# DA- Ilaw

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#### Ilaw doesn’t permit hate speech

Cohen 14 [Cohen, Roni. (J.D. Candidate, 2015, The University of Chicago Law School. ) “Regulating Hate Speech: Nothing Customary About It” Chicago Journal of International law. 6-1-2014. ] NB

International law holds freedom of expression in high regard.127 Indeed, there are several international covenants and treaties that protect an individual's right to speech. The Universal Declaration of Human Rights ("UDHR") affords everyone "the right to freedom of opinion and expression ... [which] includes freedom ... to seek, receive and impart information and ideas through any media and regardless of frontiers."1 28 Additionally, Article 19(2) of the International Covenant on Civil and Political Rights ("ICCPR") indicates that the "right to freedom of expression" includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media."l29 Similar provisions can be found in the European Convention on Human Rights ("ECHR"),130 American Convention on Human Rights ("American Convention"),31 and African Charter on Human and Peoples' Rights ("African Charter").132 Further, the European Court for Human Rights, regarding freedom of expression as a fundamental foundation of democratic society, repeatedly held the freedom "applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb."133 This respect for freedom of expression does not, however, imply that restrictions on hate speech necessarily violate international law. In fact, international agreements prescribe limitations on free speech when that speech is discriminatorily aimed at individuals.134 The International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") requires state parties to criminalize "all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all . . incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin."13 5 It also requires states to prohibit "organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.""' Further, the protections to individual dignity affirmed in ICERD are not inconsistent with language in the other treaties that affirmatively protect freedom of expression. The UDHR, for instance, makes the guarantee of freedom of expression subject "to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others.""' Similarly, Article 19 of the 1CCPR qualifies the right as "carr[ying] with it special duties and responsibilities" subjecting it to certain limitations, such as "respect of the rights or reputations of others.""' Interpreting this article, the United Nations Human Rights Committee commented, "[i]t is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.""' In the manner of ICERD, the 1CCPR goes further, requiring states to outlaw "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."l40 The ECHR,14' American Convention,142 and African Charter'43 also place restrictions on the right to freedom of expression. International courts have reinforced the understanding that limitations on speech are affirmatively allowed, if not required, under international agreements. The European Commission on Human Rights has interpreted the ECHR in particular not just to allow restrictions but also, like the ICCPR and ICERD, affirmatively to require them.'" For example, in Jersild v. Denmark,4'5 the European Court of Human Rights held that hate speech could be prohibited because it is contrary "to the protection of the reputation or rights of others."146 The ICTR agreed when, after examining "well-established principles of international and domestic law," it held that "hate speech that expresses ... discrimination violates the norm of customary international law prohibiting discrimination.l1 47 Further, international entities with appellate authority over domestic hate speech cases have affirmed convictions. For example, the UN Human Rights Committee upheld the conviction of a French university professor for advocating revisionist theories of the Holocaust under France's Gayssot Act, which criminalizes questioning the existence of proven crimes against humanity.'48 The Committee determined that the conviction was consistent with the free speech protections of ICCPR. Additionally, The European Court of Human Rights has found restrictions on freedom of expression to be consistent with free speech guarantees of the ECHR.149 Finally, scholars generally seem to agree that international law at the very least permits prohibitions on hate speech.'

