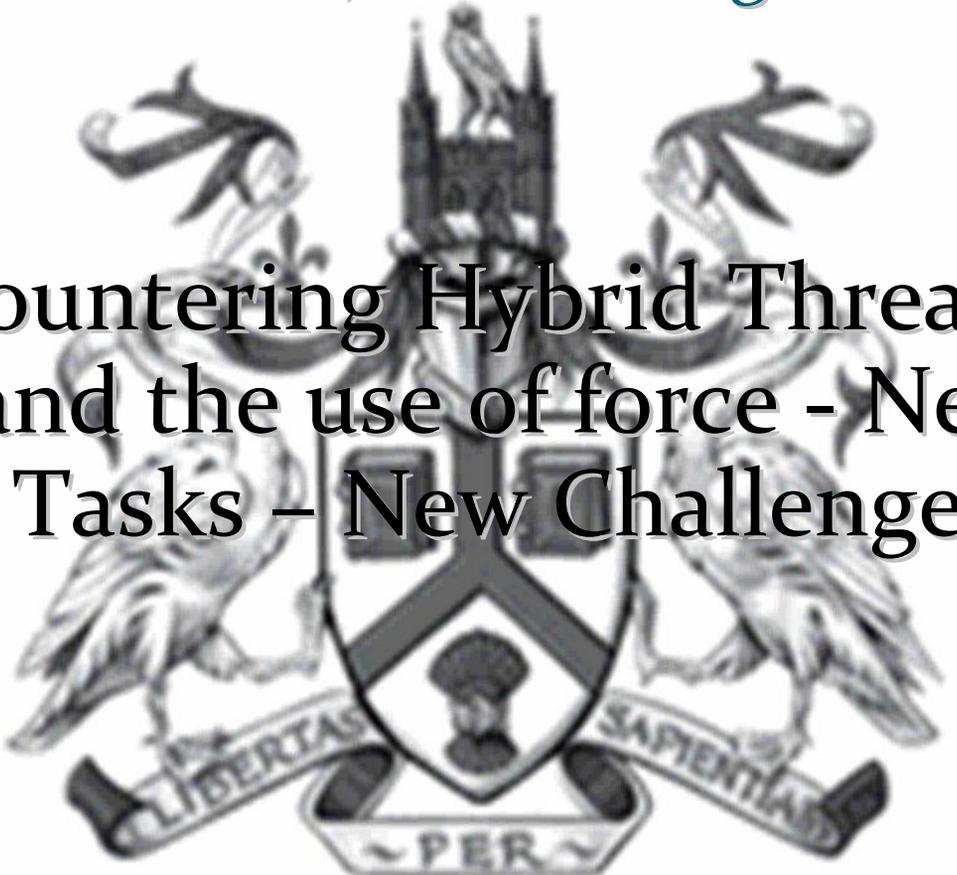


Countering Hybrid Threats (CHT) 25-
26 October, Försvarshögskolan

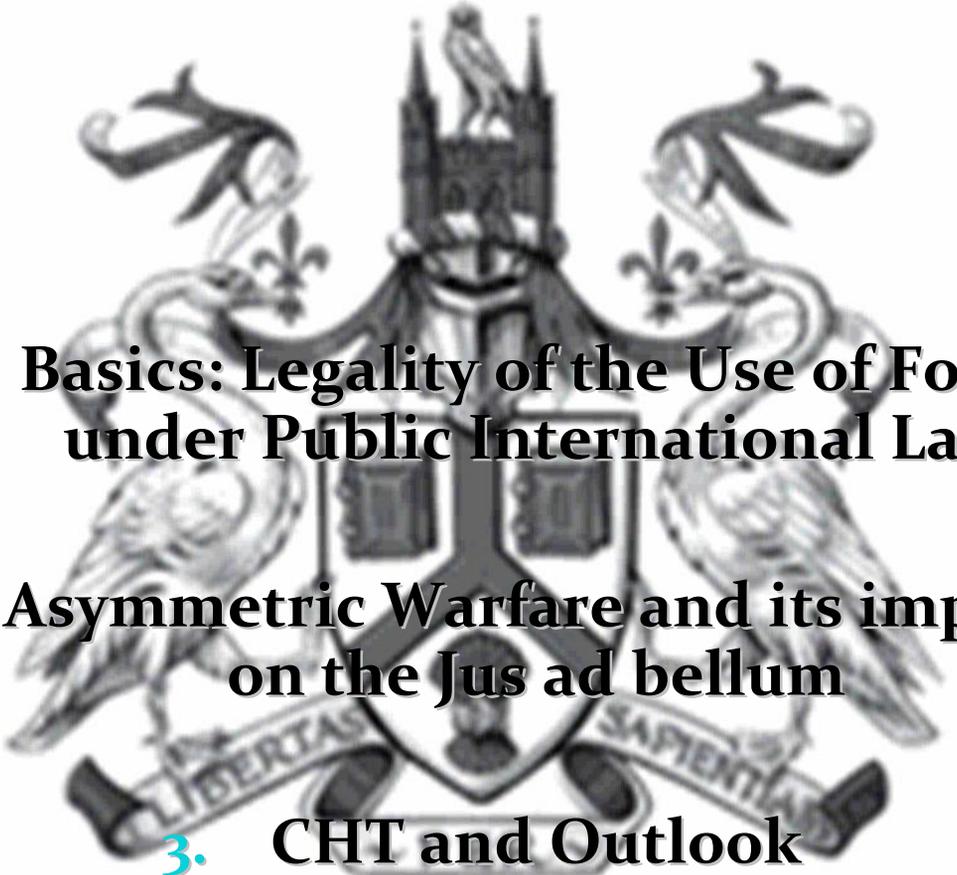
The crest of the University of Lincoln, featuring a shield with a cross, a book, and a lamp, flanked by two birds, with a banner below reading 'LIBERTAS PER SAPIENTIAM'.

Countering Hybrid Threats
and the use of force - New
Tasks – New Challenges

Dr. Sascha-Dominik Bachmann,
University of Lincoln, United
Kingdom

UNIVERSITY OF
