

Command and Consequence: The Law of Unlawful Orders in Peacetime Maritime Operations

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ABSTRACT

This Article examines the legality of lethal force in peacetime maritime operations, focusing on the boundaries of command authority under United States and international law. Using a 2025 U.S. military strike on a civilian vessel as a case study, it explores whether such actions can be justified under existing statutes, constitutional protections, and the law of armed conflict. The analysis draws on domestic law, including the War Powers Resolution, the Maritime Drug Law Enforcement Act, and the Uniform Code of Military Justice, to argue that executive orders cannot override statutory limits or due process guarantees. It then considers military law and the duty of service members to refuse manifestly unlawful orders, emphasizing the doctrine of command responsibility and the burden of judgment. International law is also examined, including the United Nations Charter, the Law of the Sea, and human rights treaties, which collectively prohibit the use of force absent necessity and proportionality. The Article contends that drug interdiction does not meet the threshold of armed conflict and that invoking wartime authorities in peacetime distorts legal doctrine and erodes accountability. Historical precedents, from Little v. Barreme to the Caroline standard and the Nuremberg trials, reinforce the principle that obedience ends where law begins. Ultimately, the Article argues that the Constitution, not command, must govern the use of force at sea, and that officers who authorize or execute unlawful orders risk personal liability under both domestic and international law.

I. INTRODUCTION: THE BOUNDARIES OF COMMAND AT SEA

The United States (U.S.) Constitution was designed to restrain power precisely at moments of temptation. The open sea, where distance hides command and law competes with urgency, tests that restraint more than any other place. In September 2025, a U.S. military strike destroyed a small boat in international waters, killing eleven men whom officials described as members of Tren de Aragua and narcotics traffickers.¹ Public accounts described the strike as a “kinetic” or “precision” military strike against a vessel allegedly carrying narcotics

* The views expressed herein are those of the author and do not necessarily reflect the official policy or position of the U.S. Government, Department of Defense, or the Uniformed Services University. © 2026, Dale W. Russell.

1. Aamer Madhani, Konstantin Toropin & Regina Garcia Cano, *Trump Says U.S. Strike on Vessel in Caribbean Targeted Venezuela's Tren de Aragua Gang, Killed 11*, AP NEWS (Sept. 2, 2025), <https://perma.cc/9CCC-8AEU>.

toward the U.S., not as a Coast Guard interdiction followed by seizure, arrest, and prosecution.² The vessel could have been interdicted; instead, it was destroyed. The strike was ordered not under a declaration of war or congressional authorization, but under the President's asserted authority as Commander in Chief. The government's later public explanations sharpened the legal issue. Secretary of State Marco Rubio stated that, instead of interdicting the vessel, the U.S. "blew it up," and that such strikes would happen again.³ Such vessel destructions have continued, carried out under the same claimed authority and absent any new declaration of war or statutory authorization.⁴

When the government orders the military to kill civilians in peacetime, under what law does it act, and what duties bind those who carry out the order? The question is not new. The early Republic confronted it in *Little v. Barreme* when a U.S. Navy captain seized a ship under orders that exceeded Congress's law.⁵ The Supreme Court held that the President's instructions could not legalize what the law forbade. The same principle governs now. No command, however high, can convert an unlawful order into a lawful one.

Congress has already spoken in the field of maritime drug enforcement. Title 21, the Maritime Drug Law Enforcement Act, and the Drug Trafficking Vessel Interdiction Act authorize investigation, boarding, seizure, arrest, prosecution, forfeiture, and punishment after conviction.⁶ None authorize killing as punishment or deterrence. The War Powers Resolution further limits unilateral uses of force to cases involving congressional authorization or a national emergency created by attack upon the U.S., its territories, possessions, or armed forces.⁷ The Constitution adds its own curb in the Fifth Amendment, which forbids deprivation of life without due process of law.⁸ The precise extraterritorial reach of due process at sea is contested, but the basic structural point is not: Congress supplied a law-enforcement process for maritime drug offenses, and the Executive may not replace that process with death by order.

Executive Order 12333 reinforces those limits by prohibiting assassination.⁹ Whether a particular strike is properly labeled an assassination may depend on facts and definitions. But a deterrent or punitive killing of identifiable persons outside armed conflict and outside lawful self-defense falls within the core concern the prohibition was designed to prevent: executive killing without legal

2. Sam LaGrone, *U.S. Military Strikes Suspected Drug Vessel as Warships Gather in the Caribbean*, USNI News (Sept. 2, 2025), <https://perma.cc/38SQ-YB5C>.

3. *Secretary of State Marco Rubio and Mexican Foreign Secretary Juan Ramón de la Fuente at a Joint Press Availability*, U.S. DEP'T OF STATE (Sept. 3, 2025), <https://perma.cc/AB6U-7AF5>.

4. Ben Finley, *Pentagon Watchdog to Evaluate U.S. Military's Boat Strikes in Latin America*, AP News (May 19, 2026), <https://perma.cc/3PHD-VK9F>.

5. *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 177–79 (1804).

6. Maritime Drug Law Enforcement Act, 46 U.S.C. §§ 70501–70508; Drug Trafficking Vessel Interdiction Act of 2008, 18 U.S.C. § 2285.

7. War Powers Resolution, 50 U.S.C. § 1541(c).

8. U.S. Const. amend. V.

9. Exec. Order No. 12,333, § 2.11, 46 Fed. Reg. 59,941, 59,952 (Dec. 4, 1981), as amended.

process. The Department of Defense *Law of War Manual*, the *Standing Rules of Engagement*, and the Navy's *Commander's Handbook on the Law of Naval Operations* require disciplined attention to necessity, proportionality, distinction, and lawful mission authority.¹⁰ Those sources do not all operate in the same way. Some are binding orders or regulations; others are doctrinal statements that guide legal analysis. But none supports killing suspected drug traffickers merely because seizure is inconvenient or deterrence desirable.

The central concern of this Article is the military commander charged with authorizing lethal force, and the subordinates ordered to carry it out. When such an order is given, they stand at the junction of loyalty and law. The Uniform Code of Military Justice (UCMJ) requires obedience to lawful orders and punishes unlawful killing as murder.¹¹ It also recognizes obedience as a defense only when the accused did not know, and a person of ordinary sense and understanding would not have known, that the order was unlawful.¹² The War Crimes Act may also become relevant where conduct falls within its statutory predicates.¹³ These statutes apply to U.S. servicemembers wherever they serve. The ocean is not an exception.

The law of nations points in the same direction, though with doctrinal nuance. The United Nations (U.N.) Charter forbids the use of force against another state except in self-defense or under Security Council authorization.¹⁴ The International Court of Justice (ICJ) has interpreted self-defense to require necessity and proportionality and has rejected punitive or deterrent force as a substitute for defense.¹⁵ If a vessel is foreign-flagged or located in another state's territorial sea, the Charter analysis is direct. If the vessel is stateless and on the high seas, the Charter does less work by itself, but the law of the sea, maritime drug-control treaties, human-rights standards, and domestic law still require a legal basis for boarding, seizure, or force. The International Covenant on Civil and Political Rights protects life against arbitrary deprivation, although the U.S. contests aspects of its extraterritorial application.¹⁶ History has long condemned such acts. The *Caroline* correspondence of 1841, written by a U.S. Secretary of State, declared that necessity must be "instant,

10. U.S. DEP'T OF DEF., LAW OF WAR MANUAL §§ 2.2, 2.4, 2.5, 17.1–17.3, 18.5 (rev. ed. 2023); CHAIRMAN OF THE JOINT CHIEFS OF STAFF, CJCSI 3121.01B, STANDING RULES OF ENGAGEMENT/STANDING RULES FOR THE USE OF FORCE FOR U.S. FORCES (2005); U.S. DEP'T OF THE NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, NWP 1-14M/MCTP 11-10B/COMDTPUB P5800.7A, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS ch. 3 (2022).

