet of both the Parliament and the King, the blame for the crisis between the Kingdom of Great Britain, and now the United States of America.

In early September 1776, George Washington found himself in a great predicament, for his success in routing the British from Boston came at a cost. As it turns out, Howe, now promoted to the rank of General, had set sail for the New York Bay when he fled from Massachusetts after the siege in Boston. He had made it clear to General Washington that New York was not the same as Boston, when he had smashed the American forces on Long Island (Middlekauff, 2007, p. 243). General Howe had begun receiving reinforcements from Britain, his forces now estimated to 30.000 men attacked the island of Manhattan and following several engagements with General Washington's forces, New York City had fallen to the British, as well as several other large American cities, most of which, New York in particular, would remain occupied throughout the remainder of the war (Grant, 2012, p. 110). From here on in, American fortune would turn for the worse, and they would not improve until the spring of 1778, as General Washington, it would turn out, would lose more battles than he would win (Grant, 2021, p. 112). He gave a gloomy prognosis to the Continental Congress, but little did he know, an ally was operating in the shadows.

A bitter French Empire dreaming of revenge ever since their defeat in the Seven Years War at the hands of the British, was observing the war, closely contemplating whether they should intervene on behalf of the American cause. The Continental Congress had in fact already in 1775 sent out feelers to finds out how the French regarded the American rebellion (Middlekauff, 2007, pp. 296-297). They had ultimately decided to not seek French aid, seeing as how congressional delegates were still keen on reconciliation with the Crown at the time. According to Middlekauff (2007), the French government had already clandestinely aided the efforts of the Americans by lending them money for munitions. Congress had dispatched a delegation led by Benjamin Franklin to Europe to confer with the French regarding an alliance treaty. This supposed treaty would not only have the French recognize the United States as an independent nation but would also have the French enter the war against the British. The parties came to a satisfactory end and signed treaties of commerce and alliance in early February 1778, and by 14 June France and Great Britain were at war (Grant, 2012, p. 112; Middlekauff, 2007, pp. 297-298).

The following events of the Revolutionary War is not significantly worth expanding on. The tide had shifted, and America geared for the next phase of their revolution, namely obtaining a formal British acknowledgement of their independence. The British found themselves in an awful predicament, seeing as how they were now fighting battles on multiple fronts, and British forces were spread thin. Over the next three years, the United States fought several battles in both New England and the southern territories against the British. The Declaration of Independence in 1776 freed America and broke the bonds of bondage. It was however not a nation. Not yet. At this point, the colonies were regarded as independent states, and it was not given that all thirteen states would join in a federation. The process of a new constitution would have to be resolved before any further action could be taken towards the establishment of a federal republic. In many ways this contributed to the notion of America as something exceptional: the foundation of the United States as the first, and to this day only, secular democratic federal republic.

1.2.4 The Western Frontier: Acquisition and Expansion

> America! America!
> God shed His grace on thee
> And crown thy good with brotherhood
> From sea to shining sea!
> - Katharine Lee bates, *America the Beautiful.*

Figure 1-1 shows a map of U.S. territorial acquisitions and the area controlled by the United States' thirteen states, starting with the formal British ceding of territory in 1783. It shows the gradual territorial expansion between 1783 and 1917. The expansion in the West continued with the acquisition of the Louisiana territories by President Thomas Jefferson in 1803. Between 1801-1802, upon discovering that Napoleon Bonaparte, the Consul of France, had seized the territory of Louisiana from the Spaniards, President Jefferson was concerned and initiated negotiations with France (Billington & Ridge, 2001, p. 37). The French were unwilling as Napoleon wanted to restore the France's presence in the New World. Napoleon's efforts would be short lived, due to rebellions in the Saint-Domingue, present-day Haiti, and the looming possibility of war with the British Empire in what would become the Napoleonic Wars (Monticello, n.d.). France realized that it could not supply forces to their dominions in the New World to stop the British from seizing the Louisiana territories from their Canadian colonies. Napoleon finally agreed to sell the Louisiana territory to the

United States (Billington & Ridge, 2001, p. 37), for $15 000 000, approximately $330 000 000 today, and would double the territory controlled by the U.S. by adding roughly 827 000 square miles or 2 000 000 square kilometers (Monticello, n.d.). As stated by Billington and Ridge (2001), the United States began throughout the decades to come to purge the Western territories of so-called “inferior races”, in this instance the Native American populations residing along the territories surrounding the Mississippi river.

Figure 1-1 Territorial Acquisitions of the United States of America between 1783-1917

The subsequent territorial acquisition was the purchase of Florida from the Spanish. There was some ambiguity regarding the territory of Louisiana and the border with Spanish West Florida (Stagg, 2009, p. 43). The French had seemingly given the United States the impression that West Florida was included in the Louisiana Purchase, though it later became known that the Spaniards disputed that notion. James Monroe, at the time the Ambassador to the United Kingdom under President Jefferson, found upon arrival in Madrid in 1805 an unwelcome development in that the French had recoiled from their previous claims regarding West Florida (Stagg, 2009, p. 43). As stated by Stagg (2009), the

United States had decided to purchase the Spanish Florida and the Spanish territory between western border of Louisiana and Spanish Texas, as opposed to seizing by force what they could not claim by right. Succeeding President Jefferson, Presidents James Madison and James Monroe would inherit the negotiations for Florida. Napoleon's betrayal of Spain in the Napoleonic War with the invasion of the Iberian Peninsula had weakened Spain in North America (Stagg, 2009, p. 43). Finally in 1819, the governments of the United States and Spain settled, and the West and East Florida, as well as territory in present-day Colorado, was ceded to the United States for $5 000 000 (Stagg, 2009, pp. 204-205; Weber, 2009, p. 128), approximately $110 000 000 today. While the negotiations with the Spaniards for Florida where taking place, the United States signed a treaty with the United Kingdom in 1818 for territories in present-day Canada, the Dakotas and Minnesota, as well as settling on borderlines between the two nations in North America.

The Viceroyalty of New Spain, encompassing territory between present-day California and Texas, and all the way through Mexico and Central America, was the administrative division representing the Spanish Empire in the New World. New Spain was unraveling due several violent separatist movements in both Central America and Mexico, and the latter became independent in 1821, and upheld the Spanish policy of encouraging Americans to settle in Texas (Silbey, 2007, p. 6). This policy worked all too well as many Americans from the United States migrated to Texas. The Mexican government encountered problems in the sense that the Americans outnumbered the Texans, and when the Mexicans adopted a new constitution in 1824, they rescinded certain rights from Texas and it was no longer considered an autonomous region within the first Mexican republic, i.e., the United Mexican States (Clemens Warrick, 2021, p. 27). Mexico also started restricting the number of settlers allowed to enter the Texan territory. American settlers in Texas became outraged and demanded for Texas to be allowed to enter Mexico as its own federal state, but to earn statehood a candidate territory would need a population of 80 000, double the population of Texas at the time in 1831 (Clemens Warrick, 2021, p. 27). The application for statehood was rejected by Mexico, and the Texans geared towards war.

In 1833, General Antonio López de Santa Anna, was elected President of Mexico. He abolished the constitution of 1824, which he himself helped to draft, and by 1835 he ruled Mexico as a dictator (Clemens Warrick, 2021, p. 27). President Santa Anna began cracking down on the American settlers in Texas. Following a kerfuffle with Mexican soldiers in the city of Gonzales in Texas, the Texan settlers

declared war upon the United Mexican States. The Texans formed a government and declared independence. The Texans won the Revolution, and after capturing President Santa Anna in combat, they negotiated a peace treaty and formed the Republic of Texas in 1836 (Clemens Warrick, 2021, pp. 98-101). It became known as the Lone Star Republic. According to Clemens Warrick (2021), President Santa Anna discovered upon his return to Mexico that he had been usurped, and that the new Mexican government didn't want to honor the treaty he had negotiated with the Texans. Ten years later, after constantly experiencing threats from Mexico, which never recognized its sovereignty, the Republic of Texas petitioned the U.S. for statehood, and became the 28th state of the United States of America (Clemens Warrick, 2021, p. 102). President James K. Polk signed the legislation on 29 December 1845, and the government of Texas formally initiated a transfer of power the next year at the inauguration of its first U.S. Governor.

In 1846 President Polk signed the Oregon treaty with the United Kingdom, which gave the United States full sovereignty over the Oregon Territory in the Northwest of the present-day United States (Moen, 2017, pp. 178-170). Meanwhile, the Mexicans, who never acknowledged the borders of the Texas Republic, and had now broken diplomatic relations with the United States following the annexation of Texas. Both the United States and Mexico dispatched troops to the disputed border along the Rio Grande River, and ultimately several skirmishes occurred where some American soldiers died (Moen, 2017, p. 180). This gave the United States cause to escalate things. On 13 May 1856, the U.S. Congress passed the Act which formally created the existing state of war between the United States and Mexico (Moen, 2017, p. 180). The war would last for almost two years. The Americans emerged victorious and settled peace with the Mexican government in 1848. This was formalized in the Treaty of Guadalupe-Hidalgo in which Mexico relinquished its claims to Texas, and ceded the entire territory from Texas to the Pacific Ocean for $15 000 000, approximately $529 000 000 today, in what would become known as the Mexican Cession of 1848 (Moen, 2017, p. 181).

The Gasden Purchase under the administration of President Franklin Pierce in 1854 for $10 000 000 (Moen, 2017, p. 206), approximately $332 000 000 today, would mark the final land acquisition that would form the contiguous United States. The United States had finally achieved its idealist and realist goal of securing territory fit for a nation of global ambitions, from "sea to shining sea". The U.S. would go on to acquire multiple territories overseas, for example the Hawaiian Islands, and kept expanding its global power. The United States found it unavoidable that it would have to export its own ideals,

and the end of the 18th century would mark a change in the United States' global ambitions in the war against Spain in 1898 (Melby, 1995, pp. 40-41). After going to war with Spain over Cuba in 1898, the United States acquired the territories of Puerto Rico, the Philippines, and Guam, as well as over the next two years annexing the Kingdom of Hawaii in 1898, Wake Island in 1899, and American Samoa in 1900 (Vox, 2016, 1:45). In addition, the United States kept building its military and navy. By virtue of the Monroe Doctrine having declared the Americas as a sphere of influence for the Unites States, the Americans would seize the Panama Canal Zone in 1903 and occupy the Dominican Republic in 1916 (Vox, 2016, 2:05), in what would become known as the Banana Wars. This period of rapid acquisition of far-flung territories put the U.S. on the map as a truly global power (Vox, 2016, 2:13). As a result, America began using its influence to protect its growing commercial and military interests abroad, for example installing pro-American regimes in places like Nicaragua (Vox, 2016, 1:45).

World War I show just how much America's influence had grown, resulting in American intervention being a decisive factor in the war's end (Vox, 2016, 2:33). In the interwar period, the United States was struck by a devastating financial crash in 1929, known as the Great Depression. This birthed in the Good Neighbor Policy from the Administration of Franklin D. Roosevelt, and ushered in an era of re-found isolationism, as American interests became domestically oriented. Ultimately, America's ever-growing entanglements abroad made it impossible to stay out of global affairs entirely, as its possessions in East Asia brought the growing Japanese Empire into direct conflict with the United States (Vox, 2016, 3:21). America's entry into WWII came after the Japanese Empire attacked the U.S. Naval bases in Hawaii, as well as British possessions in East Asia. It would later turn out that the Japanese thought that by attacking the Americans they would suppress their ambitions abroad, but instead awakened a sleeping giant. World War II would transform America's global presence forever (Vox, 2016, 3:39). Following the devastation of the Second World War, America emerged from the war more powerful than ever, and as such it was in a unique position to determine the conditions of the peace (Vox, 2016, 3:50). The United Sates had reached its true peak in the idealist and realist imaginations of its founding fathers, and achieved its "manifest destiny"

2 Theoretical Framework

2.1 American Exceptionalism

2.1.1 Sense of Escape, City Upon a Hill, and Manifest Destiny

When the first English puritans sailed into Massachusetts Bay in 1620, the colonies, and successively the United States of America, became a haven for all peoples fleeing religious and political persecution by the established governmental systems of their homelands (Melby, 1995, p. 22). Poverty was a reason for many to seek refuge in the New World, seeking new riches in the pursuit of happiness. It is out of this shared experience that the notion of a "sense of escape" was born. It became incumbent upon the political leadership of this new nation, that the systems of oppression that forced their ancestors to leave the Old World would not live on or reappear. Thomas Jefferson and James Madison were particularly adamant about the republic not developing into a tyranny (Aarebrot, 2016, p. 39). To prevent this, the colonists had to build a system that would contrast the old, a system of government that would be centered around a set of core values that would withstand the intrusions of Old-World ideas and influences (Melby, 1995, p. 22). This notion of exceptionalism already materialized itself even before foundation of the United States as an independent nation.

