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National Military Manuals on the Law of Armed Conflict

Nobuo Hayashi (editor)



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Military Manuals: An ICRC Perspective

François Sénéchaud*

This paper reviews the past experiences with military IHL/LOAC manuals from an ICRC perspective. It discusses the usefulness of these manuals as well as the conditions necessary for their acceptance and effective use.

17.1. Historical Landmarks on the Necessity of a Manual

The 1863 *Lieber Code* is widely referred to as the first attempt to codify the laws of war. Although the code's instructions corresponded to a great extent to the laws and customs of war existing at that time, it would be an overstatement to say that the Union troops were renowned for respecting them. The opinion expressed by General Sherman that "war is hell" was shared by far too many. Such an attitude and behaviour clearly demonstrated the need for the rules to be taught, trained and enforced throughout the chain of command in order to be respected in the field.

Shortly after the first Geneva Convention was adopted in 1864, the idea of using military manuals to improve respect for international humanitarian law emerged. Gustave Moynier, president of the International Committee for the Relief of Wounded (renamed the International Committee of the Red Cross in 1876), set out recommendations for what he then called the convention's "vulgarisation", *i.e.*, making its letter and spirit known by all in a popular form, a term that was replaced later by "dissemination" and complemented nowadays by "integration". Moynier insisted, for instance, that medical units wear Red Cross armbands even in

* **François Sénéchaud** is Head of the Unit for the Relations with Armed and Security Forces, International Committee of the Red Cross.

peacetime so that combat troops would become used to them and be trained in respecting them.

In the aftermath of the 1871 Franco-Prussian War, concerns arose as to the implementation of the 1864 Geneva Convention. Although it was usually understood that the lack of respect displayed by belligerents in the field was more a result of ignorance than specific intentions, some called the relevance and practicality of the convention into question. The correspondence between Gustave Moynier and Count Mundi of the Austrian Red Cross Society is illustrative of the debate which, to some extent, still echoes more recent ones. Moynier clearly expressed his belief in the need to look for ways of gaining understanding and respect other than further codification.

The text negotiated at Brussels in 1874 failed to secure the acceptance of all governments present as a convention binding upon them. The Institute of International Law then developed the Brussels Declaration¹ into the 1880 *Oxford Manual*. The manual was meant to be "suitable as the basis for national legislation in each State".² It endeavoured to support military men by clarifying the rules and, thereby, to shelter them from "painful uncertainty and endless accusations".³ Since "it is not sufficient for sovereigns to simply promulgate new laws", the manual would support the authorities so that they "make these laws known among all people" and "the men called upon to take up arms ... may be thoroughly impregnated with the special rights and duties attached to the execution of such a command".⁴ To this end, the Institute of International Law gave its work "a popular form, attaching thereto statements of the reasons therefor, from which the text of a law may be easily secured when desired".⁵

¹ Project of the International Declaration Concerning the Laws and Customs of War (1874), printed in Schindler and Toman, *op. cit.*, p. 27 *et seq.*

² *Oxford Manual*, *op. cit.*, preface.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

One century later, in 1977, the Diplomatic Conference adopted the two Additional Protocols to the Geneva Conventions. In its Resolution 21 (IV), the conference, having recalled states' responsibilities, specifically invited the ICRC to

participate actively in the effort to disseminate knowledge of international humanitarian law by, *inter alia*:

- (a) publishing material that will assist in teaching international humanitarian law, and circulating appropriate information for the dissemination of the Geneva Conventions and the Protocols,
- (b) organizing, on its own initiative or when requested by Governments or National Societies, seminars and courses on international humanitarian law, and co-operating for that purpose with States and appropriate institutions.⁶

Consequently, in the following decade, the ICRC developed a number of specific tools. Amongst those tools, Frédéric de Mulinen's *Handbook on the Law of War for Armed Forces*⁷ remains an undisputed cornerstone. This handbook emanated from the author's own experience and conviction that all the rules contained within treaty and customary laws needed to be taught and explained through their interplay rather than individually. It was "conceived and prepared ... in a military manner with recommendations for action and behaviour" so that "the relevant provisions may be understood and applied by armed forces".⁸ Since then, the handbook has served as the basis for other tools such as the ICRC's "Law of War Teaching File" and has been reproduced by countless armed forces as their own. It still serves as the basis of the teaching provided by the International Institute for Humanitarian Law in San Remo.

