There are many forms of violent conflict among human beings. In the West, “war” has been a very specific form of such conflict. As it evolved since the last major shift in the Western international system at the Peace of Westphalia in 1648, the Western understanding of war has taken a very specific shape in international law and in the evolution of customary international law. The paper will explore the various ways the United States has used its military power since the terrorist attacks on it on September 11, 2001. It will suggest that, although the U.S. has been engaged in continuous military activity since that period, only a small part of that activity conforms to the established legal and customary forms of “war” as conventionally defined. We will explore the range and nature of those uses of military force and then proceed to examine the challenges and stresses to traditional ideas of “just war” as they have been defined in the Western tradition. Furthermore, much of U.S. defense planning, acquisition programs, and force structure presumes “war” is only one, and indeed one of the less likely, ways in which we envision use of military force in the coming decades. The ethical implications of these changing patterns of the use of force are that, insofar as the ethics of war and just war theory have been worked out to guide conventionally defined “war” in the West, we may well find that those ethical rules and customs conform poorly to the actual pattern of use we have witnessed and may require supplementation or even fairly fundamental rethinking to forge consensus on the ethical standards that will guide future conflict. We will conclude with examination of the ways in which these uses of force foreshadow the kinds of uses of military force we can expect from the U.S. (and perhaps others) into the future.

* The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Navy, the Department of Defense, or the U.S. Government.

1 One exception to this is important, perhaps especially in the context of this conference in Hong Kong. That is the still somewhat inchoate “pivot to Asia” and the idea that China’s rising military power and increased assertiveness in Asia may set the scene for some form of future great power conflict that might indeed conform to conventional “war” paradigms. I won’t explore that set of issues here because it requires speculation about the future rather than examining actual practice of the past thirteen years.
‘Modern War’ in the West

Modern conceptions of war in the West emerged from the specific historical circumstance of the political shape of Europe in the aftermath of the Reformation and the wars of religion that followed it. Before the Reformation, Europe was notionally a single civilization more expansive than the nation states it contained. It was “Christendom” – the domain of the Christians, notionally under a single supreme authority – the Church in Rome – and a single leader – the Pope. Under that concept of civilization, the rules and ethics of war were grounded in a shared religious faith and a shared religious authority that could and to some degree did define the rules of war and even enforce them.

One of the causes of the wars of religion that broke out after the Reformation was the shared belief, dating back to the Roman Emperor Constantine, that religious unity was an essential element to political unity and stability: “One God, one Church, one Emperor.” Except for the Anabaptists, all the other post-Reformation Christian sects would ideally like to restore that unity with their theological tradition as the unifying force.

Only when it became apparent that that unity would not be restored did the European states to accept the compromise of the Westphalian system. That allowed them to continue to preserve religious unity as a basis of political unity, but only at the reduced scale of national churches. The religious principle was that first proposed between Lutherans and Roman Catholics at the Peace of Augsburg in 1555: cuius regio, eius religio (his realm, his religion – i.e., the ruler’s religion would be the official religion of the territory). This allowed a continued insistence on religious unity inside each territory and permitted mistreatment, persecution and even death to non-conformist religious minorities in each territory at the sole discretion of the ruler.

Now lacking a common normative religious framework and an overarching political order, a need for rules of war no longer relying on Christendom emerged. Thinkers such as Hugo Grotius stepped forward to offer new secular versions of just war, grounded in natural law and human reason directly that, he argued, are valid even “etsi deus non daretur” – even if God does not exist. This laid the foundation for International Law as we have it today: a product of the West’s particular history, but for complex reasons notionally universal and global. What emerged was the so-called Westphalian state system of sovereign independent states possessed of the rights of territorial integrity (all states should respect each other’s borders) and political sovereignty (each state was free to govern its internal affairs as it saw fit).

A distinct set of norms emerged from this evolution that provided a specific understanding of “war” as distinct from other forms of violent activity. War, by