

Law and Literature
Spring, 2003

KOSOVO

Virtual War and International Law

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Abstract. The 1999 Kosovo conflict was seen as atypical in its objective and in its one-sidedness. These qualities and the increasingly simulacral nature of modern warfare—war as entertainment—deserve attention, but represent no fundamental change. However, grudging international acceptance of NATO's “humanitarian intervention” may represent a change in the jus ad bellum. Three sections consider (1) Jean Baudrillard's Eurocentric, Orientalist attempts to address similar issues; (2) the ostensible objective of the war and the resulting effect on international law; and (3) the asymmetry of the war. The conclusion contains observations about the future of the jus ad bellum.

INTRODUCTION: KOSOVO AND POSTMODERN WAR

It has become fashionable, if not especially enlightening, to refer to the 1999 Kosovo conflict as a postmodern war. [\[FN1\]](#) In these postmodern times, of course, “postmodern” is an overworked adjective, meaning pretty much whatever the user wants it to mean. Postmodernism is often confused, even by academics, with post-structuralism, but the term enjoys greater currency as one of the clichés that arise at the intersection of popular culture and academia. As a result, it has come to be applied to every field of human endeavor, including one of the most primitive—war.

Most of the time, what lay users—that is, users outside the Modern Language Association—seem to mean by “postmodern” is “different”; specifically, “different from other examples of the same thing in the last century or so.” Other wars, notably the Gulf War, have been declared “postmodern” as well. But the objective of both sides in the Gulf War was a traditional one: to determine the territorial boundaries of two of the states involved and the sovereignty of one of those two. The Kosovo war shared with the Gulf War the characteristic of happening on television, in real time: war as entertainment. The Kosovo war differed from the Gulf War, though, and from many previous wars in at least two important respects: its objective and the lack of fatalities on one side. This article explores whether these differences do, in fact, represent a fundamental change in the nature of war and consequently in the international law of war.

WAR AS ENTERTAINMENT: IF WE DON'T WATCH IT ON TV, WILL PEOPLE STILL DIE?

Not long ago it seemed to most of the world that a war was taking place between the North Atlantic Treaty Organization (NATO), an alliance of European and North American states, and the country calling itself the Federal Republic of Yugoslavia, composed of two of the republics of the former Yugoslavia (Serbia and Montenegro). One of these republics, Serbia, dominated the “Federation,” and contained within it two territories, Kosovo and Vojvodina, with populations of a different ethnic composition than that of Serbia proper. [\[FN2\]](#) The cause of the war was the mistreatment of the Kosovar Albanian population by the Serbian military and irregulars and the government

of Yugoslavia.

It has become popular among leftist critics of NATO's involvement to claim that the war was “caused” by America's desire to build an oil pipeline from the Caspian Sea (a body of water located very far away from Kosovo) through Kosovo, [\[FN3\]](#) or to award lucrative contracts to U.S. construction firms, or to achieve any of a number of other increasingly unlikely-sounding goals. [\[FN4\]](#) These things may or may not have been hidden *motives* for the involvement of the various NATO states, but the very fact of their being so well hidden prevents them from having been the *cause* of the war. Some apologists for Milosevic, of course, go even further and claim that the ostensible cause of the war did not actually exist, and that no mistreatment of Kosovo's population had yet occurred, nor would it have occurred in the absence of NATO's unprovoked belligerent acts. [\[FN5\]](#)

During and after the period of hostilities, I somehow found myself writing several articles on the legality of the war [\[FN6\]](#) and its effect on the further development of international law. [\[FN7\]](#) At some point during this period I also found time to read Jean Baudrillard's silly book *The Gulf War Did Not Take Place*, [\[FN8\]](#) which had been sitting on my “things to get around to eventually” shelf for some time.

At the time, I rejected Baudrillard's entire work as a waste of time and money. After all, I had spent eleven dollars and ninety-five cents of my employer's money, plus tax and shipping, to buy a copy, and it did not look like good value for the money spent. The entire book is only eighty-seven pages long, and the first quarter of it is taken up by an introduction by the translator; Baudrillard's text amounts to about 63 full pages. [\[FN9\]](#) In addition, the text is widely spaced, with extra blank lines between paragraphs; the entire effect is similar to that created by an undergraduate student paper whose author, through creative use of spacing, margins, and long words pulled from the thesaurus has managed—barely—to stretch his or her paper to the three or five pages requested by the professor.

In retrospect, I can see that my casual dismissal was an error, or at least contrary to my self-interest. If I had accepted Baudrillard's view at the time, I could have saved myself the drudgery of writing all of those articles about Kosovo; for surely if the Gulf War did not take place, the war in Kosovo did not take place. Perhaps if I can convince myself at this point, I can at least spare myself any future effort.

Without delving deeply into academic postmodernism and poststructuralism (and the practitioners thereof), it may be helpful to identify Baudrillard as one of a group of French academics whose work has had a tremendous impact on the English-speaking academic world. Like their counterparts in the United States and elsewhere, many of these scholars have succeeded in becoming identified with a particular word or phrase; that word or phrase in turn comes to stand as a shorthand for the author's entire body of work. In some cases, the word is an ordinary French word twisted into a sort of pun, like *différance*; in others it might be a phrase that the user refuses to define or even to allow to be translated, like *objet petit a*. Baudrillard presents fewer problems of interpretation; his word is simulacrum (*simulacre*), which he uses in more or less the same sense, albeit with more elaboration, that is ordinarily used. [\[FN10\]](#)

Academics are often criticized for over-reliance on opaque jargon. In comparison to many of his compatriots and their American emulators, Baudrillard indulges in jargon only sparingly. For the most part, he writes the most arrant nonsense in a clear, readily accessible style. His basic point is that the Gulf War was not a war but the simulacrum of a war; it happened not on the battlefield but on television. All of the traditional trappings of the buildup to war were presented, even grotesquely exaggerated, on television; at the end, however, we (the audience) were deprived of the final battle, left with neither victory for the Allies nor defeat for Saddam Hussein.

In light of the bold promise of the book's title, this is rather disappointing. Rather than arguing unequivocally that the entire war was a fraud perpetrated upon the television-viewing public, Baudrillard is simply nattering on again about simulacra. (At one point, though, he does suggest that “[o]ne is reminded of *Capricorn One*,” a movie about a government conspiracy to fake a Mars landing in a film studio and present it to the public as news.) [\[FN11\]](#)

Baudrillard, after all, is a man who, like his compatriot and predecessor Descartes, spends an inordinate amount of time wondering whether he exists. Unlike Descartes, however, he is not convinced that he exists merely because he thinks that he does. His identity, and that of everything and everyone else, is lost in a kaleidoscope of endlessly pre-
cessing simulacra that ultimately preclude the existence of any baseline reality.