11. 10 U.S.C. §§ 892, 918.

12. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 916(d) (2024).

13. 18 U.S.C. § 2441.

14. U.N. Charter arts. 2(4), 51.

15. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶¶ 176, 194–95 (June 27); Oil Platforms (Iran v. U.S.), Judgment, 2003 I.C.J. 161, ¶¶ 51, 72–78 (Nov. 6).

16. International Covenant on Civil and Political Rights arts. 2(1), 6(1), Dec. 16, 1966, 999 U.N.T.S. 171; U.N. Hum. Rts. Comm., General Comment No. 36, ¶¶ 12–13, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

overwhelming, leaving no choice of means.”¹⁷ The Nuremberg principles later affirmed that following orders does not excuse manifest illegality.¹⁸ Those precedents together form the rule that defines lawful command: obedience stops where the law begins.

This Article examines whether the 2025 strike and any order like it can be lawful under that rule. It asks not only what power the government may claim, but also what duty binds the commanders and servicemembers who receive the command. Part II reviews domestic law, which fixes the limits of presidential authority and guarantees process even at sea. Part III considers military law and the obligation to recognize and refuse an unlawful order. Part IV turns to international law, including the law of the sea and the Charter framework. Part V explains why the law of armed conflict (LOAC), written for war, cannot justify killings in peace. Part VI looks to history for guidance. Part VII closes with accountability and remedy.

II. DOMESTIC LAW: STATUTORY LIMITS AND DUE PROCESS AT SEA

Law is not the servant of necessity. It is the measure that necessity must obey. Every exercise of military power by the U.S. must find its warrant either in the Constitution or in an act of Congress. The statutes that govern maritime enforcement are complete. They authorize search, seizure, arrest, and trial. They do not authorize killing. When lethal force is ordered outside those limits, the act moves from discretion to illegality.

A. Congress and the Design of Maritime Enforcement

Congress has legislated extensively in the field of maritime drug interdiction. The Maritime Drug Law Enforcement Act (MDLEA) criminalizes trafficking on vessels subject to U.S. jurisdiction, including stateless vessels, and directs offenders into the criminal justice system.¹⁹ The Drug Trafficking Vessel Interdiction Act extends that reach to stateless submersible and semi-submersible craft that attempt to evade detection.²⁰ Both statutes identify courts as the forum for punishment and imprisonment as the penalty. They contain no authority to destroy or execute.

Federal criminal law confirms that Congress treated maritime drug trafficking as a prosecutable offense, not as a battlefield status. The MDLEA and the Drug Trafficking Vessel Interdiction Act provide criminal prohibitions, jurisdictional rules, and penalties. They do not confer a power to kill suspected traffickers. Where lethal force is used outside armed conflict and absent an imminent threat to life, criminal exposure may arise under the UCMJ and, depending on vessel status, location, nationality, and other jurisdictional facts, federal homicide or

17. Letter from Daniel Webster, U.S. Sec’y of State, to Henry Fox, British Minister to the United States (Apr. 24, 1841), *reprinted in* 29 BRITISH AND FOREIGN STATE PAPERS 1129, 1137–38 (1857).

18. Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, Principle IV, [1950] 2 Y.B. Int’l L. Comm’n 374, 375, U.N. Doc. A/CN.4/SER.A/1950/Add.1.

19. Maritime Drug Law Enforcement Act, 46 U.S.C. §§ 70501–70508.

20. Drug Trafficking Vessel Interdiction Act of 2008, 18 U.S.C. § 2285.

conspiracy statutes. The point is not that every case will fit every criminal statute. It is that Congress wrote a criminal-enforcement scheme, not a roving license to kill.²¹

The Coast Guard is, by statute, the Nation's principal maritime law-enforcement service.²² Its officers may board, search, and seize, but they must do so according to rules of force set by Congress and executive regulation. When the Navy assists the Coast Guard, it operates in support of that law-enforcement paradigm unless Congress or the Constitution supplies a distinct military authority.²³ The Navy's *Commander's Handbook* affirms this by distinguishing law-enforcement actions from hostilities and by limiting force to what is reasonable and necessary to accomplish the mission.²⁴

The War Powers Resolution reinforces these boundaries. It confines unilateral presidential introduction of U.S. forces into hostilities, or situations where hostilities are imminent, to cases involving a declaration of war, specific statutory authorization, or a national emergency created by attack upon the U.S., its territories, possessions, or armed forces.²⁵ Drug interdiction does not meet that standard without more. A suspected smuggling route, even one that contributes to domestic drug deaths, is not itself an armed attack. Congress wrote the War Powers Resolution to prevent the very transformation at issue here: unilateral acts of war in the name of policy enforcement.

B. The Constitutional Requirement of Due Process

The Fifth Amendment commands that no person shall be deprived of life without due process of law.²⁶ The constitutional question requires more care than a simple assertion that constitutional rights follow every American weapon abroad. *Reid v. Covert* rejects the proposition that the political branches may act free of constitutional restraint simply because the government acts outside U.S. territory. *Boumediene v. Bush* likewise teaches that extraterritorial constitutional application depends on functional considerations, including the practical reach of U.S. control, the status of the person, and the obstacles to applying the asserted guarantee. Those cases do not, standing alone, prove that every foreign national aboard every vessel on the high seas receives the full domestic criminal-process model before force may be used. They do, however, defeat the opposite claim: that geography alone permits the Executive to kill without law.²⁷

The narrower and stronger due-process point is statutory and structural. Congress has already supplied the process for maritime narcotics enforcement: interdiction, boarding, seizure, arrest, and trial. U.S. courts have sustained broad

21. 18 U.S.C. §§ 7, 956, 1111; 10 U.S.C. §§ 877, 881, 918.

22. 14 U.S.C. §§ 102, 522.

23. 14 U.S.C. §§ 701–706.

24. U.S. DEP'T OF THE NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, NWP 1-14M/MCTP 11-10B/COMDTPUB P5800.7A, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS ch. 3 (2022).

25. War Powers Resolution, 50 U.S.C. § 1541(c).

26. U.S. Const. amend. V.

27. *Reid v. Covert*, 354 U.S. 1, 5–6 (1957); *Boumediene v. Bush*, 553 U.S. 723, 764–71 (2008).

MDLEA jurisdiction over stateless vessels precisely because the statute channels high-seas enforcement into criminal prosecution rather than executive punishment. The process Congress created may be austere, but it is still process. A missile strike that kills the suspects and destroys the evidence bypasses that framework entirely. It does not merely adjust the manner of enforcement; it substitutes death for adjudication.²⁸

Due process is more than a procedural formality. It is the substance of restraint. It requires that punishment follow conviction and that judgment follow evidence. The Constitution does not lose its voice because the setting is maritime or the adversary criminal. The same rule that binds the police binds the fleet: force may protect life, but it may not substitute for trial. The officer who remembers that truth remains within law. The one who forgets it places command above Constitution and may one day answer for that choice.