Its vision builds upon the main view that the United States, its political system, and its population represents something entirely unique, and therefore has a special responsibility in the world (Melby, 1995, p. 20). Thomas Paine wrote in "Common Sense" in 1774 that "the cause of America is in great measure the cause of all mankind", pointing to a reality that was in the not-too-distant future. Mainly that America would serve as "a city on a hill", exporting the values upon which its very own nation was founded (Melby, 1995, p. 21). President John Adams had reportedly said that "the United States will last forever, govern the globe, and introduce the perfection of man". This establishes different prerequisites for the operational nature of the American approach to global politics (Melby, 1995, p. 21). At this stage, when the puritans arrived, they idealized America as beacon to the rest of the world, but they would have to work hard to achieve this dream as they would have to break free from one of the world's greatest colonial powers. Global political domination seemed far off for the new Americans, and the "sense of escape" direction of American idealism led them to stick to an isolationist policy to keep the U.S. at an arm's length from Old World political institutions (Melby, 1995, p. 22). According to both Melby (1995) and Ignatieff (2005) the U.S. decided that instead of

pursuing an international profile, for the time being, the United States would rather act as a "city on a hill", and keep up with the messianic cultural tradition of Massachusetts Bay Governor John Winthrop, putting America on display to the world showing off its alternative governmental system to the corrupt and power-hungry state governance of the Old World. In a sense, America was early in showing off its own system as something unique to the world.

Exceptionalism isn't rooted only in the "sense of escape" branch. Comparatively, "manifest destiny" posed diametrically opposite implications on the American stance on foreign policy (Melby, 1995, p. 25). While "sense of escape" would prescribe a more inward and defensive style, "manifest destiny" would build on the notion that for the United States to reach its full potential of its exceptionalistic idealism, it would need to transform to an outward and offensive foreign policy (Melby, 1995, p. 25). For the United States, this meant that it had to strive to ensure that its interests on the global scene would not succumb to the hostile ideologies or traditional great power dynamics (Melby, 1995, p. 25). To achieve this role, the United States had to expand their territory beyond that of the thirteen states with which they had declared independence, as mentioned in chapter 1.3.4.

As the Western expansionism commenced at the hands of President Jefferson with the Louisiana Purchase, the ideology of the American ethos became cemented after centuries of struggle under British rule. At that time, no other country could be said to be so rooted to the traditions of idealism and realism, as that of the United States of America (Melby, 1995, p. 15). The United States' regional power came from their realist experiences, and allowed for the U.S. to play the European powers against each other. The way in which the Western exceptionalism was carried out, demonstrated with clarity the Americans' power-politics (Melby, 1995, p. 19). On 2 December 1823, President James Monroe launched a piece of foreign policy during his 7th annual State of the Union address to Congress. It demonstrated the willingness of the United States to oppose the colonial powers of the Old World, and to end their sphere of influence in the New World. In the address, President Monroe proclaimed the following:

> (…) the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers (…) We owe it,

> therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere, but with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States (…). (Monroe, 1823).

The wording of the Doctrine was by many considered to be idealistic push to manifest American influence and power in the Western hemisphere (Melby, 1995, p. 19). Idealism therefore constitutes especially as a central element in new American political thinking.

2.1.2 Traditions within American Exceptionalism

According to Melby (2004), in "Special Providence", Walter Russell Mead posits that America's role on the international stage is influenced by four traditions or waves that occurred in American society. These traditions are rooted in the soul of the American people, and thus dictated how the United States should act in foreign affairs. The traditions are commerce, missionary, isolationist, and pioneer. Melby (2004) suggests that the commerce tradition emboldens America's financial goals and corporate economic interests to influence how the United States should act. This essentially means that the United States would act according to the realist conception within Manifest Destiny imagination of the American role in global politics. This tradition is dealing with a wave in American society in which idealistic motives are subordinate to the usefulness of forming foreign policy (Melby, 2004, p. 102). It the followers of this tradition, according to Melby (2004), that pushed for increased American engagement in world affairs towards the end of the 18th century. It can be said to be closely related to America's fascination institutionalism in international affairs.

The missionary tradition is based on the American special form of idealistic moralism, i.e., the historic idealist view rooted in the Sense of Escape terminology that asserts the United States as a unique idealistic construction in the world. It can be said to be the opposite of the realistic views of the

commerce tradition. This idealistic mindset, and established ethos, enabled the United States to claim for itself the responsibility to maintain a set of liberal values in the international community (Melby, 2004, p. 103). As such, Melby (2004) states that the tradition builds on the notion that the United States is acting with different prerequisites and different, more noble motives than that of other great powers. According to the tradition, America has an historic obligation to defend its unique and special position in the world. Melby (2004) asserts that to construct a foreign policy of such nature, the United States would need to begin exporting its ideals to mitigate or eliminate the international conflict potential by harmonizing it. This gave the tradition a missionary bend, hence the name. Hitchens (2005), for example, contends that President Jefferson believed that American democracy was something that, not only could, but should be exported to the world.

The isolation tradition is grounded in the view of the United States as a freedom experiment built by people who had escaped oppression from the Old World, needed to be protected by not involving itself in the dangerous matters of the world (Melby, 2004, p. 105). This was the position held by the United States early in its founding prior to the beginning of its expansion. Melby (2004) claims that the United States could be viewed as an endangered way of life, and that it had to omit itself from world politics to not compromise on its idealist moral values by being dragged into foreign affairs. The city on a hill terminology, as described in the previous chapter, compliments the isolationist bend of this tradition. The United States was meant to stand as a democratic beacon to the rest of the world.

The Pioneer tradition, according to Melby (2004), indicates that the United States' political ideals being built on the inviolability of democracy and individual rights, made the United States liable by virtue of its own exceptional imagination, to apply comprehensive military power to defend itself and its ideals on the international stage. This became evident by America's gradual involvement in international affairs. The tradition is consisting of a peculiar blend of pessimism and optimism; pessimism in the sense that the world is view upon as an anarchy in which evil resides, and optimism in the sense that America can secure its interests in spite of the present evil in international politics (Melby, 2004, p. 113).

2.1.3 Types of American Exceptionalism

Michael Ignatieff's interpretation of American exceptionalism paints a critical picture of modern American exceptionalism, in which he faults the United States of maintaining a poor record regarding its recent foreign policy stances. According to Ignatieff (2005), there are three distinct types of American exceptionalism. The first type is so-called exemptionalism, building on the view that the United States exempts itself from international scrutiny. Ignatieff (2005) states that while America supports multilateral agreements and schemes, makes exceptions for American citizens or American practices. An example could be the unwillingness to conform to the Rome Statute of the International Criminal Court. Ignatieff (2005) make the point that exemptionalism is not the same as isolationism, as the United States is still promoting human rights and upholding defense alliances across the world. The second type of American Exceptionalism is that of double standards. Ignatieff (2005) asserts that the United States judges itself and its allies by different standards that it does other nations. An example here could be the United States being critical of a nation ignoring a UN report on abuses, say, and at the same time ignoring UN reports regarding its own abuses domestically. Ignatieff (2005) presents the third type as legal isolationism, in which he claims the attitude of U.S. courts as being exceptional to that of other countries.

2.2 International Law

2.2.1 International Law as a Concept

As an entity that consists of many different pieces of laws and precedents, international law indeed is a fragile system built in such a way that the legislative, executive, and judicial power is weak, as it is not subject to an overarching hierarchy in the same way as national laws (Johansen & Staib, 2009, p. 25). International Law as such, is a wide array of laws and treaties which regulate international relations between states. As a concept, it started taking shape around the conclusion of the thirty-years' war and the subsequent Peace of Westphalia in 1648. The Dutch jurist Hugo Grotius, which is considered a father of modern International Law, was instrumental in formulating the peace treaties, using his experiences as a jurist (Johansen & Staib, 2009, p. 169).

It would be in the 17th and 18th centuries in which international law would take serious shape as a concept, as the Classical Age would allow for a new spirit of doctrinal thought on international law thought (Evans, 2018, p. 8). That meant that there was a rising divergence from the mainstream natural law thought, meaning that there had become room for a more distinct clarification on international law in relation to natural law. *Jus gentium,* or law of nations, and natural law would be considered two bodies in alliance or confederation of international law, which were now increasingly viewed as two distinct bodies (Evans, 2018, p. 8).

Francisco Suárez, a Spanish Jesuit writer, become the leading figure in the distinction of the two bodies, with the publication in 1612 of "Treatise on Laws and God the Lawgiver". Suárez makes the distinction quite simple. He asserts that natural law in something that is inherent and universal, essentially out of the physical control of human influence, and is only susceptible to human rationality in terms of the ability to discern its content (Evans, 2018, p. 8). Whereas the law of nations would, in contrast, be subject to molding by the imaginativeness of the human mind. This means that by using this modern interpretation of the law of nations, the term international law can alternate its meaning from time to time, and place to place, and is as such created and applied by states (Evans, 2018, p. 8). It would turn out, that if Suárez was the main innovator of this new way of thinking about international law, the Dutch writer Hugo Grotius would become its best-known expositor, with the publication of his magnum opus, *On the Law of War and Peace* in 1625 (Evans, 2018, p. 8). The book's

main purpose is to apply the principles of natural law to that of international affairs, as well as the different applications of the law of nations.

The "Grotian" dualistic outlook of international law as a confederation of natural law and law of nations met challenges from the naturalists, rejecting Grotius' assertion and insisting that relations between states are governed exclusively by natural law (Evans, 2018, p. 9). The leading figure of the naturalist tradition was the English writer Thomas Hobbes who published "Leviathan" in 1651 shortly after Grotius' death. In "Leviathan", Hobbes advanced a representation of natural law that prevailed in his "state of nature", a society where the law of nature is the sole guiding parameter for human interaction in a State devoid of government overwatch (Evans, 2018, p. 9). Hobbes' view of a pre-political condition of human society, was governed by natural law, and therefore would cause chaos and violence, given the natural laws single fundamental duty (Evans, 2018, p. 9), as described in chapter fourteen of "Leviathan":

> The RIGHT OF NATURE, which Writers commonly call *jus naturale*, is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing anything, which in his own Judgement, and Reason, he shall conceive to be the aptest means thereunto. (Hobbes, 1651/2008, p. 86).

Within the confines of the State, Hobbes argues that there is a way to curb the primordial chaos and violence that would result from a state of nature, primarily the social contract. Between independent States however, there are no social contracts or political societies, and therefore States had to adhere to an "international state of nature" with regards to the relations toward one another (Evans, 2018, p. 9). Hobbes' philosophy would then align with the realist tradition in international relations theory maintaining the international system as an anarchy, much like the Hobbesian state of nature (Mingst & Arreguín-Toft, 2014, p. 81). The basic tenets of the state of nature are easily applicable to independent states, if one views the international stage as a natural society, so to speak. Hobbes' state of nature permits contracts or treaties to be formed by individuals in society, and therefore makes it feasible for States to organize along common interests in the international system. Hobbesian naturalists, however, deny that general customary practices of States could have any legal force, and that only arrangements, consciously and willingly assumed by States, would be legally binding (Evans, 2018, p. 9). Now a staple of modern international law, customary law is the part of

international law that concerns itself with the principle of customs and is presented in article 38 of the Statue of the International Court of Justice:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
    a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
    b. international custom, as evidence of a general practice accepted as law;
    c. the general principles of law recognized by civilized nations;
    d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. (International Court of Justice, 2019).

The naturalists seemingly consolidated behind the Grotian view, rather than the Hobbesian. This became evident by the contribution to natural law thought by the German writer Samuel Pufendorf, who, while he had the highest regard of Grotius, would firmly deny the validity of so-called law of nations or customary law (Evans, 2018, p. 9). The contribution of German philosopher Christian Wolff lead a mid-18th century golden age in natural law thought. One of Wolff's most prominent works was a nine-volume treatise on natural law, in which he nearly omitted any mention of State practice except for the ninth volume focusing on international law, though through the lense of natural law (Evans, 2018, p. 10). In London, however, another contribution to the discussion was being published by the Swiss diplomat Emmerich de Vattel. Vattel published his now famous exposition "the Law of Nations" in 1758. Here Vattel does not make a case based on philosophical foundations of any kind, but rather focuses on the substantive legal subject matter, essentially creating the first modern international law textbook for lawyers and statesmen to use to resolve practical problems (Evans, 2018, p. 10).

The conclusion of the Thirty Years War (1618-1648), a long and protracted conflict originating in Germany as a civil war before spiraling into a regional European war, would bring to life a notion of a "community of states". The clearest symbol of this was the peace negotiations and subsequent settlement in Westphalia in 1648. Grotius, a prominent member of the peace negotiations, essentially contributed to forming the concept we now know as nation states and assisted in

fashioning an ethos in international law claiming sovereignty between international relations as key (Johansen & Staib, 2009, p. 169). “On the Law of War and Peace” would become even more relevant as the years went by. It established a new playbook for warfare and produced a new and more nuanced interpretation on the character of international law, as such, it relied not only on the notion of justice, but also on the willingness of human compliance (Johansen & Staib, 2009, p. 169). During Grotius’ tenure as a Swedish ambassador in Paris, his “On the Law of War and Peace” would be used as field manual by King Gustav Adolf II of Sweden, given that it had many provisions regarding minimum protections of the civilian population, such as needless collateral damage, looting, rape (Johansen & Staib, 2009, p. 170).

