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## NUCLEAR DETERRENCE V. DISARMAMENT: A LEGAL AND STRATEGIC CONFLICT IN THE 21ST CENTURY

~ *Simran Chauhan*

### ABSTRACT:

The struggle between stopping wars with nuclear weapons and getting rid of them is one of the hardest and longest-lasting issues in international law and global safety today. Countries use nuclear weapons as a way to scare others from attacking by threatening major retaliation. At the same time, calls to destroy all nuclear weapons come from concerns about ethics, laws, and humanity. This article looks at how the clash between these ideas is changing now, as new technology global power struggles, and fresh dangers reshape how the world sees nuclear weapons.

The article examines laws controlling nuclear weapons. It looks at tools like the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Treaty on the Prohibition of Nuclear Weapons (TPNW). It also highlights how the International Atomic Energy Agency (IAEA) plays a role in monitoring. The research explores how much these laws set strict duties for countries under Article VI of the NPT. This article requires countries to talk about ways to achieve nuclear disarmament. Even with these rules in place, countries with nuclear weapons still stick to deterrence strategies. They argue their weapons are crucial to protect both their own safety and global security.

Looking at it, the idea of deterrence shown through things like assured destruction, has played a role in helping to prevent big wars in history. But the article points out the dangers linked to deterrence. These include mistakes accidental launches, and the chance of arming leading to

competition and escalation. The International Court of Justice, in its advisory opinion also talked about how nuclear weapons lead to major humanitarian problems. This raises questions about whether using deterrence is both legal and justified.

**Keywords:** Nuclear Deterrence, Nuclear Disarmament, Non-Proliferation, International Law, Global Security, NPT

## **INTRODUCTION:**

The issue of nuclear weapons is one of the most urgent yet puzzling challenges in today's international law and global security. After the devastating atomic bombings of Hiroshima and Nagasaki in 1945, nations have faced the difficult task to stop nuclear war while addressing the practical needs of state security. This struggle has led to two opposing but interconnected ideas: **nuclear deterrence** and **nuclear disarmament**, both of which still play a big role in shaping the debates around law and politics in the modern world.

The idea behind nuclear deterrence relies on owning nuclear weapons to stop conflicts. It works by creating fear of mutual destruction if war happens. This concept became a key part of maintaining strategic balance during the Cold War. The United States and Russia (the Soviet Union) avoided launching nuclear attacks because they understood it would lead to massive retaliation. Over the years, this approach has taken on different forms, like minimum or credible deterrence, and countries like India and China have also adopted it. Supporters believe it has helped avoid large wars between big powers. They also think it still plays an important role in keeping peace as the world becomes more multipolar.

Nuclear disarmament aims to remove nuclear weapons driven by both legal and ethical goals. It focuses on stopping the making, owning, and using of these weapons due to their devastating and uncontrollable effects. Efforts to ban nuclear weapons stem from ideas of global fairness and humanitarian law. The Treaty on the Non-Proliferation of Nuclear Weapons requires countries to work toward total disarmament<sup>1</sup>, the Treaty on the Prohibition of Nuclear Weapons has added strength to the global effort to ban nuclear arms by creating a clear and thorough legal prohibition. The fact that major nuclear powers do not participate in these agreements raises important doubts about how effective and enforceable they are.

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<sup>1</sup> Treaty on the Non-Proliferation of Nuclear Weapons, 729 U.N.T.S. 161 (entered into force 5 March 1970).

Having deterrence and disarmament exist together creates a big contradiction in international law and global security rules. Countries argue they need to keep and upgrade their nuclear weapons to stay safe and keep global peace. At the same time, they are bound by legal and moral responsibilities to aim at getting rid of these weapons. This conflict gets more complex with the arrival of new nuclear nations local wars, and military tech developments like cyber warfare and artificial intelligence. Ongoing nuclear dangers in places like the Korean Peninsula and South Asia show how shaky the non-proliferation agreements are and highlight the weaknesses in current legal systems<sup>2</sup>.

