

By Andrew Lichterman

From [Tikkun](#) | Original Article

Donald Trump's first appearance at the United Nations was a watershed moment. In an address notable for its belligerence, he marked his place not only as a harbinger of the erosion of the post Cold-War international legal order, but as an active agent of its destruction. Trump's bald threat that to defend the U.S. or its allies, the United States government would be willing "to totally destroy North Korea" is alarming enough standing alone. In the context of a rambling speech colored by Christian nationalist metaphors, in which the world is divided between good and evil and parts of it are "going to hell," it evoked the forces that brought the terrible wars of the first four decades of the 20th century, the very forces that the United Nations was designed to reign in.

A threat to "totally destroy" a country and its people runs contrary to both the letter and spirit of United Nations Charter. Adopted in the wake of World War II and proclaiming the determination "to save succeeding generations from the scourge of war," the United Nations Charter established a prohibition on the use of force to resolve disputes among states. [1] Article II Section 3 requires all members to "settle their disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Article II section 4 prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The Charter contains two exceptions to the prohibition, authorizing the Security Council to use force on behalf of the United Nations to maintain international peace and security, and recognizing the right of self-defense against an armed attack.

Trump did couch his threat to destroy North Korea in terms of defense of the United States and its allies. But this must be read in the context of the very broad right to "self-defense" that the government of the United States has claimed, encompassing not only armed response to an actual or imminent attack but the right to wage "preventive war" whenever U.S. leaders deem it necessary. In the 2002 National Security Strategy of the United States, the U.S. government explicitly asserted the right to wage preventive war to prevent adversaries from developing weapons of mass destruction, stating that "as a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed." [2] Shortly thereafter, the Bush administration launched a hugely destructive war and occupation of Iraq, unleashing a cycle of wars and violence in the region that continues to this day. That war was launched without UN sanction, and on far thinner evidence (much later proved false) that Iraq had active WMD programs.

The United States government never has repudiated the doctrine of preventive war, and in fact has continued to conduct unilateral military actions in a number of countries, less visible “small wars” employing drones, special forces, air power, and occasionally small numbers of regular ground forces. All of this goes well beyond any principle of “self defense” recognized under international law, and has contributed to the slow erosion of what legal checks there are on war-making that has brought us to this moment. And it is apparent that the Trump administration is contemplating more than a defensive response to armed attack by North Korea against the United States or its allies, and is considering a unilateral preventive war against North Korea if, in their view, sanctions and diplomacy have failed. The New York Times has reported that a “pre-emptive military strike, while a last resort, is among the options they have made available to the president.” [3] U.S. Ambassador to the United Nations Nikki Haley recently reinforced the threat of preventive war, telling CNN that “We wanted to be responsible and go through all diplomatic means to get their attention first.... If that doesn’t work, [Secretary of Defense] General Mattis will take care of it.” [4]

It important to emphasize here that the recent Security Council sanctions against North Korea issued under Article 41 of the Charter, which provides for enforcement of Security Council decisions by “measures not involving use of armed force.” There is a separate provision, Article 42, providing for the use of such force “as may be necessary to maintain or restore international peace and security.” The September 11 Security Council resolution also emphasized “the need to ensure international peace and security, and ensure lasting stability in north-east Asia at large and to resolve the situation through peaceful, diplomatic and political means...” [5] Hence the Security Council has given no mandate to the United States or any other member of the United Nations to enforce its decisions or sanctions against North Korea by military action. At minimum, the repeated threats of overwhelming military action by U.S. officials, made in the context of a long-held policy and practice of unilateral warfare conducted outside the United Nations framework, must be seen as an extralegal attempt at coercion over and above that approved by the Security Council in its resolution approving sanctions on North Korea. Such behavior violates a number of provisions of the Charter, including the Article 51 limits on the use of force to self-defense, the Chapter VII commitment of determination of responses to threats to peace and reactions thereto to the Security Council, and the general provisions of Article II prohibiting the use of force. Further, the escalating cycle of threats by the governments of both the United States and North Korea is entirely inconsistent with both the general Charter requirements that members seek to resolve disputes peacefully and with the specific call by the Security Council to resolve the crisis by peaceful diplomatic means.

All of this would apply to a use of the immense armed forces of the United States against North Korea regardless of the weaponry employed. Threats to destroy a country and its people also violate fundamental rules of international humanitarian law. Protocol I to the Geneva Conventions prohibits threatening an adversary with war conducted in a way that there will be no survivors. [6] Actually conducting a war with the intention of destroying an entire country would contravene the Genocide Convention, which prohibits killing “with intent to destroy, in

whole or in part, a national, ethnical, racial or religious group...” [\[7\]](#) The Nurnberg Judgment found “total war” to be unlawful because it runs contrary to all the rules of warfare and the moral principles underlying them, creating a climate in which “[r]ules, regulations, assurances, and treaties all alike are of no moment” and “[e]verything is made subordinate to the overmastering dictates of war.”