LINCOLN

Outline for our Symposium:

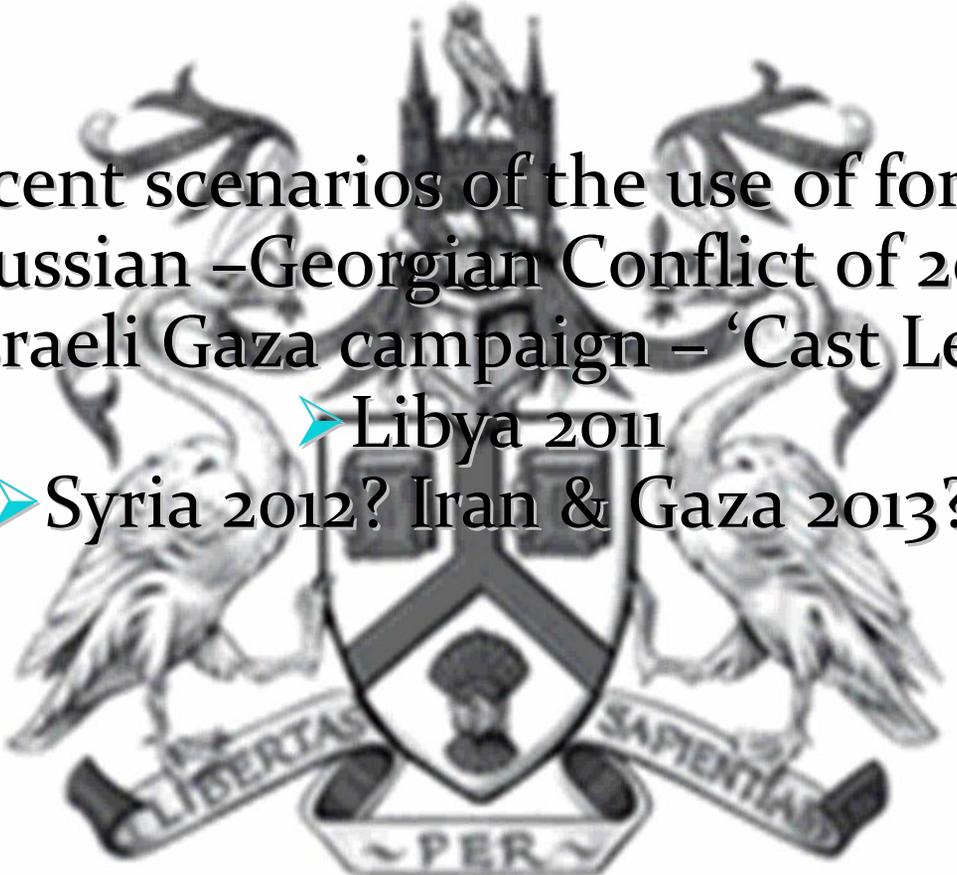
- 
- The crest of the University of Lincoln is centered in the background. It features a shield with a cross, topped by a crown and a figure. Two birds are perched on the shield, and a banner at the bottom reads 'LIBERTAS' and 'SAPIENTIA'.
1. **Basics: Legality of the Use of Force under Public International Law**
 2. **Asymmetric Warfare and its impact on the Jus ad bellum**
 3. **CHT and Outlook**

