international sources or influences on obscure, specialized, or extraterritorial issues in areas such as maritime law, but they are unlikely to be so receptive when it comes to more run-of-the-mill issues, especially when the international law at issue is customary rather than treaty-based. As a result, international law's success in expanding to increasing corners of law may have contributed to the reluctance of U.S. courts to link international law and foreign relations law as closely as did the Restatement Third.

International law appears to have led to a reduced judicial role in another way as well. One of the bedrock principles of international law is sovereignty. Sovereignty has played a mixed and evolving role in U.S. foreign relations law. In *Curtiss-Wright*, the Court cited U.S. sovereignty as the source of extraconstitutional federal, and particularly presidential, power over foreign affairs.[45] The Court has since pushed back on extraconstitutional notions of presidential power.[46] The sovereignty of other nations has also influenced the judiciary. The Supreme Court generally invokes the concern for other states' sovereignty through a separation of powers or federalism lens in which the Court leaves to the federal political branches the decision whether to infringe on that sovereignty, or otherwise provoke another sovereign. During the Cold War, concern for state interference with sovereignty led the Court to adopt a broad role for the judiciary in policing state action touching on foreign affairs.[47] More recently, however, consideration of other nations' sovereignty has led to a more restrictive judicial role. In the Alien Tort Statute cases, for example, concern for other nations' sovereignty led the Court to counsel caution in the judicial recognition of federal causes of action based on CIL.[48] Similarly, in the personal jurisdiction context, respect for and avoidance of tension with other sovereigns has contributed to a restrictive view of general jurisdiction.[49] The influence of this particular principle of international law has trended toward lesser judicial involvement in foreign affairs, in tension with the Restatement Third.

In short, much has changed in U.S. foreign relations law since the adoption of the Restatement Third. Foreign relations law has pivoted away from the orthodoxy of the Restatement Third, and the judiciary, though active in deciding foreign relations law cases, has declined to adopt an active role in foreign affairs. *The Restatement and Beyond* both documents and evidences these changes. The volume likewise provides insights into the future of the Restatement and foreign relations law. The volume thus stands as a worthy companion to the already valuable Restatement Fourth.

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The involvement of military lawyers in decisions about who lives and who dies during armed conflict has undergone a seismic shift over the past five decades. During the Vietnam War, American military lawyers—the judge advocate generals (JAGs)—played no role in U.S. targeting decisions; their responsibilities were more quotidian, generally limited to dealing with condolence payments and various types of civil claims, prosecuting and defending

[45] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 315–21 (1936).

[46] *See Zivotofsky*, 576 U.S. at 21.

[47] *See, e.g.*, *Zschernig*, 389 U.S. at 436–41.

[48] *See, e.g.*, *Sosa*, 542 U.S. at 727–28 (2004) (urging judicial caution in the recognition of common law causes of action based on CIL given the negative consequences these may cause for U.S. foreign affairs and the political branches' discretion in directing those affairs); *Kiobel*, 569 U.S. at 117 (reasoning that foreign policy "concerns, which are implicated in any case arising under the ATS, are all the more pressing when the question is whether a cause of action under the ATS reaches conduct within the territory of another sovereign").

[49] *See Daimler*, 571 U.S. at 140–42.

American soldiers accused of misconduct, and providing advice to the military concerning the classification and treatment of enemy detainees.[1] By the time of the wars in Iraq and Afghanistan, however, JAGs were reviewing targeting decisions for compliance with the laws of war and applicable rules of engagement (ROEs) during every phase of the "kill chain"—the decision-making process the U.S. military uses for both deliberate (planned in advance) and dynamic (planned in response to events on the ground) targeting. And they were not alone: between Vietnam and 9/11, the Israeli military developed an operational law of its own, increasingly relying on its military lawyers—the military advocate generals (MAGs)—to review the legality of Israel's targeted killing program in the Occupied Palestinian Territories.

