

**STAY THE HAND OF VENGEANCE:
THE POLITICS OF WAR CRIMES TRIBUNALS¹**

REVIEWED BY MAJOR SUSAN K. ARNOLD²

Justice Robert Jackson approached the podium in Courtroom 600 and glanced at his opening statement. His secretary had affixed a note that said “Slowly” to remind the Justice, acting as an allied prosecutor in Nuremberg, to speak slowly so that the simultaneous translator could keep pace with him.³ He began his famous opening statement.

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.⁴

The world sat on the edge of its seat and all eyes were on Justice Robert Jackson as he delivered his opening salvo before the International Military Tribunal in Nuremberg. The Nuremberg Tribunal is the watermark by which all other efforts at war crimes trials are judged. Gary Bass’s examination of war crimes trials is unique because he takes the reader through the political process behind the establishment of war crimes trials. His analysis stops when the prosecutor reaches the podium for his opening statement. What happens in the courtroom is a legal matter, and Bass is

1. GARY JOHNATHAN BASS, *STAY THE HAND OF VENGEANCE, THE POLITICS OF WAR CRIMES TRIBUNALS* (2000).

2. United States Army. Written while assigned as a student, 50th Judge Advocate Officer Graduate Course, The Judge Advocate General’s School, United States Army, Charlottesville, Virginia.

3. JOSEPH E. PERISCO, *NUREMBERG, INFAMY ON TRIAL* (1994).

4. 2 *TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 98-99* (1995).

concerned with the political decisions that make a trial possible, impossible or impractical.

Bass shows the reader that Nuremberg was not the first effort at a major war crimes trial. He dispels the myth that Nuremberg “invented” the charge of “crimes against humanity.” Jackson’s prose was brilliant and it begs to be quoted, recited or used as a title for a book. But Nuremberg, as Bass shows us, was neither the first, nor the last war crimes trial, although he persuasively argues that it was the best. It might be dismissed as victor’s justice, but as Bass cleverly says, if you have the right victor, then victor’s justice can still be justice.⁵

Bass’s main premise is that a war crimes trial is a political, not a legal process. His book is meticulously researched and his argument is persuasive. The main fault with his argument is that it is overstated and overly ambitious. He does not stop with the claim that war crimes trials are a political rather than a legal decision. He goes on to articulate five propositions that he claims are applicable, in varying degrees, to war crimes trials. His argument is logical and persuasive within the confines of the introduction. When he applies these propositions to the historical examples that he highlights, however, they are too forced to be persuasive.

The book is organized into seven parts. In his introduction Bass describes the five propositions that he claims apply to each war crimes trial. Five historical chapters follow the introduction, each focusing on a different war crimes trial: St. Helena in 1815 for the Bonapartists; Leipzig following WWI for the Kaiser and key Germans; Constantinople, also following World War I, for the Turks responsible for the slaughter of Armenians; the International Military Tribunal in Nuremberg; and, finally, the

5. BASS, *supra* note 1, at 5. Bass discusses the indefinite detention of Turks pending trial for the Armenian massacre. He quotes Ahmed Bey Agayeff, “I demand neither mercy nor pity: I demand justice, English justice!!” *Id.* at 134.

There was a gulf between Soviet bloc show trials and a true war crimes trial. The Soviets wanted a “trial” for the defendants at Nuremberg, but initially balked at U.S. notions of a complete trial. Stalin said that they had already declared the defendants guilty at Nuremberg and merely needed to proclaim the inevitable death sentence. *Id.* at 199. See also TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS* (1992). A real trial involves risk and assuming that risk is a political decision.

International Court for the Former Yugoslavia. These historical chapters are followed by an Epilogue.

In the introduction Bass states, repeats and adjusts his principal theme. At one point he says that the “core argument of this book . . . is that some leaders [have war crimes trials] because they, and their countries, are in the grip of a principled idea.”⁶ That principled idea is the legalism found in liberal states. At the close of the introduction, he makes another claim, which really is the main theme of his book. The book, Bass says, “is mostly interested in the politics that underpin (and undermine) international law.”⁷ This more modest statement should have been his main theme. Politics drives an international war crimes trial, and there are too many factors involved in international politics to allow Bass’s five propositions to apply to every scenario over the course of a few hundred years. These propositions certainly reflect factors behind the political process, but Bass should have asserted his more modest proposal as his main theme.

After reading Bass’s book, the modern lawyer should realize that politics, not the “law,” controls until the war crimes trial actually begins. Every aspect of an international trial will be driven by politics, and the international lawyer cannot expect to extrapolate domestic criminal experiences into the international arena. With that said, however, Bass should have been more restrained as he outlined his argument in the introduction. Experienced prosecutors know that it is a fatal mistake to promise evidence in an opening statement and then fail to deliver the evidence during the trial. This is a self-inflicted wound; Bass sets the reader’s hopes high with his five propositions, but fails to deliver the evidence.

Of the five propositions that Bass outlines, he really proves only two in the body of the book. This review examines each of these propositions in the order that Bass presents them.

Bass’s first proposition states that “it is only liberal states, with legalistic beliefs, that support *bona fide* war crimes tribunals.”⁸ This is certainly his strongest point, and he easily supports it with all of the cited historical examples. Although lawyers can become paralyzed in their own legal reasoning,⁹ Bass shows that liberal, legalistic states refuse to abandon concepts of due process and evidentiary standards even when it means risking

6. Bass, *supra* note 1, at 7.

7. *Id.* at 35.

8. *Id.* at 28.

acquittals. But it is also this commitment to legalism that makes the trial a legitimate apparatus for administering justice to war criminals—these are not totalitarian show trials.¹⁰

Bass's second proposition is specious. He claims that "even liberal states tend not to push for a war crimes tribunal if doing so would put their own soldiers at risk."¹¹ Fair enough, but on the next page, when Bass goes on to describe this proposition, he uses a catchy, but inapposite illustration. Bass calls this second proposition the "Scott O'Grady phenomena." Bass articulates this proposition by juxtaposing America's Herculean effort to rescue a downed Air Force pilot with its refusal to intervene on behalf of the people of Srebrenica. All of this is true, interesting, and well written, but it fails to support his second proposition because it is unrelated to states' decisions to hold war crimes trials.¹²

Despite this detour, Bass's second proposition is still relevant. It would have been interesting for Bass to juxtapose the domestic political decisions with international political decisions in this regard. Specifically, domestic law enforcement officers are routinely placed in dangerous circumstances to apprehend fugitives. Society expects them to do exactly that. Because the domestic criminal offender is a threat to domestic society, pursuit of that offender is a self-centered political decision. In the international arena, the decision to apprehend and try a suspect is often a purely moral, political decision. Slobodan Milosevic poses no threat to the United States of America. He is not a murder suspect who is free to walk

9. *Id.* at 130. Bass describes a debate concerning the liability of one of the Turks for the Armenian massacre. The British High Commissioner in Constantinople, Somerset Calthorpe described the legalistic dilemma. "Djavid Bey was undoubtedly deeply implicated in the crimes of which he is accused, and his moral responsibility is enormous. There is, however, a lack of definite proof against him, and it will probably be a matter of considerable difficulty to prove his individual responsibility". *Id.* In other words, the leaders know he's responsible, but they just can't prove it.

10. *See supra* note 5.

11. BASS, *supra* note 1, at 28.

12. It does beg the question of liability of the various states to intervene to save victims. War crimes trials would not be necessary if there were no war crimes. Is the United States or any other superpower liable for her inaction? A recent article delivers a blistering criticism of the Clinton White House during the massacres in Rwanda. *See* Samatha Power, *Bystander to Genocide*, ATLANTIC MONTHLY, Sept. 2001, at 84.

down Main Street USA. The political impetus to put him on trial is strictly moral; it is the right thing to do.¹³

Bass's third proposition is the weakest of the five. He states that "there is a distinctly self-serving undertone to liberal campaigns for international justice,"¹⁴ or as he restates it, "Putting Citizens Before Foreigners."¹⁵ The problem with this proposition is that Bass's historical examples demonstrate the opposite. These trials involve nations trying to protect others, rather than their own citizens. Constantinople addressed the slaughter of Armenians by the Turks, and the British pushed for the trial; the Americans orchestrated Nuremberg; and The Hague Tribunal represents an international community joining to condemn mainly Serbian practices in Yugoslavia. It certainly seems like states would always act in their own citizens' interest, but this is not borne out by Bass's examples.

Bass's fourth proposition is related to the third, and he proves this proposition quite effectively. He claims that "liberal states are most likely to support a war crimes tribunal if public opinion is outraged by the war in question."¹⁶ He would have been better off if he stopped there, but Bass goes on to say that "they are less likely to support a war crimes tribunal if only elites are outraged."¹⁷ Bass's defense of this second statement is imprecise. In the Nuremberg chapter of the book, Bass references public opinion polls that show a majority of Americans favored "punishment" for the Germans.¹⁸ Americans did not want to have a trial, they wanted the Nazis executed, enslaved, or tortured.¹⁹ It is not necessary to have general public outrage; it is sufficient, politically, to have only elite outrage. Punishment and trial are two completely different ideas. Right now in America, the vast majority of citizens want to punish Osama Bin Laden, but that does not mean they want to see him in federal court. After World War II, many citizens and leaders favored the summary execution of the Nazi lead-

13. Milosevic was not in the custody of The Hague at the time the book was published.

14. BASS, *supra* note 1, at 28.

15. *Id.* at 30.