UNIVERSITY OF
LINCOLN

The crest of the University of Lincoln features a central shield with a cross, flanked by two birds (possibly eagles or phoenixes) holding banners. Above the shield is a building with spires. Below the shield is a banner with the Latin motto "PER LIBERTAS SAPIENTIA".

1. Basics: Legality of the Use of Force under Public International Law

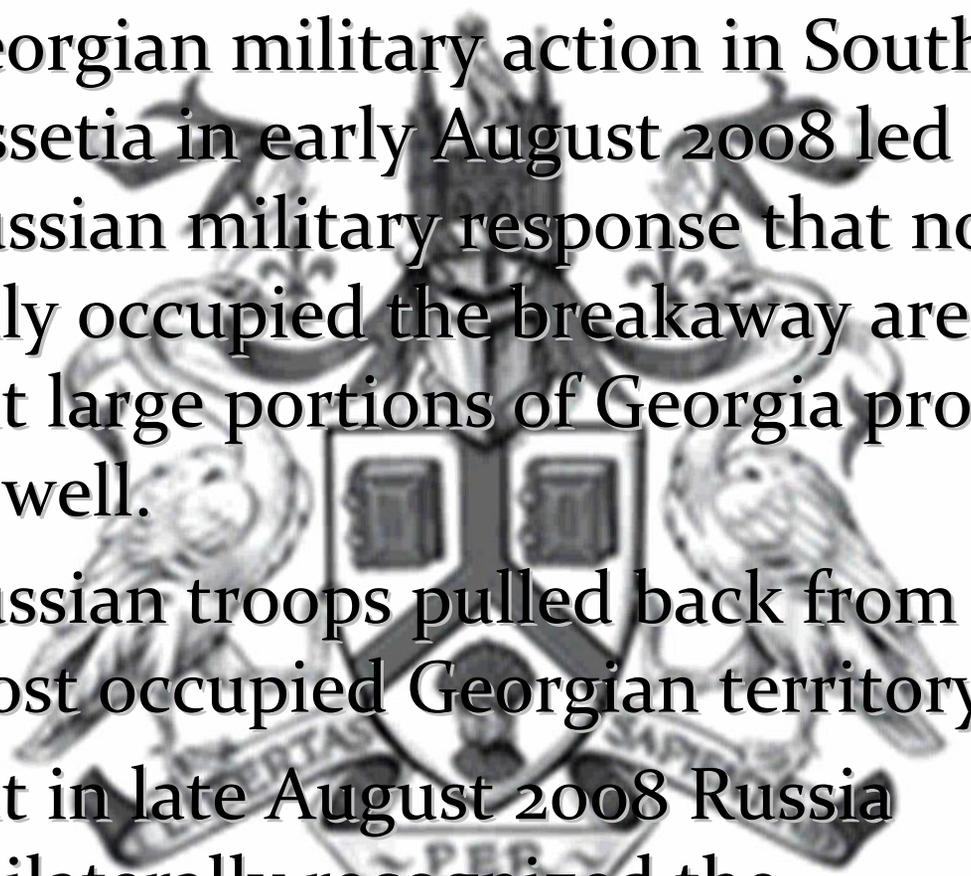
UNIVERSITY OF
LINCOLN

- 
- The crest of the University of Lincoln is centered in the background. It features a shield with a cross, flanked by two birds (parrots or similar) holding a banner. Above the shield is a tower with a figure on top. The banner at the bottom of the shield contains the Latin motto 'PER LIBERTAS SAPIENTIA'.
- Recent scenarios of the use of force:
- Russian –Georgian Conflict of 2008
 - Israeli Gaza campaign – ‘Cast Lead’
 - Libya 2011
 - Syria 2012? Iran & Gaza 2013?