Prefer- recency

#### US adherence to international law concerning hate speech is key to credibility in international human rights

**Cohen 15** [Tanya Cohen, "It’s Time To Bring The Hammer Down On Hate Speech In The U.S." Thought Catalog, 5/1/2015] AZ

Recent scandals involving right-wing hatemongers like Phil Robertson, Donald Sterling, Bill Maher, and the Sigma Alpha Epsilon fraternity have brought to light one of America’s biggest embarrassments: the fact that America remains the only country in the world without any legal protections against hate speech. In any other country, people like Phil Robertson and Donald Sterling would have been taken before a Human Rights Commission and subsequently fined and/or imprisoned and/or stripped of their right to public comment for making comments that incite hatred and violence against vulnerable minorities. But, in the US, such people are allowed to freely incite hatred and violence against vulnerable minorities with impunity, as the US lacks any legal protections against any forms of hate speech – even the most vile and extreme forms of hate speech remain completely legal in the so-called “land of the free”. Not only is this a violation of the most basic and fundamental human rights principles, but it’s also an explicit violation of legally-binding international human rights conventions. For many decades, human rights groups around the world – from Amnesty International to Human Rights First to the United Nations Human Rights Council – have told the United States that it needs to pass and enforce strong legal protections against hate speech in accordance with its international human rights obligations. As of 2015, the US is the only country in the world where hate speech remains completely legal. This is, in fact, a flagrant violation of international human rights law. The International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) both mandate that all countries outlaw hate speech, including “propaganda for war” and the dissemination of any “ideas based on racial superiority or hatred”. The ICCPR and ICERD are both legally-binding international human rights conventions, and all nations are required to uphold them in the fullest. By failing to prosecute hate speech, the US is explicitly and flippantly violating international human rights law. No other country would be allowed to get away with this, so why would the US? The United Nations has stated many times that international law has absolute authority. This is quite simply not optional. The US is required to outlaw hate speech. No other country would be able to get away with blatantly ignoring international human rights standards, so why should the US be able to? The US is every bit as required to follow international human rights law as the rest of the world is.

#### The impact is unrestrained use of force in conflict

Modirzadeh 14 [Naz K. Modirzadeh 14, Senior Fellow at Harvard Law School-Brookings Project on Law and Security, Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance, <http://harvardnsj.org/wp-content/uploads/2014/01/Modirzadeh-Final.pdf>]

The central purpose of the convergence of IHL and IHRL is to increase the protection of individuals in armed conflict. The notion behind the insistence that IHL and IHRL are part of the same discipline suggests that IHL is part of the far larger and more broadly applicable legal realm of IHRL. Indeed, the very idea of the “humanization of humanitarian law”159 is that the cold, brutal balancing of IHL, its perceived deference to the military and the needs of the state is opened up and mitigated by a body of law that protects the individual’s human rights against the state. Yet here the story flips: It is IHRL that seems to become part of IHL. It is IHRL that, by the end of our narrative, seems to be brought into the service of conflict, to act not as a powerful check on the brute force of the sovereign, not as the voice of the international community against those who wish to prioritize national security over individual liberties, but rather as a means to regulate the use of lethal violence. Having argued vociferously that IHRL applies in all situations of armed conflict at all times in order to protect individuals, the argument suddenly turns in the other direction. It becomes possible to say that IHRL can be utilized to allow for one state to invade another state’s territory in order to murder individuals without an attempt to arrest, detain, charge, and try these individuals. What is so striking in this view is how well—if that is the right word—the convergence argument worked, or at least how much work convergence ended up doing. Remarkably, many who wish to justify a far broader and even more aggressive CIA drone program cite convergence as a basis for doing so.160 For the application of IHL, on the other hand, the dominant assumption of convergence—that human rights law and IHL are part of the same general field, that they apply simultaneously, and that they are part of the same conversation—may have had the effect of loosening the boundaries around the field of application of IHL. As the two bodies of law began to be used interchangeably—as an attack utilizing a five hundred pound bomb is analogized to a police officer using a weapon when faced with the imminent danger of a hostage situation—one effect on the perception of IHL may be that it is no longer seen as a tightly controlled body of law. As many leading IHL lawyers warned in 2001 and 2002, once IHL is applied, many ugly things that we generally see as illegal, as outside the realm of rule of law, suddenly become lawful. Those IHRL lawyers who argued that IHRL applies simultaneously to IHL during armed conflict may have contributed to the blurring of the line between war and not-war.

