



HUMANE WARFARE

The Practice of Military Ethics
An Aerospace Perspective

G.M. PENDER

2002 CAF Air Power Fellow

**AIR POWER DEVELOPMENT CENTRE
CANBERRA**





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List of Abbreviations

AAP	Australian Air Publication
ACTS	Air Corps Tactical School
ADF	Australian Defence Force
ADO	Australian Defence Organisation
ADFP	Australian Defence Force Publication
CDF	Chief of the Defence Force
CENTCOM	Central Command
EMP	Electro-Magnetic Pulse
LOAC	Law of Armed Conflict
NCO	Non-Commissioned Officer
PGM	Precision-Guided Munitions
RAAF	Royal Australian Air Force
RAF	Royal Air Force
ROE	Rules of Engagement
USAAF	United States Army Air Force





Introduction

Covenants without swords are but words.

Thomas Hobbes¹

Thought is a construct of influence, instinct and experience. The way an individual or an organisation thinks and rationalises is dependent on these three qualities. Instinct is born from centuries of unconscious development, based on primordial survival. Influence is the impact of external forces, manipulating the thought process both consciously and unconsciously. Experience creates an internal blueprint of events that transpire, to be used for future considerations. The way an individual or organisation thinks directly affects the manner in which they will conduct their actions. This realisation is the key to regulating individual or organisational actions.

For the military this realisation is especially important. The military holds an important position in society, the protection of society itself, and it does this through the use of lethal force, or the threat of lethal force. Society allows for specific individuals to be trained in taking human life; something that is generally frowned upon in modern Western society. Therefore, it is important that military individuals and organisations are regulated so that they do not use these skills for purposes contrary to societal expectations. As instinct and experience are essentially ingrained constants in an individual, it is through influence that individual or organisational actions may be regulated. In the case of the military, this influence comes under the guise of organisational customs and values, ratified laws, and the customs and values of the parent society. These customs and values, both organisational and societal, have developed over centuries of debate between theologians, academics, politicians and military leaders, and are bound together under the mantle of military ethics. Ratified international laws that seek to regulate military individuals and organisations are a modern approach that directly reflects the spirit of the development of military ethics. War is a terrible business, and the fabric of society depends upon military organisations and their professionals to show restraint in war. Occasionally, advancements in technology can have a profound effect on the manner in which war is conducted, and challenges the strength of restraint used in warfare. This was so with the advent of the aeroplane.

The realisation of the value of air power in the early 20th Century heralded a revolution in the conduct of military campaigns. Air power signalled a divergence from the horrors of land-based trench warfare, for it was hoped that the employment of air power would bring about a more humane resolution to the conduct of war. This was, as history suggests, found not to be the case. Attrition moved to the third dimension, exposing a nation's citizenry to indiscriminate attack and destruction. This tested the interpretation of international law and the moral fibre of military and political leaders. During most

¹ Cited in Sir John Winthrop Hackett, 'The Military in the Service of the State', in Malham M. Wakin (ed.), *War, Morality, and the Military Profession*, Westview Press, Colorado, 1981, p. 108.





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of the 20th Century both were found to be lacking. Air power was used for devastating effect and civilian casualties ranked significantly beside those of the military. It was not until the latter part of the 20th Century that air power capability and the doctrine for its use were able to provide discrimination in the use of force.

Running parallel to these developments in technology is the emergence of certain societal expectations for the use of military force. This emerging ‘use of force’ paradigm has been described as ‘humane warfare’.² In his book titled *Humane Warfare*, Coker describes how, from a Western point of view, war is becoming ‘humanised’ and the reason for war is more often for humanitarianism, or at least has some aspect of humanitarianism in its rationale. If this is true, there are profound repercussions to be felt within military organisations, and they must be cognisant of this. The evolution of air power technology is perhaps the best illustration of Coker’s emerging use of force paradigm and will assist in giving an Australian military perspective on humane warfare.

The aim of this paper is to present that the use of air power during most of the 20th Century contradicted the spirit of military ethics, and that there are now increasing societal expectations and scrutiny for the ethical use of military force; especially air power. These expectations and scrutiny may extend beyond the customary adherence to the rule of law. To meet these expectations, the Australian Defence Force (ADF) requires a well-defined focus on what Australian military ethics means and what their relationship is with society’s own values and morality. Further to this, this paper will present a practical model of military ethics to graphically illustrate what this focus means.

The first chapter of this paper presents the challenge that has been presented to the ADF by the former Secretary of Defence, Allan Hawke, and former Chief of the Defence Force, Admiral Chris Barrie. The Defence Vision Statement presented by these two ADF leaders challenges the ADF to be *a force for good*. Chapter One will examine what this challenge means for the ADF and gives a thorough definition of what *a force for good* means.

Chapter Two examines how ethics are the fundamental principles that underpin professionalism, especially for those professionals in the military, and how military ethics is an essential part of being *a force for good*. Therefore, the study of military ethics will play a major role in meeting the Secretary of Defence and Chief of the Defence Force’s challenge to the ADF.

Chapter Three discusses the foundation principles of the just war doctrine, which is fundamental to military ethics in Western society, and compares these principles to military ethics from the diverse culture of the Islamic religion. This is to highlight that regulation of violence is a quality shared by most modern societies and there is a

² Christopher Coker, *Humane Warfare*, Routledge, New York, 2001.





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common theme of natural law, or humanism, in the regulation of violence against other human beings.

Chapter Four illustrates how military ethics has influenced the development of international laws, treaties and agreements that formally seek to regulate the use of military force. Through a case study of non-combatant immunity during aerial bombardment it is shown that customary adherence to law has replaced a military organisation's moral obligation to reflect on the spirit of military ethics. Further to this, it is highlighted that customary adherence to the rule of law is now unable to meet the expectations of modern society. It is for this reason that the military organisation and its professionals must re-acquaint themselves with the spirit in which military ethics were developed and the relations they have with society.

Finally, Chapter Five attempts to present a practical model of military ethics to illustrate the emerging demands of society for their military organisations to act in more ethical and humane methods. This model will demonstrate that conducting military operations with a focus on the spirit of military ethics will produce more ethical, humane results or even humane warfare. In this, humane warfare will be found to be not a new concept, rather just a simple codification of the spirit that embodies military ethics. When put into a modern context, in light of emerging technologies and intelligence processes, this simple codification may well become a powerful tool for future military consideration and international relations.



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Chapter 1

The Challenge

A force for good • a force to be reckoned with • a force to win.

Defence Vision¹

With the launch of the Defence Plan in 2001, the Secretary of Defence, Allan Hawke, and Chief of the Defence Force, Admiral Chris Barrie, co-authored a statement to be added as a foreword to the Defence Plan. The aim of this statement was to articulate their thoughts on the future direction of the Australian Defence Organisation (ADO) and to explain how the Defence Plan should be read. In this statement they took the opportunity to restate the Defence Mission and to present the new Defence Vision: *A force for good • a force to be reckoned with • a force to win*. This vision was stated to capture ‘the character of “what we’re on about” and why we should be proud of it’.² Further to this, they state that the Defence Vision encapsulates the aspirations of the Australian Defence Force (ADF), provides a focus for achieving the Defence Mission, and describes ‘how Defence wants to be seen by people inside and outside the organisation’.³

The section of the Defence Vision that will be examined in this paper is *a force for good*. What does it mean to be *a force for good* and how does the ADF, as an organisation, become *a force for good*?

A Force for Good

The co-authors of the Defence Vision describe that *a force for good* ‘captures the way in which Australians work so well together and in coalition with other national forces’.⁴ The problem with this statement is that it is more assumptive than descriptive. The cooperation described in this statement, whilst arguably a singular quality of goodness, fails to encapsulate a thorough definition of *a force for good*. In an attempt to expand on this initial explanation, the authors gave this definition:

Australian Service people are renowned for their ability to mix professional war-fighting skills with compassion and commitment to building a better world. We are greatly admired in our community as

1 2001 Defence Plan, Foreword, <http://defweb.cbr.defence.gov.au/defenceplan/foreword.htm>, accessed 7 May 2002.

2 *ibid.*

3 *ibid.*

4 *ibid.*





a force for good. This brings with it a strong sense of upholding, in everything we do, the rule of law. We will do everything possible to foster peace and stability in our region.⁵

Although the definition is still assumptive, this statement adds more insight into the rationale behind the development of the vision for *a force for good*. It implies that the Australian community admires Service personnel because of their professionalism and compassion. It describes the commitment of Defence to continual improvement of the world's climate and condition, particularly through the fostering of peace and stability, even though this is accomplished mainly through coercion and deterrence. The interesting part of this statement is that *a force for good* has the quality of upholding the rule of law in everything that it does. This universal approach to law abiding is again a quality of goodness, nevertheless it still does not give an holistic explanation of the significance of being good and its associated worth. The mention of professionalism, however, is a hint of what *a force for good* may be. This idea is expanded upon in Chapter Two.

Department of Defence document *Force 2020*, in reference to the section of the Defence Vision—*a force for good*, states: 'it is clear that we are seeking the moral high ground'.⁶ This statement comes closer to the rationale for *a force for good*, and the concept of superior morality will be expanded upon throughout this paper. Seeking the moral high ground will be found to be fundamental in establishing external and internal support for any military campaign of the future. This statement, however, is still lacking the definition needed for *a force for good*.

Although the authors are to be applauded for their courage to formally incorporate moral sensibilities into the Defence Vision, the descriptions and definitions that have been put forth by them are vague at best. It could be argued that this was the intention of the authors, leaving the analysis of the statement up for individual interpretation, but if this is so, the statement loses its value and its impact. After all, a vision statement, by design, is the foundation for an organisation's physical and cultural development. Vision statements embody organisational values and, without thorough articulation of these visions, organisational members will adopt their individual value systems for guidance. This situation would prove detrimental for a profession such as the military.⁷ With this in mind, it is pertinent to provide a thorough definition of the statement *a force for good*.

For centuries, philosophers, academics and theologians have argued the question of what is good and what is not. It is an age-old question that holds validity today as it

- 5 Secretary of Defence and Chief of the Defence Force speech, New Defence Vision Statement, http://intranet.defence.gov.au/csig/69/4732_1.html, accessed 15 March 2002. Emphasis added.
- 6 Department of Defence, *Force 2020*, Department of Defence, Canberra, 2002, p. 1, http://defweb.cbr.defence.gov.au/home/documents/data/adfpubs/adfmisc/for_2020/for_2020.pdf, accessed 5 October 2002.
- 7 William F. Bell, *The Impact of Policies on Organisational Values and Culture*, paper presented at Joint Services Conference on Professional Ethics (JSCOPE) 1999, <http://www.usafa.af.mil/jscope/JSCOPE99/Bell99.html>, accessed 21 July 2002.





is almost entirely subject to context. What might indeed be good for some may not be good for others. The position one takes in the argument relies heavily on the backbone of societal norms and individual values. For the military this argument is particularly important as it forms the basis for its existence. From a military point of view, it is imperative that firm definitions of norms and values are set in place, as the military profession must operate in accordance with moral duty, not for physical reward or recognition; else their intentions become mercenary. If this is true, then it can be argued that all professional military forces must believe they are indeed already *a force for good*. If so, why then state the obvious in a vision statement?

In the complex arenas of politics and international relations, *perceptions and force* hold great sway, and in order to retain internal and external support for anything the military does it must be perceived that military action is accomplished with the highest possible moral standing. Therefore, being *a force for good* necessitates being good for the sake of the individual, the state and, overriding all of these, for humanity itself. From an individual's perspective, belonging to an organisation that espouses the values and ethics of their profession creates a more supportive environment to practice the profession. For the state, it improves the reputation of its military to the community, improving civil-military relations, and the reputation of the state as a credible international citizen. For the sake of humanity it is vital that those with the power to destroy it *do not*. In the case of the ADF, embodying *a force for good* may provide example to the international community of its commitment to taking an holistic approach to preserve the principles of humanity during the application of force. The Australian public can take pride in the fact that their defence force is irreproachable in the manner in which it represents them, and personnel in the ADF can be satisfied that their professionalism is contributing to a truly ethical organisation. Therefore, in searching for a definition of *a force for good*, attention must be paid to these contexts and positions.

The Macquarie Concise Dictionary defines *good* as being 'morally excellent, righteous and/or pious'.⁸ Moral excellence can be further defined as a state of superior ethical conduct, righteousness as morally right or justifiable, and piety as dutiful respect for others or reverence to God. In a literal sense, to be *a force for good* implies that the military must nurture and exhibit these qualities of moral excellence, righteousness and piety. The religious definition of piety, however, brings with it all kinds of dilemmas in a country as religiously diverse as Australia. So for this definition only the qualities of moral excellence, righteousness and piety (dutiful respect of others) apply. Therefore, *a force for good* is: *a military organisation that functions within a respectful state of superior ethical conduct for reasons that are morally justifiable*. In this, *superior* implies a comparison with current norms of ethical military conduct.

At this stage a point must be made clear. The primary role of the Defence Force is the controlled application of violence as an extension of political pressure. The spectrum of this available force can range from the threat of violence, or deterrence, to the application of deliberate and lethal force. So how does an organisation, whose very

⁸ A. Delbridge & J.R.L. Bernard (eds.), *The Macquarie Concise Dictionary*, Third Edition, The Macquarie Library, 2000, p. 480.





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existence constitutes the possibility that human life may be threatened, operate within this restrictive framework that the Defence Vision embodies?

One method would be to ignore this paradigm and continue to operate, as has been the case in the past, in a customary manner in which morality and military ethics are an assumed quantity under the guise of following the rule of law. Although this is perhaps the easiest route to take, it does a disservice to the ADF by undermining the qualities that make the military the profession that it is. A more definitive method is to codify what is embodied by the statement *a force for good*, and utilise this definition when strategic issues are examined and debated so the ADF may indeed become this *force for good*. In a way the ADF has attempted to do this through the development of the Senior Leadership Values, but again these have not been suitably defined for common usage.⁹ That said, only the Senior Leadership Values of professionalism and integrity are identified as being at the heart of the search for *a force for good*. In Chapter Two of this paper these values are examined and found to be fundamental to the military profession, an explanation of which will aid understanding of the value placed on being *a force for good*.

⁹ Senior Leadership Values: Professionalism, Loyalty, Innovation, Courage, Integrity and Teamwork; 2001 Defence Plan, <http://defweb.cbr.defence.gov.au/defenceplan.html>, accessed 3 March 2002.





Chapter 2

The Military Profession

The history of the modern military establishment can be described as a struggle between heroic leaders ... and military 'managers' ... the distinction is fundamental. The military manager reflects the scientific and pragmatic dimensions of war-making ... [as a] professional with effective links to civilian society. The heroic leader is a perpetuation of the warrior type ... who embodies the martial spirit and the theme of personal valour.

Morris Janowitz¹

Professionalism

Professions involve the mastery of a particular skill in a specified occupation through intensive study and experience—the practice of which will significantly benefit society.² Some examples of professions are the practice of law, medicine or religion. It is this mastery of a skill for the benefit of society that sets professions apart from trades and crafts because the profession is intricately linked to societal norms and expectations, and is therefore bound by moral codes of behaviour. The members of these professions acknowledge and understand the intricate link between their skills and espoused values with the benefit to society that these bring. It is this knowledge that motivates the professional—not personal gain.³ Sarkesian and Conner isolate six characteristics that a profession exhibits:

- a. the profession has a defined area of competence based on expert knowledge;
- b. there is a system of continuing education designed to maintain professional competence;
- c. the profession has an obligation to society and must serve it without concern for remuneration;
- d. it has a system of values that perpetuate professional character and establish and maintain legitimate relationships with society;
- e. there is an institutional framework within which the profession functions; and

1 Morris Janowitz, *The Professional Soldier: A Social and Political Portrait*, Glencoe, Illinois, 1960, p. 21.

2 Samuel P. Huntington, *The Soldier and the State*, Harvard University Press, Massachusetts, 1967, pp. 8–10.

3 *ibid.*, p. 9.





- f. the profession has control over the system of rewards and punishments, and is in a position to determine the quality of those entering the profession.⁴

These characteristics can be seen as an extension of Huntington's premise that 'the distinguishing characteristics of a profession as a special type of vocation are its expertise, responsibility, and corporateness'.⁵ These three characteristics deserve further expansion.

Expertise

The underpinning themes of knowledge, history and reflection comprise what the characteristic of expertise means to professionalism. Professional knowledge may only be gained through long, intense study at appropriate institutions and through comprehensive experience. This knowledge must be in a significant field of human endeavour and have a long preserved history, as knowledge of this history directly affects the professional's competency. It is in this that Huntington believes a profession is distinguished from a trade or craft, as he asserts that the latter has no reference to history at all.⁶ Professionals must be able to reflect on the role their profession plays in the scheme of society, so that continual debate and research may be carried out in order to maintain the cultural 'fit' between the profession and the society that it serves.

Responsibility

Professionals are responsible to the parent society they serve, the profession of which they are a part, and themselves as individuals. In choosing to pursue a particular calling or profession, professionals accept the obligations that are inherent in providing this unique service to society, and that the service they provide is essential for the functioning of society.⁷ It is the responsibility of the professional to make this decision compelled by the desire to serve society, not for remuneration, and it is in this that the profession must impose certain laws to regulate its members. Professionals must also develop values and ideals to guide its members in the effective service of society. Individual professionals, and their profession as a whole, must continually reflect on these responsibilities to ensure the profession is effectively servicing society. Professionals have a responsibility to themselves as individuals to ensure that there is no mismatch between personal motivation and professional expectation, as such a mismatch could produce stress and reduce competency.

Corporateness

Huntington identifies that the corporateness of professional organisations may be either, though not mutually exclusively, a bureaucracy or an association. The difference being that in an association, the professional acts relatively independently and provides a service to individuals within society; whereas a bureaucracy fields members who

4 Sam C. Sarkesian & Robert E. Conner Jr., *The US Military Profession into the Twenty-First Century*, Frank Cass Publishers, London, 1999, p. 21.

5 Huntington, *The Soldier and the State*, p. 8.

6 *ibid.*

7 *ibid.*, p. 9.





‘possess a high degree of specialised labour and responsibilities within the profession, and the profession as a whole renders a collective service to society as a whole’.⁸ Corporateness is the feeling of belonging to a specialised group that is apart from generalised occupational groups. It can also refer to the established structure of self-supervision that a profession professes.⁹ Within this structure the profession establishes its own sets of standards and values apart from society, however, they must be a reflection of societal expectation for the profession’s service and behaviour. These standards and values are enforceable by the profession’s established structure, as is the punishment and reward system for the profession. Part of the moral function of corporateness is to supervise the reward system to prevent overcapitalisation of a profession’s expertise and competence.¹⁰

Similarities in the comparison between Huntington’s and Sarkesian and Conner’s definitions are evident. Huntington’s characteristic of expertise, responsibility and corporateness can be directly compared to Sarkesian and Conner’s six characteristics of a profession. It is evident there is a distinct paradigm in the relationship between professionals and the society they serve. For society to exist as it does there is a reliance on professionals to provide it with essential services. Ideally, the better the service to society, the more civilised society will become. For professionals to exist, they require a society that is willing to entrust them with the control of the provision of these services. Society must allow professions the opportunity for self-development apart from society, but also as a reflection of society. It is in this that the profession accepts full responsibility for reflecting on the profession’s history and the relationship it has with society.

The Military as a Profession

What makes the military a unique profession?

Professions may differ from each other in varying ways. This is because of the differences in the nature of the service they provide to society; the manner in which they provide the service; and whether the service benefits individuals in society or society as a whole. Where the military differs as a profession is that the service that the military profession provides is the protection of the *very existence* of society as a whole.¹¹ It is an accepted norm in society that the state may, as a last resort, protect itself through a controlled application of violence. The profession that provides this service is the military and it is the responsibility of professionals within the military to manage this violence.¹² The weight of this responsibility, combined with the moral dilemmas concerning the manner in which this service must be provided, is what sets the military profession apart from other professions.

8 *ibid.*, p. 10.

9 *ibid.*, p. 10.

10 *ibid.*, pp. 8–10.