The Gulf War is not then real or unreal in any absolute sense, because there is no ultimate “reality.” It is simply less real than some things and more real than others. (Baudrillard draws many comparisons between “events” in the war and television commercials, for example.) The Gulf War (or simulacrum of war) is thus at least as real as international law, and by extension so is the Kosovo war; I shall therefore have to continue writing about all three.

Baudrillard begins by asserting that “It might have been supposed that the defection of the Eastern Bloc would have opened up new spaces of freedom for war by unlocking deterrence. Nothing of the sort.” [FN12] Baudrillard, writing these words at the beginning of 1991, [FN13] was simply too impatient. As the world has since learned to his dismay, the defection of the Eastern Bloc and subsequent breakup of the Soviet Union and Yugoslavia has opened up a great number of new spaces of freedom for war, most notably in the expression of the ethnic conflicts previously repressed by authoritarian Communist regimes.

Baudrillard himself would undoubtedly deplore the idea that the facts of his life might be responsible for his opinions. But his reactions on such topics as America and superpower conflict (and, as we shall see later, Arabs and Islam) are often surprisingly conventional for a person of his age, gender, and nationality. Baudrillard was born in Reims in 1929. [FN14] He would thus have been three or four years old when Hitler came to power, fifteen during the liberation of France, and sixteen when World War II ended. The bilateral Allied/Axis conflict was almost immediately replaced with a similar conflict between the more or less free-market countries of the West and the communist countries of the Soviet bloc. As a result, it is perhaps natural that Baudrillard would see a world with two opposing ideological camps as a prerequisite for war, or at least for war of the sort to which he is accustomed. At the time of communism's collapse, he found it difficult to believe in the possibility of war in a post-Soviet world.

By the time Baudrillard opined that the collapse of the Eastern bloc had opened up no new spaces of freedom for war, in fact, Croatia and Slovenia had already begun to make secessionist noises; six months later the first of Yugoslavia's ethnic cleansing wars would begin. The Romanian revolution (or its simulacrum) had already taken place, as Baudrillard repeatedly acknowledges, after his fashion. [FN15] Iraq's invasion of Kuwait could have been designed as a test case for the role of the United States in the post-Cold War world, as the first major act of territorial aggression in which the response of the Soviet Union (which itself would not last out the year) was more or less insignificant. Thus, simulacrum or not, the Gulf War was important historically. Baudrillard himself says, somewhat inconsistently in light of his other conclusions, that “what is at stake in this one is war itself: its status, its meaning, its future.” [FN16]

Much of what strikes Baudrillard as different about the Gulf War, though, is actually not new at all. For example, he sees the role of hostages as one of the Gulf War's novel qualities: “The hostage has taken the place of the warrior. He has become the principal actor, the simulacral protagonist, or rather, in his pure inaction, the protagonist of non-war.” [FN17] Later, in Kosovo, the Serbian government would make an entire civilian population hostage. Yet the use of hostages in war, even on this scale, is hardly new; warring parties have always viewed hostages “as exchange value and liquidity.” [FN18] Using hostages as human shields and bargaining chips is as old as war itself.

It is when Baudrillard likens the plight of the audience to the plight of the hostages, though, that he begins to exhibit the indifference to human suffering for which he has so often been criticized. [FN19] He writes that “all of us [are] information hostages on the world media stage. [FN20] ... We are already all strategic hostages *in situ*; our site is the screen on which we are virtually bombarded day by day, even while serving as exchange value.” [FN21]

It is this element of the concept of simulacral war that is most difficult to accept. The difference between the hostage and the viewer should be obvious even to one who affects to disbelieve in his own existence; the viewer can simply turn off the television and thus escape his or her predicament. Nor do the viewers have significant “exchange value,” unless the governments concerned would discontinue the charade of war if they thought no one was watching, or unless the simulacrum exists only to the degree it is perceived.

Thus the claim that “[t]he complement of the unconditional simulacrum in the field is to train everyone in the unconditional reception of broadcast simulacra” makes sense only if one also accepts that the simulacrum experienced by the viewer is identical to that experienced by the viewed. Those who believe in the reality of human suffering are likely to react to this idea with a certain amount of hostility, however. This reaction can only be exacerbated by the assertion that “it is [the hostages’] virtual death that is at issue, not their real death. Moreover, they never die: at best they disappear. There will never be a monument to the unknown hostage[;] everyone is too ashamed of him ...” [\[FN22\]](#) It is not merely the hostages that are unreal, of course, but the entire war: “The war is also pure and speculative, to the extent that we do not see the real event that it could be or that it would signify.” [\[FN23\]](#)

It would be easy, after reading such statements, to dismiss Baudrillard’s entire work as having no relevance to the development of international law. He does, though, see a central role for international law in post-Soviet era warfare, although he is apparently not well-versed in the subject. “It is the deintensified state of war, that of the right to war under the green light of the UN and with an abundance of precautions and conditions. It is the bellicose equivalent of safe sex: make war like love with a condom!” [\[FN24\]](#)

In addition, “[t]he Gulf War is the first consensual war, the first war conducted legally and globally with a view to putting an end to war and liquidating any confrontation likely to threaten the henceforward unified system of control.” [\[FN25\]](#) Notwithstanding that some unreconstructed (or undeconstructed) modernist historians may have thought that World War I was the first such war, Baudrillard is correct about the increased role of international law and international legal structures (including NATO and the Security Council) in post-Cold War conflicts. Baudrillard does not distinguish between the Security Council and other organs of the United Nations, and apparently has nothing to say on the topic of the Uniting for Peace Resolution. [\[FN26\]](#) It is true, though, that the Gulf War was the first war carried out under the authority of a Security Council resolution and thus arguably the first war since the initiation of the Security Council regime to be unequivocally legal, since assertions of self-defense inevitably involve disputed facts. In fact, it is the absence of the Security Council’s “green light” (at best, the Security Council provided an amber light) that casts doubt on the legality of NATO’s war against Yugoslavia.