C. Executive Power and Its Limits

The President's authority to command the armed forces does not include the power to suspend statutes. *Youngstown Sheet & Tube Co. v. Sawyer* made that clear.²⁹ The President's order to seize steel mills during the Korean War could not override congressional policy. Justice Jackson's concurrence remains the canonical framework. Presidential power is strongest when the President acts with congressional authorization, uncertain when Congress is silent, and weakest when the President acts against Congress's expressed or implied will.³⁰

The boat strikes fall, at best, within Justice Jackson's third category. Congress has not been silent. It enacted the MDLEA and the Drug Trafficking Vessel Interdiction Act, both of which prescribe law-enforcement tools rather than summary destruction. Congress also enacted the War Powers Resolution, which does not create independent presidential authority but recognizes unilateral force only in limited circumstances involving congressional authorization or attack upon the U.S., its territories, possessions, or armed forces. When the President orders lethal military force as a substitute for the interdiction-and-prosecution framework Congress created, presidential power is at its lowest ebb.³¹

Executive Order 12333 remains binding within the Executive Branch. Section 2.11 forbids assassination.³² That prohibition should not be used casually; not every use of lethal force is an assassination. But where the government intentionally kills identified persons outside armed conflict, outside a judicial process, and without an imminent threat to life, the assassination prohibition becomes

28. See, e.g., *United States v. Caicedo*, 47 F.3d 370, 372–73 (9th Cir. 1995); *United States v. Cardales*, 168 F.3d 548, 553 (1st Cir. 1999); *United States v. Suerte*, 291 F.3d 366, 371–72 (5th Cir. 2002).

29. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

30. *Id.* at 635–38 (Jackson, J., concurring).

31. Daniel Maurer & Former JAG Working Group, *Hypothetical Legal Review of Narcotrafficking Strikes*, JUST SECURITY (Nov. 18, 2025), <https://perma.cc/QE5X-Y5BF>.

32. Exec. Order No. 12,333, *supra* note 9, § 2.11.

directly relevant. Deterrence is not a criminal judgment. Reprisal is not due process. An officer ordered to kill for either purpose must ask not only whether the command is useful, but whether it is lawful.

D. Necessity, Proportionality, and Distinction in Peacetime Enforcement

The U.S. Department of Defense Law of War Manual, the Standing Rules of Engagement, and the *Commander's Handbook* do not authorize force simply because a mission is important. They require necessity, proportionality, distinction, and lawful authority.³³ Necessity asks whether force is required to accomplish a lawful objective. Proportionality asks whether the expected harm is excessive in relation to that objective. Distinction requires separating lawful targets from protected persons and objects. In a law-enforcement operation, these principles operate more strictly than they do in combat as the objective is not to defeat an enemy force; it is to stop crime, preserve evidence, protect officers and the public, and bring suspects before a court. If a vessel can be tracked, hailed, disabled, boarded, or seized, destruction is not necessary. If the suspected offense is narcotics trafficking and the expected result is the death of every person aboard, the force is disproportionate absent an imminent threat to life. And if the government has not publicly identified individualized hostile acts by the occupants, the strike fails the discipline of distinction as well.

This point does not require pacifism or hesitation in the face of danger. A vessel that fires on U.S. forces, attempts to ram them, presents an imminent threat to life, or cannot otherwise be stopped may justify escalating force. But that is not the case publicly presented. The public justification was trafficking, deterrence, and asserted enemy status. None of those convert a peacetime suspect into a target whose death may be ordered without process.

E. Accountability Under the Uniform Code of Military Justice

These domestic limits also shape the duties of the service members tasked with executing the mission. Military obedience is owed only to lawful command: Article 92 punishes failure to obey lawful orders, while Articles 118 and 77 confirm that unlawful killing, including killing ordered, aided, or procured through the chain of command, may create personal liability.³⁴ The Manual for Courts-Martial (MCM) likewise limits obedience as a defense where the accused knew, or a person of ordinary sense and understanding would have known, that the order was unlawful.³⁵ Part III turns to the military-law question that follows from that framework: when a mission exceeds Congress's law-enforcement design and is not justified by armed conflict or an imminent threat, when must commanders and service members refuse rather than obey?

33. U.S. DEP'T OF DEF., LAW OF WAR MANUAL, *supra* note 10, §§ 2.2, 2.4, 2.5; COMMANDER'S HANDBOOK, *supra* note 10, ch. 3.

34. 10 U.S.C. §§ 877, 892, 918.

35. MANUAL FOR COURTS-MARTIAL, UNITED STATES, *supra* note 12.

III. MILITARY LAW: OBEDIENCE, ILLEGALITY, AND THE BURDEN OF JUDGMENT

Military discipline rests upon obedience, yet obedience itself is limited by law. The oath that binds every member of the armed forces runs not to an individual but to the Constitution. When an order departs from law, the duty to obey ends and the duty to refuse begins. This principle is as old as the Republic and as modern as the code that governs the force.

A. The Principle of Lawful Orders

Article 90 of the UCMJ punishes willful disobedience of a lawful command from a superior commissioned officer.³⁶ Article 92 punishes failure to obey lawful orders and regulations.³⁷ The word lawful is not ornamental. It defines the limit of command authority. Article 118 classifies unlawful killing as murder.³⁸ Together, these provisions establish a legal symmetry: an officer who issues an unlawful order and a service member who carries it out both act outside the law.

The MCM makes this plain. It provides that an act performed pursuant to an unlawful order is excused only if the accused did not know, and a person of ordinary sense and understanding would not have known, that the order was unlawful.³⁹ The Orders Project sourcebook, prepared for attorneys advising military personnel, summarizes the dilemma directly: servicemembers may face punishment for disobeying lawful orders, but may also face punishment for obeying unlawful ones.⁴⁰

An order to destroy a vessel and kill its occupants when interdiction remains feasible violates the statutory enforcement scheme, contradicts ordinary rules for the use of force in law enforcement, and collapses the distinction between criminal suspect and military target. That unlawfulness would not be hidden in fine print. It would be apparent from the nature of the command itself: kill suspected criminals rather than stop, seize, and prosecute them. Obedience to such an order could not be excused by rank or ignorance.

B. Manifest Illegality and the Officer's Duty to Judge

The defense of superior orders was rejected at Nuremberg and codified in Principle IV of the Nuremberg Principles: the fact that a person acted pursuant to government or superior orders does not relieve responsibility if a moral choice was possible.⁴¹ The UCMJ expresses the same rule in domestic form by limiting obedience to lawful orders and by preserving criminal liability for those who commit, aid, abet, counsel, command, or procure offenses.⁴²

International tribunals have elaborated the standard. In the *Čelebići* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that

36. 10 U.S.C. § 890.

37. 10 U.S.C. § 892.

38. 10 U.S.C. § 918.

39. MANUAL FOR COURTS-MARTIAL, UNITED STATES, *supra* note 12.

40. THE ORDERS PROJECT, A SOURCEBOOK FOR ADVISING MILITARY PERSONNEL 5–13 (4th ed. 2025).

41. Nuremberg Principle IV, *supra* note 18.

42. 10 U.S.C. §§ 877, 890, 892, 918.

manifest unlawfulness exists where a reasonable person in the same circumstances would have known the order to be illegal.⁴³ In *Erdemović*, the tribunal rejected reliance on orders for manifestly unlawful acts.⁴⁴ These cases should be used carefully. They are persuasive authority, not the source of the binding rule for U.S. service members. U.S. law supplies that rule through the UCMJ and the MCM. International authority reinforces the same principle but does not need to carry the entire argument.