People are paying more attention to the humanitarian effects of nuclear weapons, which points out the problems with old deterrence ideas. The massive damage nuclear wars cause to the environment, health, and society raises questions about how these weapons fit with international humanitarian rules. These rules focus on principles like distinction, proportionality, and necessity. The International Court of Justice has given an advisory opinion that shows confusion over the legal standing of nuclear weapons. This highlights the urgency to set better legal guidelines and push harder for disarmament efforts.

This article looks at the ongoing clash between nuclear deterrence and disarmament through both legal and strategic lenses. It studies if sticking to deterrence goes against global legal duties or if disarmament is just an unrealistic hope given practical political concerns. The study reviews treaties, examines what countries do, and considers new security issues. It aims to find out if there's a way to bring these two opposing ideas together in today's world.

## **INTERNATIONAL LEGAL FRAMEWORK GOVRNING NUCLEAR WEAPONS**

The global rules about nuclear weapons form an intricate and changing system. These rules aim to maintain worldwide safety while pushing towards disarmament. The Treaty on the Non-Proliferation of Nuclear Weapons, or NPT, stands at the heart of this system. It became active in 1970 and still acts as the main guide for nuclear control everywhere. The NPT is based on three key ideas: stopping the spread of nuclear weapons, working towards getting rid of them, and using nuclear energy in peaceful ways. Countries without nuclear weapons agree not to try to get

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<sup>2</sup> Thomas C. Schelling, *Arms and Influence* (Yale University Press, 1966).

them, while nations that already have these weapons must follow Article VI<sup>3</sup>, which requires them to honestly work towards agreements to reduce and eliminate their nuclear arms. Some people have criticized the treaty because it creates an unfair system. It allows certain countries to have nuclear weapons while stopping others from getting them.

The Treaty on the Prohibition of Nuclear Weapons (TPNW) adopted in 2017, supports the NPT and marks an important change in global law. The TPNW, unlike the NPT bans making, testing, owning, using, or even threatening to use nuclear weapons. It is built on humanitarian values and shows the world's increasing worries over the devastating effects of nuclear war. But its impact is limited since countries with nuclear weapons are not part of it. This raises doubts about how effective it can be and how it fits with current policies of nuclear deterrence.

The International Atomic Energy Agency, or IAEA, takes the lead in enforcing these treaties. It has a critical role in ensuring countries follow the rules using safeguards and verification systems. The IAEA works to make sure that civilian nuclear programs do not get used for military goals in countries without nuclear weapons. Even with its technical knowledge, the agency struggles because it has limited power to enforce rules and relies on countries to cooperate. This weakens its ability to handle situations where nations fail to comply.

Customary international law and general principles of international humanitarian law (IHL) play a role alongside treaty law in governing nuclear weapons. Key principles like distinction, proportionality, and banning unnecessary suffering are used to judge whether using nuclear weapons is legal. The 1996 advisory opinion from the International Court of Justice (ICJ) was an important moment<sup>4</sup>. The Court stated that using or threatening to use nuclear weapons goes against international law rules that apply to conflicts IHL. But the Court did not go as far as saying such actions are illegal in every situation. This legal uncertainty keeps the argument over deterrence and disarmament alive.

Several arms control agreements, including the now-defunct INF Treaty, have played a role in limiting nuclear weapons and easing global tensions. In recent years, the end of such treaties has sparked worries about a new arms race and a decline in the global nuclear framework. This

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<sup>3</sup> Treaty on the Non-Proliferation of Nuclear Weapons, 729 U.N.T.S. 161 (1968), Art. VI.

<sup>4</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] I.C.J. Rep. 226.

breakdown highlights how fragile current legal systems are and shows the importance of finding ways to restart diplomacy.

The legal system has major enforcement weaknesses. Treaties like the NPT set duties but do not have strong systems to make sure countries follow them nations with nuclear weapons. Big countries often prioritize politics over legal promises, as seen when they follow rules and upgrade their nuclear weapons. This shows a basic conflict between depending on nuclear deterrence for strategy and the legal duty to work toward disarmament<sup>5</sup>.