Jean-Jacques Rousseau, the Genevan philosopher famous for his social contract theories in “Du contrat sociale”, or “The Social Contract”, published in 1772, also contributed to international law. Rousseau thought that war was primarily an occurrence between States, men, and armies, and would become non-legal targets when they would lay down their arms and would only be viable targets when they are armed (Johansen & Staib, 2009, p. 170). In essence, this would mean that civilians and soldiers that are *hors de combat*, would not be legitimate targets. Rousseau states that the aim of wars, was to incapacitate or destroy the enemy State by attacking its soldiers, and this promptly became generally recognized as a staple in international law and is expressed in many contemporary international treaties (Johansen & Staib, 2009, pp. 170-171).

The Battle of Solferino in 1859, in the Kingdom of Lombardy-Venetia in present-day Northern Italy, was a battle fought during the Second Italian War of Independence. It would become the catalyst for a modern international law framework as Henry Dunant, a Swiss businessman, traveled to Solferino to negotiate a colonial business venture with the French Emperor Napoleon III, which was headquartered there. He arrived on 24 June when the battle had concluded, and was able to witness the aftermath of the battle which was fought by three hundred thousand men, leaving forty thousand men dead or wounded in the fields (Johansen & Staib, 2009, p. 173). His eye-witness report provided a grim outlook for a systemic effort to alleviate suffering for the wounded and fallen. His experiences there inspired him to author “Un Souvenir de Solférino”, or “A Souvenir from Solférino”, in 1862 describing the suffering endured by the wounded soldiers, and called for an international effort between nations to provide for a system to take care of the wounded (Johansen & Staib, 2009, p. 173). This resulted in the International Committee of the Red Cross, an organization founded in 1863

to provide for a legal framework for protections during war. Subsequently, a bulk of regulations were devised, drafted, debated, and implemented, resulting in the first Geneva Convention of 1864 (Johansen & Staib, 2009, p 173).

2.2.2 International Humanitarian Law

The international law of armed conflict regulates the conduct of hostilities between states or armed groups, including the use of weapons, and the protections of victims in both international and non-international armed conflict (Evans 2018, p. 840). The Geneva Conventions and their additional protocols, along with the Hague Conventions, are considered a staple and foundational groundwork for modern contemporary interpretations of international humanitarian law.

2.2.2.1 The Hague Conventions

The Hague Conventions of 1899 and 1907 were a series of international treaties and conventions that are the first multilateral treaties to attempt to codify how wars are to be conducted in terms of regulatory measures for behavior during wartime. The first Hague Conference took place between 18 May and 29 July of 1899 and resulted in three conventions and three declarations. These were

> the Convention (I) for the Pacific Settlement of International Disputes, the Convention (II) with respect to the Laws and Customs of War on Land, and the Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864; and the Declaration concerning Asphyxiating Gases, the Declaration concerning Expanding Bullets, and the Declaration to Prohibit for the Term of Five Years the Launching of Projectiles and Explosives from Balloons, and Other New Methods of a Similar Nature. (Webster, 2012, p. 1).

On initiative by Tsar Nicholas II of the Russian Empire, the foreign ministry of Russia circulated a note proposing to diplomats of foreign powers stationed in St. Petersburg to assemble to consider a "possible reduction in of the excessive armaments which weigh upon all nations" (Webster, 2012 p. 1). On the Tsars birthday, 18 May, 26 nations convened in the Kingdom of the Netherlands in the Hague. While the results of the conference fell short of Tsar Nicholas II's ambitions, great strides were made in that they constituted a voluntary renunciation of certain types of weaponry, such as those in the prohibitory declarations on expanding bullets, asphyxiating gasses, and explosives deployed from balloons (Webster, 2012 p. 1).

In terms of actual codification there were made tangible advancements for international law. The 1899 Hague Convention (I) for the Pacific Settlement of International Disputes in article one states that "with a view to obviating, so far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to insure the pacific settlement of international differences" (Webster, 2012, p. 2; Convention for the Pacific Settlement on International Disputes, 1919, p. 363). The first general codification on the laws of war, however, was first agreed upon by the major powers in the 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land. It made necessary conditions for which combatants could be legally identified, introduced a series of rules regarding the humane treatment of prisoners of war, and article 22 states that "the right of belligerents to adopt means of injuring the enemy is not unlimited" (Webster, 2012 p. 3). The final convention, the 1899 Convention (III) for the Adaption to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, was meant to apply the principles laid forth in the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 22 August 1864, to wounded or shipwrecked sailors at sea, and to introduce protections to hospital ships.

The first declaration agreed upon by the major powers at the 1899 Hauge Peace Conferences was Declaration (IV,1), which was aimed at prohibiting the launching of bombs from air-balloons or any new method that would achieve the same result. The declaration states that

> the Contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature. The present Declaration is only binding on the Contracting Powers in case of war between two or more of them. It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power. (ICRC, n.d.-a).

The second declaration, Declaration (IV, 2) Concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Gases. The declaration states that "the Contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases" (ICRC, n.d.-b). The final declaration, Declaration (IV, 3), concerns itself with prohibiting the use of bullets that expand or change form in the body, much like the Saint Petersburg

declaration of 1868. It states that “the Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions” (ICRC, n.d.-c).

> The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions. (ICRC, n.d.-c).

The Conventions that were agreed upon in the Hauge, would eventually be revised and expanded in the 1907 Hague Peace Conferences eight years later. The originals were replaced, but their essence and substantive sense was not altered, and while the original 1899 Hague Conventions were overly focused on armies and law of wars on land, the 1907 Hague Conventions were oriented towards navies and laws of naval warfare (Webster, 2012, pp. 3-4). There were eight conventions that covered warfare at sea. The 1907 Hague Peace Conferences yielded 13 conventions and one declaration:

> the Convention (I) for the Pacific Settlement of International Disputes, the Convention (II) respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, the Convention (III) relative to the Opening of Hostilities, the Convention (IV) respecting the Laws and Customs of War on Land, the Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, the Convention (VI) relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities, the Convention (VII) relating to the Conversion of Merchant Ships into War-Ships, the Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines, the Convention (IX) concerning Bombardment by Naval Forces in Time of War, the Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, the Convention (XI) relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War, the Convention (XII) relative to the Creation of an International Prize Court, and the Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War; and the Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons. (Webster, 2012, p. 1).

The two Hague conferences together provided, as mentioned, great strides in the codification of international law, and for the acceptance towards the idea that countries could be held accountable or owe obligations, such as war reparations, even if they fell short of the actual goal of increased disarmament, given that the World War I would break out seven years later in 1914 (Webster, 2012, p. 5). The most important contributions made to international humanitarian law by the Hague peace conferences, where the protections made for soldiers, sailors, civilians, and for the contribution to international customary law with Convention III regarding the opening of hostilities. In fact, Prime Minister Winston Churchill, before the United Kingdom's declaration of war against the Empire of Japan during World War II, would draft a letter to the Japanese Ambassador to the United Kingdom, citing a breach of Convention III of the Hague peace conferences of 1907 as one of the causes for the state of war, stating

> Sir,
> On the evening of December 7th His Majesty's Government in the United Kingdom learned that Japanese forces without previous warning either in the form of a declaration of war or of an ultimatum with a conditional declaration of war had attempted a landing on the coast of Malaya and bombed Singapore and Hong Kong.
> In view of these wanton acts of unprovoked aggression committed in flagrant violation of International Law and particularly of Article I of the Third Hague Convention relative to the opening of hostilities, to which both Japan and the United Kingdom are parties, His Majesty's Ambassador at Tokyo has been instructed to inform the Imperial Japanese Government in the name of His Majesty's Government in the United Kingdom that a state of war exists between our two countries.
> I have the honour to be, with high consideration,
> Sir,
> Your obedient servant,
> Winston S. Churchill. (Churchill, 1941).

Despite the advancements made, the two peace conferences came to be considered weak due to the fundamental unwillingness of the major powers to conform to new or expanded binding commitments, and hence produced no processes for identifying violations, to punish violations, or mechanisms to enforce prosecuting violations (Webster, 2012, p. 5). The war crimes that were

committed following the 1907 peace conferences grew despite the adoption of the convention of major powers. This became acutely clear in Europe as the deployment of chemical weapons and invasions without warning occurred during the World Wars, as well as the indiscriminate bombings, in WWII, of civilian centers such as London and Dresden by Germany and the United Kingdom respectively, and Hiroshima and Nagasaki by the United States for instance. Yet, it was the laws laid forth in the Hague Peace Conferences that would lie as the fundamental judicial framework for the Nuremburg trials of 1945-1946 that would pass judgement on individuals and officers of Nazi Germany, and as such the Hauge Conventions were ultimately superseded by the Geneva Conventions of 1949 following the end of the Second World War (Webster, 2012, p. 5).

2.2.2.2 The Geneva Conventions

As mentioned in chapter 2.2, the first of the Geneva Conventions were established in 1864 after Swiss businessman Henry Dunant observed the devastation of war on humanity. The first Geneva Convention was a milestone in terms of codifying a set of customs for States to adhere to during armed conflict. Since then, three more Geneva Conventions materialized, the fourth in 1949 as well as the revision of the previous conventions. The first Geneva Convention, officially titled the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, deals with the humane treatment of wounded soldiers, civilians, religious, and medical personnel (ICRC, 2014). A few key articles that stand out from the first chapter, General Provisions, is article 3, which makes the distinction for the convention to still be in effect for conflicts not of an international character. This means that parties engaged in armed conflict within the recognized borders of a High Contracting Party, must at minimum, respect a set of provisions. The following provision from article 3 makes the distinction of who is to be protected:

a) 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. (Geneva Convention, 75 U.N.T.S 31).

Article 3 goes on to list acts that may be perpetrated towards the protected persons, and to prohibit these acts at any given time or place:

b) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
c) taking of hostages;
d) Outrages upon personal dignity, in particular humiliating and degrading treatment;
e) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (Geneva Convention, 75 U.N.T.S 31).

It continues to say that "the wounded and sick shall be collected and cared for" (Geneva Convention, 75 U.N.T.S 31). It also allows for an impartial humanitarian body, such as that of the ICRC, to offer its services to assist State parties with complying with the provisions. Article 5 dictates that the convention applies to the protected persons for the duration of their time in the hands of the enemy, i.e., until their repatriation, and article 7 states that the protected persons cannot renounce the rights that have been bestowed upon them by the Convention (Geneva Convention, 75 U.N.T.S 31). This provides a clear way to prevent judicial loopholes for parties engaged in conflicts to exploit. Chapter two of the Convention deals with the wounded and sick. Articles 12 and 13 details who is protected by the Convention and how they should be cared for. Article 12 states clearly that "members of armed forces, and other persons mentioned in the following article, who are wounded or sick, shall be respected in all circumstances". It goes on to detail that they:

> shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created. (Geneva Convention, 75 U.N.T.S 31).

The article also asserts that there be no discrimination based on the forementioned criteria of medical treatments and that only urgent medical reasons will authorize priority in the order of treatment to be administered (Geneva Convention, 75 U.N.T.S 31). It also goes on to say that "women shall be treated with all consideration due to their sex.

Chapter 3, comprising of articles 19 through 23, cover protections for medical units and establishments. In general, they cover the protection of hospital ships, hospital zones and localities, and provide distinctions for when the personnel could become a legitimate target, such as participation or involvement in activities beyond that of the humanitarian mission, that would be deemed harmful to the enemy (Geneva Convention, 75 U.N.T.S 31). Chapters 4 and 5 cover personnel, and buildings and material, respectively. The articles in these two chapters address the protections for medical personnel, either in employ of medical societies, armed forces, or by humanitarian societies, and for the same protections to apply to buildings or stores that are essential to medical infrastructure that supports efforts to aid the wounded or sick (Geneva Convention, 75 U.N.T.S 31). The rest of the chapters and articles deal with the recognized emblems, such as the Red Cross and other religious symbols, and execution of the convention itself. The Convention has been revised to supplement the advances made in later conventions and treaties, the last time in 1949 following the atrocities that occurred in World War II.

The second Geneva Convention was first established in 1906 as an amendment to the first 1864 Geneva Convention regarding sick and wounded soldiers in on land or in the field. It is since the 1949 revision officially titled the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea due to it incorporating ideas laid forth in the 1907 Hague Conventions regarding shipwrecked and wounded sailors. It closely follows the provisions of the first Geneva Convention in structure and content but has 63 articles aimed towards war at sea (ICRC, 2014). Chapter one reiterates the general provisions from the first Geneva Convention, however article 4 specifies the field of application for this convention: “in case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship” and makes clear that forces that are put ashore will immediately become subject to the provisions of the first Geneva Convention (Geneva Convention, 75 U.N.T.S 85). Chapter 2 deals with the protections, definitions, and distinctions relating to who is subject to protection and clarifies the treatment of the protected, as well as the method of which the protected persons are to come into the custody of a belligerent State.

Article 12 reiterates the same as the first Geneva Convention, but adds the classification of shipwrecked members of armed forces, and article 14 details that

> All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment. (Geneva Convention, 75 U.N.T.S 85).

Article 21 makes it possible for Parties of a conflict to appeal to neutral ships or vessels to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead. It goes on to say that

> Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance. They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed. (Geneva Convention, 75 U.N.T.S 85).

Chapter III clarifies the role and protections of neutral and military hospital ships, and article 4 deals with the personnel aboard hospital ships, as well as medical and religious personnel. The Convention was revised in 1949 and superseded the Hague Conventions which dealt with warfare in the sea.