#### International law key to preventing escalation of crises – extensive empirics

**Goodman 09** [Ryan Goodman, Anne and Joel Ehrenkranz Professor of Law, New York University School of Law, December 2009, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, Yearbook of International Humanitarian Law / Volume 12]

A substantial literature exists on the conflation of jus ad bellum and jus in bello. However, the consequences for the former side of the equation – the resort to war – is generally under-examined. Instead, academic commentary has focused on the effects of compliance with humanitarian rules in armed conflict and, in particular, the equality of application principle. In this section, I attempt to help correct that imbalance. In the following analysis, I use the (admittedly provocative) short-hand labels of ‘desirable’ and ‘undesirable’ wars. The former consists of efforts that aim to promote the general welfare of foreign populations such as humanitarian interventions and, on some accounts, peacekeeping operations. The latter – undesirable wars – include conflicts that result from security spirals that serve neither state’s interest and also include predatory acts of aggression. 4.1.1 Decreased likelihood of ‘desirable wars’ A central question in debates about humanitarian intervention is whether the international community should be more concerned about the prospect of future Kosovos – ambitious military actions without clear legal authority – or future Rwandas – inaction and deadlock at the Security Council. Indeed, various institutional designs will tend to favor one of those outcomes over the other. In 1999, Kofi Annan delivered a powerful statement that appeared to consider the prospect of repeat Rwandas the greater concern; and he issued a call to arms to support the ‘developing international norm in favor of intervention to protect civilians from wholesale slaughter’.95 Ifoneassumesthatthereis,indeed,aneedforcontinuedorgreatersupport for humanitarian uses of force, Type I erosions of the separation principle pose a serious threat to that vision. And the threat is not limited to unilateral uses of force. It also applies to military operations authorized by the Security Council. In short, all ‘interventions to protect civilians from wholesale slaughter’ are affected. Two developments render desirable interventions less likely. First, consider implications of the Kosovo Commission/ICISS approach. The scheme imposes greater requirements on armed forces engaged in a humanitarian mission with respect to safeguarding civilian ives.96 If that scheme is intended to smoke out illicit intent,97 it is likely to have perverse effects: suppressing sincere humanitarian efforts at least on the margins. Actors engaged in a bona fide humanitarian intervention generally tend to be more protective of their own armed forces than in other conflicts. It is instructive to consider, for instance, the precipitous US withdrawal from the UN mission in Somalia – code-named Operation Restore Hope – after the loss of eighteen American soldiers in the Battle of Mogadishu in 1993, and the ‘lesson’ that policymakers drew from that conflict.98 Additionally, the Kosovoc ampaign – code-named Operation Noble Anvil – was designed to be a ‘zero-casualty war’ for US soldiers, because domestic public support for the campaign was shallow and unstable. The important point is that the Kosovo Commission/ICISS approach would impose additional costs on genuine humanitarian efforts, for which it is already difficult to build and sustain popular support. As a result, we can expect to see fewer bona fide interventions to protect civilians from atrocities.99 Notably, such results are more likely to affect two types of states: states with robust, democratic institutions that effectively reflect public opinion and states that highly value compliance with jus in bello. Both of those are the very states that one would most want to incentivize to initiate and participate in humanitarian interventions. The second development shares many of these same consequences. Consider the implications of the British House of Lords decision in Al-Jedda which cast doubt on the validity of derogations taken in peacekeeping operations as well as other military efforts in which the homeland is not directly at stake and the state could similarly withdraw. The scheme imposes a tax on such interventions by precluding the government from adopting measures that would otherwise be considered lawful and necessary to meet exigent circumstances related to the conflict. Such extraordinary constraints in wartime may very well temper the resolve to engage in altruistic intervention and military efforts that involve similar forms of voluntarism on the part of the state. Such a legal scheme may thus yield fewer such operations and the participation of fewer states in such multilateral efforts. And, the impact of the scheme should disproportionately affect the very states that take international human rights obligations most seriously. Notably, in these cases, the disincentives might weigh most heavily on third parties: states that decide whether and to what degree to participate in a coalition with the principal intervener. It is to be expected that the commitment on the part of the principal intervener will be stronger, and thus not as easily shifted by the erosion of the separation principle. The ability, however, to hold together a coalition of states is made much more difficult by these added burdens. Indeed, as the United States learned in the Kosovo campaign, important European allies were wary about the intervention, in part due to its lack of an international legal pedigree. And the weakness of the alliance, including German and Italian calls for an early suspension of the bombing campaign, impeded the ability to wage war in the first place. It may be these third party states and their decision whether to join a humanitarian intervention where the