The global legal system dealing with nuclear weapons shows a fragile mix of ideals and real-world strategies. Progress has been achieved in creating rules to stop the spread of weapons and push for disarmament. However, the ongoing use of deterrence strategies and uneven global commitment weaken how well this system works. To improve it, the world needs not just changes in laws but also stronger political determination and teamwork among nations to close the gap between what the law says and what happens.

## **DOCTRINE OF NUCLEAR DETERRENCE: STRATEGIC JUSTIFICATION AND STATE PRACTICE**

Nuclear deterrence remains a lasting and debated foundation of global security in the 21st century. At its heart, it is based on the idea that having nuclear weapons stops enemies from launching attacks because they fear devastating retaliation. This thinking, which became significant during the Cold War, still guides the strategies of countries with nuclear weapons. This happens even though these nations have also made legal promises to move toward nuclear disarmament under international law.

Nuclear deterrence splits into different types such as minimum deterrence, credible deterrence, and extended deterrence. Assured Destruction (MAD) highlights the most extreme type where opposing sides have enough nuclear weapons to obliterate one another. This makes starting a war seem irrational. Some argue these ideas are unstable, while others believe deterrence has played

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<sup>5</sup> Daniel H. Joyner, *International Law and the Proliferation of Weapons of Mass Destruction* (Oxford University Press, 2009).

a key role in stopping major wars between big powers since 1945. People often see it as a tough yet crucial way to keep global stability in a world without a central authority<sup>6</sup>.

The main reason for using nuclear deterrence is the belief that it helps keep peace by threatening massive force. Countries don't just view nuclear weapons as tools of war. They treat them as political tools to boost their security and bargaining strength. Big nuclear powers like the United States and Russia still depend a lot on these deterrence strategies. You can see this in their military plans and efforts to update their arsenals. Both nations hold massive stockpiles of nuclear weapons and have advanced ways to deliver them such as intercontinental ballistic missiles and submarine-launched ballistic missiles. These systems make sure they can strike back even if they are hit first, which a key part of deterrence is working.

Newer nuclear nations tend to practice more cautious forms of deterrence. India, as an example, uses a policy called “credible minimum deterrence” and commits to a “No First Use” (NFU) strategy. This policy tries to address the country's security needs while showing responsibility in managing nuclear weapons. China likewise, has kept a small nuclear stockpile and has stuck to its NFU approach. However, it has started modernizing and growing its arsenal. These examples show that while deterrence is a shared strategy among states how it's carried out depends on each country's geopolitical situation and strategic goals.

The doctrine of nuclear deterrence might seem appealing, but it has faced heavy criticism from ethical and legal viewpoints. People often point out a major issue the clash between deterrence and global legal duties to work toward nuclear disarmament. According to the Treaty on the Non-Proliferation of Nuclear Weapons Article VI, countries must try to negotiate ending nuclear weapons. Yet, nuclear-armed nations sticking to deterrence shows little real effort toward that goal. Many argue that deterrence keeps the arms race alive and weakens trust in international law<sup>7</sup>.

Deterrence carries risks that cannot be ignored. Accidents or unauthorized launches of nuclear weapons, mistakes in judgment during tense situations, and new dangers like cyber warfare create big challenges for keeping deterrence steady. Countries such as North Korea growing their

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<sup>6</sup> Thomas C. Schelling, *Arms and Influence* (Yale University Press, 1966).

<sup>7</sup> Nina Tannenwald, *The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons since 1945* (Cambridge University Press, 2007).

nuclear power add more trouble to world security bringing up worries about the spread of weapons and shaky regional peace. In this situation, relying on deterrence might fail to keep security intact and could even increase stress and uncertainty worldwide.

A key issue is questioning whether deterrence is acceptable. Threatening to use nuclear weapons, which can lead to massive destruction and suffering, brings up big concerns under international humanitarian law. In 1996, the International Court of Justice gave an Advisory Opinion stating that using nuclear weapons is against the law. However, the court didn't declare it illegal in every situation. This lack of clarity lets countries defend deterrence and avoid strict legal limits, which ends up maintaining the current situation.

