

## BOOK REVIEW

Andrew Clapham, *War*, Oxford University Press, 2021, 624pp, £29.99 (pb)  
doi:10.1017/S0922156523000201

Reviewing a book titled *War* in the middle of the Russian invasion of Ukraine is a truly challenging exercise. President Putin does not call it war. Instead, he characterizes the Russian military action as a ‘special military operation’<sup>1</sup> and whoever calls it otherwise ends up in prison for spreading false information. In other words, as George Orwell wrote in 1984: ‘War is Peace’.<sup>2</sup>

Andrew Clapham’s latest book is about the legal concept of war. In particular, it questions how war shapes the application of law as an accommodating legitimation framework of what is accepted and tolerated. But it is much more than that. Written in a personal and simple but not simplistic way with references to art, literature, films, and various statements and case law, it paints a nuanced picture of how the concept of war is used and abused. The book is a compilation of extensive doctrinal knowledge in all spectrums of war (*jus ad bellum*, *in bello*, and *post bellum*), together with a very strong and personal normative argument, that since the old understanding of war has been outlawed since 1945, the relevant belligerent rights of targeting, detaining and expropriating property (see Preface and Chapters 7–9) should be equally abandoned in the twenty-first century. As Clapham emphasizes, he does not provide another definition of war as a response to claims that current warfare is fluid. Instead, he argues that invoking war is a serious decision-making exercise where law stands hand-in-hand with morality and ethics. In developing this claim Clapham makes some interesting points.

Clapham argues that ‘War is a state of mind’. In a Schmittean way, war operates in a binary mentality: us versus them. The other, the enemy, is dehumanized and thus targeted. War becomes a necessity and thus related principles such as proportionality can be construed in a looser manner. Similarly, he highlights how adding the word ‘war’ before detainees or war sustaining economies, facilitates a more tolerating reality for the side that invokes a state of war. This is a dangerous sensibility that should be questioned and filtered. The mere invocation of a state of war does not imply that anything goes. Yet, during the last two decades, many leaders appear to frame all sorts of social issues as a war-related activity. The war on terror, the war against climate degradation, the war against poverty, the war against drugs, and lately the war against the Covid pandemic, trigger intense debates about the transformative nature of the invocation of war. Using the term ‘war’ in these texts puts pressure on our legal framework of norms and practice. While dealing with emergencies, the language transcends the post-Second World War toolkit of dispute settlement and crisis management. This language is indicative of the overall polemic mind-set of certain

---

<sup>1</sup>Transcript: Vladimir Putin’s Televised Address on Ukraine’, *Bloomberg*, 24 February 2022, available at [www.bloomberg.com/news/articles/2022-02-24/full-transcript-vladimir-putin-s-televised-address-to-russia-on-ukraine-feb-24](http://www.bloomberg.com/news/articles/2022-02-24/full-transcript-vladimir-putin-s-televised-address-to-russia-on-ukraine-feb-24).

<sup>2</sup>G. Orwell, *1984* (1949).

leaders combined with the instrumental *carte blanche* it appears to facilitate for the authorities. There is a dangerous trend of consolidating authoritarianism in the name of a public emergency framed as war, with official and de facto states of emergency, accompanied by derogations from human rights treaties.

Clapham invites the reader to acknowledge that words do matter. Words reflect their own symbolism: they convey strong messages, and they carry emancipatory power that can trigger changes in the legal arena. Words are not innocent and the future of international law towards the language of war requires critical reflection and wise judgment.