11 Hackett, ‘The Military in the Service of the State’, p. 108.

12 Huntington, *The Soldier and the State*, p. 11.





Within the military organisation, Huntington differentiates between the military officer and the non-commissioned officer (NCO). He suggests that NCOs are specialists in the application of violence, which is a trade; whereas an officer's skill is in the management of violence, which is a profession.¹³ This is why he uses the term officership as a synonym for military professionalism. This is supported by Sarkesian and Conner who argue that the officer corps are ultimately responsible for the organisational effectiveness and institutional character of the military, and that it is with the officer corps that accountability to the parent society rests.¹⁴ Whilst this may have been true in the past, Sir John Winthrop Hackett describes a modern paradigm where the distinction between officer and NCO needs re-examination due to the increased responsibility put on NCOs to allow relief of the junior officer for professional development and higher duties.¹⁵ Hackett's paradigm is given a contemporary flavour by Graeme Cheeseman's claim that the officer-to-NCO divide in the Australian Defence Force (ADF) is essentially a hangover from the 19th Century British class system. Cheeseman asserts that the ADF has 'significant problems in trying to differentiate between officers and others [NCOs and defence civilians] when some of the others are more skilled, more important, and deserve to be recognised much more than officers'.¹⁶ Therefore, military professionalism is perhaps more widespread than the simple class-based paradigms of the past. This suggests that a cultural mind-shift is needed when modern militaries examine their professional mastery in order to gain a more accurate assessment of their organisation and its relationship with society.

In order to explain in detail the unique nature of the military profession, Huntington's characteristics of professions will be expanded upon.

The expertise of the military professional

To the military professional, expertise is essential due to the nature of the profession's responsibility to society. As previously stated, the underpinning themes of expertise in a profession are knowledge, history and reflection. For the military professional, acquisition of knowledge may have a tiered approach. First, military professionals must master the knowledge of their specialisation; second, they must master the knowledge of their Service; and finally, they must master the knowledge of the military profession. The knowledge common to all tiers that must be mastered, however, is knowledge of the management of violence. This knowledge must be alloyed with extensive experience to gain the high levels of competency expected of the profession. It is important to note that the skills common to military professionalism, such as the management of violence, are universal and have not changed over time. What has changed though are the cultural attitudes and values of the parent society, so it is essential that military professionals realise that 'the methods of organising and applying violence at any one

13 *ibid.*, p. 18.

14 Sarkesian & Conner Jr., *The US Military Profession into the Twenty-First Century*, p. 19.

15 Sir John Winthrop Hackett, 'Today and Tomorrow', in Malham M. Wakin (ed.), *War, Morality, and the Military Profession*, Westview Press, Colorado, 1982, p. 97.

16 Graeme Cheeseman, 'Alternative Futures', in Shaun Clarke (ed.), *Testing the Limits*, the proceedings of a conference held by the Royal Australian Air Force in Canberra, Air Power Studies Centre, Department of Defence, Canberra, March 1998, p. 75.





stage in history are intimately related to the *entire cultural pattern of society*'.¹⁷ Military professionals must study the history of their profession to gain an understanding of the experiences of others and of how other specialities contribute to the military profession. As the military profession is essentially human in nature, it requires the professional to 'have a deeper understanding of human attitudes, motivations and behaviour'.¹⁸ This allows the professional to effectively reflect on personal experiences, the experience of others (through a study of history) and the history of the profession and its relation to the parent society. It is in the mastery of professional knowledge, professional history and the ability to reflect that a military professional may be judged for competence. This competence is known as professional mastery.¹⁹

The responsibilities of the military professional

Military professionals, as with all professionals, have a responsibility to the parent society they serve, the profession of which they are a member, and themselves as individuals. The responsibility the military profession shoulders is perhaps the greatest of all, as society expects them 'to be prepared to give their lives to serve the profession and the state'.²⁰ Military professionals must have no interest in the monetary gain from the use of their skills—the military professional must be motivated by a 'technical love for his craft and the sense of social obligation to utilise his craft for society'.²¹

As the professional expertise of military professionals is the management of violence, it is their responsibility to ensure the security of society and the protection of its interests and values. This requires military professionals to be aware of the socially acceptable conditions in which their expertise may be applied. The discharge of this responsibility requires professional mastery; professional mastery requires an acceptance of this responsibility. To not accept this responsibility and to practice the profession regardless belies the whole foundation of the profession and would be considered as unethical behaviour by the profession.²² It is also the responsibility of the military professional to contribute to and adhere to the values, customs and traditions of the profession. These should be continually reflected upon to ensure that they are consistent with those espoused by the parent society.

The corporate nature of the military profession

The corporate nature of the military profession is that it is a 'public bureaucratised profession'.²³ Military professionals must be granted the right to practise their expertise by the parent state and, because of the nature of the expertise and the importance of the profession, only those who have attained at least the lowest level of professional

17 Huntington, *The Soldier and the State*, p. 14. Emphasis added.

18 *ibid.*, p. 14.

19 Ian MacFarling, *Air Power Terminology*, Aerospace Centre, Department of Defence, Canberra, 2001, p. 105.

20 Sam C. Sarkesian, John Allen Williams, and Fred B. Bryant, *Soldiers, Society, and National Security*, Lynne Rienner, Colorado, 1995, p. 16.

21 Huntington, *The Soldier and the State*, p. 15.

22 *ibid.*, p. 9.

23 *ibid.*, p. 16.





mastery may gain acceptance into the profession.²⁴ The military profession is highly structured by rank and office. These are designed to distinguish levels of competency or seniority in the profession. Rank represents a military professional's experience, education and ability measured against seniority, and appointment is made by the state. In contrast to this, eligibility for appointment to office is dependent upon rank.²⁵

The military professional must endeavour to build relations with the parent society because with 'effective civil-military relations ... all members of the parent society can understand the complexity of the military profession and respect and support their armed services'.²⁶ The corporate nature of the military profession also provides a feeling of belonging to a specialised group that is apart from generalised occupational groups. This is achieved by an isolated workplace, the wearing of uniforms and the establishment of professional standards and values. These standards and values are enforceable by the military profession's established structure, as is the military profession's punishment and reward system.²⁷

Ethics and Military Professionalism

Ethical behaviour by military professionals as perceived by society is a basic ingredient to the legitimacy and credibility of the military institution.

Sam C. Sarkesian & Thomas M. Gannon²⁸

Why are ethics important to the military profession?

The answer to this question seems obvious enough given what was presented previously about the nature of professions. The military profession is unique, and because it is essentially human in nature, there are many complex, interrelated themes that underpin the importance of military ethics. Perhaps it would be more illustrative to explain the negative first; that is, what happens when military ethics are non-existent or undermined.

The past century is littered with examples of the degradation of the human moral condition or the complete ignorance of any ethical reference. Jonathan Glover's definitive book *Humanity: A Moral History of the Twentieth Century* is a testimony to this. Glover isolates historical instances of the problems that result when militaries and their parent states lose moral focus. Glover identified several conditions that lead to the degradation of the human moral condition during the military profession's management

24 *ibid.*

25 *ibid.*

26 MacFarling, *Air Power Terminology*, p. 104.

27 Huntington, *The Soldier and the State*, pp. 11–18.

28 Sam C. Sarkesian & Thomas M. Gannon, 'Professionalism: Problems and Challenges', in Malham M. Wakin (ed.), *War, Morality, and the Military Profession*, Westview Press, Colorado, 1982, p. 128.





of violence.²⁹ The two that will be concentrated on are *the slide of moral identity* and *the practice of distancing*.

The slide of moral identity

Moral identity is a set of core personal commitments that have evolved in the individual due to repeated influence and experience. These commitments may be either conscious or unconscious, and this moral identity may give strength or courage to the individual under conditions of extreme stress.³⁰ Moral identity may also be applied to the military profession as a whole, only the core personal commitments of individuals are a reflection of the commitments of the profession and they are assimilated through professional influence, study and experience. The slide of moral identity refers to the gradual disintegration of these core commitments that eventually result in inhumane or inhuman action. An example from Glover's *Humanity: A Moral History of the Twentieth Century* that is referred to as a slide in the moral identity of the military profession is the British aerial bombing campaign in World War II, which resulted in the deaths of countless civilians. Glover cites that both J.M. Spaight, who had been principal secretary of Britain's Air Ministry, and Royal Air Force (RAF) Bomber Command Air Chief Marshal Arthur Harris refer to the civilian deaths resulting from the blockade of Germany in World War I as a precedent in war to justify the British decision to embark on area bombing. The acceptance of the European bombing campaigns led to the bombings that created firestorms in Japanese cities, which in turn set the precedent for the indiscriminate atomic destruction of Hiroshima and Nagasaki.³¹ Glover observed that:

the blockade slid by degrees from having a slight effect to having a devastating impact. The blockade made area bombing seem acceptable. Area bombing was reached by a gentle slide from military bombing. The bombing of German cities made acceptable the bombing of Japanese ones, which in turn allowed the slide to the atomic bomb.³²

The acceptance of one action as legitimate, regardless of human cost or other ethical considerations, led to the gradual slide of professional core commitments to accept as the norm further actions that resulted in further innocent human loss. This illustrates a slide of moral identity of the military profession, and further demonstrates how this phenomenon may transfer between professional militaries from different parent states. In this case it was American action from British precedents.

29 For a thorough interpretation of Glover's work on the degradation of the human moral condition read: Jonathan Glover, *Humanity: A Moral History of the Twentieth Century*, Jonathan Cape, London, 1999.

30 *ibid.*, chapters 1–4.

31 Indiscriminate in terms of non-combatant immunity. An atomic or nuclear weapon's sheer range and level of destruction does not lend itself to discrimination in targeting.

32 Jonathan Glover, *Humanity: A Moral History of the Twentieth Century*, p. 115.





The practice of distancing

The practice of distancing is the physical and psychological detachment developed by a military individual or the military profession to allow the conduct of certain actions that might not be normally performed.³³ Like the slide of moral identity, the practice of distancing includes incremental modifications of the norms in practice and the effect they have on individual or group perceptions. It occurs on social levels and/or practical levels and is one of the greatest challenges on military professional competence—this is especially so due to the advancement of ‘stand-off’ weapons. The basic premise of the practice of distancing on a social level is that through manipulation and exposure, individuals or groups can develop psychological detachment from other human beings through discrimination of race, religion or politics. This psychological detachment allows the subject to believe that the other human is something less than human, therefore moral considerations for their treatment does not apply to them. Glover refers to conditions of a *weakened human response* and *the cold joke* to illustrate this concept. The former consisting of an incremental erosion of an individual’s reaction to immoral situations, and the latter being the use of humour to reduce the gravity of a situation to make it more acceptable.³⁴

On a practical level, technology and its associated lexicon have enabled the practice of distancing to become more customary. The physical distance between aggressor and victim has become greater in modern aerial warfare through the use of stand-off weaponry. Physical results from action are detached from reality with technology. For example, targeting is made either via unrealistic video imagery or through selected coordinates. Glover states:

By weakening the emotional revulsion, it makes the act easier. This reduces the feeling of responsibility and reduces awareness of the kind of person you become in doing it. There is less restraining pressure against the act, and less guilt afterwards.³⁵

Even the language associated with targeting and technology assists in creating a sense of distance from the results of an action. Terms like *collateral damage*, *soft targets* and *double effect* all relate to the death or potential death of innocent victims, however, the language belies the reality of the situation. Language has provided a means to reduce the reality of the action into an un-emotive form of communication.

Preventing the above conditions alone should be reason enough for having an emphasis on ethics in the military profession, however, there are other, not so disturbing reasons for doing so. First, the purpose of the military profession—the management of violence—brings with it a natural responsibility to humanity. The preservation of the sanctity of human life and civilisation is reliant on those with the skills to destroy it. It is

33 *ibid.*, pp. 100–101.

34 *ibid.*, pp. 35–37. Although Glover uses the example of torturing to illustrate the concepts of weakening the human response and the cold joke, these concepts are equally valid for the military profession’s core skill: the management of violence.

35 *ibid.*, p. 100.





the double-edged sword of the military profession to be effectively lethal yet still civil. The military profession must not become inured to this, and professional ethics help to alleviate this apparent paradox.

Secondly, professional military ethics are also needed to focus ethical standards, at a minimum, to match those of the parent society. This helps to establish effective civil-military relations and lessens the distance between the profession and society.³⁶ The international system also has an effect on the development of ethics in the military profession. To foster effective international relations and gain a reputation as a first-class international citizen, the state must ensure its military acts in accordance with internationally respected laws, customs and practices. It is the military professional's responsibility to the state to ensure that this is the case, as any 'perceived unethical behaviour of military [professionals] not only erodes civilian control but also denigrates professionalism'.³⁷

On an interpersonal level, 'ethical behaviour is fundamental to the military's cohesiveness and professional status'.³⁸ Military ethics set the standard for codes of conduct to ensure all members are 'on the same page' and working towards the same goals. This helps to establish group cohesion and a sense of being for the organisation.

Finally, it is argued that the military must have an ethical basis because this is the essential nature of professions. This argument, although true in a sense, belies the whole rationale for professional ethics. If ethics are enforced as a technicality, not embraced for their worth, the competence of the profession is questionable.

The Military Service and Integrity

The quality of integrity is the common thread that links the military profession's characteristics of expertise, responsibility and corporateness. It is the common bond that strengthens the relationships between the profession and the state, the profession and society, and between members of the profession. Due to the highly structured nature of a defence force's hierarchy, it is essential that integrity exist within the organisation, both vertically and laterally. Vertical integrity refers to the bi-directional flow of trust between superior and subordinate, for example, when a superior entrusts the subordinate with responsibilities and the subordinate entrusts the superior with loyalty. Lateral integrity refers to the trust developed between colleagues. In the case of military action, this trust equates literally to putting your life in the hands of your colleague, relying on another's professionalism to keep you out of harm's way.

36 Sarkesian & Gannon, 'Professionalism: Problems and Challenges', pp. 138–139.

37 *ibid.*, p. 128.

38 *ibid.*





Humane Warfare

A modern military's reliance on information also highlights the importance of integrity, both laterally and vertically. As former United States Air Force Chief of Staff General John D. Ryan states:

Integrity—which includes full and accurate disclosure—is the keystone of military service. Integrity in reporting, for example, is the link that connects each flight crew, each specialist and each administrator to the commander in chief. In any crisis, decisions and risks taken by the highest national authorities depend, in large part, on reported military capabilities and achievements. In the same way, every commander depends on accurate reporting from his forces. Unless he is positive of the integrity of his people, a commander cannot have confidence in his forces. Without integrity, the commander in chief cannot have confidence in us.

Therefore, we may not compromise our integrity, our truthfulness. To do so is not only unlawful but also degrading. False reporting is a clear example of failure of integrity. Any order to compromise integrity is not a lawful order.

Integrity is the most important responsibility of command. Commanders are dependent on the integrity of those reporting to them in every decision they make. Integrity can be ordered but can be only achieved by encouragement and example.³⁹

Ryan's last sentence underscores an important lesson about ethics in the military profession. A human quality or value cannot be enforced upon an individual or a group. Human qualities and values must be embodied for their worth, and it is up to the profession, the organisation and the individual to discover the worth of these qualities through study and reflection.

The Australian Military — A Force for Good?

The military as a profession section of this chapter stated:

It is in the mastery of professional knowledge, professional history and the ability to reflect that a military professional may be judged for competence.

In this, the ADF is extremely competent in the mastery of the knowledge and skills necessary to operate in its core duty: the management of violence. It is able to do so through the study of military history from a practical viewpoint; meaning the study of

39 John D. Ryan, 'Integrity', in Malham M. Wakin (ed.), *War, Morality, and the Military Profession*, Westview Press, Colorado, 1982, p. 189.





former conflicts in a strategic, operational and tactical context, to influence practical applications of military force in present and future circumstances. The ADF, however, is lacking in the attention it pays to studying the history of ethics in the military profession.⁴⁰ Compounding this, the ADF provides little reflection on this history so that the application of military ethics may be put into a current context.⁴¹ To counteract this deficiency, the ADF needs to reflect on how it may enhance the study and understanding of military ethics to increase the collective professional competence of the organisation. Chapter Three will endeavour to re-acquaint the reader with a necessary background to the historical development of military ethics.

Will the present focus on professionalism and integrity make the ADF a force for good?

Although this question may seem obvious on the surface, there are many underlying themes that compound the complexity of the answer. The ADF is very good at generalising what it expects from its members through the development of vision statements, core values, and the latest offering: core qualities.⁴² Before a member can take ownership of and espouse these organisational visions and qualities, however, the member must understand their relevance and history so as to define them in their proper context. In the past, the ADF has been deficient in this area. The history and relevance of military ethics and the theories that bound these visions, values and qualities are not widely studied in the Australian Defence environment. Another deficiency is the assumption that customary adherence to the rule of law makes for a superior ethical position. The ADF prides itself on adhering to the rule of law. This fact is evident in numerous publications and speeches, though none expressed more vehemently than in the Chief of the Defence Force's 2001 Military Justice Stand Down speech. Admiral Barrie stated that:

Our defence force must always act as a force for good in our community. This means that we have a high regard for the rule of law, whatever impact that rule of law may have on our own personal beliefs or behaviours ... it is the respect of the rule of law which gives us the foundation of our professionalism in the ADF. Without it, we would likely be an ill-disciplined force without a strong sense of purpose and the cohesion to perform effectively. And without it, we would not have been able to build a worldwide reputation as a professional fighting force, and earned our community's utmost admiration in that process.⁴³

40 The history of military ethics is not an essential part of ADF officer and airman training.

41 Although it is problematic to compare the ADF with US forces (due to inequity in size and financial considerations), each US Service has an academic centre dedicated to the study of military ethics.

42 Core qualities are offered in Department of Defence, *The Australian Approach to Warfare*, Department of Defence, Canberra, 2002.

43 Chief of the Defence Force Admiral Barrie's speech, Military Justice Stand Down Day, 5 February 2001, <http://intranet.defence.gov.au/cdf>, accessed 12 March 2002.





Humane Warfare

Is customary adherence to the rule of law, whether organisational, domestic or international, a strong enough statement to embody what it means to be *a force for good*? Does customary adherence to the rule of the law provide the means for the ADF to *function within a respectful state of superior ethical conduct for reasons that are morally justifiable*? The answer is no, however it is recognised that customary adherence to the rule of the law is an important building block on which to strive towards this goal. To reach this goal the ADF needs to hold standards of conduct, during peace and war, higher than that of which a customary interpretation of the law will permit. Would this approach bind the hands of the war-fighter and effectively degrade their capability? Or is it a natural progression for civilisation that would lead to the development of more ethical methods of warfare ... or even humane warfare?





Chapter 3

Military Ethics

That men do not learn very much from history is the most important of all the lessons that history has to teach.

Aldous Huxley

Military ethics is a complex beast to master, yet as discussed in the previous chapter, it is essential for the military profession to understand and reflect on these concepts and their history to enhance professional competency. Essentially military ethics has two areas of concern. The first area deals with the core duty of the military—the managed application of organised violence; and the second deals with military administrative issues.¹ This chapter will concentrate on the history of military ethics in the management of violence and common arguments regarding justification of the use of violence as an instrument of state policy. This is not to discount the importance of the administrative issues in military ethics. They are simply out of the scope of this paper.

Ethics in Warfare — A Reflection of Humanity

From a Western perspective, moderation of warfare for humanitarian purposes was initially a religious construct. Religion, during the Classical period of the Fourth and Fifth Centuries, was the main source of societal norms in morality; hence religion impacted on the way in which war was initiated and waged. With this, the Western concept of humanitarianism in warfare was conceived, and with it the paradox of justification was introduced: in order to apply force and take lives, one of the main tenets of Christian faith—thou shall not kill—was tested to the limits of interpretation. This ethical, humanitarian approach to warfare was the beginnings of a just war doctrine.

As agrarian societies became industrialised, Western society's dependence on religion to provide it with societal norms in morality, especially in the application of military force, waned. Christian just war doctrine gradually modified to become natural law just war doctrine, as theorists attempted to codify modern Western perspectives of warfare to align with the moral norms of the day. Currently, all Western societies subscribe to some form of just war doctrine, even if only in a subconscious manner, through the development of and adherence to international law, the Law of Armed Conflict, and domestic rules of engagement. These laws and rules can be directly attributed to the initially conceived just war doctrine, even though there is only a hint of religion involved in a modern interpretation of these laws.

¹ Keith Joseph, 'Contemporary Ethical Issues Within the Australian Defence Force', in *Professional Ethics*, Vol. 6, Nos. 3 & 4, 1998, p. 127.