[\[8\]](#)

North Korea’s threats to destroy its adversaries, such as its threats to use its nuclear weapons to sink Japan into the sea and to reduce the United States to “ashes and darkness”

[\[9\]](#)

also in principle contravene both with the United Nations Charter and various international law provisions outlawing threats of total war. The difference is that the military forces of the United States, capped by its immense nuclear arsenal, could accomplish the destruction North Korea and the extermination of its people in an afternoon.

[\[10\]](#)

A threat by the leader of a nuclear armed state to totally destroy another country inevitably raises the specter of nuclear weapons use. Despite Trump’s apocalyptic rhetoric of meeting North Korea’s threats with “fire and fury,” [\[11\]](#) the United States military, possessing conventional forces capable of destroying or incapacitating all but the hardest of targets, is unlikely to use nuclear weapons in a preventive attack. But a large-scale attack by the U.S. on North Korea creates the conditions under which that country’s leadership might, out of desperation, retaliate with its fledgling nuclear arsenal. That is the circumstance in which the use of nuclear weapons by the United States becomes imaginable, and in which Trump’s threat to “totally destroy” North Korea could become a reality.

The International Court of Justice has held that all warfare, including wars fought with nuclear weapons, must comply with the requirements of international humanitarian law. [\[12\]](#) It is our firm belief that the threat or use of nuclear weapons are incompatible with international humanitarian law, including when the threat of use is framed as “deterrence.”

[\[13\]](#)

A large proportion of the world’s countries share this view, and have sought to reinforce the existing international humanitarian law framework by drafting a Treaty on the Prohibition of Nuclear Weapons, which opened for signature September 20. It is noteworthy that while the International Court of Justice could not find sufficient grounds to hold nuclear weapons threat or use illegal under all circumstances, it did hold that threatened use of nuclear weapons must comply with the requirements of international humanitarian law and the UN Charter.

[\[14\]](#)

Customary international law requires that the use of force in self-defense be limited to such measures as are proportional to the armed attack and necessary to respond to it.

[\[15\]](#)

The laws of war further require that military operations be conducted in a manner that distinguishes between civilian and combatant persons and objects.

[16]

Only the force necessary to accomplish the objective of the particular military strike be employed.

[17]

In addition, it is unlawful to employ weapons or tactics that cause harm to civilians or civilian objects disproportionate to the military advantage sought.

[18]

Regardless of whether the threat or use of nuclear weapons might be lawful under some imaginable circumstances, the threat of their use to achieve the total destruction of another country clearly is not. A declaration by the leader of a state that its military will “totally destroy” another country to prevent a perceived threat, or even that it will do so in response to an attack, is utterly inconsistent with these fundamental principles of humanitarian law and of the lawful use of military force in self-defense. It is in fact a threat of “total war,” a statement that “[r]ules, regulations, assurances, and treaties all alike are of no moment.” [19] It is a threat that violates *ab initio*

all principles of military necessity, proportionality, or discrimination between military and civilian persons and objects, regardless of the weapons used. The immensely destructive and inherently indiscriminate character of nuclear weapons only makes the illegality of such a threat by a nuclear-armed country more egregious.

The Trump administration pays lip service to exhausting diplomatic efforts before, in the words of UN Ambassador Nikki Haley, letting Defense Secretary General James Mattis “take care of it.” [20] Sanctions, however, are not diplomacy; they are merely a lesser form of coercion. The UN Charter makes this clear, placing “complete or partial interruption of economic relations” in Article 41, concerning measures other than armed force that may be employed to enforce Security Council decisions. Diplomacy means talking to one’s adversaries, and preferably talking to them directly. So far the United States government has been unwilling to talk to North Korea’s government until after coercive measures have been at least partially successful, and North Korea has ceased its nuclear and missile tests. There is considerable likelihood that coercive measures short of military force will fail. Most military commentators admit that a war on the Korean peninsula would be a humanitarian catastrophe, even if no nuclear weapons are used. But even a long-running stalemate in which both sides keep their forces at elevated alert levels is dangerous. With the speed and complexity of modern armaments, the chances for disaster by mistake or misadventure are high when immense military forces confront one another in close proximity.