international legal regime matters most. Without such backing of important allies, the intervention itself is less likely to occur. It is also those states – the more democratic, the more rights respecting, and the more law abiding – that the international regime should prefer to be involved in these kinds of interventions. The developments regulating jus ad bellum through jus in bello also threaten to make ‘undesirable wars’ more likely. In previous writing, I argue that encouraging states to frame their resort to force through humanitarian objectives rather than other rationales would, in the aggregate, reduce the overall level of disputes that result in uncontrolled escalation and war.100 A reverse relationship also holds true. That is, encouraging states to forego humanitarian rationales in favor of other justifications for using force may culminate in more international disputes ending in uncontrolled escalation and war. This outcome is especially likely to result from the pressures created by Type I erosions of the separation principle. First, increasing the tax on humanitarian interventions (the Kosovo Commission/ICISS approach) and ‘wars of choice’ (the Al-Jedda approach) would encourage states to justify their resort to force on alternative grounds. For example, states would be incentivized to invoke other legitimated frameworks – such as security rationales involving the right to self-defense, collective self-defense, anticipatory self-defense, and traditional threats to international peace and security. And, even if military action is pursued through the Security Council, states may be reluctant to adopt language (in resolutions and the like) espousing or emphasizing humanitarian objectives. Second, the elevation of self-regarding – security and strategic – frameworks over humanitarian ones is more likely to lead to uncontrolled escalation and war. A growing body of social science scholarship demonstrates that the type of issue in dispute can constitute an important variable in shaping the course of interstate hostilities. The first generation of empirical scholarship on the origins of war did not consider this dimension. Political scientists instead concentrated on features of the international system (for example, the distribution of power among states) and on the characteristics of states (for example, forms of domestic governance structures) as the key explanatory variables. Research agendas broadened considerably, however, in subsequent years. More recently, ‘[s]everal studies have identified substantial differences in conflict behavior over different types of issues’.101 The available evidence shows that states are significantly more inclined to fight over particular types of issues that are elevated in a dispute, despite likely overall material and strategic losses.102 Academic studies have also illuminated possible causal explanations for these empirical patterns. Specifically, domestic (popular and elite) constituencies more readily support bellicose behavior by their government when certain salient cultural or ideological issues are in contention. Particular issue areas may also determine the expert communities (humanitarian versus security mindsets) that gain influence in governmental circles – a development that can shape the hard-line or soft-line strategies adopted in the course of the dispute. In short, these links between domestic political processes and the framing of international disputes exert significant influence on whether conflicts will eventually culminate in war. Third, a large body of empirical research demonstrates that states will routinely engage in interstate disputes with rivals and that those disputes which are framed through security and strategic rationales are more likely to escalate to war. Indeed, the inclusion of a humanitarian rationale provides windows of opportunity to control and deescalate a conflict. Thus, eliminating or demoting a humanitarian rationale from a mix of justifications (even if it is not replaced by another rationale) can be independently destabilizing. Espousing or promoting security rationales, on the other hand, is more likely to culminate in public demands for increased bellicosity, unintended security spirals, and military violence.103 Importantly, these effects may result even if one is skeptical about the power of international law to influence state behavior directly. It is reasonable to assume that international law is unlikely to alter the determination of a state to wage war, and that international law is far more likely to influence only the justificatory discourse states employ while proceeding down the warpath. However, as I argue in my earlier work, leaders (of democratic and nondemocratic) states become caught in their official justifications for military campaigns. Consequently, framing the resort to force as a pursuit of security objectives, or adding such issues to an ongoing conflict, can reshape domestic political arrangements, which narrows the subsequent range of policy options. Issues that initially enter a conflict due to disingenuous representations by political leaders can become an authentic part of the dispute over time. Indeed, the available social science research, primarily qualitative case studies, is even more relevant here. A range of empirical studies demonstrate such unintended consequences primarily in the case of leaders employing security-based and strategic rationales to justify bellicose behavior.104 A central finding is that pretextual and superficial justifications can meaningfully influence later stages of the process that shape popular and elite conceptions of the international dispute. And it is those understandings that affect national security strategies and the ladder of escalation to war. Indeed, one set of studies – of empires – suggests these are mechanisms for powerful states entering into disastrous military campaigns that their leaders did not initially intend.