⁶ Resolution 21 (IV): Dissemination of knowledge of international humanitarian law applicable in armed conflicts, Diplomatic Conference, *op. cit.*, para. 4, printed in Schindler and Toman, *op. cit.*, pp. 728-9.

⁷ Frédéric de Mulinen, *Handbook on the Law of War for Armed Forces*, International Committee of the Red Cross, 1987.

⁸ *Ibid.*, p. iv.

In accordance with its mandate, the ICRC contributed to the development of the *San Remo Manual* published in 1994. The purpose of this manual was to provide a contemporary restatement of international law applicable to armed conflicts at sea, thus replacing the *Oxford Manual on the Laws of Naval War Governing the Relations between Belligerents* adopted by the Institute of International Law in 1913.

In 1999, on the fiftieth anniversary of the four Geneva Conventions, the ICRC presented its *Model Manual* to all states attending the XXVII International Conference of the Red Cross and Red Crescent. This model manual was meant for adoption as it stood or for adaptation and completion by national authorities. It did not meet with the expected success, however. It was therefore decided to update *De Mulinen's Handbook*, a process that is now underway with the first phase of testing and amendments having just been completed. A final revised version is planned for next year.

Parallel to these efforts, and with the support of the ICRC as well as a number of experts and governments, the Program on Humanitarian Policy and Conflict Research is currently reviewing all norms related to air warfare. By the end of 2008, this process should culminate in the adoption of a manual similar to the *San Remo Manual*.

Finally, to conclude on the ICRC's experience with IHL manuals, the work of its delegates in the field should be also mentioned. Indeed, besides efforts at the international level, the ICRC has assisted numerous armed forces at the national level around the world in adopting IHL manuals or, occasionally, manuals combining both international humanitarian law and human rights law applicable to military operations. In fact, just several weeks ago, the ICRC received its most recent request from armed forces for the provision of consultative support.

17.2. Usefulness

A military IHL/LOAC manual is certainly a useful step towards making this law better known and more easily understood by those who will have to implement it in the end. As noted earlier, historically,

this need has been recognised from the beginning. Arguably, if a need was recognised after the Franco-Prussian War to adopt a national manual which would explain the 1864 Geneva Convention, a clear and succinct ten-article text, then there is little doubt that such a need persists nowadays in view of the number of existing treaties and customary law.

A manual may therefore be understood as a measure to comply with the legal obligation to disseminate international humanitarian law.⁹

Like any other body of law, international humanitarian law is a set of general rules – sometimes too general to serve as a guide for practical behaviour in combat. It is therefore necessary to interpret the law, analyse its operational implications and identify consequences at all levels, in order to guide the military clearly on how to respect it. For instance, the principle of proportionality as expressed in Articles 51 and 57 of Additional Protocol I consists of a balance between "incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof", on the one hand, and "the concrete and direct military advantage anticipated", on the other. Purportedly, the principle is very general in order to allow for its adaptation to any situation. To complete both estimates and implement the principle in practice, however, the military must establish clear responsibilities amongst relevant positions within its staff. Similarly, its decision-making process must establish precisely at what stage(s) the balance takes place – *e.g.*, at the stage of mission analysis, action development – and what its exact format should be.

Accordingly, a military manual must set aside abstract notions. Rather, it should relate international regulations to the practical situations in which armed forces may find themselves and to the context and capacities of their units. To state in a military manual that

⁹ This obligation is contained in provisions such as Article 1, Hague Convention IV 1907; Articles 47/48/127/144, Geneva Conventions I/II/III/IV 1949; Articles 83, 87(2), Additional Protocol I; Article 19, Additional Protocol II; Article 7, Additional Protocol III; Article 25, Hague Cultural Property Convention; Article 30, Hague Cultural Property Protocol II.

"all feasible precautions shall be taken to spare the civilian population, the civilians and civilian objects", though entirely correct, would be merely to paraphrase the law as contained in Article 57 of Additional Protocol I. It would not instruct the armed forces as to what they or their state regard as *feasible* precautions and what concrete measures they are required to take in view of their missions and capacities. In short, a manual should provide guidance in a manner that is realistic and practical.

