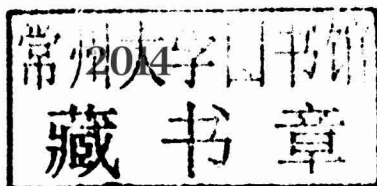


ISRAEL YEARBOOK
ON
HUMAN RIGHTS



VOLUME 44



BRILL
NIJHOFF

LEIDEN · BOSTON

ISSN 0333-5925

ISBN 978-90-04-28142-4 (hardback)

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TARGETING IN AIR WARFARE

*By Kenneth Watkin**

I. INTRODUCTION

*“Yet it is submitted, it may be unprofitable to inquire whether the practice of aerial bombardment in the form and to the extent which it assumed at the end of the Second World War was in accordance with international law The fact is that in the matter of aerial bombardment there is no rule firmly grounded in the past on which we can place reliance – for aerial bombardment is a new weapon which raises new problems”.*¹

Hersch Lauterpacht, 1952

The statement by Professor Lauterpacht in 1952 that there was no rule regulating aerial bombardment reflects the significant challenge faced by the international community in its attempt to regulate air warfare in the aftermath of World War II.² The desire to control this method of war had to be reconciled with the ability of mankind to produce technologically sophisticated weaponry that dramatically changed how wars were fought. This effort was made more demanding because there is often a resistance to limiting means of warfare for humanitarian reasons “when they threaten to assume the complexion of a decisive limitation of their [the belligerent’s] freedom of action bent upon achieving victory”.³ Another problem faced by those seeking to control air warfare is that “war” is not simply about weapons or how they are used. In the post-Westphalian context, the conduct of hostilities is fundamentally about marshaling the resources of a State to apply significant levels of violence against an adversary.⁴ As Clausewitz most famously stated “war is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means”.⁵ From the outset air power has been seen by many as a unique tool with which to attempt to influence the enemy State. In air warfare much of

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¹ See H. Lauterpacht, “The Problem of the Revision of the Law of War”, 29 *B.Y.B.I.L.* 360, 365-66 (1952).

² *Id.*

³ *Ibid.*, 366.

⁴ See M. Van Creveld, *The Rise and Decline of the State* 249 (1999); W. Thomas, *The Ethics of Destruction* 62 (2001); P. Bobbit, *The Shield of Achilles* 93-94 (2002).

⁵ C. Von Clausewitz, *On War* 87 (M. Howard & P. Paret trans. & eds., 1986).

the desired outcome is influenced by the application of violence. As has been noted “[t]he central importance of targeting in the direct and fundamental relationship between the use of force and the accomplishment of the strategic goal(s) of the military operation as a whole”.⁶

While at the turn of the 20th century the principle of distinguishing between civilians and “belligerents” was of fundamental importance, inter-State warfare also implicated the broader population as part of the “enemy”. This resulted in considerable debate regarding the participation of civilians in the war effort.⁷ The advent of “total” war, with its mobilization of the total human and material resources of the State was to significantly close the gap between belligerents and the enemy civilians of a State with tragic consequences in terms of protecting civilians from the horrors of war.⁸ Although aerial bombardment had been a reality since the beginning of the 20th century,⁹ and attempts to regulate its use were made throughout the first half of that century,¹⁰ the practice of States during World War II was such that the principle of distinction itself was called into question.¹¹ It was the introduction of strategic bombing campaigns in that conflict which came to personify the tremendous destructive power of the modern industrialized State. While it was not the only way in which warfare impacted on the civilian population, airpower provided a means by which State directed

⁶ W.H. Boothby, *The Law of Targeting* 4 (2012).

⁷ See the *Manual of Military Law* 236 (His Majesty’s Stationary Office, 1914).

The *Manual* states that “every subject of the state becomes an enemy to every subject of the other state, however, international law restricts hostilities to “the armed forces of belligerents, and that ordinary citizens of the contending states who do not take up arms and who abstain from hostile acts, must be treated leniently ...”.

⁸ See Y. Dinstein, *War, Aggression and Self Defence* 13, para. 31 (5th ed., 2012):

A war may be deemed ‘total’ not only when its goal is the complete subjugation of the enemy. A war is total also when the means, used to attain a limited objective, are total. That is to say, war may be catalogued as total when the totality of the resources (human and material) of a belligerent State is mobilized, so as to secure victory at any cost.