It is tempting to describe the remarkable evolution of this American and Israeli "operational law" (p. 32) in teleological terms, as representing progress from a benighted time in which military commanders made targeting decisions in a legal vacuum to a more enlightened age in which the military relies on the expertise of its lawyers to cut through the fog of war. But that is not the tale that Craig Jones, a political geographer at Newcastle University in the UK, tells in his remarkable new book, *The War Lawyers: The United States, Israel, and Juridical Warfare*. Drawing on seven years of research, including dozens or interviews with JAGs and MAGs, Jones argues that although the "juridification" of targeting since the Vietnam War may at times have constrained violence, it has far more often enabled and justified it. In his words: "the United States and Israel have actively and deliberately sought to widen the scope and space of what constitutes a permissible target and this has been achieved not by ignoring or circumventing international law but through diligent and creative interpretive legal work" (p. 111).

This bold claim makes the *War Lawyers* essential reading not only for international lawyers who focus on legal issues arising in armed conflict—particularly international humanitarian law (IHL)—but also for those who are interested in more theoretical issues concerning the relationship between law and violence. Jones's historical account of how and why U.S. and Israeli military lawyers became increasingly involved in targeting decisions reflects the amount of work Jones put into the book: it is detailed, revealing, extremely well-told, and completely original. And his theoretical considerations are invariably challenging and thought-provoking.

The book generally unfolds in chronological fashion, with its historical account of the evolution of operational law bookended by a more theoretical Introduction and Conclusion. The long Introduction focuses on arguing that, for three interrelated reasons, American and Israeli warfighting became increasingly juridified. The first is that, over time, both militaries began to recognize the "ethico-legal imperative of distinguishing between civilians and combatants," a distinction riven with legal indeterminacy—such as the meaning of direct participation in hostilities—and thus requiring military lawyers for interpretation and application (p. 38). The second reason is that targeting shifted from a focus on status, such as membership in the enemy's armed forces, to a focus on conduct, such as a "pattern of life" that indicates a person poses a threat. That new focus on individual conduct brought to the fore difficult questions about who can be targeted and when—questions that required legal expertise to answer. And the third reason is that the proliferation of IHL (conventional and customary) and the rise of international human rights law (IHRL) made the law governing military operations increasingly "complex, detailed, and extensive," requiring commanders to rely ever more heavily on military lawyers "to help them navigate war's juridical terrain" (p. 44).

Chapter 1 focuses on the Vietnam War. As noted above, JAGs were not involved in targeting decisions during that war. Jones argues, however, that Vietnam gave impetus to the emergence of operational law because of the terrible consequences of the United States' aerial bombing

[1] *See generally* GEORGE SHIPLEY PRUGH, LAW AT WAR, VIETNAM: 1964–1973 (1975).

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campaigns, Rolling Thunder and Linebacker I and II. Those consequences threatened to undermine popular and congressional support for the war, demanding the military become increasingly sensitive to civilian casualties. That sensitivity manifested itself in a shift from accepting unlimited collateral damage from attacks on legitimate military targets to the modern principle of proportionality, in which the military advantage of an attack must always be weighed against the collateral damage the attack is expected to cause. And who better to assess proportionality in later conflicts than the JAGs? As Jones says, "when it came to adjudicating questions about the balancing of military advantage with civilian concerns a new skill-set was required, and military lawyers had it" (p. 77).

Chapter 2 addresses the period between Vietnam and the First Gulf War. It was in this period that operational law proper was born, as the joint chiefs of staff adopted a series of directives between 1979 and 1983 that made JAGs increasingly responsible for reviewing operational plans for consistency with the laws of war—including, by the time the United States invaded Panama in late 1989, targeting decisions. JAGs' role in the kill chain fundamentally altered the targeting process—and, just as importantly, it led to a revolution in how JAGs were viewed by military commanders. After Vietnam, JAGs had been greeted with suspicion, seen as meddlesome lawyers who prevented the military from doing what was necessary to prevail over the enemy. That perception quickly changed when military commanders realized that JAGs actually served as "force multipliers" (p. 99) when inserted into the kill chain—"taming" the laws of war by "rendering them ever more pragmatic, practitioner-oriented, and military-friendly" (p. 90). In other words, far from limiting violence, operational law actually enabled it.