It would be ignorant, however, to suggest that the themes that underpin just war doctrine are exclusively Christian. For example, during the same period that Christian just war doctrine was being developed, Islamic tenets were being recorded in the Islamic holy book ‘the Qur’an’, as a narration to scribes by the Muslim prophet Muhammad. The Qur’an, as a document for social guidance, also contains direction for the moral commitment to warfare and acceptable conduct thereafter. Interpretation of these tenets of Islam finds direct parallels to the Christian just war doctrine. This is hardly surprising, as James Turner Johnson maintains:

Historical and anthropological evidence suggests that every human culture has generated some analogue of just war tradition: a consensus of beliefs, attitudes, and behaviour that defines the terms of justification for the resort to violence and the limits, if any, to be set on the use of violence by members of that culture.²

For military professionals, knowledge and understanding of the development of ethics in warfare is the keystone of professional competence. Understanding the context in which the just war theory was developed and the subsequent regulation of warfare helps the military professional gain perspective of the profession and the inherent values that the profession embodies.

Just War Doctrine as a Western Approach to Warfare

Justice cannot be done to the moral weight and historical depth of the [just war] theme unless it is well understood that the idea of restraint in war is no experimental venture of more or less modern man but is a still continuing preoccupation of humane and moral-minded people with a history as long as that of humanity itself.

Geoffrey Best

Just war doctrine refers to the attitudes, practices and ideas that are the framework for the justifiable use of force and its practicable limitations. In this, just war doctrine takes its origins from religion, philosophy, law, and military practice and theory.³ Much of the specific form of just war doctrine can be traced to the late Roman practice of statecraft and warfare. Saint Augustine of Hippo (354–430 AD) is claimed to be the progenitor of the specifically Christian influence of the just war doctrine. His ideas drew heavily from the Christian concept of the four-fold division of personal virtue and what Rome

2 James Turner Johnson, ‘Historical Roots and Sources of the Just War Tradition in Western Culture’, in John Kelsay & James Turner Johnson (eds.), *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, Greenwood Press, Connecticut, USA, 1991, p. 3.

3 James Turner Johnson, ‘Just War’, in *Blackwell Encyclopedia of Political Thought*, Blackwell, Oxford, 1987, p. 257.





accepted as normative regarding war.⁴ This included the very idea of a *bellum justum* or a 'just war'.

Both Saint Augustine and scholar Saint Thomas Aquinas (1225–1274) were instrumental in the development and continuance of just war doctrine. In this they developed rules in which force may be justifiably used, however, at this stage the concept had a heavy Christian influence and primarily dealt with the *jus ad bellum* of warfare, or the conditions where war is a justifiable act. Both Augustine and Aquinas accepted *jus ad bellum* as a mechanism for the extension of Christian values, for example, war as a justifiable act to protect Christian values.⁵ During this period, the knightly class of warriors introduced the concept of chivalry. This was a code of ethics that regulated the way in which professional warriors would conduct war. Chivalry was closely tied to the Church's just war doctrine, sharing regulations such as legitimacy in declaring war, the protection of non-combatants and the prohibition of unrestrained violence in warfare.⁶

The emergence of the Renaissance saw a decline in the influence of the Church in society and politics. By the 1530s, religious overtones in *jus ad bellum* were severely questioned. It was at this stage Franciscus de Vitoria, a Spanish theologian at the University of Salamanca, developed *natural law* just war doctrine based on the premise of human reason.⁷ He argued against religion as a basis for justifiable action in warfare claiming, through his *simultaneous ostensible justice* concept, that both sides of a conflict may have legitimacy in their claims to be fighting for God and in this only God would truly know what the justifiable action is. Therefore, justifiable action must be based on a more objective reason than religion; in this case, human reason. Vitoria's attention focused more on the justifiable execution of warfare, or *jus in bello*, in an attempt to limit the extent of violence in warfare.⁸

During the 17th Century, most Western thought continued to develop through scientific study and there was a further rejection of metaphysics. The theological and political cohesion of medieval Europe was disappearing, and during this time Hugo Grotius (1583–1645) reinforced Vitoria's natural law just war doctrine through his 1625 book *De jure belli ac pacis (on the law of war and peace)*.⁹ Grotius' experiences in international relations influenced his theories on just war doctrine, seeking to codify the concept as a customary practice between nations. Grotius recognised:

4 Commonly referred to as the cardinal virtues of prudence, justice, courage and temperance. Whitney J. Oates (ed.), *Basic Writings of Saint Augustine*, Random House, New York, 1948, cited in: Paul Ramsey, 'The Just War According to St Augustine', in Jean Bethke Elshtain, *Just War Theory*, New York University Press, New York, 1992, p. 8.

5 James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions*, Pennsylvania State University Press, University Park, 1997, pp. 52–53.

6 Michael Howard, *War in European History*, Oxford University Press, Oxford, 1976, pp. 2–19.

7 Louis A. Manzo, 'Morality in War Fighting and Strategic Bombing in World War II', in *Air Power History*, Fall 1992, pp. 38–39.

8 Turner Johnson, 'Historical Roots and Sources of the Just War Tradition in Western Culture', p. 8.

9 It is on the strength of this text that some scholars consider Grotius the father of international law.





the new reality of nation states, war was just not an affair of the ruler and the army; it was a clash of nations ...[and] there must be some moderation in making war...as there are some who make no direct contribution to the war and so should not be attacked.¹⁰

It was not until Emmerich de Vattel (1714–1767), however, that just war doctrine completely finished transition from that whose primacy relied on religion to that which is primarily based on natural law. Vattel argued for a state's natural right for self-defence and for moderation in this action. He urged that this moderation be based on humanitarian ideals rather than religious belief and that there be respect for an enemy's cultural icons, condemning the destruction of anything with cultural or artistic importance.¹¹ These concepts, along with those of his predecessors, have been instrumental in the development and the formal ratification of the international laws of war in the late 19th and early 20th Century.

The just war concept

Bellum justum is the underscoring criteria behind the just war concept, and requires that:

- a. the proportion of good from the outcome of the war must outweigh the war's potential for harm;
- b. the probability of success must outweigh the probability for defeat; and
- c. all reasonable peaceful remedies must be exhausted prior to a state entering into a given conflict.¹²

It is almost universally viewed that some things are worth fighting for, however, 'in order to create an ethical juxtaposition of the moral uses of force, the just war tradition criteria seeks to make a virtue out of an immoral necessity—violence and killing'.¹³ Perspectives and definitions modify this apparent paradox in order to maintain the high moral ground needed in modern warfare.

Jus ad bellum is the justice in committing to a conflict. In this, certain criteria must be adhered to for a state to enter into a given conflict to ensure a just resort to war. These criteria include:

- a. the war must be enacted by a recognised competent authority;
- b. the war must be for reasons of individual or collective self-defence, the protection of one's rights or for the protection of humanitarian rights; and
- c. the war must be initiated as a matter of 'best intention'.¹⁴

10 Manzo, 'Morality in War Fighting and Strategic Bombing in World War II', p. 40.

11 *ibid.*

12 Adam L. Silverman, 'Just war, Jihad, and terrorism: A comparison of western and Islamic norms for the use of political violence', *Journal of Church and State*, Waco, Winter 2002, p. 75.

13 *ibid.*, pp. 75–76.

14 *ibid.*, p. 75.





These criteria are designed to ‘ensure that a given war will be entered into lawfully, that it will be fought in a redressive rather than a retaliatory manner, and that the law will be contested on the basis of morally accepted intentions’.¹⁵

Jus in bello is the justice in conducting a conflict. Again certain criteria must be adhered to. This ensures that the methodologies and equipment employed in the conduct of a conflict are just. These criteria include:

- a. prosecuting the conflict using means that are proportional to the state’s political and military ends;
- b. use discrimination in tactics and targeting; and
- c. the prohibited use of certain military means and disproportionate types of combat and conduct.¹⁶

Modern theorist Sam Roggeveen isolated four basic tenets that support the just war concept; namely justification, discrimination, proportionality and humanity.¹⁷ These tenets deserve further expansion.

Justification

Modern just war theory states:

A just war must be waged with right and moral intention and must have an objective, not merely subjective or selfish aim. The gravity of the situation must warrant the extreme measure of war and there must be a reasonable chance of success. War must be publicly declared and only by a legitimate authority. In addition, all pacific routes must have been attempted before opting for war.¹⁸

The decision for a state to enter into a war requires both internal and external support and a measure of moral plausibility. The method a state uses to validate this decision that is encompassed by the just war concept is justification. Justification refers exclusively to the *jus ad bellum* of the just war theory. An example of justification is the North Atlantic Treaty Organisation’s (NATO) decision to commit the use of military force in the 1999 Kosovo conflict. It was agreed that the pacific measures taken against Slobodan Milosevic to stop the organised perpetration of ethnic atrocities were not effective, so NATO sought to prevent further atrocities with a justifiable doctrine of humanitarian intervention.¹⁹

15 William V. O’Brien, *The Conduct of Just and Limited War*, Praeger, New York, 1981, p. 16.

16 *ibid.*

17 Sam Roggeveen, ‘Just War After September 11’, in Gregory Melleuish & Imre Salusinszky (eds.) *Blaming Ourselves: September 11 and the Agony of the Left*, Duffy and Snellgrove, Sydney, 2002, pp. 32–33.

18 Laurie Calhoun, ‘The injustice of “just wars”’, *Peace Review*, Palo Alto, September 2000, p. 449.

19 Christine M. Chinkin, ‘Kosovo: A “Good” or “Bad” War?’, in *American Journal of International Law*, Vol. 93, No. 4, October 1999, p. 841.





Discrimination

The principle of discrimination is a cornerstone of *jus in bello*, which is enacted when a state has entered into a conflict, and refers to the just execution of the war in progress. It is intended to govern a state's action whilst conducting war and it infers that force should only be used against those who are attacking you. In just war criteria, it is described that a state must discriminate in targeting and tactics (a state must not attack non-combatants and non-military targets). This principle of discrimination has been one of the most abused principles of the just war concept. The 20th Century is littered with examples where civilians have borne the brunt of interstate and intrastate conflict. This is in direct contravention to the principle of discrimination, as:

ordinarily we do not hold individuals responsible for actions that they do not voluntarily intend and execute ... so it seems prima facie absurd to hold civilians responsible for the crimes of their leaders.²⁰

Discrimination is the founding concept that drives the current technology race to develop precision weaponry. Public outcry over the indiscriminate bombing campaigns of the United States in Cambodia and Vietnam forced Western militaries to develop more accurate methods of applying force. This led to the 'precision' style of warfare used by the US in the Gulf War and NATO in the Kosovo conflict.

International law developed the phrase 'non-combatant' to help discriminate and avoid unnecessary suffering in warfare. Non-combatants may be injured or captured combatants; combatants who have surrendered and are defenceless; or the multitude of innocents such as women, children, the aged, infirm, clergy, unarmed persons and soldiers on leave.²¹ It is hypocritical, however, that although it is unjust to specifically target non-combatants, their deaths are acceptable if they are a secondary result of a legitimate primary target. The number of deaths that are acceptable for a given end are argued in another principle of the just war concept: that of proportionality.

Legitimising accidental non-combatant deaths and referring to them as 'collateral damage' is one of the great contradictions of the just war concept. This de-humanisation of the true victims of warfare appears to run contradictory to the next principle of just war's *jus in bello*: humanity.

Humanity

Humanity constitutes the second principle of *jus in bello* and is inextricably tied to the discrimination and proportionality principles. However, the inclusion of humanity as a condition of war seems, on the surface at least, to be paradoxical. How does one respect the sanctity of life whilst one plans to destroy a life? This very question is why humanity is one of the most important principles of the just war concept—to treat the enemy and innocent parties with dignity, respecting their rights as human beings. In

²⁰ Calhoun, 'The injustice of "just wars"', p. 451.

²¹ Joy Gordon, 'Economic sanctions, just war doctrine, and the "fearful spectacle of the civilian dead"', in *Cross Currents*, New Rochelle, Fall 1999, p. 389.





just war doctrine, humanity is described as ‘the prohibition of certain military means [and] disproportionate types of combat and military conduct’.²² This principle has been recognised by most of the international community through the support of international law. International law limits the use of certain weaponry, such as those that maim, cause intense pain and suffering; and those weapons that are indiscriminate in nature, such as chemical, biological and nuclear weaponry.²³ They also impact on the manner in which conflict is conducted. The humanity principle is inherent in the customary way in which law is adopted for use during times of conflict. These laws are enacted to prevent inhumane actions such as torture, rape, starvation and murder. They are also used to foster a climate of care for the sick and wounded.

An example of the humanity principle’s influence is that it is instrumental in the current debate over banning the use of certain non-lethal weaponry such as laser blinding weapons, audio-sonic weapons and chemical/neurological neutralising agents.²⁴

Proportionality

Proportionality is the fine balance of using only as much force that is needed to achieve a legitimate military end. It is the final principle of *jus in bello* and it prohibits the use of certain disproportionate types of combat and military conduct.²⁵ One of the problems with proportionality is the inability to quantify what is acceptable for a defined legitimate military end. Currently this matter is up for interpretation—the currency of life has not yet been established and quantification is always subject to context. This makes the principle of proportionality complex and demanding because ‘it is to require that people think what they are trying to do, remember what they are trying to do, [and] avoid being side tracked into doing something else instead’,²⁶ through a rigorous maintenance of aim *for the sake of humanity* itself. Paskins and Dockrill explain that to:

obtain and preserve a sense of proportion is to see the activity with a military dimension in terms of the individual moral beings involved in it, to retain a sense of one’s own and the enemy’s humanity, to remember what the point of war is, to practice Clausewitz’s maxim that ‘war is an instrument of state policy’.²⁷

22 Silverman, ‘Just war, Jihad, and terrorism: A comparison of western and Islamic norms for the use of political violence’, p. 75.

23 See treaties such as: *Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*, Geneva, 17 June 1925; *The Distinction Between Military Objectives and Non-Military Objectives in General and Particularly the Problems Associated with Weapons of Mass Destruction*, Edinburgh, 9 September 1969; and *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*, Geneva, 10 October 1980, Amendment Article 1, 21 December 2001.

24 For example: *The Protocol on Blinding Laser Weapons* (Protocol IV to the 1980 Convention), 13 October 1995.

25 Silverman, ‘Just war, Jihad, and terrorism: A comparison of western and Islamic norms for the use of political violence’, p. 75.

26 Barrie Paskins & Michael Dockrill, *The Ethics of War*, Duckworth & Co., London, 1979, p. 211.

27 *ibid.*, p. 213.





In maintaining Clausewitz's maxim and recognising the individual human element in warfare, it is hoped that Glover's slide of moral identity, described in the previous chapter, may not occur.

Islamic Parallels to the Just War Concept

The principles that underpin the just war concept are not uniquely Western. As James Turner Johnson suggests, many other cultures subscribe to the same basic principles in the justifiable use of force and the justifiable moderation of force.²⁸ To provide an example of this, this chapter will now examine just war parallels derived from the tenets of Islam.

Islam is perhaps the most misunderstood religion in traditional Western society. After the events of 11 September 2001 (now known simply as September 11) and the Sari nightclub bombing in Bali on 12 October 2002, fear and suspicion underscore this misunderstanding. This is despite the fact that these terrorist actions were carried out by extremists; dangerous no matter what religion they espouse. In an age when diversification is to be embraced, Western ignorance on the subject is inexcusable. This is especially so for Australia, whose geo-strategic position neighbouring Indonesia—the world's largest Muslim population—makes a strong case for increased understanding in this area.

To contextually understand the Islamic teachings of justice in war, it is important to understand the development of Islam and its foundation document: the *Qur'an*. Through an examination of Qur'anic texts, and the context in which they were written, parallels can be drawn with the Christian just war concept. Indeed, some Qur'anic texts will expose the Islamic version of just war to be more ethical than the Christian equivalent at the time, however, this will be a matter of interpretation.

Foundation of Islam

To understand Islam, one must understand the importance of Muhammad, the last prophet of God. Muhammad was born approximately 570 CE and was raised primarily by his uncle; his father died before he was born, and his mother passed away about five years later.²⁹ His uncle was a wealthy merchant so Muhammad quickly learnt the trade and gained experience in the functions of the Arab tribal system. Although little is known about the early life of Muhammad, some scholars argue that he was part of a movement of Arabs who were disillusioned by certain aspects of the traditional Arab tribal system and sought to establish the foundations for Arab monotheism to

28 Turner Johnson, 'Historical Roots and Sources of the Just War Tradition in Western Culture', p. 3.

29 In accordance with the 'Common Era Calendar'. This is a calendar whose structure is the same as the Gregorian calendar, but which denotes years not according to the Gregorian AD/BC system but according to the astronomical system. Such dates can be marked with 'CE' for Common Era or 'BCE' for Before Common Era.





create a ‘transtribal community’.³⁰ It is traditionally understood that at around age 40, revelations were made to him that he was to be a conduit for the message of God:

He, like Moses and Jesus, had been given a particular mission within the providence of God: to proclaim God’s word to a specific community—in Muhammad’s case, those whose language was Arabic. And like Moses and Jesus, Muhammad would receive a particular revelation to instruct, guide, and confirm his community in its mission: the *Qur’an*, a scripture equivalent to the Torah and the Gospel, yet distinctly Arabic in language and tone.³¹

The *Qur’an* is distinct from other scriptures due to the fact that it could be written at the times when Muhammad was receiving these instructions because of the availability of writing equipment. It is therefore understood in the Muslim community that the *Qur’an* is literally ‘the word of God’, and that the messages and instructions contained within are the foundation on which society must be built. It is within the *Qur’an* passages that parallels to the Christian just war doctrine may be found. Although these passages mainly deal with the Islamic concept of ‘Jihad’, they are a reflection of the just war theories that the majority of Muslims espouse.

Jihad

Jihad is the Arabic word for ‘struggle’ but it has many connotations. These may range from what mainstream Muslims describe as the internal struggle for piety and righteousness to the extremist interpretation of religious war. It is within this broad, contextual definition that Jihad must be examined. Unfortunately, Western ignorance and the actions of a few extremists has pigeonholed the term as a synonym for terrorism, especially in light of the events of September 11 and the subsequent ‘war on terror’. This does not give the term justice, however, as it has been taken out of the context in which it was written and it does not represent the view of the majority of the international Muslim community.

Jihad and jus ad bellum

The criterion for justification in the use of force, or *jus ad bellum*, is described through the historic interpretation of Jihad. Islamic scholars Ibn Hazm al-Andulusi (1064 CE), Ibn Salamah (1032 CE) and Qadi Iyadh (1149 CE) argued that the call to Jihad is a personal obligation, and Taqi al-Din ibn Taymiyyah (1328 CE) expanded this to be the personal right of all Muslims to wage Jihad on behalf of Islam.³² It is through these teachings that the first just war criterion—war must be enacted by a recognised competent authority—is paralleled. In this case, the competent authority is any Muslim who acts justifiably in accordance to the following criteria.

30 John Kelsay, *Islam and War: A Study in Comparative Ethics*, Westminster/John Knox Press, Kentucky USA, 1993, pp. 18–19.

31 *ibid.*, p. 20.

32 R. Hrair Dekmejian, *Islam in Revolution: Fundamentalism in the Arab World*, Syracuse University Press, New York, 1985, p. 39; Silverman, ‘Just war, Jihad, and terrorism: A comparison of western and Islamic norms for the use of political violence’, p. 81.





The second *jus ad bellum* criterion—war must be for reasons of individual or collective self-defence, the protection of one’s rights or for the protection of humanitarian rights—is addressed within the passages of Sura al Hajj, verse 39, where it is stated, ‘permission to fight is given to those who are fought against, because they have been wronged’.³³ This passage implies the right for self-defence and the justification for war against a wrongdoing.

The final *jus ad bellum* criterion—war must be initiated as a matter of ‘best intention’—is addressed in Sura al-Anfal, verse 61, ‘... if they [the enemy] incline towards peace, you also incline to it’, inferring that peace should be the ultimate goal in war.³⁴ Also Surah Al-Baqarah, verse 256, states, ‘[in Jihad] let there be no compulsion in religion’, inferring that war should be used for legitimate purposes, not for the intent of conversion.³⁵ This is elaborated on in an interpretation of the Sura that states, ‘compulsion is incompatible with religion ... because religion depends upon faith and will, and these would be meaningless if induced by force’.³⁶ It is in this interpretation that the original Islamic version of just war doctrine is perhaps more ethical than that espoused by Augustine and Aquinas, who supported religious conversion by warfare.