The third Geneva Convention, officially Geneva Convention Relative to the Treatment of Prisoners of War, was revised in 1949 and replaced the original Prisoners of War Convention of 1929, and deals with the responsibility of, humane treatment to, and respect for, prisoners of war. The Convention establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities (ICRC, 2014). As with the previous two conventions, the first chapter echoes general provisions. Chapter 2 lays down general protections for prisoners of war. Article 12 explains responsibilities by member States to the treatment of prisoners, and article 13 says that prisoners of war must always be treated humanely:

> In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital

> treatment of the prisoner concerned and carried out in his interest. (Geneva Convention, 75 U.N.T.S 135).

Article 14 establishes respect for the person of prisoners, meaning that POWs are entitled in all circumstances to respect for their persons, and states that they shall retain the full civil capacity which they enjoyed at the time of their capture (Geneva Convention, 75 U.N.T.S 135). Articles 17 states that

> Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status. (Geneva Convention, 75 U.N.T.S 135).

Article 17 also states that

> No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. (Geneva Convention, 75 U.N.T.S 135).

The Convention deals with the internment of the prisoners of war, laying forth the conditions of which an internment camp may be used for housing POWs, and with the conditions within such a camp, be it food, hygiene, quarters, or use of POWs for labor. Finally, the Convention covers the termination of captivity, and repatriation. Article 118 states that

> Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities. In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph. (Geneva Convention, 75 U.N.T.S 135).

The fourth and final Geneva Convention came following the conclusion of World War II and was created to establish protections for civilians and non-combatants in addition to members of armed forces and medical personnel, seeing as how the Geneva Conventions originally adopted prior to 1949, didn't include protections for these groups (ICRC, 2014). Given the destructive nature of WWII, specifically to the civilian populations, the setting warranted additional protections. The Convention mostly deals with the status and treatment of protected persons, distinguishing between the situation of foreigners on the territory of one of the warring member States and of civilians in occupied territories (ICRC, 2014). Part II of the Convention deals with the general protection of populations against certain consequences of war, article 13 opens by asserting that

> The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war. (Geneva Convention, 75 U.N.T.S 287).

Articles 14 and 15 secure the establishment hospital and safety zones, as well as neutralized zones, intended to shelter civilian populations from harm and the effects of war. The Convention also lays out the obligations of occupying powers towards the civilian population and contains detailed provisions on humanitarian relief for populations in occupied territories (ICRC, 2014). Part III, section III covers occupied territories, and article 47, which deals with inviolability of rights, states that

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory. (Geneva Convention, 75 U.N.T.S 287).

All four Geneva Conventions were revised and finalized on 12 August 1949 to accommodate for lacking protections that became evident during the Second World War and superseded the Hague Conventions, which also made important contributions to international law. In the decades that followed, the world would see an increase in the number of non-international conflicts (ICRC, 2014),

particularly the proxy-wars that occurred during the cold war, as well as wars of national liberation. The first two protocols (I and II) came on 8 June 1977 and strengthened the protection of victims of both international and non-international armed conflicts, respectively, and placed limits on the way in which wars are fought. The aforementioned first protocol, deals with international conflicts. In part I it repeats general provisions that underline the sanctity of the Geneva Conventions of 1949 and the scope of its application, while part II deals with the definitions and terminology of the people, vessels, organizations, and zones that are protected by the laws of armed conflict.

Part III of protocol I deals with the methods and means of warfare, and combatant and prisoner of war status. Article 35 provides three basic rules: rule one limits the methods and means of warfare of contracting Parties; rule two prohibits the employment of weapons, projectiles, and material and methods that cause superfluous injury or unnecessary suffering; and rule three prohibits the employment of methods or means of warfare intended to, or may expect to, cause widespread, long-term, and severe damage to the natural environment (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3). Article 36 deals with the acquisition or development of news weapons and their usage by contracting parties, it says

> In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party. (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3).

Furthermore, Part IV “Civilian Population”, section I, covers general protection against effects of hostilities. Chapter I deals with the basic rule and field of application, article 48 lays out a basic rule for State party conduct in terms of always distinguishing between the civilian population and civilian objects, and enemy combatants and military objectives (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3). In Chapter IV “Precautionary Measures”, article 57 speaks to precautions in attack, meaning that 1., constant care should be taken to spare the civilian population and civilian objects, and 2., that

> With respect to attacks, the following precautions shall be taken:

a) those who plan or decide upon an attack shall:

i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit. (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3).

Article 57 also states that 3., that when a choice is possible to between several military targets to strike, one should strive to hit the objective that would cause the least danger to the civilian population and infrastructure (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3). It goes on to say that 4., each Party member must in conformity with international law take all reasonable precautions to avoid losses of civilian life and damage to civilian objects, as well as 5., that states clearly that no provision of this article is to be construed as authorizing any attacks against the civilian population, civilians, or civilian objects (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 3). The second protocol covers wars of a non-international character, e.g., civil wars or proxy wars happening within a member States territory. Part I in Protocol II lays out the scope of the protocol, and article 1 opens by dictating the material field of application, which is that it develops and supplements the Article 3 common to the Geneva Conventions of 1949, and that it, i.e., Protocol

II, applies to all conflicts not covered by article 1 of Additional Protocol I, (Protocol Additional to the Geneva Conventions, 1125 U.N.T.S 609). Article 1 also makes a distinction in that "this Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts", principally leaving the State to determine whether internal acts of violence is to be labeled an armed conflict of a non-international character.

Article 3 mandates a policy of non-intervention stating that

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

The article makes it clear that other State members cannot take advantage of another States internal affairs by virtue of any provisions of the Protocol Additional II. The rest of Protocol reiterates Protocol I and the Geneva Conventions of 1949. The third additional protocol is in relation to the adoption of an additional distinctive emblem and was adopted on 8 December 2005. Prior to this, there were only two distinct emblems, a red cross on a white field and a red crescent on a white field. The new symbol is a neutral emblem and is in the shape of a square diamond (red crystal) on a white field.

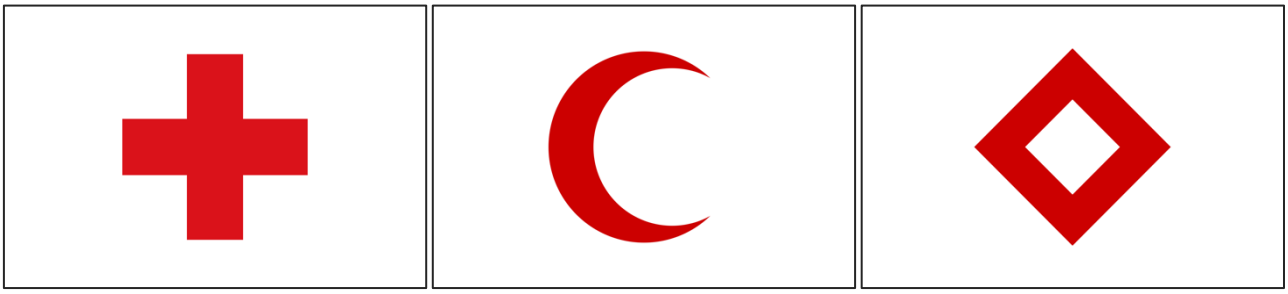

Figure 2-1 Distinct Emblems of the International Committee of the Red Cross under the Geneva Conventions.

2.2.3 International Human Rights Law

International Human Rights law is the bulk of international law intended to uphold human rights on societal, regional, and domestic fronts. Like international humanitarian law, it consists of a series of treaties and covenants that cover a wide variety of rights and contributes to international customary law. Resulting from the end of World War II, the United Nations was founded in 1945 with the aim to mitigate further wars and to promote human rights. Among its principal ways to promote human rights was the adoption of its charter, and the Universal Declaration of Human Rights. International Human Rights Law lays down obligations which states are bound to respect (United Nations, n.d.-a)

2.2.3.1 The United Nations Charter

The Charter of the United Nations is the founding document for the organization of the United Nations and was signed on 26 June 1945 in San Francisco in the United States at the United Nations Conference on International Organization (United Nations, n.d.-b). The Charter mandates both the United Nations and its members to strive to sustain international peace and security by maintaining international law. The Charter establishes the general foundations and governing structures for the United Nations, article 1 states that

> The Purposes of the United Nations are:
>
> 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
> 3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends. (United Nations, n.d.-b; Ishay, 2008, p. 216).

Chapter III presents its six principal organs: the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice, the Trusteeship Council, and the Secretariat (United Nations, n.d.-b). Chapter VI, titled Pacific Settlement of Disputes is arguably inspired by the Hauge Convention of the same name. Chapter VII distributes responsibility to the Security Council to identify any threat to international peace and mandates it to take action to restore international peace and security if need be (United Nations, n.d.-b). Most notably, is perhaps the establishment of the International Court of Justice. The UN Charter states that all members of the United Nations, are members of the International Court of Justice and that they are subject to its rulings. Article 94 mandates the Security Council to enforce the rulings of the International Court (United Nations, n.d.-b).

Article 55 states that

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
>
> 1. higher standards of living, full employment, and conditions of economic and social progress and development;
> 2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
> 3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (United Nations, n.d.-b; Ishay, 2008, p. 216).

The UN Charter prohibits the use of armed force with two exceptions: that of self-defense or for that of intervention sanctioned by the UN Security Council. Article 51 states that:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security

> Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. (United Nations, n.d.-b).

2.2.3.2 The Universal Declaration of Human Rights

A milestone document in the history of human rights, the Universal Declaration of Human Rights proclaims, for the first time, basic fundamental rights for all individuals regardless of nationality, gender, national or ethnic origin, religious affiliation, color, language, or any other status (United Nations, n.d.- c). It was adopted in 1948 in response to the devastating outcome and disregard for human dignity and conscience that became evident in World War II. The first eleven articles define personal rights, such as being born free, equality in dignity and rights, and the right to life, liberty, and security of person (United Nations, n.d.- c; Høstmælingen, 2015, p. 46). Article 7 states that

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (United Nations, n.d.-c).

This secures the right of all individuals to a fair trial and for due process before being convicted or sentenced for a crime. Articles 10 and 11 expand on this. Article 10 states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him" (United Nations, n.d.- c). Article 11 states that

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one

> that was applicable at the time the penal offence was committed. (United Nations, n.d.-c).

Furthermore, articles 12-17 regards the rights of the individual as it relates to society, it covers, amongst other things, the right to privacy, property, and freedom of movement. The remaining articles cover certain political, economic, and cultural rights (Høstmælingen, 2015, p. 46). In addition to the declaration of human rights, came the International Covenant on Civil and Political Rights of 1966, and the International Covenant of Economic, Social, and Cultural Rights of 1966, to form the International Bill of Rights (McKinnon, 2015, p 172).

2.2.3.3 The International Criminal Court

Perhaps one of the most important developments in international criminal law was the establishment of the International Criminal Court (Evans, 2018, p. 762). It came into force in 2002 after the adoption of the Rome Statute of the International Criminal Court in 1998 and provided the Court with the jurisdiction to prosecute individuals for crimes. Article 5 states that crimes within the jurisdiction of the Court

> shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
> (a) The crime of genocide;
> (b) Crimes against humanity;
> (c) War crimes;
> (d) The crime of aggression.

Articles 6,7, and 8 define what constitutes genocide, crimes against humanity, war crimes, and crimes of aggression. One of the definitions of war crimes, for instance, are defined as

> (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
> (i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages. (Rome Statute, 2187 U.N.T.S. 38544).

According to Articles 12 and 13, the Court has jurisdiction over States party to the Rome Statute, nationals of such State, or crimes committed on the territory of a member State. Additionally, the Court can take cases if they are referred by the United Nations Security Council in accordance with Chapter VII of the United Nations Charter (Rome Statute, 2187 U.N.T.S. 38544; United Nations, n.d.-b). The Court, however, does not have ultimate jurisdiction over nation states. The Court can only exercise jurisdiction on where it deems that "competent national courts are unwilling to or unable genuinely" to prosecute a case itself (Evans, 2018, p. 763).

Under the administration of President William J. Clinton, the United States of America opposed the creation of an international court and voted against its adoption on 17 July 1998, though President Clinton did approve the signature to the Rome Statute in 2000 solely so that the United States could continue to be a part of discussions on ICC matters (Amann & Sellers, 2002, p. 381). The United States' main opposition to the ICC was judicial sovereignty and the prospect of having U.S. service members and political leaders tried in courts not of its own jurisdiction. In 2002, the administration of President George W. Bush decided to renounce any involvement to in the treaty to establish the International Criminal Court (Amann & Sellers, 2002, p. 381).

2.2.3.4 Jus Cogens and Erga Omnes

Article 53 in the 1969 Vienna Convention on the Law of Treaties states that

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. (Vienna Convention, 1155 U.N.T.S. 331).