Chapter 3 turns to the First Gulf War—"the most legalistic war we've ever fought," as Jones quotes U.S. Central Command's staff judge advocate (p. 121). The major aerial bombing operation that took place during Operation Desert Storm, the wryly-named "Instant Thunder," belies that characterization, because military lawyers were not asked to vet targets—not even heavily-attacked "dual-use" objects, such as Iraq's electrical grid, the targetability of which was quite legally complex—despite the earlier directives from the joint chiefs of staff requiring such review. Instead, reflecting how they were used during the invasions of Grenada and Panama, JAGs largely concerned themselves in the lead-up to and early days of the First Gulf War with writing ROEs for the conduct of hostilities. It was not until nearly nine months into the war that JAGs assumed responsibility for "reviewing all targeting work and methodology" (p. 139). JAGs involved in targeting decisions told Jones that they were particularly sensitive to attacks likely to cause disproportionate collateral damage. Jones is skeptical of that claim, however, noting that his research identified only one incident during the First Gulf War where JAG advice led the military to reverse a targeting decision: General Norman Schwarzkopf's plans to destroy the notorious Victory Arch and a forty-foot statute of Saddam Hussein, civilian objects located in the center of bustling Baghdad.

Chapter 4 leaves the United States behind and focuses on the parallel development of operational law in Israel. MAGs had long been involved in providing legal advice concerning the administration of the Occupied Palestinian Territories, but they did not become directly involved in military operations until the Second Intifada. When Israel responded to the Intifada by creating its notorious targeted killing program, "military lawyers became instrumental in devising new legal concepts and categories designed to expand the definition of who and what constitutes a lawful military target" (p. 157). Most importantly, MAGs devised the concept of an "armed conflict short of war"—a classification unknown to conventional and customary IHL—that permitted Israel to ignore IHRL's limitations on lethal force without acknowledging that it was involved in either an international or non-international armed conflict with the Palestinians. But MAGs also became involved in reviewing targeting decisions (made in accordance with ROEs they had written themselves), both in advance of operations and during

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them. Jones claims that MAGs rarely rejected a planned target, a permissibility that he attributes not only to military commanders' awareness of which targets MAGs would likely approve, but also to MAGs being culturally conditioned to adopt a "generally permissive approach to targeting" (p. 185).

The last two substantive chapters in the book, Chapters 5 and 6, return to U.S. practice, focusing respectively on two different types of targeting: deliberate and dynamic. Jones demonstrates how, as a result of the development of operational law, JAG "involvement in aerial targeting operations is far more extensive than it has ever been" (p. 204), extending to all six phases of the kill chain, from helping commanders formulate military objectives to assessing the consequences of attacks. But he also carefully explains the differences between deliberate and dynamic targeting, emphasizing that the time-sensitive nature of the latter not only means that many dynamic targeting decisions receive no JAG review all, but also —and more importantly—that even reviewed decisions are assessed on the basis of "quite different interpretations of the laws of war and ROE" than deliberate targeting decisions (p. 254). In particular, Jones emphasizes that dynamic targeting decisions are often approved on the basis of relatively sparse intelligence concerning the nature of the target, making them subject to "greater levels of risk and uncertainty" (p. 253) and requiring particularly expansive conceptions of lawful self-defense.

Finally, the book's Conclusion offers thoughts on operational law outside of the United States and Israel and speculates about what the juridification of targeting may mean for future conflicts. In terms of the former, Jones suggests that although many North Atlantic Treaty Organization (NATO) states have also embraced operational law, there is significant legal divide between what one of his JAG interviewees called "NATO" states (such as the United States, United Kingdom, Canada, and Australia) and "NATO-lite" states (primarily those in continental Europe, such as France), with the NATO-lite states adopting far more force-restrictive interpretations of "core issues such as what (and who) constitutes a permissible military target, under what conditions, and what constitutes a lawful use of force in situations of self-defence" (p. 287). In terms of the latter, Jones suggests that operational law will continue to play a critical role in targeting because—and here he returns to the central argument of his book—that law, as "a certain form of judicial violence, has played no small part in enabling, legitimizing, and in some cases, even extending military violence" (p. 302). He then ends by adding that operational law has an additional benefit for the military: the "adiaphorization of killing" (p. 309), the idea that, by giving targeting a patina of legal acceptability, operational law lightens the moral burden imposed on the soldiers who are actually responsible for delivering lethal force.

