

In August of 2001, a group of leading international law scholars gathered at the U.S. Naval War College in Newport, Rhode Island, to meet and discuss the many issues associated with the NATO campaign in Kosovo. Their charge was to discuss, argue, learn and write about the successes and mistakes of the campaign. More broadly, they analyzed the law of armed conflict (LOAC)¹ in the era of modern warfare. *Legal and Ethical Lessons of NATO's Kosovo Campaign* is a compilation of the debates and presentations made by this learned group. As Wall captures in the introduction of his book, the sad irony of the conference is that the scholars in attendance could never have predicted the tragedy of 9/11 was a mere month away. In a brief few hours on that Tuesday morning in September, modern warfare changed again. This conference's issues became critically important to decision-makers around the world. The War on Terror ushered in a whole new array of problems challenging established LOAC principles. It is with that chilling knowledge the book puts forth reasoned debates as to issues ranging from the *jus ad bello* and, most importantly in the current context, the *jus in bello*. Throughout, regardless of which side of the debate the attendees espoused, it is clear lawyers have become an integral part of combat operations. The assembled scholars, including Dr. Nicholas Rostow of the United States mission to the United Nations, Sir Adam Roberts of Oxford, Dr. Leslie Green, and Prof. John Norton Moore, present a thoughtful and insightful discussion on the topic. This compilation by scholars, practitioners and warriors makes for a most enjoyable and learned discussion of the issues. The book is well reasoned and, as I will discuss, a must read for all policy makers.

Overview: Wall, himself a professor of International Law at the Naval War College, brings together former Clinton national security staff members including Military Court of Appeals of the Armed Forces Judge James Baker (former NSC Deputy Legal Advisor and Legal Advisor in the Clinton Administration), Prof. Yoram Dinstein of Israel, the brilliant Prof. Ruth Wedgewood, and various operational commanders to analyze and best learn from both the successes and failures of U. S. participation in the Kosovo effort. He makes clear Kosovo was a unique operation — a coalition of nations, engaging in a humanitarian effort, imposed its will on that of a sovereign entity. Regardless of the international motivations, he states it was “war.” Therefore, LOAC did and should have applied to the operations. Beyond the Kosovo conflict, the author emphasizes the law of armed conflict is changing, and the traditional norms of what is, or is not, armed conflict is changing as well. The War on Terrorism involves a sovereign nation (the United States) engaged in combat with non-state actors. These “combatants,” who operate in (at the minimum) fifty countries and engage in unconventional and arguably illegal combat tactics, do not

fit the traditional paradigm of warfare. Clausewitz himself would be challenged as to how best describe this new unconventional warfare. Approaching the subject from this perspective, the book works very well. It makes one pause and reflect on the diverse issues associated with modern warfare. Collateral damage? Perfidy? Human shields and war crimes? Perhaps the most controversial area is that of “distinction”: distinguishing between civilian and military targets, especially when many of these new illegal combatants’ uniforms are civilian clothes. The book reveals how the legality of military operations is becoming increasingly complex. I do note, with some concern, the notion of total war is never mentioned in the book. It appears almost *understood* (emphasis added) by the scholars assembled that such notions are not even worthy of debate in modern warfare. Apparently traditional war, as I knew it, no longer exists. The intervention of many humanitarian rights groups and non-governmental organizations are making warfare for the modern soldiers and sailors more difficult than ever.²

Wall addresses the concerns and knowledge requirements of readers beyond his core audience of international law attorneys. He correctly states the law of armed conflict is no longer simply for the National Command Authority, lawyers at the NSC and the Pentagon. It is now an “obligation” imposed on even the ordinary foot soldier. Thus, these implied obligations require the increased involvement of military lawyers to advise battlefield commanders and their troops of the requirements imposed by what would now be considered customary international law and LOAC.

