Received: 3. 11. 2016

Accepted: 21. 4. 2017

Published on-line: 15. 6. 2017

Available from: www.obranaastrategie.cz

doi: 10.3849/1802-7199.17.2017.01.143-156

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HOW BUTTER BEATS THE GUNS

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Abstrakt

Klesající podíl obrany na celkových vládních výdajích odráží základní volby týkající se funkcí státu. Hlavní hypotéza výzkumu je: klesající priorita vojenských výdajů může vést k nižší kvalitě obrany. Případová studie ukazuje, že strategie „trestu za vojenský úspěch“ snižuje motivaci důstojníků armády. Historické údaje (vojenské výdaje a nástup nové vojenské spravedlnosti) podporují hlavní hypotézu.

Abstract

The decreasing share of defence in total government expenditures reflects the fundamental choices about state functions. The main hypothesis of the research is: decreasing priority of military spending could cause lower quality of defence. The case study shows, how “punishment for military success” strategy undermines incentives for army officers. Historical data (military spending and rise of new military justice) support the main hypothesis.

Klíčová slova

Všeobecné volební právo; vojenské výdaje; válečné právo; vojenské právo.

Keywords

Universal Suffrage; Military Spending; Law of War; Military Law.

Acknowledgements

The authors wish to express their gratitude to Yehoshua Socol for important discussions and criticism, to the Attorney Yitzhak Bam for valuable references and comments, to Daniel Shestakov and Georgiy Sunyaev for research assistance in the project.

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THE PROBLEM

“A State, then, has one of two ends in view; it designs either to promote happiness, or simply to prevent evil.”

*W. von Humboldt*¹

The principal concern of this paper is the lowering priority of national defence in democratic countries. It is manifested both in the decrease of the spending share and in the expansion of military justice. The new priority means transition from the limited government for responsible citizens to the welfare state for infantilized, institutionally corrupted citizens.² The transition, which has very clear ethical implications.

Guns rather than butter?

A number of researchers have noted the trend to lower the proportion of defence spending within the total spending by the state.³ When military spending was a principal component of “the central government’s budget share of the economy, it was remarkably stable for nearly 150 years... but grew quite rapidly throughout the latter two-thirds of the 20th century,”⁴ after social spending increased, since the rise of the welfare state.⁵ The connection is stressed between an increase in government size (social component) and the extension of the suffrage in general.⁶

Spending on welfare programs is considered implicitly, or even explicitly, to increase the public good. Some researchers even highlight the “social side” of military programs.⁷

There is a substantial body of literature on the guns vs. butter trade-off, and the presumed “peace dividend”. Since Russett⁸ until Heo and Bohte, 2012⁹ no conclusive

¹ HUMBOLDT, Wilhelm von. *The Sphere and Duties of Government* (The Limits of State Action) Chapter III [on-line]. 1792. [cit. 2016-11-01]. Available from: <http://goo.gl/Hh6MLT>.

² JASAY, Anthony. *The State*. Indianapolis: Liberty Fund, 1998.

³ ELORANTA Jari. *Warfare and Welfare? Understanding 19th and 20th Century Central Government Spending* Warwick Economic Research paper #699. Department of Economics, The University of Warwick, 2004.

⁴ TULLOCK, Gordon. *Government Spending* [on-line]. The Concise Encyclopedia of Economics Liberty Fund, 2002. [cit. 2016-11-01]. Available from: <https://goo.gl/sih98g>.

⁵ Historically, in the long-term (since the 1930s), military expenses by Western democracies were dominated by social spending - see Figures 1 and 2 below. Military spending as a proportion of the GDP was stable until the end of the Cold War, while social spending skyrocketed.

⁶ See AIDT, Toke S. - DUTTA, Jayasri - LOUKOIANOVA, Elena. Democracy comes to Europe: Franchise extension and fiscal outcomes 1830-1938. *European Economic Review*. 2006, Vol. 50, pp. 249-283; FUNK, Patricia - GATHMANN, Christina. *What Women Want: Suffrage, Gender Gaps in Voter Preferences and Government Expenditures* [on-line]. SITE - Stockholm School of Economics Stanford University (Draft), July 2006. [cit. 2016-11-01]. Available from: <http://goo.gl/9gTjfA>.

