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We're Not in Beersheba Anymore: Discussing Contemporary Challenges in the Law of Armed Conflict with 120 International Lawyers

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We're Not in Beersheba Anymore: Discussing Contemporary Challenges in the Law of Armed Conflict with 120 International Lawyers

*Brigadier General Sharon Afek**

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I. NEW BATTLES, NEW QUESTIONS

In 1917, at the height of the Great War, battles were being waged across Europe and the Middle East. In the dry and dusty desert of what is today southern Israel, the Battle of Beersheba pitted light infantry soldiers from the Australian and New Zealand Armed Corps (ANZAC), led by the British General Allenby, against the Ottoman forces manning defensive positions outside the town of Beersheba.

The ANZAC troops were infantry soldiers and were not trained to fight on horseback. Yet, in the Battle of Beersheba, they took their horses that they ordinarily used for transportation and conducted a

* Military Advocate General, Israel Defense Forces. The following is based upon remarks delivered at the opening of the 2nd International IDF Conference on LOAC.

mounted cavalry charge. Bayonets drawn, they rushed into close-quarters combat. One of the ANZAC troops wrote about that battle:

At a mile distance, their thousand hooves were stuttering thunder, coming at a rate that frightened a man. They were an awe-inspiring sight, galloping through the red haze, knee-to-knee and horse to horse, the dying sun glinting on bayonet points.¹

This first-hand account encapsulates the nature of the Battle of Beersheba. It saw uniformed soldiers fight other uniformed soldiers from an organized and hierarchical military. The battle took place in the open terrain of the desert. There was a clear frontline, entirely separate from the civilian life in the nearby town of Beersheba. The battle, and the wider war of which it was a part, was clearly delineated in its start and end. The Battle of Beersheba enabled the Allied forces to break the Ottoman line and advance northwards, eventually beating out the Ottoman Empire and permanently changing the geopolitical landscape of the region.

Now, just over one hundred years later, warfare is very different. Naturally, technology has changed, but so has so much else. Many conflicts today endure for over a decade, with punctuated bouts of intensive hostilities. They involve all manner of parties: states that are committed to the rule of law, states that are not committed to the rule of law, nonstate armed groups that receive material support from states, nonstate armed groups that have the military capabilities of states, and groups that have constantly shifting allegiances. They take place all over the world—far from home in another continent or spanning multiple regions, as well as closer to home, on a state's own border, directly affecting the homefront. Yet wherever the conflicts occur, they are increasingly being fought in urban environments, endangering civilians and civilian population centers.

While armed conflict and the use of force continue to have tragic consequences, today's battles involve complexities that are different from those of the distant past. As practitioners and experts in the Law of Armed Conflict (LOAC), we all have a part to play in confronting these challenges.

1. Malcolm Turnbull, Australian Prime Minister, Speech at the Centenary of the Battle of Beersheba Commemorations—Israel (Oct. 31, 2017) (quoting ION IDRIESS, *THE DESERT COLUMN* (1932)), <https://www.malcolmturnbull.com.au/media/speech-at-the-centenary-of-the-battle-of-beersheba-commemorations-israel> [<https://perma.cc/859N-54NZ>] (archived Feb. 26, 2018).

II. THE 2ND IDF INTERNATIONAL CONFERENCE ON LOAC— RECONCILING THEORY AND PRACTICE

The legal issues arising from the challenges in modern conflicts were the subject of the 2nd IDF International Conference on LOAC, which took place in Tel Aviv, Israel, over three days between April 25 and April 27, 2017.

Past and present Military Advocates General, military judges, government and national security legal advisers, senior members of the ICRC, and leading academics from Israel and other countries offered their perspectives on the application of LOAC to contemporary dilemmas. Over 120 participants from over twenty countries came together to discuss the challenges facing countries and organizations committed to upholding and applying LOAC.

The topics selected for the conference reflect some of the most pressing issues emerging from contemporary conflicts, and the way in which the theory of LOAC is to be applied in practice. One case in point is the law governing ground operations, which continue to be of vital importance to the militaries of many states. Given that hostilities increasingly take place in urban environments, where ground operations are particularly critical and where their consequences can be particularly significant, are we sufficiently aware of the legal issues arising in these circumstances? As the perception of modern warfare as a precise and “clean” vocation increases, do we give adequate attention to the uncertainty, urgency, and dynamic nature of ground operations in urban areas? Questions like these engaged the high-ranking military lawyers, past and present, and legal scholars in a panel entitled *LOAC in Ground Operations*.

Introducing this panel, Major General Nitsan Alon, Head of the IDF Operations Directorate, delivered an in-depth presentation on the operational challenges in urban warfare. General Alon, one of the IDF's most senior commanders, shared his professional insights and analyses, drawing on his battlefield experience at all levels of command. I am very pleased that we are able to publish his presentation, which is instructive for any practitioner or academic considering the practical application of LOAC to urban warfare.