The connection between Trump’s threat of total war and his strident nationalist rhetoric also sound an alarm that resonates with the darkest periods of recent history. People are not born to hate. When leaders desire to mobilize their populations for war, an essential step is to portray

the adversary as both less than human and as a mortal danger to the Nation and its People. Where the goal is total war or extermination, the campaign to dehumanize the enemy will be intense and systematic. Among the Nazi officials punished for crimes against humanity were propagandists who engaged in sustained efforts to arouse the hatred of the German people against the Jews. One of them was Otto Dietrich, who served as press chief for the Reich in 1937 and then as State Secretary of the Ministry of Public Enlightenment and Propaganda from 1938 to 1945. [21] The Military Tribunal found that Dietrich conducted a “well thought-out, oft-repeated, persistent campaign to *arouse the hatred* of the German people against Jews....” [22]

The Tribunal held that Dietrich’s actions constituted neither “aimless expressions of anti-Semitism” nor propaganda efforts “designated only to unite the German people in the war effort.” Rather, “[t]heir clear and expressed purpose was to enrage Germans against the Jews, and to justify the measures taken and to be taken against them, and to subdue any doubts which might arise as to the justice of measures of racial persecution to which Jews were being subjected.”

[23]

At the time of the Nuremberg Tribunals, there was no established law against genocide, and Dietrich was found guilty under the broader charge of crimes against humanity. The Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force in 1951, strove to systematize the prohibition against genocide. Among the acts the Convention declares punishable is “[d]irect and public incitement to commit genocide.” [24]

It is a useful, and disturbing, exercise to evaluate Trump’s threats and other rhetoric by the standard of public incitement to commit genocide. At the outset, it must be remembered that Trump is addressing not only his adversaries but the American public, and also the members of the U.S. military as their Commander in Chief. In addition to his threat to destroy North Korea entirely, Trump described the country’s leader in terms clearly intended to demean and dehumanize. Trump’s threats and degrading rhetoric were not an isolated instance, but rather were only new and more extreme versions of past threats and insults. All of this is taking place in a broader context in which public officials and media commentators routinely frame North Korea, its leaders, and its population as incomprehensible, likely irrational, and in any event irredeemably Other. As the historian Bruce Cumings notes,

“The demonisation of North Korea transcends party lines, drawing on a host of subliminal racist and Orientalist imagery; no one is willing to accept that North Koreans may have valid reasons for not accepting the American definition of reality. Their rejection of the American worldview – generally perceived as indifference, even insolence in the face of overwhelming US power – makes North Korea appear irrational, impossible to control, and therefore fundamentally dangerous.” Bruce Cumings, “A Murderous History of Korea,” London Review of Books, Vol. 39

No. 10, 18 May 2017, pages 17-19.

Nationalism is the ideology that ruling elites use to take modern nations to war. Hitler's faction deployed an extreme form of blood and soil nationalism in its successful struggle for power, and used it to mobilize the German public for total war. Both ethnic exterminism and total war are latent potentials in such ideologies, waiting to be unleashed when conditions are ripe. The connection between Trump's blood and soil nationalism at home and his threats of total war abroad is not accidental. Trump's conduct may not rise to the level of incitement of genocide, falling closer to the kinds of propaganda used routinely by governments to whip their publics and their armies up for war. But it still poses a significant danger in a time of instant, omnipresent mass media, and in which it takes days or weeks, rather than months or years, for the leader of a country possessing the military might of the United States to ramp up the machinery of annihilation.

Our main goal here is not to stigmatize Trump by comparing him to the Nazi leadership. Rather, it is to remind ourselves of the potentially catastrophic consequences that flow from blood and soil nationalism conjoined with industrialized militarism. These are the forces and passions in the shadow of which the foundational instruments of the post-World War II legal order, from the Nuremberg and United Nations Charters to the International Declaration of Human Rights, and the Geneva and Genocide conventions were crafted, and were designed to rein in. And our purpose also is to remind ourselves that the best time—and perhaps the only time—to rein them in is early, before they gain momentum, setting loose forces uncontrollable by any law.

Trump's ascendance, and the authoritarian nationalist currents the brought him to power, also is not an isolated instance. This may be the most damaging aspect of Trump's crude celebration of me-first identity-based sovereignty and of militarism (with Trump apparently believing his announcement that his government would pursue a \$700 billion-plus military budget would be viewed as a positive development by the delegations listening to his General Assembly speech). [\[25\]](#) Blood and soil nationalisms are resurgent world-wide, including in a number of nuclear-armed states. Where their adherents acquire state power they pose a threat not only to weaker neighbors but to domestic minorities and to refugee populations which we can expect to grow in a society and ecology strained by profound inequality, resource shortages, global warming, and general deterioration of ecosystems. As President of the world's largest economy and most militarily powerful state, Trump leads the most dangerous political elements and currents world-wide by example.