16. *Id.* at 28.

17. *Id.*

18. *Id.* at 160.

19. *Id.* at 183.

ership. Punishment does not always equate to a trial, especially when a trial has uncertain results.

Even with that discrepancy, Bass's point about outrage is perceptive. Outrage provides the political will, the momentum for such an event. Proposition one, the legalism of liberal states, must join proposition four, outrage, if there is to be any action. As Bass sums up, "legalism without outrage could result in a dreary series of futile legal briefs."²⁰ During the chapter on The Hague Tribunal, Bass chronicles the ebb and flow of international enthusiasm. Where there was little outrage, there was little action; the court was merely a skeleton. On the other hand, outrage without legalism may result in summary execution or other Draconian measures. Therefore, Bass argues effectively that legalism and outrage are the driving political forces behind a genuine war crimes trial.

Bass's final proposition involves the role of nongovernmental organizations. These organizations are largely a post-World War II phenomena. Their value, according to Bass, is that they "can be effective in pushing for a tribunal by shaming liberal states into action and providing expertise."²¹ Bass describes the role of nongovernmental organizations in the Balkan states, and he demonstrates their worth to the international legal community. It is likely that these organizations will continue to have a role in war crimes trials, but their recent emergence makes it hard to support a proposition that they are essential to those trials.

Despite the problems with some of Bass's five propositions, *Stay the Hand of Vengeance* is an excellent book for anyone interested in international law or politics. In the right circumstances, a war crimes trial is far superior to the other alternatives: inaction or vengeance. A certain cathartic effect results from the trial. In addition, Bass, as a political scientist and journalist, provides a fresh perspective to a subject area that is dominated by a legal focus. Bass is correct to examine the politics behind these trials, and lawyers, historians and political scientists will appreciate his book.

Bass's skill as a journalist reveals itself in the chapter concerning The Hague.²² His writing finds a natural pace that transports the reader to the courtroom to observe the defendant's mannerisms and the physical surroundings of the tribunal itself. Bass reduces the barbarian to a self-con-

20. *Id.* at 31.

21. *Id.* at 28.

22. Bass has covered the proceedings at The Hague for *The Economist*.

scious and sometimes inattentive defendant. The reader wonders, along with Bass, how this seemingly harmless person could be responsible for so much suffering.

In contrast, Bass's historical writing is more labored. His analysis is sharp, and the book has been meticulously researched, but his historical writing does not have the same tempo as the introduction or The Hague chapter. His historical discussion also presumes a high level of background knowledge. Because of this presumption, Bass rattles off the names of obscure figures without pausing to clearly identify the person or his political affiliation. This problem is acute during the Constantinople chapter. Bass first acknowledges that history has ignored the trial for the Armenian slaughter, but then seems to forget his statement as he recites relevant names and places in quick succession. He exacerbates this problem by mentioning many people only once, preventing the reader from gaining familiarity with the individual through context. The reader's attention is divided between Bass's arguments and this cast of characters.²³ This confusion is unfortunate because Constantinople is a forgotten event, and important lessons can be learned from this abortive attempt at a war crimes trial.²⁴ An easy remedy for this would have been a glossary containing a brief description of individuals and political parties. If Bass publishes a second edition, especially in light of Milosevic's appearance at The Hague, a glossary would be a helpful addition.

Bass teaches the reader that "crimes against humanity" were first asserted as a criminal charge after World War I, not during Nuremberg. Bass then contradicts himself by crediting at least three people with initially coining the phrase, the Canadian prime minister,²⁵ England's Lloyd George,²⁶ and the Russian foreign minister Sergei Sazonov.²⁷ Thus, the ideas made famous by Nuremberg were hatched in earlier trial efforts, but

23. In the opening pages of the chapter, Bass mentions a litany of individuals, barely pausing to identify them. BASS, *supra* note 1, at 108-14.

24. Many Turks were imprisoned, but most were released once the British realized that support for the trial had languished. One British estimate said that forty-three Turks had been accused of involvement in Armenian massacres and all eventually were freed. *Id.* at 143.

25. *Id.* at 66.

26. *Id.* at 68.

27. *Id.* at 115. The Russian foreign minister used the phrase in reference to the Armenian massacre while the other two gentlemen cited above were describing Kaiser Wilhelm's actions.

the reader must look beyond Bass's cast of characters to glean this historical lesson.

The five trials that Bass highlights provide important historical perspective and lessons for lawyers. Unfortunately, because he focuses so completely on the politics behind the trial, he overlooks some rudimentary legal details. In the chapter concerning St. Helena, for example, Bass never tells the reader what criminal charges would be leveled against the Bonapartists. Certainly they would not have been charged with waging a war of aggression; colonialism was still rampant, and war was routinely used as a method for states to assert their political will. Although Bass carefully analyzes the debate over the Bonapartists' fate, he omits information about the possible charges against them. Even though the book is about politics, the reader still needs a brief legal background concerning the underlying events.

Bass's coverage of the Nuremberg trial provides a fresh perspective. Rather than merely genuflecting in front of the tribunal, Bass highlights Chief Justice Harlan Stone's criticism of the trial. Stone commented that "Jackson is away conducting his high-grade lynching party in Nuremberg. . . . I hate to see the pretense that he is running a court and proceeding according to common law."²⁸ The Nuremberg Tribunal is rarely criticized today, but in 1945, the Chief Justice of the U.S. Supreme Court referred to it as a farce. Although the Chief Justice was criticizing the trial, his words demonstrate Bass's first proposition. He wasn't bothered by the idea of punishing the Nazis, he was concerned that his principled ideas of liberal legalism were being distorted in order to exact revenge on the Nazis. The results, however, proved the legitimacy of the Nuremberg war crimes trials; the Allies risked acquittal to remain true to their domestic legal mores.²⁹ Perhaps the Chief Justice was reassured after the outcome, but legalism was his primary concern.³⁰

28. *Id.* at 25 (quoting HARLAN FISKE STONE: PILLAR OF THE LAW 716 (1956)).

29. This resulted in acquittals and variations in findings and sentencing. Of the twenty-one men who were physically present in the dock, three were fully acquitted, eleven were acquitted on at least one count of the indictment, and the rest were found guilty of all counts on which they were indicted. Additionally, of the eighteen who were sentenced, eleven were condemned to death, three received life sentences, and four received term between ten and twenty years of confinement. 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 524-89 (1995).

30. Bass observes, "It is only in retrospect that Nuremberg has become unimpeachable." BASS, *supra* note 1, at 203.

Finally, Bass demonstrates that outrage also fueled the Nuremberg Tribunal. The evidence presented by Allied prosecutors further outraged an already inflamed public. Those who may have been uncertain at the outset were certainly convinced by the close of the Allied case as the German's own documents revealed the Nazi atrocities. Thus, Bass uses Nuremberg to make an exceptional argument for the propositions of legalism and outrage, but his other three propositions do not fare as well when applied to Nuremberg or the other major war crimes trials.

In summary, Gary Bass's *Stay the Hand of Vengeance* provides an important political and historical study. The author's only fault was ambition—he outlined a precise theory that was too rigid to withstand application over two hundred years. Bass convinces the reader, however, that political forces will mold the war crimes trial process and, ultimately, when legalism and outrage can join together, the world will witness justice.

KOSOVO—WAR AND REVENGE¹REVIEWED BY MAJOR KERRY L. ERISMAN²

*In Kosovo, history is not really about the past, but about the future. He who holds the past holds the future.*³

Hundreds of books and articles have been written about the conflict in the Balkans throughout history; dozens cover the tumultuous 1990s alone. Tim Judah's *Kosovo—War and Revenge* stands apart for its exceptional analysis of the role that Kosovo has played in the historic struggle between Serbians and Albanians. It is especially useful for judge advocates, particularly those who deploy to the Kosovo region, because it provides crucial insight into the region's history and puts the current conflict into context. This review first analyzes the overall strengths of the book, followed by an examination of several limitations, which prospective readers should keep in mind.

The book's greatest strength is its thorough and detailed explanation of how Kosovo became the flashpoint in the historic battle between Serbians and Albanians, a conflict which ultimately shattered the former Yugoslavia.⁴ This explanation is essential to military personnel serving in the region because the strategic importance of Kosovo is not readily apparent to an uninformed observer. The nearby province of Montenegro appears more vital to Yugoslavia's continued existence for without it, the country would be landlocked. Yet Kosovo has remained the cherished prize in the longstanding struggle between Serbs and Albanians.

