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TRANSCRIPT

"HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING"

A conversation with Rosa Brooks and Aryeh Neier

Recorded Sep. 14, 2016

ANNOUNCER:

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ARYEH NEIER:

Good evening-- I'm Aryeh Neier. I'm-- president emeritus of the-- the Open Society Foundations. And it's a great pleasure-- for me to-- to introduce-- Rosa Brooks-- this evening. Rosa is-- a professor of law and-- associate dean at-- Georgetown University-- Law School. She is also a Fellow of New America, and a columnist for-- *Foreign Policy*.

Her-- career includes-- service with both the-- State Department and the-- the Defense Department. She was in the-- the State Department Human Rights office during the-- the Clinton administration, and-- she served in the Obama administration in the Department of fen-- of Defense as-- counselor to the-- the Undersecretary of Defense. And-- after a period, she-- directed a rule of law and-- humanitarian policy-- office within the-- Department of Defense which-- in effect was-- a human rights office-- in the-- Department of Defense.

Rosa-- also has-- a long connection to the-- to the Open Society Foundations. About 20 years ago-- Gara Lamarshe who just walked in-- (BACKGROUND VOICE) right-- engaged-- Rosa as a consultant-- to help-- (COUGH) establish the-- the early-- United States programs-- of the-- the Open Society Foundations. That was about-- 20 years ago.

And then about-- a dozen years ago-- Rosa-- served for a period-- as special counsel--

in the office of the-- the president of the Open Society Institute, at the time that-- that I was the-- the president of the Open Society Institute. And-- her connection to the-- the Open Society Foundations-- also-- includes-- service today as-- a member of the-- the board of the-- the U.S. programs-- of the-- the Open Society Foundations.

She has-- written-- an important book. Rosa has-- what I think of as an effervescent-- writing style-- which makes it-- a pleasure to read-- even when she is dealing with the-- the gravest-- issues. And so-- it's-- not only-- a book that is-- worth reading-- but it is a book that is-- enjoyable to read. If you haven't-- obtained a copy-- there are copies for sale-- outside. And I think Rosa can probably be inveigled into-- to signing books-- if you-- purchase a copy-- this evening. So Rosa-- why don't you say-- something-- about the book, and then-- we'll open it up for-- questions and discussion?

ROSA BROOKS:

Thank you, Aryeh. I will go up here. (NOISE) Aryeh, thank you-- thank you so much for that kind introduction. And it, for me, it is fantastic to be here at the Open Society Foundation because what-- what Aryeh did not say-- is that this book would not even exist had it not been for the Open Society Foundation and for Aryeh.

When-- more than ten years ago, 12 years ago-- Aryeh asked me if I would be willing to write a short-- think piece. He wanted to put together, this is a couple years after-- after the 9/11 attacks. This was before-- stories like the Abu Ghraib torture scandal had broken. And-- and he asked me-- he wanted to put together-- a group of people to talk off the record about the question of whether international humanitarian law was adequate for the challenges posed by-- non-state terrorism.

And he said, "Would you be willing to write a think piece just arguing no, and I'm gonna get somebody else to write a piece arguing yes, and I think that will help create an interesting discussion if we have, you know, two pieces that frame the issues in very different ways."

And-- he even offered a little bit of money, and I thought, "Great, I'm-- I'm broke." I was a broke young law professor, junior facility member, and I was very happy to accept that. And so I wrote a short paper which led to a very lively internal discussion-- which made me start thinking about these issues. And turned into a *Law Review* article which I guarantee absolutely no one is going to ever read, which eventually led me to try to write this book in the hope that somebody other than-- my student research assistant would read it. And it-- so if it hadn't been for that, the book would not have been written. And the year I spent here as Aryeh's special counsel, which was a fancy way I was saying-- of saying that I was a Fellow-- sort of hanging around doing my own work, and putting together some colloquy on civil-military relations and other issues-- the book would never would have been written. So Aryeh, thank you so much-- for all of the work that you have done over the years, but also for playing such an important role, and enabling me to-- to write this book.

It was not completely a forgone conclusion that I would end up working at the Pentagon. Some of my earliest memories are sitting on a picnic blanket, my-- at Central Park celebrating the end of the Vietnam War. I don't remember much about it, except that someone gave me one of those little lollipops with crossed sticks, which I found extremely exotic. And this event has lived in my memory ever since.

My-- my parents were very active in the anti-war movement. I certainly did not grow up thinking-- I'm gonna go work at the Pentagon-- end up-- I ended up marrying an Army officer. My mother took a while to adjust to that, although she eventually said, "I guess it's good to have an armed wing of the family." (LAUGHTER) My-- my father is sitting here now, and he's-- he's making facing. I always also try to bring my family with me to these events, in case the audience isn't big enough, it's good to have your family (LAUGHTER) fill it out.

But I-- I'll tell another story about my mother, actually. When-- when I was (COUGH) at the Pentagon-- I had been working there for maybe six months or so. And-- I-- I asked my mother if she wanted to come and have lunch with me at the Pentagon. And she sort of gave me a suspicious look, and-- and, you know, she had last present at that building trying to levitate it-- (LAUGHTER) and she said, "Okay."

So-- so she-- so my mother comes to lunch at the Pentagon-- she comes through the visitor entrance-- Aryeh in fact once had this experience. Aryeh also came to visit the Pentagon with me at one point. But she comes through the visitor's entrance. She gets through the multiple layers of security. We're walking through the corridors, and we're walking past the food court, and we're walking past the florist shot, and we're walking past the candy shop, and we're walking past the CVS and the souvenir store, and the running shoes store. And suddenly she stops still, and she just-- (BANG) and-- and I stop. I look at her, and, you know, "What's wrong?" And she says, "You're telling me that the heart of American military power is a shopping mall?" (LAUGHTER) Yes, as a matter of fact-- yes. (LAUGH) She wasn't far wrong.

You know, the Pentagon-- is the world's largest office building. It has 17.5 miles of corridors. It has more office space than the Empire State Building. It's just sort of short and squat rather than tall. There are 23,000 people who work in it. And over the years-- the Pentagon itself has sprouted dozens of shops and restaurants to cater to the 23,000 military and civilian employees who work there.

And over time-- the U.S. military itself has come to offer a similar kind of one-stop shopping experience-- to the nation's top policy makers. So it's slightly surreal today at the Pentagon. You can-- you can buy a pair of new running shoes-- or you can order up a marine expeditionary unit to patrol in the Philippines. You can buy some Tylenol at CVS if you have a headache, or you can order a team of Special Forces medics-- to go fight malaria in Chad.

You can buy a new cell phone, or if you're sufficiently senior, you could task the National Security Agency with monitoring the cell phone communications of suspected terrorists. You can buy a small chocolate sculpture of a fighter jet, yes you actually can-- (LAUGHTER) or you can order a drone strike in Yemen.

You name it, the Pentagon supplies it. My friend-- retired Lieutenant General Dave Barno once said to me, "I think the U.S. military in the Pentagon has become-- it's like Super Walmart-- he said, with everything under one roof. And what we have seen in the last-- last-- two presidential administrations is two successive presidential administrations that have been extremely eager consumers-- of everything that the Pentagon has to sell.

Needless to say, the military's transformation into the world's largest one-stop shopping outfit-- is not necessarily a cause for celebration. But I think it's both the product and the driver, really seismic changes in how-- how we think about war with some consequent challenges both to the law, the rule of law, and to the military itself.

And in fact we've-- we've become trapped in something of a vicious circle. As the United States faces novel kinds of security threats coming from novel quarters ranging from threats that come from non-state terror networks that cross borders, to threats that come from cyberspace to threats that relate to the impact of poverty, repression, genocide, climate change, et cetera.

What's happened is that we have gotten into the habit since 9/11 of viewing all of these new kinds of threats through the lens of war, and asking the military to take on an ever-expanding range of non-traditional tasks-- by viewing more and more threats as war, what we also do is we bring more and more spheres of human activity into the ambit of the law of war. With much-- with it's much greater tolerance for secrecy, for lethal force, for coercion, and with its reduced protections for human rights.