C. Command Responsibility and the Chain of Accountability

Responsibility climbs the chain of command. In *In re Yamashita*, the Supreme Court affirmed that a commander may bear responsibility for failing to control forces under his command when the law imposes a duty to prevent or punish violations.⁴⁵ Protocol I to the Geneva Conventions codifies a similar duty, but the U.S. is not a party to Protocol I.⁴⁶ The safer U.S.-law argument is narrower: commanders may incur direct liability when they order unlawful killing, accomplice liability when they aid, abet, counsel, command, or procure it, and UCMJ liability when they are derelict in duties imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.⁴⁷

Command responsibility includes two forms relevant here. The first is direct liability for issuing an unlawful order. The second is derivative or omission-based liability for failing to prevent, halt, report, or punish unlawful acts where a duty exists. Navy Regulations instruct personnel to report offenses and breaches of law or regulation.⁴⁸ Article 92 punishes dereliction in the performance of duties, including duties imposed by regulation, training, operating manuals, and service custom.⁴⁹ Silence does not always protect. When the duty to act is clear, silence may condemn.

The My Lai prosecutions should be cited carefully. *United States v. Calley* is the proper adjudicated conviction arising from unlawful killings at My Lai. Captain Medina was court-martialed and acquitted, so the Medina proceedings are historically relevant but should not be cited as holding that a commander was criminally liable. The stronger doctrinal sources are *Yamashita* for command responsibility, *Calley* for unlawful obedience and killing of civilians, and the MCM for the modern superior-orders limitation.⁵⁰

43. Prosecutor v. Delalić (Čelebići Case), Case No. IT-96-21-T, Judgment, ¶ 1264 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

44. Prosecutor v. Erdemović, Case No. IT-96-22-A, Judgment, ¶ 20 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 7, 1997).

45. *In re Yamashita*, 327 U.S. 1, 15–16 (1946).

46. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts arts. 86–87, June 8, 1977, 1125 U.N.T.S. 3.

47. 10 U.S.C. §§ 877, 892; MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 18.c.(3)(a) (2024).

48. U.S. DEP'T OF THE NAVY, UNITED STATES NAVY REGULATIONS art. 1137 (1990).

49. MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 18.c.(3) (2024).

50. *United States v. Calley*, 46 C.M.R. 1131 (A.C.M.R. 1973).

D. The Moral and Legal Burden of Judgment

The decision to refuse an order requires courage, but the law expects no less. The MCM instructs that obedience is no defense when the accused knew the order was unlawful or a person of ordinary sense and understanding would have known it.⁵¹ The DoD Law of War Manual states that members of the armed forces are bound to disobey manifestly unlawful orders.⁵² These are not abstract declarations. They are directives that impose real consequences. To obey unlawfulness is to invite prosecution; to refuse it is to uphold the oath.

Military command carries two burdens: the burden to decide and the burden to answer. Those who authorize lethal force against civilians in peacetime must bear both. The law does not ask whether the order came from a senior official. It asks whether the official had lawful authority to give it. If Congress has supplied only a law-enforcement framework, if no armed conflict exists, and if no imminent threat to life is present, an order to destroy the vessel and kill its occupants exceeds that authority. The commander who orders destruction and the service-member who executes it may share liability under the UCMJ.

IV. INTERNATIONAL LAW: RESTRAINT AND THE RULE OF NECESSITY

International law is not a suggestion; it is a boundary drawn by civilization against the excess of power. It rests on necessity and proportionality, and it applies wherever a state uses force. The sea has never been exempt from that restraint. For two centuries, the U.S. has urged it upon others. The same measure now binds itself.

A. The Charter Framework and the Use of Force

The U.N. Charter forbids the use of force against the territorial integrity or political independence of another state except in self-defense or under Security Council authorization.⁵³ Article 51 preserves the inherent right of self-defense if an armed attack occurs, but that right is confined by necessity and proportionality.⁵⁴ The ICJ has repeatedly rejected deterrence and reprisal as substitutes for self-defense.⁵⁵ Force may prevent an ongoing or imminent armed attack; it may not punish the past or advertise resolve.

The Charter analysis must be tied to the facts. If the targeted vessel was foreign-flagged, or if the strike occurred in another state's territorial sea without consent, Article 2(4) is directly implicated because the strike would use force against interests protected by the flag or coastal state. If the vessel was stateless and located on the high seas, Article 2(4) does less work by itself. But even then, the government still must identify a lawful basis for lethal force under domestic law,

51. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 916(d) (2024).

52. U.S. DEP'T OF DEF., LAW OF WAR MANUAL, *supra* note 10, § 18.5.

53. U.N. Charter art. 2(4).

54. *Id.* art. 51.

55. *Nicaragua*, 1986 I.C.J. ¶¶ 176, 194–95; *Oil Platforms*, 2003 I.C.J. ¶¶ 51, 72–78.

the law of the sea, human-rights law, and any applicable self-defense rule. Drug trafficking alone is not an armed attack. A generalized desire to deter future trafficking does not satisfy necessity.

The *Nicaragua* case defined the difference between unlawful force and lawful defense. The Court held that self-defense requires an armed attack and that support for non-state actors or the use of force in another state cannot be justified by broad assertions of a security interest.⁵⁶ In *Oil Platforms*, the Court rejected the U.S.'s claim that attacks on U.S. shipping justified destruction of Iranian oil platforms because the U.S. had not proven the necessary armed attack and because the response was not shown to be necessary or proportionate.⁵⁷ Those cases do not bind U.S. officers as domestic criminal statutes do; ICJ judgments bind only the parties to the case. But they are important evidence of international legal reasoning on necessity, proportionality, and self-defense.⁵⁸

The 2025 Caribbean strike cannot fit comfortably within these limits. The publicly stated basis was suspected narcotics trafficking by persons labeled "narcoterrorists." The government has not publicly shown that the vessel was attacking U.S. forces, that an attack on the U.S. was imminent, or that interdiction was infeasible. That matters because necessity is not a slogan. It is a test. If less-lethal means remain available, and if the threat is criminal rather than military, the legal basis for lethal self-defense collapses.

B. The Law of the Sea and Maritime Enforcement

The law of the sea governs conduct on the world's oceans, including the circumstances under which states may interfere with vessels beyond their territorial waters. The U.S. is not a party to the U.N. Convention on the Law of the Sea (UNCLOS), largely because of longstanding objections concerning sovereignty, dispute resolution, and the Convention's original deep-seabed mining regime. That fact matters as the UNCLOS should not be described as binding on the U.S. as a treaty. But the point should not be overstated as the U.S. has long accepted many of UNCLOS's traditional, non-seabed rules, especially those governing navigation, high-seas freedoms, flag-state authority, and maritime zones, as reflecting customary international law. For this Article, UNCLOS is therefore most useful not as a treaty obligation directly binding the U.S., but as evidence of the legal architecture of maritime authority. That architecture is one of restraint. The high seas are not a free-fire zone. A state that boards, seizes, disables, or destroys a vessel must point to a recognized jurisdictional basis for doing so.