Article 53 does not only bind State parties to the Vienna Convention, but on the contrary reflects a concept that already exited in customary international law as it's supposed to safeguard norms of general international law (Proukaki, 2010, p. 22). There is ambiguity as to the specifics of what constitutes the scope and content of peremptory norms (Proukaki, 2010, p. 25). Also, article 64 of the Vienna Convention on the Law of Treaties states that "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates" (Vienna Convention, 1155 U.N.T.S. 331; Menshawy, 2019, p. 184). There is no universal legal binding agreement that states which peremptory norms are to be consider jus cogens, but there is a general understanding that norms present in international law and customary international law is to be considered jus cogens. Although a treaty is considered void if in breach of a peremptory norm, there is little said regarding legal consequence when a customary rule conflicts or violates a jus cogens norm (Proukaki, 2010, p. 32). Jus cogens, a Latin term for "compelling law", therefore becomes a fundamental principle of international law established new treaties to be void if it conflicts or violates a peremptory norm of general international law. In 1970, the International Court of Justice made a significant distinction between reciprocal and bilateral obligations arising from the law of diplomatic immunities and obligations owed to the international community of states as a whole (Proukaki, 2010, p. 33).

That distinction became the Latin phrase meaning "towards all" or "towards everyone", erga omnes. There has long been a consensus, arguably since WWII, that international law has an interest in creating obligations for individuals and non-state entities (Evans, 2018, p. 469). Despite their similarities, jus cogens and erga omnes serve different purposes. While jus cogens norms establish obligations, i.e., erga omnes, the same does not apply with respect to erga omnes, which most of the time does not possess a peremptory character, i.e., jus cogens (Proukaki, 2010, p. 33). A decision in a case before the International Court of Justice recognized it as a concept in the famous Barcelona

Traction case, officially the Case Concerning Barcelona Traction, Light, and Power Company, Ltd (Belgium v. Spain). In the decision the court writes:

> In particular, an essential distinction should be drawn between obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law; others are conferred by international instruments of a universal or quasi-universal character. (Evans, 2018, p. 470; Proukaki, 2010, p. 35).

The Courts pronouncements on the erga omnes character of obligations were strictly speaking incidental, since those rights weren't involved in the facts of the case, but literature accepted that at least at the level of primary rules, international obligations fell under two distinct categories: those in nature of a civil law right and which were owed to individual States, and those which created a regulatory framework for dealing with public order concerns and were therefore owed to the international community as a whole (Evans, 2018, p. 470). In 1986, the International Court of Justice presided over Nicaragua v. the United States, officially the Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America). The judgement of the Court was that even though the United States was not a party to the Protocol (II) Additional to the Geneva Conventions relating to armed conflict of a non-international character, the U.S. had an obligation to ensure respect for the Geneva Conventions in all circumstances (Dörmann & Serralvo, 2014, p. 717). This further cements erga omnes as a concept of international law. The International Court of Justice, as well as the United Nations' Security Council and General Assembly, have issued a myriad of resolutions affirming that there exists a legal obligation for third States to ensure protection and respect for international humanitarian law, regardless of being a signatory contracting party (Dörmann & Serralvo, 2014, p. 717).

2.3 Semi-Autonomous Weapons

There are several different definitions and categories of autonomous and semi-autonomous weapons. In fact, many people in day-to-day language will use many of these terms interchangeably. Autonomous weapons are commonly defined as weapons that can deploy and operate independently from human intervention, whereas semi-autonomous weapons are still subject to human interposition. The most common category of semi-autonomous weapons in modern-day use is unmanned aerial vehicles (UAVs), or drones. According to Crootof (2015) "an 'autonomous weapon system' is a weapon system that, based on conclusions derived from gathered information and preprogrammed constraints, is capable of independently selecting and engaging targets". Caron (2020) says of semi-autonomous weapons that

> some weapons' autonomy is solely pre-programmed, and their lethal capacities remain entirely the prerogative of a human operator. This is the case with many military technologies, such as drones that are able to fly autonomously to a certain location. However, they cannot fire their weapons without the direct intervention of a human being. We can think in this regard to the United States' Predator and Reaper drones whose non-lethal autonomy remain largely akin to that of a standard plane with its auto-pilot function. However, when it comes to firing their Hellfire missiles, these weapons cannot act on their own. They are fired by a human agent according to certain rules of engagement. (p. 173).

Semi-autonomous weapons are arguably the most common option for most armed forces. There is near universal consensus among ban-advocates and skeptics that fully autonomous weapons currently do not exist, though the common argument for advocates of a ban on these weapons is that their emergence is imminent (Crootof, 2015, p. 1863). One aspect of autonomous that is yet to be fully applied is its implementation of Artificial Intelligence. As such, for AI to be used in its full capacity for military applications, this advanced technology should be able to attain three important characteristics: 1., to be able to analyze all possible outcomes and to suggest the best possible strategy and, if necessary, 2., to have intelligent robots coordinate a common action together, as well as 3., to display an analytical ability to show the same moral discernment as human beings (Caron, 2020, pp. 174-175). Currently, AI is seemingly only able to fulfill the first two tasks, according to Caron (2020).

There are four relevant classifications of autonomy for weapons. 1., inert weapons can be weapons that necessitates contemporaneous intervention by humans to functionally become lethal, e.g., knives or firearms; 2., automated weapons can be weapons that are reactive following deployment by humans by following preprogrammed commands, e.g., mines or grenades; 3., semi-autonomous weapons can be weapons that have some autonomous capabilities in terms of flight and target acquisition, though would need human action to engage in target termination, e.g., remote-controlled UAVs or loitering munitions; 4., autonomous weapons can be weapons that are capable of operating with autonomy without human intervention in terms of acquiring and eliminating selected targets based on AI pre-determined constraints and scope of information gathering, e.g., anti-air systems or other missile systems (Crootof, 2015, pp. 1864-1865).

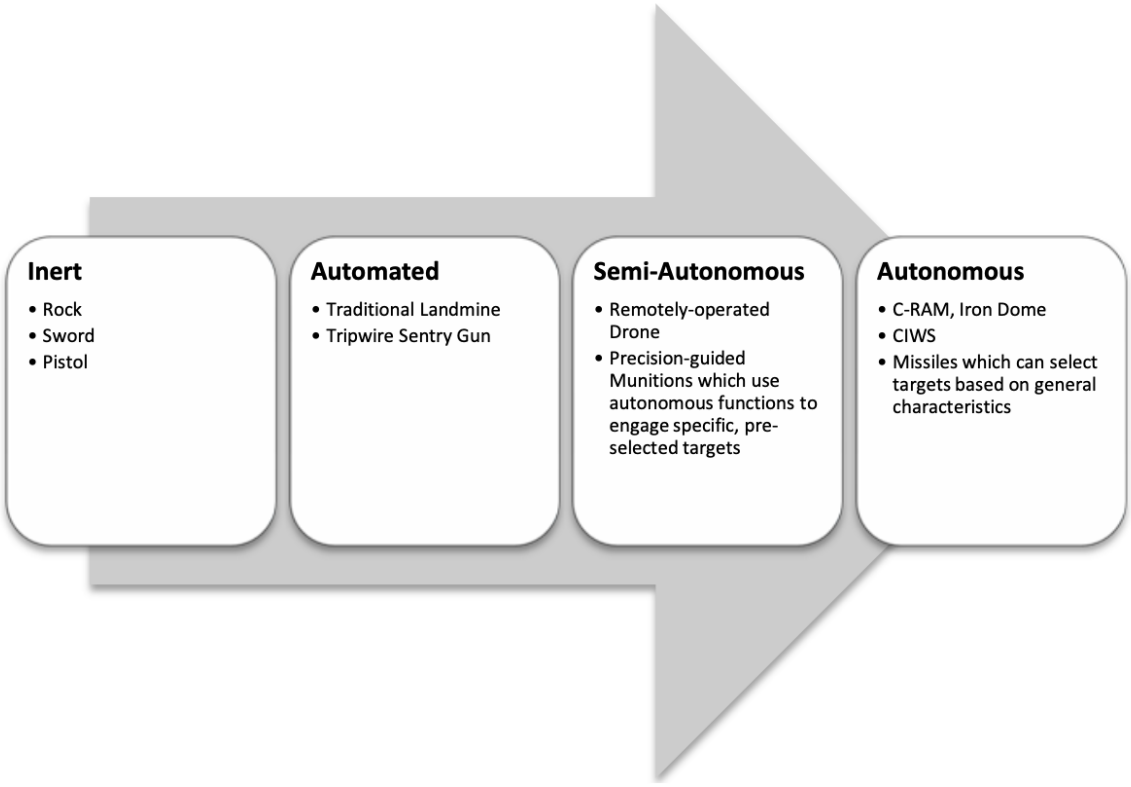

Figure 2-2 Chart for Levels of Autonomous Weapons Systems

Besides reconnaissance based semi-, or fully autonomous non-lethal systems, offensive lethal UAVs and loitering munitions are arguably the most common the autonomous systems used by contemporary armed forces. As mentioned in chapter 1, the largest manufacturer and consumer of such weapons arguably is the United States of America, though they are meeting stark competition

from other State actors such as Israel, China, and Turkey. There are two main categories to focus on withing unmanned combat aerial vehicles: combat drones and loitering munitions.

2.3.1 Combat Drones and Loitering Munitions

The purpose of combat drones is to serve as a single, unmanned and, remote controlled strike platform, though with the human factor still in control, the level of direct human participation is far less present when compared to airstrikes carried out by a multirole fighter combat aircraft such as the F-35 (Grimal & Sundaram, 2018, p. 4). In addition to its strike capabilities, combat drones are also able to conduct surveillance missions to gather intelligence and target acquisition. The most common vehicles currently in use by the United States Armed Forces, and most known by the general public, are the Predator and Reaper models produced by General Atomics, an American energy and defense company. For the last two decades, the main application for combat drones has been for specific targeted strikes against top suspects in the War on Terror conducted by the United States in hotspots and warzones in the Middle East or in Northeast Africa. General Atomics says about the Reaper:

> Featuring unmatched operational flexibility, MQ-9A has an endurance of over 27 hours, speeds of 240 KTAS, can operate up to 50,000 feet, and has a 3,850-pound (1746 kilogram) payload capacity that includes 3,000 pounds (1361 kilograms) of external stores. The aircraft carries 500% more payload and has nine times the horsepower. It provides a long-endurance, persistent surveillance/strike capability for the war fighter. An extremely reliable aircraft, MQ-9A is equipped with a fault-tolerant flight control system and triple redundant avionics system architecture. It is engineered to meet and exceed manned aircraft reliability standards. (General Atomics, n.d.).

Loitering munitions are UAVs equipped with lethal payload, though the vehicle itself is the lethal payload. They can be launched and are able to fly autonomously to its target area, where they loiter or wait, in the air for multiple hours to perform target acquisition (Deutsche Welle, 2021, 2:04). Once a target has been acquired, the vehicle will dive straight into its target, rather than drop the payload. Loitering munitions have earned the nickname “kamikaze drones” (Deutsche Welle, 2021, 2:24). The weapon system is capable of aborting a strike if it can detect civilian presence, using its advanced surveillance and AI technology. Recently, loitering munitions played a massive part in the Republic of Azerbaijan’s victory against the Armenian Republic in the 2020 Nagorno-Karabakh war (Deutsche

Welle, 2021, 3:40). Among the successful models was the Mini-Harpy, a loitering munition produced by the Israeli government-owned Israel Aerospace Industries, or IAI, where they describe the model:

> Provides tactical forces with the ability to suppress the area of interest for long duration and to strike immediately emitting and non-emitting Targets. The ability to seek and to attack any target from any direction at any angle, gives the Mini HARPY significant advantage in any environment. In addition, long-range communication, long-endurance of loitering time and a deadly warhead enables it to deal with diverse targets in the modern warfare. (Israel Aerospace Industries, n.d.).

2.3.2 Arms Race

The various advantages that combat drones and loitering munitions provide have made them a coveted technology. The United States has had a general monopoly on these weapons as their technology was far ahead any other, though recently more countries are obtaining these weapons. The Republic of Turkey, for instance, was enquiring to the U.S. about combat drones, but the United States, requiring congressional and military oversight for exports (Farooq, 2019), were unwilling to sell to the Turks. Thus, the Turkish government commissioned a defense contractor based in Istanbul to construct a combat drone for use in the Turkish Armed Forces and subsequently became a world leader in manufacturing drones and loitering munitions (Christiansen, 2022). While the United States was the top utilizer of combat drones for decades, today, more than a dozen countries possesses the technology, and as such, efforts by the United States to control proliferation through restrictions on exports have failed to slow down an increasing global race to acquire the technology (Farooq, 2019). In an interview with Deutsche Welle (2021), then German Minister of Foreign Affairs Heiko Maas made clear that he thought that an arms race was already well underway.

2.4 War on Terror

> One day into the post-World Trade Centre era, and the question "how" is still taking precedence over the question "why". At the presidential level, the two questions appear to be either crudely synthesised or plain confused, since George Bush has taken to describing the mass murder in New York and Washington DC as "not just an act of terrorism but an act of war".
>
> - Christopher Hitchens, *Love, Poverty, and War*.

2.4.1 Terrorism

A strict definition of what terrorism is, is hardly easy to nail down given the vast different causes and motivations of various actors around the world. As such, there is no single universal widespread acceptance for just one definition. For the sake of simplicity, terrorism can generally be defined as: 1., being politically motivated; 2., perpetrated by non-state actors; 3., affecting civilian targets; and 4., using non-conventional methods (Saul, 2019, pp. 35-36). At the turn of the millennia, international security became haunted by global terrorism following the attacks on the United States on 11 September 2001. Even so, terrorism should hardly be considered a new concept. For example, the Troubles saw terror to be a common occurrence in the United Kingdom, though particularly prevalent in Northern Ireland, as the Irish Republican Army and Union loyalist paramilitary death squads would target either each other or various civilian targets for political goals. Nowadays, terrorism is characterized by the so-called War on Terror, which was commenced following the infamous 9/11 attacks on the United States of America.