Meanwhile, we ask the military to take on more and more non-traditional tasks. That means you have to find money for it to do that, which means you have to look for savings elsewhere, which means that we end up cutting or freezing the budgets of civilian foreign affairs organizations, State Department, USAID. Budget cuts then cripple those agencies, which means that their capabilities dwindle, which means that we look to the military to pick up the slack even more-- and the-- the-- the cycle starts to continue.

It's the old adage-- you know, if you're tool's a hammer, everything looks like a nail. If you're functioning government institution is the military, everything starts to look like a war. And if everything looks like a war, then everything looks like a job for the military. And when everything looks like a war, then it looks like war rules, the legal framework for war applies to more and more things. And everything looks like a military mission displaces the civil institutions, and undermines their credibility even while it overloads the military itself.

Why does this matter? I-- you all know-- probably the famous lines from Shakespeare's Henry V-- "Here's what's at stake. When we decide whether to frame something as war or not war-- in peace there's nothing so becomes a man as modest stillness and humility, but when the blast of war blows in our ears, then imitate the action of the tiger, stiffen the sinews, summon up the blood disguised fair nature with heart-favored rage."

Which is a much fancier than I would ever come up with of saying something that we

all know, right, which is that we expect different things in war time, and from warriors than in peace time-- and from people who are not warriors, that-- we expect in war time, we expect warriors to act in ways that we would consider immoral and illegal in peace time.

What happens when the boundaries around war begin to blur-- and when the boundaries around warriors begin to blur, is that we lose our ability to decide which actions should be praised, and which should be condemned. Throughout human history, human societies have tried to draw sharp lines between war and peace for precisely this reason. You know, until less than a century ago, at least at the formal level, most western societies insisted that war should be formally declared, take place on clearly delineated battle fields between-- be fought by uniformed soldiers who operated within specialized, elaborate, and hierarchical military organizations.

In different societies and earlier times, humans have found other ways to mark the boundaries between war and not war, warriors and civilians. I'll give you just a couple of examples. This is-- I'm a sort of anthropologist monkay (PH) so this for me was the most fun part of researching the book.

The Navajo, and the American southwest-- literally Navajo warriors would speak a different dialect, with different vocabulary when they set out on raids. And then when they came home from raids, the warriors would draw a line in the desert sand, they would turn around, face back their home territory, and face away from the enema-- enemy territory, step over the line, and resume the ordinary language.

Among the Macao and Papua (COUGH) New Guinea-- warriors-- had to wear elaborate masks, and elaborate war paint and spend months-- engaging in various rituals to-- to create war sorcery to enable them to become fearsome warriors who could kill. During that period they had to abstain both from certain foods and drinks. They also had to abstain from sexual relations during that time period. And when they returned from war, they had to go through a similar period of abstinence, because if they didn't, if they had sexual relations with their spouses before the war sorcery had worn off-- if there were any cuts or holes in their bodies, that the idea was the-- the-- the toxins of war would leach into their bodies, killing them both. That war was conceptualized as literally toxic to ordinary community life and human relationships.

And there are lots and lots of other examples, I'm sure you can think of many of them or rituals that we use to distinguish between war and peace, between warriors and non-warriors. We tend to think that we're different, that these are just things that primitive societies used to do. But of course we do exactly the same thing today.

Think of the rituals that relate to basic training-- for Army or Marine Corps recruits or cadets at our military academies. Where their hair is shorn, we strip them of their ordinary clothes, and we put them in uniforms with mystical-colored ribbons on their chests that can't be decoded, except by insiders. They learn a new language, they memorize (NOISE) arcane bits or lore-- and indeed we, much like-- many of our forbearers and other societies, we too name our weapon systems and so on after

totem animals, and pre-- you know, the predator, the reaper, the hornet-- hoping that we will take on the fearsome characteristics of these-- these beasts when we go to war.

And despite the changes, and-- and, you know, the function of all these different kinds of rituals is very much the same. The function is to say, we wanna have-- we wanna know the difference between war and not war, and warriors and civilians. We need to know the difference. And I'll talk a little bit more about what's at stake in terms of law in a minute.

But despite the changes that have been ushered in by 9/11, despite the increasing number of sort of inchoate threats, we-- we till-- we still tend to view war as a distinct and separate sphere of something that is totally unrelated to the ordinary world of shopping malls, and soccer games, and office buildings. And we relegate war to the military, which is a distinct social institution that we simultaneously lionize, and ignore.

We like to think that war is an easily recognizable exception to the normal state of affairs. And we think of the military as an institution that we can easily, if tautologically define as the institution that engages in war, whatever that is. Trouble is in our modern world-- the post 9/11 universe-- war just isn't a distinct sphere to the extent that it ever was. It clearly isn't anymore.

In a world of terror networks that cross borders of cyberthreats, disruptive non-state actors-- our traditional categories of war, peace, warrior, civilian don't work very easily anymore. It's gotten harder and harder to figure out how to apply them in a coherent way. And I'll just-- a few examples.

In a war on terrorism, or a cyber war-- we can't delineate any boundaries in time or in space. It's not clear where the war is. You can't say, "Ah hah, the war is in France, but not at Switzerland, 'cause it's neutral." You know, you can't say, "Here is where it is, and not here." You can't delineate boundaries in time. "Here's where the war began." It's hard to even imagine an ending when you're not dealing with organized state actors, or even organized non-state actors.

We aren't sure what counts as a weapon any more. A civilian-- hijacked civilian jet liner, a box cutter, the kind you can buy at CVS-- a line of malicious computer code. We can't even define the enemy. The United States has been dropping bombs on somebody in Syria for a couple years now. But I think most Americans, and in my experience unfortunately also most executive branch officials in the U.S. government, would be hard-pressed to articulate who it is that we're fighting against much of the time.

And we've also lost any coherent basis for distinguishing between combatants and civilians when we're no longer talking about the uniformed, hierarchically-organized military of states, or even similarly organized insurgent groups, for instance. We don't know who counts-- who counts as a warrior, and who doesn't. Is a Chinese hacker who is part of hacking into U.S. government computers, is that person a combatant under certain circumstances?

What about a financier for Somalia's Al-Shabaab? What about a Pakistani teenager who spreads extremist propaganda on Facebook, or a Russian engineer who's paid by ISIS to maintain-- (COUGH) captured Syrian oil fields, are they combatants or are they civilians? It's gotten pretty-- pretty slippery in the context of the-- the-- ever metastasizing war on terrorism.

And all of this matters, right. And it matters-- for the very simple reason that we have-- when there-- when there is a war, the law of war applies. And the law of war gives states and their agents enormous amount of latitude in using lethal for-- lethal force and other forms of coercion. And this is the-- the fancy term lawyers use, here is the lex specialis, the law of armed conflict is the lex specialis, it means special law. The rest of the law is the lex generalis, the general law. And the lex specialis, the special law, applies in these special circumstance of war. It doesn't apply the rest of the time.

But that whole system of saying we have a law of war, it applies in these special circumstances is obviously premised on the idea that you can tell the difference. That it's-- and it's easy and straight forward to tell the difference. And we have this elaborate set of rules that only apply during wars, and that's great, and-- and we can tolerate a certain amount of reduced rights protections, and reduce-- and greater tolerance for state secrecy for instance, when our framework is that war is the easily recognizable exception.

But obviously when the boundaries around war get blurry, it gets harder and hard to know when you apply that set of rules, and when you don't. In peacetime-- obviously we think that due process is really important. You don't just get to go around and kill somebody, or to put it totally bluntly, and to-- to caricature it a little bit, you know-- if I walk outside, and I bash the nearest person over the head with my heavy microphone here, you know, we-- we-- we hope that the police come along and arrest me, and I'm charged, and I'm tried, and I go off to jail for murder, or for attempted murder. But if I'm a combatant during war time, and I kill someone who is an enemy combatant-- I might even get a medal for it, you know.