Article 108 requires states to cooperate in suppressing illicit traffic in narcotic drugs or psychotropic substances by ships on the high seas.⁵⁹ But Article 108 does not itself authorize boarding, seizure, or destruction. John Noyes's maritime-security

56. *Nicaragua*, 1986 I.C.J. ¶¶ 176, 194–95.

57. *Oil Platforms*, 2003 I.C.J. ¶¶ 51, 72–78.

58. Christine Gray, *The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force After Nicaragua*, 14 EUR. J. INT'L L. 867 (2003).

59. United Nations Convention on the Law of the Sea art. 108, Dec. 10, 1982, 1833 U.N.T.S. 397.

analysis explains that UNCLOS contains no explicit authority for boarding or inspection of vessels on the high seas for narcotics trafficking, much less seizure of the vessel or cargo. During the UNCLOS negotiations, proposals to authorize narcotics-related boarding or seizure were not adopted.⁶⁰

Article 110 authorizes the right of visit only in specified circumstances, including piracy, slave trade, unauthorized broadcasting, statelessness, or suspicion that the vessel is in reality of the same nationality as the warship, unless another treaty supplies authority.⁶¹ Article 111 permits hot pursuit, but only when the coastal state has good reason to believe the vessel violated its laws and the pursuit satisfies the article's procedural requirements.⁶² These provisions support a central point: even seizure requires legal predicates. Destruction requires more still.

The 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances supplies a more specific treaty framework for maritime narcotics enforcement. Article 17 permits a state with reasonable grounds to suspect that a foreign-flagged vessel is engaged in illicit traffic to notify the flag state, request confirmation of registry, and seek authorization to board, search, and take appropriate action if evidence is found.⁶³ It is a consent-and-cooperation regime. It does not authorize unilateral destruction of a vessel and its crew. Nor should Article 17 be described as customary international law without a separate showing of state practice and *opinio juris*.

C. Jurisprudence of the International Tribunals

The International Tribunal for the Law of the Sea in *M/V Saiga* (No. 2) condemned Guinea's use of live ammunition in a law-enforcement action and held that force must be reasonable, necessary, and not go beyond what is required under the circumstances.⁶⁴ In *Guyana v. Suriname*, the Permanent Court of Arbitration held that threatening force to expel a drilling vessel from disputed waters violated Article 2(4) of the Charter.⁶⁵ These cases confirm that maritime enforcement is measured by necessity and proportionality.

Their application to the boat strikes is direct but limited. *Saiga* involved law-enforcement force at sea and supports the proposition that even when a state has enforcement interests, live fire must be reasonable and necessary. *Guyana v. Suriname* involved interstate force and is strongest when a strike implicates another state's vessels or maritime rights. Neither case independently answers every question about a stateless drug vessel. Together, however, they reinforce the

60. John E. Noyes, *Marine Security and International Law: Government Seizure of Vessels in Peacetime*, in 1 OCEANS '95 MTS/IEEE: CHALLENGES OF OUR CHANGING GLOBAL ENVIRONMENT 440, 444-45 (1995), <https://perma.cc/SV8R-R7CC>.

61. United Nations Convention on the Law of the Sea art. 110, Dec. 10, 1982, 1833 U.N.T.S. 397.

62. *Id.* art. 111.

63. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 17, Dec. 20, 1988, 1582 U.N.T.S. 95; Noyes, *supra* note 60, at 444-45.

64. *M/V "Saiga" (No. 2)* (St. Vincent v. Guinea), Judgment, International Tribunal for the Law of the Sea (ITLOS) Case No. 2, ¶ 155 (July 1, 1999).

65. *Guyana v. Suriname*, Award, 30 R.I.A.A. 1, ¶¶ 445-46 (Perm. Ct. Arb. Sept. 17, 2007).

same baseline: maritime enforcement is not combat by default, and force at sea remains legally constrained.

Human-rights courts have adopted a similar approach. In *Medvedyev v. France*, the European Court of Human Rights held that France's detention of a vessel on the high seas brought its crew within French jurisdiction.⁶⁶ In *Hirsi Jamaa v. Italy*, the Court held that Italy's interception and return of migrants engaged Convention obligations.⁶⁷ These cases are not binding on the U.S. and should not be used to establish universal custom by themselves. Their value is persuasive. They illustrate a developing and increasingly accepted principle that when a state exercises effective control over persons at sea, it must account for their basic rights.

D. Human Rights at Sea and the Duty to Protect Life

Article 6(1) of the International Covenant on Civil and Political Rights, to which the U.S. is a party, prohibits arbitrary deprivation of life.⁶⁸ The Human Rights Committee has interpreted that rule to apply extraterritorially when a state exercises power or control over a person.⁶⁹ The U.S. contests aspects of that extraterritorial view, and the Committee's General Comments are not domestic judicial holdings. The point should therefore be stated modestly: international human-rights materials provide persuasive support for the proposition that intentional lethal force in law enforcement is exceptional and must be justified by necessity, usually the protection of life.

The U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials direct that intentional lethal force may be used only when strictly unavoidable to protect life.⁷⁰ The Basic Principles are not a treaty and should not be labeled independently binding on the U.S. Their relevance is persuasive: they reflect a widely accepted law-enforcement norm that lethal force is a last resort. That norm supports, but does not alone establish, the Article's conclusion.

The idea of "human rights at sea" captures this evolution. It holds that the ocean is not a lawless space but a place where states remain answerable for their conduct.⁷¹ The argument here does not require proving that every human-rights-at-sea norm is customary international law. It requires only the more modest conclusion that maritime location does not itself erase the obligation to justify lethal force. Where seizure is feasible and no imminent threat to life is shown, destruction of the vessel cannot be reconciled with the law-enforcement norm of last resort.

The law of nations therefore aligns with domestic law. Both demand restraint. Both make necessity the measure of force. The better principle is not that destruction is always illegal whenever seizure is possible. There may be circumstances

66. *Medvedyev v. France*, App. No. 3394/03, ¶ 67 (Eur. Ct. H.R. Mar. 29, 2010).

67. *Hirsi Jamaa v. Italy*, App. No. 27765/09, ¶¶ 74–81 (Eur. Ct. H.R. Feb. 23, 2012).

68. International Covenant on Civil and Political Rights art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171.

69. U.N. Hum. Rts. Comm., General Comment No. 36, *supra* note 16, ¶¶ 12–13.

70. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, princs. 9–10, U.N. Doc. A/CONF.144/28/Rev.1 (1990).

71. Irini Papanicopolulu, *INTERNATIONAL LAW AND THE PROTECTION OF PEOPLE AT SEA* (2018).

(e.g., self-defense, imminent threat, inability to stop a dangerous vessel by lesser means) in which destruction is lawful. The principle is narrower: destruction of a suspected drug vessel is unlawful where the government has not shown that lethal force was necessary, proportionate, and tied to an imminent threat rather than deterrence or punishment.

V. THE LAW OF ARMED CONFLICT: WHY WAR RULES DO NOT APPLY

The LOAC was written for war. It does not govern every act of force, nor does it supply immunity where none exists. Its rules apply only when hostilities rise to the level of armed conflict. The use of military power against suspected criminals in peacetime falls outside that definition. To invoke the law of war to justify killing in enforcement is to distort both.