Other panels at the conference also sought to address the meeting point between theory and practice. Legal scholars and practitioners with diverse experience and perspectives considered contemporary issues in proportionality, the targeting of persons, and the evolution of LOAC. Another panel, titled *Providing Legal Advice on National Security Issues – Multinational Experiences, Dilemmas, Recollections*, brought together past and present heads of legal services (governmental and military) from Australia, France, Israel, the United Kingdom and the United States to share experiences how, in practice, government and military legal advisors provide legal advice on national security issues.

Perhaps the best way to ensure that theory corresponds with practice is to visit the point at which they meet. To this end, the conference included a tour of Israel's northern boundaries with Lebanon and Syria, during which participants received intelligence and operational briefings as well as an overview of the legal issues concerning both areas.

Standing on the Lebanese boundary, an Intelligence Officer pointed out Hezbollah positions embedded within the Shi'ite village three hundred meters from where we were standing. The officer described their current operational capabilities, resulting from their continuous build-up of their arsenal as well as their combat experience gained from fighting in the Syrian conflict (sometimes alongside, and sometimes in coordination with, the Syrian Army and the Lebanese Armed Forces). As UN helicopters flew overhead, we discussed the operational and legal implications of Hezbollah's known *modus operandi* of hiding military assets in civilian structures and Hezbollah's continued integration into Lebanon's political system and military mechanisms. We also discussed the challenges in contending with continued violations of UN Security Council Resolutions, including the prohibition of armed groups in southern Lebanon, as well as Hezbollah's increasing material support from Iran.

Operational and legal challenges were also the focus of the discussions at the Syrian boundary. Standing at an old IDF military fortification (today partially in use by the UN Disengagement Observer Force), with Israeli villages and agricultural fields on one side and Syrian villages on the other, our briefings were punctuated by the occasional explosion of shells in the Syrian conflict. Here, IDF officers described the challenges as various armed groups across the border constantly shifted in their allegiances to each other, in their control of different areas (and sometimes, sharing control over the same area), and in occasionally turning their activities towards Israel. The officers also described Israel's humanitarian efforts, providing medical services and basic goods to Syrians caught up in the conflict, and the security challenges in conducting such activities in the midst of a conflict. These challenges today have been exacerbated by Iran's increasing military presence in Syria (which has already translated into direct military activities against Israel, supported by Syrian forces), the increasing presence of other states (and their proxies) operating in the area, and the threat of chemical weapons being used against Israel.

It is an unfortunate privilege that LOAC practitioners in Israel have many opportunities to gain first-hand accounts of the realities of modern warfare and its interaction with the law, and the tour of Israel's northern boundaries gave participants a glimpse into these stark realities. On a personal note, I must admit that ushering more than 120 international lawyers onto an Israel Air Force transport aircraft and accompanying them aboard a flight to areas just a stone's

throw from Hezbollah and the Syrian conflict is a little unsettling. But it was certainly worthwhile.

I believe that I speak for all the conference participants in stating that one of the major highlights of the conference was the keynote address delivered by Emeritus Professor Yoram Dinstein. A profound and insightful assessment of the last fifty years of LOAC development, Professor Dinstein's address—*The Recent Evolution of the International Law of Armed Conflict: Confusions, Constraints, and Challenges*—was met with a standing ovation. It was a distinct privilege to hear his rare and unique perspective on LOAC today, informed by decades of intimate involvement in the interpretation, teaching, development, and dissemination of LOAC. Professor Dinstein's address is a must-read for all international lawyers.

The conference culminated in a practical workshop in which participants were divided into groups. Each group was presented with scenarios raising challenging questions concerning different legal issues. These issues included detention in armed conflicts, organized armed groups, targeting financial facilities, and conducting ground maneuvers in urban areas. The workshop prompted stimulating group discussions that highlighted the challenges in applying LOAC to contemporary conflicts.

Owing to the diversity among participants—representing different countries and organizations, with a combination of practical experience and academic expertise—the panels, workshop, and tour enabled a variety of different opinions and analyses to be heard. During each of the conference sessions, the participants were united by an appreciation for the law, a shared interest in promoting and strengthening the application of LOAC, and an understanding that the challenges of today will affect how the law will develop, and be perceived, tomorrow.

III. PUBLICATION OF THE CONFERENCE PROCEEDINGS

I am very pleased that we have been able to bring the proceedings of the conference to a wider readership through the *Vanderbilt Journal of Transnational Law*, an esteemed and well renowned journal. In the following pages, speakers on the various panels and sessions share their thoughts and analyses on their topics, based on their presentations and the ensuing discussions.

I wish to sincerely thank and commend the *Vanderbilt Journal of Transnational Law* Board of Editors, the Board of Advisors, and the Editorial Staff for their tireless efforts in preparing this issue, and to the various contributors who agreed to submit their articles for this publication. The articles herein are written by true experts in the law and in its application, and I am honored that they participated in the conference and in this issue.