In *Kosovo—War and Revenge*, Judah explains that Kosovo attained such importance due in large part to the emphasis placed on it by Slobodan Milosevic.⁵ Notwithstanding the province's uncertain strategic worth, Milosevic was determined to hold onto it at all cost, even if it meant the suffering of his own people. Judah demonstrates this by quoting from var-

1. TIM JUDAH, *KOSOVO—WAR AND REVENGE* (2000).

2. United States Army. Written while assigned as a student, 50th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. JUDAH, *supra* note 1, at 2.

4. *Id.*

5. *Id.* at 33-60.

ious speeches given by Milosevic over the years. An illustration is found in a quote taken from a speech given during a protest rally in 1987. Milosevic, then head of the Serbian Communist Party, urged Kosovo Serbians:

Comrades . . . you should stay here. This is your country, these are your houses, your fields, your gardens, your memories It has never been a characteristic of the Serbian . . . people to retreat in the face of obstacles Yugoslavia does not exist without Kosovo! Yugoslavia would disintegrate without Kosovo! Yugoslavia and Serbia are not going to give up Kosovo.⁶

This statement was made eleven years before Milosevic became the moving force behind the diabolical slaughter of thousands of innocent Kosovo Albanians. The rhetoric from the 1987 speech provides clear insight into Milosevic's feelings about Kosovo and the lengths he would eventually go to keep it from splitting from Serbia.

According to Judah, Milosevic was concerned not with creating a "greater Serbia," but with perpetuating his own power by dominating all of Yugoslavia.⁷ To further support this idea, Judah spends considerable time looking at Milosevic's background because, in his view, one must understand the power hungry Serbian leader in order to understand the 1999 conflict.⁸

Judah shows Slobodan Milosevic to be a diabolical, manipulative dictator whose tactic was to win at all costs.⁹ He describes how Milosevic became president by manipulating a long-time friend and forcing him to resign as Serbia's president.¹⁰ Milosevic then immediately "destroyed the prospects of Serbia's transition to democracy"¹¹ and set out to "unite Serbia by abolishing the autonomy of the provinces" (Montenegro and Kosovo) and "protect[ing] the Serbs of Kosovo."¹² Slowly, he eroded Kosovo's rights and laws.¹³ He passed laws that prevented Albanians from buying land or houses,¹⁴ created an all-Serbian police force in Kosovo, and

6. *Id.* at 53.

7. *Id.* at 56-57.

8. *Id.* at 33-60.

9. *Id.*

10. *Id.* at 54.

11. *Id.*

12. *Id.* at 55.

13. *Id.* at 62.

ordered the police to take over the television and radio stations.¹⁵ He shut down the Kosovo Albanian's daily newspaper and imposed the Serbian education curriculum on Albanian students.¹⁶ He followed these acts by implementing an educational rationalization plan that basically eliminated Albanian children's chance of attending secondary schools.¹⁷ Finally, Milosevic dissolved the Kosovar parliament.¹⁸ In describing these tactics, Judah enables the reader to understand the lengths to which Milosevic was willing to go in order to hold onto his power. This provides a necessary background to understanding Milosevic's willingness to subject his country to prolonged destruction during the NATO air strikes.

A second factor which separates this book from others on the same topic is Tim Judah's unique understanding of the Balkan region. Originally from London, he lived in Belgrade from 1990 until 1995 covering the region for the *London Times* and *The Economist*.¹⁹ This gives Judah a distinct perspective and allows him to provide facts unavailable to authors who are not as familiar with the region. For example, Judah uses his first-hand knowledge of the area to explain why so little was reported in the Western press about the events occurring in the Balkans during the late 1980s and 1990s.²⁰ He provides a detailed description of that period's political climate, which clarifies why so little information was transmitted to the rest of the world about the plight of the Kosovar people for almost a decade.²¹

A third strength of the book is its analysis of NATO's air war against Yugoslavia.²² Judah evaluates the actions of NATO and Milosevic during this time. He describes why Milosevic held out as long as he did, and why the campaign was not as successful for NATO as it could have been. Both

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 63.

18. *Id.* at 65.

19. *Id.* at xvii.

20. *Id.* at 64-65.

21. *Id.*

22. NATO developed a phased air campaign for air operations against Serbia after negotiations repeatedly failed to reach a peaceful settlement. True to his previous leadership style, Slobodan Milosevic decided to "gamble" with his countrymen's lives, "risk the bombs and go for broke." *Id.* at 227. The attacks began on 24 March 1999 with forty military targets being struck the first night.

explanations are important for anyone dealing with the Balkan conflict because they provide important lessons for any future campaigns.

Judah details how both NATO and Milosevic miscalculated their respective positions. Sources in Belgrade told Judah that Slobodan Milosevic defied NATO “because he believed the Russians would supply him with . . . advanced weapons systems.”²³ What Milosevic did not know was that Russia had earlier told the United States that they would do nothing if NATO were to bomb.²⁴ On the other hand, the United States and other NATO countries began the air campaign believing that it would “only last a few days.”²⁵ Unfortunately, NATO air strikes were not entirely effective. Because Serbia had numerous anti-aircraft weapons, NATO routinely kept its planes at a ceiling of 15,000 feet to avoid being shot down.²⁶ This did not cause problems in hitting stationary targets, but “made it very difficult to hunt down the small groups of men and equipment” that were wreaking havoc in Kosovo.²⁷ In the end, NATO bombed Serbia for seventy-eight days rather than “a few days,” and Slobodan Milosevic “backed down” because his “calculations had failed.”²⁸

Should any similar campaigns be necessary in the future, this understanding of the mistakes made by both sides will be very useful. One such lesson is that the strategy of “bombing-lite”²⁹ was not the right course of action to end the campaign in a matter of days. Given the fact that it was ineffective on the small bands of soldiers hiding in houses who constituted the main threat to Kosovo, a “massive blow at the beginning, rather than a slow build-up” would likely have been more effective.³⁰ Additionally, it is important to remember the importance of the Kosovo province to Serbians and the measures they will take to gain or retain control over it.

While *Kosovo—War and Revenge* is well worth reading for the in-depth coverage it gives to the Balkan conflict, several drawbacks require further reading from additional sources. First, while the book purports to be based largely on eyewitness accounts and personal interviews, a check of the notes section reveals this is not the case. Judah relies mostly on sec-

23. *Id.* at 183.

24. *Id.*

25. *Id.* at 228.

26. *Id.* at 265.

27. *Id.*

28. *Id.* at 279.

29. *Id.* at 256.

30. *Id.* at 257.

ondary sources such as books and articles about the topic rather than more primary ones. For instance, he describes the death, torture, and destruction inflicted on the Kosovar Albanians by Serbian soldiers and police using what he describes as “eyewitness accounts.”³¹ The eyewitness descriptions that he quotes, however, do not come from interviews he personally conducted, but from reports taken by other journalists.³² Given the contemporary nature of his topic,³³ it would have seemed relatively easy, and perhaps even necessary, to speak to some of the people who were directly impacted by these events. He then could have used his own knowledge to ask different follow-up questions to support his theories and supplement the already existing interviews. A true first-hand account would have made the images he tries to convey much more powerful and riveting. Judah does not address this seemingly obvious gap in his research, leaving a disappointing hole in an otherwise thoroughly researched book.

Another shortcoming of particular relevance to judge advocates who use this book as a source is the inadequate treatment of the military strategy and technical aspects of the air war. Judah superfluously attempts to address some of these features based on his sources. However, he does not provide a thorough analysis of NATO’s military objectives and tactics. Though he attempts to explain why certain targets were selected and struck,³⁴ he lacks any military background to truly understand the targeting process.³⁵ He fails to remedy this by including any military sources among his research, quoting instead largely from civilian newspapers.³⁶ This leads to an insufficient and somewhat skewed description of the process used to develop targets.

Finally, the fact that Tim Judah lived in the region for a considerable amount of time is both an advantage and disadvantage for the book. As discussed above, he was intimately familiar with the region and this provides a clear benefit. It allowed him access to facts and sources that may not have been available otherwise.³⁷ The downside, though, is that Judah’s

31. *Id.* at 242-43.

32. *Id.* at 242-43 nn.12-15.

33. The book was published one year after the air campaign.

34. JUDAH, *supra* note 1, at 258.

35. For a more comprehensive look at NATO’s strategy and actions, judge advocates should supplement Judah’s book with General Wesley Clark’s book, *Waging Modern War*. WESLEY K. CLARK, *WAGING MODERN WAR* (2001).

36. JUDAH, *supra* note 1, at 332-33 nn.1-25.

37. *See, e.g., id.* at 58 (citing personal interview with Bujar Bukoshi for a description of Kosovar refugees in other countries).

familiarity with the region and its citizens may have caused him to lose some objectivity and begin to sympathize with the Kosovo Albanians. He appears to have presented a thorough account of the events affecting Kosovo. With the immeasurable suffering and senseless slaughter inflicted on Albanian citizens by the Serbians, however, it would be difficult for anyone to give an entirely impartial account of the events of the past decade in the former Yugoslavia. Thus, while any such bias is certainly understandable, it is important for the reader to keep this potential partiality in mind when considering Judah's interpretation of events.