Nuclear deterrence still plays a key part in guiding how countries act and in shaping global security. Some defend it as a practical way to keep peace, but it clashes with the moral and legal push for nuclear disarmament. Its continued use shows the ongoing struggle between protecting national security and working toward a world without nuclear weapons. Solving this issue needs more than just legal changes. It calls for completely reimagining how we think about global security.

## **NUCLEAR DISARMAMENT: LEGAL OBLIGATIONS, HUMANITARIAN CONCERNS & GLOBAL MOVEMENTS**

Getting rid of nuclear weapons forms an important part of the global rules that control weapons of mass destruction. This idea comes not just from formal treaties but also from shared goals tied to humanitarian values and worldwide safety. As nations face the struggle between using nuclear weapons as a strategy and the call to get rid of them, the legal duty to remove these weapons keeps clashing with the reliance countries still have on their stockpiles today.

The Treaty on the Non-Proliferation of Nuclear Weapons, or NPT, forms the backbone of the legal system addressing nuclear weapons. It creates two main goals: stopping the spread of nuclear arms and working toward their elimination. In Article VI, it demands that all member states work to negotiate nuclear disarmament. But critics often argue that this clause is vague and hard to enforce. This loophole lets nations with nuclear weapons hold onto and even upgrade their arsenals by claiming it's necessary. As a result, there's an ongoing imbalance between

nuclear and non-nuclear nations, which many believe weakens the trust in the disarmament process<sup>8</sup>.

To address these challenges, nations around the world created the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017. This marked a major shift in global norms. The TPNW bans making, owning, using, or even threatening to use nuclear weapons. It treats nuclear weapons as unlawful. Non-nuclear states and civil society groups have shown strong support for the treaty. However, its progress faces limits because nuclear-armed countries have not joined. This difference shows a gap between what the law aims for and the realities of global politics.

The role of humanitarian issues in nuclear disarmament has become more important over the years. International humanitarian law, which includes rules like distinction, proportionality, and banning unnecessary suffering, raises tough questions about nuclear weapons. Using these weapons brings disaster killing huge numbers of civilians, damaging the environment for a long time, and causing cross-border harm. This goes against what these legal standards stand for. The International Court of Justice shared its opinion on this in 1996. While it didn't outright label all nuclear weapons illegal, it highlighted that using them conflicts with humanitarian law. The Court emphasized the duty to work towards nuclear disarmament with honesty highlighting the legal importance of Article VI of the NPT<sup>9</sup>.

Humanitarian concerns have grown louder because of what victims of nuclear war and testing often called "hibakusha," have gone through. The bombings of Hiroshima and Nagasaki, along with later nuclear testing in different areas, show how radiation exposure has wide-reaching and lasting effects. These harsh truths have helped create a strong humanitarian argument questioning whether nuclear deterrence can be justified as a security approach.

Global movements and civil society groups have been a key in pushing efforts to eliminate nuclear weapons. Initiatives like the International Campaign to Abolish Nuclear Weapons (ICAN) have rallied global support and shaped treaty decisions such as the acceptance of the TPNW. These groups stress the ethical reasons to ban nuclear weapons arguing they are not just

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<sup>8</sup> Daniel H. Joyner, *International Law and the Proliferation of Weapons of Mass Destruction* (Oxford University Press, 2009)

<sup>9</sup> International Campaign to Abolish Nuclear Weapons (ICAN), "The Humanitarian Impact of Nuclear Weapons" (2015).

a threat to security but also inhumane. More non-state actors joining this cause shows how international law-making is opening up, with advocacy and public voices helping mold global standards.

Even with these advancements big problems still exist. Countries with nuclear weapons claim their stockpiles are necessary to deter wars saying these weapons stop major conflicts and keep global balance. This belief clashes with the commitments to disarm leading to uneven respect for global rules. On top of that, updates to nuclear weapons, like better delivery methods and the use of new technologies, make it even harder to achieve disarmament goals.

Nuclear disarmament involves a tricky mix of legal duties human welfare issues, and worldwide efforts to promote change. International law sets guidelines to get rid of nuclear weapons, but the agendas of powerful nations weaken its impact. The focus on human welfare backed by court rulings and grassroots groups, keeps questioning the validity of nuclear deterrence. The international community faces a tough task to close the divide between legal promises and real-world strategies while aiming to create a world without nuclear weapons.

