

2002

The Law of War

Greg O'Brien

Ingrid Detter

Follow this and additional works at: <https://digital-commons.usnwc.edu/nwc-review>

Recommended Citation

O'Brien, Greg and Detter, Ingrid (2002) "The Law of War," *Naval War College Review*: Vol. 55 : No. 4 , Article 16.
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol55/iss4/16>

This Book Review is brought to you for free and open access by the Journals at U.S. Naval War College Digital Commons. It has been accepted for inclusion in Naval War College Review by an authorized editor of U.S. Naval War College Digital Commons. For more information, please contact repository.inquiries@usnwc.edu.

They point out that comparisons of present policies to those of the British at Munich are premature and that it is not their intention to draw precise parallels between the British and U.S. experiences. However, these admissions come only in the very last chapter, after the reader has had every opportunity to make just such comparisons.

Despite these critical comments, *While America Sleeps* is very much worth reading. The Kagans are asking the right questions. Their warnings about the fate of states that reduce military capabilities to dangerously low levels, lack consistent strategic visions, and replace sound strategy with wishful thinking are more germane than ever.

So too are the questions their work points to but does not ask. Can democracies avoid reducing military capabilities without the impetus of a visible external threat? Does state behavior motivated by self-interest weaken all alliances over time? Can a democracy survive taking on the mantle of world policeman? Can wars be prevented through consistent displays of strength and purpose? These are questions that reading this book evokes, questions that should be considered and discussed far more than they are.

RICHARD NORTON
Naval War College



Dettter, Ingrid. *The Law of War*. Cambridge, U.K.: Cambridge Univ. Press, 2000. (2d ed.) 516pp. \$39.95

This is the second edition of Ingrid Dettter's sweeping survey of the law relating to the "modern state of war." The first edition, published in 1987, was then

reviewed by, among others, Professors Howard Levie (*American Journal of International Law*, vol. 83 [1989], p. 194) and Leslie Green (*Canadian Yearbook of International Law* [1988], p. 473), two distinguished former holders of the Stockton Chair of International Law at the Naval War College. Both reviewers identified numerous inaccuracies and misreadings of source documents. The second edition is intended to explore the changing legal context of modern warfare since 1987. A reader interested in this edition should first read the earlier reviews. Regrettably, the representative deficiencies pointed out by Levie and Green still persist, and a fully balanced discussion of particularly important legal issues is lacking.

Typical errors left unchanged include Dettter's erroneous position regarding the treatment of prisoners of war. She states that the 1949 "Geneva Convention III on Prisoners of War specifies [in Article 4] that there need be no fighting for the Convention to apply; it is sufficient for persons to be captured." There is no such provision in the convention. Dettter also continues to assert that the convention provides that prisoners of war must not be subjected to interrogation, because Article 17 obliges prisoners to provide only their name, rank, date of birth, and serial number. Article 17, however, then continues, proscribing physical or mental torture, or any other form of coercion, to secure information from prisoners of war. Interrogation short of such prohibited actions is not prohibited by the convention. While a prisoner of war is required to give the identifying information, international law does not prohibit a prisoner from giving more than this, nor a captor from seeking more—so long as torture is not used.

Astonishingly, Detter continues to insist that the actions taken during the Korean War never had authorization from the United Nations. She states that the military operations were only “a collective security action of certain States, as there was no actual UN authorization for the action.” She asserts further that “the troops operating under the aegis of the United Nations in Korea may not have been forces of the United Nations as the decision to take action had been taken without the vote of the former Soviet Union, a permanent member of the UN Security Council.” Detter continues, “The units were probably troops of the collective operation of the Western powers, but as such, detached from their respective home States and placed under a collective command which, at least on an ad hoc basis, functioned as an international organization.”

As noted by Levie in his review, the legally significant actions taken by the Security Council were in Resolution 1511 of 27 June 1950, calling on all members to offer assistance to the Republic of Korea, and Resolution 1588 of 7 July 1950, requesting that members offering assistance do so through a unified command under the United States and authorizing it to use the United Nations flag. That the Soviet Union chose to boycott Security Council meetings was significant politically but not legally with respect to the actions taken by the Security Council in authorizing action under Article 42 in Korea.

It is bewildering that Detter in the second edition did not make the proper corrections about both the Prisoner of War Convention and the legal basis of the Korean conflict, given the prominence and qualifications of the earlier critical reviewers.

The last passage above also illustrates Detter’s distracting tendency to mix personal opinions with legal analysis, which does little to present a balanced view of the state of the law. In discussing the basis for intervention by Nato in Kosovo, Detter describes Kosovo as “a province of Yugoslavia which . . . sought, and deserved” autonomy from Serbia. She argues that nonstate “groups” should be allowed to adhere to treaties on the law of war, reasoning that “it is important to abolish the unequal idiosyncrasy that States are bound by obligations under the Law of War by treaties but groups, because of their inequality, are not.” Moreover, she states that “much has been written about the ambit of article 2(4) of the United Nations Charter [which prohibits the threat or use of force by members in their relations with each other]; there is above all an area of doubt as to whether the article covers economic force.” The issue whether economic force is included in the Article 2(4) prohibition (it is not) was settled long ago—it is not at all an area of doubt.