These limitations notwithstanding, *Kosovo—War and Revenge* is a must read for all Army judge advocates. The American presence in Kosovo that began in 1999 will no doubt continue for many decades. Many judge advocates will find themselves in the rotation to deploy to Kosovo as part of Operation Joint Guardian. It is vital that they understand the history of the region and the actions that led to the air war to effectively deal with future legal issues and understand why NATO's continued presence is necessary to ensure stability in the area. The book effectively lays out these facts and incorporates the legal dilemmas that NATO faced during the "legally intensive" air war.³⁸ As quoted in the beginning of this review, the key to understanding Kosovo, both its present and its future, is understanding its past. Tim Judah's book provides a key building block to achieving that understanding.

38. Many of the targets of the air war were dual military and civilian use. *Id.* at 357. These included "factories, oil refineries and depots, roads, bridges, railways, and communications facilities." *Id.* "All governing the laws of war." *Id.* A military attorney would evaluate whether the target's military value was outweighed by "the potential costs of collateral damage." *Id.*

**ORDEAL BY SEA:
THE TRAGEDY OF THE U.S.S. INDIANAPOLIS¹**

REVIEWED BY LIEUTENANT COMMANDER CLYDE A. HAIG²

No one but a sailor who has watched his ship disappear and leave him floating on the surface of a hostile sea can dare to imagine the awful loneliness that swept over the survivors of the Indianapolis For most there was the brief moment of relief that came with the realization that they had actually managed to survive the sinking. Then came the sledgehammer blow of disbelief. How was it possible for a ship so large and so strong, a ship that had been through so many battles simply to turn her stern to the sky and vanish so swiftly?³

In *Ordeal by Sea: The Tragedy of the U.S.S. Indianapolis*, Thomas Helm chronicles the harrowing events surrounding the sinking of the armored cruiser U.S.S. *Indianapolis* by an Imperial Japanese submarine in the final days of World War II.⁴ In providing a matter-of-fact, detailed account of one of the most catastrophic disasters in U.S. Naval history, Helm grips the reader on separate planes. On one level, *Ordeal by Sea* provides an exacting account of the sinking of one of the largest, heaviest ships in the U.S. arsenal. The reader is exposed to the sudden shock of a torpedo attack on a ship at sea, from the vantage point of the surviving crewmembers. The subsequent horrors encountered by those who successfully abandoned the ship are recounted in excruciating detail, as these men faced the agonies of being left adrift on the open ocean for nearly four days. On a very different level, Helm addresses the unfortunate treatment

1. THOMAS HELM, *ORDEAL BY SEA: THE TRAGEDY OF THE U.S.S. INDIANAPOLIS* (Signet 2001) (1963).

2. Judge Advocate General's Corps, United States Navy. Written while assigned as a student, 50th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. HELM, *supra* note 1, at 90-91.

4. Originally published in 1963, the June 2001 Signet printing contains an informative Foreword and Afterword by Captain William J. Toti, U.S. Navy, the final captain of a U.S. Naval vessel bearing the Indianapolis name, the submarine U.S.S. *Indianapolis* (SSN 697), decommissioned in February 1998. Captain Toti's contribution to this work provides an invaluable frame of reference for the *Indianapolis* tragedy, written from the perspective of an accomplished high-ranking naval officer.

of the ship's Commanding Officer at the hands of the Navy following the ordeal.

In the Preface, the author asserts that *Ordeal by Sea* is not intended to be "controversial," making an assessment of who was ultimately to blame for the tragedy; rather, it is the "narrative of a warship" and the story of the men who survived her sinking.⁵ Helm remains true to this promise by providing a chronicle of the events surrounding the U.S.S. *Indianapolis* tragedy in a candid, unaffected fashion. It is apparent by the end of the book, however, that this straightforward presentation of events lays the groundwork for a controversial topic: the politically motivated and unjust treatment of the commanding officer of the U.S.S. *Indianapolis*, Captain Charles Butler McVay, III.⁶

In addressing the Navy's treatment of Captain McVay, the author goes beyond the book's stated purpose, in effect presenting the reader with two stories. One story, the major focal point of *Ordeal by Sea*, centers on the attack on the *Indianapolis* and the tortuous events leading up to the rescue of the surviving crew. The other story relates to the commanding officer's unfortunate treatment after the rescue. While the author provides a thorough and gripping account of the tragedy suffered by the crewmembers at sea, his discussion of Captain McVay is relatively brief. In addressing the Navy's treatment of Captain McVay, Helm touches upon a number of questions surrounding the sinking of the *Indianapolis* that, he admits, will be "left unanswered."⁷ Although these unanswered questions leave the reader puzzled, the tensions that they create may be exactly what the author intended. Whether or not this is the case, the strength of this book lies in the gripping narrative of the ordeal suffered by the *Indianapolis* crew. It is this story, the account of the ship's crew and their struggle for survival against seemingly impossible odds, which makes *Ordeal by Sea* well worth reading. Perhaps no author could bring as much to the story as Helm, a former crewmember of the U.S.S. *Indianapolis*.

At the outset of *Ordeal by Sea*, the author soundly establishes his standing to write about the sinking of the U.S.S. *Indianapolis*. Thomas Helm was stationed aboard the vessel from April 1940 to August 1941, and he made friends with shipmates who were still stationed on her when she

5. HELM, *supra* note 1, at xviii.

6. In his Afterword, Captain Toti grapples with the treatment that Captain McVay received at the hands of the Navy following the disaster, providing incisive insight into Captain McVay's actions from an operational perspective. *Id.* at 193-216.

7. *Id.* at 189.

encountered her final attack.⁸ As a former crewmember of the ship, Helm had a special vantage point in writing *Ordeal by Sea*.⁹ In addition to searching records contained in numerous Department of the Navy offices, Helm corresponded and talked with most of the 317 survivors of the tragedy, obtaining first-hand accounts of events from those who were present and lived through the ordeal.¹⁰ At the start, the author establishes that *Ordeal by Sea* is not simply the product of academic research—it is the story of a ship written by a former crewmember, a man who had lived aboard the ship and was familiar with its most intricate details.

Ordeal by Sea presents a well-organized account of a ship and the piercing story of her loss. The book provides the reader with a brief history of the *Indianapolis* and an explanation of the setting for the attack. This background information is followed by a chilling description of the events onboard in the moments following the impact of the torpedoes. There is also a vivid description of the heartbreaking, at times terrifying, plight of the crewmembers who survived the torpedo attack, only to be left undiscovered on the open ocean for four days. The book includes the riveting story of the crew's discovery by a Navy PV-1 Ventura patrol bomber, and the heartening rescue of the 317 men who survived. The sobering reality is that this number comprised only a small remnant of the 1196 men who embarked on the final voyage of the U.S.S. *Indianapolis*.¹¹

The author does an excellent job in setting the background for the events leading up to the attack on the ship. He notes that the U.S.S. *Indianapolis* saw heavy battle at places like Tarawa and the Marshall Islands during World War II.¹² At one point during the war, she served as the flagship for Admiral Raymond Spruance.¹³ Less than three weeks before her demise, however, she was undergoing repairs, “snugged up in the Mare Island Navy Yards” in the San Francisco Bay area.¹⁴ On Thursday, 12 July 1945, the operational plan for the ship was a two-week training followed by deployment to the forward area in the Pacific.¹⁵ Then an unanticipated

8. *Id.* at xvii.

9. In his Foreword, Captain Toti aptly comments on Helm's service aboard the U.S.S. *Indianapolis*: “He understood the ship in ways other authors could not. He got it right.” *Id.* at xv.

10. *Id.* at xviii.

11. *Id.* at 182-83.

12. *Id.* at 7.

13. *Id.*

14. *Id.* at 12.

15. *Id.*

order was given to Captain McVay: in four days his ship was to carry a top-secret cargo to the island of Tinian in the Pacific. Unbeknownst to the crew, that cargo would contain the component parts for the atomic bombs later dropped on Hiroshima and Nagasaki.¹⁶

The *Indianapolis* dutifully completed her urgent mission, promptly delivering her top-secret, highly guarded cargo. She then immediately set off the short distance to Guam for refueling and bringing aboard ammunition. On 28 July 1945, at 0910, the *Indianapolis* embarked for Leyte in the Philippines for a two-week training exercise with Admiral Lynde D. McCormick's unit in preparation for joining a task force off Okinawa.¹⁷ Helm notes that this voyage to Leyte "should have been simple and uneventful," despite a "routine" warning that several submarine contacts had been reported "within two hundred miles of the ship's plotted course."¹⁸

In addressing the submarine warning, Helm artfully lays the groundwork for Captain McVay's ordeal after the rescue. By Sunday night, 29 July 1945, the *Indianapolis* was midway between Guam and Leyte. Until approximately 1800 that day, Captain McVay had been directing the ship to zigzag enroute to her destination. The practice of zigzagging, a torpedo-evasion measure, entailed steering a ship in a side-to-side pattern enroute to its ultimate destination, instead of steering the ship in a "straight-line course."¹⁹ Fleet orders required that a ship zigzag during periods of good visibility day or night.²⁰ McVay ordered the ship to cease zigzagging as the night approached because there was ragged cloud cover and poor visibility that showed no signs of improving.²¹

This order to stop zigzagging would be the critical focus of disciplinary proceedings that would take place against McVay for hazarding his ship. Although there was a reported enemy submarine sighting in the area, enemy submarine alerts in that part of the ocean were "as common as barnacles on a ship bottom" and were often reported in error. "[A] chunk of driftwood bobbing along the surface" might be mistaken for a submarine and reported.²² Helm notes that it was not difficult to become "callous" to

16. *Id.* at 12-14.