Organization of the book: The book is organized in a lucid, compelling fashion. Part I includes written remarks of the three keynote addresses during the three day conference, opening remarks of then President of the Naval War College, Vice Admiral Arthur Cebrowski; learned comments of The Honorable Jim Baker, discussing the Clinton Administration involvement with target selections and management of the operational warriors while he served as Legal Advisor to the NSC, and illuminating perspectives from Lieutenant General Short (Ret.), former NATO Air Commander in Operation Allied Force. The rest of the book is logically organized and covers all relevant areas for scholars to debate: Part II is the applicability of the Law of Armed Conflict, Part III is Targeting, Part IV is Collateral Damage, and Part V is Coalition Operations. The book concludes with “the road ahead” and tackles the myriad problems of using military force for humanitarian intervention. An appendix provides the *Final Report of the Prosecutor by the Committee* — a controversial piece interwoven throughout the text (and apparently the conference itself). If for nothing else, this report demonstrates why the U.S. is not, and should not, be a signatory to the International Criminal Court (ICC).

Wall is successful in making the book relevant to both lawyers and decision-makers, as well as to operational warriors. It should, and does, provide interest and appeal across the spectrum. Wall explicitly states there are four major lessons learned from Operation Allied Force:

- 1) The Law of Armed Conflict applies to any clash of arms between two or more states.
- 2) Military objectives may be lawfully targeted and they are defined within the temporal context of the given conflict.
- 3) The principle of “proportionality” prohibits *excessive* (italics added) collateral damage, yet the law does not impose absolute rules regarding implementation of weapons and tactics.
- 4) Despite the proliferation of treaties on the law of armed conflict, customary international law will continue to define major elements and interpretations of the LOAC.

Recommendations: In general, the book analyzed divergent interpretations of the debate. The liberal perspective, as well as the conservative viewpoint, are offered for the reader to reflect upon. I personally disagree with Wall in his limited definition on what constitutes armed conflict (See, para 1 above). His definition is particularly limiting considering the context under which the U.S. and current administration are operating. The War on Terror is not between two nation states. Yet I think we all would agree that LOAC applies to our combat operations as well as those of the al Qaeda. Specifically, the United States is about to try six suspected members of the enemy for violations of LOAC. In his introductory remarks, Wall seems aware of the issue of non-state actors involved in the current War, but he still addresses LOAC as applicable only in the traditional sense (e.g., when there is a “clash of arms between two or more states”). I would suggest a broader definition. While non-state combatants may be considered illegal actors under LOAC, applying “gotcha” law enforcement tactics against these illegals would be the wrong approach. Instead, LOAC should be read expansively to permit war fighting methods against such terrorists.

Besides some formatting disconnects, and specific issues raised herein, this book is a “must read” for policy-makers and decision-makers at all levels of government and academia. The current world situation, rightly or wrongly, demands in-depth knowledge of the law of armed conflict. As the world becomes increasingly internationalized, consensus on what is or is not lawful in combat operations will become critical to successful operations before, during, and after the operations have concluded. United States policy makers must be versed in this area. Our positions can not be weakened by those who would use LOAC as a means to embarrass or humiliate the U. S., or worse yet, individual soldiers, sailors, marines, airmen, and coastguardsmen. This

book is useful for bringing the reader up-to-date on LOAC arguments being undertaken in academia and the world community.

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Footnotes

¹ The Law of Armed Conflict (LOAC) is the preferred term for this area of law. It had been known as the Law of War and many today, outside of US governmental and military circles, refer to it as International Humanitarian Law.

² Brigadier General Charles Dunlap, USAF, has lectured on the growing use of what is known as “Lawfare.” It is the theory that many nations and non-state actors are using the legitimate aims of humanitarian law and rights groups against conventional combat operations of the West. At a minimum, the use of lawfare can lead to negative public and international opinion of Western nations’ legitimate combat objectives. In essence, the group will use lawfare to create the appearance of violations of LOAC when none really occurred. Operation Iraqi Freedom has offered many examples of using LOAC and the law as a means to confuse otherwise lawful targeting and wrongfully embarrass legitimate military efforts.