The *UK Manual* is interesting in this regard. It regularly refers to existing policies and draws consequences from them. For example, in the case of precautions in attacks, the manual contains a veritable checklist for consultation during target selection by a commander in his efforts to comply with the "legal obligation to do everything feasible to verify that the proposed target is not protected from an attack"¹⁰:

- a. whether he can personally verify the target;
- b. instructions from higher authority about objects which are not to be targeted;
- c. intelligence reports, aerial or satellite reconnaissance pictures, and any other information in his possession about the nature of the proposed target;
- d. any rules of engagement imposed by higher authority under which he is required to operate;
- e. the risks to his own forces necessitated by target verification.¹¹

Similarly, the manual lists factors to be taken into account when considering the means or methods of attack to be used:

- a. the importance of the target and the urgency of the situation;
- b. intelligence about the proposed target – what it is being, or will be, used for and when;

¹⁰ *UK Manual, op. cit.*, §5.32.2, p. 82. Footnote omitted.

¹¹ *Ibid.* Footnotes omitted.

- c. the characteristics of the target itself, for example, whether it houses dangerous forces;
- d. what weapons are available, their range, accuracy, and radius of effect;
- e. conditions affecting the accuracy of targeting, such as terrain, weather and time of day;
- f. factors affecting incidental loss or damage, such as the proximity of civilians or civilian objects in the vicinity of the target or other protected objects or zones and whether they are inhabited, or the possible release of hazardous substances as a result of the attack;
- g. the risks to his own troops of the various options open to him.¹²

One might question whether an IHL manual is the best vector to provide the military with an interpretation of the law and guidance for its respect. Arguably, international humanitarian law could simply be integrated into existing field manuals (*e.g.* those relating to military decision-making processes and staff organisations) so that they would ensure the lawfulness of decisions and orders. Although such an approach may appear more direct and therefore preferable, a number of reasons still speak in favour of an IHL manual. To begin with, some armed forces have doctrines that are not extensively developed and, as a result, revert either to unwritten standard principles which guide their actions at the strategic, operational and tactical levels, or to foreign field manuals. An IHL manual may provide a useful alternative to such eventualities. Even where doctrines are well developed, an IHL military manual remains useful at least for two reasons. Firstly, it permits the systematisation of various measures needed to ensure respect for the law before their integration within different manuals and thereby facilitates a flawless process. Secondly, it provides an easy reference not only for legal advisers but also for commanders and their staff.

¹² *Ibid.*, §5.32.4, pp. 83-84. Footnotes omitted.

17.3. Conditions for Acceptance and Effective Use

Adopting a national IHL manual in itself is not sufficient, however. As with any tool, it is of little use unless it is accepted, regularly used and referred to. Practice shows that a number of conditions are decisive for a manual's acceptance and effective use, especially beyond the mere circle of legal advisers. In addition to the requirement of clear guidance, two main conditions need to be fulfilled. On the one hand, the manual must be the result of a genuine commitment by the authorities or leadership to see the law respected. On the other hand, the manual must be recognised by the armed forces as one of "their own" – in other words, they must feel a sense of ownership.

As mentioned earlier, the first condition for a successful IHL manual is its capacity to provide its users with relevant interpretation of the law and guidance for its respect. Two issues need to be solved here. Firstly, the manual must be understandable to the practitioners without simplifying the law up to the point where the rules are no longer legally accurate. Secondly, the manual must be written in a way that is familiar to its users. Members of armed forces are more likely to accept the ideas put forward to them if they are familiar with the expressions used. The success of *De Mulinen's Handbook* can certainly be explained by the fact that it fulfils these conditions. By applying military logic and vocabulary to the presentation of the law, de Mulinen made his handbook easily accessible to armed forces and enabled them to reproduce the same within themselves. Moreover, he offered a general interpretation and not a national one. This meant that he did not need to go into the same degree of detail as a drafting committee would in order to produce a national manual. Indeed, he wrote under the presumption that all existing conventions would be ratified effectively and without reservations or interpretations; he did not have to take any national legislation into account either. What was arguably an initial weakness for such a generic work has become its major strength over time, especially as the Geneva Conventions secured universal acceptance and more states ratified the two 1977 Additional Protocols.