See also J.L. Kunz, “The Chaotic Status of the Laws of War and the Urgent Necessity for Their Revision”, 45 *A.J.I.L.* 37, 41-42 (1951).

⁹ See S. Lindqvist, *A History of Bombing* 1 (2001): “The first bomb dropped from an airplane exploded in an oasis outside Tripoli on November 1, 1911”.

¹⁰ See J.M. Spaight, *Air Power and War Rights* Ch. X, 244-58 (3rd ed., 1947); W.H. Parks, “Air War and the Law of War”, 31 *Air Force L. Rev.* 1 (1990).

See also the Hague Rules of Air Warfare, 1923, 32 *A.J.I.L. Supp.* 12 (1938).

¹¹ See Lauterpacht, *supra* note 1, at 364: “In any case, whatever may have been the original merits of that distinction, the phenomenon of total war has reduced it, in most respects, to a hollow phrase”. See also Spaight, *supra* note 10, at 43-47 (for a discussion about the changing views regarding factory workers as “quasi-combatants”, although the author remains in favour of their being targeted).

violence could be inflicted on a broad spectrum of targets far beyond the front lines.¹²

In the years following World War II there was a persistent, if at times labored,¹³ effort to re-assert the distinction principle and regulate the conduct of hostilities “not by reference to existing law but to more compelling considerations of humanity, of the survival of civilization, and of the sanctity of the individual human being”.¹⁴ However, it was not until the 1970s that the legal framework for controlling this “new” means of warfare was to be established in the form of Additional Protocol I to the 1949 Geneva Conventions.¹⁵ Notwithstanding the development of this Protocol, there remained a need to clarify the law as it applied to air operations. This occurred, in part, because although 89% of States are parties to Additional Protocol I there remain significant “airpower” States, such as the United States and Israel, which are not bound by its provisions.¹⁶ The need to clarify the humanitarian norms governing the use of air power resulted in the development of the 2009 *HPCR Manual on International Law Applicable to Air and Missile Warfare*¹⁷ (*HPCR Manual*) and its accompanying

¹² See L. Nurick, “The Distinction Between Combatant and Noncombatant in the Law of War”, 39 *A.J.I.L.* 683-85 (1945). This insightful 1945 review of the effects of World War II looks not only at airpower but also artillery bombardment, naval bombardment, sieges, blockade and naval contraband enforcement.

See also Lauterpacht, *supra* note 1, at 373-75; W.J. Fenrick, “The Rule of Proportionality and Protocol I in Conventional Warfare”, 98 *Mil. L. Rev.* 91, 114-17 (1982).

¹³ See K. Suter, *An International Law of Guerrilla Warfare* 39-44 (1984) (for a discussion of the initial reluctance of the international community to become involved in development of international humanitarian law in the post World War II era).

¹⁴ See Lauterpacht, *supra* note 1, at 379.

¹⁵ See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, 1125 *U.N.T.S.* 3; hereinafter: AP I.

The four 1949 Geneva Conventions are:

- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949, 75 *U.N.T.S.* 31;
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949, 75 *U.N.T.S.* 85;
- Geneva Convention (III) Relative to the Treatment of Prisoners of War, 1949, 75 *U.N.T.S.* 135; and
- Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 1949, 75 *U.N.T.S.* 287.

¹⁶ State Parties to the Following International Humanitarian Law and Other Related Treaties as of 16-May-2013, International Committee of the Red Cross, online: <http://www.icrc.org/applic/ihl/ihl.nsf/vwtreaties1949.xsp?Redirect=0> (where it is indicated there are 173 States Parties to AP I).

¹⁷ *HPCR Manual on International Law Applicable to Air and Missile Warfare* (Program on Humanitarian Policy and Conflict Research at Harvard University, 2009); hereinafter: *HPCR Manual*.

Commentary (HPCR Manual Commentary).¹⁸ In outlining these Rules and by providing explanatory notes, based on both treaty and customary law, the *HPCR Manual Commentary* constitutes the most comprehensive effort to date to identify how international humanitarian law impacts on the conduct of aerial warfare.¹⁹ It is the impact of the post-World War II international humanitarian law addressing the identification of, and attack on, persons and objects that is the focus of this article.

