

America Repeats Habit of Blatantly Rewarding Lawlessness

Senator Barrasso's timely post on Thursday calling for substantial financial consequences not only for the Palestinian Authority but also for those states that support the PA's request for an upgrade in their U.N. status could not be more welcome. However, I have no real hope that we'll take any substantive action to punish the PA (much less the U.N.) for its blatant violation of the Oslo Accords.

In fact, if there is one consistent bipartisan strand in recent American foreign policy, it's the notion that international law is binding unconditionally upon the U.S. and its allies while compliance is entirely optional for our adversaries. By policy and practice, we reward lawlessness.

Nowhere is this more plain than in the absurd and oft-misunderstood (even by our commanders and troops in the field) Rules of Engagement that have long bound American forces confronting jihadist enemies. Our unilateral and typically unconditional compliance with international legal norms costs American lives, creates a perception of American weakness, and frustrates our allies.

The absurdity is only compounded by our foreign aid to Islamist regimes such as Egypt and thinly disguised terrorist organizations such as the Palestinian Authority. Again and again, the message is clear: America is bound by treaties and outdated notions of friendship; our enemies are not.

Justifications for restraint grow less credible by the year. In one of the more disturbing moments of my early Army training, a fellow JAG officer was going through the standard LOAC briefing (Law of Armed Conflict) and came to a slide

explaining that we strictly comply with LOAC so that we won't provide any justification for our enemy's noncompliance.

I raised my hand and—quite respectfully—asked when was the last time we fought an enemy who complied with the laws of war. The officer couldn't answer. Simply put, almost a century of modern conflict has demonstrated that our compliance does not incentivize enemy compliance.

Even worse, our unconditional, excessively strict compliance is less and less justifiable by any independent moral norm. By continuing low-intensity conflicts for years (perhaps even decades) we prolong the human cost of war: in killed, wounded, and in psychological casualties.

Our own soldiers are often deeply traumatized by the inability to defend themselves effectively and by the loss of brothers-in-arms to those who could never strike us but for our own restraint. During my Iraq deployment, the ratio of enemy-caused civilian casualties outpaced coalition-caused casualties in our area of operations by a ratio of close to 100 to 1. In other words, American restraint had the perverse effect of enabling the enemy to kill more civilians.

This is only a short blog post, and much, much more could and should said about this topic. There is a crying need for revised American (and Israeli) military doctrine in the face of enemies who hide behind women's skirts and stockpile weapons in mosques and hospitals.

In fact, by many historical measures, our abundant and seemingly limitless self-restraint is a decidedly un-American way of waging war—just ask William Tecumseh Sherman and Curtis LeMay. I'm not calling for a military campaign designed—paraphrasing Sherman—to “make Kandahar howl,” but there is space between total war and war-by-regulation that can and should be explored.

At the very least—and for the sake of our soldiers and for the

civilians otherwise condemned to live as human shields—we must make it quite clear that crime does not pay.

At , I see that Professor Hanson has made similar points in the context of the most recent Gaza conflict. I fear, however, that his conclusion may be too optimistic:

But just as the fantasies of T-ball give way when kids grow up and start keeping score in the real world of baseball, so too will the T-ball war in the Middle East come to an end. To avoid unending rocket barrages and serial on-and-off wars, Israel will have to convince Hamas and its allies that, collectively, they all have a lot to lose by starting more T-ball wars—ones that in the future no longer will end with a no-score truce.

For more than 60 years, Israel's enemies have been able to count on the international community to save them from truly crushing defeat. While Israel's enemies lose fight after fight, they always preserve enough strength to restock, re-arm, and try again. The cycle is the same: attack, tactical defeat, internationally imposed truce. Lather, rinse, repeat.