A. *The Threshold of Armed Conflict*

The Geneva Conventions and customary law distinguish armed conflict from ordinary criminal violence.⁷² For non-international armed conflict, the usual inquiry asks whether there is organized armed violence between a state and an organized armed group, and whether the violence is sufficiently intense and protracted. The DoD Law of War Manual likewise distinguishes non-international armed conflict from internal disturbances, riots, isolated and sporadic acts of violence, and other similar acts.⁷³ The ICTY's *Tadić* formulation—protracted armed violence between governmental authorities and organized armed groups—has become a common reference point for that analysis.⁷⁴

Drug cartels can be organized and can be violent. The point is not that traffickers can never become parties to an armed conflict. The point is that narcotics trafficking by itself is not armed violence against the U.S., and the public facts do not show sustained hostilities between the targeted boat crews and U.S. armed forces. A unilateral series of U.S. strikes does not create a non-international armed conflict unless there is also organized armed violence by the opposing party. An armed conflict presupposes more than one side fighting.

Drug traffickers are criminals unless and until the facts show that they are members of an organized armed group engaged in sufficiently intense armed violence against the U.S. They act for profit, but motive alone is not dispositive. The legally relevant questions are organization, intensity, and connection to hostilities. Publicly available facts show alleged drug transport, not attacks on U.S. forces. They show criminal conduct, not sustained armed confrontation. Classifying smugglers as combatants would confer on the Executive a targeting power that Congress has not authorized and that the facts do not support.

72. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; U.S. Dep't of Def., *Law of War Manual*, *supra* note 10, § 17.1.1.

73. U.S. Dep't of Def., *Law of War Manual*, *supra* note 10, § 17.1.1.

74. *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

B. U.S. Doctrine and the Limits of Combatant Authority

The Navy's *Commander's Handbook* distinguishes law-enforcement operations from hostilities.⁷⁵ The Standing Rules of Engagement preserve the inherent right of self-defense but do not authorize punishment or deterrence as independent bases for lethal force.⁷⁶ The DoD Law of War Manual distinguishes self-defense from combat operations and recognizes that the law of war does not govern all uses of military force.⁷⁷ These provisions leave no room for a strike whose stated purpose is deterrence rather than defense.

The administration's reported positions expose the problem. If the U.S. is not in "hostilities" for War Powers Resolution purposes, it is difficult to claim simultaneously that it is in a non-international armed conflict for LOAC targeting purposes. Conversely, if the government claims an armed conflict exists, then the persons targeted must still be lawful military targets under LOAC. Drugs are not military objectives merely because they are contraband, and suspected smugglers are not targetable combatants merely because they belong to a designated criminal or terrorist organization. Foreign Terrorist Organization designation under 8 U.S.C. § 1189 does not itself authorize military force.

The Supreme Court has enforced the same boundary. In *The Prize Cases*, the Court upheld the President's authority to respond to actual hostilities but emphasized that such authority depends on the existence of war or armed attack.⁷⁸ In *Ex parte Milligan*, the Court held that the Constitution applies in war and peace and that military jurisdiction cannot replace civil process where civil courts are open.⁷⁹ These decisions draw the constitutional line between enforcement and combat.

C. The Constitutional Structure of Peace and War

Congress alone holds the power to declare war.⁸⁰ That allocation prevents the President from invoking wartime authorities in peacetime. While the President may direct immediate defensive force against attacks, the Constitution withholds the power to wage offensive or punitive campaigns without legislative sanction.⁸¹ The 2001 Authorization for Use of Military Force applies only to those nations, organizations, or persons responsible for the attacks of September 11, 2001, and associated forces.⁸² Congress has enacted no comparable authority against narcotics traffickers.

The U.S. State Department's designation of a group as a Foreign Terrorist Organization carries serious immigration, material-support, and sanctions

75. *Commander's Handbook*, *supra* note 10, ch. 3.

76. CJCSI 3121.01B, *supra* note 10.

77. U.S. Dep't of Def., *Law of War Manual*, *supra* note 10, §§ 1.11, 17.1.

78. *The Prize Cases*, 67 U.S. (2 Black) 635, 668 (1863).

79. *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 120–21 (1866).

80. U.S. Const. art. I, § 8, cl. 11.

81. *See* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

82. Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, 224 (2001).

consequences, but it is not an authorization for the use of military force. Congress knows how to authorize force when it chooses to do so. It did so in 2001. It has not done so here. The President cannot create a new theater of war by proclamation. To do so would erase the separation of powers and the rights that depend on it.

D. Humanitarian Law and Its Misuse

International humanitarian law is the body of law that regulates the conduct of hostilities once an armed conflict exists. Its core principles include military necessity, distinction, proportionality, and humanity.⁸³ Those principles are restraints, not permissions. They limit what belligerents may do in war. They do not create authority to kill in peace. When governments invoke law-of-war vocabulary outside armed conflict, they reverse its purpose.

The ICJ's nuclear weapons advisory opinion stated that human rights law does not disappear in armed conflict and that the right to life continues to apply, with its content informed by the applicable *lex specialis*.⁸⁴ The U.S. is a member of the U.N. and party to the ICJ Statute, but ICJ decisions bind only the parties in a particular case. The opinion is therefore best used as persuasive authority for a general proposition: human-rights law and humanitarian law are not interchangeable licenses to kill. Below the armed-conflict threshold, law-enforcement standards remain central.

E. The Consequence of Misclassification

When governments misclassify enforcement operations as armed conflict, they dissolve accountability. The law of war permits targeting of enemy combatants and, in limited circumstances, incidental civilian harm that would be impermissible in law enforcement.⁸⁵ That statement must be kept precise. The LOAC does not give commanders discretion to kill at will; it imposes strict constraints. But it does permit forms of force that peacetime law enforcement does not. That is why misclassification matters. If suspected traffickers are treated as combatants without satisfying the armed-conflict threshold, the government gains the language of war without the law that makes war legally possible. The boundary between war and peace is not theoretical; it is constitutional. It is the safeguard that separates the use of force under law from violence without law. The sea tests that distinction daily. If the government erases it, the uniform will no longer protect those who wear it. It will expose them.

VI. LESSONS FROM HISTORY: THE TRADITION OF RESTRAINT

Law grows through memory. Its purpose is not only to punish wrong but to prevent its return. History provides that warning. Whenever power has invoked

83. U.S. Dep't of Def., *Law of War Manual*, *supra* note 10, §§ 2.2–2.6.

84. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 25 (July 8).

85. U.S. Dep't of Def., *Law of War Manual*, *supra* note 10, §§ 5.5, 5.10.

necessity as its sole justification, the judgment of law has followed. The rules that restrain force at sea were not written in abstraction. They were written in response to error.

A. *The Caroline Standard and the Origins of Necessity*

The modern law of necessity began with an American statement. In 1837, British forces crossed into New York and destroyed the steamer *Caroline*, alleging that it aided Canadian rebels.⁸⁶ Secretary of State Daniel Webster replied that self-defense must rest upon necessity, and that necessity must be instant, overwhelming, leaving no choice of means and no moment for deliberation.⁸⁷ The formula became a foundation of international self-defense analysis and has been cited repeatedly in discussions of necessity and proportionality.⁸⁸

The *Caroline* standard should be applied rather than merely invoked. The reported facts do not show instant and overwhelming necessity. The vessel was allegedly carrying narcotics, not firing on U.S. forces. The government has not publicly shown that boarding, disabling, tracking, seizure, or coordination with a flag or coastal state was infeasible. The strike therefore looks preventive or punitive, not defensive. Under *Caroline*, necessity fails when there is time for deliberation and a choice of means. Proportionality fails when the chosen means, such as killing everyone aboard, exceeds what is needed to stop the threatened harm.