Claiming that the second edition is intended to incorporate changes since 1987, Detter provides disappointingly little discussion on information operations. In less than two pages, she notes that information technology has introduced a new form of warfare and that collateral damage to nonmilitary targets is a risk of information operations. Much more could have been presented about when information operations constitute a use of force under Article 2(4), when a state may consider an information attack an armed attack and respond in self-defense under Article 51 of the charter, or how the law regulating the use of force applies to information

operations. While little was written in the late 1980s and early 1990s about the international legal issues associated with information operations, a cottage industry on the topic has grown over the latter part of the decade, and Detter's book suffers without a fuller discussion of this topic.

Detter's treatment of the law of naval warfare is similarly incomplete. She fails to include discussion of modern maritime interception operations beyond a cursory mention of the coalition operations conducted in the Arabian Gulf since 1991, and she only briefly covers the UN-authorized operations in Haiti and the Balkans. Although Nato's operations in Kosovo are discussed at great length in other parts of the book, Detter does not address the vigorous debate that ensued among Nato members about the propriety of interdicting delivery of refined oil intended for Yugoslavia. Some Nato members believed that the authority to do so was based on the belligerent right of visit and search, while others claimed that Nato was not involved in an international armed conflict, a predicate for the belligerent right. With respect to maritime war zones, Detter states that "defensive" war zones are allowed if they do not extend for more than twelve miles offshore and are effectively supervised, while "offensive" zones, in which merchant ships are sunk, are illegal even if warnings are provided. Both these statements are patently wrong. Customary international law provides that within the immediate area of naval operations, a belligerent may establish special restrictions on the activities of neutral vessels and aircraft and may prohibit altogether such vessels and aircraft from entering the area. The "immediate area" or vicinity of naval operations is

that area within which hostilities are taking place or belligerent forces are actually operating. Such an area could exceed twelve miles and could also be in some location other than near the shore of one belligerent. Additionally, while merchant shipping generally enjoys greater protection from targeting than enemy warships, it is not an absolute protection. Under particularly defined exceptions, merchant shipping is liable to being targeted by a belligerent.

Detter also concludes, concerning the torpedoing of the Argentine cruiser *General Belgrano* by the submarine HMS *Conqueror* when both were outside the British total-exclusion zone during the Falklands War, that it was "highly questionable whether the sinking was compatible with international law, especially as the [warship] was heading for its home base and posed no threat to the British armed forces." This too is a misstatement of the law. Generally, enemy warships are subject to attack, destruction, or capture anywhere beyond neutral territory. Thus the sinking of *Belgrano*, even beyond the declared British total exclusion zone, was a legitimate act of war.

Conspicuously absent from Detter's assessment of the law of naval warfare is any citation or reference to the International Institute on Humanitarian Law's *Manual on International Law Applicable to Armed Conflict at Sea* (the *San Remo Manual*). The *San Remo Manual*, issued in 1994 and published in 1995, is a contemporary restatement of the law applicable to armed conflicts at sea. It was compiled by a panel of international law experts from various countries as an attempt to restate the customary and treaty law of naval warfare. It is not binding authority on states, but it is nonetheless

persuasive evidence of the current law. The United States does not agree with every provision in the manual, nor does any other state. Still, it is a fundamental source document that must be considered in any discussion of the law of naval warfare. As such, it is inexcusable of Detter not to cite it. Failing to do so detracts greatly from the text. Using the manual would have provided balance, and familiarity with it should have helped to avoid the errors described.

In Leslie Green's review of Detter's first edition, he concluded that "regrettably, it can hardly be said that Dr. Detter De Lupis' *Law of War* provides the reader with any real practical account of 'the body of rules which regulates relationships in war.'" Levie, after devastatingly recounting the representative errors and inaccuracies in the first edition, left to the reader to judge "whether [these errors] are important or unimportant, could a political leader or a military commander accept and rely on advice based upon this volume as authority?" Unfortunately, the passage of more than ten years and the addition of new information do not warrant improving these two assessments of Detter's *The Law of War*. Like the first edition, the second is not a very useful book if one is looking for a basic understanding of the law of war, nor is it helpful in advancing the development of that law.

GREG O'BRIEN
Commander, JAGC, USN
Naval War College



Podvig, Pavel, ed. *Russian Strategic Nuclear Forces*. Cambridge, Mass.: MIT Press, 2001. 692pp. \$45

This comprehensive encyclopedia of all Russian (and Soviet) nuclear weapons systems deserves attention not only because all earlier versions were confiscated by the Russian Security Service (FSB) but because it is a complete and authoritative chronology of the weapons, warheads, and delivery systems that enabled the Soviet Union to achieve "superpower" status. Authored by Russian physicists and mathematicians using only unclassified data bases, the book tells the "official" story of how Soviet and Russian bureaucracies built the world's most fearsome nuclear arsenal from World War II until the mid-1990s.

Organized by function and military services, the story is easy to follow for a reader reasonably conversant with the systems and willing to plow through tables and specifications. The book's objective, clinical, and dispassionate treatment is both its strongest and weakest point. It presents all the facts. The data presented in the tables and notes probably could not have been fabricated at this level of detail. However, the book makes no judgments or any effort to place its contents in political context.

The chapter on the Soviet navy details how technology shaped strategy. The development of the R-29 sea-launched ballistic missile (Nato's SS-N-8) and the Project 667B (Nato's Delta I) submarine put the Soviet ballistic submarine force within range of its American targets while remaining in the "bastions" of the ice-covered regions of the Arctic, thus obviating the need for the "Yankee patrols" (by Yankee-type submarines carrying SS-N-6 missiles). With only one-third of the range of the SS-N-8, the SS-N-6 missile was a threat only when it was brought near the U.S. coast, where the submarine could be constantly