As its use of terms like "adiaphorization" indicates, *The War Lawyers* is theoretically ambitious, eager to explain not only why operational law emerged in the United States and Israel, but also what the juridification of targeting says about the relationship between law and violence. Paraphrasing Jones somewhat, the book promotes three interrelated theses about that relationship: (1) the laws of war are inherently indeterminate; (2) military lawyers almost always resolve that indeterminacy in ways that maximize the use of "lawful" violence; and (3) force-maximizing interpretations of the laws of war can have a significant effect on the formation and content of customary international law. In the remainder of this review, I want to interrogate each of those theses—particularly the second and third ones.

The idea that the laws of war are indeterminate recurs throughout the book. Indeed, it is central to Jones's argument, because it allows him to reject the claim that American and Israeli attempts to expand targetability through "diligent and creative legal work" are inconsistent with the laws of war as they are traditionally understood. As he says in response to Jens Ohlin's claim that "[i]nternational law is under attack" in the United States,[2] "an assault on international law assumes an essentialist conception of

[2] JENS DAVID OHLIN, THE ASSAULT ON INTERNATIONAL LAW 8 (2015).

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law—and especially the liberal idea that international law is ultimately a force for good—whereas an assault through international law refuses such a conception in favour of indeterminacy (i.e., international law is whatever states do with it)" (p. 12).

That said, Jones does not believe that all interpretations of the laws of war are equally valid. On the contrary, he accepts that at least *some* interpretations are simply incorrect. He makes that clear in his discussion of the Dahiya Doctrine, which encourages the Israel Defense Forces (IDF) to deliberately use disproportionate force against Palestinians in Gaza in order to deter them from supporting Hamas.[3] "This is not a legitimate interpretation of the laws of war," Jones insists, because "disproportionate force is by definition illegal as it constitutes a violation of the principle of proportionality" (p. 187).

Jones's position, then, is that the laws of war are inherently indeterminate—but not always irremediably so. Instead, "[w]ar lawyers work to determine the law in an ongoing process of bounded interpretation: they provide answers and options for harried decision makers, but in negotiation with the broader indeterminacy and permissibility of the law" (p. 13). This is an entirely defensible understanding of the laws of war, but it does not explain where the bounds of interpretation come from. What distinguishes an illegitimate interpretation of the laws of war, such as the Dahiya Doctrine, from one that simply represents "diligent and creative interpretive legal work"?

Jones does not answer this question, despite its centrality to his argument. But perhaps the beginning of an answer can be found in literary theorist Stanley Fish's concept of an "interpretive community": a group of individuals who participate in a common discursive enterprise.[4] The role of an interpretive community is to "set the parameters of acceptable argumentation—the terms in which positions are explained, defended, and justified to others."[5] In other words, an interpretive community constrains interpretation: what separates a legitimate interpretation from an illegitimate one is not the thing being interpreted itself—a text or an action—but the intersubjectively established conventions of the interpretive community. If an interpreter does not care about remaining a member in good standing of a particular interpretive community, she can promote any interpretation of a text or action she likes. But if she wants to be part of that community, she must limit herself to interpretations that the other members will recognize as legitimate: "if the interpreter proffers an interpretation that reaches beyond the range of responses dictated by the conventions of the enterprise, he or she ceases to act as a member of the relevant community."[6]

The community of states, I would suggest, functions as a particular kind of interpretive community regarding international law—a very unequal one, to be sure, in which some states are listened to more than others, but an interpretive community nonetheless. Recall Jones's claim that "international law is whatever states do with it." States do indeed make international law, but they do not make it precisely as they please. On the contrary, unless they are willing to rely on brute force—the privilege of only the most hegemonic—states must limit themselves to interpretations of treaties and customary international law that, by remaining within generally accepted interpretive conventions, will be viewed as acceptable by (most) other states. If they stray too far outside of those conventions, their interpretations will be rejected—with potentially negative consequences.