### **CONFLICT BETWEEN DETERRENCE & DISARMAMENT IN THE 21<sup>ST</sup> CENTURY**

The 21st century has highlighted the ongoing conflict between nuclear deterrence and disarmament bringing out a clear contradiction in global security and international law. Legal agreements push to eliminate nuclear weapons over time, but military strategies still insist on keeping them as key to protecting nations. This clash shows a constant tug-of-war between the ideals countries commit to and the practical demands of global politics.

The heart of this conflict stems from Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, which calls on states to negotiate in good faith to achieve nuclear disarmament. But nuclear-armed nations often take a more loose approach to this requirement focusing on slow reductions over total elimination<sup>10</sup>. At the same time, they upgrade their nuclear weapons strengthening the idea of deterrence. This kind of selective following of the rules weakens trust in international law and widens the gap in legitimacy between nations with and without nuclear weapons.

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<sup>10</sup> Treaty on the Non-Proliferation of Nuclear Weapons, 1968, 729 UNTS 161 (entered into force 5 March 1970), Art. VI.

The idea behind deterrence relies on threatening to use nuclear weapons, which brings up big questions about international humanitarian law. Important rules like distinguishing between military and civilian targets, avoiding excessive force, and preventing needless suffering clash with the massive damage nuclear war can cause. In 1996, the International Court of Justice gave an advisory opinion pointing out this murkiness. It stated that using nuclear weapons would break the laws of war but stopped short of ruling them illegal in extreme self-defence cases. This grey area lets countries argue for deterrence without breaking international rules.

Nuclear deterrence remains a strong factor in regional conflicts and the spread of nuclear weapons. Take North Korea as an example. Its work on nuclear weapons poses a clear threat to the world's non-proliferation efforts. Even with sanctions and diplomatic pressure, North Korea treats its nuclear weapons as critical to keeping its regime in power. This drives them to focus on strategy above following international rules. Another example is the Joint Comprehensive Plan of Action. This agreement aimed to restrict Iran's nuclear plants in return for easing sanctions. However, changes in political dynamics and some nations pulling out have weakened the deal showing how strategic goals can overpower international agreements<sup>11</sup>.

India and Pakistan show how deterrence still plays a key role in South Asia's nuclear dynamics. Both countries rely on their nuclear weapons to maintain strategic stability even though neither one has joined the NPT. India follows a "No First Use" policy aiming to combine deterrence with some level of restraint. However, having these weapons goes against the goal of disarmament. The region stays at risk of conflict because of long-standing tensions, misunderstandings, and the chance of accidental or unapproved use.

New technology has made the debate over deterrence and disarmament even more complex. Artificial intelligence, cyber tools, and hypersonic weapons bring fresh challenges filled with risk and unpredictability. Cyberattacks targeting nuclear command systems might trigger false alarms or even unapproved missile launches. This raises the chances of accidental wars happening. Current legal rules do not cover these threats leaving gaps that undermine efforts to disarm and strengthen the belief that deterrence is essential.

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<sup>11</sup> Daniel H. Joyner, *Interpreting the Nuclear Non-Proliferation Treaty* (Oxford University Press, 2011).

One big problem is the weak enforcement in international law. Domestic laws have strong systems to ensure rules are followed, but international law depends mostly on countries agreeing and working together. This means strong countries can avoid responsibility while focusing on their own security goals. Since there's no strict enforcement, countries with nuclear weapons can keep them without serious legal trouble. This unfair system affects the rule of law and makes other countries less likely to follow non-proliferation efforts.

The Treaty on the Prohibition of Nuclear Weapons (TPNW) shows rising frustration among non-nuclear nations and civil organizations. Its goal is to create a full ban on nuclear weapons focusing on humanitarian and moral concerns. However, nuclear-armed countries have not joined, which limits how effective it can be. This situation reveals a deep conflict in global politics. Some nations push for total disarmament, but others stick to using nuclear deterrence as a key part of their security strategies.

