

2007-08 International Law Speaker Series Presents:

"International Humanitarian Law, Foreign Policy, and the Limitations of Power"

With Harvey Rishikof
National War College

Thursday, November 8, 2007

4:00 PM - 5:30 PM

Social Sciences Building (SSB) 104

Free and open to the public.

Abstract: How does law or the rule of law interact with the war on terrorism and international norms? How does the US participate in the ideological debate over international justice and world opinion as a matter of foreign policy? A fundamental issue is what is the appropriate legal authority to prosecute war crimes or to decide how far habeas corpus should be extended when prosecuting terrorism, or when are targeted killings and renditions appropriate? For many these issues are primarily military-political executive functions. But under the Juridical Warfare paradigm, what role should law and the courts both international and domestic play?

Often the US position exemplifies the fact that the 1950's international legal framework was based on a Cold War balance of power and set of norms that are no longer efficacious in the post Cold War world. Failing states, emerging new powers, terrorism, and globalism are calling into question the status quo. As the world struggles for new norms and frameworks for justice, there is much suspicion and lack of international trust. In a world where the old is increasingly obsolete, the new reflects shifting and emerging balances of power, and the current is amenable to plays of unfettered power projections of the strong, it is no wonder that Juridical Warfare is on the rise and resented as a tool of the weak.

The Executive Branch has clashed with both the Congress and the Supreme Court in its view of executive power when creating new policy on a war footing. Is a terrorist action a criminal violation or a political act? Should terrorism be prosecuted under the laws of armed conflict or the criminal justice system? Is terrorism primarily a domestic or foreign issue? When projecting force against the threat of terrorism, should we be using law enforcement shooting criteria or military rules of engagement? Which and how do international conventions govern the confinement and interrogation of terrorists? Does it make a difference if the victims of terrorism are combatants or non-combatants? Under what laws should "private contractors" be governed - - military, criminal or local? If gathering intelligence is the center of gravity to prevent terrorist acts, should this process be governed by law enforcement restrictions or foreign intelligence criteria? How should the Executive Branch conduct its terrorist policies with respect to the Congress and the federal courts?

Based on the range of these questions and the constitutional issues involved, the characterization juridical warfare appears to be a more appropriate term than lawfare, or just war theory when thinking about the law more broadly, both as an ideological concept and as a tool, within the context of foreign policy and national security.

Biography: Harvey Rishikof, former Chair Department of National Security Strategy, Professor of Law and National Security Studies at the National War

College in Washington, DC, specializes in the areas of national security, civil and military courts, terrorism, international law, civil liberties, national security law, civilian/military relations, governmental process, and the U.S. Constitution. Mr. Rishikof's career includes experiences with the academy, the private sector, and public service. As Dean of the Roger Williams University School of Law, Bristol, RI (1999-2001), he introduced courses in national security law and the Constitution involving the Naval War College in Newport, RI. As Legal Counsel to the Deputy Director of the FBI (1997-99), Rishikof focused on FBI policies concerning national security and terrorism, and served as liaison to the Office of the Attorney General at the Department of Justice. As Administrative Assistant to the Chief Justice of the Supreme Court (1994-96), Rishikof served as chief of staff for the Chief Justice and was involved in general policy issues concerning the federal court system. In this capacity, he acted as liaison to the Executive Branch, Congress, the Federal Judicial Center, and the Administrative Office of the United States Courts, and International Judicial Committee of the Judicial Conference. Rishikof has participated in numerous international seminars and projects, most recently in Colombia (2007). Mr. Rishikof's most recent publication is "Morality, Ethics, and Law in the War on Terrorism (The Long War), West Point Terrorism Series Countering Terrorism and Insurgency in the 21st Century: International Perspectives, James J.F. Forest ed. (2007). Rishikof holds a J.D. from New York University School of Law, an M.A. from Brandeis University, and a B.A. from McGill University.

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