This explanation of what distinguishes legitimate from illegitimate interpretations of international law is, of course, woefully oversimplified. Although states agree that treaties and custom are the most important formal sources of international

[3] Institute for Middle East Understanding, *The Dahiya Doctrine and Israel's Use of Disproportionate Force* (Dec. 7, 2012), *at* https://imeu.org/article/the-dahiya-doctrine-and-israels-use-of-disproportionate-force.

[4] Stanley Fish, Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies 141 (1990); Ian Johnstone, *The Power of Interpretive Communities*, *in* Power in Global Governance 185–86 (Michael Barnett & Raymond Duvall eds., 2004).

[5] *Id.* at 186.

[6] *Id.* at 190.

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law, they often disagree passionately not only over which rules qualify as primary, but even over the secondary rules that govern how primary rules should be identified. It seems highly likely, therefore, that the "parameters of argumentation" established by the interpretive community of states constrain the interpretation of international law far less than the parameters used by more unified interpretive communities, such as "European judges" or "World Trade Organization experts" or "investment treaty arbitrators."[7]

But that does not mean there are no constraints on how states interpret international law. On the contrary, despite contestation over secondary rules, at least *some* interpretations of international law are so beyond the pale of what the international community can accept that a state will make itself a pariah by adopting them. Indeed, I would suggest that the Dahiya Doctrine is the archetypal example of such an interpretation: it is precisely because states so overwhelmingly agree that IHL prohibits the deliberate use of disproportionate force that Jones can plausibly —and offhandedly—claim that the Dahiya Doctrine is "by definition illegal."

This account obviously has important implications for military lawyers. As the individuals within the military responsible for interpreting and applying the laws of war, JAGs and MAGs must always be cognizant of how the international community will view their legal advice. Unless the state they represent is fine with being a pariah, they cannot promote interpretations of international law that will routinely be rejected by other states. And that is true even if the laws of war are sufficiently indeterminate to justify their disfavored interpretations: if the military lawyer's legal advice leads to negative consequences for their state—from sanctions to lack of cooperation to loss of credibility—their advice is "wrong" in the only sense that matters.

The community of states, however, is not the only relevant interpretive community for military lawyers. They are also part of a particularly important domestic interpretive community: namely, the military itself. As Jones notes, invoking a similar concept, military lawyers "do not stand apart from military culture or military operations; they are part of them and they form part of . . . an epistemic community" (p. 106). Indeed, that is particularly true of the military lawyer in the era of operational law, where the "cross-culturalization between the lawyer and the commander" has become so intense that the former "are not simply talking the talk" of military operations but "understand operators and commanders world and worldview and sympathize with the[ir] daily dilemmas" (*id.*).

The insight that military lawyers involved in operational law are members of a larger military interpretive community helps explain why it is wrong to assume that constraining violence is the primary function of JAGs and MAGs. On the contrary, because "successful mission accomplishment" (p. 104) is the military's primary goal, military lawyers who want to remain members in good standing of the military interpretive community have a powerful incentive to provide commanders with legal advice that will maximize their use of violence: a JAG or MAG who consistently makes it more difficult for the military to fight effectively will quickly find herself a community "outsider," viewed with the kind of hostility that existed between military lawyers and military commanders in the aftermath of the Vietnam War. It is thus no surprise that, as Jones notes, the U.S. Air Force's JAG handbook explicitly insists the primary role of operational JAGs is to "provide commanders with options and recommendations to enable mission accomplishment" (*id.*).

A good military lawyer, in short, must navigate between the "parameters of argumentation" established by two very different interpretive communities: the community of states and the military. With regard to the latter, she must take care to provide military commanders with advice that they will not view as unduly constraining. With regard to the former, she must

[7] Examples of interpretive communities in international law offered by Michael Waibel. *See* Michael Waibel, *Interpretive Communities in International Law*, *in* INTERPRETATION IN INTERNATIONAL LAW 152–53 (Andrea Bianchi, Daniel Peat & Matthew Windsor eds., 2015).