17. *Id.* at 16-17.

18. *Id.* at 17.

19. *Id.* at 201.

20. *Id.* at 21-22.

21. *Id.* at 22.

22. *Id.* at 21.

such warnings because if each had been taken seriously, every ship in enemy waters would have spent most of the war in a state very close to general quarters.²³

As an underlying consideration, many opposed the practice of zigzagging, despite the fact that it was Department of Navy policy. In addition to the obvious burden of increased effort, time and distance engendered by the practice, some questioned its efficacy in avoiding torpedo attack given the advances in radar and range-finding technologies that came about in World War II.²⁴ In setting the stage for the attack, the same author who promised to avoid controversy and deliver a straightforward narrative of events surrounding the sinking of the *Indianapolis* also accomplishes another, more subtle purpose. He provides an explanation of Captain McVay's decision to cease zigzagging in a candid and straightforward fashion that evidences the captain's sound professional judgment, operational prudence, and common sense.

As Helm goes on to describe the torpedo attack, the reader's focus is ultimately ripped from Captain McVay and locked on to the different experiences of crewmembers stationed throughout the ship. It was just after midnight, 0001 on 30 July 1945, when the first of presumably two torpedoes from Japanese submarine *I-58* slammed into the unsuspecting ship. The author conveys the sense of chaos and terror that existed in those first moments after impact: men fought their way out of the bowels of the ship in "Stygian darkness," struggling through heavy smoke and acrid fumes.²⁵

Filling the air, in addition to the smoke, were the cries of the wounded. Men coughed and stumbled on decks that were slick with oil from ruptured pipes, and some men were burned black.²⁶ In the pandemonium of smoke and fire, the ship was rapidly taking on water—the men who were able frantically abandoned ship. Those in the water saw the stern of the great ship pointing to the sky, towering 250 feet above them. As the ship started to slide beneath the water, there was horror that can only be imagined by those who did not live through it: "the crashing and bang-

23. *Id.*

24. *Id.*

25. *Id.* at 43.

26. *Id.* at 43, 46.

ing of objects tearing loose blended in a hideous discordant symphony with the cries of men trapped inside.”²⁷

Helm makes it excruciatingly clear that the worst ordeal was yet to come for the hundreds of men who successfully escaped the sinking ship. Although their ship sank in the very early hours of Monday, 30 July 1945, they would not be discovered until the following Thursday. By that time, hundreds of the men would perish from shark attacks, drinking salt water, wounds that they received during the torpedo attack, and sheer exhaustion. Those who were seemingly fortunate enough to have found their way into a lifeboat avoided the sharks, but many of these men began to blister from the sun within the first few hours.²⁸ After forty hours in the water with nothing to eat or drink, many of the crewmembers began to hallucinate, some killing their shipmates under the firm conviction that these fellow crewmembers were members of the enemy force.²⁹

It was not until the morning hours of Thursday, 2 August 1945, that a Navy PV-1 Ventura airplane on a routine patrol sighted the lost crew. Helm recounts the events leading from the survivors’ initial sighting to the massive rescue effort that took place throughout the day. His fast-paced description leaves the reader joyful for the men that survived the monstrous ordeal. *Ordeal by Sea*, however, does not end with the rescue.

Following the rescue of the *Indianapolis* survivors, in the days shortly following the close of World War II, public interest grew about the hundreds of lives lost in the *Indianapolis* tragedy. Helm notes: “Newspapers, sparked by influential people, refused to let the story die When it was obvious that the public at large would not give up, the Navy Department announced . . . that Captain McVay would be court-martialed.”³⁰ The court-martial ultimately found Captain McVay guilty of hazarding his ship’s safety by failing to zigzag, and it sentenced him to the loss of one-hundred numbers in grade.³¹ This punishment foreclosed the possibility of

27. *Id.* at 89.

28. *Id.* at 138.

29. *Id.* at 128.

30. *Id.* at 186-87.

31. *Id.* at 188.

further promotion for Captain McVay and effectively ended his professional career in the Navy.³²

By the time Helm recounts these events in the conclusion of *Ordeal by Sea*, he has already covered the issue of zigzagging much earlier in the book, establishing that Captain McVay's order to cease zigzagging on the night of the attack was a reasonable course of action.³³ As he closes *Ordeal by Sea*, Helm highlights the political nature of Captain McVay's court-martial: "In the months that followed [the court-martial], a few top-ranking admirals and many newspapers were not content with the treatment Captain McVay had received."³⁴ On 23 February 1946, Secretary of the Navy James Forrestal remitted the sentence against Captain McVay in its entirety, and restored him to full duty in the Navy.³⁵ Despite this act by the Secretary of the Navy, Captain McVay's life would ultimately be ruined by the stigma of the initial court-martial proceedings.³⁶

The book's only weakness derives from Helm's setting a parameter for the book that he later oversteps. Helm starts the book by promising to avoid the controversial issue of assessing who finally was to blame for the tragedy, yet he concludes *Ordeal by Sea* by touching on that very issue. Ultimately, this raises the question of why Helm initially informs the reader that he intends to avoid this controversial topic. Conversely, it is not clear why Helm chose not to affirmatively embrace the issue of Captain McVay's treatment at the outset of the book. While there are no readily apparent answers to these questions, there is a likely explanation for why the author goes beyond the stated parameters of the book and addresses the Navy's treatment of Captain McVay.

Helm is more than a disinterested third party witnessing the events surrounding Captain McVay's court-martial. As a former crewmember,

32. *Id.* at 188-89.

33. In his Afterword, Captain Toti provides a well-researched and informative analysis of a number of events and issues surrounding Captain McVay's decision not to zigzag on the night of the attack. *Id.* at 193-216.

34. *Id.* at 191-92.

35. *Id.* at 192.

36. In the Afterword, Captain Toti addresses a number of factors surrounding the tragic loss of the *Indianapolis* and her crew, from today's perspective. His analysis of events substantiates, *inter alia*, that Captain McVay's actions were not to blame for the tragedy. In 1968, nearly twenty years after he retired from the Navy, Captain McVay "dressed in his Navy uniform, picked up a toy figure of a sailor, walked on to his front porch, put a handgun into his mouth, and pulled the trigger—yet another victim of a battle that claimed too many." *Id.* at 216.

his underlying loyalty to the ship's captain eventually comes to the fore. Thus, Helm recounts the tragic events of the *Indianapolis*'s final voyage, and then focuses the reader's attention on the politically driven prosecution of Captain McVay, a man whose memory will be forever intertwined with the lost ship as her final commanding officer.

Although *Ordeal by Sea* goes beyond its stated purpose, it is a well-written, informative story of one of the most significant losses sustained by the U.S. Navy in a single attack. The greatest strength of this work lies in the way it imparts the crewmembers' experience to the reader. Helm's unaffected, candid writing style places the reader at the scene, on the deck plates of the ship when the torpedoes make contact. The author does more than rehash the record of a Naval disaster—he moves the reader with the agony suffered by the men of the lost ship. It is this human dimension that Helm adds to the story that makes *Ordeal by Sea* so powerful. The reader need not look far to understand why the book has this uncanny human dimension. As a former crewmember of the *Indianapolis*, the story could not be any closer to the author's heart. This is the story of his ship and his shipmates, and Helm convincingly narrates the events as if he was present throughout the final ordeal of the *Indianapolis*.

**INTERVENTION: THE USE OF AMERICAN MILITARY
FORCE IN THE POST-COLD WAR WORLD¹**

REVIEWED BY MAJOR MARK W. HOLZER²

Rommel, you magnificent bastard, I read your book!

-General George S. Patton, Jr., as he watched the doomed German armor and infantry of Field Marshal Rommel's 10th Panzer Division advance in Tunisia, North Africa.³

This quote highlights the simple proposition that there is no greater insight into how a man approaches a particular subject than to read something he has written on that subject. *Intervention* provides such an opportunity for readers concerned with U.S. foreign policy. The book offers an outstanding overview of the intervention debate by one of the key policymakers in the Bush Administration, Richard Haass, and it provides excellent insight into the Administration's likely approach to using military force. While *Intervention* raises issues that are important to all U.S. citizens, it should be required reading for U.S. military leaders at all levels. This review discusses several positive and negative aspects of *Intervention*, beginning and ending with its strengths.