2.4.2 11 September 2001 Attacks and the American Global Response

Reportedly a calm and clear-skied morning, 11 September seemed a day as any other for most New Yorkers, and indeed most Americans. In Boston, Massachusetts however, two jet airliners bound for Los Angeles, California are commandeered by al-Qaeda terrorists, and are diverting to New York City (National Commission on Terrorist Attacks Upon the United States, 2004). Both planes strike the World Trade Center, within the span of 16 minutes. American Airlines flight 11 and United Airlines flight 175 respectively hit the northern and southern towers of the World Trade Center complex (National Commission on Terrorist Attacks Upon the United States, 2004). In the same time span in

Dulles, Virginia, another airliner, American Airlines flight 77, is commandeered and diverted to Washington, DC. Some 34 minutes after the impacts at the World Trade Center in New York, American Airlines flight 77 plummeted into the headquarters of the United States Department of Defense, the Pentagon (National Commission on Terrorist Attacks Upon the United States, 2004). Finally, a fourth airliner is commandeered Newark, New Jersey and seemingly diverted towards Washington, DC. The passengers aboard United Airlines flight 93 attempted to storm the cockpit and forced the al-Qaeda hijackers to crash the plane as the passenger's entry was imminent (National Commission on Terrorist Attacks Upon the United States, 2004). United Airlines flight 93 crashed in an empty field in Shanksville, Pennsylvania. The attacks ultimately claimed 2977 fatalities excluding the 19 hijackers.

On 20 September 2001, President George W. Bush in a presidential address to a joint session of Congress, launched the global War on Terror:

> (...) Deliver to United States authorities all of the leaders of Al Quaeda who hide in your land (…) The Taliban must act and act immediately. They will hand over the terrorists or they will share in their fate (…) Our war on terror begins with Al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated (…) Every nation in every region now has a decision to make: Either you are with us, or you are with the terrorists. (C-SPAN, 2001, 36:24).

Given the Taliban governments' lack of willingness to cooperate with the President Bush's demands, an invasion of the Islamic Emirate of Afghanistan seemed inevitable. On 7 October 2001, the United States launched a military invasion of Afghanistan, deposing the Taliban government, and resulting in a near 20-year occupation plagued by terrorist attacks and counter insurgency. The United States full withdrawal came on 30 August 2021 by the Administration of President Joseph R. Biden Jr. (Gibbons-Neff, 2021). The War on Terror extended well beyond the War in Afghanistan. U.S. soldiers and intelligence officers were dispatched to hunt down any person or organization affiliated with the 11 September attacks. The United States Congress passed a joint resolution, the Authorization for Use of Military Force, which granted President Bush powers to utilize any or all necessary and appropriate force (Sterio, 2020, p. 198). One of the measures applied by the Bush Administration was the implementation of combat drones. Even though President Bush had designated Afghan airspace as a combat zone, the United States had drones operating in other parts of the world, e.g., the

Republic of Yemen, because the use of the drones meant that al-Qaeda members could more easily be targeted and killed (Sterio, 2015, p. 199). Thus, President Bush's approach meant that the War on Terror essentially had no geographical constraints and that the "battles" could truly be fought globally (Sterio, 2015, p. 199).

2.5 Philosophy

2.5.1 Just War Theory, Consequentialism, and Deontology

Contemporary war theory is dominated by two camps: 1., the traditionalists, whose view on morality is tied to international law; and 2., the revisionists, who are attracted to the ethical and moral aspects of humanitarian interventions (Lazar, 2016). The Traditionalist basically subscribe to international law as prescribed by the United Nations and the Geneva Conventions, and will want to adhere to international humanitarian law, in most aspects, for instance the Latin term *jus ad bellum*, literally "the right to war", i.e., the manner in which wars are to be started, and *jus in bello* "law in war", i.e., the manner in which wars are to be conducted. The revisionists, however, are not interested in wars of national defense and are moral revisionists in the sense that they believe contemporary laws of armed conflict are not intrinsically morally justified, but that they are sufficient and not in need of substantial change (Lazar, 2016).

Just war theory interprets *jus ad bellum* and *jus in bellum* as a set of principles that are necessary and sufficient for a war to be permissible. For *jus ad bellum* there are six accompanying principles:

1. Just Cause: the war is an attempt to avert the right kind of injury.
2. Legitimate Authority: the war is fought by an entity that has the authority to fight such wars.
3. Right Intention: that entity intends to achieve the just cause, rather than using it as an excuse to achieve some wrongful end.
4. Reasonable Prospects of Success: the war is sufficiently likely to achieve its aims.
5. Proportionality: the morally weighted goods achieved by the war outweigh the morally weighted bads that it will cause.
6. Last Resort (Necessity): there is no other less harmful way to achieve the just cause. (Lazar, 2016; McKinnon, 2015, p. 221).

Though not ranked in any particular order, one must meet all requirements in order to justly declare war upon another (McKinnon, 2015, p. 221). *Jus ad bellum* typically comprises of three principles:

1. Discrimination: belligerents must always distinguish between military objectives and civilians, and intentionally attack only military objectives.
2. Proportionality: foreseen but unintended harms must be proportionate to the military advantage achieved.
3. Necessity: the least harmful means feasible must be used. (Lazar, 2016; McKinnon, 2015, p. 221).

Some of the principles are growing harder to accommodate, especially in terms of declaring war, due to the rise of asymmetrical warfare and the rise of non-state entities waging war, such as terrorist organizations, paramilitaries, or private military companies. For instance, a legitimate authority must be the one to declare war, usually a head of state, or for example in the United States only Congress has the authority to declare war (McKinnon, 2015, p. 221). The main opposition to just war theory is pacifistic theory. The pacificists generally rely on a policy of non-aggression and of neutrality. They reject the idea that the use of force can ever be just, and therefore think that just war theory is misguided because one must always strive to avoid violence (McKinnon, 2015, p. 216).

As ethical theories go, consequentialism is fairly well known. Much as the name suggests, the theory deals with those normative properties that entirely rely on consequences of actions (Sinnott-Armstrong, 2019). Consequentialists are concerned with decisions being morally right or wrong given their consequences. The classic paradigm case of consequentialism is utilitarianism, commonly advocated for by the philosophers Jeremy Bentham and John Stuart Mill (Sinnott-Armstrong, 2019). The fundamental idea of utilitarianism is that the morally correct action in any given situation is that which brings about the highest possible sum of utility or happiness (Wolff, 2006, p. 49). An example of how consequentialism may be applied in the War on Terror, for instance, would be if it is morally permissible to execute a strike on a terrorist with innocent civilians present. Mill (1859/2016) presents the harm principle, in which he argues that harm can rightfully be exercised against any member of civilized society, against their will, as long as one is acting in the interest of preventing harm towards others. An action can only be morally wrong if 1., it fails to maximize utility, and 2., if the agent is liable to punishment for the failure (Sinnott-Armstrong, 2019).

Deontological ethics are generally considered consequentialisms theoretical opposite. It derives its morality not from consequences, but whether the act itself is moral (Alexander & Moore, 2020). One

of the common theories within deontological ethics, is the agent-centered theory. It claims that moral agents have inherent moral value, and that their obligations are not to focus on how their actions cause or enable other agents to do evil, but rather to keep our own agency free of moral taint (Alexander & Moore, 2020). Agent-relative obligations are often related to the actions that agents are responsible for. As a moral agent, one is obligated not to kill innocents, for example, though willingness to commit the killing is what is weighed here (Alexander & Moore, 2020). Another theory within deontological ethics is the patient-centered theory. While agent-centered theory derives its moral value from actions, the patient-centered view is premised by people's rights, e.g., the right against not being intentionally killed (Alexander & Moore, 2020).

2.5.2 Human Dignity

Human Dignity as term refers to the inherent worth of human beings regardless of any classification. According to Bayefsky (2013), human dignity is the modern conception of dignity, and is comparatively different from older conceptions in the following ways:

> First, human dignity applies specifically to human beings rather than to other entities such as offices, institutions, or states. Second, human dignity applies equally to all human beings, as opposed to "restrictive" conceptions that accorded individuals at the top of the social order more dignity than others. Third, human dignity is an inherent feature of the human personality, not a rank bestowed by social recognition or a status conditional upon certain forms of behaviour. (Bayefsky, 2013, p. 810).

Immanuel Kant's views on dignity is rooted in two influential passages from "The Groundwork" and "The Metaphysics of Morals", in which he differentiates things with so-called "prices" which can be exchanged for something else, and things with a "dignity" or worth (Bayefsky, 2013, p. 815). Essentially, Kant's views arrive at the conclusion that having autonomy of oneself, is what gives that human being worth. As such, following Kant's interpretation, Griffin (2008) and Douzinas (2019) assert that persons who have dignity through personhood are of such a unique value that they are above any "price", i.e., that people who possess autonomy and agency in personhood, have dignity and are therefore priceless.

3 Methods

3.1 Research Design

3.1.1 Qualitative Method

For this thesis, the qualitative strategy was chosen as the main research method. Given the emergence of the COVID-19 pandemic and all the challenges that it entails with regards to traveling restrictions, it was decided that it would be more pertinent to pursue a text-based approach due to the increased challenges. As stated in Bryman (2016), qualitative strategy is more concerned with words, rather than quantitative accumulation of numbers or statistical data. An important tenet of qualitative research is text-based analysis, which is heavily leaned upon for this thesis. An inductive approach is used to derive theory from observations in literature. Within text-based analysis is assessing documents as sources of data. According to Bryman (2016), the term "documents", covers a wide range of different document sources. For example, different document sources could be:

- Official documents deriving from the state (such as public inquiries);
- Official documents deriving from private organizations (such as documents produced by organizations);
- Mass-media outputs;
- Virtual outputs, such as internet sources. (Bryman, 2016, p. 545).

The thesis relies on all of the above, as well as published research in books and academic journals. One approach to qualitative data analysis entails secondary analysis of qualitative data (Bryman, 2016, p. 594). For this thesis, that means that different publications of documents, media and virtual outputs, books, and journals, were analyzed to combine different knowledge from the qualitative data collected from primary sources.

3.1.2 Epistemology

Epistemology is the branch of philosophy which concerns itself with knowledge. Its etymology stems from Ancient Greek, *episteme*, meaning knowledge or understanding, and *logos*, meaning reason or argument (Steup & Neta, 2020). There are a wide variety of epistemologies. This thesis is mostly rooted in interpretivism and hermeneutics. Interpretivism is rooted in interpretation as the name

suggests. Interpreting or understanding literature and theories has been an important analytical factor to conceive a proper theoretical framework to obtain an answer to the research question. Hermeneutics is a branch within interpretivism and is concerned with the validity of interpretive experience (George, 2020). For the thesis, hermeneutics is actively used to gain better understanding of not only the theoretical literature, but also of the analytical findings. The Hermeneutic Circle devised by Wilhelm Dilthey is particularly helpful in this arena. As depicted in figure 3-1, we can see that new understanding is achieved through renewed interpretative attention to further possible meanings of presuppositions that inform the understandings that we already have (George, 2020).