Still this book is not about the 'rhetorical value of expressions referencing war',<sup>3</sup> as he clarifies, but it is about War with a capital letter W in its technical and legal sense compared with war (with a small letter) understood as armed conflict in the post-1945 era. Here, Clapham highlights a paradox. Although war with capital letter, in its old form, has been outlawed, classic belligerent rights in warfare appear to remain intact. Naval warfare, prizes, a loose interpretation of targeting towards war sustaining economies,<sup>4</sup> and the indefinite detention of war detainees shed light on this rationale. For Clapham this paradox is deeply troubling and dangerous. It is like retaining slavery-related rights long after slavery has formally been abolished (although modern types of slavery exist). Those remnants of War with capital letter operate as a Trojan horse, slowly eroding the post-1945 legal framework of war with small letter, or else of armed conflict. Both the rules of *jus ad bellum* and *jus in bello* become porous and an old legal mentality of the necessity of War accommodates questionable practices of killing, detaining, destroying and capturing goods of the enemy. In that sense War became a corrosive promise that does not reflect the fundamental choice made in 1945 that War has ceased being an institution of law, but it is replaced by war as armed conflict and its constraining regulation (despite all the flaws and imperfections).

Although Clapham argues that the rationale and practice of War should be fully abandoned, he carefully acknowledges that we should not get rid of the word war all together.<sup>5</sup> The semiotics of the word war do matter. We can use the word war to protest, as he acknowledges. Particular practices are connected to warfare (rape as a weapon of war, or starvation as a weapon of war), and during the last three decades the dramatic development of International Criminal Law has partially been based on the concept of war crimes. As Clapham points out, 'introducing the word "war" should prick the moral conscience rather than muddy the legal waters'.<sup>6</sup> It is not a solution to replace the paradigm of war with the one of peace, all the more so given the diversity of views on what peace entails. Intervention in the name of peace can be even more corrosive (humanitarian intervention). As Clapham repeatedly says, words matter. This is why it is very important to seriously think about the legal and practical implications of the invocation of war, and to use the word wisely.

This last observation by Clapham reads as a call to the profession of international lawyers, whether as academics or legal advisers to governments and organizations. International lawyers must act responsibly, address new challenges and shed light on the possibilities and limits of the existing legal framework, providing convincing alternatives, while emphasizing what is not accepted in the field of war with small letter. Reiterating adherence to well established normative legal arrangements while acknowledging the challenges raised by new technologies, climate change and human mobility will be vital for a cautious and responsible response to the transformation of global governance. In this regard relevant actors should raise their voice against abuses and violations of legal norms in the name of exceptional circumstances and thus operate as a wall

<sup>3</sup>A. Clapham, *War* (2021), at vi.

<sup>4</sup>This concept is particularly embraced by the US adopting a broader understanding of what can be considered a military objective.

<sup>5</sup>See Clapham, *supra* note 3, at 520–1.

<sup>6</sup>*Ibid.*, at 520.

of wisdom, moderation and moral power in times of crisis when our political leaders claim that 'we are at war'.

Clapham finishes the book by warning the readers once more about the danger of war as a state of mind. He reflects on the findings of the recent inquiry on Australian war crimes in Afghanistan, where a particular mentality or culture of war contributed to the dehumanization of the enemy and the commission of heinous acts.

Since February 2022, we are witnesses to horrific images from Ukraine. Civilians are targeted, executed, being subjected to torture and sexual violence, dehumanized. These civilians are portrayed by the aggressor as the enemy, and the necessity of war 'justifies' their killing. Young soldiers commit egregious acts that truly shock us and make us wonder how these atrocities can still take place in the twenty-first century. Clapham's book could not be more timely. Some people will argue that it is utopian, overly idealistic, that it cannot fully grasp the relevance of power and human nature. This is not persuasive. Clapham has written a humane book – a work that cannot accept, morally but also legally, that 'War' as a legal institution that accommodates human suffering. This is not an idealistic exercise. Instead, it is an invitation to responsible scholarly activity that acknowledges the risks and prospects of the word war with regard to human suffering. War with a capital letter is dangerous and Clapham's fine way of alerting us is reminiscent of Svetlana Alexievich's reflexion, based on stories of Soviet women who participated in the Second World War, that 'a human being is greater than war'.<sup>7</sup>

Maria Varaki\*

---

<sup>7</sup>S. Alexievich, *The Unwomanly Face of War* (2017), at xxviii.

\*Lecturer in International Law, Department of War Studies, King's College London, United Kingdom [Maria.varaki@kcl.ac.uk].