The post-Cold War legal order always has been imperfect, repeatedly institutionalizing a two-tier structure in which the world's most powerful (and nuclear-armed) countries were allotted

disproportionate institutional influence, whether in the Security Council or in the Nuclear Nonproliferation Treaty. Without substantial democratization of international institutions (and also of the economies and societies of the countries that comprise them) it is unlikely that there can be much progress towards removing the causes of international conflict. But the post-World War II legal institutions, and the United Nations in particular, were crafted to serve less ambitious but nonetheless crucial goals. The twin scourges of nationalism and militarism may not be the root cause of interstate conflict, but they often are the forces that precipitate wars. The United Nations system was designed to control these forces, primarily through a system of treaties and forums designed to mitigate conflict and outlaw war, and by giving the most powerful states a privileged place in it. Like all legal orders, this one requires the powerful to cede some autonomy to collective authority, in exchange for the security and stability benefits that a legal order can bring. The two-tier structure of the United Nations system, with most significant decisions consigned to a Security Council in which the victorious powers wield a veto, is a measure of how much autonomy they were willing to concede.

The intense Cold War confrontation that divided the world also stunted the development of the United Nations, in particular leaving largely abandoned much of its intended collective security architecture, such as permanently available military forces under UN command.

Leading states (and perhaps the United States most of all) have resisted efforts to democratize the United Nations, while both ignoring their own obligations and claiming the right to enforce the obligations of weaker states. Throughout, and perhaps especially after the fall of the Soviet Union, the United States has been able to exert its military and economic preeminence to play a dominant role in the security function of UN institutions. When significant military action has been taken to enforce Security Council decisions, it has mainly been carried out by coalitions assembled and led by the United States. The U.S. often has combined campaigns for multilateral sanctions authorized by the Security Council with more or less carefully calibrated measures of extralegal coercion, on a spectrum ranging from covert action to overt threats to use overwhelming force unilaterally.

This mode of exercising power through and around international institutions been integral to the larger U.S. project of hegemony in the non-Communist world during the Cold War and as global hegemon after, as most of the post-Communist states have been integrated into the neoliberal capitalist circuit of trade and investment. Although the system of international law and institutions centered around the United Nations often has been under extreme strain, U.S. elites have managed to exercise their dominance in a way that gave the other power players sufficient reason to continue to participate.

Trump's arrival on the scene constitutes a radical break from prior practice. His simplistic vision of absolute sovereignty rules out compliance with international norms even to the extent necessary to allow the double standards that long have been represented as neutral principles to be sustained. The most cynical efforts by power players to deploy UN mechanisms successfully to their advantage still requires some respect for the system, and a stake in its continued existence. Trump as an individual is ignorant of the history and institutional realities that might allow him to see much value in international institutions. His supreme egoism, combined with his race-based nationalism, make it impossible for Trump to accept the idea of ceding autonomy to anyone, much less foreigners, most of whom he sees as both alien and inferior. Trump's nativism and reflexive rejection of any genuinely mutual obligation (despite his self-promotion as a "dealmaker") also makes him suspicious of diplomacy, which must start from the premise that the sovereign parties are at least formally equal.

All of this would be less problematic if it were merely a matter of Trump's individual failings. But his predilections also are expressed as policy via budgets and personnel. Trump and his inner circle have chosen to gut the U.S. foreign service, shrinking its budget and leaving many top positions unfilled. Top level foreign policy positions have been filled with generals, and, as Trump bragged at the General Assembly, his administration intends to spend yet more on the military. There will be few obstacles to Trump's agenda of more military might and less diplomacy in Congress, already dominated by a party whose politicians either were swept into office by the same coalition of white nationalist forces and radical right-wing billionaires that elevated Trump, or who are too intimidated to stand in their way. And one of the few areas of broad "bipartisan" agreement in the United States Congress is that no amount of military spending is too much.

If it is to be anything other than force in fancy dress, a legal order must have a legitimating ideology, although large measures of force can prevent a threadbare ideology from being examined too closely. But the contradictions between official claims of justice and an unjust reality carry costs for those who seek to rule that increase over time. One element of the ideology underpinning the post-Cold War international order has been that the United States is indeed an exceptional nation, if not entirely so; that the power underpinning that order would be exercised in pursuit of a national interest at least partially enlightened by a longer view. Trump, and more than Trump the undeniable ascendance in the U.S. of the forces that brought him to power, has shattered this ideological image, regardless of its relative measures of truth and illusion. The United States has been shown to be subject to the same failings as any other country. Its traditional party structure is fragmenting, its future political stability is in doubt. Identity-based nationalism further stoked by ultra-rich factions has resulted in the rise of a President whose main frustration seems to be that the law does not yet allow him to be a tyrant. This is the cause of the desperate hand-wringing we see on the Sunday talk shows from the former luminaries of the U.S. foreign policy establishment. The world in which their accustomed way of exercising power could work is gone, likely forever. There is no returning to the pre-Trump status quo in international affairs.