The main strength of this book is the author's in-depth discussion of factors he considers important to reaching sound intervention policy decisions. In broad form, Haass's thesis is that interventions tend to be successful when a clear purpose is matched with appropriate means and ends, and adequate forces are matched to the challenges of the situation. Other strengths of the book include an excellent historical overview of the intervention debate, the use of actual interventions to illustrate key points, and a discussion of points that are beyond the immediate intervention debate, but that impact upon it. These otherwise strong points are particularly

1. RICHARD N. HAASS, *INTERVENTION: THE USE OF AMERICAN MILITARY FORCE IN THE POST-COLD WAR WORLD* (1999).

2. United States Army. Currently assigned to the Advanced International Law Studies Program at the Center for Law and Military Operations, Charlottesville, Virginia. Written while assigned as a student, 50th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. PATTON (20th Century Fox 1970).

noteworthy because the author not only writes from experience, but is also in a position to affect U.S. foreign policy.

Richard Haass, the current Director of Policy and Planning in the U.S. Department of State, has a great deal of experience in shaping and articulating U.S. intervention policy. His career includes service from 1989 to 1993 as both special assistant to President George Bush and senior director for the Near East and South Asian Affairs on the staff of the National Security Council. Under the previous Bush Administration, Haass was instrumental in developing and articulating U.S. policy during the Persian Gulf conflict. He was awarded the Presidential Citizens Medal for his efforts. When writing both the original 1994 edition and the revised 1999 version of *Intervention*, the author was overseeing the foreign policy program at the Brookings Institution. His other works include *The Reluctant Sheriff: The United States After the Cold War* (1997), and *Economic Sanctions and American Diplomacy* (editor, 1998), as well as numerous other articles on U.S. foreign policy.⁴

The author's background makes him uniquely qualified to discuss "whether" and "how" the U.S. military should be employed to best serve U.S. interests. This is an important discussion because the United States faces potentially unlimited intervention challenges with limited resources. The collapse of the Soviet Union and resulting end of the Cold War led to the absence of a nation capable of countering the United States on a global scale. These events have increased the opportunity and perhaps the temptation for the United States to use its military more freely as a foreign policy tool. Carefully addressing the questions of whether and how to intervene is crucial to successful interventions.

Haass's historical overview of the intervention debate provides one of the book's best aspects, painting a very cogent picture of how we arrived at the current point of debate. He does this, in part, by drawing the reader through the philosophical underpinnings of Western thought regarding the political and legal grounds for going to war. Haass builds a clear roadmap to help the reader understand the ever-strengthening legal and political norms against nations using military force, and he notes that the "overall effect of this body of thought is to make it more difficult politically to go to war and more difficult militarily to fight one."⁵ In contrast to this gen-

4. Further information about Richard N. Haass and his other writings can be found at www.brook.edu/scholars/rhaass.htm.

5. HAASS, *supra* note 1, at 9.

eral trend of the declining use of military force in its traditional war-fighting role, Haass describes nations' growing sense of obligation to use military force in support of humanitarian concerns. Matters traditionally thought of as strictly internal are now viewed in a totally new light, significantly complicating the intervention debate.

Haass's historical overview provides a solid basis for the reader to grasp the more difficult questions explored in subsequent chapters, and it serves as a ready reference even after the book has been read. It also highlights several baseline points for his discussion. First, that the effort to define the appropriate role and limit the use of U.S. military forces, in both unilateral actions as well as United Nations and other coalition actions, is an ongoing effort where no consensus exists. Second, that the fundamental debate between graduated response and decisive engagement is not new. Third, that several successive administrations have articulated questions, criteria, or conditions that they felt "must" be addressed prior to using military force. Finally, that each "must address" list appears inadequate from a long-term policy perspective because all the lists were seemingly formed with a specific past incident or brewing situation in mind.

The major fault with this otherwise useful historical overview is that Haass presents previous administrations' points of view in such a muddled manner that they are extremely difficult to compare and contrast.⁶ Another problem is that Haass does a poor job of tying each "address" list to the historic situation that prompted its development, and he does not directly relate them to the case studies discussed later. This manner of presentation requires the reader to retrace several pages and make side notes to extract important distinctions and follow the conceptual development.

One of *Intervention's* strongest features is its use of case studies. Haass brings his book to life and makes his points much more memorable by using historic examples as the main platform for discussing intervention issues. He presents twelve military interventions either considered or actually undertaken by the United States over the past few decades. He uses these experiences to effectively illustrate his main points within the questions of whether and how to use military force as an extension of foreign policy. Haass presents each case in one to seven pages, providing a quick refresher to those who have studied or been involved in the interventions

6. *Id.* at 14-17.

and a succinct history for those who may be less familiar with each of the scenarios.

The interventions initially discussed are: Iran (1979-1981), Lebanon (1982-1984), Grenada (1983), Libya (1986), Persian Gulf shipping (1987-1988), Philippines (1989), Panama (1989-1990), the Gulf War (1990-1991), Northern and Southern Iraq (1992-1993), former Yugoslavia (1991-present), Somalia (1992-1993), and Haiti (1993-1994). In addition to these twelve, he addresses the interventions undertaken or continued since the book was first published in 1994. These later experiences include the aftermath of Haiti (from mid-1994), Bosnia (from mid-1994), Rwanda (1994), the Taiwan Straits (1996), Iraq (1998), Afghanistan and Sudan (1998), and finally Kosovo (1999).

Examining the questions of why and how the United States chose to intervene in each circumstance is not only interesting, but is particularly useful in understanding the basis for the author's cautions and recommendations. Where sufficient time has passed to provide a historical context for commentary on the effectiveness of an intervention, Haass offers such commentary. This section of the book is a particular strength because it provides the greatest insight into why the Bush Administration is likely to deem particular factors more or less important in its intervention determinations.

Another strength that makes the book worth reading and worth keeping as a ready reference is Haass's expansion of the discussion beyond the bounds of whether and how to intervene. The three most interesting areas of this expanded discussion are: weapons of mass destruction (WMD), force size and structure, and public opinion. Haass opines that the presence of WMD in a conflict changes the calculus of intervention so significantly that the United States should devote significant resources to counter-proliferation. His recommendation to maintain sufficient forces to ensure effective unilateral military efforts is framed within a larger discussion advocating cutting costs and spreading the intervention burden through ad hoc coalitions as well as regional organizations.

In addressing public opinion, it is clear that Haass would advise the Administration to be prepared to demonstrate fortitude when making policy decisions concerning the use of military force. He cautions firmly against allowing the media or a collective emotional reaction to events around the world to dictate policy. On the other side of the decision-making process, he clearly believes that although popular and congressional

support are desired, they are not necessary prior to the commitment of U.S. forces. By tying these issues into the book, Haass provides insight into where the Bush Administration is likely to focus its efforts to make intervention a more effective tool of foreign policy.

While *Intervention* is well worth reading overall, a few distractions mar the book. The author presents his guidelines in a very indirect manner, uses imprecise language in several sections, and inexplicably inserts a chapter of definitions into the middle of his discussion. While some readers might find these shortcomings troubling, they do not significantly devalue the book.

The first and most obvious distraction is the chapter inserted in the middle of the book, which Haass devotes entirely to defining the language of the intervention debate. Most of the book maintains a flowing thought process, but this chapter unnecessarily digresses into an area better suited to treatment in an appendix. Another distraction is the author's imprecise use of terminology. For example, although he comments that "[p]eace-making' is an imprecise and misleading term,"⁷ he uses the term "peace-making" to describe what is commonly referred to as "peace enforcement" by the military community. Another example of this is found when Haass refers to the use of "portable air-defense systems" by the Somalis to shoot down U.S. helicopters.⁸ Most military readers will recognize that the rocket-propelled grenades used to shoot down U.S. helicopters represent World War II technology and are not generally used as, or considered to be "air-defense systems." While these are not major flaws, they do detract from what the author is trying to communicate.

The book's main flaw is Haass's failure to deliver on his promise to present intervention guidelines in a direct manner. While he does present guidelines, the presentation is simply not as straightforward as he implies. Haass makes it fairly clear upfront that readers will be disappointed if they read *Intervention* with a view toward realizing any type of formula approach to foreign policy or to the application of military force as a tool of foreign policy.⁹ Instead, Haass argues strongly against stating a definitive set of rules for intervention. He points out that such an approach

7. *Id.* at 59.

8. *Id.* at 95.

9. *Id.* at xii.

would tend to both bind decision makers' hands and embolden potential adversaries to push up to the line drawn by such rules.¹⁰

After making it clear that he will not present firm intervention rules, Haass affirmatively states that he intends to provide a set of guidelines in the form of questions that can be used to measure the efficacy of any proposed intervention.¹¹ After reading this, the reader expects to find a list of questions somewhere in the book or at least expects to find questions that can later be compiled into a list. Adding further to this expectation, Haass states that the answers to the questions need not be determinative, but warns that any departure from the guidelines "ought to be carefully considered and justifiable."¹²

After this build up, Haass frustrates the reader because he does not actually pose questions, but rather presents various factors and follows each with a discussion of why he feels they are important and how each might be approached. This strikes the reader as an almost reverse-Socratic method. At the end of most sections, the reader is forced to contemplate what Haass has presented, and to then formulate questions that must be asked to address the concerns Haass has raised. The discussion of internal intervention presents one exception to this general disconnect. Here, the author actually poses questions that can be used as a set of guidelines for internal intervention. Fortunately, Haass's general failure to articulate intervention guidelines does not overshadow the main strength of the book.