Of necessity the *HPCR Manual Commentary* deals particularly with the law governing the use of force during the conduct of hostilities. The acquisition and destruction of an enemy's war fighting capability is often referred to as "targeting". That term has been defined as "[t]he process of selecting and prioritizing targets and matching the appropriate response to them, considering operational requirements and capabilities".²⁰ It is here that the principles, customary norms and "black letter" provisions of international humanitarian law come face to face with the realities of modern inter-State conflict. Significantly, for those seeking to enforce the rule of law this targeting process also provides the framework within which decision-makers, both military and civilian, who take part in the conduct of hostilities, may be held accountable. As a result the discussion of whether the armed forces of a State have conducted their operations lawfully increasingly takes place in the context of whether those forces have met the legal requirements of targeting.

A key requirement for analyzing aerial targeting is to situate that activity in the context of how States conduct air warfare. The analysis of targeting in this article is divided into three parts. First, the nature of warfare as a State based activity and with it the impact the levels of war (e.g. strategic, operational and tactical) have on the application of air warfare will be explored. In doing so particular attention will be paid to the development of airpower theory and challenges that arise in the use of airpower as a strategic "weapon". As will be demonstrated it is the application of airpower to meet strategic goals that has impacted on the legal definition of "military objectives" and with it the effort to limit collateral civilian casualties and damage. Secondly, the military doctrine governing the application of airpower will be reviewed. The framework developed by State military forces to conduct air warfare not only demonstrates how airpower theory is put into practice it highlights a number of the challenges facing military

¹⁸ Program on Humanitarian Policy and Conflict Research at Harvard University, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare* (2010); hereinafter: *HPCR Manual Commentary*.

¹⁹ *HPCR Manual*, *supra* note 17, Definitions, para. 1(s) for reference to being based on both treaty and customary law.

²⁰ U.S. Dep't of Defense, *Dictionary of Military and Associated Terms* (8 Nov. 2012, as amended through 15 Nov. 2013), online: http://www.dtic.mil/doctrine/dod_dictionary/index.html; hereinafter: *DoD Dictionary*.

forces seeking to apply targeting “principles”. This part will discuss the operational planning process; and highlight targeting doctrine such as effects based targeting, the phases of the targeting cycle, and time sensitive targeting.

Thirdly, building on the preceding contextual development, the late 20th Century attempt to regulate targeting will be discussed. Particular attention is paid to the two main trends applied in interpreting the legal definition of military objectives. One approach seeks to restrictively apply the wording of Additional Protocol I with a bias towards narrowly viewing lawful targets as being more directly associated with the tactical level of war fighting. The second broader method applies a more traditional strategic approach seeing warfare as a State based activity resulting in a broader set to targets that may be attacked. Ultimately, it is suggested the second method of interpreting the law governing what objects may be attacked more accurately reflects how air warfare is conducted and wars are fought. The analysis then turns to the requirements of the principle of distinction; the identification of people and objects as targets; the resolution of doubt; and application of targeting precautions, both in the offence and defence. The goal of this assessment is to outline the challenges associated with applying international humanitarian law provisions to the targeting decision-making process. To a large extent the discussion will deal with international armed conflict between States, however, where helpful reference is made to conflict with non-State actors as well.

II. LEVELS OF WARFARE: A CONTEXTUAL APPROACH TO ASSESSING TARGETING

A. Armed Conflict Between States: Strategy, Operations and Tactics

International humanitarian law is intended for practical application. This is particularly evident in respect of the targeting precautions to be applied by those who “plan or decide upon an attack”.²¹ Armed conflict can involve a broad range of warfare. Along the conflict spectrum the use of airpower can take place in total war in the form of international armed conflict between States²² at one end, to the conduct of drone strikes in contemporary

²¹ AP I, *supra* note 15, Art. 57(2)(a).

²² L.C. Green, *The Contemporary Law of Armed Conflict* 66-67 (2nd ed., 2000); Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 26, para. 61 (2nd ed., 2010).

See also Prosecutor v. Tadic (ICTY, Appeal Judgment, 1999), para. 84 (for confirmation that international armed conflict is primarily about warfare between States).

counterterrorism operations at the other.²³ The law governing aerial warfare also applies to non-international armed conflict.²⁴ However, it is in the context of a contest between States where the provisions of international humanitarian law governing air targeting were primarily developed. In order to understand the challenge of attempting to regulate air warfare during inter-State conflict it is essential to consider how such wars are ultimately fought; through the attainment of strategic, operational and tactical objectives.

