

Publication Series

National Military Manuals on the Law of Armed Conflict

Nobuo Hayashi (editor)



E-Offprint:

Maria Bergram Aas, “Minutes of the Discussion”, in Nobuo Hayashi (editor), *National Military Manuals on the Law of Armed Conflict*, 2nd edition, Torkel Opsahl Academic EPublisher, Oslo, 2010 (ISBNs: 978-82-93081-02-9 (print) and 978-82-93081-03-6 (e-book)). This book was first published on 19 December 2008. The Second Edition was published on 23 July 2010. TOAEP publications may be openly accessed and downloaded through the web site www.toaep.org which uses Persistent URLs (PURLs) for all publications it makes available. These PURLs will not be changed and can thus be cited. Printed copies may be ordered through online distributors such as www.amazon.co.uk.

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Minutes of the Discussion

Reported by Maria Bergram Aas*

Hans-Peter Gasser stated that the *UK Manual* provides the necessary information in an excellent manner. First, it says what military objectives are. Then, it quotes the treaty text followed by an explanation of the definition. Finally, some examples are given. It is likely that future generations of manual users will not know what a referral to "Dresden" would represent. Other solutions should be found to illustrate different aspects of the law.

As regards the applicability of the law of armed conflict to peace operations, Gasser recalled a conversation with an Australian major on the challenges facing Australian forces in Somalia. They were in a situation of *de facto* occupation and, accordingly, decided to apply Geneva Convention IV. This shows that the issue at hand is not necessarily one of formal applicability but one of practicality. The rules contained in Geneva Convention IV were exactly the rules the Australian forces needed at the time.

In Gasser's view, a military manual should, as the *UK Manual* does, provide practical rather than theoretical solutions.

Tom Staib asked whether, and to what extent, it would be fruitful to produce a Nordic or Norwegian manual based on existing manuals.

To Gasser's observations, Tony Rogers replied that this was in fact how he wanted the *UK Manual* to be structured. As regards Staib's question, Rogers stated that it would be possible to develop a new manual on existing ones, but copyright issues would need to be addressed. That said, existing manuals would be a good starting point. One should in any event look at several manuals for this purpose.

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Bill Fenrick followed Gasser and Rogers in endorsing the idea of both using and looking to existing manuals. At one point in time, Canada did so by adopting the *US Navy Commander's Handbook* and attaching a Canadian annex to it. Such an annex was needed to implement the differences between the two countries' points of view on certain law of the sea issues and also to incorporate the *San Remo Manual*. Fenrick agreed with Gasser on the importance of a military manual's practical applicability.

Dieter Fleck also advocated the need to look at other manuals during the process of drafting one's own. For example, NATO's Multinational Corps Northeast headquartered in Stettin, Poland, consists of German, Polish and Danish forces. They might benefit from having access to national manuals in preparing instructions for their operations.

Fleck responded to the point made by Gasser regarding peace operations and the lack of distinct, traditional rules that are appropriate for them: Bjørn Egge, former president of the Norwegian Red Cross, had served at one point of his career as a captain in the *Opération des Nations Unies au Congo* (ONUC). Lacking military instructions, the young captain simply decided to apply what Egge referred to as "Geneva Conventions *plus*". Admittedly, however, the world has become more complicated today. The rules needed to be translated into practical and up-to-date solutions.

Klaus Ilmonen¹ commented on how best to use the available resources with a view to prioritising the needs for military manuals. Nordic countries have not been involved in armed conflict for the past few years. They also operate with different realities when it comes to the politics of security; some nations are allied nations, others are not. One area in which Nordic countries do face challenges almost every day is peace support operations. Should one approach the task of creating a military manual from the bottom up rather than from the top down? Nordic countries do not have the kind of field expertise that, for example, the United Kingdom has from its experience in Northern Ireland. Nordic countries should perhaps first focus on the legal status

¹ Klaus Ilmonen, LL.M., jur.lic., is an attorney in private practice.

of ROEs. It would then be appropriate for them to consider a set of operational guidelines on the laws of targeting in peace support operations, the legal status of intelligence in such operations, and so on. Eventually, one might create a coherent legal policy on peace support operations.

Ilmonen also raised concrete questions regarding the law of armed conflict in peace operations. Let us imagine a peace support operation in an area with no local infrastructure. All the judges have been shot or fled. One finds himself having the custody of a person suspected of a very serious crime, say murder. Under the European Convention on Human Rights,² what is he to do? For how long can he keep the person in question? Let us also imagine crowd control in a hostile environment where people have weapons and hand grenades whereas our soldiers have nothing but their weapons and shields. At what point do our soldiers use force? What kind of force do they use?

Charles Garraway cautioned that states should be very careful about blindly copying the manuals of other states. New Zealand, for example, had copied the Canadian manual but somehow missed the fact that in the manual there was a reference to "a state with a common border". It should also be noted that law and politics are very closely intertwined here. One must therefore approach the task of drafting a new manual by looking at other nations' manuals very, very carefully. It may very well turn out that an annex is not sufficient.

² Convention for the Protection of Human Rights and Fundamental Freedoms, printed in Malcolm D. Evans (ed.), *Blackstone's International Law Documents*, 8th edition, Oxford University Press, 2007, p. 46 *et seq.*

FICHL Publication Series No. 2 (2010, Second Edition)

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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.

ISBN 978-82-93081-02-9

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International Criminal
and Humanitarian Law

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