⁷ See GIFFORD, Brian. Why No Trade-off between “Guns and Butter”? Armed Forces and Social Spending in the Advanced Industrial Democracies, 1960-1993. *American Journal of Sociology*. 2006, Vol. 112, No. 2, pp. 473-509; WHITTEN, Guy D. - WILLIAMS, Laron K. Buttery Guns and Welfare Hawks: The Politics of Defense Spending in Advanced Industrial Democracies. *American Journal of Political Science*. 2011, Vol. 55, No. 1, pp. 117-134.

empirical evidence of a trade-off was found. More results of this body of literature review are summarized in Supplementary Materials, see Tables 1 and 2.

Discussion on military spending is conducted within a stringent ideological schema: "...conventional wisdom holds that high levels of military spending divert government money from both social spending and investments that can fuel economic growth and increased standards of living" (Gifford 2006).

The majority of authors (except Russett and very few others) consider welfare spending as "butter" and the "peace dividend" as the redistribution of funds from defence budget to welfare spending.

One of very few inarguable instances of a true "peace dividend" since the late 1940s is the achievement of a balanced budget in the US under the Clinton administration, due to post-Cold War cuts in military spending and reduced welfare spending mandated by the 1996 Welfare Reform law.

Looney and McNab, 2008 article¹⁰ is the rare case of a study that considers defence and security as "quality (pure public) goods". The authors aren't concerned with bureaucratic underfunding that results with the provision of pure public goods and show that economic growth could be encouraged by economic liberalization to avoid any negative effects of increased military spending.

Barro and de Rugy, 2013¹¹ challenge the Keynesian multiplier-based claim that "defence-spending cuts [have] dire impact on the economy". They insist the claim is "grossly overblown". They state their reservations, pointing out that the "impact of the cuts on national security may be up for debate". Heo¹² arrives to similar conclusions regarding governmental programs efficiency (in spite of his belief, the problem solution is "to reexamine the programs", not to cut inefficient spending) in 1998.

Our discussion is focused on the decline in military spending quality. This decline, we believe, was linked to the huge social programs and related political and bureaucratic incentives.

Of course, the principal effect of military spending should be security, that is, the prevention and deterrence of aggression and terror, not economic externalities. This is a simple idea; the quality of military spending preserves lives and is a matter of survival.

The political representation of groups demanding that society's wealth be redistributed in their own favour became a prominent factor in lowering military spending vis-a-vis overall spending by the extended government. Left-wing (socialist) parties would as

⁸ RUSSETT, Bruce M. Who Pays for Defense? *American Political Science Review*. 1969, Vol. 63, pp. 412-26.

⁹ HEO, Uk - BOHTE, John. Who Pays for National Defense? Financing Defense Programs in the United States, 1947-2007. *The Journal of Conflict Resolution*. 2012, Vol. 56, No. 3, pp. 413-438.

¹⁰ LOONY, Robert - McNAB, Robert M. Can economic liberalization and improved governance alter the defense-growth trade-off? *Review of Financial Economics*. 2008, Vol. 17, pp. 172-182.

¹¹ BARRO, Robert - DE RUGY, Veronique. *Defense Spending and the Economy*. Mercatus Center, George Mason University, 2013.

¹² HEO, Uk. Modeling the Defense-Growth Relationship around the Globe. *The Journal of Conflict Resolution*. 1998, Vol. 42, No. 5, pp. 637-657.

a rule openly proclaim the army (“militarism”) to be their enemy.¹³ The refusal of a sizable group of social democrats to assume an extreme anti-military position during World War I was met with severe criticism by the radicals.¹⁴

At the outset, the bureaucracy, being a thoroughly conservative corporation, treated the demands of the socialists with watchful wariness. But the socialists’ demands coinciding with the interests of the bureaucracy unconnected with the military budget was too obvious to be ignored for long. “Providing care” for every single citizen “from the cradle to the grave” offered an opportunity to put contemporary economic growth to use¹⁵ so as to extend the government’s share in the economy. Preserving the state as a militarized structure with a “night watchman’s” functions would have considerably complicated finding a solution to this problem.

Opportunities for expanding the authorization and grounding for additional budgetary expenses, with special emphasis placed on mixed public goods (education, healthcare, aid for the elderly, the handicapped, or the indigent and the like), are unlimited for all intents and purposes.