Clausewitz noted that war is “not a contest between individuals”, but rather “[w]arfare comprises everything related to the fighting forces – everything to do with their creation, maintenance and use”.²⁵ In attempting to achieve a political objective the State marshals its resources to impose its will on an opponent.²⁶ For “[w]hen whole communities go to war—whole peoples, and especially *civilized* peoples – the reason lies in some political situation, and the occasion is always due to some political object”.²⁷ For Clausewitz the conduct of war consisted of the planning and conduct of fighting which were divided into two levels: tactics and strategy. The former involved “the use of armed forces in the engagement”, while strategy was “the use of engagements for the object of the war”.²⁸

The strategic level of war is a concept that has had a particular impact on the application of airpower and the identification of military objectives. The meaning of strategy has undergone considerable analysis since the early 19th century. “Strategy” is the term that is also used to describe higher-level national goals in armed conflict. It can have a narrow operational meaning such as that used by Clausewitz, or “broadly inclusive implications” extending to the use of all the State’s resources.²⁹ As James Spaight noted “[w]ar is the means by which [a nation] vindicates a vital right threatened or infringed ... [i]ts object is to cause the other State to desist from the action or

²³ D.H. Ucko, *The New Counterinsurgency Era* 88 (2009), where it is noted that counterterrorism has, in a modern context, been viewed by the United States military as “an almost exclusively strike-oriented endeavor”.

²⁴ *Prosecutor v. Tadic*, (ICTY, Appeal Chamber, 1995), paras. 96-127, where the provisions of international humanitarian law are extended to non-international armed conflict. See also *HPCR Manual Commentary*, *supra* note 18, at 6, para. E. where it is noted the *Manual* makes specific reference to the law governing aerial warfare in non-international armed conflict.

²⁵ Clausewitz, *supra* note 5, at 95.

²⁶ *Ibid.*, 75 (“War is thus an act of force to compel our enemy to do our will”).

²⁷ *Ibid.*, 86-87.

²⁸ *Ibid.*, 128.

²⁹ See P. Paret, “Introduction”, in *Makers of Modern Strategy: from Machiavelli to the Nuclear Age* 3 (P. Paret ed., 1986) (where it is noted strategy is not simply “the use of armed force to achieve the military objectives and, by extension, the political purpose of the war”, but is “also based on and may include, the development, intellectual mastery, and utilization of all the state’s resources for the purpose of implementing its policy in war”).

abandon the claim which is the cause of offence”.³⁰ Ultimately, a war is fought “in order to bring about a change of mind in another State”.³¹ Basil Liddell Hart refined this binary approach by dividing “strategy” into a higher and lower plane. In making this division he allowed for a broader concept in what he termed as “grand strategy” and the narrower military application of “strategy on a lower plane”. “[T]he role for grand strategy – higher strategy is to co-ordinate and direct all the resources of a nation, or band of nations, towards the attainment of the political object of the war – the goal defined by fundamental policy”.³² This distinction between the two levels of strategy (e.g. grand and lower strategy) is often reflected in contemporary military doctrine with reference to higher level “national” strategy³³ and lower level “military” strategy.³⁴ However, this distinction may also be dealt with under a generic title of “strategy” with the setting of “policy and national strategic objectives” being separated from the strategic military objectives that “facilitate identification of the military end state”.³⁵

As described by Liddell Hart, higher strategy also involved the fostering of people’s will to fight; the distribution of power between the services and industry; and included financial pressure, diplomatic pressure, commercial

³⁰ Spaight, *supra* note 10, at 2.

³¹ *Ibid.*, 3.

³² B.H. Liddell Hart, *Strategy* 322 (2nd ed., 1991).

³³ See, e.g., *British Defence Doctrine* (Joint Doctrine Pub. 0-01,1-4, para. 113, 2011), online: <https://www.gov.uk/government/publications/jdp-0-01-fourth-edition-british-defence-doctrine>, (“National strategy directs the co-ordinated application of the instruments of national power...in the pursuit of national policy aspirations. Accordingly, it lies within the political domain, principally with the Prime Minister and Cabinet, with advice from the National Security Council”).

See also *The Air Power Manual* (Australian Air Pub. AAP 1000–D) 46 (5th ed., 2007), online:

<http://airpower.airforce.gov.au/Publications/Details/161/AAP1000-D-The-Air-Power-Manual-5th-Edition.aspx> (“National strategic level refers to the broad political dimension of a conflict or other operation and the mobilisation and coordination of military and other national resources”).