In assessing the underlying cause of the war, Baudrillard is again inconsistent. On the one hand, the war is meaningless: “the absence of politics pursued by other means.” [\[FN27\]](#) (Here Baudrillard acknowledges Clausewitz but not Foucault’s inversion of Clausewitz, that politics is war continued by other means.) [\[FN28\]](#) On the other hand, “[t]he crucial stake, the decisive stake in this whole affair is the consensual reduction of Islam to the global order.” [\[FN29\]](#) While many might question whether this was in fact the purpose of the war, it is surely a political objective. (Earlier, of course, Baudrillard had opined that what was at stake was not the fate of Islam, but of “war itself.”) [\[FN30\]](#) The identification of this purpose, though, seems to be part of Baudrillard’s continuing identification of Islam with the Other. Early in the piece he comments that Iran and Iraq are nations of “savages.” [\[FN31\]](#) Although his tone here and throughout the piece is arch and scornful, and was probably meant to be taken as mocking those who think of Iranians and Iraqis as savages, the repetitions are too frequent to be ignored. He refers to “the virulent and ungraspable instability of the Arabs and of Islam, whose defense is that of the hysteric in all his versatility,” [\[FN32\]](#) and to “the Oriental logic of Saddam.” [\[FN33\]](#)

The word “Oriental” in this context has an odd ring to American ears. To Americans “Oriental” is an outmoded term once used to refer to the countries, cultures, inhabitants, and artifacts of East Asia. To Europeans in general, however, and to the French in particular, the term refers to what Americans generally still refer to as the Middle East. And to academics everywhere the word inevitably suggests the work of Edward Said. [\[FN34\]](#)

Orientalism was at one time the term used in European universities for the study of the countries of the Middle East and, to a lesser extent, South and East Asia. The European “Orientalists”—writers and academics—created an image of the “Orient” in the European popular consciousness bearing only occasional resemblance to the original: a perfect Baudrillardian simulacrum except for the fact that it was largely constructed before the days of television, relying almost exclusively on the medium of print. Said uses the term “Orientalism” to refer not only to the academic discipline but also to the simulacral Orient created by it: a textual Orient. [\[FN35\]](#) He describes the creations of the Orientalists as “highly stylized simulacra, elaborately wrought imitations of what a live Orient might be thought to look like.” [\[FN36\]](#)

To an American, perhaps, it may seem especially bizarre that a resident of France would repeatedly insist on the Otherness of Arabs and Islam. [\[FN37\]](#) France, after all, is a diverse and pluralistic democracy with nearly two million Muslims among its fifty-nine million inhabitants. [\[FN38\]](#) In 1992, 1.72 million Muslims lived in France, making Muslims more than twice as numerous there as Protestants; [\[FN39\]](#) this number included 614,207 Algerians and 572,652 Moroccans. [\[FN40\]](#) Many of these persons, of course, are French citizens. Perhaps it is these he is thinking of when he says, “The Arabs: there where they should not be (immigrants) ...” To a resident of a country where even conservative standard-bearers extol the benefits of immigration [\[FN41\]](#) it may be difficult to understand the assumption that immigrants “should not be” there. [\[FN42\]](#) On the other hand, my bafflement and, indeed, disgust at the racism contained in this assumption may only prove Baudrillard’s point that “[T]he Americans ... cannot imagine the Other, nor therefore personally make war upon it.” [\[FN43\]](#) In this thought Baudrillard echoes the earlier words of Said: “Unlike the Americans, the French and the British ... have had a long tradition of what I shall be calling *Orientalism*, a way of coming to terms with the Orient that is based on the Orient’s special place in European Western experience.” [\[FN44\]](#) The Orient, Said concludes, is the source of one of Europe’s “deepest and most recurring images of the Other.” [\[FN45\]](#)

It does not hold a similar place in the American worldview. Baudrillard, however, is unable to free himself from the Orientalism his culture has inculcated in him, and therefore is insistent on the Otherness of Arabs and Islam. He conflates the two terms, and draws no distinction between largely Arab Iraq and non-Arab Iran. The goal of the West is to meet “the challenge of Islam, with its irreducible and dangerous alterity.” [\[FN46\]](#) The “refractory forces on the planet” include “Islam in its entirety.” [\[FN47\]](#) Of course, Baudrillard apparently disapproves of these aims, and of those who would see Islam as the Other. But the mere fact that he imputes this belief to others suggests that he sees Islam in this way—as Other in its entirety—and tells us more about the author than about those he addresses.

From an American perspective, at least, this insistence is bizarre. Baudrillard’s “uncontrollable elements” include, among others, the 1.72 million Muslims of France, many of whom must be Mr. Baudrillard’s neighbors, colleagues and, at one time, students. Many, born in France, are every bit as French as Mr. Baudrillard himself. [\[FN48\]](#)

Throughout this work, as indeed in all his work, Baudrillard affects an air of cynical detachment, as if prepared to sneer at any reader foolish enough to take him seriously or to believe that he actually means the outrageous things that he says. But racism, even affected racism, causes real damage. Baudrillard, despite his rejection of everything up to and including reality, is evidently a product of his time and his culture: As Said points out, France has played a greater role than any country (with the possible exception of the United Kingdom) in the development of Orientalism. [\[FN49\]](#)

But Islam and its adherents are not the only Others here. The Americans, those “missionar[ies] bearing electroshocks” [\[FN50\]](#) serve equally as signifiers or at least exemplars of everything that is un-French. Seen in this way, the book becomes nothing more than the curmudgeonly and xenophobic rant of a cranky old French person dismayed to find his country embroiled in a conflict between two equally despised sets of foreigners.

Baudrillard’s unquestioning acceptance of a Eurocentric and even racist value system is not all that surprising in light of the obvious consequences of his thinking. An obvious extension of the argument that the Gulf War did not take place, or did not take place in any meaningful way, is that the Holocaust did not take place, nor did the geno-

cides in Cambodia, Rwanda or the Balkans. The latter two had not occurred at the time of Baudrillard's writing, of course. The former, though, was an outgrowth of the same intellectual tradition as Baudrillard's self-conscious bourgeois nihilism; Pol Pot (then Saloth Sar) and Sary Ieng (then Kim Trang) acquired much of their ideology, including Andre Malraux's doctrine of necessary violence, at the Sorbonne. [\[FN51\]](#)

It would be unkind to conclude from this that the principal export of French universities is bad ideas. It might be even less kind to expand upon this idea, taking colonialism, communism, fascism, Orientalism and various other isms into account, and conclude that the principal export of Europe is bad ideas.