Further we shall use the terms “left-wing”, “leftist” party or politician to differentiate between “happiness promoter” and “defender”, and to mark politicians who stand for extending the state functions beyond the limits of providing pure public goods, seeing these new functions (supplying mixed public goods, supervising citizens’ behaviour and markets) as basic to a modern state.

The military spending of democracies in a historical retrospective

The data at our disposal indicate that military expenditures in times of peace were probably never beyond the realms of imagination. During a period when more or less reliable statistical data are available and published and parliamentary control over government incomes and expenses is in effect, military peacetime expenditures make up 2-4% of the GDP or 20-30% of the expenses of the extended government (prior to the extended spread of the institution of universal suffrage). In times of war, there would naturally be a sharp increase in expenses, sometimes growing ten-fold (see e.g. Barro, 1987).¹⁶ Barro (ibid.) presents data on UK military spending between 1702 and 1918 (Table 1, p. 227). The data prove a pretty moderate level of long run military spending. Even during local wars this spending did not exceed 0.7-2% of GNP, usually.

During world wars, the powers involved in the most intensive military action expended some 30% and more of their GDP on the war effort, and not less than 70% of the spending of the extended government.¹⁷

¹³ LIEBKNECHT, Karl. *Militarism and Anti-Militarism*. Cambridge: Rivers Press Limited, 1973.

¹⁴ LENIN, Vladimir I. *Opportunizm i krah vtorogo Internacionala (The Opportunism and II-nd International Failure)*. Collected works 5-nd Russian Edition, vol. 27, pp. 99-128. Moscow: IPL, 1969.

¹⁵ KUZNETS, Simon. *Modern Economic Growth*. New Haven, CT: Yale University Press, 1966.

¹⁶ BARRO, Robert J. Government Spending, Interest Rates, Prices and Budget Deficit in the United Kingdom, 1701-1918. *Journal of Monetary Economics*. 1987, Vol. 20, pp. 221-247.

¹⁷ Countries which really engaged in war later paid war debts. An example of a war budget nonetheless fitting the indicated figures, is Great Britain.

After WWII, the approximate 2-4% load level on the economy was retained. After the Cold War had ended, there was a drop in the defence spending burden on the economy of the democratic countries, where it reached 1-2.5% of the GDP.¹⁸

It should be noted, however, that countries engaging in war sometimes had to pay up later to cover war debts. These payments could approximately double the burden on the budget. But even taking these conditions into consideration, state expenditures were usually less than 10% of the GDP, and military ones did not exceed 4-7%.

The US and Israel constitute something of a special case. Prior to WWI, the US, protected by oceans from potential invaders, usually spent no more than 0.5-1.5% of the GDP on defence. The 10% threshold was shattered only during the Civil War, showing up next close to the end of WWI. During and after WWII, the US became a leading military power providing protection and aid for dozens of smaller partners in a variety of coalitions. This naturally impacted the military onus: an anomalously high 5-10% of the GDP before the end of the Cold War, and 3-5% of the GDP after the Cold War (albeit including the period of the wars in Iraq and Afghanistan - see Figure 1).

Figure 1: Dynamics of military spending in four powers as a share of the GDP (%)

Sources: Sources: Hobson, 1993, 1987, SIPRI, national statistics offices (for details see section Data of Supplementary Materials).

¹⁸ Military departments are losing ground compared to the civil departments of the central government. Generals lost their prestige but got rid of responsibility for the quality of the public good provided. Selection criteria for officers' promotion have changed respectively.

Great Britain's record-breaking spending during WWII is to be explained by the support (credits and other military aid) of the US. Even so, the USSR's military expenses during WWII apparently broke the one absolute and definitive record for all of modernity. According to M. Harrison's estimate,¹⁹ military expenses were above 61% of the GDP in the USSR, a fact explained by both the mobilization capacity of the totalitarian state and the substantial drop in production during 1941-1942.

Another country with "anomalous" military spending is Israel. Here, during years of relative peace, military expenses occupy between 10-15% and 20-25% of the GDP. In times of war, military-connected spending was also very high, at 30% of the GDP. After the end of the Cold War, spending remains at the 5.5-9% of the GDP level.

Even in the leading country of the western alliance defence tasks were clearly dominated (outspent) by various "happiness promotion" projects since 1970s (see Figure 2).