So the-- the rules are very different. They're profoundly different, the rules and terms not only of who you can kill, but what circumstances the state can monitor your communications, and detain you, and a whole range of other things, with what degree of due process, what degree of accountability, what degree of secrecy, are radically different.

Trouble is, if we lose our ability to figure out what counts as a war, you know, if we're not sure anymore when to apply this special set of rules, and when that special set of rules don't apply clearly. You know, when-- when we're used to thinking of war as a temporary, an obvious state of exception, and we'll know it when we see it. We'll always know what a war is, you can tell. When we lose that ability to distinguish in a coherent and principled way between what counts as war, and what doesn't count as war, we-- also our ability to-- we lose any principle basis for making the most important decisions a democracy can make. What matters, if any, should be beyond the scope of judicial review? When can a government have secret laws, and engage in

secret activities, and when is it not allowed to do that?

When can a state monitor the private communications, or censor the private communications of citizens? Who can be imprisoned for how long, with what degree of due process, and ultimately who lives and who dies? You know, when and under what circumstances-- can lethal force be used, and against whom?

It matters a lot if we're at war. Take an issue like drone strikes that people spend may-- more controversial than many of the things that I talk about in the book, and probably more publicity. If we're in a war, legally speaking-- with al-Qaeda and its associated forces, and that war extends to wherever the associated forces are. And those associated forces don't have to be wearing a uniform, and don't have to be carrying anything that looks like a traditional weapon necessarily-- and don't have to be engaged in what traditionally looks like an attack, or maybe thinking of some future-- (COUGH) something that we construe as an attack.

Then U.S. drone strikes, or other forms of targeted killing are lawful wartime targeting of any enemy combatants. And they're-- they're not morally or legally any different than an American soldier on D-Day shooting at a German machine-gun nest, and killing a German soldier. There's nothing new here if it's a war.

If it's not a war, they're just murders. If it's not a war, then the U.S. government is murdering people overseas. So we really wanna know the difference, right. We really wanna know the difference, because (LAUGH) we really wanna be on one side of that, not on the other side. So a lot-- it-- a lot is a stake.

There are also institutional consequences of this for the military itself. Perhaps of less-- less interest to this audience-- but I spent a lot of time talking to military communities, and some of the issues that-- that trouble people in those communities. One of the things that happens when-- when we expand what we label war, you know, when everything looks like war, then everything looks like a job for the military. And we-- so we also lose our ability to make kind of sound or coherent decision about what tasks would we assign to the military, and what tasks should we leave to civilians?

So right now we have American military personnel in literally almost every country on earth, almost every country on earth. Not necessarily in large numbers, in many places the numbers are quite small. But they are not only on almost-- in almost every country on earth, but they are undertaking virtually every task on earth. We have military personnel who launch raids, and agricultural reform pro-- projects. They plan airstrikes, and small business development initiatives. They train parliamentarians, and produce (NOISE) TV soap operas. They patrol for pirates. They monitor global e-mail communications. They design programs to prevent human trafficking in the Pacific. And they vaccinate cows.

You name it, somebody in the military's doing it. This was actually one of the kind of things that was both slightly terrifying and kind of awe-inspiring when I was at the Pentagon to realize that (COUGH) pick a topic, pick anything, pick a problem in the world, and someone in that building was working on it. Which was kind of amazing,

but also (LAUGH) kind of alarming when you-- depending on your perspective.

And I-- many years ago when I was-- when I was in law school, right around the time that I started doing some consulting work for Gara and Aryeh-- I was also-- so unsure of what I wanted to do, I interviewed for a job with McKinsey and Company, the management consulting company. And they have this interview process where you-- you're-- you-- you're given these elaborate hypotheticals, and you have to come up with, I assume what the right management consultant kind of thinking is to demonstrate your suitability to be a strategy consultant.

And one of the questions that I got-- was, "Well, imagine that you run a small mom-and-pop grocery store. And everything is going great. And then one day, Walmart announces that they're moving in down the block. You know, what do you do?" And I said-- I said something, like, "Ho, ho, well, roll over and die. It's all over." (LAUGHTER) And that-- was apparently was the wrong answer. (LAUGHTER) You know, I was supposed to say something, like, you know, "Oh, I would not go down without a fight, I would find a niche, I would make artisanal Aztec chocolate coffee with soy woodchips from, you know, a collective in Nigeria. And then everybody would come, because I would have this special niche that Walmart could not hope to replicate, I would be so interesting and original and--"

But we all know that in fact the odds would be on the mall. The-- the-- the writing's on the wall. The odds would be-- vo-- odds would be against me, you know. When Walmart moves down the block-- you're in trouble if you're the little mom-and-pop shop. And like Walmart, today's military can marshal vast resources, and exploit economies of scale in a way that the little mom-and-pop shops cannot hope to replicate. And like Walmart, the tempting one-stop shopping convenience that is offered-- has had a devastating effect on smaller, more traditional enterprises, which in this case would be enterprises such as the U.S. Department of State, the-- U.S. Agency for International Development, and-- and so on and so forth.

We've seen the State Department, other U.S. civilian foreign-- foreign p-- policy and foreign assistance agencies shrinking in-- into greater and greater irrelevance-- when it comes to the foreign affairs of the United States. The Pentagon is not better at promoting agricultural or economic reform than the State Department or USAID is. Most of the time the Pentagon is somewhat worse at it. Not always, since state's record, and AID's record's not so great either, but most of the time, however, the military is not as good at it.

But unlike USAID and the State Department, what the Pentagon does have at its disposal is millions of employees who are willing to work long hours in horrendous and dangerous conditions, and it's open 24/7. You know, it's-- it's fashionable to hate Walmart-- I'm sure most of you would not admit to going to Walmart. You know, argh, argh, yuck, we don't go to Walmart. We don't like it because we think the goods it produces are cheap, and tacky, and-- we don't like it because of it's-- it's sheer vastness, and it's sort of mindless ubiquity, and the-- the sense we all have I think of the human pain that's at the heart of the enterprise.

And most of the time we don't wanna see Walmart-- either. We-- we use our zoning laws to exile it, and the other big-box stores to the commercial hinterlands outside of town, so we don't actually have to look at it. But much as we resent it-- many of us would be very hard pressed to live without it. You know, sooner or later we all find ourselves going in because it's just so darn convenient. It's cheap. It's got everything, we don't have to go to 18 little places. And as the U.S. military struggles to define its role and mission, it's evoking, I think, some similarly contradictory attitudes from the civilian population.

Civilian government officials want a military that costs less, but can provide more, a military that will stay deferentially out of strategy discussion, but will be eternally available to ride to the rescue-- a military that will prosecute our perpetually expanding wars, but will not ask us to confront any of the different moral or legal questions that are created by the blurring boundaries between war and not war.

And we want a military that will solve every global problem, but will be content to stay safely quarantined on isolated bases, separated from the rest of us by barbed-wire fences, and anachronistic rituals, and often acres of cultural misunderstanding. And indeed-- as a footnote, you know, even as the boundaries around war have blurred, and as the military's activities have expanded dramatically, the military itself has a human institution, has grown if anything more and more sharply delineated from the broader society it's charged with protecting, leaving fewer and fewer civilians with the knowledge or the confidence to raise questions about how we define war, or how the military operates.

It's not actually too late to change any of this. No divine power said, there are these categories called war and not war, and here's what you have to put in them. And there's this category called the military, and only people wearing uniforms can do these tasks, and only people who don't wear uniforms can do these other tasks. And you have to have these rules for war, and these rules for peace.

You know, th-- these are categories that are human creations, you know. And-- and I've said earlier, every society has tried to delineate the line between war and peace. But they've done it in different ways, with different rules. And some have done it-- some have had in between categories, others have not.