It thus comes as something of a relief to find that some of Baudrillard's numerous critics consider that he has nothing of value to contribute:

In fact, his thought does not develop at all. He is simply an aphorist who seized upon half a dozen borrowed concepts twenty-odd years ago and has rung changes on them ever since. Thus it is both frustrating and deceptive to seek progressive modulations between one text and another. They are all basically one book, and any fifty consecutive pages of Baudrillard are essentially the *whole* of Baudrillard. [\[FN52\]](#)

More recently, the United States has found itself involved in a postmodern conflict of another sort: One in which there is no clearly defined "enemy." For most of us, the war is defined by simulacra: the videos, endlessly repeated, of the hijacked airliner crashing into the south tower of the World Trade Center, and the videos of the towers collapsing. We have seen these images so many times, woven into so many different commentaries (each a creative work in itself) in so many media, that the original event may be difficult to distinguish from the precessing simulacra. But it is not impossible to distinguish. To dismiss the underlying reality (and horror) of the event, as Baudrillard does with the Gulf War, is facile, meaningless, and morally empty. Real people died; real people continue to suffer as a result.

The concept of simulacrum is useful for understanding the relationship between events and experience, but simulacra, even those generated by a single event, are not necessarily symmetrical. Simulacral or not, the experience of war by TV viewers is not the same as the experience of war by its participants and victims. While the war may not have taken place for Jean Baudrillard, and even less so for me, for example (I didn't even watch it on television), it definitely took place for the Iraqis, Kuwaitis, Palestinians, Saudi Arabians, Israelis, Americans, Europeans and others involved.

THE OBJECTIVE OF THE WAR: HUMANITARIAN INTERVENTION AND THE DOMESTIC AFFAIRS OF STATES

The Kosovo war was the first war in which states declared war on another state specifically to protect the human rights of subjects of that state. In doing so, the NATO states broke with existing international law and ventured into territory previously the exclusive domain of academics and some human-rights activists: the doctrine of humanitarian intervention. [\[FN53\]](#)

The human rights of subject populations have been a concern of warring states since at least the time of the American Civil War. Until the Kosovo war, however, international law had recognized no right to go to war to protect human rights, or to intervene militarily in the domestic human-rights practices of another state. The modern doctrine governing the use of force is set forth in the United Nations Charter, which states that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." [\[FN54\]](#) Only two exceptions are permitted: States may use force in self-defense [\[FN55\]](#) or where authorized by the Security Council. [\[FN56\]](#) The Charter contains no right of humanitarian intervention, and specifically prohibits the United Nations from intervening "in matters which are essentially within the domestic jurisdiction of any state," although "this principle shall not prejudice the application of enforcement measures under Chapter VII." [\[FN57\]](#)

Unlike the Gulf War, the Kosovo War took place without a green light from the Security Council. While the Security Council was “[d]eeply alarmed and concerned at the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe,” [FN58] the certainty of a Russian or Chinese veto prevented it from authorizing the use of military force. [FN59] The NATO states claimed that their action did not violate article 2(4) of the United Nations Charter because it was implicitly authorized by Security Council Resolutions 1160, [FN60] 1199, [FN61] and 1203. [FN62] Surprisingly, they placed less emphasis on the traditionally popular doctrine of collective self-defense, perhaps because the self-defense in this instance was anticipatory. [FN63] All were united, however, in agreeing that the war was undertaken to protect the human rights of the Kosovar Albanian minority. [FN64] At least one of the NATO states, Belgium, argued that the war was justified as a humanitarian intervention even if not otherwise permitted by the Charter, because NATO’s action was “not an intervention against the territorial integrity or independence of the former Republic of Yugoslavia. The purpose of NATO’s intervention [was] to rescue a people in peril, in deep distress [This was] an armed humanitarian intervention, compatible with Article 2, paragraph 4, of the Charter, which covers only intervention against the territorial integrity of political independence of a State.” [FN65]

At the outset of the war, NATO’s actions almost certainly violated existing normative expectations about the behavior of states. [FN66] Events since the war, however, have shown a high degree of tolerance of NATO’s conduct, even by those states most opposed to the war. Ultimately, an answer to the question of the legality of humanitarian intervention must await the resolution of the eight cases still pending against NATO members before the International Court of Justice (ICJ). [FN67] Of course, the ICJ may well dodge that question. There remains, however, Security Council Resolution 1244, which in effect retroactively endorses NATO’s actions. [FN68] Barring future developments to the contrary in the ICJ, it appears that a normative expectation permitting armed intervention to protect human rights, or at least to prevent genocide or ethnic cleansing, is in the process of being formed. Although it cannot yet be said with certainty that humanitarian intervention is legal, it can no longer be said with certainty that international law prohibits humanitarian intervention in the domestic affairs of a state.

WAR WITHOUT TEARS: KOSOVO AS A VIRTUAL WAR

Baudrillard calls the Gulf War a “virtual war,” [FN69] a term that turns up again as the title of Michael Ignatieff’s book on the Kosovo war. [FN70] It is this aspect of the war that has particularly captured the popular imagination: More than 5,000 Yugoslav soldiers and about 500 civilians were killed by NATO forces. [FN71] An unknown number of Serbian irregulars and KLA guerillas were killed in fighting on the ground. An unknown but probably larger number of Kosovar Albanian civilians were murdered by Serbs. Women were imprisoned, and often killed, in rape camps at Djakovica and Pecs. [FN72] Property was looted, homes were burned, nearly the entire population of Kosovo was left homeless. In short, war was hell—but only for the people on the ground.

In the first sentence of the chapter titled “Virtual War” in his book of the same name, Michael Ignatieff observes that NATO forces made it through the Kosovo war without a single combat fatality. [FN73] To many observers, it seems as if the war must have been no more than a video game to the NATO soldiers; they, like the TV watchers back in Paris and Chicago, experienced the war as a simulacrum. The concern of the observers seems to be that war without risk just isn’t sporting. Ignatieff writes that NATO observed especially strict rules of engagement, and “presented these rules—which tried to limit civilian casualties—as a sign of moral superiority. But one could argue that their real purpose was to assuage NATO’s unease about its own impunity.” [FN74] He then goes on to observe that the effect of lower NATO casualties was probably lower Yugoslavian casualties as well; had NATO suffered losses, it might have responded more savagely.