Intervention's main strength derives from Haass describing the thought process used to reach an intervention decision and articulating the factors and criteria important to arriving at sound policy decisions. He develops this discussion primarily in two chapters devoted to posing both suggestions and warnings on the intertwined issues of "whether" and "how" to intervene in foreign affairs with military force. Haass separates the two for ease of discussion, but is quick to point out that one cannot reasonably be considered without the other. His discussion produces an excellent breakdown of the subordinate components of the two parts of the intervention debate, and it offers concrete examples of why each is important to consider prior to intervention. For example, the chapter on "whether" to intervene includes a section titled, "Neither Victory Nor an

10. *Id.* at 68.

11. *Id.* at 69.

12. *Id.*

Exit Date Should be Prerequisites.”¹³ Haass illustrates this point by highlighting the flexibility gained by not promising “victory” in the Gulf War and by highlighting the flexibility lost by setting an exit date in Somalia. The components of the discussion are themselves valuable in gaining insight into how the Bush Administration is likely to approach the intervention problem.

Haass draws from the analyses of the cases presented and concludes that success tends to result when the United States achieves “clarity of purpose, consistency of means and ends, [and] use of adequate forces given objectives and the threats or impediments.” Haass clearly understands the gravity of these three factors when he warns that the cost of not achieving consistency between them could be a pattern of failed intervention that would make any future intervention attempts less likely to succeed.¹⁴

Overall the strengths and utility of this book clearly outweigh its relatively minor flaws. *Intervention* provides an excellent discussion of the issues surrounding the intervention debate and includes a very useful compilation of relevant documents and speeches as appendices. In addition to being interesting and well written, the book is truly worth reading because it offers tremendous insight into the Bush Administration’s view on the use of the military. With all of these factors in mind, *Intervention* should be required reading for all U.S. military leaders, and it should be on the bookshelf of every military operational law attorney.

13. *Id.* at 76.

14. *Id.* at 155.

**CARNAGE AND CULTURE
LANDMARK BATTLES IN THE RISE OF WESTERN
POWER¹**

REVIEWED BY MAJOR CHARLES L. YOUNG III²

It must be a terrible thing to drown at sea—arms thrashing the waves, lungs filled with brine, the body slowly growing heavy and numb, the brain crackling and sparkling as its last molecules of oxygen are exhausted, the final conscious sight of the dim and fading, unreachable sunlight far above the rippling surface. By day's end in late September 480 B.C., a third of the sailors of the Persian fleet were now precisely in those last awful moments of their existence. A few miles from the burned Athenian acropolis as many as 40,000 of Xerxes' imperial subjects were bobbing in the depths and on the waves—the dead, the dying, and the desperate amid the wrecks of more than 200 triremes . . . Their last sight on earth was a Greek sunset over the mountains of Salamis or their grim king perched far away on Mount Aigaleos watching them sink beneath the waves.³

Thus begins *Carnage and Culture*, a riveting account of the development of Western military power. This book explores nine, well-chosen examples of military engagements drawn from across a 2500-year spectrum of Western development.⁴ These examples are used to explain the factors contributing to the development of Western military culture and lethality as compared to other traditions in Asia, Africa, and the Americas.⁵

1. VICTOR DAVIS HANSON, *CARNAGE AND CULTURE: LANDMARK BATTLES IN THE RISE OF WESTERN POWER* (2001).

2. United States Army. Written while assigned as a student, 50th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. HANSON, *supra* note 1, at 27-28.

4. Hanson chose the battles of Salamis (480 B.C.), Guagamela (331 B.C.), Cannae (216 B.C.), Poitiers (732), Tenochtitlán (1521), Lepanto (1571), Rorke's Drift (1879), Midway (1942), and Tet (1968) as his examples.

5. HANSON, *supra* note 1, at xv.

This book is a joy to read as it explores, from an individual and cultural perspective, historic land, air, and sea battles from all across the globe.

Some readers may cringe at the thought of picking up a 478-page book that has the word “culture” in its title.⁶ Hanson quickly places the focus on culture into perspective, however, defining the term as how “military prowess reflects larger social, economic, political, and cultural practices that themselves have little to do with war.”⁷ One would suspect that an analysis of such high-browed topics as economics and socio-politics would require the studies of grand strategies and major protracted military campaigns. Pleasantly, Hanson focuses instead on individual battles and the fighting experience of the average soldier.⁸ As he so eloquently puts it:

Abstractions like capitalism or civic-militarism are hardly abstract at all when it comes to battle, but rather concrete realities that ultimately determined whether at Lepanto twenty-year old Turkish peasants survived or were harpooned in the thousands, whether Athenian cobblers and tanners could return home safely after their butchery at Salamis or were to wash up in chunks on the shores of Attica.⁹

This is the thesis that binds culture with carnage and the perspective that glues the reader to the pages of this book. Many books on ancient military battles focus primarily on the macro issues of strategy, campaigns, and national politics.¹⁰ Hanson, on the other hand, disagrees with historians who avoid the human element of warfare and those who brush over casualty statistics as abstract numbers. Hanson describes “euphemisms in battle narrative or the omission of graphic killing altogether . . . as a near criminal offense of the military historian.”¹¹ To Hanson the focus of the military historian should be on the wages of war, which to Hanson is ulti-

6. Though others, like the author of this book review, may be equally attracted to “Carnage” in the title.

7. HANSON, *supra* note 1, at 6.

8. *Id.* at 7.

9. *Id.*

10. See H. DELBRUCK, *Warfare in Antiquity*, in 1 THE HISTORY OF THE ART OF WAR (1975); J.F.C. FULLER, A MILITARY HISTORY OF THE WESTERN WORLD (1987).

11. HANSON, *supra* note 1, at 7.

mately killing.¹² Hanson demonstrates this “focus” on the wages of war in his account of the battle of Tenochtitlán. He writes:

They attacked all the celebrants, stabbing them, spearing them from behind, and they fell instantly to the ground with their entrails hanging out. Others they beheaded: they cut off their heads or split their heads to pieces. They struck others in the shoulders, and their arms were torn from their bodies. They wounded some in the thighs and some in the calf. They slashed others in the abdomen, and their entrails spilled to the ground. Some attempted to run away but their intestines dragged as they ran; they seemed to tangle their feet in their own entrails.¹³

Thus Hanson examines, in graphic detail, the killing that took place on these nine battlefields to “discover how the practice of government, science, law, and, religion simultaneously determines the fate of thousands on the battlefield.”¹⁴

Hanson’s work may be critiqued for its unstated premise that the Western method of warfare is, all things considered, superior to that of the non-West. This concept sets the underlying theme for his analysis of all nine military engagements. No matter the victor of the battle, Hanson always concludes the Western way is superior. On the surface, this “cultural chauvinism”¹⁵ may appear to jaundice the finished work. Hanson takes great care, however, to avoid the issues of race, biology, and geography, and he instead focuses on the concepts of civic militarism, democracy, freedom, capitalism, and the importance of landed infantry.¹⁶

Close analysis of the contents of the book reveals clues that, despite Hanson’s efforts, a bit of bias may have slipped in. For example, he takes great care to define the West,¹⁷ but does not offer a corresponding definition of the non-West.¹⁸ This may seem like a trivial detail, but throughout the book there is a noticeable lack of a clear, overarching definition of just what the Western way is being compared to. In his examples, the Western war machines face the Persians at Salamis and Guagamela, Hannibal’s Carthaginians at Cannae, the mounted Islamic Saracens at Poitiers, the enraged Aztecs at Tenochtitlán, Ottoman sailors at Lepanto, swarming

12. *Id.* at 7-8.

13. *Id.* at 174 (citing *THE BROKEN SPEARS* 76 (M. Leon-Portilla ed. 1992)).

14. *Id.* at 8.

15. *Id.* at 15.

16. *Id.*

Zulu tribes at Rorke's Drift, Japanese kamikazes at Midway, and stealthy Viet Cong at Tet. From this collage of non-Western adversaries, the reader is left to deduce the identity of the lethally inferior non-West.

Hanson ultimately concludes that Western methods of warfare prevailed due to the ingredients of freedom, decisive battle, civic-militarism, rationalism, vibrant markets, discipline, dissent, open critique of the government, landed infantry, and scientific exploration. Hanson's analyses of two of those concepts offer insight into this conclusion.