So these categories that we have, the-- the content of the law of armed conflict for instance-- the content of our peace time rules, what goes into them, you know, these are things that we can-- we created them, we can change them. They're not any more eternal than the rituals of the Navajo, or the rituals of the old Norse, or the Macao Indians. Indeed many of them are of quite recent vintage, that they-- the law of armed conflict essentially stems from the middle of the 19th century-- but was particularly codified in the middle of 20th century, the global institutions that we're used to, and much of the content of modern international law is of even more recent vintage-- developed in the post-World War II era.

So we don't have to accept the boun-- a boundaryless w-- world-- world in which wars never end, or the military doesn't have any coherent sense of purpose. If we're

bothered by the moral and legal account-- ambiguity surrounding for instance drone strikes and targeted killing-- I-- I've sat in so many rooms filled with lawyers (LAUGH) in the last 15 years, this is by fate, right, as a law professor. (NOISE)

My fate has been to sit in rooms full of really smart lawyers who argue in circles-- and, you know, the human-rights watch lawyer says, "Drone strikes are clear human rights violation." And the U.S. government lawyer says, "No, clearly they are not. Clearly it's a lawful war time targeting of enemy combatants." And we kind of keep going in circles because they're just applying different assumptions about what set of rules you're supposed to use.

And there's not-- the law will not answer those questions. You know, the law-- the one thing missing from the law of war is a definition of war. And so there is not possible answer to those questions provided by the legal frameworks themselves. It's a political choice to say, "We're gonna call this war, we're gonna call this not a war."

But we ha-- essentially we have a binary legal framework with radically different rules, depending on which category we chose. But we live in a non-binary world. We live in a world in which lots of stuff is in between. You know, lots of stuff doesn't quite look like crime, and it doesn't quite look like war. And what we've essentially done is we've put everything in the war box.

Lots of different ways to change that, both by changing the categories, and by think-- trying to I think they're sort of an epic failure of imagination collectively in our inability to think beyond these traditional categories to say, "Hey, wait a minute. We've got some stuff that doesn't look like war, but (NOISE) it doesn't look quite like not war, either." But let's think about what we want to accomplish, and let's think about what norms (NOISE) and values we want to-- we want to abide by as we accomplish those goals. It's not easy, but it's not impossible either.

If we don't like the simultaneous isolation, and Walmart-ization of the U.S. military-- we can change the way we think about recruiting, and training, and deploying, and treating those who serve. We can change the way we define the military's role. We can change the way we treat our civilians foreign policy institutions.

And in fact one of the things that gives me hope in some ways-- is that one of the audiences that is often more receptive to-- to hearing me talk about these issues has been military audiences, perhaps because-- very few military leaders want to preside over what they see as the Walmart-ization of the military. They're very fearful that in the end, the nation's over-reliance on an expanding military that is perpetually trying to keep pace with wars that are infinite-- will be that the military will risk destroying not only it's civilian competition, but ultimately itself. That the military under constant pressure to be all things to all people, will eventually find itself unable to offer little that is of enduring value anyway.

And if the Walmart metaphor is the right one, the fear is that eventually the military will indeed look like Walmart only the day after the Black Friday sale-- stripped bare by a society that is greedy for what it has to offer, and resentful of its dominance at the same time-- with nothing left behind but a bunch of demoralized employees, and

a lot of broken, shoddy merchandise-- scattered through the aisles. So-- not an image that anybody particularly likes.

I think I'll stop there. There-- there are lots of difficult directions that-- that I could go in, but this is (NOISE) probably as good a stopped point as any. And I would love to hear your thoughts, and your questions, and reactions. So thank you very multicultural. (CLAPPING)

ARYEH NEIER:

Thank you-- there-- there's a microphone-- up here, and-- I-- I would like people to-- to come to the microphone. Usually when I've-- moderated events of this sort I'm told to say-- that if anybody-- asks a question or participates in discussion-- they should know that it I don't-- being recorded, and-- this-- may be used. So-- be

ROSA BROOKS:

Not by the N.S.A.--

ARYEH NEIER:

Not by-- well, but the N.S.A. may find a way of-- of listening in. And so-- you have-- agreed to-- to be recorded in that fashion, and to have your words-- communicated if you participate-- in-- in the discussion. And if I may-- I-- I would like to-- ask a first question, and then-- invite others to-- to ask questions.

Rosanna, in a way I'm still bothered by-- the question-- a dozen years ago. (NOISE) That is-- are we better off-- trying to-- reform or rewrite-- international humanitarian law to-- to cover some of the-- the ways in which-- things have developed. Or is it better to-- to leave things-- be. Because in a way-- when you-- when you've talked about lex specialis-- you've-- you've-- suggested that-- it provides-- permission for-- these activities by the-- by the military.

But there are also some-- very significant-- protections in lex specialis. There are principles that are built into-- international humanitarian law. There's a principle of humanity. There is a principle of proportionality. There is-- a principle of distinction. And the-- the concern-- I have had about-- modifying or trying to-- to rewrite-- international humanitarian law-- is that in the climate-- that has prevailed-- since-- 9/11-- are we going to get-- a revised version of international humanitarian law that is as protective of rights-- as what we have today?

What you said was that the-- the codification took place after World War II, and then further codi- codification-- took place in 1977. And we got-- quite good protections into international humanitarian law. I-- I worry as to whether-- we would get that today?

ROSA BROOKS:

I think-- (NOISE) I think this is the moment where I have to get up and show you the-- I have a visual aid.

ARYEH NEIER:

Okay.

ROSA BROOKS:

Which-- which-- I-- my limited ability to draw makes me think I should get my iPad and show it to you. So-- how many of you are Wittgenstein fans? Or Wittgenstein (UNINTEL PHRASE). So what I'm gonna try to-- try to show you if I can pull it up on my iPad is-- Wittgen-- Wittgenstein's famous duck-rabbit-- let's see if I can find the duck-rabbit here. This is a test of O.S.F.'s-- Wi-Fi network among other things here. (LAUGH) Okay, here we go. All right. We recognize this. You've seen this before. And-- and what is it?

MALE VOICE:

Platypus?

ROSA BROOKS:

Platypus. Maybe it's (UNINTEL). It's a duck-- it's a rabbit-- so here's-- here-- (LAUGH) how does this relate to anything, you ask? You know, here's the problem. Yeah, the law of international humanitarian law has got great protections for civilians, for instance, in times of armed conflict. The-- parties of the conflict are obligated to distinguish between civilians and combatants--

ARYEH NEIER:

But also protections for-- the military when they are prisoners--

ROSA BROOKS:

Absolutely. And these are great, if we have any degree of consensus whatsoever on who's a civilian, who is a combatant who is entitled to the pervect-- to the protections of the conventions, and so forth. The trouble is, I think that we've now reached a point where it's almost indeterminate whether to construe a particular individual as

being entitled to these protections or not, and indeed whether to construe a particular-- a particular set of contested activities as a conflict that triggers the applicability of that law of not. So the-- the-- the-- the-- we look at say some guy in Yemen who's been targeted by a U.S. drone strike. And-- human rights groups often look and say, you know, he's a duck, he's a civilian. Don't get t-- it's not duck-hunting season. You can't do that.

The executive branch looks and says, "He's not a duck, he's rabbit." And they're no more likely to reach any conclusion than we are ever to reach a conclusion about whether this little guy is a duck or a rabbit, because the nature of that-- that terminology no longer makes any sense, or conforms to any of the original assumptions that-- that used it to create it.

You know, and s-- so-- so that-- that's my worry, is that we can-- it doesn't matter how good the protections in the law of armed conflict are, if you have no basis even for having a conversation-- you know, that the-- the conversations, and this is-- very much triggered by having spent so much time in these rooms filled with lawyers, which say, "It's a duck. Clearly it's a duck. Here's why it's a duck." And-- and they're not lying, they're not making it up. They believe it. You know, they've got all sorts of compelling reasons to argue for the duck-ness, you know.