UNIVERSITY OF
LINCOLN

The Georgian – Russian conflict of August 2008

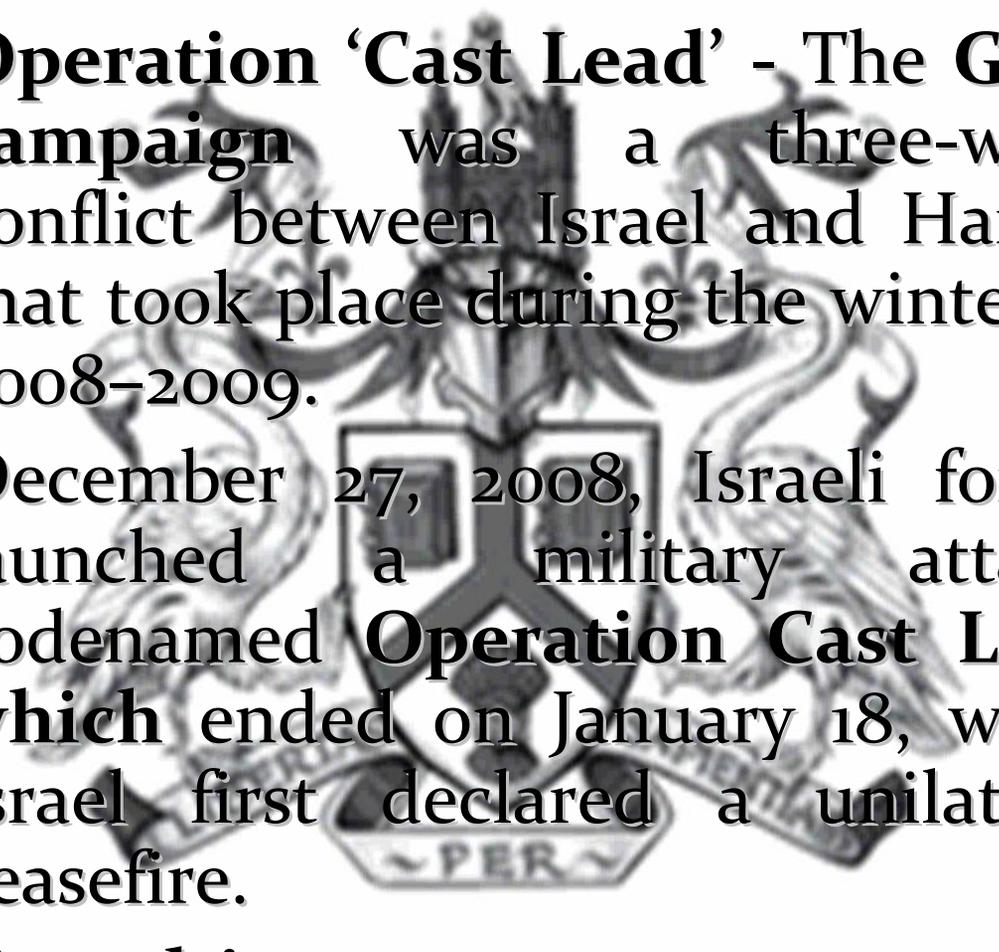


- 
- The background of the slide features a large, semi-transparent watermark of the University of Lincoln crest. The crest is a shield with a central figure, flanked by two lions, and topped with a crown. The motto 'LIBERTAS PER VERITATEM' is visible on a banner below the shield.
- Georgian military action in South Ossetia in early August 2008 led to a Russian military response that not only occupied the breakaway areas, but large portions of Georgia proper as well.
 - Russian troops pulled back from most occupied Georgian territory,
 - but in late August 2008 Russia unilaterally recognized the independence of Abkhazia and South Ossetia.

UNIVERSITY OF
LINCOLN

Operation Cast Lead – IDF vs Hamas in Gaza 12/2008 -1/2009



- 
- **Operation 'Cast Lead'** - The Gaza campaign was a three-week conflict between Israel and Hamas that took place during the winter of 2008–2009.
 - December 27, 2008, Israeli forces launched a military attack, codenamed **Operation Cast Lead** which ended on January 18, when Israel first declared a unilateral ceasefire.
 - **Casualties:**
IL: 13
Hamas/Palestinian: 1500

UNIVERSITY OF
LINCOLN

Operation Unified Protector- Libya

03/2011 -10/2011- to implement UNSC Res 1973



Modern Jus ad bellum: Prohibition of the use of force

- Art. 2(4) of the United Nations Charter of 1945 -(reflecting on Article 1 of the General Treaty for the Renunciation of War 1928, Kellogg Briand Treaty) overcoming Clausewitz dogma of “war as a means of state relations”