Ignatieff is better informed and more consistent than Baudrillard. Yet even while applauding the relatively low loss of life in the Kosovo conflict, its one-sidedness disturbs him: “[H]ere we have ... violence which moralizes itself as justice and which is unrestrained by consequences.” [FN75] In this he echoes Baudrillard, and is in turn echoed by others who consider the disproportionate numbers of casualties.

Disproportionate casualties are nothing new, though. Whenever levels of technology or military strength are widely disparate, as they were in Kosovo, the weaker side will suffer much greater losses; occasionally the stronger side suffers none at all. The losses on both sides tend to be far greater when strengths are approximately evenly matched, as in World War I.

The main factor that kept NATO casualties low was distance. NATO weapons could strike at targets while the operators of those weapons remained safely out of sight and out of reach. As technology advances, this insulation of the soldier from the battlefield will also increase. Eventually it may become possible for soldiers to operate weapons while remaining safely hundreds of miles away from the “battlefield”—a term that is itself already archaic—making the video-game war a reality, at least for one side.

This has already begun to happen: in the recent war in Afghanistan, American forces used remotely-controlled spy aircraft that had been outfitted with weapons. [FN76] This spectacle—robots armed with missiles firing on vil-lagers armed with rifles—is a common theme in science fiction, which Brian McHale has called “*the* ontological genre *par excellence*,” adding “science fiction [is] Postmodernism’s non-canonized or ‘low art’ double.” [FN77] Although this theme has attained the status of a cliché, one carefully-developed depiction is that in Joe Haldeman’s novel *Forever Peace*. [FN78] The story’s protagonist, Julian Class, is a University of Texas professor and U.S. Army sergeant who spends ten days each month remotely operating a military robot metonymically (and ironically) called a soldierboy. Together Class and the soldierboy form a cyborg—a concept often linked in fiction and criticism with problems of identity. [FN79] Class, in the person of the soldierboy, fights against third-world guerrillas who, unlike him, are actually present. In one disturbing scene, he and his fellow soldiers discuss having killed two ten-year-old girls who fired upon the soldierboys. [FN80] The girls could not have inflicted serious damage on the robots, and, of course, could not have injured Class or his fellow operators, who were far away and safe at the time.

The scene could have been written in response to Baudrillard’s solipsistic view of virtual war as nothing more than non-intersecting simulacra—for Baudrillard, the simulacral war that the “Americans” experienced never mirrored that experienced by Saddam Hussein: “[T]he two adversaries did not even confront each other face to face, the one lost in its virtual war won in advance, the other buried in its traditional war lost in advance.” [FN81] Haldeman’s reader, however, is left with the horrified awareness that, while Class’s war is a simulacrum, the little girls’ deaths are real. Inhabiting worlds of simulacra is a luxury enjoyed by academics from wealthy countries, like Jean Baudrillard and Julian Class, one of whom may be no more and no less real than the other. Those who actually risk death in war, though, enjoy no such luxury, but must believe in the reality of war and their own existence.

AFTER THE VIRTUAL WAR IS OVER: THE FUTURE OF WAR

Was the Kosovo conflict, then, a “postmodern” war? It was, as all future wars are likely to be, simulacral, or at least televised. The casualties were one-sided, but that has always been and will always be the case when one warring party enjoys a significant technological or strategic advantage and values the lives of its own troops. The one way in which it differed significantly from all previous wars was in its stated objective.

Other observers also see the inconclusiveness of the war as a departure from past practice. To Baudrillard, the Americans needed to “hallucinat[e]” Iraq “to be a threat of comparable size to themselves: otherwise they would not even have been able to believe in their own victory.” [FN82] A virtual victory was no victory at all: In the end, Saddam Hussein remained in power, and thus the “Americans” did not achieve victory, [FN83] the withdrawal of Iraqi troops from Kuwait apparently not being a significant result. “The minimal losses of the coalition pose a serious problem, which never arose in any earlier war.” [FN84] The invasions of Grenada and Panama—the latter concluded just as Baudrillard began to write—apparently do not count. Nor does the Spanish-American war, in which the greatest hazard to American troops was the canned meat with which they were supplied, nor do any number of Indian wars. Nor do the European colonial wars in which warriors armed only with spears confronted Europeans

armed with machine guns. Apparently only more allied deaths could have made the war real, for “a war without victims does not seem like a real war ...” [FN85] The deaths of tens of thousands of Iraqis (Baudrillard himself sets the figure at 100,000 [FN86])—for that matter, the deaths of the Kuwaitis whose country was invaded—were not enough to make the war real.

Ignatieff sees the same problem from a different perspective:

Virtual war proceeds to virtual victory. Since the means employed are limited, the ends achieved are equally constrained: not unconditional surrender, regime change or destruction of the war-making capacity of the other side, only an ambiguous “end state.” Instead of Serb surrender, the NATO alliance contented itself with a “military technical agreement” which ... left entirely undefined the juridical status of the territory over which the war was fought. [FN87]

This problem may not actually exist, however, or at least it may not be a new phenomenon. The assumption that the ends achieved in the Kosovo war were “constrained” because “the means employed [were] limited” seems to overlook history. Ambiguous endings to wars are probably more common than any other sort. For example, in high school I learned that the United States (and, of course, its allies, including South Korea) “won” the Korean war, after a protracted conflict with enormous loss of life on all sides. It was only later that I questioned how an ending that left both states in control of more or less the same territory as before the war, and left Kim Il Sung in power in Pyongyang, might be termed a victory.

Yet the continuing division of the Korean peninsula is itself but one of the many ambiguities and unresolved conflicts left scattered about the globe by World War II. For example Germany, one of the major villains of that conflict, remained a divided country (and Berlin a divided city) until 1991, after Germany reunified and the Treaty on the Final Settlement With Respect to Germany (between Germany and the World War II Allies) entered into force. [FN88]

Ambiguous endings have been a feature of American warfare at least since the War of 1812. Elsewhere in the world, Israel's wars with its neighbors have for the most part ended inconclusively, without resolving “the juridical status of the territory over which the war was fought.” Such defined international borders as Israel possesses are the result of lengthy negotiations during peace-time, years or decades after the wars with those particular neighbors have ended. More recent conventional wars, such as those between Iran and Iraq or between Eritrea and Ethiopia, have also ended inconclusively. Civil wars have proved similarly ambiguous; sometimes, as in Cyprus, the ambiguity persists for long enough to acquire its own quality of permanence.