³⁴ *British Defence Doctrine*, *supra* note 33, at 1-5, para. 116:

Military strategy links political aspiration, expressed in Government policy and military feasibility. It is derived from national strategy and determines how the Armed Forces should be configured and employed, in conjunction with the other instruments of national power, to achieve favourable outcomes.

See also *The Air Power Manual*, *supra* note 33, at 46 (“military strategic level refers to the military planning and direction of operations at the macro level. This level of command formulates the desired military end-states and broad military approaches to achieving these end-states”).

³⁵ *Doctrine for the Armed Forces of the United States* (Joint Pub. 1) 1-7 to 1-8, para. 5 b. (Mar. 2001), online:

http://www.dtic.mil/doctrine/new_pubs/jp1.pdf.

The United States doctrine also identifies a theater strategic planning level by the combatant commanders; hereinafter: *US Armed Forces Doctrine*.

pressure and ethical pressure to weaken an opponent's will.³⁶ Grand strategy, which "serves to bring out the sense of 'policy in execution'"³⁷ was identified as the responsibility "of the government and not of military leaders".³⁸ Strategy on the lower plane, the responsibility of military commanders, was defined as "the art of distributing and applying military means to fulfill the ends of policy" and involved not merely the movement of military forces "but also with its effect".³⁹ The "purpose of strategy is to diminish the possibility of resistance".⁴⁰ In contrast "tactics" is the term used for the disposition and control of the "military instrument" when it merges into actual fighting.⁴¹ Neither of the categories of strategy or tactics can be viewed as entirely separate, "because each not only influences but merges into the other".⁴²

Another level involving the conduct of warfare has subsequently come to be recognized within military doctrine: the operational level of war. This is the "level of war at which campaigns and major operations are planned, conducted, and sustained to achieve strategic objectives within theaters or other operational areas".⁴³ While airpower theorists had written comparatively little regarding the conduct of warfare at this level until the late 1980s this is where the "target sets" for the application of air campaigns are primarily developed.⁴⁴ The impact of these levels of war on air warfare: grand strategic, strategic, operational and tactical cannot be overstated. The reference to strategy in airpower doctrine is noteworthy as it recognizes that defeating an opposing State can involve activity seeking to impact the will of the opponent. Further, warfare is framed in terms broader than striking at military forces and can be extended to forms of "economic warfare", such as through the conduct of naval⁴⁵ and aerial blockades.⁴⁶ While the starvation of the civilian population is prohibited⁴⁷ the conduct of such economic warfare continues to be recognized under international humanitarian law.⁴⁸

³⁶ Liddell Hart, *supra* note 32, at 322.

³⁷ *Id.*

³⁸ *Ibid.*, 319.

³⁹ *Ibid.*, 321.

⁴⁰ *Ibid.*, 213.

⁴¹ *Ibid.*, 321.

⁴² *Id.*

⁴³ *DoD Dictionary*, *supra* note 20 (taken from the definition of the "operational level of war").

⁴⁴ J.A. Warden III, *The Air Campaign: Planning for Combat* 4-5 (1988) (commenting on the lack of air doctrine writing following World War II.).

⁴⁵ *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* 176-80 (L. Doswald-Beck ed., 1995) [hereinafter: *San Remo Manual*]; 1 *Israel's Public Commission to Examine the Maritime Incident of 31 May 2010* 38-45, paras. 29-36 (2010).

⁴⁶ *HPCR Manual Commentary*, *supra* note 18, at 287-300.

⁴⁷ AP I, *supra* note 15, Art. 54 (for international humanitarian law protection against using starvation of civilians as a method of warfare). *See also HPCR Manual Commentary*,

The link between the strategic, operational and tactical levels of war is reflected in the planning of air operations. The broader political objectives are established at the grand strategy level. Military objectives are then identified at the military strategic level. These objectives provide the guidance for the operational level commander who plans the military campaign. The operational level commander oversees the production of an operational plan and the employment of military forces.⁴⁹ The conduct of missions at the tactical level creates results that impact not only at that level, but also ultimately at the higher operational and strategic levels.