The clash between deterrence and disarmament goes beyond just being a legal matter. It highlights two opposing ways of looking at the world. Deterrence focuses on realism. It puts state survival and stability first<sup>12</sup>. Disarmament leans toward idealism. It stresses the importance of laws human welfare, and group security. Resolving this conflict means bringing these views together. This remains a tough task in the complex global environment today.

The conflict between nuclear deterrence and disarmament has grown more intense in the 21st century. International law outlines a structure to reduce and get rid of nuclear weapons, but countries still keep and upgrade them due to strategic concerns. This clash weakens the non-proliferation system and brings up important concerns about the stability of global security. Solving this issue means nations not need to improve legal tools but also work harder to build trust and cooperate with each other.

## **CONCLUSION:**

The ongoing clash between nuclear deterrence and disarmament is one of the hardest issues in modern global security and international law. Nuclear-armed nations rely on the idea of deterrence in their strategies, but international law pushes harder for disarmament treating it as a

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<sup>12</sup> Scott D. Sagan and Kenneth N. Waltz, *The Spread of Nuclear Weapons: A Debate Renewed* (W.W. Norton & Company, 2003).

duty and an ethical necessity. This clash has hurt the trust in the global non-proliferation system and revealed clear contradictions in how countries call for disarmament while upgrading their nuclear weapons at the same time.

The rules managing nuclear weapons under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) push for nuclear disarmament in the future. Article VI of the NPT requires countries in the treaty to make an honest effort to negotiate getting rid of nuclear weapons. But without a set deadline or a system to enforce it, this duty ends up being more of an aim than an action. Nuclear-armed nations often argue that they need these weapons for their national security, which leads to uneven compliance and weakens the idea that international law applies to everyone. The situation has caused frustration in non-nuclear-weapon states and pushed the creation of new legal agreements like the Treaty on the Prohibition of Nuclear Weapons (TPNW). This treaty bans nuclear weapons, but big nuclear powers are not part of it.

Many see nuclear weapons as clashing with the core ideas of international humanitarian law, which raises major concerns. In 1996, the International Court of Justice gave an advisory opinion that pointed out how nuclear weapons are against the law. It said these weapons go against key rules like distinction, proportionality, and avoiding unnecessary suffering. The Court however, did not outright say using them is always illegal in every situation. Even so, this opinion boosted the case to push for disarmament. In recent years, people have grown even more worried about the awful damage nuclear weapons cause, both to people and the planet. This worry has led to stronger claims that keeping nuclear weapons violates basic international law rules.

At the same time, you can't ignore the reasoning behind deterrence strategies. Nuclear deterrence seems to have played a part in preventing large-scale wars between top world powers since World War II. Countries like the United States Russia and China still treat nuclear weapons as key to their national security plans. Growing nuclear states such as India also use strategies based on deterrence often with defensive policies like "No First Use." But sticking to these strategies keeps a cycle of building more weapons alive. It fuels competitions between nations to develop advanced technology like hypersonic missiles and combine artificial intelligence with military tools, which increases the chances of accidents or unauthorized use.

The main challenge is to bring together these opposing ideas. Pushing for quick nuclear disarmament without dealing with the security reasons behind nuclear weapons is unlikely to work. On the other hand supporting deterrence could make an unstable and questionable system seem normal. Moving ahead needs a mix of practical planning and meeting legal responsibilities. Steps like building trust making gradual agreements to reduce arms, and improving openness between nations could help connect these opposing views. It is also important to strengthen groups like the International Atomic Energy Agency to make sure nations follow the rules and trust each other more.

More focus needs to go toward spreading disarmament rules and getting nuclear-armed nations involved in international legal agreements. Emerging powers like India have an important role here because they can bridge the gap between countries with and without nuclear weapons. Achieving a world without nuclear weapons relies on more than just legal promises. It demands strong political determination and teamwork from nations worldwide.

Resolving the tension between nuclear deterrence and disarmament doesn't seem likely anytime soon. But steady work to connect military strategies with legal and humanitarian values might ease this conflict over time. This century brings new difficulties and chances in this area. Decisions made by world leaders today will shape the path of global safety in the years ahead.