Jihad and jus in bello

Interpretations of the *Qur’an* also account for ethical considerations in the management of violence. Again, direct parallels from an Islamic perspective can be drawn to Western just war themes. In this case the themes of proportionality, discrimination and humanity in *jus in bello* will be explored and compared to those just war criteria mentioned previously in this chapter.

As stated earlier, the theme of proportionality in just war theory can be described as *the prosecution of the conflict utilising means that are proportional to the state’s political and military ends*. In the prosecution of Jihad or self-defence, the *Qur’an* states that, ‘whoever has retaliated with the like of that which he was made to suffer, and then has again been wronged, Allah will surely help him’.³⁷ This passage embodies the spirit of proportionality in the application of force, in that it is only permissible to retaliate in kind, not with disproportionate measures.

The just war theme of discrimination is described in the *Qur’an* by the statement in Sura Al-Baqarah, verse 190, ‘and fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.’³⁸ An interpretation of this statement not only reinforces justification in self-defence but also implies that discrimination should be used in retaliation. Although it was written during a period

33 *The Noble Qur’an in the English Language*, translated by Dr. Muhammad Taqi-ud-Din Al-Hilali & Dr. Muhammad Muhsin Khan, King Fahd Complex, Madinah KSA, 1997, p. 534. All references to the *Qur’an* will refer to this text unless noted otherwise.

34 *ibid.*, p. 295.

35 *ibid.*, p. 79.

36 *The Holy Qur’an*, translation and commentary by A. Yusuf Ali, Armana Corp., Maryland USA, 1983, p. 103 (footnote 300).

37 *The Noble Qur’an in the English Language*, p. 538.

38 *ibid.*, pp. 56–57.





when warfare was limited to line-of-sight, there are clear ethical boundaries limiting the application of force to only against enemy belligerents, and that it is unethical (sinful) to do otherwise. Given a modern context, this statement runs parallel to the just war theme of discrimination, where one must *use discrimination in tactics and targeting*. Sura Al Isrâ', verse 33, 'and do not kill anyone whose killing Allah has forbidden, except for a just cause', further supports this theme.³⁹

Examining the parallels between the just war theme of humanity—the prohibited use of certain military means and disproportionate types of combat and conduct—and the Islamic equivalent is a somewhat more difficult task. Due to the nature of the *Qur'an* and the historical context in which it was written, references to methods and means of warfare are almost non-existent. An interpretation of the following verse, however, may provide a starting point, 'Whosoever intercedes for a good cause will have the reward thereof, and whosoever intercedes for an evil cause will share in its burden.'⁴⁰ Although this verse is intended more towards *jus ad bello*, the spirit in which it is written suggests a concern for humanity in the conduct of any action.

Conclusion

What has been highlighted through this brief comparison between Western just war theory and the Islamic equivalent is diverse cultures can have similar basic moral foundations in the management of violence. Even though both have strong foundations in religion, it is the basic premise of humanism that inextricably links them. It is for this reason that Vitoria and Grotius' natural law just war doctrine holds strength as a universal approach to military ethics. In the next chapter, these theories are developed further into international laws that currently seek to regulate modern warfare. To set the tone for the rest of the paper, international law will be examined for its effect on air power and non-combatant casualty limitation within both a theoretical and practical framework. This will be achieved through a case study of the utility of military ethics and their influence on non-combatant immunity in aerial operations.

³⁹ *ibid.*, p. 448.

⁴⁰ *ibid.*, p. 158.





Humane Warfare





Chapter 4

The Utility of Military Ethics

In accordance with Government policies, the Australian Defence Force aims to be, and be perceived as being, a highly trained, well equipped, professional force, and one that operates within the boundaries set by domestic and international law and ethical standards.

The Australian Approach to Warfare¹

The Use of Military Force

As has been established in the previous chapters, there has been a long history in the development of theories and practice in regard to the ethical application of military force. Interpretation of these theories is further compounded by the philosophical position to which one subscribes. Philosophical positions such as pacifism, realism and utilitarianism contextualise the morality of military intervention and the use of force. These arguments range from whether military force should ever be used at all, to whether military ethics and law are practical in the reality of war. It is important to recognise these arguments as they, and the collective theories of just war doctrine, have influenced the development of international laws that seek to regulate and modify modern warfare.

Pacifism

Pacifism may be simply defined as the antithesis of war. It is the belief that it is morally unjustified to use violence to resolve disputes, as all disputes may be resolved through peaceful measures.² For the pacifist even the condition of self-defence is no excuse to resort to violent means. It is in this that pacifism counters the theories of just war doctrine, where there is a justifiable use of violence. Pacifism can be broken down into two positions, although most pacifists subscribe to both positions to some extent.

Firstly there is *consequentialist* pacifism, the 'consequentialist form of pacifism ... which maintains that the benefits accruing from war can never outweigh the costs of fighting it'.³ Secondly there is *deontological* pacifism, 'which contends that the very activity of war is intrinsically wrong, since it violates foremost duties of justice, such as killing human beings'.⁴ Defenders of pacifism put forward two distinct methods to

1 Department of Defence, *The Australian Approach to Warfare*, p. 20.

2 Donald A. Wells (ed.), *An Encyclopedia of War and Ethics*, Greenwood Press, London, 1996, p. 375.

3 *Stanford University Encyclopaedia of Philosophy*, <http://plato.stanford.edu/entries/war>, p. 8, accessed 6 May 2002.

4 *ibid.*, p. 8.





circumvent the use of violence in a less than idealistic world. The first is to remove the reasons for antagonism; and second, through the use of non-violent resistance. It is argued antagonism within or between states is the result of friction created by competition. Competition exists between groups within a state and between states within the international system, although it can also be argued competition can also exist between a group and a state, for example, Al Qaeda and the United States. Consequentialist pacifists would argue that if an international system existed that reduced or abolished this competition, then war would not be an option, as international policy would not require it. Further to this, the costs associated with war, whether they are human, monetary or ecological, would far outweigh the benefits gained, if any.⁵

In the second method, non-violent resistance would seek to cripple a state or group of states making them 'unattractive' to invade or annex. As a state is virtually a system of systems that interrelate to create the cohesion necessary for it to operate, non-violent resistance breaks down or interrupts these systems to effectively cripple the state making it 'difficult' for belligerents to occupy.⁶ Deontological pacifists would argue that this method is the only morally sound act against an invading belligerent.

Although these positions and their associated methods do have merit, they are based on the assumption that other groups or states will adhere to a similar form of moral standard. A mere cursory read of literature on the history of the 20th Century would reveal that this is not always the case. The philosophical position that runs counter to pacifism is realism.

Realism

Realism is perhaps the most influential philosophical position amongst the military and other practitioners of international relations. Realists argue that self-interest must be the driving force behind all decisions made concerning the international environment.⁷ Concepts such as morality and humanity are considered invalid for employment in the decision-making process. In the case of whether military force should be employed for a particular end, the realist will only consider national self-interest (security and power) as a priority. During the application of military force, realism allows for adherence to ethical issues, international law and other moderators only if it is the best interest of the state to do so, otherwise they represent a hindrance to achieving nationalistic goals.⁸ Realism has two schools of thought, *descriptive* realism and *prescriptive* realism.

Descriptive realists argue states either 'do not (for reasons of motivation) or can not (for reasons of competitive struggle) behave morally'.⁹ States exist within a competitive environment that is under continual pressure from other states; in order to survive, primacy must be given to power, security and self-interest. In this, the state cannot be

5 *ibid.*

6 *ibid.*, pp. 7–8.

7 *ibid.*, p. 5.

8 *ibid.*, p. 6.

9 *ibid.*





considered as an animate entity bound by the same ethos that individuals are expected to exhibit to maintain civility in society.¹⁰

In contrast to this, prescriptive realism argues that a state should be amoral when concerning international relations. By establishing amorality, a state is better equipped to clearly pursue the self-serving policies in the international arena that is necessary for survival. In this 'a state should ... adhere to an amoral policy of *smart self-regard* in international affairs'.¹¹ Smart self-regard and amorality is argued to allow more scope for action in resolving international problems. Although being amoral, prescriptive realists may support international regulation of the use of force if it means creating an environment in which the state will further flourish.¹²

Realists generally disavow just war theories as invalid, as is the case for prescriptive realists; or for descriptive realists, only to be considered for reasons of self-interest, not for the benefit of humanity as a whole.

Utilitarianism

Making up the middle ground between the two moral antipodes, pacifism and realism, are the theories of utilitarianism.¹³ Utilitarianism may be described as 'the moral theory that an action is morally right if and only if it produces at least as much good [utility] for all people affected by the action as any alternative action the person could do instead'.¹⁴ Utilitarianism is therefore the balancing act of weighing up the repercussions of one's actions, or inactions, to ensure that the effects produced will be beneficial, not detrimental, to the parties concerned. This may or may not be measured against preset moral norms, depending on what form of utilitarianism is being subscribed to. Utilitarianism has two forms of practice, *act* utilitarianism and *rule* utilitarianism, although it is possible to subscribe to both forms in parallel.

Act utilitarianism references the morality of an action against other possible alternative actions for the given situation.¹⁵ This position has similar parallels to just war principles of humanity, proportionality and discrimination. The action must be in accordance with a greater good (humanity) in comparison to other actions (measured through application of the principles of proportionality and discrimination).

In comparison, rule utilitarianism references the morality of an action against a preordained set of rules and restrictions.¹⁶ This position also has similar parallels to just war principles of humanism, proportionality and discrimination, only their customary practice have been ratified into formalised laws (rules and restrictions). Rule

10 *Stanford University Encyclopaedia of Philosophy*, p. 6.

11 *ibid.* Emphasis added.

12 *ibid.*

13 Sometimes referred to as consequentialism.

14 Robert Audi (ed.), *The Cambridge Dictionary of Philosophy*, Cambridge University Press, USA, 1995, p. 824.

15 *ibid.*

16 *ibid.*, p. 825.





utilitarianism may also allow by and large morally wrong actions to occur if they are in accordance with the regulating system in which they were committed. For example, killing non-combatants in war may be morally wrong. However, in accordance with international law (the system regulating the action) it is permissible to kill non-combatants if they are a secondary result of your action, whether intended or not. If this example were applied to act utilitarianism, the moral implications of non-combatant deaths would only be measured against the moral implications resulting from other possible actions in the situation, not in accordance with the preset rules governing the situation.

Theory to Practice, Laws to Preserve Humanity

Properly understood, the principle of military necessity is the source of authority to use armed coercion so long as it is proportionate to legitimate military ends and limited by the principles of humanity, notably including discrimination, and the laws of war.

William O'Brien¹⁷

Formalised international law concerning the use of military force has been in existence for well over a century; such as the 1880 Laws of War on Land, the Hague Conference of 1899, and the 1907 Convention (IX) concerning Bombardment by Naval Forces in Time of War. Since then, the League of Nations and subsequently the United Nations have attempted to encourage the international community to regulate the use of military force in international relations. The codification of law represents the culmination of centuries of theoretic argument and customary practice in the regulation of military force in international and domestic relations. The purpose of this section is to describe the manner in which theory relates to practice, how the practice of international law reflects the spirit from which the theory was developed, and how the practice of law affects the manner in which the ADF applies military force. In the previous chapter, it was determined that just war doctrine consists of the justification for war—*jus ad bellum*; and justifiable action in war—*jus in bello*. As the scope of this paper is primarily concerned with the application of force this section will only concentrate on *jus in bello*.

International law and Law of Armed Conflict (LOAC)

International law pertaining to the conduct of war is composed of customs, treaties, judicial decisions, legal texts and general legal principles.¹⁸ LOAC, as a subset of international law, generally derives from customary international laws that have

17 William V. O'Brien, 'The International Law of War as Related to the Western Just War Tradition', in John Kelsay & James Turner Johnson (eds.), *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, Greenwood Press, Connecticut USA, 1991, p. 181.

18 Australian Air Publication 1003 (AAP 1003), *Operations Law for RAAF Commanders*, First Edition, Air Power Studies Centre, Department of Defence, Canberra, May 1994, paragraph 11.





developed through accepted practice and treaties formed through international agreement on these customs.¹⁹ It can be said that customary law derives from:

the practices of military, naval and air forces during hostilities. When a practice attains a degree of regularity and is accompanied by a general acknowledgment by nations that behaviour, in conformity with practice, is obligatory, it can be said to have become a rule of customary law.²⁰

Treaties range from bilateral agreements between two states, or forces within a state, to internationally recognised and ratified treaties developed by the international community. The 1863 Lieber Code, the 1899 Hague Convention, and the 1949 Geneva Convention are examples of treaties governing the conduct of war.

LOAC embodies the just war principles of *jus in bello* and *jus ad bellum*. O'Brien identified the elements of LOAC and divided them into several categories that constitute justifiable action in war. These are:

- a. basic principles: military necessity, humanity, and chivalry;
- b. combatant and non-combatant status;
- c. limitation on means and methods of warfare;
- d. prisoners of war;
- e. treatment of wounded and sick;
- f. belligerent occupation—treatment of civilians;
- g. communications and agreements between belligerents; and
- h. sanctions.²¹

These categories can be directly related to the four principles of just war theory: justification, proportionality, humanity and discrimination. For the sake of brevity and to keep focus on the purpose of the paper, only O'Brien's first three categories will be compared to these principles.

Basic principles: military necessity—just war principle of justification

In the law of war, 'military necessity' is a term that has been developed to explain the justification of a military action.²² The guiding principles of military necessity that are paralleled in just war theory are justification and proportionality. Justification being that the means used to achieve an end are legitimate and lawful, and proportionality being that the means used to achieve that end do not outweigh the value of the end.

19 *ibid.*, paragraphs 7, 11 & 12.

20 *ibid.*, paragraph 6.3.

21 O'Brien, 'The International Law of War as Related to the Western Just War Tradition', p. 166.

22 AAP 1003, *Operations Law for RAAF Commanders*, paragraph 6.6.





The Australian Defence Force Publication 3 (ADFP3) *Rules of Engagement* describes military necessity as:

the legitimate application of force to obtain a military objective. Military necessity is the concept which allows Australia to apply force during a conflict to defeat an enemy. The aim is to defeat the enemy as soon as possible at the least cost in lives and resources. This concept presupposes: (a) the force can be and is being controlled, (b) the use of force is necessary to achieve as quickly as possible the partial or complete submission of the enemy, and (c) the amount of force used is no greater in effect on enemy personnel or property than needed to achieve his prompt submission ... military necessity is not a concept which can be considered in isolation ... [it] cannot justify actions absolutely prohibited by law as a means to achieve military victory are not unlimited. Armed conflict must be carried out within the limits of the prohibitions of international law, including the restraints inherent in the concept of necessity.²³

Additional Protocol I of the Geneva Convention further provides what is lawful for military necessity. It refers to the principle of military necessity through its implications for civilian protection in times of war. Military actions may be considered unlawful if they 'may be expected to cause incidental loss of civilian life ... which would be excessive in relation to the concrete and direct military advantage anticipated'.²⁴ Therefore, military necessity is the justifiable action used to achieve a concrete and direct military advantage in times of conflict (established by applying the principle of proportionality).

Basic principles: humanity—just war principle of humanity

The LOAC basic principle of humanity, like that of just war humanity, is the underpinning theme that permeates the *raison d'être* of lawful moderation in war. Humanity is a focus to prevent the unnecessary pain, injury or death of innocent parties, and to prevent unnecessary destruction of property. The key elements of LOAC humanity are:

- a. the force used must not exceed the minimum required to achieve the military objective;
- b. there must be a valid military objective;
- c. destruction as an end in itself is prohibited;
- d. any destruction of property must contribute to the defeat of the enemy; and
- e. wanton killing and wilful infliction of suffering, as revenge, is prohibited.²⁵

23 Australian Defence Force Publication 3 (ADFP3), *Rules of Engagement*, First Edition, Department of Defence, Canberra, 1996, paragraphs 234–235.

24 Additional Protocol I, Article 51 (5)(b), cited in AAP 1003 *Operations Law for RAAF Commanders*, paragraph 6.8.

25 *ibid.*, paragraph 6.9.





A sixth principle of *any destruction of property with cultural significance is prohibited* should be added here as an annex to this list. This form of cultural sensitivity and respect should be exercised as complimentary to the principle of humanity. Additional Protocol I reflects these principles throughout its Articles. For example, Article 35 states:

- a. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
- b. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
- c. It is prohibited to employ methods or means of warfare, which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.²⁶

This Article has humanistic overtones that seek to instil a theme of respect for the dignity of human life and the environment in which we live. Although this is just a small portion of the vast document that is Additional Protocol I, it is representational of how this theme of humanity permeates the spirit of the development of these laws.

Basic principles: chivalry

Although originally developed as a code of conduct between gentlemen in a time when war was a contest of arms, the principle of chivalry still holds true in much of modern LOAC. Unscrupulous behaviour, such as employing human shields and disrespecting the flags of truce, is factored into LOAC. For example, the 1880 Laws of War on Land state that it is unlawful 'to make treacherous attempts upon the life of an enemy ... by feigning to surrender'.²⁷ This implies the unchivalrous misuse of the flag of truce to gain an illegal military advantage.

Combatant and non-combatant status—just war principle of discrimination

In defining the distinction between combatants and non-combatants in armed conflict, LOAC adheres to the just war principle of discrimination. LOAC seeks to identify parties to be afforded protection in war—non-combatants; and those who are legitimate targets for the application of force—combatants. During early just war thought, there was a propensity to identify an individual as either guilty or innocent in times of war. Any citizen of an opposing nation or state guilty of contributing to the war effort was identified as being an enemy and therefore a legitimate target. When the populace of an enemy nation aided the war effort, either directly or indirectly, then the populace may be legitimately attacked. This was an argument that found its way into both World War I and World War II because of the position that war was total; nation versus nation, state versus state. This was despite the fact that in 1907 the Hague Convention IV tried

26 Additional Protocol I of the Geneva Convention, International Committee Red Cross website, <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079?OpenDocument>, accessed 25 April 2002.

27 *The Laws for War on Land*, Oxford, 9 September 1880, Part 2, Article 8(b), International Committee Red Cross website, <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6a5d425d29d9d6dbc125641e0032ec97?OpenDocument>, accessed 25 April 2002.





to distinguish combatants as the only legitimate targets for the application of force. The Convention stated that in order to distinguish themselves from non-combatants, combatants were to:

- a. be commanded by a person responsible for his subordinates;
- b. have a fixed distinctive emblem recognisable at a distance;
- c. carry arms openly; and
- d. conduct their operations in accordance with the laws and customs of war.²⁸

These rules draw a distinct difference between a combatant and a non-combatant during times of conflict. These differences have been made more distinct in modern LOAC. Non-combatants may be the civilian population, excluding ‘the armed forces, militia, or paramilitary forces, and others not taking a direct part in the hostilities [but are contributing indirectly]’.²⁹ Non-combatants may also include accompanying civilians,³⁰ journalists, war correspondents and members of the armed force who are non-combatants; such as medical personnel and chaplains.³¹ Additional Protocol I confirms the principle of discrimination. For example, Article 48 states that:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.³²

Limitation on means and methods of warfare—just war principle of proportionality

The just war principle of proportionality inextricably links the LOAC principles of humanity and military necessity. When there is a military necessity to apply military force to a situation, the principle of humanity urges the use of force proportional only to that which is required to achieve the stated aim. This has an effect of minimising unnecessary pain, injury or death of innocent parties, and preventing unnecessary destruction of property. Therefore, proportionality puts a limitation on the means and methods of warfare for the sake of humanity, a spirit reflected in LOAC and international law. The ADFP3 *Rules of Engagement* states:

[Proportionality] specifies that the military value of the target dictates the extent to which otherwise intolerable damage and suffering is acceptable. Military objectives will not always be separated from civilian activities and locations. The general immunity of

28 Hague Convention IV Respecting the Laws and Customs of War on Land, 18 October 1907, 35 Stat. 2277; Treaty Series No. 539; Malloy Treaties, Vol. 2: 2269, cited in O’Brien, ‘The International Law of War as Related to the Western Just War Tradition’, p. 170.

