

## **BOOK REVIEW:**

# **THE WAR LAWYERS: THE UNITED STATES, ISRAEL, AND JURIDICAL WARFARE BY CRAIG JONES**

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In his book *The War Lawyers*,<sup>349</sup> Craig Jones offers a comprehensive critique of the interplay between international law and the advancement of aggressive military goals. His book examines the role of the laws of war and war lawyers in aerial targeting operations carried out by the US military in Iraq and Afghanistan, and the Israeli military in Gaza. In doing so, he argues that war lawyers have diligently and creatively interpreted International Humanitarian Law to deliberately expand the scope and space of what constitutes as permissible targets during air strikes. As a result, violence is not moderated by law but enabled, legitimized and extended by it, with international law becoming a steppingstone allowing for the achievement of military goals rather than a restraining force.

International Humanitarian Law aims to limit the use of violence in armed conflicts by restricting it to the amount necessary to weaken the military potential of the enemy. However, Jones argues that the law's indeterminacy

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allows it to be productive of violence and that war lawyers engage in a law-making enterprise when they give legal advice on targeting. As a result, legal advice does not fetter the army, as intended, but allows it the tools to win lawfully. Jones uses examples of the Vietnam War and the Iraq War to argue that law and war are ‘co-constitutive’, in that law can channel violence to make it seem legitimate and acceptable. He anchors this argument in the observation that military lawyers have become a constitutive element of the ‘kill chain’ of both U.S. and Israeli military forces, which has entangled violence with law and has enabled the legitimization of violence using a creative interpretation of the law.

The book focuses on the concept of ‘juridical warfare’. Juridical warfare is the use of military lawyers within the ‘kill chain’ to be able to legally justify every attack and ascertain its legality under IHL. Craig traces the evolution of this concept to the Vietnam war and the domestic and international backlash received by the American armed forces during it, especially after the ‘My Lai’ massacre. This established the need to include war lawyers in decisions of what and how to attack. Jones also explains that apart from on the ground mistakes made by US military forces, there was also a cultural shift within the U.S. army and officers wherein they wanted to ensure their actions had the cloak of legality. Consequently, the Department of Defense began the Law of War Program to educate every U.S. officer about IHL

The involvement of lawyers in this program led to the development of ‘operational law’ which Craig defines as the rules, regulations and departmental orders that were reconfigured in domestic law in conformity with international law. However, this ‘operationalization’ emphasized military rights as opposed to constraints within IHL. It was the practical version of

international law tailored to the needs of the military forces of America in order to help US armed forces achieve a range of objectives.

Operational law was first put to the test in the first Iraq war, where JAGs – Judge Advocate Generals (U.S. war lawyers) – were used to authorize various targets ascertained for military strikes. The book claims that a notion was developed where army generals deemed the advice of JAGs an authentic authorization of an attack. Craig uses particular examples to illustrate this like Operation Desert Storm, where JAGs were involved in determining the potential list of targets for air strikes in order to push Iraqi forces out of Kuwait. JAGs were also involved in the aiding in choosing targets for air strikes during the Afghan War, where they were involved in time-sensitive calculations of what places to attack and what qualified as proportionate under the law of armed conflict. Around 2,200 JAGs, 350 civilian attorneys, and 1,400 paralegals accompanied US troops into Iraq in 2003, indicating a growing reliance on war lawyers and the focus on legitimising military attacks.

Quite interestingly, Jones also argues that these lawyers have not only assisted the U.S. in justifying their drone and air strikes in Pakistan, Afghanistan and Iraq, but also have closely worked with the United Nations and the international community to legitimize the need for the US to go to war. Jones mentions that these lawyers were the pioneers of the campaign behind the U.S. invasion of Iraq, where they worked with the UN Security Council to pass resolutions which were then relied on to obtain Congress' authorization for the invasion. Moreover, they were also involved in the campaign to expand the notion of self-defence that formed the basis of the U.S. invasion of Afghanistan.

In addition to mapping the development of the concept of juridical warfare in U.S military practice, Craig also uses Israel as a case study to further his claim. He argues that the U.S. use of war lawyers inspired Israeli forces to incorporate a similar model in its use of military force in occupied Palestinian territory. This model is predicated on the idea, as stated by an Israeli general, that “[t]he whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries”. This mindset has broadened the definitions and applicability of the provisions of the law of war for both Israel and the United States, allowing them to use the law to legitimize violence. Jones claims that the war lawyers of the Israeli Defense Forces, through operations in Gaza, have paved the way for innovative and expanded legal constructions of targeted killings and their sanction under international law.

The book incorporates interviews of war lawyers, military documentation and first-hand communication during wars to give three key takeaways. The first is that law channels violence as it enables lawyers in modern juridical warfare to decide what and who can be targeted. The second is that the complexity of the battlefield in terms of the rules that apply to air strikes is making generals and military officers more dependent on war lawyers. The third is that military lawyers exploit their key strategic position to use state practice to create the law, thus expanding the jurisprudence in creative yet damaging ways.

*The War Lawyers* is an interesting read in understanding how regimes that are actively participating in armed conflicts around the world use law to further their objectives. The role played by law to further violence is an emerging critique on the law of war, especially the way the U.S. and Israel have manipulated its provisions for military gains. Jones’ research is fascinating,

and the book is written, with the inclusion of war lawyer interviews, in a very engaging and captivating way. There are, however, some lapses in terms of the law. For instance, Jones seems not to, in his analysis of proportionality under IHL, explore the fact that it also includes injury/harm to civilians and not merely civilian death. This is understandable as Jones is a geographer and not an international lawyer and does not undermine his overall argument. It may also have been worthwhile to mention some interplay between IHL and international criminal law which also seems to lack teeth in its prosecution of war crimes and the crime of aggression, thereby facilitating an expansive role for war lawyers.

Nevertheless, the book's main argument that military lawyers have broadened the scope of targetable objectives by innovatively applying IHL has been well put using specific examples and anecdotes from the military activities of the U.S. and Israel. All in all, the book is a substantive read that takes up much needed academic space in acknowledging that the law of war can also act as an agent channelling the atrocities of war.