



HELSINGIN YLIOPISTO
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War and Law: Paradoxes of a Civilizing Project

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Naples 5 October 2019





War From “Politics” to “Law”

“Balance of Power”

- Concert of Europe
1815-1914

- Political discretion

- Free manoeuvring

“Collective Security”

- League of Nations 1919-
1939

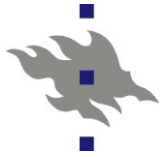
- Rule-application

- Institutional decision



Problems with Rules: League Covenant, Articles 10 & 16

- “Should any Member of the League resort to war in disregard of its covenants ... it **shall *ipso facto* be deemed to have committed an act of war** against all other Members of the League, which hereby **undertake immediately** to subject it to the severance of **all trade or financial relations...**”



League of Nations experience

- The Chaco War 1928-35
- The Manchurian War 1931-32
- Italy-Abyssinia 1935-36
- Remilitarization of the Rhineland (March 1936)



Rules are

good because they:

- Deter;
- Do not allow political manipulation;
- Are efficient and fast;
- Are easy to operate;
- Treat everyone in the same way;
- Do not rely on social cohesion.



Rules are

bad because they:

- Generalize any conflict;
- Do not take into account particular circumstances;
- Are dangerous to apply;
- Put countries in a de facto different position;
- Rely on social cohesion



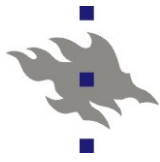
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UN: From rules to discretion

Article 2:4

- “All Members shall refrain in their international relations from **the threat or use of force** against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

Article 39

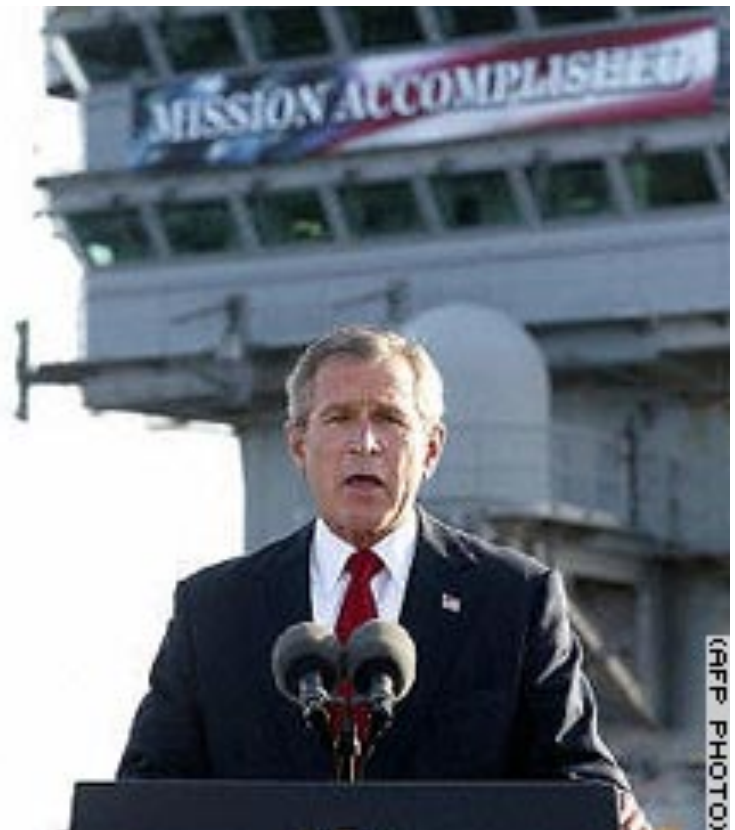
- “The **Security Council shall determine** the existence of any **threat to the peace**, breach of the peace, or act of aggression and shall **make recommendations**, or decide what measures shall be taken... to maintain or restore international peace and security.”



The problem with discretion: Illegal but legitimate?



Kosovo 1999 – Iraq 2003





“Responsibility to Protect 1999-2011”

- Kosovo 1999
- ICISS 2001 R2P Report
- UN World summit 2005
- Libya 2011
- Syria (560.000 killed, 6,7 M refugees, 6,2 M internally displaced)





The Paradox

Rule

- Automatic, no misuse (500 killed).

But:

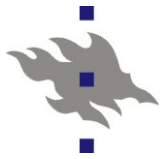
- Permits everything it does not prohibit
- Over-inclusive and under-inclusive

Discretion

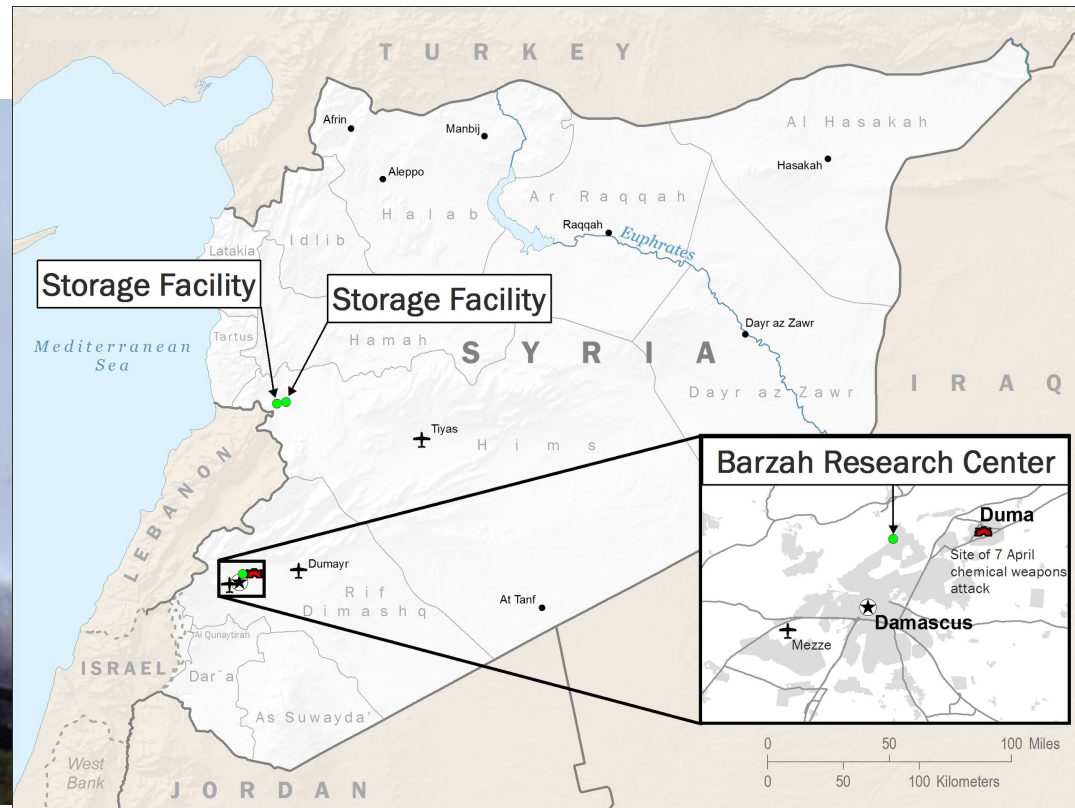
- Allows intelligent policy-making

■ But:

- Opens the door for “imperial” wars;
- Cannot be controlled



The end? Libya 2011 Syria 2013-2019





Law and War

