



Case Western Reserve Journal of International Law

Volume 9 | Issue 2

1977

Book Review

Ronald A. Gray

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>

 Part of the [International Law Commons](https://scholarlycommons.law.case.edu/jil)

Recommended Citation

Ronald A. Gray, *Book Review*, 9 Case W. Res. J. Int'l L. 425 (1977)
Available at: <https://scholarlycommons.law.case.edu/jil/vol9/iss2/6>

This Book Review is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

BOOK REVIEWS

LAW AND RESPONSIBILITY IN WARFARE: THE VIETNAM EXPERIENCE.
By Peter D. Trooboff (ed). Chapel Hill, North Carolina: The University of North Carolina Press (1975). Pp. 280. \$13.95.

War is the final political means to settle a disagreement. The paradox of a total effort to destroy the enemy in a civilized manner has bred many gray areas in the Laws of War.

This volume focuses upon the difficulties of interpreting, and insuring compliance with the Laws of War. The methods, means, and weapons of warfare are constantly changing. Technology and the response to that technology by less advanced belligerents has pushed the nations of the world to reassess and qualify the Laws of War. This text uses the Vietnam War as the stage to raise the controversial issues of a humanitarian war. That experience raised questions as to the legal methods of counterinsurgency, the limitations upon weaponry, and the individual's responsibility for transgressing ill-defined guidelines on brutality.

The editor divides the book into three main sections. Part One deals with the methods and means of warfare. Part Two discusses the weapons of warfare; and Part Three covers the individual responsibility in warfare. Each of these sections is a balanced account of the legal issues raised by the Vietnam experience. The contributors to this collection are the leading participants in the national debate about the conduct of the Vietnam War. The editor's open forum approach allows the supporters and the critics of the war to present their views and to rebut the opposing viewpoint.

The contributors examine the customs of war, then present strong arguments to support their view. The basic disagreement concerns what restrictions, if any, have become customary obligations binding on the United States, even though such restrictions are not part of treaties to which the United States is a party.

Because of the reliance upon custom and usage, the editor outlines the reasons and historical development of the rules of war in an introduction. The outline is a concise, comprehensive summary of the codified laws that govern armed conflicts and assert humanitarian values to be considered during warfare. The summary suggests that the Vietnam issues are not unique, but are recurring problems in warfare.

One of the principal questions raised concerning the application of the Laws of War in Vietnam, is whether or not a highly technological counter-insurgent may use its highly advanced weapons against a low technology insurgent. An ancillary question is whether this disparity causes insurgent irregulars to disregard the Laws of War and not wear "fixed distinctive signs recognizable at a distance." This issue in turn raises questions as to whether relocation and resettlement is an appropriate remedy for that response; the legality of "free fire zones"; and the allowable circumstances for an armed force to fire upon inhabited villages.

Basic to the answers to these questions is the doctrine of military necessity, but its scope is unclear. That doctrine is particularly unclear as to when military necessity becomes politically motivated. This text deals with that issue in an extensive analysis of the legality of the 1972 Christmas bombings of Hanoi.

The second principal issue raised concerns the use of controversial weapons such as napalm, lachrymatories, and herbicides. This is the area in which the paradox of war is the strongest. At what point does a weapon exceed its function of demobilizing the enemy and become an instrument of brutality? What should the ground rules be for declaring them illegal? Professor Tucker concludes that customary law prohibits the use of all chemical weapons with either lethal or lastingly injurious effects. The issue then becomes whether lachrymatories and herbicides have those effects. The effects of napalm (burning and adhesive properties) cause some to argue that it should be totally prohibited in armed conflicts. Others view napalm as a practical weapon to destroy the military capabilities of the enemy. The compromise argument proposes a United Nations study to determine whether it is necessary to prohibit napalm. A United Nations report found that no rule prohibits the use of napalm upon selected targets.

The third principal issue involves the responsibility of the individuals who were in command during the Vietnam War. Emphasis is placed upon World War II and the post-World War II ramifications of Nuremberg. The contributors treat the concept of liability as extending beyond the officer at the battlefield. It includes the chain of command and civilian leaders. But there is still room for disagreement because the crimes of Hitler clearly were the extreme. The contributors present conflicting views on the standard of criminal responsibility that officers bear for the

unlawful actions of their men. Professor Wasserstrom poses perceptive questions concerning the precise motive, purpose, and knowledge of civilian or military leaders that should be required in order to hold them liable for crimes against peace.

Law and Responsibility in Warfare: The Vietnam Experience serves as a balanced study of the controversial methods and weapons used in the Vietnam War. The contributors present the reader with an excellent array of primary authority on the conflicting approaches in interpreting the Laws of War.

RONALD A. GRAY*

* J.D. Candidate, Case Western Reserve University, 1978.

