



**Paper – BCMH Summer Conference 2009**

***The Legality & Legitimacy of the Strategic Bombing Campaign***

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**Introduction**

The Strategic Air Offensive against Germany, to use the title of the Official History, remains one of the most controversial campaigns of the Second World War. Of the various debates that continue to excite scholars, from many disciplines, the legality and morality of the offensive is high on the list of topics deemed worthy of revisiting. The standard refrain has been that cynical national interests prevented the ratification of the 1923 Hague Rules on Aerial Bombardment thus preventing the use of the bomber from being outlawed. Any analysis would therefore have to be conducted on moral grounds thus allowing the philosophers and more emotive voices to come to the fore. This exercise has often been completed using modern vocabulary, standards and invariably without the international and technological context. Recent examples include A. C. Grayling, *Among the Dead Cities* and Donald Bloxham's chapter, 'Dresden as a War Crime' in Addison and Crang's *Firestorm: The Bombing of Dresden*.

For some authors, the bombing offensive has become the epitome of all that is brutal in war. And, almost inevitably, the tarnish has spread to the crews and their commanders with damnation by faint praise (at best) starting with Churchill (despite his efforts to distance himself from post-war opprobrium) and moving downwards. The standard caricature has traditionally continued along the lines that senior commanders in the Royal Air Force, and the United States Army Air Force, were determined to wreak the greatest havoc on Germany and Japan in order to justify their pre-war dogma and the independence of the air arm from its fellow services. But this image of callous, blood thirsty, potential war criminals sits at considerable odds with the more traditional concepts of military chivalry and the underlying requirements for the conflict to be legal and for there to be a just cause for the military actions undertaken.

The natural progression from a broadly accepted code of conduct, arguably an extension of the chivalric code, is for the required behaviours to be set out in formal language and agreed between nations; ideally this should take the form of a binding treaty. In short, to transpose them into an international law of armed combat. Adam Roberts has insisted that the study of [international] law must be integrated with the study of history. A logical extension of this is that the development of air law, and indeed strategy and doctrine, must be examined in the context of the wider international and domestic political situation. In turn, the developments in thinking must take heed of the pace of technological progress (including limitations), and in particular the weapons on which restraint was sought.

The starting point for the discussion of the legality of aerial bombardment is the Hague Convention of 1923. Whilst it might be said that this Convention revealed the individual Great Powers still possessed of cynical national characteristics in that they only wished to ban weapons which were of no use to them and leave themselves with the options to pursue others. For example, at the 1899 Hague Convention the Russians wanted to restrict the use of



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shells above a certain calibre because the technology was getting away from them. The Convention did not outlaw the bomber or aerial bombing. Consequently we can now look back on the Strategic Bombing Offensive only in moral and not legal terms.

During the interwar years this debate was perforce extended. The question was '*Could there be bombing without restriction?*'

The use of aircraft in war has to be studied in the context of history and of international law at the time. This may seem obvious to us but a number of modern philosophers have gone into print in recent years with a tendency to look only at their area of philosophy without any knowledge of the context whether historical, legal or, of course, technological.

Michael Howard has discussed the concept of waging war in the context of legitimacy – to use force with deliberation and with legitimacy. He takes the view that when control breaks down then the legal element breaks.

It has been said that, in terms of International Law, the Law of War is at a vanishing point. But there was a huge effort in the 1920's to make the Laws of War relevant. Theories ranged right across the spectrum from banning war altogether to having no rules at all. But people were genuinely seeking a middle way.

Many countries sent deputations to the 1923 Hague Convention (though not Germany) and there was significant discussion around the subject of Rules for Air Warfare. Draft Rules were drawn up which the bombing of property of a non-military nature or of non-combatants would have been prohibited but governments were reluctant to sign as they did not want to fetter the use of an untested weapon. So the draft was never enacted.

Nevertheless the subject occupied politicians, civil servants and the armed services at the highest levels. The lawyer and civil servant J M Spaight wrote extensively on the subject, his writing being on the syllabus for Staff College candidates in the 1930's. Spaight's work has three facets that are both distinct, and complementary. He was an air power advocate; an academic lawyer (a jurist in his own right); and a senior official. His book '*Air Power & War Rights*' (1924) was certainly considered at the highest levels. In it he looked at the history of air war to date and analysed those targets attacked in the First World War which might now be beyond the pale. He was influenced by the Just War theories but was a realist; he thought that modern war could be waged in a more moral way.

The 1930's saw the emphasis turn to the Geneva Disarmament Conference with the idealists seeking an outright prohibition on all military aviation. This view was shared in the British cabinet with Baldwin one of the strongest supporters. The Air Ministry was at its most pragmatic at the time, with consistent advocacy that there should also be serious limitations on civil aircraft (as these could easily be converted to bombers. Under the influence of the likes of Spaight, they also argued for firm limitations to aerial bombardment on the basis that these rules may be adhered whereas outright prohibition would be ignored.

These discussions were taking place in Britain and the US against a backdrop of fast-moving technological developments and a lack of interest from other powers. Nevertheless, events in



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Manchuria and Germany underpinned interest in the topic. The discussions in Geneva eventually ground to a halt amid the growing evidence of German rearmament and claims that they had achieved parity in the air. The scramble to rearm then took centre stage.

The most serious problem for the UK was that it was the only country really to take disarmament seriously and was therefore a long way behind in re-equipping its armed forces. It was evident that it would be several years before a bomber force had sufficient weight and numbers to be able to bring some reality to the rhetoric of the interwar years. Webster and Frankland have suggested that this factor alone was sufficient justification for a limited and pragmatic approach to bombing policy as war drew close. But it is suggested that this does not take sufficient account of the role of Chamberlain through until 1940; it is clear that his preference for peace prevented *'the gloves coming off'*.

Even at an official level, there is evidence right up until September 1939 of real efforts to re-invigorate the Hague Rules in both the Admiralty and the Air Ministry. The realists still saw unlimited bombing coming sooner or later, but not all shared this view. Again the files show a consistent line until well into 1941 prohibiting the indiscriminate bombing of civilians. The move to area bombing came in an incremental way and the paper argues that the Air Ministry Directive to Bomber Command of February 1942 was the watershed with its language of bombing *'without restriction'*. It is significant that this was in place before Harris assumed Command.

The paper finished with a 'sting in the tail' referring to the attempts by Churchill to gain the moral high ground over the international outcry following the bombing of Dresden.