And then the human rights lawyer's saying, "No, no, no, clearly you're wrong. Clear-- I see the exact same thing and I interpret it differently, so a whole different set of rules applies. So the problem becomes, I think, you know, and this-- and it's-- it's a deep problem. It's not a problem of, you know, are the protections and the law of armed conflict insufficient to protect civilians? Well, if we all agree who's a civilian, they're excellent.

But if we can't-- if there's no longer even any meaningful basis for having that conversation, because we're seeing such radically different things, because the U.S. government is seeing such radically different things then when everyone else, you know, they're-- they're not lying, right. That they're not-- it's not bad faith, it's just-- it's just sort of ine-- it's indeterminate at this point.

I-- so to me, that-- that's-- that's the deep problem, that when you-- when you have a body of rules, it doesn't matter how good they are, and how protective they are, if there will always be a r-- reasonable basis for saying, "Oh, yes but they don't apply--"

ARYEH NEIER:

Wait, wait, I-- I'm gonna pursue this. (NOISE) We-- we've always had-- these-- these arguments. I can remember in the-- let's say the war in El Salvador. And-- one of the things that was-- going on then, is that the-- the Salvadorian Air Force, which was wholly a creature of the United States-- was-- attacking-- civilians in the-- the countryside. They were called masas. They were the-- the people who-- supported or the gorillas-- in that territory, that is they-- they grew the crops-- which-- the gorillas relied upon to-- to feed themselves.

And so the-- the Salvadorian-- military was-- attacking-- the civilians, and claiming that they were legitimate-- targets of attack-- because they were-- growing these crops. But we had a basis for arguing in-- international humanitarian law. And-- we made-- the-- the argument. And-- eventually prevailed-- in that argument. And international humanitarian law does have-- significant-- protections in it.

It's always possible for people to distort-- anything-- that is-- written into law. But-- you-- you need a basis-- for-- for making the argument. And I worry-- that if we start making-- revisions-- in-- again, this post 9/11-- era-- that-- we're-- we're going to end up worse rather than better.

ROSA BROOKS:

Uh-huh (AFFIRM). Yeah, I don't think that's a totally (NOISE) misplaced concern. But I do think something has changed. Right, I mean-- I mean-- always the-- the law of international humanitarian law was always imposing on reality a tidier framework than-- than-- in fact existed. And on the margins, there have always been cases that were difficult to categorize. You know, partisans, and gorillas.

Also, there's always been bad faith. You know, there of course have always been actors who are willing to say, "Oh, that's not a civilians" when, you know, most objective observers would say, "Yes, that was a civilian. Of course that's a civilian.

I think what has happened recently is a little bit different though. You know, I don't think it's as simple as the occasional hard to categorize case, or simple bad faith on the part of U.S. government for instance in saying, "Oh, all those drone-strike targets, they're, you know, clearly they're combatants when clearly they're not.

You know, I think it's a deeper problem that ha-- that does have to do with the-- changing nature of conflict, which increasingly involves non-state actors, and-- and non-traditional kinds of threats, that-- that do just-- s-- s-- s-- so we're no longer seeing challenges to the framework on the margins and coming from actors who are not acting in good faith, but instead we're seeing more and more challenges that are kind of central to the categories themselves, and-- and really undercut the whole system.

That's-- that's separate from saying, I mean, I think your concern might still stand regardless, because you could say, "Hey, look-- this is a variant of Donald Rumsfeld. You know, you don't go to war-- you were the Army. You-- you go to war with the Army you have, not the Army you wish you had, that you go to war with the law you have, not the law that you might wish you had, and that in fact this is the law that we have. And if you start-- once you-- that you're more likely to succeed in protecting rights by insisting that it's crystal clear. And airing on the side of including more people in the categories that get protection, then you are by saying, "Hey, these categories are really hard to apply. Maybe we need something different."

ARYEH NEIER:

Yeah, and I-- I would say that with respect to the-- the drone strikes-- the argument has continued, but I would say over time-- the drone strikes seem to have been more narrowly focused then they were at the beginning. In the early days-- for example, drone strikes would-- target the home-- of the-- the person who was-- the target. (SNEEZE) But that home was likely to-- you know, house-- three generations, there'd be a dozen members of the family-- in the home who were not themselves-- combatants.

And then, you know, eventually they shifted to-- targeting-- these people as they got into vehicles. Because at the moment that they were getting into vehicles-- they were not likely to be accompanied by-- their children. They were likely to be-- accompanied by other-- militants.

And-- a variety of things-- a variety of changes-- were made-- which seemed to-- diminish-- the-- the problems. And I think that took place because of the arguments-- about the abuses which were-- related-- to those drone strikes. So I don't want to lose-- the capacity-- to-- to make those arguments--

ROSA BROOKS:

I guess-- I guess-- I'm not as-- I don't share your feeling that things have gotten better. I think--

ARYEH NEIER:

Okay.

ROSA BROOKS:

I think we've-- I think we've been-- I think those of us in the human rights community have spent 15 years-- trying to use the law that we have, and we have failed. And what we have instead created, or-- or we've witnessed the creation of a system in which-- no one is challenging fundamentally the-- the-- the fundamental point that the U.S. government is making, because it's sort of unchallengeable given the existing frameworks, which is that the law of conflict is the right framework for applying in these settings. Once you can see that, you've already lost much of the battle that I think you care about.

ARYEH NEIER:

Yeah--

ROSA BROOKS:

And I think that what troubles me much, much more-- you know, abs-- I-- and I-- and I say this with-- with an enormous amount of respect for the people who are making these decisions, who I think are acting in good f-- certainly in this administration, are acting in god faith, or are trying really, really hard not to kill anybody who they think doesn't count as a combatant, et cetera, et cetera.

And yet we have ended up-- legitimizing a secret war which has killed thousands of people, that is almost entirely, formally unacknowledged-- and developed a theory about sovereignty that is really, really destabilizing internationally, setting precedents that are quite horrifying internationally, when others turn around and use them, because we have-- we have created a situation to put it c-- very bluntly, where-- we are essentially saying, and-- and because-- becau-- and-- and when-- because we are applying the-- the law of war framework, we are essentially saying, "Hey, we can-- we the United States decide when the law of was applies, and when it doesn't. And when we decide that it applies in a given situation, then we get to kill, anybody, anywhere in the world, based on reasons that we don't have to disclosed to anybody, because they're-- they're secret. And in war time you don't have to have a court signing off on who you kill and so on--

ARYEH NEIER:

I'm-- I'm not-- I'm not disagreeing with any of that. No, I'm-- I'm saying that--

ROSA BROOKS:

This doesn't seem like a success to me?

ARYEH NEIER:

It-- it isn't a success. But there have been-- certain modifications which come about on the basis of-- the-- the law of war as it exists.

ROSA BROOKS:

Uh-huh (AFFIRM).

ARYEH NEIER:

And-- I worry that-- if anything, it would be worse-- if we start-- a process of-- revising the international law of armed conflict.

ROSA BROOKS:

See, I don't-- but I don't know that you necessarily have to revise it. I think I come at it-- a slightly different perspective, which is that as long as you're still sort of fighting on the terrain of the law of war, you can make these very tiny, marginal differences.

It seems to me that the more important thing for all of us to be saying is, "You know what U.S. government? You're right. If the law of war applies, then you get to do all these things. But we don't wanna live in a world where the government does all these things. We don't wanna live in a world where other states do all these things.

So let's think about-- let's think about whether there is a different set of rules that should apply, a different set of rules that we have to create, that says, you know-- the end of story should not be, "Ah ha, it's an armed conflict, therefore, as long as we're careful not to kill the little children, everything else is ev-- anything goes. You know, that we wanna live in a world in which we say, "Hey, wait a second. When one state can kill around the world without disclosing even that it is killing, that's-- that's a problem. Let's come up with some set of rules for saying-- let's place limits on that." Or, "Let's impose some transparency requirements." Or, "Let's create some checks and balances."

So I think you-- I don't think you can get at that from within the framework of international humanitarian law--

ARYEH NEIER:

Okay-- I-- I don't want to monopolize the discussion, so-- let me invite others to-- to come up and ask questions.