The Cold War was driven by two trans-Continental empires with fundamentally opposed ideologies that contained some elements of nationalism, but that were also internationalist. For the first time since nuclear weapons were invented, we are encountering conflicts in which the rulers of nuclear-armed states are deploying traditional nationalist ideologies in the service of traditional great power goals. This has led many commentators to see parallels in the present to the mode of great power conflict that brought us the world wars of the last century. Trump only gives voice, albeit especially loudly and crudely, to these disturbing trends. And, of course, the abandonment of even a one-sided and self-interested commitment to internationalism by those who rule in the world's most powerful state, an announcement that any rule-bound international order no longer serves their ends, deals a significant blow to prospects for such order.

The path ahead lies to two different kinds of futures. The road Trump would take us down leads to further erosion of what international rules and institutions remain, and to a return to older, less constrained varieties of great power rivalry, modes of competition and conflict in which nationalisms can more easily take a virulent form. These rivalries will divert attention from the epochal challenges faced by humanity as whole, such as resource shortages, climate change, and the broader deterioration of the ecosystems we all depend on. Nationalist competition will prevent necessary cooperation on these planet-scale crises and at the same time will be intensified by them. In a nuclear armed world, the chances for catastrophe will only increase if leadership classes continue to deploy nationalist and identity-based divide and rule strategies to preserve their privilege in struggles both at home and abroad.

The path to a more survivable future is harder to discern. It will require prudent action by a significant number of governments in the near term to avert disaster. In the longer term, we will need bottom-up social movements on a global scale to transform world's economic system to one that functions within the planet's ecological limits and that distributes its fruits fairly, and that transforms the world's political systems to give every person an equal voice. Only these more fundamental changes can significantly reduce the causes of international conflict and make long-term peace and stability possible. There never has been a greater need for fair, nonviolent, and democratic means of making decisions and resolving conflict. The risks of transition to a kind of economy and society in which we all can lead dignified lives on a recovering planet must be shared fairly, or we will have no chance of getting there.

Everywhere, but especially in the United States, the near-term task will be to balance building the social power to make the big changes needed to achieve a stable peace, while using what capacity we have to prevent our rulers from pitting us against one another in wars that can slide into catastrophe. As we come out of a long period in which there were few sustained, large-scale social movements within the great powers, we must be willing to change our styles

of work, and abandon our own rigid positions and preconceptions. Those who work closer to the centers of power must understand that what moves the boundaries of political possibility in more peaceful directions are mobilized publics and social movements—and that those movements generally are mobilized from below, not from above. Those of us who work in more grassroots settings will need to acknowledge the significance of more modest, near-term goals that may be necessary to stave off imminent disaster. On the most important things, in this moment, we are on the same side, and must learn to work together more effectively, for human survival may depend on it.

For governments, the route back from the brink goes through common sense, and to a return to the first principles of the post-World War II legal order. In a time when a leader's impulsive decision can destroy cities on the other side of the world in less than an hour, some of the diplomatic practices developed in an age when both death and information traveled at the pace of a man on horseback are obsolete. Reducing or ceasing diplomatic relations as an expression of sovereign disapproval when antagonists are armed with nuclear weapons and supersonic means of delivery carries risks that far outweigh any possible gain. In the nuclear age, the first principle of diplomacy should be that adversaries talk directly to each other to the maximum possible extent, and in moments of crisis directly, and unconditionally.

We learned during the Cold War was that even when the prospects for any tangible progress seem dim, negotiations between nuclear-armed adversaries have other positive results. They allow the military and political leadership of the adversaries to better understand each other's intentions, and their fears. They build broader channels of communication between military and government bureaucracies that can be of tremendous value when tensions rise. William Perry, Secretary of Defense during the Clinton Administration, observed that more determined arms control efforts in the 1970's might have considerably reduced the dangers of the 1980's "second Cold War" between the United States and the Soviet Union:

"a successful arms-control agreement could have put a brake on the arms race, but even more important, it would have engaged us in a dialogue with our deadly foe, given both sides a degree of transparency, and, most critically, given us context – a better understanding of our opponent – to inform the awesome decisions we were expected to make in a heartbeat." [\[26\]](#)

The central message and aspiration of the key post-World War Two international law instruments is that we must recognize each other as human beings even in the worst of circumstances, when we are in starkest conflict with one another, in war as well as peace. This principle is enshrined in the preamble of the United Nations Charter, which states the determination of the peoples of the United Nations "to reaffirm faith in fundamental human

rights, in the equal rights of men and women and of nations large and small....”