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ensure that her advice does not lead her state to take positions that will be rejected by other states.

For his part, Jones focuses almost exclusively on the military interpretive community, repeatedly emphasizing that "the laws of war, with help from war lawyers, are productive of military violence" (p. 293). Indeed, as noted above, the central argument in his book is that the United States and Israel have "actively and deliberately sought to widen the scope and space of what constitutes a permissible target . . . not by ignoring or circumventing international law but through diligent and creative interpretive legal work."

There is little question that the United States and Israel have tried to push the laws of war in directions that make it easier for the military to use lethal force. But I question the claim that they have primarily done so through the work of military lawyers. On the contrary, Jones's own account supports two quite different conclusions: (1) that military lawyers have generally defended mainstream interpretations of the laws of war against the inflationary demands of other governmental actors; and (2) that insofar as military lawyers have produced violence through their legal work, they have normally done so via their role in drafting and interpreting rules of engagement, which are statements of policy, not law.

To be sure, the book does identify situations in which JAGs and MAGs have interpreted the laws of war in a manner that goes well beyond how what the community of states is willing to accept. The Dahiya Doctrine is the most troubling example, but there are others as well. Jones notes, for example, that JAGs promoted a definition of (targetable) military objects that, by including certain war-sustaining objects such as certain types of civilian infrastructure, "defied international consensus" (p. 152). Similarly, he notes that JAGs have approved the targeting of individuals solely on the basis that they were male and military-aged in a conflict zone—an idea that, as I have shown elsewhere, cannot be reconciled with the traditional understanding of direct participation in hostilities.[8] And finally, Jones points out that the MAG's embrace of "armed conflict short of war" is little more than a convenient Israeli fiction designed "to create a third category that [is] neither international armed conflict nor non-international armed conflict"(p. 169)—a binary classification system that no other state in the world has questioned.

Far more common in the book, however, are situations in which military lawyers *refused* to tell the military what it wanted to hear. Particularly striking is what Jones says about how JAGs reacted when, during the early days of the war on terror, the Department of Justice "bent the law beyond recognition in order to attempt to legalize and justify torture: "[t]he US war lawyer community fought vociferously against their civilian counterparts but were ultimately overruled" (p. 9). Other examples include JAGs refusing to authorize the attacks on Baghdad's Victory Arch and the giant statue of Saddam Hussein and on a "convoy of vehicles" in Afghanistan in 2010 that turned out to be civilian. The military abandoned the former attack, as mentioned earlier, but it went ahead with the latter one despite the JAG in question making it "crystal clear" (p. 277) that striking the convoy would be unlawful—with predictably catastrophic consequences.

Jones's discussion of the role MAGs played in Israel's targeted-killing program is also instructive. As Jones notes, the six criteria in the MAG legal opinion issued in 2001, which governed targeted killing for nearly six years, "are an interesting and often confusing mix – an intentional blurring – of the laws of war, human rights law, and the concept of self-defence" (p. 176).[9] What he does not point out is that, relative to the laws of war as traditionally understood, the criteria made it *more difficult* for the IDF to use lethal

[8] Kevin Jon Heller, *"One Hell of a Killing Machine": Signature Strikes and International Law*, 11 J. INT'L CRIM. JUST. 89, 97–98 (2013).

[9] Simplified, the criteria state: (1) all targeting must be proportionate; (2) only combatants and civilians directly participating in hostilities can be targeted; (3) when possible, suspected "terrorists" should be captured instead of killed; (4) terrorists under Israeli security control cannot be targeted; (5) planned attacks require Ministerial-level approval; and (6) assassination is only permissible when necessary to prevent a planned attack; it cannot be used for retribution (pp. 174–75).

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force. Indeed, the most problematic aspect of Israel's current targeted-killing program is its "doubly expansive interpretation of direct participation in hostilities" (p. 181), which permits targeting individuals who provide "logistical and other support" to alleged terrorists and authorizes destroying civilian homes that alleged terrorists once used. But that interpretation of direct participation in hostilities, as Jones acknowledges, came from Israel's High Court of Justice—not from the MAG.