MALE VOICE:

I don't wanna m-- muddy this, but-- ask your opinion on two different things, that we had a problem literally from the get-go. The Continental Army created bef- before the Declaration of Independence along with the military academy, which was our first school of engineering, and the Corps of Engineers that went with that, which was intended to do civilian works for most of the (UNINTEL) were there before the Declaration of Independence, and in fact we occupy territory before in hopes that they would join us, Montreal and Quebec.

So we were pushing the boundaries from-- from the get-go. The-- the Department of Defense has actually been a leader who never asked for its opinion on environmental things. They've long consi-- signaled their concern of the impact of climate change in causing vast amounts of refugees, the water shortages, and the like.

But on another level or one of the-- the factors that's causing it, the use of fossil fuels, the southwestern division of the Corps of Engineers said, "No fracking, in fact no other kinds of drilling near any vulnerable facilities like dams, and-- and reservoirs,

and bridges, and tunnels. No one is paying attention.

And yet we have people in the civilian realm asking to, or engaging in militarizing things as we have the terrible situation in all the police forces, the proceeding mayor of this-- this city referring to N.Y.P.D. as "his Army." So where do we do that if we have this-- we s-- we s-- we started in-- on innocent bases of expecting it to (UNINTEL) be there standing on the side, you know, when we needed to do it-- that it has its level of expertise, and then we, as you say, wanna imply a war on everything.

ROSA BROOKS:

Uh-huh (AFFIRM). Yeah-- and there's a lot-- lot in there, so I don't think I'm gonna be able to touch on-- all the issues that you raise, but-- I do-- I do think-- you know, here-- so if you're a glass half empty person, you look around and you go, "Oh goodness, we've seen the militarization of U.S. foreign policy, and the militarization of all these things, and that's bad.

If you're a glass half full person, maybe you say, "Oh, you know, we're seeing the civilianization of the military, which has-- which is an institution which has enormous potential to do all kinds of good things. And so that's okay. And-- and, you know, I-- here's an-- a story that was-- I'll have to-- radically oversimplify it-- from a colleague of mine-- who was-- serving in Afghanistan, as-- as a senior Army officer-- in about 2006, 2007.

You know, and the Army look around, they say, "Oh gosh, you know, it doesn't matter how many military victories we have over the Taliban, Afgan-- Afghanistan will never be stable unless the agricultural economy is diversified. It's not so dependent on opium oppies, and so basically they call up the Department of Agriculture in Washington, and say, "Hi, Department of Agriculture, could you please send some agriculture experts over here to Afghanistan-- to work with Afghans, you know, help them figure out what to do about their agricultural economy."

And of course the Department of Agriculture says, you know, "Well, no, first of all, there are only two of us. And second of all we're really busy. And third we don't wanna go to Afghanistan. And so the Army does what the Army does, which is it kind of says, "Well, we must get agriculture people here . And they look around, they say, "Hey, we've got all these farmers in the National Guard, in the reserve. Let's get the farmers here."

And six months later you've got a battalion basically of American farmers in Afghanistan. Does this mean that they're gonna be any good at all at focusing on (LAUGH) Afghan's econ-- agri-- you know, no, of course not. And many of them are thinking to themselves, "Gee whiz, you know, I have a garden. I don't know anything about Afghanistan. It doesn't mean I know anything about this."

But-- but the kind of amazing thing about it, right, is that this is the only institution that this country has that is capable of marshaling that much human talent and energy, you know. But the military can get more people, and more stuff to more

places faster than anything else we have. And that is a resource to the United States and to world. And we-- we certainly see it in humanitarian crisis, can get more stuff faster.

And so I do think it-- it is worth thinking. I-- I think that our, you know, our assumption, and I think it's an assumption that is widely shared both-- both-- both in this country on the left, but also in the military itself, our immediate assumption is, "Ah ha. We need to get the military out of the business of doing all this stuff. But-- but I think we should probably ask ourselves, you know, should we instead be saying, "Hey, we have this incredible tool. Let's think about how we adapt it, and use it to achieve our national goals, which should be a lot broader than just killing people here and there."

And which are a lot broader than killing people in there. And-- and is it possible to do that? And that's a whole different set of questions that I think we don't think about very much, because we're so habituated into thinking, "Oh no, that's good." (NOISE) (UNINTEL) the military goes over here, civilians do this, we need to keep them apart.

ARYEH NEIER:

Michael? (BACKGROUND VOICE) Come-- come-- come to the mic.

MICHAEL:

There's something-- I-- I so appreciate your perspective, because unlike most of us, you've been inside. And so you can come out and tell us, like, you know, what it's like there. And you have all this respect for what people are doing. But there's an elusiveness in your presentation that-- I-- I sort of wanna press you. Because there's an implicit critique of the situation in your talk.

ROSA BROOKS:

Uh-huh (AFFIRM).

MICHAEL:

That we're assigning way too much to milit-- you yourself said, these people don't know how to do agriculture in Afghanistan. I read their reports on Afghanistan, I mean, the press coverage is all about the military. There is never an Afghani, like, interviewed.

And, like, so we have no idea what's going on. I mean, where ultimately do you come down on the fact that the military has come to occupy (NOISE) this (UNINTEL)? Don't we need to imagine-- it was interesting in your exchange with Aryeh, you came

out much more strongly about the inadequacy of our current structure. But do you ultimately--

ROSA BROOKS:

Yes, I do--

MICHAEL:

--imagine a much (LAUGHTER) difficult type of structure?

ROSA BROOKS:

Yes, I do. And-- and in fact-- right, I don't mean to be at all elusive. I-- not only am I exhausted by sitting around in rooms full of lawyers going around in circles, but I am also very exhausted of sitting around in rooms full of-- full of earnest people in Washington, having the following conversation, where people go, "Oh, goodness, it's so sad that so many resources and authorities have flowed to the military and away from the civilian agencies. And we need to fix that. We need to rebalance. We need to move resource authorities back to the civilian sector."

And everybody sits around and nods. And I get tired of that conversation because it's been going on for two decades. And I've started to say to people, "Do you think there is any chance whatsoever in our political lifetimes that that will happen? That congress-- everybody in congress wakes up one morning and says, 'Oh, my goodness, we've put too much money on the defense side. We really need to really radically rebel.'"

No, there is no ch-- and everybody says, "No, there is zero chance that that will happen. And it seems to me that if there is in fact zero chance that that will happen, zero, which I think there is, that at some point you have to start saying, "Instead of sitting around, ringing our hands and saying, 'Too bad the military's doing all this stuff, and too bad they do it so badly, you know, if only we could just fix that.'" That we have to say, "That won't be fixed by moving things back to the good-old days, you know, when the civilians did all that stuff, and put the military back in its box where it only fights wars. It's time to start saying if the military is doing this stuff now, and is likely to continue to be asked to do it, and told to do it for the foreseeable future, let's figure out what we need to do to make the military do it more effectively, more transparently, and more accountably. And that's a very different project than sort of sitting around saying, "Oh, gee, the military shouldn't do this stuff. So does that-- (BACKGROUND VOICE) come down on--

MALE VOICE:

Before Occupy Wall Street--

ROSA BROOKS:

Yeah?

MALE VOICE:

And then Bernie Sanders, everybody said, "You can't do anything about the economy, the inequality, and so things change very radically. And I just don't think you should accept the idea that what is has to be?

ROSA BROOKS:

I agree, we don't have to accept that what is has to be, but-- but I also, (SIGH) you know, and there's certainly areas in the book where I argue for some fairly Utopian-- changes, particularly to international institutions. But this is one where I also think that we're-- we're-- I think we get so fixated on artificial categories, that were created for convenience.