29 AAP 1003 *Operations Law for RAAF Commanders*, paragraph 10.5.

30 Only when not contributing to the war effort.

31 AAP 1003 *Operations Law for RAAF Commanders*, paragraphs 10.1–10.4.

32 Additional Protocol I of the Geneva Convention.





the population does not extend to protecting military objectives of significance. The higher the priority of a military target, the greater (proportional) collateral civilian casualties and damage to civilian objects will be tolerated. It can be argued that an attack on a truly vital target will so impair the will or means of the enemy to resist as to bring the conflict quickly to a halt. In that case, the overall end result is reduced suffering, notwithstanding that collateral casualties and damage that may occur.³³

Additional Protocol 1 further defines proportionality as:

The principles and rules of pre-existing conventional and customary international laws as to the precautions which are required of the attacking party in order to avoid or minimise loss of civilian life or damage to civilian property collateral to attacks on military objectives.³⁴

In this, Article 57 goes to great depth in describing the legal requirements associated with the consideration of proportionality when applying military force. It demands that war planners ‘take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss or civilian life, injury to civilians and damage to civilian objects’.³⁵

This analysis of LOAC and the just war principles illustrates the manner in which theory reflects customary practice and, in turn, practical law. International laws such as those ratified at the Hague Conventions of 1949 and 1977 embody the spirit of the just war principles, which were developed through centuries of theoretic argument and customary practice in the regulation of military force in international and domestic relations. In this, it is important to continually reflect on society’s demands of their armed forces to ensure the laws and customary practices of the day reflect society’s values. It is the professional responsibility of the military to seek to achieve this equilibrium.

Australian aerospace power and the law

ADF doctrine manual *Australia’s Approach to Warfare* states that if the ADF:

[is] to meet future challenges ... [it] needs an intimate understanding of the changing nature of society. It must be a flexible and adaptable organisation, acknowledging the *role and limitations of armed force as a means of resolving conflict*.³⁶

33 ADFP3 *Rules of Engagement*, paragraph 239.

34 *ibid.*, paragraph 241.

35 Additional Protocol I of the Geneva Convention.

36 Department of Defence, *The Australian Approach to Warfare*, p. 1.





The role of an armed force or military has been discussed previously in this paper, however, it is the limitations of armed force put upon the ADF, in particular aerial operations, that will be addressed in this section.

What are the legal limitations of the way in which the ADF can apply armed force?

ADF actions are legally bound by the international laws of several international treaties (that Australia is a signatory to their ratification), and the limitations imposed upon the ADF by the Australian Government.

First, Australia is a signatory to the 1949 Geneva Conventions and the subsequent 1977 Additional Protocols. Therefore, Australia is bound to abide lawfully by the international laws contained within, as well as to the spirit in which these laws were written, including customary international laws regarding the application of military force or LOAC. LOAC is well defined in many of the ADF's manuals and to define LOAC again would be at the risk of repetition, suffice to say that in general terms the ADF subscribes to the definitions of LOAC previously mentioned in this chapter.³⁷

Secondly, Australia is restricted in the types of weapons it may use. As a signatory to the Conventional Weapons Convention, Australia is bound by rules to restrict the use of incendiary weapons and the use of cluster and fragmentation weapons against anyone but combatants. Further to this, as a signatory of the 1992 Chemical Weapons Convention, Australia is prohibited to develop, produce, stockpile, test and use chemical weapons, and as a signatory to the Treaty of Rarotonga Australia will prevent the stationing of nuclear weapons on Australian sovereign land. Australia will also not use any other weapon that is banned by guidelines within the 1949 Geneva Conventions and the 1977 Additional Protocols.³⁸

Thirdly, the ADF is bound to apply to the principles of Aerial Targeting as explained in the *Operations Law for RAAF Commanders* manual:

The law of aerial targeting is based upon three fundamental principles:

- a. the right to adopt means of defeating the enemy is not unlimited;
- b. attacks directed at the civilian population or civilian objects are prohibited; and
- c. distinction must be drawn between combatants and non-combatants, with every effort being made to avoid involving non-combatants in the conflict.

37 For example: *The Australian Approach to Warfare, AAP 1000 Fundamentals of Australian Aerospace Power, AAP 1003 Operations Law for RAAF Commanders, ADFP3 Rules of Engagement, and Australian Defence Doctrine Publication: Foundations of Australian Doctrine.*

38 AAP 1003 *Operations Law for RAAF Commanders*, paragraphs 9.1–9.8.





These principles conform to three of the principles of war: selection and maintenance of the aim, concentration of force, and economy of effort. That is, the law requires that only objects of military value be attacked.³⁹

Finally, the ADF is limited in the manner in which it may apply force by the development of rules of engagement (ROE) for a particular operational theatre or campaign. ROE are developed at the military strategic level with guidance from the Government and are approved by the Chief of the Defence Force. They provide:

operational and tactical level [guidance to] commanders that delineate the circumstances and limitations within which force may be applied by the ADF to achieve military objectives. ROE are issues both in times of peace and armed conflict and will be influenced by national policy and international and domestic law.⁴⁰

The foundation principle of ROE is the right to self-defence, however, ROE may also be ‘a means of ensuring there is appropriate strategic level control over ADF operations, to ensure consistency with policy objectives and political constraints’.⁴¹ In addition to this, it is through the employment of ROE that military commanders and government officials may be sure that their subordinates carry out operations in accordance with international law.

International law, LOAC and ROE are instrumental in preserving the just war principles of humanity, proportionality, discrimination and justification. In the case of protecting non-combatants, however, they are still lacking due to an emerging propensity to misuse the principles of intention (military necessity) and double effect. Non-combatant casualties are still an acceptable norm in warfare by the military if they are the result of secondary effects of the intended aim, however, societal expectations for non-combatant immunity are beginning to challenge this norm. This paradigm shift will be highlighted in the following case study.

Just War, the Law and Air Power: A Case Study in Aerial Bombing and Non-Combatant Immunity

War has been the birth of aviation—aviation will be the death of War.

Royal Flying Corps lecture 1916⁴²

39 *ibid.*, paragraph 8.3.

40 Australian Air Publication 1000 (AAP 1000), *Fundamentals of Australian Aerospace Power*, Fourth Edition, Aerospace Centre, Department of Defence, Canberra, 2002, p. 114.

41 Australian Defence Doctrine Publication, *Foundations of Australian Military Doctrine*, Department of Defence, Canberra, 2002, paragraph 7.39.

42 Philip S. Mumford, *Humanity, Air Power and War: An Essay Upon International Relations*, Jarrolds Publishers, London, 1936, p. 21.





War, no matter how it may be glorified, is unspeakably horrible in every form. The bomber simply adds to the extent of the horror, especially if not used with discretion; but when used with the proper degree of understanding, it becomes, in effect, the most humane of all weapons.

General Arnold⁴³

On 8 June 1972, a nine-year old Vietnamese girl and her family were subjected to a 'friendly' napalm attack. The girl was severely burnt by the napalm and ran screaming from her destroyed village. She was naked with her arms outstretched, crying from the painful burns to her back, neck and arms, crying to any who could hear '... nong qua, nong qua!' (... too hot, too hot!). On the same road she was running down were several international journalists, each trying to get photographs of the evolving events but none were ready for the shocking events they witnessed.

The girl's name is Kim Phuk, and the photographs and film taken of her on that fateful day helped turn public opinion in the West against the continuance of the Vietnam War.⁴⁴

What makes an individual's story of suffering during military action, such as Kim Phuk's, an international event that can sway the opinion of millions of people isolated thousands of miles away from the event? How is it that the perceptions of protecting the innocent in warfare are becoming so prevalent today when only 60 years ago the case was the opposite?

This case study on non-combatant immunity in the application of air power seeks to answer these questions and demonstrate the utility of military ethics in the application of force.

Non-combatant immunity and the conception of air power

Immediately prior to World War I, the concept of non-combatant immunity was firmly entrenched in law of war treaties, such as the 1880 Laws of War on Land and the 1907 Convention IX concerning Bombardment by Naval Forces in Time of War. However, the practice of these rules was still tentative and subject to situational context; non-combatants were still subject to military actions such as siege warfare and naval blockades. The development of these laws were the result of centuries of custom, practice and theories, as discussed in previous chapters. When air power was conceived the concept of non-combatant immunity during conflict was further vexed due to the unknown future capability of this emerging technology. Prior to the advent of fixed-wing aircraft, air power consisted of rudimentary, 'lighter-than-air' machines, whose primary purpose was reconnaissance and intelligence work. However, this did not stop the fear that they may be used for more destructive purposes and the international

43 Cited in Ronald Schaffer, *Wings of Judgement: American Bombing in World War II*, Oxford University Press, New York, 1985, p. 61.

44 For the entire Kim Phuc story read: Denise Chong, *The Girl in the Picture: The remarkable story of Vietnam's most famous casualty*, Simon & Schuster, UK, 1999.





community set about trying to restrict the use of these machines during times of war. At the Hague Peace Conference of 1899, the international community voted in favour of prohibiting the discharge of explosives or projectiles from balloons for a period of five years.⁴⁵ Although this decision was seemingly humanitarian in nature, other factors influenced the final outcome. The status of a nation's air power development program was one of the major points of order. As French and German air power development programs were quite successful, they and other strong aeronautical powers such as the United States and Britain argued against the proposed restrictions. Russia and the smaller states that had either failing programs or no programs at all argued affirmatively for absolute prohibition of aerial bombardment.⁴⁶ The deadlock was finally broken with the suggestion that the ban exist for only five years at which time it would be reviewed for renewal. This decision proved two things: firstly, even though it was in its conceptional stage, states recognised the potential of air power and 'were unwilling to sacrifice a potentially useful weapon to the indefinite future'.⁴⁷ Secondly, states were essentially realist in nature, basing their decisions primarily on either the advantages they could gain from air power or the disadvantage they would suffer against another state who had superior air power—concern for humanity in general came a poor second consideration.

Due to the realisation of the advantages to be gained through air power, in subsequent years virtually all states that could afford it developed their own air power capabilities. When in 1903 the Wright brothers proved the viability of heavier-than-air flight, ambitions were furthered for the expected capability that air power promised and there was increased public concern for the impact it may have on future warfare. Various journalists, military thinkers, and politicians influenced this public concern, but it was the British novelist H.G. Wells who had the most profound effect on the psyche of the public. His novel *The War in the Air* portended the obliteration of civilisation without the use of land or naval forces, as aircraft would be employed 'by an unscrupulous enemy against hapless civilians rather than soldiers'.⁴⁸

Despite the growing public concern, at the Second Hague Conference in 1907 aerial bombardment was not banned and was left regulated under the auspices of the rules of land warfare. This was primarily due to the success of the air programs by the French, Germans, Russians and Italians who sided for the negative in the reinstatement of the 1899 ban.⁴⁹ Although it may appear that humanitarian issues were put aside for military utility, it must be remembered that the full implication of the emerging technology of air power could not be fully realised at the time.

45 E.E. Casagrande, *Air Bombardment and the Law of Armed Conflict*, Air Power Studies Centre, Department of Defence, Canberra, 1993, p. 4.

46 Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations*, Cornell University Press, New York, 2001, pp. 99–100.

47 *ibid.*, p. 100.

48 Richard Overy, 'Air Warfare', in *The Oxford Illustrated History of Modern War*, Oxford, UK, 1997, p. 228.

49 Thomas, *The Ethics of Destruction*, pp. 100–102.





In 1911, Italian aviator Second Lieutenant Giulio Gavotti dropped four small bombs from his flimsy fixed-wing aircraft on the towns of Taguira and Ain Zara in Libya, during Italy's campaign against Turkey.⁵⁰ This act, although contributing little to the war effort, signalled the future for air power in the 20th Century. The world only had to wait a few more years until air power and the concept of non-combatant immunity would be ultimately tested during a major world war.

Air power and non-combatant immunity in World War I

When war broke out in 1914 the air capabilities of the major powers were rudimentary at best. However, this was to change over the next four years of the war as air power capabilities made remarkable progress, mostly driven by the necessity of war. At the start of the war fixed-wing aircraft were generally flimsy, single-seat biplanes used in reconnaissance and scouting roles; by 1918 there was a variety of specially built aircraft for other applications, such as fighters and bombers.⁵¹

The customary practice of non-combatant immunity from aerial bombardment was subject to the regulation of the Laws of War on Land. They stated that in the case of non-combatant immunity, a force may not 'attack and bombard undefended places'.⁵² This law was conveniently sidestepped by the argument that virtually all European cities were fortified to some extent, so therefore they were legitimate targets. Also, ineffective technology played a large role in exposing non-combatants to aerial bombardment. Even if the target aimed at had been legitimised as a military objective, the limitations of bombing technology caused inaccurate results that exposed non-combatants to death and destruction. So although, in theory, a state held the high moral ground of only attacking a legitimate military objective, practice belied this position.

As the war progressed, air power was continuously employed in more novel ways, however, it is argued by Overy that its most effective role, in a military sense, was in tactical support.⁵³ In spite of this, it was the strategic long-range bombing campaigns that the general public of the warring states remembered most. The use of aerial bombing in tactical combat support created a fear that touched even the most seasoned troops in the field. The value of this was quickly realised and the tactic was soon to be tested on unsuspecting civilians. In 1914–1915, Germany conducted a campaign of Zeppelin raids on British and French towns to try and disrupt the morale of the civilians. The fear they created was perhaps more effective than the bombs they dropped, however the precedent for wholesale killing of non-combatants via aerial means was set.⁵⁴ In 1917–1918, the British launched reprisal attacks against German cities and again the fear created was more effective than the munitions dropped. Wells' *The War in the Air* was all too quickly becoming a reality for many civilians, none more so than the

50 R. Saundby, *Air Bombardment: The Story of Its Development*, Chatto & Windus, London, 1961, p. 7.

51 Overy, 'Air Warfare', pp. 228–229.

52 *The Laws for War on Land*, Article 32(c).

53 Overy, 'Air Warfare', p. 230.

54 Jeffrey Legro, *Cooperation Under Fire: Anglo-German Restraint During World War II*, Cornell University Press, Ithaca, 1995, p. 96.





citizens of London. Just two years after bombs rained down on them from the huge German airships, they were subjected to the morale testing bombing runs of the Gotha IV bombers. The Gotha raids created widespread panic in London, displacing hundreds of thousands of people, leading to widespread absenteeism and a subsequent decline in the war industry production.⁵⁵ To the Londoner mindset, they must have looked to the sky and asked, ‘*What next?*’

World War I highlighted several problems with the application of air power with relation to non-combatant immunity:

The inadequacy of existing rules of war in regulating this emerging technology

Warfare in the third dimension was such a novel idea, and there was not a great deal of thought put towards creating its own unique laws for regulation. Rather any laws that were proposed were put aside for the sake of military advantage. Instead, the regulations applicable to land and naval warfare were adopted, as these were the only benchmarks available. The general consensus was that dropping bombs from aircraft was similar in manner to artillery from the army or shelling from the navy, therefore the existing rules would be adequate in regulating this new form of warfare. It was found that these rules were inadequate, however, as the applicability and capability of airpower was severely underestimated.

The gap between rhetoric and practice in the bombing norm

In order to appease the moral indignations expressed by many against the indiscriminate nature of aerial bombing during World War I, proponents of air power developed the principle of ‘intent’ in bombing. As the bombing of a target was subject to many external forces that could affect the delivery of the munition (for example, high winds, poor lighting or fog), so long as the intent was legitimate, the result was legitimate. This mostly political principle was adopted to maintain public support for the war effort at a time when technology could not meet moral expectations. As an interesting aside, this principle still exists today, even though technology can now deliver these expectations. Modern militaries can explain away military mishaps by arguing that their intent was different to the result.

Setting the precedent of non-combatant targeting for effect

Although initially the deliberate targeting of non-combatants was met with moral opposition, the useful effects noticed from incidental bombings of non-combatants led to their deliberate attack. Reminiscent of Glover’s slide of moral identity, one action with questionable morals led to another, then another, until it was an acceptable norm to drop incendiaries on a children’s playground with the intent of affecting the psyche of the enemy’s populace.

The lack of an effective doctrine

The doctrine in use was developed from centuries of war fighting in two dimensions. ‘To meet and defeat’ an adversary’s posted military in the field (or at sea) was the

⁵⁵ Lee Kennett, *A History of Strategic Bombing*, Charles Scribner’s Sons, New York, 1982, pp. 25–26.





accepted method to cause the enemy to capitulate or sue for peace. Air power allowed an adversary's surface forces to be effectively circumvented, exposing civilians to the prospect of unannounced attack. Ad hoc doctrine was developed to keep up with the rapidly developing capability of air power. This reactive style of planning resulted in ineffective (and perhaps immoral) use of air power's emerging capability. In the words of M.W. Roysse:

The doctrine of the military objective defined as the right to bombard objects of military character wherever such objects were to be found, became the official basis for air attack, although ... the mechanical deficiencies of aerial bombing resulted in practically indiscriminate bombardment.⁵⁶

Post-war recommendations and inter-war theorists

Since it was clearly evident from the conduct of air power in World War I that the methods of regulating aerial bombing were inadequate in protecting non-combatants, a post-war international commission was formed to discuss and amend this issue. During 1922–1923, the Hague Commission of Jurists proposed to:

[formulate] updated rules that were consistent with the humanitarian goals of existing rules of warfare ... [whilst] recognising the powerful influence of military necessity. The commission therefore explicitly set out to formulate realistic rules that states would actually agree to and abide by.⁵⁷

What this essentially resulted in was a switch in convention of adhering to the rules of land warfare, where bombing fortified establishments was the accepted norm, to adopting naval rules of bombardment where the target must be a legitimate military objective. The commission further refined these rules by adding the provisions articulated in Articles 22 and 23 of the General Report. These were (22) bombing for the purpose of terrorising civilians (morale effects) or injuring non-combatants was prohibited; and (23) the civilian population was not to be subject to indiscriminate bombing as a secondary effect of an attack against a legitimate military target. Cities, towns and villages not in the immediate area of ground operations were protected against attack.⁵⁸ These ambitious regulations were met with criticism from all quarters. Pacifists regarded these measures as too ambiguous, thus leading to misinterpretation or manipulation; whereas realists argued they were too restricting on an emerging technology that had a war winning potential for the state.⁵⁹ It is not surprising then that by the beginnings of World War II, no state had ratified these regulations and therefore

56 Cited in J.M. Spaight, *Air Power and the Cities*, Longmans, Green and Co., London, 1930, p. 178.

57 Thomas, *The Ethics of Destruction*, p. 107.

58 Donald Cameron Watt, 'Restraints on War in the Air Before 1945', in Michael Howard (ed.), *Restraints on War: Studies in the Limitation of Armed Conflict*, Oxford University Press, London, 1979, p. 66.

59 *ibid.*, pp. 66–71.





there was only customary practice and the laws of war for land and naval operations to regulate aerial operations for the coming war.

Influencing the debate were inter-war air power theorists such as Douhet, Trenchard and Mitchell. Strangely enough it was the humanitarian effects of air power they advocated, however misguided this may have been. As witnesses to the depravity of attrition warfare in World War I, they saw the aircraft as a means in which this form of war may be avoided, saving the lives of hundreds of thousands of soldiers. What they did propose, however, was equally atrocious. Their ideas for saving lives were humanitarian only in a nationalistic sense, at the expense of an enemy's general population. For example, Douhet envisioned:

fleets of warplanes heading toward the vital centres of an enemy nation to paralyse and destroy them with poison gas, incendiary bombs, and explosives, terrorising civilians until they begged their government to surrender ... bombers would spare the lives of the soldiers by moving the battlefield from the trenches to the cities.⁶⁰

These proponents for air power advocated theories of air power capability that the current technology had no way of matching. Douhet touted the aircraft as the ultimate weapon of war, able to decide the result of a conflict by destroying a nation's will to wage war with a 'knockout blow' aimed at civilian morale:

A complete breakdown of the social structure cannot but take place in a country subjected to this kind of *merciless pounding from the air*. The time would soon come when, to put an end to horror and suffering, the people themselves, driven by the instinct of self-preservation, would rise up and demand an end to the war—this before their army and navy had time to mobilise at all!⁶¹

Douhet's book *Command of the Air* contained future claims of air power capability long before the technology was available. It predicted future war scenarios that contained his paradoxical claim of the humanity in indiscriminate aerial bombardment:

Mercifully, the decision will be quick in this kind of war, since the decisive blows will be directed at civilians, that element of the countries at war least able to sustain them. These future wars may yet prove to be *more humane* than wars in the past in spite of it all, because they may in the long run shed less blood.⁶²

Douhet advocated that there be no discrimination between combatant and non-combatant, and that air power would exploit this lack of distinction:

60 Schaffer, *Wings of Judgement*, p. 20.

61 Giulio Douhet, *The Command of The Air*, (1921), translated by Dino Ferrari, Coward-McCann, New York, 1942, p. 58.

62 *ibid.*, p. 61.





