

Opening Remarks

Vice Admiral Arthur Cebrowski

The Naval War College is thrilled to have such a distinguished and diverse group of participants in this colloquium. You represent the pre-eminent international law and ethics scholars and the top military lawyers and warfighters from the United States and at least ten of our friends and allies—including Australia, Belgium, Canada, the Netherlands, Germany, Israel, Italy, Sweden, Switzerland, and the United Kingdom.

This colloquium, Legal and Ethical Lessons of NATO's Kosovo Campaign, is unique in that it is the first time that warfighters and international law scholars alike have gathered to specifically address the *jus in bello* issues that arose during Operation Allied Force. The opportunity to study, reflect, discuss and debate the issues involved is a rare one that must be seized with zeal and determination. The mission for this colloquium is simple: to examine the legal and ethical lessons of NATO's Kosovo Campaign—focusing exclusively on the *jus in bello* aspect of the campaign. Notice that we have not said lessons learned, for only the future will reveal if they have in fact been learned. Your work will lay the foundation that is necessary for policy makers and warfighters to comply with international law today, tomorrow and for years into the future.

The Information Age and Modern Warfare

How does law and ethics impact where we are headed with modern warfare? We here at the US Naval War College, whether looking at ancient battles or modern technology, always ask the question: what are the implications for the military and its activities in the future?

Opening Remarks

Admiral Jay Johnson, the former Chief of Naval Operations for the United States Navy, has described the future as being shaped by three increasing and irreversible trends: networking, greater globalization and economic interdependence, and technology assimilation. Each has enormous implications for militaries and societies throughout the world.

Obviously, these trends have enormous implications for the armed forces. We are now in the midst of a revolution in military affairs unlike any seen since the Napoleonic Age. In that period, the practice of maintaining small professional armies to fight wars was replaced by the mobilization of citizen armies composed of much of a nation's adult population. Henceforth, societies as a whole would, perhaps tragically, become intricately vested in warfare. The character of armed conflict had changed fundamentally.

Today we are witnessing an analogous change in the character of war and warfare—an information revolution that enables a shift from what we call platform-centric warfare to network-centric warfare. Understanding of these new operations remains nascent. No great body of collated wisdom has emerged to explain how this revolution will alter national and international security dynamics.

Allow me to briefly explain what network-centric warfare is, then raise some concerns with how it intersects with law and ethics. Perhaps most notably, network-centric warfare enables a shift from attrition-based warfare to a much faster effects-based warfighting style, one characterized not only by operating inside an opponent's decision loop by speed of command, but by an ability to change the warfare context or ecosystem. At least in theory, the result may well be decisional paralysis.

How might this be achieved? The approach is premised on achieving three objectives:

- First, the force achieves information superiority, having a dramatically better awareness or understanding of the battlespace.
- Second, forces acting with speed, precision, and the ability to reach out long distances with their weapons achieve the massing of effects versus the massing of the forces themselves.
- Finally, the results that follow are the rapid reduction of the enemy's options and the shock of rapid and closely coupled effects in his forces. This disrupts the enemy's strategy and, it is hoped, forecloses the options available to him.

Underlying this ability is an alteration in the dynamics of command and control. The key to this possibility is the ability to provide information access to those force levels that need it most. In a sense, the middle-man is cut out.

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Traditionally, military commanders engaged in top-down direction to achieve the required level of forces and weapons at the point of contact with the enemy. However, top-down coordination inevitably results in delays and errors in force disposition. It is an unwieldy process that denies flexibility to subordinate commands. Combat power is needlessly reduced and opportunities present themselves to one's enemy. In contrast, bottom-up execution permits combat to move to a high-speed continuum in which the enemy is denied operational pause to regroup and redeploy.

Challenges

There are several challenges that arise from the information age and the resulting bottom-up organizational structure. The ones you will address during this colloquium concern the law of armed conflict as it relates to the conduct of hostilities, rather than the *jus ad bellum* or legality of the conflict. Two concerns related to targeting come immediately to mind. First is consistency: as you are delegating decision-making down to the lowest levels, how do you ensure that commanders are uniformly applying the same standards of military necessity and proportionality? The second concern related to targeting is accountability: the information age ensures that we as warfighters will have more and better information, but it also means that everyone else will as well. Thus, our decision making—our targeting decisions—will continue to be scrutinized in ever-increasing detail.

Allow me to remind you of an incident that occurred during Operation Allied Force. On April 12, 1999 a NATO fighter was given the mission to destroy the Leskovac railway bridge over the Grdelica Gorge and Juzna Morava River in eastern Serbia. The fighter was to drop two electro-optically guided bombs—one on each end of the bridge. The first bomb was launched and as it was being remotely guided in to the aimpoint, at the last instant before impact, a train came into view. It was too late to divert the bomb and the train and bridge were struck. The fighter then circled around to complete his mission by dropping the second bomb on the opposite end of the bridge as planned. The bomb was dropped and as it broke through the clouds and smoke, again at the last instant before impact, it became apparent that the train was covering the expanse of the bridge. The train was struck a second time. All told 15 civilians lost their lives.

The laws of armed conflict judge military commanders on the basis of the information they have available to them at the time decisions are made. Now the decision to target and destroy this particular railway bridge was reviewed

Opening Remarks

and approved by the US National Command Authorities and, in general, by the North Atlantic Council. The bridge was a valid military objective because it was an integrated part of the communications and logistics networks in Serbia. It was determined that the military necessity of destroying the bridge was not outweighed by the potential incidental injury or collateral damage that would occur should civilians be on or near the bridge at the time of the attack.

That was a reasonable determination consistent with the laws of armed conflict. The challenge arose during the execution of the mission when the pilot acquired information that the planners did not have—i.e. that a train, possibly a civilian passenger train, was on or near the bridge. The pilot then made a split-second decision under the pressures of combat, while flying in enemy airspace that he would execute his mission as planned. He was properly assuming that the possibility of incidental injury or collateral damage had been accounted for during the target approval process. But while the pilot made that decision as he flew above the clouds, at an altitude above 15,000 feet, in enemy airspace, and while guiding the bomb on a five-inch screen in his cockpit, the public—including eventually the Prosecutor’s Office for the International Criminal Tribunal for the former Yugoslavia—had the luxury of hindsight and of viewing the cockpit video in slow-motion on large-screen televisions in the comfort of their own homes or offices. Many critics were appalled by the sight of crosshairs seemingly locked-on to a civilian passenger train. The pilot was accused by many of having committed a war crime—of having intentionally targeted civilians or recklessly disregarded the fact that they would be struck.

So as our actions as warfighters will be increasingly analyzed in ever greater detail, it is important that we reflect back on Operation Allied Force and identify the legal and ethical lessons to be learned. There is no better venue for this colloquium than here at the Naval War College. Here we have a proud tradition of bringing the preeminent legal minds together with the leading warfighters and policy makers. Together we can ensure that the law of armed conflict is not only expertly articulated, but also applied to real world scenarios in a manner that incorporates the crucial operational perspective and realities. You will go even further by not just asking “what is lawful?” but also “what is ethical?” Not just what *can* we do, but what *should* we do.