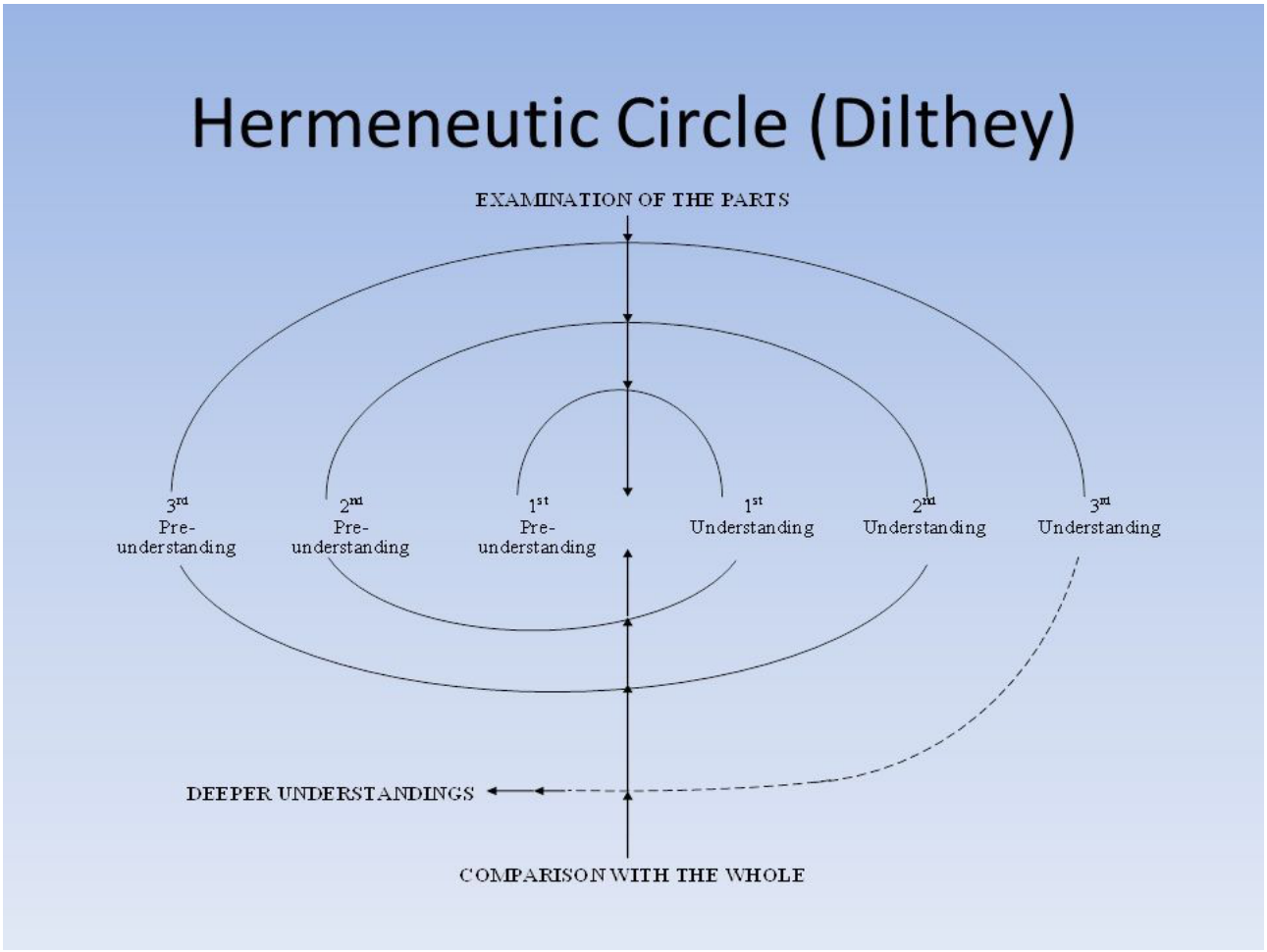

Figure 3-1 Depiction of Wilhelm Dilthey's Hermeneutic Circle.

3.1.3 Interdisciplinarity

Interdisciplinarity is the combination of multiple academic disciplines. In this thesis the disciplines that are mainly featured is history, philosophy, social and political science, and human rights. Interdisciplinarity was used in the thesis to better understand and supplement each topic discussed.

Andreassen et al. (2017) state that interdisciplinarians enjoy greater flexibility in their research. The interdisciplinary nature of human rights makes it hard not to involve other disciplines in the theoretical framework, as well as analytical sources. In fact,

> a key contribution of interdisciplinarity is theory and method. Each discipline tends to act as an incubus for intellectual developments and toolboxes that soon become relevant elsewhere. Indeed, the two dominant disciplines in human rights today, law and social science, have been thoroughly shaped by philosophy, theology and hermeneutics (in the case of law) and the natural sciences and history (in the case of the social sciences). (Andreassen et al., 2017, p. 39).

3.1.4 Reference Style

The reference style chosen for the thesis was the 7th edition of the Publication Manual of the American Psychological Association. In its Publication Manual, the American Psychological Association (2020) states that "APA style provides a foundation for effective scholarly communication because it helps authors present their ideas in a clear, concise, and organized manner, as well as uniformity and consistency enabling readers to focus on ideas and scan works quickly for key points, findings, sources. Given that the APA style is the preferred reference style for the University of South-Eastern Norway, it was decided that the thesis would APAs 7th edition would be utilized. The American Psychological Association (2020) states that students may use the APA style seeing as how they often either write the same types of papers that are professionally published, or assignments such as dissertations, theses, or essays.

The APA style applies only to the reference list and to in-text citations. The Publication Manual of the American Psychological Association also has guidelines for the format of a paper, this however was not utilized for the thesis due to the recommendation of the University of South-Eastern Norway to use its own templates for theses. The single paged USN thesis template is the one that was chosen for the thesis. Relevant ethical principles to adhere to for the purposes of this thesis is plagiarism and violation of intellectual property rights. Every possible effort has been made to credit any and all work to the appropriate individuals, organizations, or institutions. According to the American Psychological Association (2020) plagiarism is the act of presenting words, ideas, or images of another, as one's own (p. 21).

3.1.5 Positionality/Personal Bias

The positionality of the thesis is of an outsider perspective. Outside perspective in the sense that I, the author and analytic, am not a citizen of the United States of America nor a member of its armed forces or national security apparatus. However, as a citizen of the Kingdom of Norway, an allied nation, with whom the United States has not had no hostilities, I am of a friendly predisposition towards the United States. I feel it is important to disclose any personal bias, that may or may not be intentional in the thesis. While being interested in American history, domestic politics, and foreign policy, I also have interest in war, in terms of how they effect history and international law, particularly international humanitarian law. Seeing as how the thesis is doing an analysis of the American drone program, there may be some criticism leveled towards the United States government, as I am a strong advocate for international humanitarian law.

3.1.6 Relevance to the programme

The relevance of the thesis to our study programme is it's interdisciplinarity. Human rights and multiculturalism are both represented. Human rights are covered in international law, both in international humanitarian law and international human rights law, as well as in the philosophical theories regarding human dignity. Multiculturalism is covered in the historical and analytical discussion regarding Americas society and culture.

4 Discussion

4.1 Combat Drones in the War on Terror

4.1.1 General Use

The developments in the War on Terror called for warfare of non-conventional methods. After the falls of Afghanistan in 2001 and Iraq in 2003, the enemy became hidden. He was no longer a uniformed soldier, but a combatant hidden among non-combatants. The United States found it increasingly costly, both in money and in the lives of its soldiers, to pursue terrorist targets on the ground. To remedy this, the United States began using airstrikes conducted by combat drones to eliminate suspected terrorist targets. President Bush was the first in the line of American presidents to authorize combat drones to kill enemy combatants. Due to the global nature of the War on Terror, the battlefield would move to wherever the threat of terrorism manifested (Sterio, 2012, p. 202). President Barack H. Obama would later increase the use of combat drones. By 2011, the War on Terror had expanded drone strikes to seven different countries (Blumenthal, 2019, pp. 136-137). Soon enough, criticisms regarding the use of such weapons would arise. Questions regarding the legality of drone strikes would dominate the wave of criticisms. Meanwhile, the administration of President Bush defended the use of combat drones by claiming the drone program to conform with international law (Sterio, 2012, p. 199).

The drone program is not only run by the United States military. Sterio (2012) contends that the Central Intelligence Agency has become more involved in launching drone strikes to eliminate targets. This in turn produced more scrutiny as the clandestine nature of the drone strikes began drawing more attention. In a 2013 hearing in Congress, Rosa Brooks, a former U.S. Defense Department advisor and professor at Georgetown University Law Center, summarized the process of the American drone policy in this way:

> What I think it comes down to, Senator Durbin and Senator Cruz, is that right now we have the Executive Branch making a claim it has the right to kill anyone, anywhere on Earth, at any time, for secret reasons based on secret evidence, in a secret process undertaken by unidentified officials. (C-SPAN, 2013, 24:54).

Later, a series of newspaper articles titled “the Drone Papers” were published by The Intercept, a news media organization, exposing classified documents regarding America’s drone program. These documents, spanning from between 2011-2013, revealed that the Obama administration had made efforts to conceal the true number of civilians that are killed in airstrikes eliminating targets (Scahill, 2015). Arguably, this raises concerns to conformity of international law. For example, in a period of January 2012 and February 2013, U.S. drone strikes had killed more than 200 people, of which only 35 people were the intended targets, though still, the unintended targets were marked as “enemies killed in action” by the U.S. military (Scahill, 2015). Even so, who can actually be targeted by these drone strikes, who are considered “legitimate” targets?

Both the Bush and Obama administrations maintained that the nationally enacted 2001 Authorization for Use of Military Force, permitted the pursuit of al-Qaeda members and its affiliates wherever they may be located (Currier, 2015). This meant that a suspected terrorist was a legitimate target even though he was outside of the designated combat zones of America’s “official” wars in Afghanistan and Iraq. President Obama, under increased pressure, announced that such devastating action would only be taken on those who could not be captured and who posed a continuing and imminent threat to the American people. This however does not always turn out to be the case. A recent example, occurring less than six months ago, found the United States to order an airstrike on am individual suspected of planning an imminent attack on the U.S. evacuation of embassy personnel in late-August of last year during the American withdrawal from Afghanistan.

4.1.2 29 August 2021 Drone Strike in Kabul

On 29 August 2021 the United States conducted an airstrike using a MQ-9 Reaper drone killing Zemari Ahmadi (Savage et al., 2022). The U.S. military task force responsible for the drone strike were operating on the belief that Ahmadi was an ISIS-K member. U.S. military officials were working under increased pressure to avert another suicide bombing attack on the evacuation efforts at Kabul International. Three days earlier a suicide bombing had killed 182 people including thirteen American servicemen (Savage et al., 2022). The Reaper drone had followed Ahmadi for several hours, tracking his movements and stops. The New York Times obtained the drone strike footage from United States Central Command pursuant to a Freedom of Information claim (Savage et al., 2022). In the approximate 22-minute footage, one can observe several civilians around the vehicle when the Reaper drone launched a Hellfire missile to eliminate Ahmadi’s car, a white Toyota Corolla, believed

to be transporting bombs. The car was parked in Ahmadi's what would be later known to be his family compound.

Figure 4-1 Photo depicting the wreckage of Zemari Ahmadi's car following the drone strike on 29 August 2021.

The United States military was quick to announce that it had thwarted another planned attack at the airport (Savage et al., 2022). Senior Pentagon officials claimed that collateral damage caused by the drone strike was triggered by a secondary explosion. Major General William Taylor said in a press conference that "significant secondary explosions from the targeted vehicle indicated the presence of a substantial amount of explosive material" (The New York Times, 2021, 7:09). Shortly thereafter, the New York Times (2021) ran an investigative story collaborated by eye-witness reports and sources from within the military, in which they uncovered that Ahmadi was not an ISIS-K terrorist, but a humanitarian aid worker employed at a California-based non-governmental organization, transporting water to his neighborhood. Nine other innocent people succumbed from the botched drone strike, including Ahmadi's children. Following the revelations of the New York Times, Captain Bill Urban, the spokesperson for U.S. Central Command reiterated the Pentagon's apology:

> While the strike was intended for what was believed to be an imminent threat to our troops at Hamid Karzai International Airport, none of the family members killed are now believed to have been connected to ISIS-K or threats to our troops. We deeply regret the loss of life that resulted from this strike. (The New York Times ,2021)

Secretary of Defense Lloyd J. Austin III has stated, in relation to an airstrike conducted in Syria, that the United States military must make more efforts to reduce harm to civilians (Schmitt & Phillips, 2021).

4.2 American Power

Why include a prolonged history about the founding of the United States of America? To explain how a country barely 250 years old went from being a set of small colonies on the East coast of the New World, to possessing such overwhelming economic, military, and diplomatic global power. It was pertinent to explore America's past, to understand why and how the United States acts in the present, by using its special and unique conception as a fuel to gradually rise in power. This is something that was touched upon by Alexis de Tocqueville in "De La Démocratie en Amérique", or "On Democracy in America", as early as 1835. He studied American society comparatively to those in Europe and noticed certain unique aspects. In his travels across the United States, he noticed the role of the early Puritan arrivals in New England in that their gathering in the New World presented equality among their peers, as there was no aristocratic system present to discriminate. He explains that

> the emigrants who came to settle the shores of New England all belonged to the comfortable classes of the mother country. Their gathering on American soil presented, from the beginning, the singular phenomenon of a society in which there were neither great lords, nor lower classes, neither poor, nor rich, so to speak. [I have already said that, among the Europeans who went to America, conditions were in general largely equal, but it can be said that, in a way, these emigrants {the Puritans} carried democracy even within democracy.]. (Tocqueville, 1835/2012, p. 53).

His accounts provide a very different societal contrast to that of European societies. The Unites States is a secular democratic federal republic, something completely unprecedented to that time.

Tocqueville (1835/2012) described America as something exceptional in how their society was built, particularly the ingenuity in equality for the political system. Tocqueville's study therefore ascertained that the American experiment was indeed something unique. One can find traces of American exceptionalism in most of its involvements in history. The mere fact that they started interventions in Central American countries by virtue of believing themselves to be so special that they had a manifested right to do so, speaks volumes. America's foreign political actions are therefore clearly heavily influenced by its historical heritage, and the waves of different "eras" in American society. As such, there is no better way to connect exceptionalism to America's power than by exploring how its journey from British colonial rule to its current superpower status, led the United States leadership to justify its geographical and political expansion by virtue of the exceptional culture of its very own people, society, and governmental system. In short, American cultural identity is what drives and fuels American power and foreign policy.