B. *Judicial Warnings Against Executive Excess*

The Supreme Court of the early Republic faced similar questions. In *Little v. Barreme*, the Court held a naval captain personally liable for seizing a Danish ship under presidential orders that exceeded congressional authority.⁸⁹ Chief Justice Marshall ruled that presidential instructions could not legalize an act that Congress had not authorized.⁹⁰ The superior-orders doctrine is the principle that an official order does not excuse unlawful conduct when the order itself exceeds legal authority or commands illegality. *Little* is an early American expression of that rule in maritime form: a naval officer who obeys an unlawful presidential order may still answer in law.

In *Mitchell v. Harmony*, the Court held an Army officer liable for seizing private property during the Mexican War without necessity.⁹¹ The Court declared that danger must be immediate and impending and must not admit delay.⁹² Those words echo Webster's *Caroline* standard and reinforce the constitutional duty of restraint. The officer who acts from convenience rather than necessity stands outside the protection of law.

86. R.Y. Jennings, *The Caroline and McLeod Cases*, 32 AM. J. INT'L L. 82 (1938).

87. Letter from Daniel Webster to Henry Fox, *supra* note 17, at 1137–38.

88. See *Nicaragua*, 1986 I.C.J. ¶ 176; *Oil Platforms*, 2003 I.C.J. ¶¶ 73–78.

89. *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 177–79 (1804).

90. *Id.*

91. *Mitchell v. Harmony*, 54 U.S. (13 How.) 115, 134–35 (1851).

92. *Id.* at 135.

C. Maritime War and the Birth of Limitation

Even in war, law has insisted upon limits. *The Prize Cases* recognized the right to capture enemy property at sea but required judicial condemnation before confiscation.⁹³ That requirement signified that even in armed conflict, executive acts remained subject to legal judgment. During the twentieth century, unrestricted submarine warfare sharpened this lesson and helped produce modern rules protecting merchant crews and passengers.⁹⁴ The 1909 London Declaration Concerning the Laws of Naval War preserved the same tradition. It required that before a belligerent destroys certain merchant vessels, the crew and passengers must be placed in safety.⁹⁵ Capture, not destruction, remained the rule. Even at war, the deliberate killing of civilians was forbidden. In peace, the rule is stronger still.

D. The Postwar Judgment and the Doctrine of Command Responsibility

The postwar tribunals gave legal form to a principle that had long existed in moral judgment: rank does not erase responsibility. The Nuremberg principles confirmed that superior orders cannot absolve a person who carries out a manifestly unlawful act.⁹⁶ *Yamashita* carried the principle up the chain of command, holding that a commander may be responsible when he fails to control forces under his authority in circumstances where the law imposes a duty to prevent or punish violations.⁹⁷ Together, these authorities reject the idea that responsibility disappears into hierarchy.

The terminology matters. “Custom” is not a single concept. In international law, “customary international law” is a term of art: it requires general and consistent state practice followed from a sense of legal obligation. Command responsibility may overlap with that body of law, and it also appears in treaty law, military manuals, and the jurisprudence of international tribunals. But the Article need not rest entirely on customary international law to make its point. For U.S. commanders, domestic military law supplies an independent foundation. A duty may arise from statute, regulation, lawful order, standard operating procedure, training, or the custom of the service. That last phrase (custom of the service) refers not to international custom, but to the settled practices and professional obligations of the armed forces themselves.

The distinction strengthens rather than weakens the argument. A commander need not wait for an international tribunal to identify a customary rule before recognizing that he may not order a crime, aid one, or ignore duties imposed by the military system he serves. The UCMJ, the MCM, service regulations, and operational doctrine already define those obligations in domestic law. International law

93. *The Prize Cases*, 67 U.S. (2 Black) 635, 671 (1863).

94. *Judgment of the International Military Tribunal for the Trial of German Major War Criminals*, 41 AM. J. INT'L L. 172 (1947).

95. Declaration Concerning the Laws of Naval War art. 50, Feb. 26, 1909, 208 Consol. T.S. 338 (not in force).

96. Nuremberg Principle IV, *supra* note 18.

97. *In re Yamashita*, 327 U.S. 1, 15–16 (1946).

reinforces the same conclusion, but U.S. law is sufficient: command authority carries with it the duty to know the legal limits of command.

These precedents form a genealogy of restraint. From *Little* to Nuremberg, from *Yamashita* to modern military law, each generation has returned to the same proposition: legality does not depend on hierarchy. It depends on lawful authority, disciplined judgment, and the capacity to choose. A superior order may explain why a subordinate acted, but it cannot by itself make the act lawful. The law asks a harder question: whether the person who gave or obeyed the order still had a legal and moral choice. When the order is manifestly unlawful, the answer is yes.

E. The Contemporary Echo

The recent strikes in the Caribbean and eastern Pacific repeat questions that law has already answered. The justifications offered (necessity, deterrence, and war against crime) mirror earlier claims for preventive or punitive force. They fail for the same reason. Necessity must be immediate, not speculative. Proportionality must be measured against a lawful objective, not policy preference. History's verdict is consistent: when the state kills outside law, its officers bear the cost. Experience teaches that restraint is not weakness but strength. The Republic's security has endured not by ignoring law but by observing it. The tradition of restraint at sea is one of those inheritances. To abandon it now would not only risk criminal liability for those who command or comply; it would mark the loss of the principle that defines lawful power.

VII. ACCOUNTABILITY AND REMEDY: THE LAW'S FINAL WORD

The rule of law does not end with command; it ends with judgment. Authority that escapes review becomes power, and power without law invites injustice. The enduring purpose of legal order is to hold even the highest decision within reach of consequence. That purpose governs war and peace alike. It binds the one who gives an unlawful order and the one who obeys it.

A. Accountability Under Domestic Law

The UCMJ is the immediate source of accountability for service members. Article 118 punishes murder.⁹⁸ Article 92 punishes failure to obey lawful orders and dereliction of duty.⁹⁹ Article 77 establishes principal liability for those who aid, abet, counsel, command, or procure an offense.¹⁰⁰ Article 81 punishes conspiracy.¹⁰¹ These provisions reach every member of the chain of command whose conduct satisfies the elements of the offense. Military leaders who authorize the use of lethal force outside law, and operators who execute it, may each face prosecution.

Civilian statutes reinforce the same responsibility, though their application depends on jurisdictional facts. Federal murder law applies within the special

98. 10 U.S.C. § 918.

99. 10 U.S.C. § 892.

100. 10 U.S.C. § 877.

101. 10 U.S.C. § 881.

maritime and territorial jurisdiction of the U.S.¹⁰² Section 956 criminalizes certain conspiracies to commit murder abroad.¹⁰³ The War Crimes Act criminalizes specified grave breaches and other war crimes where its statutory predicates are satisfied.¹⁰⁴ These statutes should not be overclaimed. A particular prosecution would require proof of jurisdiction, status, *mens rea*, and statutory fit. But their existence matters because they confirm the central premise: unlawful killing does not become lawful because it occurs at sea or is ordered through a military chain.