Taking into consideration the financing of particular military programs in particular countries which played a key role (or are capable of playing a key role), it is impossible not to be struck by the incredible popularity of pacifism and readiness to give up minimal reasonable military burdens. This is the case while the overall burden of state spending is increasing everywhere.²⁰

The British voters' refusal to provide serious financing for the navy and the air force placed the country at the edge of disaster in 1940.²¹ The Finnish voters rejected the plan for construction of fortifications incomparably more modest than the Maginot Line on the Karelian Isthmus²² (Mannerheim 1954). They paid dearly for their refusal: the loss of tens of thousands of lives and the resettling of a considerable part of the population of the country. "Butter instead of guns" turned to be "butter today instead of human lives tomorrow".

¹⁹ HARRISON, Mark. *Accounting for War: Soviet Production, Employment, and the Defence Burden, 1940-1945*. Cambridge: Cambridge University Press, 2002.

²⁰ CARDOSO, José Luís - LAINS, Pedro (eds.). *Paying for the Liberal State: The Rise of Public Finance in Nineteenth-Century Europe*. Cambridge: Cambridge University Press, 2010; VOEGELI, William. *Never Enough: America's Limitless Welfare State*. New York: Encounter Books, 2010; TANZI, Vito. - SCHUKNECHT, Ludger. *Public Spending in the 20th Century: A Global Perspective*. Cambridge: Cambridge University Press, 2000.

²¹ SMITH, Peter C. *The Great Ships Pass: British Battleships at War 1939-1945*. Cerberus Publishing, 2006. The author notes that in the course of negotiations concerning restricting the size of the navy, the highest command of the British navy in 1921 was less apprehensive about rival partners than about the Lloyd-George government, the "first builder" of the welfare state in England, and its leftist political allies. Regarding the choice between military and social spending under the burden of military debt (above 130% of the GDP, with debt growth continuing beyond 180% of the GDP in 1923 (see http://www.ukpublicspending.co.uk/debt_brief.php), the government resolutely sacrificed the navy and all security guarantees for the post-war generation of the British. The minister who had been responsible for the first "social welfare" reforms based on the German model since 1910 was Winston Churchill. But by this time, he had left the Liberal Party and significantly corrected his views.

²² *The Memoirs of Marshal Mannerheim*. E.P. Dutton & Company, first edition, 1954.

Figure 2: US Federal Budget principal spending structure²³

Source: US Budget Historical Tables <http://www.whitehouse.gov/omb/budget/Historicals> Table 6.1. "Composition of Outlays" retrieved December 4, 2014 (data for 2014-2015 - Estimates)

Naturally, failures and serious mistakes in preparing for war were not limited to the period immediately following the introduction of universal suffrage. But the phenomenon of lower defence capacity against the backdrop of sizable growth in state spending is relatively new since the times of building for purposes of religious worship in ancient despotic states. For market democracies whose history is divided into a period of the taxpayer's (census) democracy and one of universal suffrage, we believe that comparing the status and combat readiness of the armed forces in these ages appears to be a thoroughly promising task.

²³ Payment for individuals was previously designated as "human resources" or, for most non-military outlays, predetermined by law mentioned in the literature as "mandatory spending". Defence spending could sometimes be found as a major part of "discretionary spending".

Civil bureaucrats' interest

Competition among political coalitions (the “rightist” and “leftist”, as we term them) is superimposed on competition among bureaucratic structures for budgetary resources. This involves competition among “military” and “civil” bureaus (departments). The long-term successes of “civilian” bureaucrats and “leftist” politicians can serve as an explanation for the curtailment of the share devoted to defence spending (and of spending on pure public goods in general) in state spending as a whole.

This works even better as an explanation for the emergence of the new military legislation which practically forbids winning (causing the enemy irreversible losses which deprive the opposing side of the ability to resist). Mottos like “war is no solution” or “no winners in nuclear war” fit the bureaucratic agenda no worse than a newspaper article or anti-war demonstration speech.

Competition among military and non-military projects, or military and civilian bureaucrats, probably dates from the same time as the state itself. In its present form, as an unceasing attack by civilians upon the military, this phenomenon surfaces between the world wars. Churchill²⁴ and Mannerheim are both examples of failure to provide security as a result of politicians' myopia²⁵ or unfortunate coincidence. Even so, a different explanation may be possible in connection with the interests of both politicians and bureaucrats.