You know, the-- the categories of war, peace, military, civilian, were created to help us achieve certain normative goals. There's nothing sacred about them, absolutely nothing from my perspective. So I don't find it that int-- I don't-- I don't-- to me this is not so much a question of wouldn't it clearly be better if something else? To me, this is-- this is a failure of imagination. This is just, you know, wh-- I don't care-- I really don't care what label we attach to the institution that does things that we think ought to happen. I would just like someone to do it, and to do it well, and to do it in a way that is consistent with the values that I care about, that have to do with human rights, that have to do with democratic accountability, et cetera.

So-- so for me, this isn't one where it's-- wouldn't it be better to go back. I don't think it would be better to go back. I don't think you can go back. I think that the various genes that out of their boxed in the last few decades, are not going away, that we're gonna continue to inhabit a world in which-- in which attempting to apply the old categories will be close to impossible.

And that I would rather see us re-imagine the military, and re-imagine the laws in institutions in that space that doesn't quite fit into the old war box, and or the old peace box, than try to go back. And so that's not so much premised on a pessimism about the possibilities of political change, as it is in part also premised on a conviction that we are clinging to categories that we would just stop clinging to, because they don't matter, and they're not-- they're not doing what we want them to do.

ARYEH NEIER:

We now see-- various hands-- in-- in order I saw the gentleman over here, the gentleman-- in the back, then Maureen, and then the woman in-- in front.

MALE VOICE:

Thank you for (UNINTEL) introducing this subject so well, but I would like to reverse it, (LAUGHTER) and say that the writing that (UNINTEL) will never end, will always be employed. The agreement about the wordings will also never end. There is one thing that will make a difference and that is a well-modulated forum of witnessing, being able to record what actually happened.

We see this in the way in which we got used to the police forces, (UNINTEL PHRASE) recording practically everything that was always accused-- the-- the Black Lives Matter, and so forth. There are people there. I was in-- I'm economist, and I'm gonna go-- and looked at what happen in Kosovo. In Kosovo, the United States said there is a tremendous argument between all of the little nations of what used to be the Balkans.

And that the U.S. Air Force is now going to bomb the bridges across the main rivers outside Belgrade, at which point the-- (UNINTEL)-- Belgrade lined up on the bridges and said, "You will never bomb these bridges so long as we're standing there. Witness-- witness has come so-- so many civil rights (UNINTEL PHRASE) wars as on the enormous frontiers between the Arab and Israel countries, and what has to be done.

That witness is much more powerful and the ability to write laws. So much so that for many years, the United States refused to be a party to the international court of-- address this on the criminal level. Because it would be too tempting for any country in the world to say that the Pentagon was at stake, they were using bombs, and were using terrible fire power, to which the answer was, "Yes, the more evidence we get on the ground, the more that we can film what's happening." It is the perpetrators who are going to be in a very tough position. And they're simply gonna have to either get-- be a lot more clever in how they are going to go forward with civil wars and whatever else, or do it in the dark. But what really matters is that we will never now (UNINTEL) be party to it, and that so long as there is the evidence on record, there is always a threat that the people who had-- the America, the people who are committing the crimes will be in a bad position. (UNINTEL PHRASE) the international--

ARYEH NEIER:

I want to get to other people as well, so I'd-- I'd for you-- perhaps we can-- make the example very brief, or skip the example?

MALE VOICE:

Yes.

ROSA BROOKS:

I-- I-- I think your point about witnessing is-- is a really important one. And-- and I say this against interest, since I'm a law professor, and my bread and butter involves-- trying to encourage people to think about the law-- but I think that in many ways (NOISE) the lawyers have dominated the set of conversations about the post-9/11 conflicts in-- in ways that have been really detrimental, because I do think that, and-- and this is part of-- part of the-- the frustration of-- of we go around in circles because we are-- we are debating legal categories.

And at the end of the day, fundamentally, there-- there-- there is a great deal of human misery, and human suffering, and tragedy that is arising from decisions that lawyers can easily justify. And I think if we keep our focus on-- on that, if we keep our focus squarely on that, that helps us move in the direction of no longer arguing about what label to apply, and then thinking to ourselves, (NOISE) "Oh, good, you know, it's legal, because look, the law of armed conflict applies, or whatever, and therefore I can sleep well at night."

And-- and draws our attention right back to saying, "That's really not th-- the most interesting, or useful, or morally relevant way to think about this. If something is happening that is appalling to us on a human level, then let's start thinking about creating new rules and institutions to change it, rather than getting so wound up in the old ones.

ARYEH NEIER:

Okay, all-- all the way in back.

MALE VOICE:

I'm just gonna should out a quick questions and I won't come up--

(OFF-MIC CONVERSATION)

MALE VOICE:

So-- my-- my-- my quick question is what happens, do you think, when the Chinese send a drone to assassinate a Tibetan nationalist, or the Iranians do the same somewhere, or-- everyone then the Turks assassinate a Kurdish-- assassinate is probably the wrong way--

ROSA BROOKS:

Yeah--

MALE VOICE:

They will say it's the law of war, this is (UNINTEL) threat--

ROSA BROOKS:

Yeah--

MALE VOICE:

What does the United States do? What is the argument?

ROSA BROOKS:

We are-- we are screwed. (LAUGHTER) because, yeah, because we say, "Don't do that. You shouldn't kill that nice dissident." And they say, "Oh, no, that was not a nice dissident. That was-- that was a combatant in an armed conflict against us." And we say, "No it wasn't. We think that was a dissident." And they say, "Oh, but we have evidence." And we say, "Well, let's see it." And they say, "Well, no, unfortunately we can't share with you for national security reasons. We know you'll understand." And we kind of go, "Oh, humm."

MALE VOICE:

And how many years are we from that?

ROSA BROOKS:

Oh we're-- we're-- it's happening. It's happening.

MALE VOICE:

With drones?

ROSA BROOKS:

Yeah, with drone-- and-- and the drones are irrelevant, right. Drones are-- drones are just another way to drop stuff that kills people from the sky. And-- and from a moral perspective, you know, whether it could be the poised umbrella, you know, or the radio-active sushi.

MALE VOICE:

Now, that we've (UNINTEL PHRASE) I just mean from the drones (UNINTEL PHRASE).

ROSA BROOKS:

Yeah, no, no, we're there.

ARYEH NEIER:

Okay, Maureen?

MAUREEN:

(UNINTEL PHRASE) (LAUGHTER) Many thanks, Rosa for-- the talk. Much appreciated. I'm not talking from a lawyer's perspective, but from a humanitarian practitioner (UNINTEL PHRASE). And some of the consequences of what you're describing, in terms of the blurring of the lines between civilians and (UNINTEL) and how that's defined, by whom-- as well as the question of-- proportionality and distinction--

ROSA BROOKS:

Uh-huh (AFFIRM).

MAUREEN:

--is creating for those that are providing medical services-- at the front line of conflict, a major issue.

ROSA BROOKS:

Yeah.

MAUREEN:

And we were very comfortable with the boxes, because the boxes helped us have a basis upon which we could-- explain our presence, and negotiate our presence. And now we're finding ourselves in a situation where carpet (UNINTEL) is being pulled from under our feet--

ROSA BROOKS:

Yeah, yeah.

MAUREEN:

Now, those protections were never perfect. We know that.

ROSA BROOKS:

Right,

MAUREEN:

But at least they were for the framework that we feel we no longer even know whether it's applicable and we can (UNINTEL) you or not. And-- it's pushing some people from the (UNINTEL PHRASE) to the M.S.F. of this world-- you know, to say that maybe we're-- what we're witnessing today is also gonna, in a way-- you know, generate the end of the possibility of (UNINTEL) Germany during action.

ROSA BROOKS:

Right.

MAUREEN:

Which is premised on the idea that you can provide impartial care, in complex (UNINTEL PHRASE)--

ROSA BROOKS:

Right--

MAUREEN:

--on, know, of needs only. And I wonder if-- if you could, you know, share some thoughts about that? I did read the book, I didn't, you know, find that line of-- of reasoning--

ROSA BROOKS:

Yeah, yeah--

MAUREEN:

But I-- I wonder if you could share some thoughts?