To the extent that international law exists, all countries stand equal before it. No self-selected state or group of states has a legitimate ground to act as judge and executioner.

A first step towards breaking the impasse that has developed around nuclear weapons proliferation is for the nuclear-armed countries to relinquish the narrative of crime and punishment in which they have framed it. This narrative is in part a conscious ideological gambit, but it also is rooted in deep-seated attitudes of the elites of the original nuclear powers about who has a right to control nuclear technology. Ideologically, the narrative of crime and punishment plays on the everyday assumptions of people for whom law is something enforced on subjects by sovereign states. From that everyday perspective the State occupies the legal field, having both a monopoly on “legal” violence and on the definition of what the law is, and how violations should be investigated, adjudicated, and punished.

The nuclear-armed Western powers have conjoined this powerful framing with deep-rooted tropes of Western cultural and western superiority to portray the pursuit of nuclear technology by non-Western countries as inherently irrational, and hence as more dangerous than their own continued possession of nuclear arsenals of civilization-destroying size. The American and European nuclear arsenals are portrayed implicitly as a stabilizing force defending a common global civilization, and attempts by others to obtain nuclear weapons as threatening this common good. Trump’s unhinged threats and purely self-interested nationalism, ironically, may undermine this framing; few could mistake Trump and his government as a force for either stability or for any globally shared vision of the common good.

For all these reasons Trump’s government is the last place the world can turn for leadership. It is essential that his government be subjected to sustained pressure from within and without to start diplomacy anew, beginning with direct talks with North Korea without preconditions of any kind. From the perspective of ordinary people everywhere, the best course of action when tensions rise among nuclear-armed governments is to stop threatening and start talking.

The stakes simply are too high and the risks too great to allow the spiral of threat and counter threat to continue. As Thomas Schelling, one of the preeminent Cold War theorists of nuclear war reminds us, the threat and counter-threat that constitutes “deterrence” might not involve great risk if the adversaries always had a clear, and clear-headed, view of each other’s credibility and intentions. “But uncertainty exists,” wrote Schelling.

“Not everybody is always in his right mind. Not all the frontiers and thresholds are precisely defined, fully reliable, and known to be so beyond the least temptation to test them out, to explore for loopholes, or to take a chance that they may be disconnected this time. Violence, especially war, is a confused and uncertain activity, highly unpredictable, depending on decisions made by fallible human beings organized into imperfect governments, depending on fallible communications and warning systems and on the untested performance of people and equipment. It is furthermore a hotheaded activity, in which commitments and reputations can develop a momentum of their own.” [\[27\]](#)

Even in the earliest years of the atomic age, those who knew best the power of nuclear weapons understood their apocalyptic potential if conjoined with the kinds of nationalist forces the had ignited two world wars. The Emergency Committee of Atomic Scientists, which included Albert Einstein and several of the physicists who had participated in developing the atomic bomb, warned that

“Through the release of atomic energy, our generation has brought into the world the most revolutionary force since prehistoric man’s discovery of fire. This basic power of the universe cannot be fitted into the outmoded concept of narrow nationalisms.” [\[28\]](#)

We need to bring the problem of nationalism more to the forefront of our analysis and actions. A significant strand—likely the dominant strand—in the elements that brought Trump to power is not only white supremacist but white nationalist. We need to identify the specific forces that are driving the rise of blood and soil nationalism in this country in this time. White supremacy has been a significant strand in the ruling ideology of this country since its inception as a slave-holding nation. But its expression as a blood and soil nationalism in this moment has specific causes, and poses particular dangers. It should be noted that both Trump and the white nationalist elements of his coalition are strongly opposed by significant portions of the traditional US economic and political elites—perhaps to a significant degree because of their opposition to ultra-nationalist politics, which conflict with both their interests and their ideology. And if a strongly white nationalist faction does fully take power, whether under Trump or some other politician, it is likely to target broader segments of the U.S. resident population far more harshly than any manifestation of white supremacy in recent memory.