Prior to achieving an advantage in the division of the budgetary pie, one is usually required to ground the problem priority and bureau's alleged advantages by “solving problems”. Care “from cradle to grave” for those citizens who are allegedly limited in their ability to undertake action makes for potentially unlimited opportunities for expending budgetary means and for mass legal bribery of the voters.²⁶

Defence expenditures “are sold” to the welfare dependent voters with a great deal more trouble. So, at the end of this route, modern legislator defines spending for mixed public goods' provision (social spending) as ‘mandatory outlays’ defended by specific laws and pure public goods (military spending, first and foremost) as ‘discretionary outlays’.

²⁴ See CHURCHILL, Winston S. *The Second World War, Volume 1 - The Gathering Storm* (Winston Churchill World War II Collection). Rosetta Books, 2010. Primarily, chapters 5 (“Years of Locust Attack”), 7 (“Balance in the Air is Lost”), and 8 (“Challenge and Response”) (first published 1953).

²⁵ As justification for the most complete refusal by the opposition to take any measures whatsoever to lend strength to our air force, Attlee, speaking on its behalf, stated the following, “We deny the need to increase our air force... We do not agree with the claim that fortifying the English air force will aid the preservation... of peace throughout the world, and we utterly reject any pretense of equality.” The Liberal Party supported this resolution about a vote of distrust. Ibid. p. 103.

²⁶ YANOVSKIY, Moshe - SHESTAKOV, Daniel - ZHAVORONKOV, Sergei. *Universal suffrage: Undeclared conflict of interest* [on-line]. 2016 (updated version of report for Prague conference on Political Economy, 2016). [cit. 2016-11-01]. Available from: <http://ssrn.com/abstract=2745294>

Who is afraid of an efficient military leader?

Assume an elected leader who has made a strategic choice in favour of providing his nation with defence and security based on deterrence. To deliver on this commitment, the country's leadership must pose a credible threat of retaliation in the face of potential enemies. To make his threat credible, the leader needs:

- To maintain the edge in the arms race
- To demonstrate readiness and determination to fight, to attack and to win
- And, last but not least, to promote capable, gifted military leaders

The choice in favour of a “position of strength”, deterrence, and credible threat is risky and not always profitable for an elected politician.²⁷ Modern politicians have strong incentives to avoid making risky choices (see the “Model” section of Supplementary Materials).

Military bureaucrats in western democracies by and large preserved their “fair share” of the GDP during the span of years between WWII and the collapse of the USSR. Even so, it should be noted that defence spending as a share of total government expenditures in these states declined throughout this period.

The real test of military officials' readiness and ability comes with military action. In military bureaucrats' eyes, the option of avoiding the risk of having to demonstrate the worth of their work on the battlefield does not look all that bad. They have good reason to join the anti-militarist coalition with the proclamation that “war is not a solution”. They also have a vested interest in promoting diplomacy and foreign aid to poor countries, which would in effect take the place of deterrence based on the credible threat of the use of military force (all this goes for the military bureaucratic establishment, to say nothing of diplomats and other bureaucrats in civil service). A strong and capable military leader would in all likelihood prove a cause of discomfort and source of trouble for his country's ministry of defence; efforts are likely to be taken to prevent him from taking advantage of a genuine opportunity to excel.

The minority

Here we need to make reference to a fact which is common knowledge. Successful military leaders are a very scarce resource. This is as much as to say that officers of genuine ability comprise a minority in any army,²⁸ as risk lovers are greatly outnumbered by risk-averse persons. The army's capacity and strength depend on the level of tolerance shown to this handful of capable military men.²⁹ Eventually, the defence ministry has to acknowledge the fact that it must aim and invest effort in working for decisive military victory; it then has no alternative but to be on good terms

²⁷ DE MESQUITA, Bueno Ethan. Politics and Suboptimal Provision of Counterterrorism. *International Organization*. Winter 2007-08, Vol. 61, pp. 9-36.

²⁸ The majority of generals “... who fought not to win but to avoid losing”, for details see Supplemental Materials.

²⁹ Or else, the people will be forced to tolerate special interests' ('influential' groups') choice instead: “Advancement [in the Army] is a political process...” See excerpt from our interview with IDF Lt. colonel Ze'ev Lerer in Supplemental Materials.

with these often rude, unpleasant, eccentric, imperious, and adventurous men (consider the instances of Douglas MacArthur, George Patton, or Ariel Sharon - see "...Problematic Winners" in Supplementary Materials).