- whereas “All Members shall refrain in their international relations from 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.”

UNIVERSITY OF
LINCOLN

Prohibition: exceptions to the rule

- However, force will be legitimate when exercised in
 - self defence,
 - authorized by the UN (Art. 51 UN Charter)
 - or (disputed) when exercised to prevent a 'humanitarian' catastrophe' -> as manifestation 'R2P' in terms of UN GA Res A/63/308.
 - Any action has to be proportionate and limited in its scope.

UNIVERSITY OF
LINCOLN

The criminality of prohibited use of force: aggression

➤ Legal Instruments criminalising aggression

- ✓ Nuremberg Charter, Art. 6 (a); Nuremberg Principles
- ✓ UN Resolution on Aggression 1974 (soft law)
- ✓ UN Draft Code of Offences against the Peace and Security of Mankind
- ✓ ICC Rome Statute of 1998, new Art. 8 bis post Kampala 2010 – ongoing process – binding only Member States and UNSC referral

UNIVERSITY OF
LINCOLN

CASE SCENARIOS

- **The Korean War 1950-1955: authorized by the UN, see UNSC Res. 82 (1950)**
- **The invasion of Iraq 1990/91: authorized by the UN, see UNSC Res.678 (1990)**
- **Kosovo 1999: “Humanitarian Intervention”**
 - **to prevent the occurrence of mass human rights violations?**
 - **Regarded as “unique” and exceptional under international law:**
 - **disputed whether acceptable under PIL. Some regard the post conflict 1244 SC Res as a late endorsement of NATO’s action**