Identifying the so-called “populism” central to Trump’s rise to power as a variety of extreme, identity-based nationalism allows us to recognize its rise and resurgence elsewhere around the world. This is a key way we can make a link between the struggles at home and the wars and war dangers abroad. It allows us to see the same root causes in the global economic and political system driving similar ultra-nationalist forces in different places, and to recognize that ultimately the struggle against those causes must be global. It allows us to see where nationalist ideologies as being deployed in ways that may increase the risk of war. It should be remembered that a global catastrophe could be precipitated by a war that the United States did not start, and was not involved in at the outset, and perhaps never was involved in at all. Finally, calling blood and soil nationalism by its name here at home helps us to identify allies in struggles against the rise of similar nationalisms elsewhere,

and to begin to construct the renewed internationalism we need, specific to this moment.

A call to end nationalism as an ideology used by the powerful to mobilize mass publics to serve their ends does not necessarily imply a call to abolish the nation-state and the imposition of some kind of all-powerful “world government.” Nor does it mean that we should abandon the struggle against the forces of trans-national capital and a globalizing neoliberalism, a struggle that must be conducted from the bottom up and that requires some local or regional locus of resistance. To bring our economy and society back in balance with the planet, we will need to consolidate economic activity back towards the local, and this will require that we devolve political power back towards the local as well. We will also need re-localization of some kind as to democratize both our economy and our politics.

But nationalisms are a dangerous short cut. Nationalisms unreflectively invoke identities and ideologies that have been forged in the service of state-building of a kind that is tied inextricably to both militarism and to modes of production that exploit ecosystems in a way that will inevitably destroy them. As the historian Charles Tilly wrote,

“Power holders’ pursuit of war involved them willy-nilly in the extraction of resources for war making from the populations over which they had control and in the promotion of capital accumulation by those who could help them borrow and buy. War making, extraction, and capital accumulation interacted to shape European state making.” [\[29\]](#)

We must find ways to express our love of our people, place and culture and to unite in common efforts other than rallying around flags that first and foremost are the banners of war. [\[30\]](#)

Andrew Lichterman is a lawyer and policy analyst at the Western States Legal Foundation, based Oakland, California. He also is a member of the Coordinating Committee of United for Peace and Justice, and of the boards of the International Association of Lawyers Against Nuclear Arms and the Campaign for Peace, Disarmament and Common Security. The opinions expressed in this piece are his alone.

[\[1\]](#) The United Nations Charter is the highest treaty in the world, superseding states’ conflicting obligations under any other international agreement. UN Charter, Article 103. The Charter is a treaty of the United States, and as such forms part of the “supreme law of the land” under the U.S. Constitution. U.S. Constitution, Article VI, Clause 2.

[\[2\]](#) The National Security Strategy of the United States of America, September 2002, p.2.

[\[3\]](#) Peter Baker and Choe Sang-Hun. “Trump Threatens ‘Fire and Fury’ Against North Korea if It Endangers U.S.,” *The New York Times*, August 8, 2017

[4] Eli Watkins, "Nikki Haley: Trump's fire and fury comment 'not an empty threat'," CNN online, September 17, 2017 <http://www.cnn.com/2017/09/17/politics/nikki-haley-north-korea-un-cnntv/index.html>

[5] Resolution 2375 (2017), Adopted by the Security Council at its 8042nd meeting, on 11 September 2017 [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2375\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2375(2017))

[6] "It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis." Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 40 – Quarter.

[7] Convention on the Prevention and Punishment of the Crime of Genocide, Article II.

[8] Judgment, The Nuremberg Trial, (1946) 6 F.R.D. 69, 112–13.

[9] Jack Kim, Kiyoshi Takenaka, "North Korea threatens to 'sink' Japan, reduce U.S. to 'ashes and darkness'," Reuters, September 13, 2017, <https://www.reuters.com/article/us-northkorea-missiles/north-korea-threatens-to-sink-japan-reduce-u-s-to-ashes-and-darkness-idUSKCN1BP0F3>

[10] Trump's statement carries particular weight, being delivered by the President and commander in chief of the armed forces, before a particularly significant audience, the General Assembly of the United Nations. In contrast, almost all of the threats attributed to North Korea emanate from North Korea's official news service; while it is a government source, its authority could not, without more, be directly comparable.

The recent round of hostile rhetoric from North Korea does include statements directly attributed to Kim Jun Un, but those statements consisted of personal insults directed at Donald Trump and the vague threat that "his country will consider the "highest level of hard-line countermeasure in history." North Korea's foreign minister, replying to a reporter's question in New York, speculated that this "countermeasure" might be "the most powerful detonation of an H-bomb in the Pacific." See Foster Klug, "Kim fires off insults at Trump and hints at weapons test," The Associated Press, September 22, 2017. http://hosted.ap.org/dynamic/stories/A/AS_KOREAS_TENSIONS?SITE=SCAND&SECTION=HOME&TEMPLATE=DEFAULT

These statements are unhelpful and arguably inconsistent with the obligation to seek peaceful resolution of international disputes. but both were phrased conditionally, and neither rose to the level of a direct threat of military action, much less use of nuclear weapons against another state.

