

International law as interpreted by the losers?

Atomic Warfare -- Shimoda (1957) ~~1957~~ 4-91
(1963)

Does the Court deal with the question of nuclear weapons as a unique new bomb?

No, it talks generally about bombing (first) then "unnecessary pain" US rules § 35, p. 688 says atom bombs are ok!

Analogy to poison gas, top of 688.

Where does it find its law?

A list of international agreements, ~~1925~~ 1925!
4-91/92

Heavy reliance on the

1923 Draft Rules of Air Warfare ~~1923~~ 4-94

Not a Treaty!

But is a custom!

How? 4-94

See bottom of ~~1923~~

What about practice?

- Battle of Britain
- Allied Carpet Bombing
- Dresden
- Pearl Harbor

Convincing?

But see § 39 of US rules, p. 689, which accepts the rule!

And more recently?

- Vietnam
- Laos
- Cambodia
- 1972 Christmas bombing of Hanoi

Attacks on civilians are not permitted

Kassem, 4-5

Shimoda, 4-94

New article 51

Shimoda, ~~4-91~~ (1963)

What is the "law" of the 1923 Draft Rules?

Distinction is made between "defended" and "undefended" cities. 4-95 ¶(7)

Namely?

Defended cities are defending themselves against imminent attack.

Does that seem like a good rule? Compare

US rule ¶40.689 p.19

Is it realistic in terms of 1944 and 1945?

"Total war"? ~~4-96~~ ¶(9)

Count says no one understood that term as meaning that everything within a country is fair game for attack.

Is that true?

Count does concede, ~~4-96/97~~, that "aerial bombardment on an objective zone" (i.e., a military concentration) is permissible.

But then asserts that Hiroshima & Nagasaki weren't such centers.

Compare Article 52 -- nondefended localities are those "open for occupation by an adverse party"!

4-63

Shimoda (1963) ~~7-70~~ 4-70

The Court finally asked whether the atomic bomb caused UNNECESSARY PAIN? 4.97 9(11)

How is this determined?

Unnecessary means "serving no military objective". See discussion of projectiles of less than 400 grammes 4-~~70~~ 97

See Test at 4-~~70~~ 97 1/2

Does the A-Bomb serve a military objective?

NO because it destroys the environment and makes future life impossible.

?!

Compare the "U.S. test" on ~~4-85~~ --
A "Balance" between "suffering" and "military effectiveness." [same as Shimoda test?]

ASK And "military effectiveness" includes (!)
"effects on morale, command and control, stamina. . . ." etc. 4-85 3/4

See also 9134, ~~687-88~~ ^{4-85 FM 27-10} of combat.

But note the recognition of proportionality ^{4-97 1/2}