Humane Warfare

All the influences which have conditioned and characterised warfare from the beginning are powerless to effect aerial action. No longer can areas exist in which life can be lived in safety and tranquillity, nor can the battlefield any longer be limited to actual combatants. The battlefield will be limited only by the boundaries of the nations at war, and all their citizens will become combatants, since all of them will be exposed to the aerial offensives of the enemy. There will be no distinction any longer between soldiers and civilians.⁶³

Douhet was unapologetic for this position going as far as to claim that soldiers were actually of more value to society than other citizens were, in fact he criticised:

that peculiar notion which makes people weep to hear of a few women and children killed in an air raid and leaves them unmoved to hear of thousands of soldiers killed in action ... [when] a soldier, a robust young man, should be considered to have the maximum individual value in the general economy of humanity.⁶⁴

RAF Chief of Air Staff Sir Hugh Trenchard's opinions were ambiguous at best, advocating the effectiveness of striking military objectives that may result in incidental effects on non-combatants, describing the secondary effect of morale reduction as being more effective than the primary aim of material destruction, yet he denounced indiscriminate bombing of a city expressly for this purpose.⁶⁵ In a memorandum he prepared in May 1928, he expressed his opinion that legitimate military objectives may be expanded to include any 'centres of production, transportation and communication'⁶⁶ that may contribute to the war effort with such broad terms as 'from battleships to boots'.⁶⁷ He also stated that this form of warfare was neither illegal nor inhumane.⁶⁸ This broadening of the legitimate target base allowed a false morality in his approach to aerial bombardment, disguised by the principle of intent. He described the acceptability of incidental destruction of non-combatant life and property if the intent of an action was against legitimate military targets. If the legitimate target base were increased to include more targets within a city, as he advocated, non-combatants would be more exposed to the effects of aerial bombardment, therefore increasing the anti-morale effects of bombing. In Trenchard's view this would reduce production rates because civilians 'are not disciplined and it cannot be expected of them that they will stick stolidly to their lathes and benches under the recurring threat of air bombardment'.⁶⁹

US Army General Billy Mitchell was another advocate for the extremity of air power's potential. Mitchell's work (heavily influenced by Douhet and Trenchard) influenced the

63 Cited in Saundby, *Air Bombardment: The Story of Its Development*, pp. 34–35.

64 Douhet, *The Command of the Air*, p. 195.

65 Kennett, *A History of Strategic Bombing*, pp. 75–76.

66 Sir Charles Webster & Noble Frankland, *The Strategic Air Offensive Against Germany*, Vol. 4, London, 1962, p. 73.

67 *ibid.*, p. 74.

68 *ibid.*, p. 76.

69 Kennett, *A History of Strategic Bombing*, p. 76.





US Army Air Services' Air Corps Tactical School (ACTS) doctrine. Mitchell's ideas wavered over the years from that of the pure Douhetian targeting of civilian morale to only targeting legitimate military objectives such as crops and manufacturing centres, and warning civilians before commencement of the attacks. He argued against the traditional doctrine of 'meet and destroy the enemy in the field', stating that:

the advent of air power which can go straight to the vital centres and entirely neutralise or destroy them has put a completely new complexion on the old system of war. It is now realised that the hostile main army in the field is a false objective and the real objectives are the vital centres. The old theory that victory meant the destruction of the hostile main army, is untenable.⁷⁰

ACTS doctrine generally followed Mitchell's thought on strategic bombing, however, they were also cognisant of non-military opinions on the matter. During World War I, US President Wilson and Secretary of War Newton Baker both insisted that America would not partake in promiscuous or indiscriminate bombing of civilian populations.⁷¹ As a result, the ACTS embraced the idea of proportionality in formulating their doctrine, maintaining that the air force would not be used against a political objective (for anti-morale effects), 'except as the result of a careful estimate of the results to be accomplished when weighed against the suffering of women and children, and the effect upon public opinion in neutral countries'.⁷²

With such strong advocates for air power it is not surprising that the climate preceding World War II was charged with expectations of destruction raining from above. With memories of World War I still strong and stark warnings such as Stanley Baldwin's 'the bomber will always get through', citizens were in fear of their accessibility during war and shared disappointment that the international community had failed to produce adequate legal protection to them from this new form of warfare.⁷³

World War II—total war and the redundancy of non-combatant immunity

When Great Britain and France declared war against Germany in 1939, there were expectations of Douhetian knockout blows against the major cities of Europe. However, for Hitler, as was true for the Allies, 'it was the very fact that the effect of air war was an unknown quantity that discouraged adventurism in using aircraft [for this purpose]'.⁷⁴ Early in the war bombing, on the western front at least, was remarkably constrained by the fear of reprisal bombings that would lead to the loss of all restraint in aerial bombardment. With long memories, Britain and France were fearful of the results such an unbridled attack could have on a capital city, and they also believed that their respective forces were inferior to the German Luftwaffe. So in the first years of the war it was Hitler who actually constrained air operations against cities and non-

70 Saundby, *Air Bombardment: The Story of Its Development*, p. 50.

71 Schaffer, *Wings of Judgement: American Bombing in World War II*, p. 26.

72 *ibid.*, p. 28.

73 Overy, 'Air Warfare', p. 234.

74 Richard Overy, *The Air War 1939–1945*, Europa Publications, London, 1980, p. 26.





combatants. In his book *The Ethics of Destruction*, Ward Thomas puts forward four reasons why the Germans did not initiate the wholesale trading of airborne destruction in the initial stages of the war. First, Hitler wanted to keep diplomatic channels open to Britain with the hope of reaching some form of concession later on in the war, and that the bombing of British cities would close this option down. Second, Hitler wished to retain public support for the war, and if he exposed the German civilian population to reprisal attacks it would erode their support for his regime. Third, there was a fear that any form of reprisal attack could hamper the offensive efforts of the Wehrmacht against fielded Allied forces, which was Germany's primary concern at that stage of the war. And finally, the German leadership did not share the Allies' perception that the Luftwaffe was capable enough to attempt such an attack.⁷⁵ In addition to this, there was a moral stigma attached to targeting non-combatants amongst the international community, especially the United States. From a British point of view, who wanted the United States to join them against Germany, any instigation on their part would have had caused consternation within the decidedly moral American public led by President Roosevelt; thus losing their support for any military commitment.⁷⁶ So on both sides there was a disincentive to be the first side to throw down the gauntlet.

Meanwhile, the German offensive in the east was taking shape and air power was being used with varying levels of success. Attacks on the Polish capital of Warsaw continued, but they were deliberately focused only on targets of military necessity. Allied observers noticed little in the conduct of the air campaign that deviated from the spirit of the 1923 Hague Rules of Aerial Warfare.⁷⁷ The Germans were still holding on to the moral high ground in conducting its air campaign. When the Germans turned their attention to the western front, however, tensions skyrocketed.

The incidental bombing of the German town of Friburg set everyone on edge. The Germans blamed the Allies and the Allies quickly claimed to have no knowledge of the attack. The Allies assumed that the Germans had orchestrated the attack in order to claim rights for reprisal attacks on British and French cities. When the truth eventually leaked out, however, it was found to be an error on the part of the Germans, who had bombed their own city by mistake.⁷⁸ Even though, the hostilities were ramping up. In another German debacle, the city of Rotterdam was accidentally bombed when a call to cancel the air operation was not received in time. The resultant losses for Rotterdam were around 1000 dead and 78,000 left homeless.⁷⁹ To the British, this action by the Germans constituted breaking the unwritten agreement of non-combatant immunity in air operations and effectively 'the gloves were off'.⁸⁰ Reprisal bombing of the Ruhr by the British (generally targeting railways and oil production) began the direct aerial bombardment hostilities between the Allies and Germany.

75 Thomas, *The Ethics of Destruction*, pp. 126–127.

76 *ibid.*, p. 127.

77 Kennett, *A History of Strategic Bombing*, p. 107.

78 *ibid.*, p. 112.

79 *ibid.*

80 *ibid.*





In retaliation to this strike from the British, Hitler redirected the efforts of the Luftwaffe. His Directive No. 13 urged:

[independent] of the operations in France, the Luftwaffe is to undertake a full-scale offensive against the British Homeland as soon as sufficient forces are available ... to institute a crushing reprisal raid as response to the English attacks on the Ruhr area.⁸¹

Thus began the slide of moral identity—the protection of non-combatants against indiscriminate attack. Due to the inability of any force to retain control of the air, bombing was mainly constricted to the cover of night, as daylight raids tended to result in major losses in assets and manpower. These night-time raids, coupled with the lack of effective technology, resulted in extremely inaccurate targeting.⁸² Although the targets may have been legitimate on paper, in practice the result was the destruction of large urban areas and disastrous loss of civilian lives.

Meanwhile, on the other side of the globe, other hostilities were about to be unleashed. When the United States entered the war in the closing stages of 1941, they brought with them a doctrine designed to appease the concerns of the morally righteous American public. The United States Army Air Force (USAAF) doctrine was based on precision, although in truth their effectiveness was no better than the Europeans.⁸³ It was important, however, for the Americans to employ the impression of precision in bombing. United States' General Arnold considered the selective precision doctrine of his Service as both morally superior and more effective than the doctrines employed by the Europeans. In a memorandum to his combat commanders he highlighted the practical and humanitarian spirit of this doctrine.⁸⁴ In theory, the employment of precision would avoid exposing American assets and airmen to the dangers of repeated attacks on the same target, and precision may avoid the hatred developed through indiscriminate bombing. As cooperation of an enemy's population is needed when war is concluded, selective precision targeting of legitimate military targets may help to keep post-war discussions civil.⁸⁵ This high moral ground would not last throughout the war, however, as military necessity demanded more than the ineffective technology could produce.

By the closing stages of World War II, concern for non-combatant immunity was virtually redundant. Whole cities were burnt to the ground from firestorms created from incendiary bombing, indiscriminately killing thousands of non-combatants and combatants alike. In this, names like Dresden, Tokyo and Coventry were synonymous with tragedy. Military necessity finally outweighed humanitarian concern for non-combatants. The lowest point of humanity in warfare was reached when Douhet's vision for air power was finally realised; although it was not achieved through the employment of thousands of bombers like he predicted, but through the use of a single aircraft. Both

81 *ibid.*, p. 113.

82 *ibid.*

83 Schaffer, *Wings of Judgement*, p. 38.

84 *ibid.*, p. 61.

85 *ibid.*, pp. 60–61.





Humane Warfare

Hiroshima and Nagasaki were hit with a single atomic bomb that unleashed enough awesome power to level thousands of acres in both cities. Although the destruction did not compare to the firestorms of Tokyo, the destructive capability of the munition signalled a new era in warfare.

In examining the events that unfurled during World War II, Watt identified that:

the history of the efforts to limit, restrain and inhibit the operations of war in the air shows such efforts to have had one of three alternative aims: the limitation of armaments by quantity and quality; the prohibition of bombing from the air; and the limitation of such bombing to rigidly defined military targets.⁸⁶

It was shown in practice that eventually all of these aims failed to some extent. In the conflicts soon to be discussed, it will be shown that two of these aims will still hold true and the other will actually become its opposite. Efforts to limit, restrain and inhibit the operations of war in the air will still be centred on the limitation of bombing to rigidly defined military targets and the limitation of armaments by quantity, quality and effect. Bombing from the air, however, will become the preferred method of warfare adopted by those able to do so.

Post-World War II and the development of international law

The experiences of World War II highlighted the inadequacies of existing international law and it was seen as a priority to revise the existing law to develop a more comprehensive and universal code. This led to the diplomatic conference that developed the 1949 Geneva Conventions I–IV, and later the two Additional Protocols of 1977. Due to the rapid developments in technology, in particular aerial warfare, Additional Protocol I (part IV) of the 1949 Geneva Conventions—*Geneva Convention relating to the protection of civilian persons in time of war*—was developed. As mentioned in previous chapters, these laws embody the just war principles of justification, discrimination, proportionality and humanity to help regulate the application of force during times of conflict.

Vietnam: the birth of precision and the media watchdog

The Vietnam War is incomparable in many ways to World War II. From a Western point of view, Vietnam was not a total war, therefore it was not subject to the extremities of practice that befalls wars of national survival. Vietnam does highlight the developing practice of non-combatant immunity in warfare that fell by the wayside in other major wars. It does so through the development of doctrine, emerging technologies and a necessity borne of the freedom of the press and the availability of television and other media technology in modern democratic states.

⁸⁶ Watt, 'Restraints on War in the Air Before 1945', p. 74.





The American use of aerial bombardment against the North Vietnamese during the Vietnam War has been considered as a failure in both strategic and operational terms.⁸⁷ Why it failed is not within the scope of this paper, however, what is important is that it did not fail through lack of air power's effective capability or because of a focus on non-combatant immunity. Americans have received their fair share of criticism for their operations in North Vietnam, including the *Rolling Thunder* campaign that dropped over 605,000 tonnes of bombs from 1965 to 1968 against essentially a dispersed land-based opponent.⁸⁸ Although it is conceded that civilians would have died as a result of these bombings, the focus of the Americans was for thorough interdiction and destruction of supplies and industry that aided the North Vietnamese war effort. Whilst declining civilian morale may have been an expected secondary result of this action:

the rules developed to govern bombing operations made it clear that direct harm to civilians and the civilian economy was to be avoided to as great an extent as possible. Here the commitment to non-combatant immunity went beyond the nominal restriction of raids to military targets that typified World War II.⁸⁹

In this, the 'main tactical constraints have been defined as minimisation of civilian casualties and limitation of attacks to *military objectives*'.⁹⁰ The restraints on air operations and targeting had a political necessity about them, rather than any form of rule utilitarianism towards the 1949 Hague Conventions. American Presidents Johnson and Nixon were extremely cognisant of the division amongst the American people over America's role in the conflict. The measures they took in restraining their military leaders was more for the avoidance of adding substance for the pacifist side of the debate rather than for the adherence to international law.⁹¹ One of the main factors that influenced the formulation of opinion in America was the presence of media and war correspondents on assignment in Vietnam. The press in Vietnam had a fair degree of freedom to report on whatever they perceived as newsworthy. As it was one of the first wars that was replayed nightly on the television screens of the general public, certain images they portrayed had the profound effect of adding fuel for anti-war sentiment. Television allowed for the personalisation of the victims of war, such as Kim Phuk and others. By adding this human edge to the victims they cease being seen as non-combatants and become human beings, just like the observer. This realisation by the observer helps to create an affinity with the victim, which in turn causes the observer to feel indignation over the victim's maltreatment. This eventually leads to condemnation of the war effort and even physical protests. This phenomenon is not just limited to the nations involved but spreads throughout the international community.

87 Royal United Services Institute (RUSI), *Lessons from the Vietnam War*, report of a seminar held at the Royal United Services Institute on 12 February 1969, RUSI, London, 1969, pp. 2–13.

88 Mark Clodfelter, *The Limits of Air Power: The American Bombing of North Vietnam*, Free Press, London, 1988, p. 212.

89 Thomas, *The Ethics of Destruction*, p. 152.

90 Oleg Hoeffding, 'Bombing North Vietnam: An appraisal of economic and political effects', *Memorandum RM-5213-1-ISA* prepared for the Office of the Assistant Secretary of Defence/International Security Affairs, RAND Corporation, 1966, p. vi. Emphasis added.

91 Thomas, *The Ethics of Destruction*, pp. 155–158.





The foreign response to the ‘Christmas Bombings’ of Hanoi included unfavourable reactions from the Soviet Union, China, Finland, Denmark, Sweden, the Netherlands, Canada, Yugoslavia, Poland, Australia, Singapore, India, Bangladesh, West Germany, West Berlin, and Belgium, as well as from the Pope, UN Secretary General Waldheim, Fidel Castro, Catholic peace groups abroad, and the British Labour Party. The reaction ranged from ‘painful emotion’ over ‘harsh and heavy military operations in blessed Vietnam’ to ‘one of the most cold-blooded actions in recent history’.⁹²

To avoid future condemnations, America had to maintain a strict regulation on targeting and the bombing norm, even refusing to bomb legitimate targets for the concern of the impression it may portray. It is in this that Thomas argues that American aviators went beyond the constraints of international law to hold the high moral ground needed to continue the campaign.⁹³

One method that was used to achieve this aim was the exploitation of emerging technology. Precision-Guided Munitions (PGM) were in their infancy but their effectiveness was threefold. On the technical level they provided the means by which to accomplish the aim of striking targets constrained by the strict regulations, such as legitimate targets in built-up areas. On a tactical level, they helped limit the amount of bombing runs needed to achieve the success in targeting. On the moral level, the use of these weapons created an impression to the public of a surgical like precision in the application of force, somewhat like a surgeon removing a brain tumour, although in practice this was not always the case.

By the close of the war, there was prevalence amongst Western thought that there should never be another Vietnam. Over and again analysts, the military, military advisers, politicians, journalists and academics studied and debated the conduct of the Vietnam War to develop lessons of how not to run a campaign.⁹⁴ In a way, the Gulf War proved to be the testing ground to see whether these lessons were learnt.

Gulf War: Technology matches theory, and taming the watchdog

In examining the Gulf War it must be remembered that on an operational level it was a clash of a highly technically superior force against a measurably lesser one. Establishing this context allows for an understanding of how certain operations were allowed to take place. For example, overwhelming strategic strike quickly disabled air defence mechanisms and allowed the Allies to operate with relatively unchallenged air superiority. The tempo at which the campaign was conducted was staggering, yet this was achieved within strict guidelines. Within the first 14 hours of the campaign, the Allies bombed Iraqi early warning systems, air defence, command and control structure, communications and other targets in over 1000 sorties:

92 Martin F. Herz, *The Prestige Press and the Christmas Bombing, 1972: Images and Reality in Vietnam*, Ethics and Public Policy Center, Washington, 1980, pp. 34–35.

93 Thomas, *The Ethics of Destruction*, p. 155.

94 For example read RUSI, *Lessons from the Vietnam War*.





Eighty per cent of the sorties were effective, meaning that 80 per cent of the aircraft reached their targets, delivered their ordnance, and returned. The others did not because of mechanical or weather problems that prevented the pilots from positively identifying their targets, which was required under the rules of engagement so that civilian damage was absolutely minimal.⁹⁵

In the words of Ward Thomas, ‘Operation *Desert Storm* was one of the most intense air campaigns in history and at the same time perhaps one of the most restricted’.⁹⁶ This was able to be achieved through effective policy and doctrine, media management and advanced technology.

The war that the general public saw was not the real war. The public was enamoured by constant video footage, conveniently supplied by the military, of ‘smart’ bombs going through the windows of targeted buildings giving the overall feeling that somehow the Gulf War was some super high-tech bloodless affair. This image is somewhat true but also misleading. In the bombing campaign only 6500 tonnes of PGM were used, merely eight per cent of the total tonnage dropped.⁹⁷ What the public watched on television was only eight per cent of the story. This meant that over 90 per cent of munitions were ‘dumb’ bombs. Again these figures can be misleading. Delivery methods for dumb ordnance had vastly improved over the years and they were primarily used against fielded Iraqi military forces. The precision weapons were only used, according to the doctrine espoused by the Allies, in cases where there was risk of civilian death or damage to civilian property.⁹⁸ This focus on non-combatant immunity and a quick decisive war was borne mainly out of political necessity because it represented a groundswell of public support for the concepts—no one wanted another Vietnam.⁹⁹

Conscious of the importance of favourable public opinion on the conduct of the war, Allied planners set about formulating doctrine on how to conduct operations whilst still maintaining public support. Target lists were drawn up, as with any campaign, but in this instance emphasis was placed on gaining intelligence on the surrounding area of the target to ensure that there was minimal risk of causing damage to civilians and civilian property such as schools, hospitals or mosques. If the risk was too high, the target was not attacked.¹⁰⁰ The agency responsible for targeting, Central Command (CENTCOM), also had to analyse targets for the most effective way to hit it. Weaponers were employed to examine the target to figure out the best weapon to achieve the desired result:

95 Rod Alonso with Bruce George (MP), Raimondo Luraghi, Tim Lister, James Piriou, and B.L. Cyr, ‘The Air War’, in Bruce Watson (ed.), *Military Lessons of the Gulf War*, Greenhill Books, London, 1991, pp. 64–65.

96 Thomas, *The Ethics of Destruction*, p. 159.

97 *ibid.*, p. 160.