The U.S. Department of Justice may have civilian jurisdiction over certain offenses, while the military may exercise court-martial jurisdiction over service-members under the UCMJ. The jurisdictional relationship is therefore concurrent in some cases between civilian federal authorities and military authorities, subject to statutory limits and prosecutorial discretion.

B. International Responsibility and the Law of Nations

The law of nations imposes parallel obligations on the state. The International Law Commission's Articles on State Responsibility provide that a state is responsible for internationally wrongful acts attributable to its organs or agents, and that full reparation may include restitution, compensation, and satisfaction.¹⁰⁵ The Articles are not themselves a treaty. They are best described as a codification and progressive-development project that is frequently treated as evidence of customary international law in substantial part. The Article should not imply that they are part of the U.N. Charter or independently enacted domestic law.

International criminal law extends individual accountability beyond the state in some circumstances. The Nuremberg principles remain the foundation: superior orders do not excuse manifest illegality.¹⁰⁶ The Rome Statute codifies command responsibility for states party to that treaty.¹⁰⁷ The U.S. is not a party to the Rome Statute, so Article 28 should not be described as treaty law binding on U.S. officers. It may be cited as persuasive evidence of how modern international criminal law frames command responsibility, but the Article's primary accountability argument should rest on U.S. law: the UCMJ, federal criminal statutes, and enforceable military duties.

C. Remedies and the Duty to Provide Redress

The right to an effective remedy is integral to every legal system that claims legitimacy. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) requires states to provide an effective remedy for violations of Covenant rights.¹⁰⁸ The Human Rights Committee has interpreted this duty to include

102. 18 U.S.C. §§ 7, 1111.

103. 18 U.S.C. § 956.

104. 18 U.S.C. § 2441.

105. Int'l Law Comm'n, Articles on Responsibility of States for Internationally Wrongful Acts arts. 2, 31, 34, U.N. Doc. A/56/10 (2001).

106. Nuremberg Principle IV, *supra* note 18.

107. Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 90.

108. International Covenant on Civil and Political Rights art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171.

investigation, prosecution, and compensation in appropriate cases.¹⁰⁹ As with Article 6, the U.S. contests aspects of the Covenant's extraterritorial reach, and the Committee's General Comments are not domestic judgments. They are nevertheless persuasive evidence of the international expectation that lethal state action be investigated and remedied.

The Federal Tort Claims Act (FTCA) provides only a limited remedial analogy. It waives sovereign immunity for certain torts committed by federal employees acting within the scope of employment, but Congress preserved significant exceptions. Claims may be barred if they arise from discretionary functions, combatant activities during time of war, or a foreign country. Those exceptions may make recovery difficult or impossible for families of persons killed in extraterritorial maritime strikes. The FTCA therefore should not be presented as a guaranteed remedy. Its relevance is narrower: ordinary domestic law recognizes wrongful government killing as compensable in principle, but national-security and extraterritorial doctrines often leave victims without a practical forum. That remedial gap supports congressional action.¹¹⁰

Congress may act to clarify and reinforce these obligations. It could require prompt reporting of every maritime lethal-force incident, including the legal basis, target-identification standard, evidence of imminent threat, alternatives considered, and post-strike assessment. It could require preservation and disclosure of targeting records to the intelligence, judiciary, and armed services committees. It could also create an administrative compensation mechanism for wrongfully killed persons or their families without requiring proof that the FTCA applies extraterritorially. These remedies would not weaken maritime enforcement. They would restore the distinction between enforcement under law and killing by executive assertion.

D. The Ethical Imperative of Command

Law without morality is command without conscience. Authority is safest when it is limited. The Constitution and the law of nations exist to preserve that limit. When officers are told to destroy rather than seize, and when those who obey do so without judgment, the limit disappears. The profession of arms then becomes a profession of obedience alone. The law cannot permit that.

Commanders and subordinates share one oath: to support and defend the Constitution. That oath is not conditional. It binds against unlawful orders as much as it binds against the enemy. The courage to refuse illegality is part of that duty. The legal system exists to protect those who uphold it and to hold accountable those who do not.

E. Conclusion: The Law's Final Word

The question presented by these strikes is not whether the U.S. may confront narcotics trafficking at sea. It may. Congress has given the government powerful

109. U.N. Hum. Rts. Comm., General Comment No. 31, ¶¶ 15–16, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

110. Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680; 28 U.S.C. § 2680(a), (j), (k).

tools to do so: detection, pursuit, boarding, search, seizure, arrest, forfeiture, prosecution, and imprisonment. The question is whether the Executive may cast those tools aside and substitute death for process. On that question, the law gives a clear answer. A suspected trafficker is not made a combatant by accusation. A criminal vessel is not made a battlefield by distance from shore. And a President's order is not made lawful by the urgency with which it is given.

The sea has always tempted governments to believe that law fades with the horizon. It does not. The Constitution follows American power in the sense most important here: it denies the Executive a free space in which command alone decides who lives and who dies. Congress has not authorized war against drug traffickers. It has not made narcotics smuggling a capital offense triable by missile. It has not permitted military officers to replace courts, juries, evidence, and judgment with a targeting packet and a launch command. Where Congress has built a law-enforcement regime, the President may not turn it into a campaign of execution.

Nor does international law supply what domestic law withholds. The Charter permits force in self-defense, not force as warning. The law of the sea permits carefully bounded enforcement, not destruction without necessity. Human-rights law protects life against arbitrary deprivation. And the LOAC, written to restrain war, cannot be invoked to manufacture one. These bodies of law differ in source and force, but they converge on the same principle: lethal force must answer to necessity, proportionality, and lawful authority. Deterrence is not necessity. Suspicion is not judgment. Power is not law.

That conclusion matters not only for the civilians aboard the vessel but for the officers ordered to destroy it. Military obedience is a virtue only when joined to legality. The oath of service is not an oath to a person, a policy, or a moment of political will. It is an oath to the Constitution. When an order commands what law forbids, the uniform does not shield the act; it sharpens the duty to refuse. The commander who authorizes an unlawful killing and the operator who carries it out may stand at different places in the chain of command, but they stand before the same law.

This is the burden of command in a constitutional republic. The hardest cases do not ask whether officers are loyal. They ask what loyalty means when command and law part ways. The answer cannot be that the order itself resolves the question, for that would make legality depend on rank. It cannot be that necessity resolves it, for necessity unbounded by law is only another name for will. The answer is older and stronger: command is lawful only when it remains within the authority that law confers.

The destruction of a civilian vessel in peacetime, absent imminent threat, armed conflict, or statutory authorization, is not interdiction. It is not prosecution. It is not judgment. It is killing without trial. If such an act is permitted merely because the target is despised, the place remote, or the policy urgent, then the principle will not remain confined to drug boats in distant waters. It will become a precedent, and precedents of unchecked power do not stay small.

The final word must therefore belong not to command, but to law. The Republic does not become safer when its officers are asked to choose between obedience and legality. It becomes weaker, because the discipline of the armed forces depends on both. A lawful military is not one that obeys every order; it is one that knows the difference between command and authority. At sea, as on land, that difference is the boundary between government under law and violence under color of office.

The Constitution was written for precisely this moment: when fear, distance, and claimed necessity make unlawful power seem useful. It does not forbid strength. It disciplines strength. It does not prevent the U.S. from enforcing its laws. It requires that enforcement remain law. That is the command no officer may disregard, and the consequence no unlawful order can escape.

* * *