Virtual or simulacral war thus has no monopoly on the ambiguous ending. Nor was the ending of the Kosovo war particularly ambiguous. The inaccuracy contained in the statement that the end of the war “left entirely undefined the juridical status of the territory over which the war was fought” makes the ending appear more ambiguous than it actually was. The war was not fought over territory; none of the NATO members has territorial aspirations in Kosovo. The war was fought to protect the Kosovar Albanian population from oppression and expulsion. Once the Serb forces left Kosovo, the agent of oppression was removed. Once the refugees were able to return to their homes (or the places where their homes had been), most did so. (Similarly, the goal of the Gulf War was not to remove Saddam Hussein from power, but to remove the Iraqi army from Kuwait.)

Finally, the “juridical status” of Kosovo is somewhat uncertain, but that uncertainty seems to result more from the deliberative processes of the United Nations than from any actions of NATO or Yugoslavia itself. The first source of uncertainty is the ICJ, which has not yet been able to bring itself to address the related questions of Yugoslavia's membership in the United Nations and its sovereignty over Kosovo. [FN89] The second is the General Assembly, whose refusal to seat the Yugoslav delegation at the time of the Kosovo war left open the question of Belgrade's sovereignty over all of the territory of the Federal Republic of Yugoslavia.

The third is the Security Council: Resolution 1244 claims to reaffirm “the commitment of all Member States to the sovereignty and territorial integrity of” Yugoslavia, yet it has the effect of terminating Yugoslavian sovereignty over Kosovo. [FN90] Part of the reason for this waffling was the extremely conservative approach the UN has always taken to questions of territorial sovereignty. Another was pragmatic: As Ignatieff observes, Western Europe and the United States wish to impose their values upon Kosovo “without the burdens of actual occupation.” [FN91] Neither NATO nor the UN wishes to govern Kosovo; however, it was demonstrably unacceptable to return the province to the rule of Milosevic. The emergence of a stable, pluralistic Yugoslavian democracy would enable NATO and the UN to return Kosovo to Belgrade's rule with a clean conscience. To the extent that such a democracy has emerged since the Kosovo war, it has actually dimmed Kosovar Albanian hopes for independence, while signs of Montenegro's impending secession must strengthen them. Ironically, Kosovo would be far closer to independence now had an intransigent and irredentist Milosevic remained in power. If the fledgling Yugoslavian democracy succeeds, it seems unlikely that Western nations will support independence for Kosovo—a result that can only be seen as betrayal by the Kosovar Albanians.

Regrettably, war is an old and apparently durable human institution. If Kosovo represents a fundamental change in the nature of war, that change can only be in the legality of war fought to prevent a humanitarian catastrophe. The probable emergence of a normative expectation permitting humanitarian intervention may have encouraged the current administration to continue testing the bounds of the *jus ad bellum* (law pertaining to the use of force). Its current stance on war with Iraq invokes the doctrine of anticipatory self-defense, an idea with roots far more ancient than the UN Charter but with nearly as uncertain a modern footing as the doctrine of humanitarian intervention. [FN92]

If the objective of the Kosovo war was novel, however, the one-sidedness of the loss of life was not. The Kosovo war thus represented no fundamental change in the *jus in bello* (the law pertaining to the conduct of armed conflicts). It may, however, have ushered in a fundamental change in the nature of the *jus ad bellum*: the apparently emerging legality of the use of armed force to prevent a humanitarian catastrophe within the territory of another state.

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[FN1]. See, e.g., “U.S. Wages a Postmodern War in Kosovo,” *Minnesota Daily Online*, May 6, 1999, at http://www.daily.umn.edu/daily/1999/05/06/editorial_opinions/000506/; see also generally Michael Ignatieff, *Virtual War: Kosovo and Beyond* (New York: Metropolitan Books, 2000).

[FN2]. Throughout this article, “Yugoslavia” is used to refer to the Federal Republic of Yugoslavia, and “Kosovo” is used to refer to the territory also known as Kosova or as Kosovo and Metohija. These terms are used for convenience and follow general usage in the news media; they should not be read as implying any political position.

[FN3]. See, e.g., Marjorie Cohn, “Why Kosovo? It's the Oil,” 56 *Guild Practitioner* 69 (1999).

[FN4]. Many prominent icons of the academic left opposed the war in Kosovo. See, e.g., “Jean Baudrillard: Razones Ocultas de la Guerra,” *El Mundo*, May 3, 1999, at <http://www.el-mundo.es/1999/05/03/europa/03N0015.html> (subscription required; copy on file with author); Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Monroe, ME: Common Courage Press, 1999).

[FN5]. See, e.g., Chomsky, *supra* note 4, at 16, 81-82. (Chomsky says that the mistreatment would have been less extreme.)

[FN6]. Aaron Schwabach, “The [Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia](#),” [11 Pace International Law Review](#) 405 (1999) [hereinafter Schwabach (Legality)]; Aaron Schwabach, “NATO’s War in Kosovo and the Final Report to the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia,” [9 Tulane Journal International & Comp. Law](#) 167 (2001).

[FN7]. Aaron Schwabach, “Humanitarian Intervention and Environmental Protection: The Effect of the Kosovo War on the Law of War,” [6 Columbia Journal E. Eur. Law](#) 405 (1999) [hereinafter Schwabach (Effect on Law of War)]; Aaron Schwabach, “Yugoslavia v. NATO, Security Council Resolution 1244, and the Law of Humanitarian Intervention,” [27 Syracuse Journal International Law & Comm.](#) 77 (2000) [hereinafter Schwabach (Yugoslavia v. NATO)]; Aaron Schwabach, “Environmental Damage Resulting from the NATO Military Action Against Yugoslavia,” [25 Columbia Journal Envtl. Law](#) 117 (2000).

[FN8]. Jean Baudrillard, *The Gulf War Did Not Take Place* (Bloomington: Indiana University Press, 1991), p. 61.

[FN9]. The French text comes to about 92 full pages. Jean Baudrillard, *La Guerre du Golfe n'a Pas Eu Lieu* (Paris: Editions Galilée, 1991). If any text or meaning has been lost in the translation from French to English, my French is inadequate to detect it. For those who would like to explore the comparative information density of the two languages in more detail, each page of the English text contains 29 lines, and each page of the French text contains 27 lines.

[FN10]. See, e.g., Jean Baudrillard, “The Precession of Simulacra,” in *Art After Modernism: Rethinking Representation*, Brian Wallis, ed. (Boston: David R. Godine, 1984).