UNIVERSITY OF
LINCOLN

CASE SCENARIOS

- **Afghanistan 2001:** a post 9/11 act of war by the USA
 - that can qualify as self defence, directed against al Qaeda and the Taleban?!
 - Against non state entities: Taleban?
 - **UN SC Res 1373 (2001)** confirms the right to self defence and to “take necessary steps to stops acts of terrorism
- **The invasion of Iraq 2003:**
 - Self defence?, no WMD and no al Qaeda?! Preemptive Self Defence?
 - not UN authorized
 - nor a humanitarian intervention.
 - Or: a reactivation of UN SC Res 678 (1990) as justification? -> eg Mike Schmitt

Outlook

- **“The Legality of Operation Iraqi Freedom under International Law”, by Professor Michael Schmitt, formerly Durham University, argues that OIF was a lawful – as a renewal of hostilities**
 - arguing that Iraq was in “breach of the 1991 cease-fire” as established under in Security Council Resolution 687
 - which released the US and UK from their obligation to refrain from hostilities,
 - thereby reactivating the use of force authorization in Security Council Resolution 678 (1990)”

UNIVERSITY OF
LINCOLN

2. Asymmetric Threats and their impact on the Jus ad bellum



UNIVERSITY OF
LINCOLN

2. Asymmetric Warfare and its impact on the Jus ad bellum

- **Transnational Terrorism changed the perception that jus ad bellum governed inter-state relations.**
- **Pre 11/9 examples of engaging in military action against foreign terrorists led mostly to condemnation as a violation of Art. 2 (4) UN Charter- see e.g. Operation El Dorado Canyon of 1986 against Libyan terrorist targets-> e.g. Hot pursuit operations by SADF against ANC, MK and SWAPO as well as IDF OPS (Khartoum?)**
- **Hybrid Threats? Multi modal attacks like cyber attacks and eco war? The need for a new legal approach?**

UNIVERSITY OF
LINCOLN

9/11 and its impact on the Jus ad bellum

- **Transnational Terrorism** was recognized as constituting a threat warranting the right of the affected state to exercise its legitimate right to self defence, see UN SC Res 1368 of 12/09/2001 and UN SC Res 1373 of 28/09/2001
- **NATO invoked Article 5 of the Washington Treaty, the Alliance's collective defence clause, in 2001 as a response to 9/11**