98 *ibid.*

99 For an in depth analysis of the role of public opinion in influencing foreign policy read: Richard Sobel, *The Impact of Public Opinion on US Foreign Policy Since Vietnam*, Oxford University Press, New York, 2001.

100 Thomas, *The Ethics of Destruction*, p. 158.





Precision was paramount, especially for Iraq's nuclear facilities. Hitting a reactor risked the possibility of large-scale nuclear contamination. Pilots needed to hit reactor buildings in such a way that the buildings collapsed on the reactors and entombed them. *Just hitting targets would not be enough in this war.*¹⁰¹

The weapons employed to be able to achieve these results were very expensive and extremely high-tech. They ranged from 'dumb' bombs fitted with smart sensors and control systems to the first 'non-lethal' types of munitions: a Tomahawk cruise missile fitted with a High Power Microwave Warhead designed to produce a high powered electro-magnetic pulse (EMP). The EMP creates havoc in high-tech electronic equipment by wiping memories from computer equipment with the magnetic properties of the blast and by burning out electronic equipment with induced electrical 'spikes'.¹⁰² Accuracy of bombing had also come a long way since World War II. In World War II over 50 per cent of bombs would land more than 3000 feet from the target and in Vietnam around 50 per cent of the bombs would land more than 400 feet from a target. In the Gulf War, 50 per cent of the bombs landed more than 40 feet away and around half of the PGM used landed within four feet of the target.¹⁰³ The technology that produces PGM is quite expensive (for example US\$70,000 for a Maverick laser-guided bomb).¹⁰⁴ Due to of the political necessity of non-combatant immunity, however, certain situations demanded that the Allies use this equipment when there was an inherent risk involved. The expense is deemed to be worth the results.

Media management was another concept that was learnt from the mistakes of Vietnam. As explained above, there was a political necessity to have the support borne from favourable public opinion, and one of the methods used to achieve this was through stringent management of the media, the conduit to the public's mindset. Media management was developed initially for security reasons, as there were some aspects of the conflict that, if reported, may have jeopardised lives. It was for mainly political reasons, however, that the level at which the media was controlled in the Gulf War was borderline censorship.¹⁰⁵ For a reporter or war correspondent to gain access to the front lines of the war they had to qualify for a 'pool' of selected press representatives that would be chaperoned to the areas that the military deemed as a non-threat, to both security and operations. These 'pool' members could then return to the rear echelon to share their story with the rest of the press gallery. Military representatives, again for 'security' reasons, would then screen any formulated stories before it could be released

101 Thomas Houlahan, *Gulf War: The Complete History*, Schrenker Military Publishing, New Hampshire, 1999, p. 22. Emphasis added.

102 *ibid.*, p. 27.

103 James F. Dunnigan & Austin Bay, *From Shield to Storm: High-Tech Weapons, Military Strategy, and Coalition Warfare in the Persian Gulf*, William Morrow and Company Inc., New York, 1992, p. 180.

104 *ibid.*, p. 222.

105 Sydney H. Schanburg, 'A Muzzle For The Press'; Robert Fisk, 'Free To Report What We're Told'; and Walter Cronkite, 'What Is There To Hide?', all in Micah L. Sifry & Christopher Cerf (eds.), *The Gulf War Reader: History, Documents, Opinions*, Times Books, New York, 1991, pp. 368–384.





for syndication.¹⁰⁶ Any unauthorised visit, investigation or reporting would result in the removal of the reporter.

This led one reporter to complain:

The press has been crippled, rendered unable to provide the public with a credible picture of what war is like in all its guises. What has been delivered to the public are superficial brushstrokes across the sanitised surface of war. *Bombs fall remotely and perfectly, and no one seems to be bleeding.*¹⁰⁷

Despite having effective policy and doctrine, media management and advanced technology, things invariably can go wrong and in the climate of increased concern for non-combatant immunity, mistakes can have a great impact on the way in which a campaign is conducted. For example, through inadequate intelligence the Al Firdos bunker in Bagdad was labelled as a legitimate target as it was thought to be a part of the Iraqi command and control network. (Later, it was argued that it was obviously a civilian air raid shelter where families went to sleep in safety.)¹⁰⁸ Two 2000-pound laser-guided bombs hit it on the morning of 13 February 1991 and destroyed the target. Apparently unbeknownst to the Allies the bunker contained over 300 civilians, including women and children. This was an event that was impossible to conceal from the media. The result of this catastrophic error was that strikes against strategic targets within Bagdad were extremely curtailed and highly regulated.¹⁰⁹ Thomas notes:

The Gulf War Air Power Survey later concluded that ‘the strategic consequences of this attack were considerable. To all intensive purposes the civilian losses ended the strategic air campaign against targets in Bagdad,’ and with it went the effort to ‘decapitate’ the Iraqi military, a major goal of air force officials.¹¹⁰

This was despite the fact that the bunker was argued to be a legitimate target. The focus here was the moral and political implications of non-combatant immunity—not the legal ones. This example highlights that the more technologically advanced a force becomes, the higher the benchmark is set for proper use of this technology. Having such a high regard for non-combatant immunity during military operations is a complex process, and if any stage of the process fails, the results can have far reaching implications.

106 Schanburg, ‘A Muzzle For The Press’, p. 370.

107 *ibid.* Emphasis added.

108 Robert K. Goldman, ‘The Bombing of Iraqi Cities: Middle East Watch Condemns Bombing Without Warning of Air Raid Shelter in Baghdad’s Al Ameriyya District on February 13’, in *Middle East Watch: A Committee of Human Rights Watch*, Vol. 3, No. 6, New York, 6 March 1991, p. 1.

109 Charles J. Jr. Dunlap, ‘Technology: Re-complicating moral life for the nation’s defenders’, in *Parameters*, Bell & Howell, 10 January 1999, p. 26.

110 Thomas, *The Ethics of Destruction*, p. 88.





Conclusions

Air power and the concept of non-combatant immunity began a shaky relationship at the turn of the 20th Century. As with most world changing technology, air power technology was met with supporters and detractors alike. There was a mixture of fear and adoration for the prospects in which this emerging technology may be used. Fear initially overrode utility and restrictions regarding its use were put into place. As the value of air power was realised by states, however, utility soon took priority. This had a detrimental effect on the moral focus of non-combatant immunity, eventually leading to a redundancy of the concept in World War II. It was at this stage that technology closely matched the expectations of the interwar air power theorists, and ethical application of the technology was lost. Post-World War II memories of the horror of a world at war drove the international community to codify regulations that attempt to protect innocents during war. This forced air power to have a ‘facelift’ and technology was developed to try to comply with the spirit of non-combatant immunity in warfare; technology that allowed for discrimination and proportionality through precision. With this technology also came a burden of responsibility to develop doctrine to ensure it is used to its full capacity, and the public expectation of adherence to moral values. Although it is conceded that conflicts should be viewed as exclusively joint, air power is now used as a first choice in conflict, and as technology continues to evolve it allows for more effective results from its application. It is with a view to the future that observations must be made from the past. Observations made of the previously presented history now follow.

Military ethics are a practical method to prescribe the manner in which violence is applied in combat

Military ethics has always influenced the manner in which violence is applied in combat. Over the past millennium, military ethics has evolved to become the basis of international law, including rules of war such as chivalry, which sought to regulate warfare. There have been periods in history when military ethics have been forgotten, such as in the two world wars—and millions of humans, both combatants and non-combatants, have suffered and died as a result. Since then there has been a gradual escalation of societal disapproval of unethical military behaviour. This in turn has pressured governments to adhere to a form of political necessity in trying to preserve the concept of non-combatant immunity in warfare. Whether this is based on political realism or utilitarianism does not matter in so much as long as the link between societal expectations and military ethics and values remains. As mentioned previously, there are now laws, based on military ethics, set in place that prescribe the manner in which violence may be applied in combat. Nonetheless, it is important to keep the study of and the debate over military ethics alive in the military profession so these laws may be recognised for the spirit in which they were written.

Military ethics and values must reflect those of the parent society

It must be recognised that the military does not operate within a vacuum. As a servant to its parent society, the military’s ethics and value systems must be reflective of those of society. This is fortunate for countries like Australia, where societal values and morals are based on advancing civilisation and humanity, as these are the basic



principles that underpin just war theory and military ethics. So long as the ADF seeks professional mastery through the study of and espousal of military ethics, this link will be maintained. The importance of recognising and maintaining this link cannot be understated. More frequently there will be times, such as the Gulf War, when simple adherence to international laws will not be sufficient to maintain the supportive public opinion needed to conduct military campaigns. The ADF must recognise this and set its own moral benchmark to be more reflective of society's expectations. If society expects more humanity in war, the military must give them 'humane warfare'.

Technology increases the complexity of air strike, creating problems such as double effect, intentionality and dual use targets

There is little doubt that over the past century the increase in technology has aided the effectiveness and capability of strategic strike. Along with this increased effectiveness and capability, however, have come higher expectations from society. Society now expects aerospace power to be applied in an ethical manner in relation to the protection of non-combatants. What good is expensive high-tech equipment if it cannot be used within the moral guidelines set by the parent society? This increased expectation for the military to devise better, more humane methods of employing force has led to problems in targeting, such as dual use targets and the flow-on effects or double effect. In the first instance these are targets that are used by both the military and civilians, such as power grids, where affecting them may have detrimental repercussions on the civilian populace. In the second instance there are flow-on effects that result from an action against a target. For example, employing the wrong type of weapon may lead to unintended excessive destruction that may kill innocent lives, destroy protected structures or damage the environment. Although these problems may be acceptable under the guise of military necessity, campaigns such as those in the Gulf War proved increasingly that parent societies expect their military to operate at a higher benchmark than the one posed by international law. The way in which these two problems may be minimised is through superior, near real-time intelligence, which will in turn aid in weaponeering for the required effect. Also, through analysis and recognition of the interplays between the various systems of an enemy's culture, politics, economic structures, societal behaviours/values, technological advancement or dependency, and environmental concerns, a heightened awareness may be developed of the 'connections' a target may have, giving a better understanding of the way in which the target may be affected to avoid detrimental flow-on effects. This concept is called Operational Net Assessment.

An emerging moral problem is the abuse of the principle of intent. It is conceded in law that unforeseen secondary results of an action (for example collateral damage) are acceptable if the intention of the action was legitimate. This principle is now in danger of being used as a crisis management tool to explain away military mishaps. It is morally wrong to misuse this principle, and this contradicts the spirit of military ethics and international law.





Targeting and action against targets should be for a required discriminate effect; destruction is not the only answer

Since the inception of bombing it has long been known that the action itself causes many other effects apart from the destruction of the target. Essentially the destruction of the target is just a means in which to achieve a desired end. That is, the desired end is achieved via a *flow-on effect* from the target's destruction. Recognising what end is needed for victory can be simply defined as changing the adversary's mind. As this is an intangible end it must be achieved through the means of a psychological effect. The adversary's mind must be psychologically affected by information that will cause them to do what ever you wish them to do, for example capitulate or withdraw. It is in this that the military must be seen as a conduit of change between the two intangibles: your will and the adversary's will. That is, the imposition of your will on an adversary's mind by utilising the physical properties of military action against the physical domain of the opponent. Through an intelligent system of net assessing an adversary, they may be holistically analysed in context to develop targets that will achieve the discriminate effects needed to accomplish the required end with a minimal amount of intrusion. It has been demonstrated in the past that this may be achieved by a combination of methods both destructive and non-lethal.

Developing a practice of exactness for a true discriminate effect

To ensure the effect achieved through the means of military action is indeed that which is required, it is necessary to develop a practice of exactness, or *exactitude*, in the targeting process. Exactitude in targeting ensures that there is a zero degree of separation between aim and result when an immediate effect is required, and one degree of separation between aim and result when the effect required is a second order effect. To achieve this, exactitude requires a combination of intelligence, proportionality and precision.



Chapter 5

Practical Modelling of Military Ethics: Humane Warfare Model

It has been established previously in this paper that there is a propensity for technology to be used as a measure of risk aversion in the case of non-combatant immunity in aerial bombardment or strategic strike. This is due to a groundswell of public support for the concept of non-combatant immunity in times of conflict. This public expectation of enhanced ethical conduct may even surpass that provided by an interpretation of international law, as proved to be the case in the Gulf War. The question now is whether this focus of superior ethical conduct for the military in times of armed conflict can be formulated into a practical model to provide relevance for future conflict considerations. The answer to this question lies in the *humane warfare* concept. This concept has been designed as a stimulus for debate over what constitutes *a force for good*, and whether this goal can be achieved. In Chapter One the Secretary of Defence, Allan Hawke, and Chief of the Defence Force, Admiral Barrie, challenged the Australian Defence Force (ADF) to be *a force for good*, which has been defined as *a military organisation that functions within a respectful state of superior ethical conduct for reasons that are morally justifiable*. To achieve this requires goals to be set that supports this definition. The simple ‘adherence to the rule of law’ principle currently espoused by the ADF is not enough to address the high expectations of this definition. The humane warfare concept can be a focal point to achieve the challenge of being *a force for good*.

What is the Humane Warfare Concept?

Humane warfare can best be qualified as a benchmark in the ethical application of military force. The concept takes into account the religious foundations of societal norms in ethics combined with contemporary natural law just war doctrine, to provide an holistic approach to the moderation of military force, as a reflection of the expectations of modern society. These foundations are bound by the long history of professional military ethics and are reflected upon in relation to modern societal demands, the main premises being respect for non-combatant immunity and the preservation of humanity. Humane warfare seeks to exploit the wide range of developing technologies, both military and non-military, to develop intellectual systems and processes for force application to abide by the benchmarks set by these societal demands. By adopting policy focused on moving towards this benchmark, and developing and employing these intellectual systems and processes, the ADF will gain the high moral ground necessary to maintain the internal and external support needed for the ADF’s primary purpose—defending Australia and its national interests.



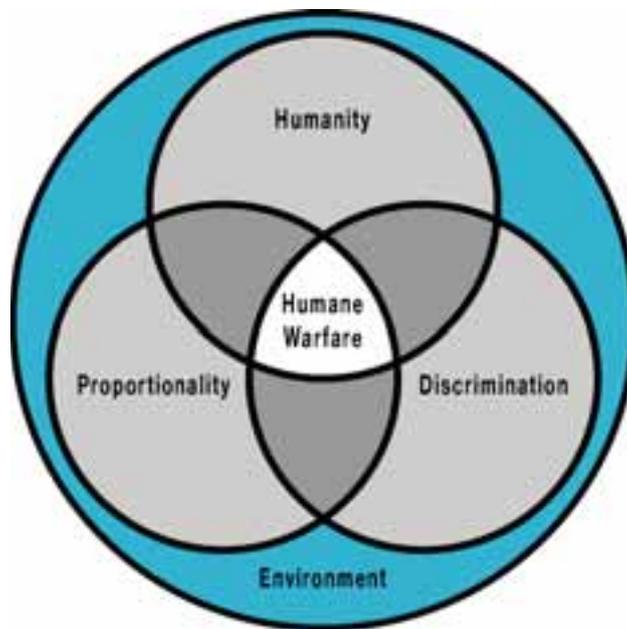


Figure 1: Humane Warfare Spheres of Influence

The above figure (Figure 1) is representative of the various spheres of influence that build the humane warfare concept. Humane warfare has influences from the just war principles of proportionality, discrimination and humanity, contained within a framework of the immediate environmental influences. For the sake of clarity these principles will be described further.

Proportionality

Humane warfare must be conducted using proportionate means to achieve holistically proportionate ends. This means that due care should be taken to analyse the resultant flow-on effects of the chosen action, not just the immediate effects. The depth of this analysis needs to be comprehensive as some detrimental effects may impact upon multiple generations.

Discrimination

One of the founding principles of humane warfare is that non-combatant immunity from attack must be respected. The principle of discrimination must be exercised to its full meaning. To achieve this requires adequate and timely intelligence, effective and exact means of force employment, and exact weaponeering for effect.

Humanity

The preservation of humanity is the other founding principle of humane warfare. This principle urges that for the sake of the continual evolution of civilisation, respect for the inviolability of human life must be uppermost in mind of military planners. Humanity





in humane warfare is about finding novel methods or means to achieve the same grand strategic ends in a conflict without exposing innocent parties to any undue risk of endangerment.

Environment

This represents the external factors that influence the way in which force is employed during conflict. Factors such as political necessity, public opinion, media attention, technical limitations, weather concerns and terrain limitations all impinge on the interpretations of proportionality, discrimination and humanity, and in turn affect the way in which a conflict is conducted. These immediate environmental influences also may vary depending on the nature of the conflict itself (for example, whether it is a total war or a limited war).

The humane warfare concept does not suggest that traditional forms of conflict are obsolete. It is realised that armed conflict has many different shades. Rather the humane warfare concept is yet another arrow in the statesman's quiver to be used in times when a careful and steady hand is needed. This of course could be argued to be at all times short of total warfare.

To best explain how the concept works in practice it is useful to provide a graphical representation of the concept in the form of a model. This model will serve several practical applications. First, it will aid in understanding the humane warfare concept in its practical form. Second, historical data such as previous conflicts may be plotted to see how the humane warfare concept has evolved over the past century. And finally, the model may be used to illustrate the importance of perspective during a conflict.

Humane Warfare Model

Practical modelling of conceptual parameters is not an easy task, especially when it involves elements as complex and varying as warfare and ethics. The Humane Warfare Model (Figure 2) represents the varying relevance of humane warfare measured across the spectrum of conflict.

The horizontal axis represents the spectrum of conflict between the antipodes of peace and total war.¹ The vertical axis represents the level at which the realisation of and adherence to the humane warfare concept exists. This ranges from the antipodes of being non-existent to an idealistic level of being absolute. Within the model are four zones that are representational of the levels at which the humane warfare concept is adhered to within the spectrum of conflict, between which are areas of overlap. These zones are the Illegitimate and Unlawful Zone, the Customary Zone, the Applied Ethics Zone, and the Theoretical Ethics Zone.

¹ For a comprehensive explanation and diagram regarding the full spectrum of conflict read: AAP 1000 *Fundamentals of Australian Aerospace Power*, p. 91.



Illegitimate and Unlawful Zone

This zone represents any military or political acts that are considered illegitimate or unlawful through an interpretation of customary rules of war, international humanitarian law, treaties or domestic law. The zone encompasses any act committed throughout the spectrum of conflict that is considered to have a disregard for the principles of non-combatant immunity in armed conflict.

When war is considered total, as in cases of national survival, the Illegitimate and Unlawful Zone is quite narrow. This is due in part to a state's desperation for survival as well as the legitimate right of a state to practice self-defence, thus allowing for actions that would be considered unacceptable during lesser situations. As the zone moves through the spectrum of conflict, through limited conflict towards peace, there is a gradual widening of illegality and illegitimacy in the zone due to increased regulations imposed on military action during lessening forms of conflict.

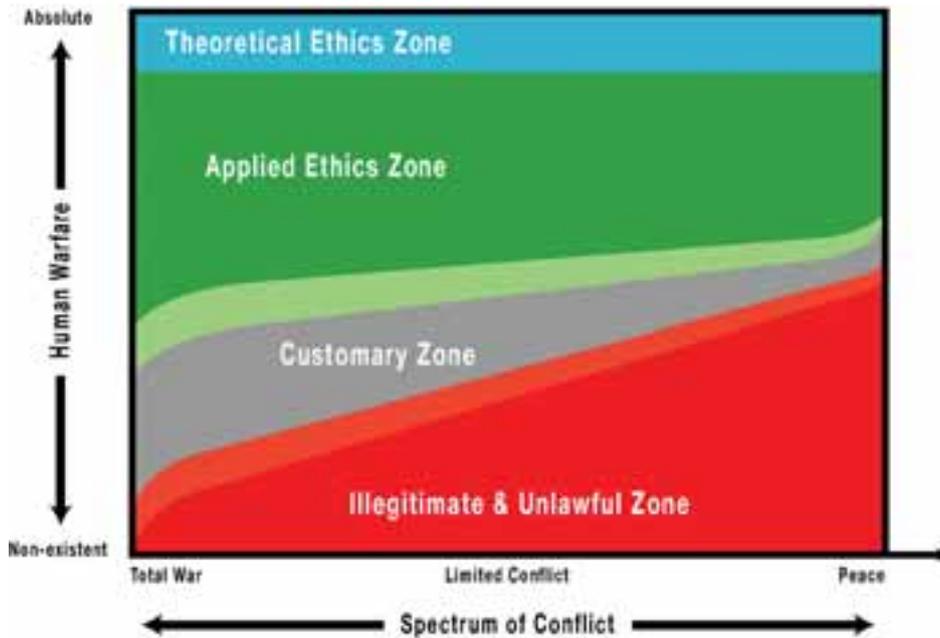


Figure 2: Humane Warfare Model

Customary Zone

This zone represents any military or political acts that are considered legitimate and lawful through an interpretation of customary rules of war, international humanitarian law, treaties or domestic law. The zone encompasses acts that are committed throughout the spectrum of conflict that are considered to have a judicious regard for the principles of non-combatant immunity in armed conflict. It is the zone in which the customary application to the rule of law moderates the application of force in times of armed conflict. Most modern militaries attempt to confine their operations within the boundaries of this zone, however, because law and custom is subject to interpretation



and contextual analysis, this zone is quite broad and has some overlap with the other zones.