4.3 Challenges

4.3.1 Challenges posed by American Exceptionalism

America's exceptionalism has arguably done good. Following WWII, it was the main orchestrator of institutionalizing human rights and international humanitarian law with the founding of the United Nations and in helping revise the Geneva Conventions. The United States acts, however, acts unilaterally and clandestinely to eliminate foreign nationals, on foreign soil, which they suspect of being terrorists or terrorist sympathizers. This elevates the United States above punitive measures internationally, and weakens international law. For example, the United States has signed, and subsequently withdrawn its intention to ratify, the Rome Statute of the International Criminal Court which would have made U.S. soldiers, leaders, and civilians liable for breaches of international humanitarian law. This action has already in recent times drawn criticism in the sense that while America pursues war criminals in, say, African countries, its own actions are not subject to any court or tribunal other than that of its own national jurisprudence. This main challenge that American power and exceptionalism pose to international law is that it weakens one of the main principles of international law: its universality. The legal concept of obligations erga omnes, as cover in chapter 2.2.3.4, dictates that international law is applicable to all either way, though with the example cited in the chapter, of the United States being ruled against in the case of Nicaragua v. United States, might have caused the United States to ignore these international institutions to a greater extent.

The consequences of this could become reluctance by other countries to conform to international law. This would bring further harm to the work of mitigating violations to international humanitarian law. This brings us to Ignatieff's exemptionalism. America's insistence on being exempt from certain treaties or laws make it difficult for other nations and organizations to encourage conformity to international law, if one of its main proclaimers is not acting accordingly. This appropriately levies accusations of the United States operating under double standards, one of Ignatieff's (2005) criticisms of American exceptionalism, which then also ties in legal isolationism. The American reluctance of conformity to certain aspects of international law, stems from the self-proclaimed messianic belief that the United States is on a mission to export its own ideals to the betterment of the world. The ethos that it has built over almost 250 years inform their decisions, makes adherence to international law and organizations, such as the United Nations, a hindrance of achieving its foreign policy goals. They believe themselves to be exempt by virtue of their manifest destiny.

It is clear that American exceptionalism is not just one thing, but a symbiosis of multiple terms on exceptionalism theories as presented by Melby and Ignatieff in chapter 2. As if to make the point that the principles of the hermeneutic circle are important, it is evident that the different theories regarding American exceptionalism build on each other. In the myth of the American imagination of its founding being something entirely unique, brings in Melby's (1995) accounts on sense of escape and manifest destiny influencing U.S. foreign policy. Those terms then accordingly supplement American exceptionalism for the four traditions of waves in American society as described by Walter Russell Mead in Melby (2004). And those views tie in with Ignatieff's (2005) criticisms of American exceptionalism.

This notion of being exempt from punitive measures has made America bolstered to continue its path of exceptionalism. In fact, American power today, is indeed extremely exceptional. Since the end of the Cold War and the collapse of the Soviet Union, Wohlforth (1999) stresses that commentators recognized that a new unipolar moment in international politics had arrived in unprecedented American power (p. 5). Though, today this position is increasingly being contested by Russia throughout the last decade. But armed conflict today, is not of a conventional manner. Even so, following the 9/11 attacks on the United States, American soldiers and drones on foreign soil became the current interpretation of exceptionalism in that it has become incumbent upon the United States to fight terrorism anywhere, by virtue of its own national laws, i.e., the Congress' authorization to

use military force against terrorists. This behavior of acting unilaterally on nationally enacted policies by virtue of its self-proclaimed notions of exceptionalism and exemptionalism is therefore coined in this thesis as "the American imperative". This brings back another legal aspect, jus cogens. Though nationally enacted laws or "authorizations" are not considered treaties, they still do contradict international law. For example, the U.S. Congress passed the Authorization for Use of Military Force Against Iraq Resolution of 2002, mandating President Bush to use the United States Armed Forces against Iraq in any way he determined to be necessary. Mind you that an authorization for use of military force is not the same as a formal declaration of war, which the United States has not done since WWII. The United States at that time was not able to convince the United Nations Security Council of invading Iraq based on alleged violations of certain UN resolutions on Iraq from the first Gulf War over Kuwait. Instead, the United States acted bilaterally with the United Kingdom to invade Iraq on the assertion of self-defense, claiming to disarm Iraq of its alleged nuclear capabilities.

According to Byers & Nolte (2003), the United States' use of force has been characterized by military doctrines which follow the following parameters:

1. The use of force is considered an instrument of foreign policy.
2. Enforcing respect of international law in cases of grave violations is not per se a reason to use force.
3. The use of force by the United States is not necessarily conditioned by respect for international law.
4. The exhaustion of non-military means before resorting to force, although desirable, is not a precondition.
5. Interest and success are the main considerations when resorting to force.
6. Unilateral use of force (that is to say, without UN endorsement or support from other countries) is not precluded. (p. 201).

These parameters collide with general philosophical just war theory, for example parameter 5., in which all non-military means is *not* a precondition for use of force. This also collides with the UN charter. There has always been a tension between the U.S. position on the use of force and the postulates of Articles 2 (4) and 51 of the UN Charter (Byers & Nolte, 2003, p. 202). This speaks to the significant role that the United States plays in international politics; in that it has the raw power of

unilaterally acting despite international customs and international law. There are several post-9/11 examples of America's tension with articles 2 (4) and 51, for example the aforementioned invasions of Afghanistan and Iraq. In the Afghan case, the United States claimed that it was acting in self-defense after the 9/11 attacks, but Byers & Nolte (2003) suggest that the United States misinterpreted the meaning of self-defense in case of "armed attacks" in the UN Charter's article 51 to include terrorist attacks. Even so, Byers & Nolte (2003) assert that even in assuming that the 9/11 attacks could be considered an armed attack, it did not conform to the notion of self-defense, as the situation of self-defense implies that an ongoing attack must be repelled, whereas the 9/11 attacks had already concluded at the point of the U.S. invasion of Afghanistan (p. 209). The Iraqi case was different, however. In that case the United States claimed to be acting in "preemptive" self-defense, under the alleged belief that the Iraqi government had weapons of mass destruction which it intended to use on the United States. The United States' reluctance in conforming to the principles set in the UN Charter, e.g., obtaining a UN Security Council resolution, deteriorates the integrity of the United Nations and the large bulk of international law that it embodies.

4.3.2 Challenges posed by Drone Strikes

Given the evasive definition of autonomous and semi-autonomous aerial vehicles as weapon delivery systems rather than as weapons proper, combat drones are not explicitly made illegal under the laws of armed conflict (Evans, 2018, p. 862). Consequently, this gives the United States leeway to use these weapons with impunity given their position and lack of accountability. The real issues in terms of compliance with international humanitarian law is: 1., whether the persons targeted are in fact combatants, and 2., whether any resulting collateral damage is excessive in relation to the corresponding military advantage (Evans, 2018, p. 862). Taking the August 2021 Kabul drone strike into consideration, one can see that some drone strikes indeed, while not illegal, are morally and ethically reprehensible, and pose serious contentions toward compliance with protections for civilians, as covered by the Geneva Conventions. According to Heyns et al. (2016), for a particular drone strike to be considered lawful under international law, it must satisfy the legal requirements under all applicable international legal regimes (p. 795). International humanitarian law and international human rights law each balance to varying degrees, State security concerns on one hand, and the protection of individuals on the other (Heyns et al., 2016, p. 794). In a presidential new conference on 15 September 2006, when answering questions regarding the United States'

enhanced interrogation program, president Bush said when confronted by a journalist about him principally seeking support for torture in Congress, the following:

> Now, this idea that somehow, we've got to live under international treaties, you know - and that's fine, we do - but oftentimes the United States Government passes law to clarify obligations under international treaty. And what I'm concerned about is, if we don't do that, then it's very conceivable our professionals could be held to account based upon court decisions in other countries. And I don't believe Americans want that. I believe Americans want us to protect the country, to have clear standards for our law enforcement, intelligence officers, and give them the tools necessary to protect us within the law (C-SPAN, 2006, 13:39).

This brings us back to notions of American exceptionalism, and how legal isolationism and exemptionalism plays a big role across the board, whether it relates to use of torture or drone strikes. At the risk of sounding like a broken record, the point about the most ardent vocal defender of human rights, being one to ignore its own violations, unfortunately only builds on skepticism towards conformity, which is damaging to human rights discourse. For example, one of the greatest challenges that arises with use of combat drones is imbedded in the ethical and moral foundations that contest international human rights ethics and discourse. What does that mean? Well, the Geneva Conventions' common article 3, 1 (b) states that it should be prohibited to commit outrages upon personal dignity, and in particular humiliating and degrading treatment. So, let's talk about that word, dignity. As a term, dignity speaks to your worth and value as a human being. Where is the dignity in simply seizing to exist when a Hellfire missile strikes your home killing you and your children, from a remote control-room in the United States, for alleged crimes levied against you which you have not been provided the opportunity to refute? One might argue there is no dignity in that. In fact, one might argue that Zemari Ahmadi and his children did not receive the respect to their person, that they are entitled to in international humanitarian law. Using the mindset within consequentialism, the consequence of this kind of disregard to human life, only tears down the hard work that has been built over decades and centuries of human rights discourse. How many more humans could live their life if the notions of human dignity and worth are respected by all belligerents in armed conflict? Other ethical challenges that arise is the implications of having inadvertently started an arms race to proliferate autonomous weapons technology, which in its current form, is not prohibited, but is still subject to, international law. The cultivation of this weapons technology is

creating 21st century challenges to warfare in that the ethics of AI acquiring and killing targets being extremely problematic due to its disconnect to human dignity. The consequences could bring about more human suffering. The United States, a self-proclaimed beacon of democracy and freedom, should live up to its maximum humanitarian potential in armed conflicts. Alas, in that same 2006 press President Bush made the point that U.S. conformity to Common Article 3 would make it so U.S. personnel could be tried for war crimes.

> this debate is occurring because of the Supreme Court's ruling [Hamdan v. Rumsfeld] that said that we must conduct ourselves under the Common Article 3 of the Geneva Convention. And that Common Article 3 says that "there will be no outrages upon human dignity." It's very vague. What does that mean "outrages upon human dignity"? That is a statement that is wide open to interpretation. (…) Now, the Court said that you've got to live under Article Three of the Geneva Convention, and the standards are so vague that our professionals won't be able to carry forward the program, because they don't want to be tried as war criminals. They don't want to break the law. (C-SPAN, 2006, 10:39)

Just to drive the point home, the Bush administration passed legislation which granted the President of the United States, according to the American Service-Members' Protection Act (2002), the authorization to "use all means necessary and appropriate to bring about the release of any U.S. or allied personnel being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court". This law was nicknamed the "Hauge Invasion Act" by opposing lawmakers due to its staggering implications. If a country was to detain American soldiers and extradite them to the ICC in the Hauge, the U.S. Congress had authorized the Office of the President to use military force to retrieve them. A situation very unlikely to occur admittedly, though a possibility, nonetheless. What kind of moral high ground does the United States possess then, when it accuses others of war crimes, when it will not even subject its own people to the same standards it demands of others?

5 Conclusion

5.1 The American Imperative

Given the arguments made in Chapter 4, derived from analysis based on multiple texts and sources, it is evident that when the United States of America exercises its power, it creates real-life implications across the world. It gained this power by virtue of its idealist imagination regarding its own founding, supported by its realist outlook on the world, fueled by a culture rooted in manifested destiny that would put the United States in a position to dominate world politics. In many ways it has done just that. By using this power, it has provided many goods to this world. The most recent example is aiding in defeating the forces of evil in the Second World War, and helping to create the United Nations and institutionalizing international law and human rights. Although, in the 21st century its role in the War on Terror has made it blinded by its own power, using drone strikes to eliminate suspected terrorist targets without a fair trial, with disregard for human life. America's role in cultivating combat drone technology, has created a weapons race for autonomous weapons such as loitering munitions, which bring new age challenges to international law and human rights.

The ethical implications are also evident, as innocent civilians are often caught in the crossfire by American drone strikes. Human dignity is accosted when the human element is removed from combat, as this new age technology removes the necessity of a soldier to stand on the frontlines when killing a person. In the case of drones strikes, a soldier can sit in the comfort of a U.S. military base in the United States, and at the push of button, though a screen, determine who shall perish and who should not. This desensitizes the reality and severity of taking another life, and omits the appropriate dignity that a human being deserves. Winston Churchill said in response to criticisms of him being too polite in his abovementioned letter in which he declares war on Japan, that "when you have to kill a man, it cost nothing to be polite". In its quest to spread international law and human rights, the United States' own unwillingness to adhere to international law and subjection of itself to the jurisdiction of the ICC, is in many ways the undoing of its own "city upon the hill" imagination. Arguably, in the eyes of American exceptionalism, it may be failing its own ideals at the expense of international law.

In short, to answer the research question: the power of the United States, which is fueled by its cultural and hereditary identity, is creating new age challenges to international law and human rights

because its realist and idealist interpretation of its own role in international politics, was attacked in 2001 by terrorists opposing American foreign policy. To remedy this, the United States entered a new era in its international and military history which reimagined the meaning of 21st century warfare with the proliferation of combat drone weapons technology, as well as bringing up new challenges to human rights discourse with the execution of its drone program use to extrajudicially kill suspected terrorist targets in anti-war operations in countless countries while violating national sovereignties. The title of the thesis is "An American Imperative". The American Imperative here, is meant to be the sheer will of the United States to exercise its power in the War on Terror regardless of the implications of international law and human rights, to achieve its foreign policy goals without being subject to those same rules and regulations. The American Imperative is ultimately damaging the United States' own work in promoting human rights and international law because of allegations of hypocrisy and double standards. Its ethics and morality are being questioned, and inadvertently, so does the entire body of international law and human rights ethics, because after all, morality is what separates heroes from villains.

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