[FN11]. *Capricorn One* (movie) (1978). The movie, directed by Peter Hyams, co-stars O.J. Simpson, himself a fascinating subject for students of Baudrillardian simulacra.

[FN12]. Baudrillard, *supra* note 8, at 23.

[FN13]. The first of the three essays in the book, “The Gulf War Will Not Take Place,” was originally published on January 4, 1991. *Id.*, at 1.

[FN14]. Richard Vine, “The ‘Ecstasy’ of Jean Baudrillard,” *The New Criterion Online*, May 1989, at <http://www.newcriterion.com/archive/07/may89/vine.htm>.

[FN15]. E.g., “We are ... induced to believe in the war just as we were once led to believe in the revolution in Romania, and confined to the simulacrum of war as though confined to quarters.” See Baudrillard, *supra* note 8, at 25; see also generally Baudrillard, *L'Illusion de la fin ou la grève des événements* (Paris: Editions Galilée, 1993).

[FN16]. Baudrillard, *supra* note 8, at 32. But see note 29, *infra*, and accompanying text.

[FN17]. *Id.*, at 24.

[FN18]. *Id.*

[FN19]. See, e.g., Christopher Norris, *Uncritical Theory: Postmodernism, Intellectuals and the Gulf War* (Amherst: University of Massachusetts Press, 1992).

[FN20]. Baudrillard, *supra* note 8, at 24.

[FN21]. *Id.*, at 25.

[FN22]. *Id.*, at 27. It would be pointless to digress into whether the practice of tying yellow ribbons around trees, sign posts, car antennae, and so forth is a monument to the hostages, or the act of viewers responding to (perhaps applauding) a particularly well-crafted simulacrum.

[FN23]. *Id.*, at 29.

[FN24]. *Id.*, at 26. This phallic and sexual imagery appears throughout the book, e.g., “[T]he only impressive images of missiles, rockets or satellites are those of the launch.” *Id.*, at 42. Ultimately, he concludes that “the war has unfolded like a long striptease ... such that when the naked body finally appears, it is no longer naked, desire no longer exists and the orgasm is cut short.” *Id.*, at 77. The effect of this imagery is to create a sense that the author is disappointed: The Gulf War would have been more satisfying if only it had been bloodier, if only there had been more battles. As it is, the war “will leave ... the entire world irritated as though after an unsuccessful copulation.” *Id.*, at 33. Indeed, there is an unmistakably wistful tone to the comment that “War is no longer what it used to be ...” *Id.*, at 85 (ellipses in original).

[FN25]. *Id.*, at 83-84.

[FN26]. Uniting for Peace Resolution, U.N. GAOR, 5th Sess., U.N. Doc. A/RES/377(V) (May 3, 1950).

[FN27]. Baudrillard, *supra* note 8, at 30 (original italicized).

[FN28]. See, e.g., Chris Hables Gray, *Postmodern War* (New York: Guilford Press, 1997), pp. 258-59.

[FN29]. Baudrillard, *supra* note 8, at 85.

[FN30]. See note 16, *supra*, and accompanying text. This may be an example of what the translator, Paul Patton, refers to in his introduction as Baudrillard's “high-risk writing strategy, courting equally the dangers of contradiction by the facts and self-refutation.” Baudrillard, *supra* note 8, at 6 (introduction).

[FN31]. *Id.*, at 32.

[FN32]. *Id.*, at 36.

[FN33]. *Id.*

[FN34]. Edward Said, *Orientalism* (New York: Vintage Books, 1979).

[FN35]. See, e.g., *id.*, at 92-93.

[FN36]. See, e.g., *id.*, at 88.

[FN37]. See also, e.g., Baudrillard, *supra* note 8, at 37.

[FN38]. *The Statesman's Yearbook*, Barry Turner, ed. (London: Macmillan, 2000) (total population of France), p. 624.

[FN39]. *Id.*, at 639.

[FN40]. *Id.*, at 625.

[FN41]. See, e.g., Michael Barone, “Markets Dictate Liberalization of Immigration Law,” *Wall Street Journal*, July 25, 2001, at A16.

[FN42]. Said points out that to Europeans, whether imperialists or anti-imperialists, “the Oriental, like the African, is a member of a subject race and not exclusively an inhabitant of a geographical area.” Said, *supra* note 34, at 92. In contrast, the American attitude is perhaps more militaristic than colonialist: Foreigners are neutrals, allies or enemies, not subjects. Those who become immigrants—inhabitants of our geographical area—may sometimes be seen as enemies but will, with the passage of time, become Americans, while in France or England they might (to extend Said's reasoning) continue to be perceived as subjects.

[FN43]. Baudrillard, *supra* note 8, at 37.

[FN44]. Said, *supra* note 34, at 1.

[FN45]. *Id.*

[FN46]. Baudrillard, *supra* note 8, at 86.

[FN47]. *Id.*

[FN48]. In post-September 11 France Mr. Baudrillard's anti-Arab and anti-Islamic sentiments are hardly unique; they were perhaps exemplified by Jean-Marie le Pen, as they were in the Netherlands by Pim Fortuyn.

[FN49]. For example, “for something more than the first half of the nineteenth century Paris was the capital of the Orientalist world.” Said, *supra* note 34, at 51.

[FN50]. Baudrillard, *supra* note 8, at 84.

[FN51]. See, e.g., Marie-Alexandrine Martin, *Le Mal Cambodgien: Passages Concernant Iang Sary* (1996) at http://www.kh.refer.org/cbodg_ct/tur/livres/mal.htm.

[FN52]. Vine, *supra* note 14 (emphasis in original).

[FN53]. For pre-Kosovo approaches to humanitarian intervention, see, *inter alia*, Fernando R. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (Ardsley, NY: Transnational Publishers, 2d ed., 1997); Michael O'Hanlon, *Saving Lives With Force: Military Criteria for Humanitarian Intervention* (Washington, DC: The Brookings Institution, 1997); *The Ethics and Politics of Humanitarian Intervention*, Stanley Hoffman, ed. (Notre Dame, IN: University of Notre Dame Press, 1996); Sean D. Murphy, *Humanitarian Intervention* (Philadelphia: University of Pennsylvania Press, 1996); Robert L. Phillips and Duane L. Cady, *Humanitarian Intervention: Just War vs. Pacifism* (Lanham, MD: Rowman & Little-field, 1996); Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict* (Cambridge, UK: Polity Press, 1996); *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention*, Andrew M. Dorman and Thomas G. Otte, eds. (Aldershot: Dartmouth Publishing, 1995); Francis Mading Deng, “State Collapse: The Humanitarian Challenge to the United Nations,” in *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, William Zartman, ed. (Boulder, CO:

Lynne Rienner 1995), p. 207

[FN54]. U.N. Charter art. 2, para. 4.