There are also situations in the book in which military lawyers disagreed among themselves about how to interpret the laws of war. An important example here is the United States' non-adoption of the First Additional Protocol (AP I), which Jones describes as one of the two formative moments in the development of operational law. According to Jones, by deeming certain provisions in AP I "militarily unacceptable," the JAGs were "there to ensure that the military does not tie its own hands" (p. 107). True enough—but it is also true that nearly a dozen JAGs were part of the American delegation to the 1974 Diplomatic Conference, including luminaries like Major General George S. Prugh, and they unanimously supported U.S. ratification.[10] So the story of AP I's non-adoption cannot simply be told as JAGs using legal interpretation to avoid limitations on the United States' ability to engage in military violence.

In short, there is ample evidence in Jones's book that military lawyers often support traditional violence-constraining interpretations of the laws of war. That is critical, because—as Jones himself notes with regard to the IDF—military commanders "are operationally aware of prevailing legal advice and do not want to waste time and energy proposing targets that likely will not be approved" (p. 185). In other words, once well-integrated into the kill chain, military lawyers do not have to risk professional exile by continually rejecting targeting requests. At that point, military commanders do the difficult work of saying no for them.

None of these considerations mean that Jones is wrong to insist that military lawyers are "productive of military violence." They do indeed produce violence through "diligent and creative" interpretation—but generally via their (ever-increasing) responsibility for ROE, a distinctive feature of operational law, the evolution of which Jones expertly traces. ROE, however, are statements of *policy*, not *law*: as Jones notes, "in an ideal form ROE can be more restrictive but not more permissive than the laws of war" (p. 135). ROE thus provide military lawyers with fertile ground for earning their stripes: namely, by writing and interpreting ROE to permit as much violence as possible without contravening international law. Indeed, there are two particularly striking examples of that function in Jones's book: (1) JAGs involved in Operation Desert Storm writing ROE that ensured "the rules were not more restrictive of coalition operations than was required by the law of armed conflict and collateral limitations" (pp. 137–38[11]) and regularly informing military commanders "that it was okay to do something the commanders had assumed was illegal" (p. 137); and (2) Trump-era JAGs rewriting ROE to relax Obama-era restrictions on collateral civilian damage that went well beyond what the laws of war require.

Jones's argument, however, is more ambitious. In his view, "this conventional understanding" of the role of ROE "assumes that the laws of war are static and have fixed boundaries. In reality, the laws of war are a developing and flexible legal regime with enough elasticity to allow for a variety of interpretations and a variety of ROE" (p. 136). This is no doubt true—but once again the concept of an interpretive community of states provides an important qualification to Jones's point. Even if the indeterminacy of the laws of war makes it possible for military lawyers

[10] *See, e.g.*, George H. Aldrich, *Progressive Development of the Laws of War: A Reply to Criticisms of the 1977 Geneva Protocol I,* 26 VA. J. INT'L L. 693, 695 (1986) (noting that "the delegation as a whole concurred in the conclusions of our report to the Secretary of State that the Conference had succeeded beyond our expectations").

[11] Quoting John G. Humphries, *Operations Law and the Rules of Engagement in Operation Desert Shield and Desert Storm*, 6 AIRPOWER J. 36 (1992).

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to write a variety of different ROEs, some more violence-enabling than others, their choice of ROE is still constrained by the need to avoid negative reactions from other states. Indeed, Jones says that the JAGs he interviewed offered many examples of how, in multinational coalition operations, "crucial differences" in ROE concerning targeting led "predominantly continental European allies [to] raise their national 'red flag' and withdraw their personnel and assets (e.g., fighter jets) from certain targeting missions" (p. 287). Those American ROEs were thus counterproductive and ill-advised, even if they were interpretively defensible.

Overall, then, most of the military-lawyer interpretations of the laws of war that Jones discusses, whether in the form of legal advice or ROE, have remained within the range of interpretations the community of states has been willing to accept—and those that have strayed beyond that range have proven strategically unwise. I thus question Jones's third and final thesis, which is that JAG and MAG efforts to "widen the scope and space of what constitutes a permissible target" represent "a new way of forging customary law, one that departs from the democratic model of sovereign equality and consent in favour of a trail-blazing custom forged by the hegemonic few and largely unopposed by asymmetrically 'weaker' and legally unequipped states" (p. 15).