[11] Peter Baker and Choe Sang-Hun. "Trump Threatens 'Fire and Fury' Against North Korea if It Endangers U.S.," *The New York Times*, August 8, 2017.

[12] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, PP 42, 86 (July 8).

[13] An excellent overview of the arguments for this position can be found in Charles J. Moxley, John Burroughs, Jonathan Granoff,, "Nuclear Weapons And Compliance With International Humanitarian Law And The Nuclear Non-Proliferation Treaty," 34 Fordham Int'l L.J. 595.

[14] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, PP.42-47.

[15] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, Para.41.

[16] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226. Para. 78.

[17] The United States military recognizes this rule, for example in the operations manuals of the military services; see discussion in Charles J. Moxley Jr., John Burroughs, and Jonathan Granoff, "Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty," 34 Fordham Int'l L.J. 595, 617 et seq.

[18] *Ibid.* at 616 *et seq.*

[19] Judgment, The Nurnberg Trial, (1946) 6 F.R.D. 69, 113.

[20] Eli Watkins, "Nikki Haley: Trump's fire and fury comment 'not an empty threat,'" CNN online, September 17, 2017 <http://www.cnn.com/2017/09/17/politics/nikki-haley-north-korea-un-cnnlv/index.html>

[21] For a discussion of the Dietrich case see Wibke Kristin Timmermann, "Incitement in international criminal law," *International Review of the Red Cross*, Volume 88 Number 864 December 2006, 823, 831-832.

[22] Trials of War Criminals before the Nuernberg Military Tribunal under Control Council Law No.10, Nuernberg October 1946-April 1949, Vol.14 p. 575.

[23] Trials of War Criminals before the Nuernberg Military Tribunal under Control Council Law No.10, Nuernberg October 1946-April 1949, Vol.14 p. 575.

[24] For a useful discussion of incitement to genocide see Wibke Kristin Timmermann, "Incitement in international criminal law," *International Review of the Red Cross*, Volume 88 Number 864 December 2006, 823. Timmerman argues that public incitement to genocide is an "inchoate" crime, punishable even in the absence of completed genocidal acts.

[25] Trump included the pursuit of ever more billions for weapons and war as one of the benefits he claimed have flowed from his election:

"Fortunately, the United States has done very well since Election Day last November 8th. The stock market is at an all-time high — a record. Unemployment is at its lowest level in 16 years, and because of our regulatory and other reforms, we have more people working in the United States today than ever before. Companies are moving back, creating job growth the likes of which our country has not seen in a very long time. And it has just been announced that we will be spending almost \$700 billion on our military and defense." Remarks by President Trump to the 72nd Session of the United Nations General Assembly, New York, New York, September 19, 2017.

[26] Alexey Arbatov, "Understanding the US–Russia Nuclear Schism," The International Institute for Strategic Studies, *Survival* vol. 59 no. 2 April–May 2017 pp. 33–66, 41–42, quoting William Perry *My Journey at the Nuclear Brink* Stanford: Stanford Security Studies, 2015) p.53.

[27] Thomas C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), p.93.

[28] The Emergency Committee of Atomic Scientists, January 22, 1947. (Trustees: Albert Einstein, Chairman, Harold C. Urey, Vice Chairman, Hans A. Bethe, T.R. Hogness, Philip M. Morse, Linus Pauling, Leo Aizlard, V.F. Weisskopf

[29] Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, edited by Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985), 172.

[30] The fact that The Flag is first and foremost a banner of war is manifest in the most banal ideological tropes, with the flag invoked not as a symbol for love of the land or the people as a whole but of The Troops:

"I don't think you can disrespect our country, our flag, our national anthem," Trump said. "Many people have died," he added, referring to fallen military members.

"Many people are so horribly injured," he added, before recalling a recent visit to Walter Reed National Military Medical Center.

"I saw so many great young people and they are missing legs and they're missing arms and they're so badly injured. They were fighting for our country, they were fighting for our flag, they were fighting for our national anthem," Trump said.

"For people to disrespect that by kneeling during the playing of national anthem I think is disgraceful," he said.

Adam Edelman, "Trump: I 'Felt Ashamed' After 'Disgraceful' NFL Protests," NBC News online, September 26, 2017 <https://www.nbcnews.com/politics/donald-trump/trump-i-felt-ashamed-after-disgraceful-nfl-protests-r804901>