UNIVERSITY OF
LINCOLN

9/11 and its impact on the Jus ad bellum

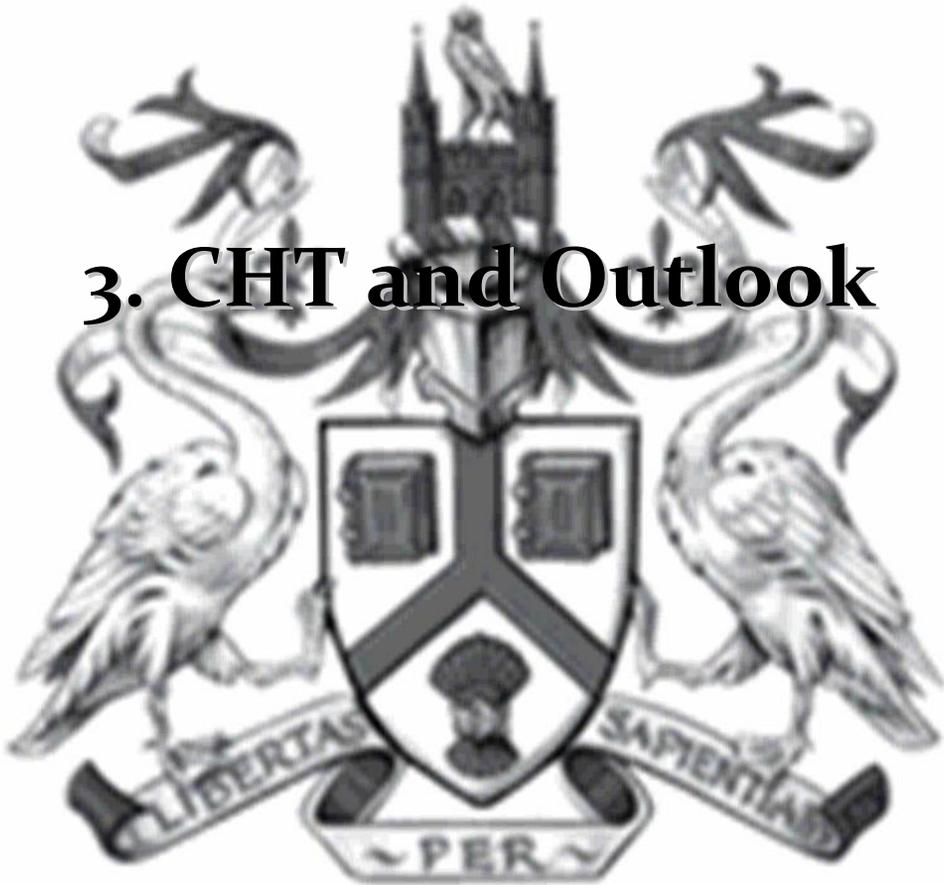
- **Art 51 UN Charter does not specify that the originator of an attack has to be a state actor only - the traditional inter-state concept of armed conflict used to limit the scope of the defence argument to state actors only - this perception seemed to have been overcome after post 9/11.**
- **However: the 2004 ICJ Advisory Opinion on the Israeli Wall [2004] ICJ Rep 136 seems to confirm the classical view - by requesting Israel to prove that a state sponsor was behind the terror attacks.**
- **The newly codified Art 8 bis of the ICC Statute criminalizes only inter state aggression and excludes the non state entity as subject/victim of such a crime**

Asymmetric Warfare and its impact on the Jus ad bellum

- UAVs and Targeted Killings: long term operational use in Pakistan (as non theatre) might become more scrutinized in the future :
- Military Responses to Asymmetric Threats within the wider scope of self defence is limited by its three criteria:
 - ✓ Necessity
 - ✓ Proportionality
 - ✓ Immediacy
- And the general 'right' to chose another state's territory as the locus actionis for military action against a terrorist non state threat is difficult to justify under PIL: see the ICJ *Nicaragua* case [1986]; denied in the above 'Hot Pursuit' cases

UNIVERSITY OF
LINCOLN

3. CHT and Outlook



UNIVERSITY OF
LINCOLN

Hybrid Threats - Definition

- Multimodal, low intensity, kinetic as well as non-kinetic threats to international peace and security including cyber war, low intensity asymmetric conflict scenarios, global terrorism, piracy, transnational organized crime, demographic challenges, resources security, retrenchment from globalization and the proliferation of weapons of mass destruction
- (cf BI-SC Input for a New NATO Capstone Concept for The Military Contribution to Countering Hybrid Enclosure 1 to 1500/CPPCAM/FCR/10-270038 and 5000 FXX/0100/TT-0651 SER: NU0040, dated 25 August 2010).

Outlook

- **US Capstone concept for JOps: HT and asymmetric Threats/WF identified by the new US defence strategic guidance Sustaining US Global Leadership: Priorities for the 21st Century.**
- **PSO and CIMIC/J9**
- **Legal Clarity: jus ad bellum outdated as interstate prohibition of the use of force: the war on terrorism has shown its limitations**
- **UAVs in PAK/WAZIRISTAN: strictly speaking violation of Art 2(4) UN Charter**
- **Drone Operators could be liable for violation of jus in bello**

UNIVERSITY OF
LINCOLN

- 
- The crest of the University of Lincoln, featuring a shield with a cross, supported by two birds, with a banner below reading 'LIBERTAS PER VERITATEM'.
- Comments and Suggestions?
 - Please contact me under sbachmann@lincoln.ac.uk

- THANK YOU

UNIVERSITY OF
LINCOLN