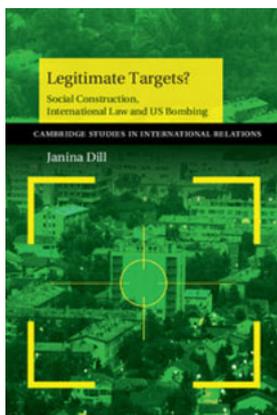


## BOOK REVIEW



# Legitimate Targets? Social Construction, International Law and US Bombing

**Janina Dill\***

**Book review by Dr Bill Boothby**, former Deputy Director of Legal Services for the Royal Air Force.

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In this book, Dr Janina Dill<sup>1</sup> takes on the considerable challenge of trying to work out whether international law can effectively regulate the conduct of States in the absence of an independent enforcing authority. She does this by considering the law regulating conduct in war and, more specifically, the effectiveness of international humanitarian law (IHL) in delimiting the scope of legitimate targets of attack in US air campaigns. She uses this discussion as an indicator of the wider ability of international law to regulate State behaviour more generally.

After an introduction to the book, the substantive text is divided among nine chapters and arranged in four parts. Part I, consisting of Chapters 1 and 2, explains the constructivist theory of international law. Why States create international law, why they comply with it and what is distinctive about its norms are the questions that lie at the core of Chapter 1. Chapter 2 then explores the constructivist theory associated with international law. Part II defines the notion of a legitimate target in international law by reference to positive law, in Chapter 3, and in relation to customary law, in Chapter 4. Part III, divided into Chapters 5, 6 and 7, charts the rise of international law in US air warfare thinking, how this impacts on the US interpretation of what is a legitimate target and the extent to which international law is relevant in determining US air warfare behaviour. Part IV comprises Chapters 8 and 9, in which, having

\* Published by Cambridge University Press, Cambridge, 2015.

concluded that international law is not normatively successful in US air warfare, the author considers the proposition that normative success for international law in war is impossible. Thereafter there is a concluding section in which the strands of the discussion are brought together.

At the end of the introduction to the book, when faced with the suggestion that widely held normative beliefs imply that, in reality, there are no such things as legitimate targets in war, the reader will be troubled and highly motivated to dig deeper into the ensuing analysis. That digging will be amply rewarded.

In a comprehensive tour of the philosophical theory of law as it applies to international law, the author concludes that “existing scholarship, in law as well as in IR [international relations], casts considerable doubt on [international law]’s ability to be ... ‘behaviourally relevant’”.<sup>2</sup> Chapter 2 then addresses international law’s behavioural relevance and comes to the conclusion that international law is indeed dependent on interests and shared normative beliefs, while retaining a character that is distinct from each of those factors; it is a “compromise between pre-existing motivational forces and normative codes” and is thus “dependent, but separate”.<sup>3</sup>

In Part II of the book, the focus shifts to how international law defines a legitimate target of attack. The notions of distinction, military objective, proportionality and precautions are all subjected to careful analysis. There are those who would contest the assertion that Article 57(3) of Additional Protocol I (AP I) is subsumed within proportionality or that proportionality *per se* necessitates minimization of collateral damage, but the analysis is persuasive.<sup>4</sup>

The discussion of military objectives is a most valuable feature of *Legitimate Targets?*. As is the case with other topics considered in the book, this discussion examines all matters of contemporary controversy and achieves depth, detail and accuracy. Language and underlying concepts are explored thoroughly, the debate being wisely centred on the pervasive notion of necessity while reflecting and discussing the humanitarianism/military pragmatism trade-off. The inherent indeterminacy of the law, critical in the eyes of some to its realism, becomes the basis for a proper critique, while an evaluation of the salient parts of the AP I negotiating history is used to determine the logics underpinning the interpretation of “military objective” and “proportionality”.

Chapter 4 looks at the emergence of corresponding customary law rules, reflecting on US interpretations, in particular by critically exploring the emergence and significance of the “war-sustaining” approach to the definition of military objectives and by evaluating the effects-based approach to targeting. The

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2 *Legitimate Targets?*, p. 20.

3 *Ibid.*, p. 63.

4 *Ibid.*, pp. 73–74.

chapter concludes with an insightful appraisal of the challenges one faces when seeking to determine the exact content and meaning of customary law on these, and related, issues.

It is on the basis of this sure, well-rounded appreciation of the relevant legal concepts that Part III of the book sets out to assess whether the definition of lawful targets in war affects how US military decision-makers define a legitimate target. Aerial targeting in the Vietnam War, in the Persian Gulf War and in the Iraq War of 2003 are chosen as the basis for comparison, as the first of these pre-dates the adoption of AP I while the latter two came after its adoption. The resulting discussion, as well referenced and authoritative as the rest of the book, provides a valuable insight into the progressive importance and internalization by air operators of IHL obligations, and thus, a sound basis for the remaining analysis.

Appropriately, the next chapter tackles the targeting activity associated with the three chosen armed conflicts, detecting an evolution from attrition to effects-based approaches to target selection. The analysis of the evolving methodology associated with US targeting choices during the selected campaigns is most illuminating in showing how the basis of US understanding of what constitutes a legitimate target for attack has shifted from a logic of sufficiency, characterized by a focus on accomplishing military advantage, to a logic of efficiency, driven more directly by the wish to accomplish identified political purposes. Noting that aspects of the logic of efficiency may contribute, in part at least, to evolving US approaches to target selection, the approach of personnel to targeting decisions is also carefully assessed.

As the book establishes, precision attack, improved battlefield awareness, emerging doctrine and the wider context for use of force all impact on perceptions as to legitimate targets. However, the sufficiency and efficiency logics imply differing proportions of civilian and military casualties, so in its final phase, the discussion shifts to an assessment of some recent developments in international law in general. Does the growing emphasis on the rights of individuals imply a need for IHL to adopt some kind of liability-based approach in determining who or what gets to be lawfully targeted? Such a contention is properly rejected.

*Legitimate Targets?* represents a well-informed, well-researched, balanced and all-embracing treatment of a vitally important issue, providing valuable insights to military thinkers, policy specialists, academia and all concerned with ensuring the social acceptability of future military operations. The quality of the scholarship is evident and the resulting analysis is intellectually robust and thorough, while the emerging conclusions are well supported and compelling. In my view, this book takes understanding of this critically important aspect of IHL materially forward, and there can be no greater praise of research than that.