At Salamis, the Western concept of democratic freedom emerged. The Greeks who fought at Salamis elected almost all of their civic leaders by lot.¹⁹ In turn, these leaders recognized that "in the Greek mind the ability to hold property freely, to have legal title to it, and pass it on was the foundation of freedom."²⁰ This Western concept of land ownership created a vested interest in the outcome of battles. "War [to the Greeks] would hinge on how much freedom was worth and to what degree it could trump the enemies' enormous advantages in numbers, wealth and experience."²¹ The 40,000 Persians who were drowned, harpooned, stabbed, or clubbed to death on the shores of the Aegean were all "bandaka,"²² now known as slaves. Hanson includes an insightful quote from Herodotus:

As long as the Athenians were ruled by a despotic government, they had no better success at war than any of their neighbors. Once the yoke was flung off, they proved the finest fighters in the world. . . . [T]hey battled less than their best when they

17. In his Preface, Hanson characterizes "Western" as:

The culture of classical antiquity that arose in Greece and Rome; survived the collapse of the Roman empire; spread to western and northern Europe; then during the great periods of exploration and colonization of the fifteenth centuries expanded to the Americas, Australia, and areas of Asia and Africa; and now exercises global political, economic, cultural, and military power far greater than the size of its territory or population might otherwise suggest.

Id. preface.

18. *Id.* at 487.

19. *Id.* at 34.

20. *Id.* at 36.

21. *Id.* at 39.

22. *Id.* at 34.

worked for a master; but as free men each individual wanted to achieve something for himself.²³

To Hanson, freedom is a “military asset. It enhances the morale of the Army as a whole; it gives confidence to even the lowliest of soldiers; and it draws on the consensus of officers rather than a single commander.”²⁴ Hanson’s selection of battles repeatedly emphasizes the Western reluctance to rely on a single commander and the non-West’s over-reliance on the despotic power of a single leader. Hanson’s non-West paid a terrible price in blood for their over-reliance. Fifty thousand Persians were slaughtered at Guagamela, when Darius III fled before Alexander.²⁵ Forty thousand Aztecs were filled with abject panic when Cortez and five conquistadors waded into their midst and hacked their leaders to death.²⁶

At Guagamela, the concept of decisive battle emerged. Hanson defines decisive battle as the concept of “men seeking their enemies face-to-face, in a daylight collision of armies, without ruse or ambush, with the clear intent to destroy utterly the army across the plain or die honorably in the process.”²⁷ Hanson deduces that decisive battle “evolved in early-eighth century [B.C.] Greece” and was not found earlier or elsewhere.²⁸ The Persians facing Alexander the Great wanted war to give them social recognition, religious salvation, or cultural status.²⁹ They preferred the tactics of surprise, ambush, maneuver, and envelopment, all designed to deplete the enemy enough to force his capitulation in the battle.³⁰ The Persians, unlike Alexander, would not seek to totally annihilate their enemy after routing them in battle. Alexander’s new concept of warfare led to battle casualties that boggled the mind. Hanson relates that one-year before Guagamela (331 B.C.), Alexander’s army at Issus killed as many as 100,000 Persian soldiers in eight hours of fighting.³¹ According to Han-

23. *Id.* at 47.

24. *Id.* at 55.

25. *Id.* at 73.

26. *Id.* at 183.

27. *Id.* at 92.

28. *Id.*

29. *Id.* at 97.

30. *Id.* at 96.

31. *Id.* at 83.

son's gruesome battle calculus, nearly 300 Persians were killed every minute for eight hours!³²

A year later at Guagamela, Alexander applied the same principles of "shock and frontal collision by walls of highly trained and disciplined foot soldiers."³³ The results were horrifyingly successful. Alexander's disciplined troops stood firm against an overwhelming, numerically superior enemy, counter-attacked, broke the enemy's ranks, caused Darius III to flee for his life, sent the Persians into a panicked retreat, and systematically slaughtered them by the thousands.³⁴ Hanson's battle calculus reveals that at least 50,000 Persians died that day, compared to only 100 of Alexander's men, a rate of 500 Persians for every Macedonian.³⁵

The Western desire for decisive battle and total destruction of the enemy is evidenced in several of the battles Hanson discusses. From Alexander's total destruction of the Persian Empire after Guagamela to the British annihilation of the Zulu tribes, the West has retained a preference for shock warfare and the total destruction of its enemies. Hanson further explores this concept in his analysis of Cortez's battle against the Aztecs at Tenochtitlán.

The Aztecs had traditionally engaged in "Flower Wars"³⁶ in which battle rituals were largely symbolic. Their tactic, like those of the Zulus and other tribal cultures, was that of envelopment.³⁷ The Aztecs primarily fought to stun their enemy and then pass them back to second echelon troops who would bind and gag them. These prisoners would then be used either for human sacrifice, slaves, or food.³⁸ The Aztecs rallied around the "Cihuacoatl," the leader of the Aztec line.³⁹ Hanson portrays the Spaniards under Cortez as almost complete opposites to the Aztecs. The Spanish had the goal of "killing the enemy out right, pursuing the defeated, and ending his will to resist."⁴⁰ While under overwhelming attack, separated from their leader, the Spaniards "fell in rank and file, fought in unison with unquestioning discipline, and fired group volleys."⁴¹ This extreme

32. *Id.* at 84.

33. *Id.*

34. *Id.* at 66.

35. *Id.* at 73.

36. *Id.* at 181.

37. *Id.* at 197.

38. *Id.* at 193, 197.

39. *Id.* at 181.

40. *Id.*

difference in culture and warfare ultimately led to the complete annihilation of the Aztec civilization.⁴² In describing a battle involving gold, human sacrifice, overwhelming odds, siege warfare, and amphibious assault, Hanson weaves a marvelous story of an incredible saga of human suffering and courage. This chapter alone makes the book a “must read.”

Carnage and Culture goes well beyond well-organized analysis and gripping tales of the horrors of war. It also offers the reader unique insight into current events in the United States, specifically the U.S. response to terrorist attacks on the World Trade Center and the Pentagon.⁴³ Many of the principles discussed in *Carnage and Culture* are evidenced in this current conflict. A recent interview with Osama bin Laden, the prime suspect in the terrorist attacks,⁴⁴ illustrates this point. In this interview, bin Laden states:

Hostility towards America is a religious duty and we hope to be rewarded for it by God, praise and glory be to Him. Praise be to God for guiding us to do jihad in his cause. To call us enemy number one or two doesn't hurt us. What we do care for is to please God, praise and glory be to Him, by doing jihad in his cause and by liberating Islam's holy places from those wretched cowards.⁴⁵

The interview suggests that the terrorists may be seeking the same religious salvation as the Persians facing Alexander at Guagamela, the Saracens facing Charles Martel at Poitiers, and the Ottomans facing the Christian fleet at Lepanto.⁴⁶ It also reveals that bin Laden and his associates may seek to drive Western forces from their Muslim homelands, but they fail to state a desire for the total annihilation of Western culture. The essence of terrorist tactics also derives from the non-Western principles of

41. *Id.* at 207.

42. *Id.* at 228.

43. On 11 September 2001, terrorists crashed two U.S. civilian jet liners into the World Trade Towers in New York City, one into the Pentagon in Washington, D.C., and one in rural Pennsylvania. Over 3000 were killed, and several thousand were wounded.

44. On 18 September 2001, during a national press conference, President George W. Bush called Osama bin Laden a “prime suspect.”

45. Transcript of Statement by Osama bin Laden (ABC News Broadcast, June 26, 1999).

46. HANSON, *supra* note 1, at 97.

surprise and ambush, which Hanson repeatedly emphasizes is a non-Western method of warfare.⁴⁷

As for America's response, it could almost be pulled directly from Hanson's text.

Hanson sums up the Western response to terrorism by saying:

The real atrocity for the Westerner is not the number of corpses, but the manner in which they were killed. We can comprehend the insanity of a Verdun or Omaha Beach, but never accept the logic of far fewer killed through ambush, terrorism, or the execution of prisoners and noncombatants As long as Westerners engaged the enemy in an open contest of firepower, the ensuing carnage was seen as relatively immaterial: terrorists who shamelessly killed a few women and children, or States that surprised us on a Sunday morning in a bombing attack, usually found mechanized murderous armies of retaliation on their soil and daylight fleets of bombers over their skies. . . . A rogue state that sponsors a terrorist with a vial in Manhattan is still cognizant that its own existence is measured by little more than a fifteen-minute missile trajectory.⁴⁸

As if following the recipe of *Carnage and Culture*, Deputy Defense Secretary Paul Wolfowitz said in a recent press interview: "The United States' retaliation will be sustained, broad, and effective. It's not just simply a matter of capturing people and holding them accountable, but removing the sanctuaries, removing the support systems; it's about ending States who sponsor terrorism."⁴⁹

Carnage and Culture is a well-written, cultural guide to the Western method of warfare. Those who have any interest in military history, past or present, should read this book and watch as its principles play out in the modern world.

47. *Id.* at 86.

48. *Id.* at 97, 451.

49. *Bush Calls Terrorist Attacks "First War of the 21st Century"*, DAILY PROGRESS (Charlottesville, VA), Sept. 14, 2001, at A-7.

By Order of the Secretary of the Army:

ERIC K. SHINSEKI
General, United States Army
Chief of Staff

Official:

JOEL B. HUDSON
Administrative Assistant to the
Secretary of the Army
0213706