B. Air Power Theory

In order to understand the link between the levels of war and the conduct of air warfare it is important to consider the unique theoretical framework within which airpower has historically been viewed. During the past century air operations have developed into an essential and at times dominant element of contemporary warfare. This period has also witnessed a shift in airpower theory from annihilation towards effects based targeting that animates much of the targeting dialogue regarding contemporary conflict. Airpower is a dominant force in the conduct of operations. The attainment of air superiority by United States forces has been referred to as the hallmark of the American way of war since 1943. It has meant "U.S. ground forces have rarely had to deal with enemy aircraft overhead, and that air superiority has allowed U.S. ground forces the freedom to maneuver audaciously...."⁵⁰ As one leading airpower theorist has noted "[t]heory alone would suggest that surface warfare cannot possibly succeed if the surface forces and their support are under constant attack by enemy aircraft".⁵¹

Air warfare has been identified as a means of asymmetrically attacking an opponent.⁵² This concept of indirect warfare is neither new nor unique to air warfare as it has long been associated with what John Keegan has described

supra note 18, Rule 157(a) and (b), and Rule 158, outlining that the starvation of the civilian population is prohibited if it is the "primary purpose" of the operation. Further there is a requirement on the part of the Blockading Party to ensure passage of foodstuffs and other essential supplies essential for the survival of the civilian population.

⁴⁸ United Nations Charter, 1945, Art. 42, which recognizes that action that "may be necessary to maintain or restore international peace and security...may include demonstrations, blockade, and other operations by air, sea or land forces...."

⁴⁹ *US Armed Forces Doctrine*, *supra* note 35, at 1-8, para. 5(c).

⁵⁰ W. Murray & R.H. Scales, Jr., *The Iraq War* 180 (2003).

⁵¹ See Warden, *supra* note 44, at 14.

⁵² See M. Clodfelter, "Airpower Versus Asymmetric Enemies: A Framework for Evaluating Effectiveness", 16 *Air & Space Power J.* 37, 37 (2002), ("[A]symmetric warfare is about ends, ways, or means – fighting for ends that do not match an opponent's objectives, fighting in ways that differ from an opponent's approach to war, or fighting with means different from an opponent's resources").

as the “oriental way of war”.⁵³ What the development of air warfare did represent was a means by which the destructive and paralyzing military stalemate that highly industrialized European States had created in the early 20th Century might be overcome.⁵⁴ The discussion concerning the use of air power following World War I centered the view that attacks would be made on the “enemy’s great industrial and governing centers. All these attacks will be made against the civil population in order to compel it to accept the will of the attacker”.⁵⁵ Between the two great wars of that Century theorists (such as Major-General Hugh Trenchard, General Giulio Douhet and General Billy Mitchell) advanced theories expounding the unique war winning capabilities of the relatively new technology: the airplane.⁵⁶ The result, in theory at least, would be an air campaign against military and non-military targets in cities and areas internal to a State with the traditional sea and land efforts reduced to a sideshow.⁵⁷

Perhaps most significantly the post World War I period evidenced the development of an independent vision for the use of airpower that was significantly different than providing support to ground or sea warfare. However, it has been noted these early theories were often treated skeptically because “visionaries such as Douhet and Mitchell made sweeping claims for airpower that reached far beyond the then-available technology ...”.⁵⁸ At the same time early air power theorists were developing their vision for air warfare the inter-war years experienced a paralysis in attempts to revise the law in the form of two “opposite tendencies...the ideology of extreme pacifists, well intentioned, good but utterly utopian and the thinking of hard and shrewd people...who wanted to keep their hands free as to the conduct of the next war”.⁵⁹ Efforts were made, such as by the development of the 1923 Hague Rules of Air Warfare, to regulate air warfare. However, by 1939 “the norm against bombing civilians, while present, was weak and not internalized by the organizations responsible for the planning and prosecution of the air war”.⁶⁰

⁵³ See J. Keegan, *A History of Warfare* 387-92 (1993).

⁵⁴ *Ibid.*, at 390-91, for a discussion of western war making and its impact on 20th century warfare.

⁵⁵ Spaight, *supra* note 10, at 14 [quoting from J.C.F. Fuller, *Tanks in the Great War* 314-15 (1920)]. See also J.M. Spaight, *Air Power and War Rights* 13-19 (1924).

⁵⁶ See I.B. Holley Jr., “Reflections on the Search for Airpower Theory”, in *The Paths of Heaven: The Evolution of Airpower Theory* 579 (P.S. Meilinger ed., 1997) (for a critical discussion of the impact of early airpower theorists.); hereinafter: *The Paths of Heaven*.

⁵⁷ Spaight, *supra* note 10, at 14-19.

⁵⁸ Holley, *supra* note 56, at 597.

⁵⁹ See Kunz, *supra* note 8, at 39.

⁶⁰ See Thomas, *supra* note 4, at 125.