Simply put, Jones provides little evidence of this "new way of forging customary law." The section of the Conclusion entitled "Beyond the United States and Israel" provides only two examples of American interpretations of the laws of war that have been adopted by other states: the UK embracing the United States' approach to imminence for its targeted killing program, and Russia parroting U.S. discourse concerning self-defense against non-state actors when asked to defend its actions in Syria. By contrast, as noted above, the Conclusion contains a long discussion of how, in nearly every respect, European states have *rejected* U.S. positions on "core issues such as what (and who) constitutes a permissible military target, under what conditions, and what constitutes a lawful use of force in situations of self-defence" (p. 286).

If anything, Israel has fared even worse. Jones does not identify even *one* state—not even the United States—that has endorsed Israel's positions that "armed conflict short of war" is a legitimate conflict classification, that individuals "who provide logistical and other support" to alleged terrorists are directly participating in hostilities, that the Dahiya Doctrine is legitimate, or that it is lawful to destroy civilian homes that had once been used for terrorist activities. But that is not surprising, because Elisabeth Schweiger has shown that, in fact, most states "have protested against Israeli targeted killing practices" from the perspective of both the *jus ad bellum* and the *jus in bello*.[12] Indeed, with regard to who can be lawfully targeted, the High Court of Justice's interpretation *did not even convince the MAG*: as Jones notes, "one of the very lawyers who helped write the MAG legal opinion justifying assassination thought that the Court went too far in its definition of who and what constitutes a legal target" (pp. 181–82).

We are left, then, with the fact that a number of states—particularly in the Global South—have failed to specifically protest American interpretations of the laws of war that govern targeting. Jones is correct to insist that although "[s]uch legislative violence may begin as an 'exception' to the 'rule' . . . [t]he 'exception', if practiced and unopposed by the powerful, becomes the norm and the 'rule' is rewritten" (p. 15). As Schweiger brilliantly explains, however, "the invocation of silence as acquiescence in itself risks complicity of legal knowledge production with the legitimization of contentious forms of state violence,"[13] because "smaller states in the Global South most affected by a potentially developing lawfulness of targeted killing are also the ones least able to speak, particularly in opposition to hegemonic actors."[14] In other words, even if such states legally reject U.S. targeting practices—which they almost certainly do,

[12] Elisabeth Schweiger, *Targeted Killing and the Lack of Acquiescence*, 32 LEIDEN J. INT'L L. 741, 742 (2019).
[13] *Id.* at 743.
[14] *Id.* at 756.

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given the Non-aligned Movement's regular insistence on a restrictive interpretation of the laws of war[15]—they have very real political and economic reasons for not antagonizing the United States by airing their rejection publicly. Their silence, therefore, cannot be interpreted as assent.

In short, although Jones is on solid ground when he emphasizes the need to pay attention to how international law produces violence, there are issues with each of the central theses in his book. As this review has attempted to show, interpretation of the laws of war is constrained by the community of states as an interpretive community; military lawyers "legislate" primarily as a matter of policy, not law; and idiosyncratic interpretations of the laws of war offered by the United States and Israel have not had—and are unlikely to have—a significant effect on customary international law. Those criticisms, however, are intended not as rebukes of Jones's book, which is superb, but as gentle correctives to it. No scholar to date has provided such an innovative and compelling account of the emergence of operational law in the United States and Israel. And as more states turn to operational law, Jones's account will only become more important over time.

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[15] *See, e.g.*, Statement by H.E. Mr. Gholamali Khoshroo, Ambassador and Permanent Representative of the Islamic Republic of Iran, on behalf of the Non-aligned Movement Before the Sixth Committee of the 70th Session of the United Nations General Assembly (Oct. 12, 2015), *available at* https://www.un.org/en/ga/sixth/70/pdfs/statements/int_terrorism/nam.pdf.

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