Military leaders of this type are exacting and often seem to be petty tyrants (e.g., Rafael Eitan, George Patton, Alexander Suvorov, or Yonatan Netanyahu).

Hence taxpayers and their representatives, the elected politicians, need to hold these capable leaders in high regard, sustaining a stable political demand for what the leader can provide; the civilian segment of society needs to choose, to defend, and to promote the kind of capable general, who can ensure that its defence needs are in fact met (Abraham Lincoln's support thrown behind Ulysses S. Grant is the best pattern among the famous cases).

"Thug", "butcher", "hero" - these and other apparently mutually exclusive terms are all often used to refer to the same person. The choice of descriptive wording depends on the choices already implicitly made by the public. The civil - and frequently the military - bureaucratic establishments are the "natural enemies" of successful military generals (winners). The military department prefers nice, risk averse general. The problem is: "you don't win wars by having nice men".

Modern military justice is the perfect instrument for fighting (working to exclude, to isolate, and to delegitimize) the most successful military leader. The moral delegitimizing has an adverse impact on the process of the selection of youths aspiring to a military career. As a result of having instituted punishment as a reaction to its own officers' military success, the army gets rent-seekers or, at best, bureaucrats, instead of hunting for glory idealists).³⁰ Some outstandingly brave and gifted commanders have decided to abandon their original stances, apparently giving up their former beliefs, and undertaken the "fight for peace" instead, because "war is not a solution."

There are plenty of instances, especially from among those generals who first started their political careers in democracies with universal suffrage, where they needed to secure the support of leftist voters and the cooperation of bureaucrats (the cases of Wesley Clark, Jim Webb, Ehud Barak, Ariel Sharon, and many others).

THE CASE

The authors of modern international military justice norms implicitly suppose there is some observable and reasonable ratio of military casualties to civilian casualties (collateral damage). They believe the casualty assessment could be made before the attack with a reasonable error as they try to outlaw "indiscriminate" or "disproportionate" use of force.

One may reasonably assume the existence of positive correlation between military and civil (collateral damage) casualties as a result of the attack, but not forecast its real values. The civilian victims resulting from the attack (not due to the location of the attackers' troops on the ground in densely populated areas) can now be interpreted as

³⁰ SMITH, Adam. *On Volunteers in the First Days of War*, p. 127. The Glasgow Edition, 1976; on talent distribution see also MURPHY Kevin M. - SHLEIFER, Andrei. - VISHNY, Robert W. The Allocation of Talent: Implications for Growth. *Quarterly Journal of Economics*. 1991, Vol. CVI, pp. 503-530.

war crimes. The new approach discourages an offensive attack as a reasonable choice for the law-abiding commander, and eventually prevents the law-abiding side from being victorious. Such rules make war endless, multiplying civilian deaths and suffering (Iraq military situation development, Islamic State, etc.).

What is the reason for the emergence of strange new norms of military justice, and court decisions based on these norms, which make victory less attractive than defeat for members of the armed forces?

It would seem some new moral standard is at stake, which has come to be in demand after the horrors of World War II. Yet it is clear that had these new norms and approaches been applied prior to the end of World War II, the war and its outcomes would have taken an unavoidably different course. It would have been impossible to defeat Nazi Germany by guaranteeing the enemy impunity in using tactics of the “human shield” kind together with punishing our own officers and generals for the consequences of the enemy’s use of such tactics.

It is a historical fact that the immediate impression made by the war led to the ratification of the 1949 Geneva Convention concerning the defence of the civilian population in times of war. However, in no way it hindered the destruction of the enemy together with the human shield, unambiguously placing the burden of responsibility for civilian lives on the side resorting to human shields for purposes of defence, rather than on the side of the attacker. The side that has deployed its forces among civilian targets is the one responsible for losses.³¹

Protocol 1, dated June 8, 1977 (hereafter the Protocol), to the Geneva Convention of 1949 requires to weight and to compare “incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 51 of the Protocol).³²

Keiler (2009) cites a reference to the directive³³ which forbids the American military to attack, in cases when the possible losses to civilian targets are incomparable to the anticipated military gain. This requirement echoes the requirement articulated in the Protocol. Such a requirement is all the more surprising in light of the fact that neither the US nor Israel have signed and ratified the aforesaid Protocol.

