

Yearbook of International Humanitarian Law

Volume 23

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Yearbook of International Humanitarian Law 2020



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ISSN 1389-1359

ISSN 1574-096X (electronic)

Yearbook of International Humanitarian Law

ISBN 978-94-6265-490-7

ISBN 978-94-6265-491-4 (eBook)

<https://doi.org/10.1007/978-94-6265-491-4>

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Published by T.M.C. ASSER PRESS The Hague, The Netherlands www.asserpress.nl

Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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Editorial

This volume of the *Yearbook* takes a close look at the role of so-called *expert manuals* in the interpretation and development of the international law of armed conflict and related branches of international law relating to military operations. Manuals on the law of armed conflict come in different guises. The most common one is the military manual, which is a publication issued by a State's Ministry of Defence or a branch of the armed forces with a restatement of the law of armed conflict or another branch of military law as interpreted by that State. Such manuals usually have an official status as standing orders or ordinances within that State's armed forces and are used for training and educational purposes within the armed forces and sometimes are also used in the operational context when applying the law to the planning and conduct of operations. Such manuals can trace their origins back to at least the nineteenth Century with the famous Lieber Code of 1863 usually seen as the first such codification.

Although there are some early examples of a second type of manual drafted by one or more experts with a view to interpreting and developing the law of armed conflict, such as the famous Oxford Manual of 1880, we have seen in more recent years that there has been a proliferation of such *expert panel manuals*. These take the form of a practically oriented academic publication which aims to set out an authoritative restatement of a particular branch of the law of armed conflict or other branch of operational law which is the product of a process of a panel of experts setting out their views on the interpretation of the area of law in question. Such manuals have taken on an increasingly prominent role partly to address emerging technologies, methods of warfare and applications of the law and partly to fill the gap left in updating and codifying the law because of the difficulty of reaching consensus at the State level. They differ from traditional military manuals by their non-governmental and non-binding status and from edited volumes by being the product of a group effort where consensus is sought and presented as an authoritative interpretation by a group of experts within a particular field. These manuals are aimed at policy level officials in foreign ministries, defence staffs, and international organizations as well as at fellow academics and (post-)graduate level students. In this they differ from

traditional military manuals, which are primarily internal training and operational tools within a State's armed forces.

Examples of these *expert panel manuals* include the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (1994), the *HPCR Manual on International Law Applicable to Air and Missile Warfare* (2005), the *Tallinn Manual on the Application of International Law to Cyber Warfare* (2013), its follow-up 2nd edition including peacetime cyber operations entitled *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (2017), the *Leuven Manual on the International Law Applicable to Peace Operations* (2017), and the *Oslo Manual on Select Topics of the Law of Armed Conflict* (2020). To these must be added other such manuals currently under consideration or development on a wide variety of topics ranging from armed conflict in Outer Space to various types of new and established weapons and methods of warfare. There is every likelihood that these manuals will continue to play a significant role in interpreting and shaping the law and its application.

While these manuals can and do play an undoubtedly useful role, their proliferation raises a number of questions. What degree of authority do they have and how much weight should be given to the views expressed in them? What is the methodology they employ and how effective is it in ensuring an as objective and impartial interpretation of the law as possible? What is their place in the doctrine of sources? While there is already a considerable body of literature addressing these and other relevant questions, this volume aims to contribute further to this discussion with contributions by three experts involved in one or more of these manuals in one capacity or another. *Yoram Dinstein* offers his views as someone who has a long list of such manuals in which he has been involved as an expert. He explores their place in the current state of the interpretation of the law and offers some valuable insights into their relevance and the role they play. *Heather Harrison Dinniss* offers her perspective as both a peer reviewer and participant in the process of drafting these manuals and some thought-provoking observations on both the strengths and weaknesses of such manuals. *Alfons Vanheusden* offers his perspective as one of the general editors and member of the panel of experts in one of these manuals, the *Leuven Manual*, and someone who has been deeply involved in its dissemination. These pieces viewed both singly and together will offer a valuable contribution to our understanding of the role such manuals play in the interpretation and development of the law of armed conflict. We are most grateful to their authors.

Alongside these pieces on this year's theme, we are also very happy to have received several articles submitted by their respective authors in the course of the past year on a number of highly interesting and relevant topics. *Jolanda Jackelien Andela* investigates the current state of customary humanitarian law in relation to the starvation of civilians. *Rebecca Barber* looks at the present state of the law in relation to the provision of relief to civilians in the absence of Host State consent. *Kludia Klonowska* provides some insights on the place of Article 36 API weapons reviews in relation to decision support systems employing artificial intelligence. Needless to say, all of these topics are highly relevant, as even a cursory look at recent events demonstrates, and we are happy to make these contributions available

to our readers along with the articles on our theme. The volume is rounded off with the customary *Year in Review* prepared by *Klaudia Klonowska* and the *Yearbook's* editorial assistant, *Shraddha Dubey*, who unfortunately leaves us after this year.

Finally, as this is my last year as Editor-in-Chief of the *Yearbook*, I would like to say a sincere and heartfelt thank you to the entire editorial team (past and present), our peer reviewers and all of the support team at T.M.C. Asser Press, in particular Mr. Frank Bakker, all of whom have been great supporters of our work over the past nine years of my tenure on the editorial board. I would also like to thank our many contributors without whom there would, of course, be no *Yearbook* to offer. I have very much enjoyed working with all of you and together helping to make the *Yearbook of International Humanitarian Law* one of the leading publications in the field and carrying on the tradition and high standards set by previous editors. Last but not least, I wish to extend my very best wishes to fellow editors *Robin Geiß* in his new position as Director of the Institute for Disarmament Research at the United Nations and to *Heike Krieger* who will take over as Editor-in-Chief starting with the next volume and the new team of editors she is putting together and wish her and her team every success in carrying on with the *Yearbook* in the coming years.

Amsterdam, The Netherlands
July 2021

Terry D. Gill
Editor-in-Chief, 2012–2021

Contents

Part I Expert Manuals

1 Law of Armed Conflict Manuals	3
Yoram Dinstein	
2 A Room Full of Experts: Expert Manuals and Their Influence on the Development of International Law	21
Heather A. Harrison Dinniss	
3 The Leuven Manual on the International Law Applicable to Peace Operations: An Ambitious <i>Sui Generis</i> Expert Panel Manual with Time on Its Side?	35
Alfons Vanheusden	

Part II Other Articles

4 Examining a Norm of Customary International Law that Criminalises the Intentional Use of Starvation of the Civilian Population as a Method of Warfare	63
Jolanda Jackelien Andela	
5 Does International Law Permit the Provision of Humanitarian Assistance Without Host State Consent? Territorial Integrity, Necessity and the Determinative Function of the General Assembly	85
Rebecca J. Barber	
6 Article 36: Review of AI Decision-Support Systems and Other Emerging Technologies of Warfare	123
Klaudia Klonowska	

Part III Year in Review

7 Year in Review 2020 157
 Klaudia Klonowska and Shraddha Dubey

Table of Cases 247

Index 253