ROSA BROOKS:

Yeah, it's-- it's a really hard issue. And-- and-- you know, the whole issue of shrinking humanitarian space, and is there any possibility of kind of reclaiming that? And-- and I'm-- I'm very pessimistic about that. I think that both-- both the U.S.'s actions, and developments in other, you know, other parties obviously have-- happen very challenged that, and it may be impossible to-- to return to that in any, you know, reasonable time frame that we would, like.

I-- I do-- so I don't-- I don't have any answer whatsoever, except-- except that I-- I recognize and share that-- that worry. I-- I do think that-- you know, going-- going back in some ways to the-- the question, the challenge that Aryeh posed to me. One of the things that I find most chilling, and-- the U.S. I don't-- only-- only-- somebody who's deeply in the weeds (LAUGH) probably actually read this memo, but-- but there was 2000-- 20011 Justice Department memo on-- the-- it was leaked-- on the legal theory behind the targeting of Anwar al-Awlaki, a U.S. citizen-- who was killed by a U.S. drone strike-- in 2011.

And-- one of the things that I found most-- sh-- shocking, and-- and distressing about the legal analysis in that memo-- was th-- had to do with portionality and necessity. And-- and for-- forgive me, those of you who (LAUGH) are-- are not particularly-- interested in the-- the legal piece of this, but-- but the-- the argument-- the-- the standard argument for the use of force-- in-- not in international hum-- in the law of armed conflict framework, but in the sort of ius ad bellum framework is that you don't use force unless there's a threat that is-- is-- is imminent-- and that then the use of force is to be proportionate to the threat itself.

And the memo that the Justice Department authored made the argument that the nature of terrorist plots is such that all terrorists are at all times seeking to find ways to harm the United States, and that therefore by definition-- but that we can't know what those plots are, because that's also the way terrorists work, they, you, they're

secretive. We don't see an Army massed on the border.

So we-- we cannot know the nat-- the nature of the threat that they post is unknowable. The timing is unknowable. The scale is unknowable. And thus we need to regard the threat as always imminent, which entitles us then to target al-Awlaki when he's sittin in a café, or he's driving here or there. And saying, we don't have to wait for him to pick up a gun, and point it at somebody-- some similar thing.

But the trouble with that in addition to sort of-- eliminating any meaning to the whole concept of imminence, is if by definition we cannot know the magnitude or nature of the threat, it becomes impossible to conduct any kind of proportionality analysis, that any level of force is proportionate to-- because we have no idea what the-- you know, it could be he's gonna kill one person, it could use a nuclear bomb. (COUGH) We don't know.

So it-- it just-- it renders the whole-- the traditional analysis-- impossible to undertake by definition. And, now, don't get me started, 'cause I'll-- I'll go on and on and on about this, but, you know, and-- and added to that, the fact that we only know about this particular bit of-- Orwellian analysis because of leaked memo.

You know, I think for me, one of the most (COUGH) chilling, and shocking things as an American citizen about what has happened in the last 15 years is that huge sways of U.S. foreign policy and law have disappeared into the covert world. And I just find that morally shocking. Because among other things, it makes witnessing hard, if nothing else.

ARYEH NEIER:

Okay, yes?

FEMALE VOICE #2:

I personally do not see any end to existence of non-state actors. Their names might change, but they will continue. It's gonna be the conflicts of the 21st century. Now, the militarization of civilian functions, like, (UNINTEL) development. That actually in-- in carrying on from the previous question, is actually endangering the actually civilian groups that-- international N.G.O.s that are trying to continue carrying out these functions, and are more effective than the military, because they are actual specialists, where the-- what you just described what the military is sending in, quote, farmers who (LAUGH) you know, know nothing about Afghanistan agriculture. And they're not gonna really do anything about the opium, you know. So, you know, what you're doing is, people who could change, are gonna be targets from the non-state actors.

ROSA BROOKS:

Yeah. So I got myself in-- in some hot water-- a few years ago, because I wrote-- a kind of a tongue-and-cheek column-- suggesting that the U.S. military-- if there-- if the U.S. military was gonna continue to do all these thing, you know, micro enterprise programs for Afghan women, or whatever. That the military should stop recruiting-- high school boys, and start recruiting at the-- American Association of Retired People conference instead.

And everybody sort of said, "That's ridiculous." (LAUGHTER) And-- but-- but-- but-- but-- but-- but-- but, you know, the-- the-- we-- the United States still recruits-- primarily young-- young males between 18 and 22 or 23, which makes perfect sense if your conception of a military task that you need a lot of guys who can march-- march carrying heavy loads, getting into fire fights, and you need physical stamina, and you need physical endurance.

On the other hand, if you think that much of the time, for most people most of the time you want them to be doing agricultural reform, or micro enterprise, or whatever it may be-- it's not obvious that you want to recruit high school boys for those tasks, right. That there are people who know something about this, and it doesn't tend to be 18 year old boys-- or even 28 year old captains.

So-- so I do think y-- you know, there-- there are-- we would, if we in fact were to decide that the only way to improve the current situation-- we can't-- there's no other actor who is able to just-- take-- assume the same scale of activities that we wanted the military to not be bad at it, that would have pretty radical implications for how we recruit, how we train, et cetera in the military.

So and then that's-- that's not your point, I realize, but-- but-- it's not inevitable that the military is bad at this. And that's a difficult issue. I don't know whether t-- to some extent, you're also raising the issue that Maureen raised, is about humanitarian space, and what happens when the person-- (BACKGROUND VOICE)

Yeah, yeah. And I-- and as I said earlier, I-- you know, I don't have an answer to that-- except that I think-- think that it's gone. The humanitarian space is gone. It's gone-- it's partly the United States' fault, it's partly not. But either way, it's gone. And we can't wish it back, you know.

I-- I-- I-- and-- this makes me feel very sad, but I don't-- I don't think that if the U.S. military tomorrow, stopped doing every single thing it does that isn't strictly speaking of a good old fashioned Clausewitzian military activity, I don't think that suddenly, magically non-state actors would stop targeting humanitarian workers. I don't think that for a minute, unfortunately.

(OVERTALK)

ARYEH NEIER:

One-- one last question (UNINTEL PHRASE). Go ahead, yes?

FEMALE VOICE #3:

I'm so sorry I lost the first half of your-- lecture but being from Middle East, I will be last person on earth to defend American military. But these poor guys, since 9/11, they're just the most ignorant people on earth. They have never had these traditional enemies that they always had throughout the history of the United States.

You're talkin' about the-- the dealing with ISIS, kids who are suicide bombers. It-- they have no-- you know, the-- the war that started with our lovely President Bush had no idea what Sunni and the Shiite were. They-- they don't know. Then we have-- presidential candidate, aside from Hillary Clinton, who doesn't know what Aleppo is. I mean-- you have bunch of ignorants running the military. What do you expect from that? (LAUGHTER) What do you truly expect from them?

ROSA BROOKS:

The problem cuts across (LAUGH) all sectors of American society (LAUGH) unfortunately. Yeah, I don't know if that problem is restricted to the U.S. military as opposed to, as you say-- we have presidential candidates who don't--couldn't find--

FEMALE VOICE #3:

They should-- they would be--

ROSA BROOKS:

Yeah--

FEMALE VOICE #3:

(UNINTEL) Commander in Chief-- telling them what to do, right--

ROSA BROOKS:

Yeah, yeah, yeah. That problem is beyond the scope of-- (LAUGHTER) the book.

ARYEH NEIER:

Ok, well-- thank you very much. I-- I again, recommend the book so if you-- want to-- to purchase it (COUGH) there are copies available outside--

ROSA BROOKS:

The answers to all your questions are actually contained in the book (LAUGHTER) but you have to buy it, and copies for your relatives and stuff like that.

ARYEH NEIER:

Rosa, thank you very much.

ROSA BROOKS:

Thank you, Aryeh. (APPLAUSE)

* * *END OF TRANSCRIPT* * *