At the total war end of the spectrum, the zone is quite broad due to a wider interpretation of customary rules of war, international humanitarian law, treaties and domestic law that is available to states involved in self-defence. Within the vertical axis of the spectrum, where a military conducts its operations may be dependent on the available capability, technology and intelligence. Arguably, the more sophisticated the technology and intelligence, the more a military may operate within the upper reaches of this zone, paying more attention to conducting humane warfare to maintain a necessary superior moral position in the conflict.

As the zone moves through the spectrum of conflict, it tends to narrow as the options for legal and legitimate use of military force reduces in accordance to the respective lessening level of conflict. The customary zone still exists during times of peace and relative peace due to secondary military roles such as disaster relief and emergency assistance.

Applied Ethics Zone

This zone embodies actions that adhere to the principles of humane warfare. It encompasses actions that involve a heightened interpretation of the rule of law, exploitation of emerging technologies and an increased sensitivity to the potential and resultant flow-on effects from actions—for the good of humanity and the protection of non-combatants. Any military operating within this zone seeks to embody superior ethical standards, working towards a benchmark that represents a standard higher than that codified by law and custom. It is called the Applied Ethics Zone because humane warfare is essentially superior ethical standards in practice; the humane warfare concept has practical applications, not merely theoretical rhetoric.

Theoretical Ethics Zone

This is a zone in which conditions and actions exist only in an idealistic state. It is within this zone that non-testable theories of idealistic ethical situations and responses may be debated for their philosophical worth. In the humane warfare concept, it is within this zone that the idealistic state of absolute immunity for non-combatants exists. As this state of absolute immunity is idealistic, it cannot be tested in practice so it remains in the realm of theory.

Inter-Zone Overlaps

Overlapping exists between the zones and it represents both the interpretive nature of custom and law, and a mержence of practice with theory. The inter-zone overlap that exists between the Illegitimate and Unlawful Zone and the Customary Zone concerns situations when custom and law are loosely interpreted and, in response, military action is not held to any stringent accountability to these customs and law. Principles such as ‘intent’ and ‘military necessity’ may be misused, though not illegally in accordance to the written letter of the law but in disregard for the general nature or spirit of the





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law. The overlap that exists between the Customary Zone and the Applied Ethics Zone represents when military action is in accordance with heightened interpretations of custom and law that are mindful of the spirit in which they were written. It is a blend of the codified notions of military ethics and natural law embodied by international law, with a heightened responsibility for the actions that are committed, including the recognition of certain flow-on effects resultant from the action.

It must be recognised that this model in no way is representational of scientifically quantifiable elements. The model seeks to be a visual representation of a concept that is dependent on subjective, qualitative responses. Elements such as human response, philosophical and ethical positions, classifications of conflict, and interpretation of law and custom are highly complex and extremely subjective. With this in mind, pictures do speak clearer than words, and are therefore invaluable in assisting the development of practical representations from theoretic constructs. It is also very much a work in progress, as is the humane warfare concept, so interpretations of these models should be viewed in light of these considerations.

Humane Warfare Model in Practice

By plotting previous conflicts on the Humane Warfare Model, a visual representation of the effect the humane warfare concept has on the conduct of armed conflict can be achieved (Figure 3).

Figure 3: Humane Warfare Model and Previous Conflict





To help simplify the process, the prime humane warfare element of *non-combatant immunity* will be examined with respect to aerial bombardment in warfare. This relationship will be isolated and examined in context and will represent an holistic overview of the entire conflict. These conflicts will also be examined from a Western perspective.

1. The first plot refers to the conduct of aerial operations during World War I. The conflict was considered to be a total war because for some of the Allies national survival was at risk. It has been plotted quite low on the humane warfare axis within the overlap between the Customary Zone and the Illegitimate and Unlawful Zone. This is due to a loose interpretation of the available laws that allowed for relative disregard for the immunity of non-combatants from aerial bombardment. This was compounded by the rapid emergence of air power related technology that was thought to be able to be constrained by the existing rules for naval or land warfare, however, in practice they led to indiscriminate attack against non-combatants.
2. The second plot refers to World War II aerial operations. Again this conflict was considered to be a total war due to the threat to national survival for most of the Allied states. It has been plotted mostly within the Illegitimate and Unlawful Zone. Although it is conceded that in the first few years of the war air power was used for legitimate military purposes, in the latter years of the war its practitioners endorsed the practice of deliberate attack on non-combatants. This is why it has been plotted so low against the humane warfare axis. The deliberate employment of tactics and weapons designed to produce terrible indiscriminate effects, such as incendiaries and atomic weapons, against non-combatants registers very low on the humane warfare scale. It is only the faint recognition that these tactics were designed to save Allied lives that a protracted war would claim, that it does not register as non-existent on the humane warfare scale.
3. The third plot represents the conduct of air operations during the Vietnam War preceding the use of Precision-Guided Munitions (PGM). It has been plotted at the limited conflict point along the spectrum of conflict axis because, from a Western perspective, the conflict represented no immediate threat to the national sovereignty of any of the allied nations involved. Against the humane warfare axis it has been plotted very low within the customary zone. This is due to the indiscriminate nature of campaigns, such as *Rolling Thunder*, that had no real consistent set of objectives except to conduct armed reconnaissance missions, selecting targets of opportunity. Out of the 294,000 sorties flown from 1965 to 1968, only five per cent were against fixed targets,² meaning that the objective of discrimination in targeting was left to operational discretion.

2 J.T. Smith, *Rolling Thunder: The American Strategic Bombing Campaign Against North Vietnam 1964–68*, Air Research Publications, St Paul, 1994, p. 212.





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This lack of coherent direction and a definitively formulated target system led to over 605,000 tonnes of bombs dropped over North Vietnam, well in excess of the destructive capability of the atomic bombings of Hiroshima and Nagasaki.³

4. The fourth plot represents the conduct of air operations during the Vietnam War after the introduction of PGM.⁴ As mentioned above, the plot is situated at the limited conflict point along the spectrum of conflict axis. This plot differs from the previous one because exploitation of technology allowed for operations to be conducted with a greater efficiency in discrimination, due to the ability to operate with precision. Thus it has been plotted centrally within the Customary Zone, higher against the humane warfare scale. Precision allowed for the neutralisation or destruction of targets of value within the Hanoi and Haiphong areas, as well as the efficient interdiction of supply lines and destruction of oil storage systems, which are attributed to the final settlement of the war.
5. This plot represents the conduct of the 1991 Gulf War. This conflict is considered to be limited, due to the relatively low level of national risk to which the Allies were exposed. This conflict has been plotted quite high on the humane warfare axis, overlapping both the Applied Ethics Zone and the Customary Zone (within the inter-zone overlap). It has been plotted here for a number of reasons. First, although much of the conflict was conducted in a customary manner, the focus on non-combatant immunity was uppermost in the development of legitimate targets. Second, in relation to non-combatant immunity, practices were developed that exceeded that which was laid down by law. Many targets that would have been considered legitimate and lawful were not acted upon because of the possibility of non-combatant casualty or property damage. Finally, available technology was exploited in an attempt to further reduce the risk to non-combatants. This high-end technology increased the effectiveness of the systems of intelligence, communication and weaponising to obtain the desired effect on a target.

This activity heralds several observations of the changing nature of armed conflict. Firstly, at least from a Western point of view, there has been a move away from the conduct of total war. The levels of destruction achieved in both world wars perhaps serve as a lesson for something that must be avoided at all cost. Secondly, there is an emerging propensity to observe measures that preserve the concept of non-combatant immunity. The development of technology has allowed for precision application of military force, and better intelligence systems have allowed for this force to be directed at carefully selected target systems for a specifically desired effect. Lastly, during a

³ *ibid.*

⁴ The most famous being the laser-guided bomb that destroyed the Than Hoa bridge on 13 May 1972. Before PGM were used, thousands of sorties were flown against this target and several aircraft were lost in these missions.





limited conflict the state requires the favourable support of internal factors (public opinion) and external factors (international community) in order for it to continue the campaign.

Perceived Moral Separation in Conflict

One of the problems in assessing modern conflict is the perceived moral separation between each side of the conflict. To be able to understand the ethical positions of each side in the conflict requires an open mind and an ability to understand the position of each adversary. In any given conflict there are always two sides to the story, and sometimes factors such as the media, technology and propaganda cloud the perceptions of the conflict, providing a moral divide between who is acting righteous and just, and who is perpetrating evil. This is especially true of states that require a higher moral stance to justify its involvement in the conflict. Figure 4 provides a graphical representation of the contextual separation between two adversaries.

In this overlay on the Humane Warfare Model, there are two adversaries: Force A and Force B, who are involved in a particular conflict. Each is approaching the conflict from a situation unique to their relevant position. In this example, Force A is fighting against an adversary and considers the campaign to be that of a limited conflict. It is likely that the conflict does not threaten Force A's sovereignty and that Force A is perhaps technically superior to the adversary. As it is a limited conflict, Force A must continually retain internal and external support for its efforts. This is evident by Force A operating at standards higher than those codified by international law and custom. Force B on the other hand is fighting for survival. Force B considers the conflict to be total, yet is still operating within an interpretation of customary military action in war and international law; a morally justifiable position. It is possible that Force B wants to act more in accordance with the principles of humane warfare but because of a combination of inferior technology, capability and the pressure of survival demands that Force B operates within the lower portion of the customary zone.



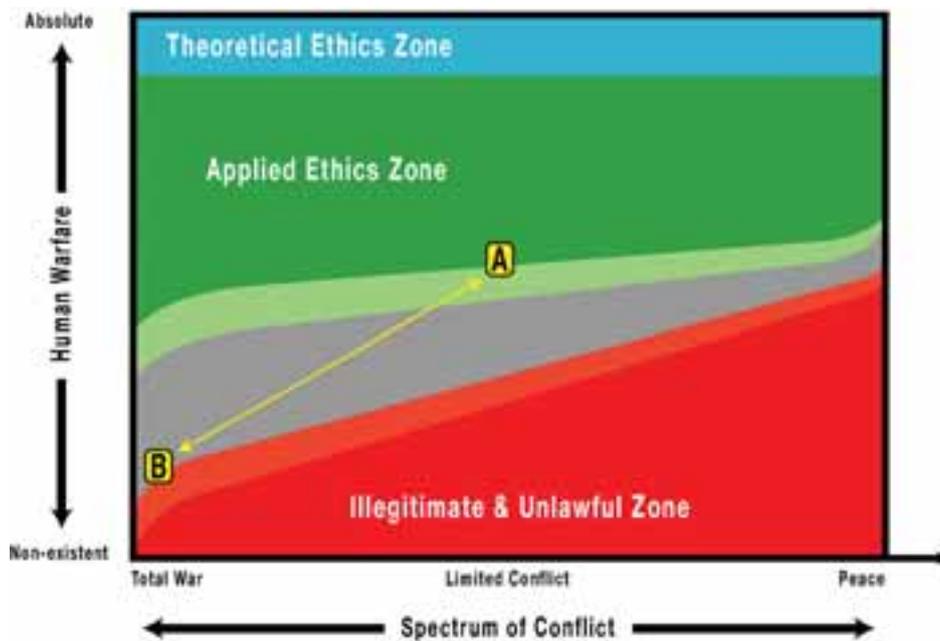


Figure 4: Contextual Separation in Conflict

The picture denotes that there is a large degree of separation due to the different contexts in which Force A and Force B exist. Even though there is this separation, it can be said that both Force A and Force B are still operating with some form of justice and legitimacy. Problems arise, however, when a correct interpretation of the moral positions of the two adversaries is clouded by opinion-shaping mechanisms such as the media and propaganda.

In order to retain the internal and external support needed to continue with the conflict, Force A needs to gain the moral higher ground over Force B. Force A may seek to influence opinion over the conflict by comparing its level of morality in its operations with Force B's level of morality in its operations, disregarding Force B's contextual situation. In effect, Force B's actions are measured against Force A's contextual situation. Figure 5 illustrates how this develops a perceived moral separation between the two adversaries. In effect, Force B's actions are now perceived as illegitimate and unlawful, thus elevating the moral status of Force A, providing the favourable support needed to continue to conduct the campaign. This technique is also available to establish pre-conflict support and justification using a technique called *threat construction*, however, this concept is beyond the scope of this paper.

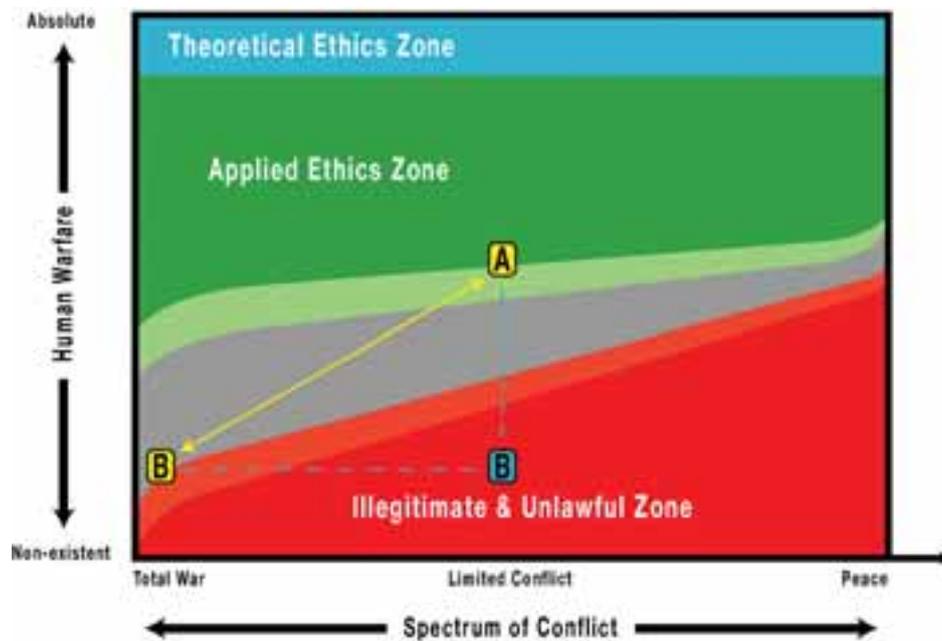


Figure 5: Perceived Moral Separation

The creation of this perceived moral separation is detrimental for the impartial observer because it clouds the true contexts in which the conflict is being fought. It gives those who possess military forces with high-end technology an advantage over lesser forces. Through effective opinion manipulation a superior force may always be seen to comply with a superior ethical benchmark, and thus gain further support for the continuance of their operations. Whether this is iniquitous or not is still to be debated.

What Can the ADF Learn from this Model?

While the essence of warfare will always remain the same, the conduct of warfare will always evolve to meet the expectations of the parent societies of the world's militaries. The military professional must recognise this, as it is an inherent part of their professional mastery. Recognising the expectations of society to ensure that when necessary, the employment of military force will be conducted in such a manner to meet these expectations is not a new concept. In fact, it will last so long as the military is considered a professional organisation. The challenge for the military professional in this age is that societal expectations now demand a decidedly ethical exactness in the manner in which the military must carry out its core function of the management of violence. Whether this is achieved due to a political necessity, which a realist may suggest, or due to a more discriminating form of utilitarianism does not really matter, when the fact remains that it is the will of society that urges this evolution of military action.



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Understanding the lessons that can be learnt from the humane warfare model will help the ADF to make the transition needed to keep up to these evolving societal expectations. The current norm of upholding, in everything the ADF does, the rule of law has been demonstrated to be lacking compared to the current expectations of Australian society and the international community. The humane warfare model demonstrates that:

- a. it should be a goal for the military to operate, *or appear to operate*, within the Applied Ethics Zone;⁵
- b. exploitation of technology is needed to achieve this goal; and
- c. this goal also requires the development of exactitude in operations.

These points deserve expansion.

- a. An historical analysis of the way Western militaries have conducted operations with the use of aerospace power was represented by *Figure 3: Humane Warfare Model and Previous Conflict*. The gradual evolution of the humane warfare concept (non-combatant immunity) was demonstrated by the manner in which conflicts climbed the vertical axis, entering into the Applied Ethics Zone. This highlights growing societal expectations for warfare to be more precise and against only those who are guilty of offence. Operating within the Applied Ethics Zone indicates a superior ethical benchmark, more so than that represented by international law and the customs of war. Currently the ADF espouses a spirit of operating within the customary zone, upholding the rule of law. This should be perceived as being inadequate to retain the internal and external support needed to sustain the conduct of any form of strategic strike during a conflict anything less than total. To alleviate this problem, the ADF should raise, *or be perceived as raising*, this benchmark to espouse a spirit of operating at a superior ethical benchmark similar to that represented by the humane warfare concept.⁶
- b. Achieving the goal of operating within the Applied Ethics Zone requires a commitment to humane warfare. It requires the ability to exploit available technology to allow for prediction of the resultant effects from certain actions (intelligence and weaponeering), the discrimination of targets (intelligence and sensors) and the effective completion of the action for the required effect (weapon systems and communications). Coordination is required to ensure that the acquisition and management of technological assets operate in an holistic approach to compliance with humane warfare principles in an effort to operate within the Applied Ethics Zone of the Humane Warfare Model.

5 Simply appearing to have a goal to operate within the Applied Ethics zone is a dangerous practice. This practice could result in a total loss of trust and support of the parent society and the international community.

6 It is acknowledged that the appearance of intending to act with superior ethics may be just as effective to gain the necessary support needed to conduct a campaign. Perception is a strong tool in politics.



- c. Exactitude in operations is an important principle of an effects-based strategy, in which the ultimate goal is to produce zero degree of separation between the physical and psychological aims and the physical and psychological results, including resultant flow-on effects (for example, second order and third order effects). Exactitude is a hybrid of intelligence, precision and proportionality, influenced by the immediate environment. This concept will require rigorous analysis and debate to determine the role it will play in modern and future military strategies.



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Conclusion

Professionalism is essential for a military organisation's competence. An essential element to military professionalism is the understanding of military ethics and the ability to reflect on their relationship with societal values and expectations. When Secretary of Defence, Allan Hawke, and Chief of the Defence Force, Admiral Barrie, challenged the Australian Defence Force to be *a force for good*, essentially this meant that the Australian military must reconnect with the values espoused by military ethics. Given that military ethics, by nature, must reflect societal values and expectations, the current norm of adhering to the rule of law is not adequate enough to satisfy these demands. Society expects its military to take the high moral ground when acting on its behalf, especially during conflict that don't threaten Australia's national security, and in doing so it expects the military to adhere to humanitarian guidelines in applying force, or in other words, conducting humane warfare. This is especially so in the case of non-combatant immunity during aerial warfare. The evolution of the concept of non-combatant immunity during aerial warfare has been almost a century long. Modern technology allows for the realisation of this concept and duly so, society expects modern militaries to adhere to this concept.

In the introduction of this paper I stated that to meet this challenge to be *a force for good* requires the ADF to produce a well-defined focus of what military ethics mean and what their relationship is with society's own values and morality. To achieve this, I hope to have re-acquainted the reader with the essential qualities that exist to underpin military ethics and how they have been embodied into international law. To meet the challenge to be *a force for good*, the spirit of these essential qualities has been formally codified to represent a well-defined focus for Australian military ethics in a concept called humane warfare. Although the basis of this concept is not new, modelling of the concept helps to create a new perspective on how the ADF may indeed become *a force for good*. The Humane Warfare Model clearly represents how a heightened focus on military ethics, further to those embodied by international law, may meet both the challenge set by Australia's military leaders and the high expectations set by society.





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