[FN55]. U.N. Charter, art. 51.

[FN56]. U.N. Charter, Ch. VII, e.g., art. 42.

[FN57]. U.N. Charter, art. 2, para. 7.

[FN58]. S.C. Res. 1199, U.N. SCOR, 3930th mtg., U.N. Doc. S/RES/1199 (1998).

[FN59]. See generally Schwabach (Legality), *supra* note 6, at 407-8.

[FN60]. S.C. Res. 1160, U.N. SCOR, 3868th mtg., U.N. Doc. S/RES/1160 (1998).

[FN61]. S.C. Res. 1199, *supra* note 58.

[FN62]. S.C. Res. 1203, U.N. SCOR, 3937th mtg., U.N. Doc. S/RES/1203 (1998).

[FN63]. See generally, e.g., Schwabach (Legality), *supra* note 6, at 408-12. At the time of this writing the article, the Bush administration has tested the doctrine of anticipatory self-defense with its misguided and regrettable invasion of Iraq. The results are yet to be seen. See note 92, *infra*, and accompanying text.

[FN64]. See generally Schwabach (Yugoslavia v. NATO), *supra* note 7, at 89-92.

[FN65]. See Request for the Indication of Provisional Measures, Legality of Use of Force (Yugo. v. Belg.) CR 99/15 (Oral Pleadings), May 10, 1999, at <http://www.icj-cij.org/icjwww/idocket/iybe/iybeframe.htm>.

[FN66]. See, e.g., Schwabach (Legality), *supra* note 6.

[FN67]. The eight cases are Legality of Use of Force (Yugoslavia v. Belgium); Legality of Use of Force (Yugoslavia v. Canada); Legality of Use of Force (Yugoslavia v. France); Legality of Use of Force (Yugoslavia v. Germany); Legality of Use of Force (Yugoslavia v. Italy); Legality of Use of Force (Yugoslavia v. Netherlands); Legality of Use of Force (Yugoslavia v. Portugal); Legality of Use of Force (Yugoslavia v. United Kingdom) available at <http://www.icj-cij.org/icjwww/idocket.htm>.

[FN68]. See generally Schwabach (Yugoslavia v. NATO), *supra* note 7, at 80-83.

[FN69]. Baudrillard, *supra* note 8, at 30.

[FN70]. Ignatieff, *supra* note 1.

[FN71]. Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, para. 53, at <http://www.un.org/icty/pressreal/nat0061300.htm> (visited October 14, 2002).

[FN72]. See, e.g., Schwabach (Effect on Law of War), *supra* note 7, at 418-19.

[FN73]. Ignatieff, *supra* note 1, at 161.

[FN74]. *Id.*, at 162.

[FN75]. *Id.*, at 163.

[FN76]. See, e.g., Bruce V. Bigelow, "Predator, Part II: Spy Plane's New Version Is Bigger, Better, More Capable," *San Diego Union-Tribune*, Aug. 27, 2002, at C-1.

[FN77]. Brian McHale, *Postmodernist Fiction* (London: Methuen Press, 1987), p. 59 (emphasis in original).

[FN78]. Joe Haldeman, *Forever Peace* (New York: Ace Books, 1997). Haldeman's novel incorporates many of the tropes of cyberpunk, a subgenre of science fiction that flourished in the 1980s and which Fredric Jameson called "the supreme *literary* expression if not of postmodernism, then of late capitalism itself." Fredric Jameson, *Postmodernism: The Cultural Logic of Late Capitalism* (Durham, NC: Duke University Press, 1991), p. 419 n.1 (emphasis in original).

[FN79]. See, e.g., Donna Haraway, "A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s," 15 *Socialist Review* 80 (1985); reprinted in *Simians, Cyborgs and Women: The Reinvention of Nature* (New York: Routledge, 1991), pp. 149-81. Class's intermittently cyborg nature plays a role in his struggles with issues of gender, race (Class is African-American), identity and (of course) class, which in turn affect his role as a combatant and, at least in Haldeman's novel, are apparently central to the nature of war.

[FN80]. Haldeman, *supra* note 78, at 7-8.

[FN81]. Baudrillard, *supra* note 8, at 62. What makes Julian Class's war particularly horrifying is the same thing that worries Ignatieff: the inequality of risk. While in the short term American technological and economic ascendance seems secure, over the longer term this advantage is likely to fade, just as the military advantages of the European colonial powers over their subject nations eventually faded. Ignatieff speculates that "[t]he technologies involved [in virtual war] are neither abstruse nor expensive, and in time, America will lose its monopoly over them." Ignatieff, *supra* note 1, at 210. Similarly, Julian Class muses on the possibility that war will someday consist of "ten-million-dollar machines reducing each other to junk while their operators sit hundreds of miles away, concentrating in air-conditioned caves." Haldeman, *supra* note 78, at 9.

[FN82]. Baudrillard, *supra* note 8, at 65.

[FN83]. *Id.*, at 82; see also *id.*, at 71.

[FN84]. *Id.*, at 73.

[FN85]. *Id.*

[FN86]. *Id.*, at 72.

[FN87]. Ignatieff, *supra* note 1, at 208.

[FN88]. Treaty on the Final Settlement With Respect to Germany, 1992 U.N.T.S. 123, Sept. 12, 1990 (in force Mar. 15, 1991).

[FN89]. This question was discussed for and by, but not resolved by, the ICJ in the first phases of the ten cases brought by Yugoslavia against the ten NATO states. See Schwabach (*Yugoslavia v. NATO*), *supra* note 7, at 95.

[FN90]. S.C. Res. 1244, U.N. SCOR, 4011th mtg., U.N. Doc. S/RES/1244 (1999).

[FN91]. Ignatieff, *supra* note 1, at 209.

[FN92]. See R. Y. Jennings, “The Caroline and McLeod Cases,” 32 *Am. Journal International Law* 82, 89 (1938). On the right of anticipatory self-defense generally, see George K. Walker, “[Anticipatory Collective Self-Defense: What the Treaties Have Said](#),” 31 *Cornell International Law Journal* 321 (1998). Professor Walker concludes that the inherent right to anticipatory collective self-defense still exists. *Id.*, at 375.

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