The Protocol itself constitutes the principal international-legal documented act introducing responsibility for “disproportionate use of force” (to be more precise, “excessive” use of force) without providing due, precise definition of criminal conduct or at least wrongful activities. The notion commonly resorted to today of “disproportionate force” is not accompanied by even a minimum attempt at definition, or the least sources of its legal meaningfulness. The reference to Article 51 in the 1st Protocol is the attempt by a number of legal scholars to discover a rational explanation

³¹ See Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 [on-line]. [cit. 2016-11-01]. Available from: <http://goo.gl/RqI4fy>.

³² See also further development - Article 26(3)(b) of the draft Additional Protocol II submitted by the ICRC to the CDDH [on-line]. [cit. 2016-11-01]. Available from: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule14.

³³ Law of Land Warfare Manual, FM 27-10, Chapter 2, Paragraph 4.1 [on-line]. [cit. 2016-11-01]. Available from: <http://goo.gl/pYaH7j>.

and sources for this bizarre notion.³⁴ G. P. Fletcher makes independent attempts to decipher the notion of disproportionate force. He demonstrates that, given the current accepted use of the term, doing this in a legally correct manner is impossible. As for the meaning of the term in practice, this is incompatible with both the elementary requirements of law and the possibility of conducting the combat action.

Great Britain, Germany and France ratified the aforementioned Protocol, making crucial reservations, including ones pertaining to Article 51. They all emphasized that they understand “attack” rather broadly.³⁵ Great Britain also reserved the right to refuse the obligations ensuing from the Protocol, should the “adverse party” violate the same.

It should be noted that most countries signed the Protocol without making substantial reservations.

At the same time, most of the “non-altering” signatories apparently have no intention of observing the requirements of the Convention and Protocol. This presupposition is based on the fact that in the past they never observed these, or the even more narrow requirements of the original text of the Geneva Convention (Syria, which has already been mentioned in this connection, Congo, Uganda, Cuba, North Korea, Sudan). To these last we should also add the USSR, which ratified the additional Protocol without any amendments.³⁶

Democratic countries which signed the Protocol without making reservations are almost all small countries using the “umbrella” of the US (which shirked signing) and other large powers, which did make substantial reservations.

The US and Israel never ratified the Protocol. The US and Israel do not recognize the authority of the International Criminal Court (ICC). The US motivates this refusal by the need to protect its military from persecution (even though the Clinton administration signed the Roman Statute in 2000, the next administration, upon running into the must of military action, immediately took legislative measures in the opposite direction). The agreement and work of the ICC are now explicitly in contradiction to the special law accepted during the term in office of George Bush, Jr., the American Servicemembers’ Protection Act of 2002 (ASPA 02).³⁷ Israel’s reasoning concerning this issue is similar.

The Protocol adoption empowers dramatically military lawyers and courts in charge. So, the phenomena of the Protocol application (contrary to the elected officials’ will) in Israel and in the US could be explained partly by this group’s special interest (see, for example, Shurat haDin 2015 conference materials, 2015).³⁸

In democratic countries readiness to take on the duty of prosecuting one’s own military

³⁴ FLETCHER, George P. *The Law of War and Its Pathologies* [on-line]. Working paper in preparation to Herzliya conference 2010, IDC, 2010. [cit. 2016-11-01]. Available from: <http://goo.gl/83thn3>.

³⁵ “...the attack considered as a whole and not only from isolated or particular parts of the attack” [cit. 2016-11-01]. Available from: <http://goo.gl/NW90LG>.

³⁶ Ibid.

³⁷ Title II of P.L. 107-206; 22 U.S.C. §§ 7421-7433 - see WEED, Matthew ‘International Criminal Court and the Rome Statute: 2010 Review Conference’, Congressional Research Service 75700, R41682, March 10, 2011.

³⁸ YANOVSKIY, Moshe - ZATCOVETSKY, Ilia. *How to Restore Army’s Deterrence Capacity* [on-line]. Shurat haDin May 2015. [cit. 2016-11-01]. Available from: <http://ssrn.com/abstract=2626141>.

servants for having performed what are, as a rule, successful combat operations, is inversely proportional to the frequency of the country's need to apply military force.