The Spanish manual¹³ is a case in point. It follows the manner in which the *De Mulinen's Handbook* is structured and defines the different responsibilities for each position within the staff at battalion level and higher. At the same time, however, the manual is adapted to Spain's specificities and realities.

Equally important to the success of an IHL manual are the motives that lead to its adoption. A genuine commitment to the law's implementation must exist from the top of the armed forces and down the chain of command. That the military itself comes to the conclusion that it needs a manual, that it feels a sense of ownership over the drafting or editing process, that the necessary material, intellectual and financial resources are allocated, and that there is an unequivocal preface by the highest ranking officer on the need to know and respect the legal framework – all these usefully indicate the existence of such a commitment. For instance, the *IHL Code of Conduct for the Republic of Sierra Leone Armed Forces* provides an interesting foreword by the Chief of Defence Staff urging "all our troops to read and digest this small booklet and put the IHL principles therein in practice".

The decision to adopt a manual must not be dictated merely by reasons of politics and propaganda. Otherwise, the manual would become an end in itself and end up on the same obscure shelf as the legal instruments it is meant to support. Should the armed forces adopt a foreign manual such as *De Mulinen's Handbook* without making any effort for its national adaptation, the genuineness of their motive might be doubted.

Lastly, the form of the manual will also have a definite impact on its acceptance and effective use. A manual may offer relevant interpretation and guidance, and reflect a genuine commitment by the authorities and leadership to respect the law. It will still be of little use, however, if the armed forces to which the manual addresses itself do not have a sense of ownership whereby it is recognised as one of "their own".

¹³ *Orientations, the Law of Armed Conflict (Orientaciones, el derecho de los conflictos armados)* OR7-004.

Experience shows that the military feels a greater sense of ownership whenever the LOAC manual is produced as a field manual and forms an integral part of its doctrine. Again, the Spanish manual is a case in point. It is an Army field manual, similar in all aspects to any such document. It was produced for internal use within the armed forces by the J-3 Operations of the General Staff of the Army and approved by its Chief. The manual's structure, which reflects the Spanish military decision-making process, facilitates quick referencing and understanding by any officer.

As a matter of policy, the ICRC has resisted requests from armed forces to have its name or logo printed on their military manuals for whose creation it provided cooperation and support. This policy reflects the ICRC's desire to strengthen a sense of ownership by the practitioners. Examples range from Mexico's *Law of Armed Conflict Manual*, another national adaptation of *De Mulinen's Handbook*, to the LOAC training manual developed by the armed forces of Tajikistan.

17.4. Conclusion

IHL manuals are undoubtedly useful, and arguments for their adoption have been voiced since early on in history. In order to be accepted and effectively used, however, such manuals must fulfil a number of conditions. They must provide an interpretation of the law and clear guidance as to its respect. In so doing, they must account for the practical situations in which armed forces might find themselves and for the context and capacities of their units. Manuals must emanate from a genuine commitment throughout the chain of command to see the law known and respected. Finally, their form must guarantee acceptance by the military.

The experience surrounding numerous IHL manuals, such as South Africa's *Law of Armed Conflict Manual*, shows that their adoption should not be seen in isolation. It is only one step in the process through which doctrine provides the measures, mechanisms and means to ensure respect for the law. Education must transmit theoretical knowledge on what needs to be done. Training must offer practical experience on how to do it. Finally, an effective sanctions mechanism must exist in order to enforce the law in case of violations.

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National Military Manuals on the Law of Armed Conflict

Nobuo Hayashi (editor)

States are duty-bound to disseminate and ensure respect for the law of armed conflict (LOAC) among their personnel. A number of national military LOAC manuals have been issued to this end. But what are they exactly? What do they do? Is such a manual really necessary for a state that does not have one yet? What are the experiences of those states which already issue manuals? What areas of law should a good manual cover? These and other questions were considered at an international seminar held under the auspices of the Forum for International Criminal and Humanitarian Law (FICHL) in Oslo, Norway, on 10 December 2007. This publication records the seminar's deliberations and findings. It also contains an introductory article and a checklist prepared by the editor for the benefit of those considering writing a new manual.

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Forum for International Criminal and Humanitarian Law

E-mail: info@fichl.org

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