Among political parties and coalitions, the supporters of meting out punishment to the military for success are, by our definition (and frequently by their own self-proclaimed identification) "left-wing" politicians. These coalitions' gains are considerable in all democratic states, including the US³⁹ and Israel.⁴⁰

HYPOTHESIS AND PRINCIPAL OUTCOMES OF STATISTICAL ANALYSIS

The following hypotheses have been tested.

- (1) Universal suffrage stimulates or even creates public (electoral) demand for a welfare state. This demand is reflected in the rising of powerful left-wing parties, that become, over time, part of the political establishment.
- (2) A welfare state means simultaneously sharp growth in spending on mixed public goods (education, healthcare, aid for the elderly, the handicapped and the like). Social spending becomes the leading spending category for a historically extended period of time, while spending on pure public goods assumes secondary status in the total structure of expenses of the general government. This is true even in cases when a stable share of the GDP is retained.
- (3) The process of relative "marginalization" of military spending goes hand in hand with the marginalization of military offices, delegitimization⁴¹ of the military as a corporation or profession, as well as imposing ever more rigid constraints on the military for handling combat actions, up to the point of preventing the very possibility of achieving victory.⁴²

The introduction of universal suffrage caused a rapid rise of lefts (specifications 1-3, Table 8.1. of Supplementary Materials⁴³) - cradle to grave caring state supporter over "night watchman state". Lefts push up spending for "mixed public goods" decreasing the share of military spending in total government spending (see Table 8.2., *ibid*).

³⁹ See the case of US vs. Wuterich. Marine Staff Sergeant Frank Wuterich was accused of murdering a number of civilians in cold blood, including men capable of bearing arms. According to the version submitted by military servicemen themselves, the incident involved combat of the usual type with irregular fighters (not in uniform) who resorted systematically to the use of "human shields". The version about cold-blooded murder was rejected, based on an expert report which demonstrated that none of those killed had been killed by being shot at point-blank range - see New York Times report [on-line]. [cit. 2016-11-01]. Available from: <http://goo.gl/2VrPUz>.

⁴⁰ For Israel case details and peculiarities see ZATCOVETSKY, Ilia - YANOVSKIY, Moshe - GINKER, Timofey - ZHAVORONKOV Sergei. *The Evolving Priorities of the Israeli Left: From Social Justice to Security and Back* [on-line]. 2014. [cit. 2016-11-01]. Available from: <http://ssrn.com/abstract=2425418>.

⁴¹ Intended here is the public demonstration of disdain, or contesting the correctness of solving problems by using arms; see Smith ref. 21, Chapter 1.

⁴² In Clausewitz's terms: "Each strives by physical force to compel the other to submit to his will: his first object is to throw his adversary, and thus to render him incapable of further resistance" (CLAUSEWITZ, Carl. 2009, 18: Book I, Chapter I para 2, "Definition" or see: <http://goo.gl/4Mg4V> [cit. 2016-11-01]).

⁴³ See online version of the article.

Punishment of the military for their (successful) activities phenomena, described above, were not refuted by the statistical analysis (Table 8.3).

Thus, all three hypotheses are supported by the statistical analysis. Variable specification, data description and sources: tables with regression specifications and outcomes are presented in Supplementary Materials (“Statistical Analysis”).

CONCLUSION

Government spending priorities in old democracies show that these states made a fundamental choice to “promote happiness” by every conceivable means, rather than opting for the modest “simply to prevent evil”.

Large-scale social projects and the growth of the share of such spending within the overall state expenditure cut down the sensibility of society, of voters - the budget clients - to threats connected with low efficacy of the army and security services.

Post-1977 military justice institutions (“disproportionate use of force” and “exceeding the limits of necessary self-defence”) indicate the new status of the army in old democracies as well as the decreasing share in the budget spending.

Military spending efficiency is crucially dependent on soldiers’ legal protection quality. A responsible government “has an obligation to protect the members of its armed forces, to the maximum extent possible, against”⁴⁴ politicized or poor substantiated criminal prosecutions. This protection is the government’s moral obligation to soldiers, it is mandated by moral obligations to civilians, protected by soldiers, and secures effectual provision of the most important public goods: defence and security.

⁴⁴ ASPA 02 Section 2002 (8).