

JOINT SERVICES PUBLICATION 383 – THE MANUAL OF THE LAW OF ARMED CONFLICT AMENDMENT 3 (SEPTEMBER 2010)

The text¹ of the Manual of the Law of Armed Conflict should be read in the light of the following amendments:

Insert/delete the following text as indicated.

CHAPTER 1

Page 2

1. At the end of paragraph 1.2, add a footnote indicator ‘1 bis’. Insert footnote to read:

‘1 bis For the purposes of this Manual, these differing terms for the ‘*jus in bello*’ are used interchangeably. However, these terms do not include human rights law which is a separate branch of public international law.’

2. At the end of paragraph 1.5.1, add a footnote indicator ‘4 bis’. Insert footnote to read:

‘4 bis Article 5 was invoked by the NATO states following the attacks on the United States on 11 September 2001. See Statement by the North Atlantic Council on 12 September 2001, accessed at http://www.nato.int/cps/en/natolive/news_18553.htm?selectedLocale=en’

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3. Add to footnote 6:

‘Although throughout history, and today, non-international armed conflict is the predominant form of conflict, traditionally, international law has been principally concerned with relations between states and not with internal matters within states (see paragraph 1.33.3). This focus is changing with, for example, the development of human rights law and its relationship with the law of armed conflict, particularly in non-international armed conflict.’

¹ All page and paragraph references refer equally to the Binder and OUP versions – pagination is identical. There is, however, some discrepancy in the Appendices.

Page 4

4. In paragraph 1.10.1, lines 4-5, delete ‘Membership of the armed forces thus requires knowledge of the law of armed conflict.’ Insert instead:

‘The armed forces thus require knowledge of the law of armed conflict.’

Page 5

5. In paragraph 1.13.2, line 4, delete ‘embodied’ and insert instead ‘were considered to embody’.

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6. In footnote 22, delete “para 1.12” and insert instead “para 1.13.1”.

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7. In paragraph 1.26.2, lines 2-4, delete ‘The Hague Peace Conference 1899 forbade the dropping of bombs for a period of five years. This was followed by the Hague Regulations 1907.’ Insert instead:

‘The Hague Peace Conference 1899 forbade the discharge of explosives and projectiles from balloons or by other means of a similar nature for a period of five years, a prohibition that was renewed by Declaration XIV of 1907 but which subsequently failed to withstand conflicting technical advance, particularly the development of aircraft. Limited provision in relation to air warfare is to be found in the Hague Regulations 1907.’

Footnote 27 remains.

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8. In paragraph 1.27.1, delete the first sentence, ‘The 1899 Declaration had a very limited scope and has been replaced by the Geneva Gas Protocol 1925.’ Insert instead:

‘The 1925 Protocol replaced the 1899 Declaration concerning asphyxiating gases which had a very limited scope.’

9. At the end of paragraph 1.27.2, add a footnote indicator 33 *bis*. Insert footnote to read:

‘33 *bis* However, the use of riot control agents such as CS gas ‘as a method of warfare’ is now prohibited by the Chemical Weapons Convention 1993.’

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10. In paragraph 1.28, lines 8-11, delete ‘The notion of total war, where civilians were heavily involved in war-supporting industries, area bombing methods, siege warfare, long-range rockets, and atomic weapons together led to extremely heavy civilian casualties.’ Insert instead:

‘The notion of total war meant that civilians were heavily involved in war-supporting industries. This, together with area bombing methods, siege warfare, indiscriminate long range rockets, and atomic weapons, led to extremely heavy civilian casualties.’

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11. In paragraph 1.29, lines 10-11, after ‘not necessarily linked to a state of armed conflict’ insert ‘under customary law.’

12. In paragraph 1.29, lines 11-12, after ‘the Hague Regulations’ insert ‘on land warfare.’

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13. In paragraph 1.30.3, delete all text. Insert instead:

‘In practice, the Geneva Conventions are now of universal application and their principles are generally considered to reflect customary law.’

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14. In paragraph 1.33.2, delete all text. Replace with existing text of paragraph 1.33.5.

15. In paragraph 1.33.5, delete all text.

Page 18

16. In paragraph 1.37, line 4, insert ‘permitted’ before ‘training.’

17. In footnote 65, delete all text with and replace with ‘Obligations in the Convention are implemented in UK by means of the Landmines Act 1998.’

18. After paragraph 1.37, insert new paragraph 1.37 *bis*.

‘Additional Protocol III 2005 [Insert footnote indicator 65 *bis*]

1.37 *bis* This Third Protocol to the 1949 Geneva Conventions introduces an additional distinctive emblem, the red crystal, to accompany

the red cross and the red crescent. The new emblem has the same status as the existing emblems. [Insert footnote indicator 65 *ter*]

Insert new footnotes:

65 bis Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) 2005.

65 ter Obligations in the Protocol were implemented in UK by the Geneva Conventions and United Nations Personnel(Protocols) Act 2009.’

19. After paragraph 1.37 *bis*, insert new paragraph 1.37 *ter*.

‘Oslo Convention 2008 [Insert footnote indicator 65 *quater*]

1.37 *ter* This Convention prohibits the use, development, production, acquisition, stockpiling, retention or transfer of cluster munitions as defined under the Convention and requires the destruction of stocks. It does permit the retention of small stocks for permitted training purposes and has provisions dealing with clearance and victim assistance. [Insert footnote indicator 65 *quinquies*]

Insert new footnotes:

65 quater The Oslo Convention on Cluster Munitions 2008.

65 quinquies Obligations in the Convention are implemented in UK by means of the Cluster Munitions (Prohibitions) Act 2010.’

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20. In footnote 68, add:

‘In 1999, the United Nations Secretary General issued ‘Secretary General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law. See paras 14.11 and 14.11.1.’

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21. In paragraph 1.42.2, lines 1-2, after ‘the Pact of Paris’ add ‘(also known as the Kellogg-Briand Pact)’.

CHAPTER 2

Pages 21 - 22

22. In paragraph 2.2, delete existing text. Insert instead:

‘ Military necessity is now defined as ‘the principle whereby a belligerent has the right to apply any measures which are required to bring about the successful conclusion of a military operation and which are not forbidden by the laws of war’ [Insert footnote indicator 1 *bis*]. Put another way, a state engaged in an armed conflict may use that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial [insert footnote indicator 2] submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources.’

Insert new footnote 1 *bis*:

‘1 *bis* See JDP 0-01.1, *UK Glossary of Joint and Multinational Terms and Definitions* (Edn.7) at page.M.9; AAP-6, *NATO Glossary of Terms and Definitions* (2008), at page 2-M-6.’

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23. In paragraph 2.4.1, line 6-7, delete ‘because civilians and civilian objects make no contribution to military action.’ Insert instead:

‘because civilian objects, by definition, [insert footnote indicator 7 *bis*] make no effective contribution to military action and civilians only lose their protection if they take a direct part in hostilities [insert footnote indicator 7 *ter*].’

Insert new footnotes:

‘7 *bis* See AP I, Art 52.
7 *ter* AP I, Art 51(3).’

24. In paragraph 2.4.2, line 3, before ‘incidental casualties’, insert ‘expected’.

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25. In paragraph 2.5, lines 3-4, delete ‘between combatants and non-combatants’. Insert instead:

‘between combatants and those who take a direct part in hostilities, and those who are protected against direct attack’.

26. In paragraph 2.5.1, delete the first sentence. Insert instead:

‘The principle of distinction separates those who may be legitimately the subject of direct attack, namely combatants and those who take a direct part in hostilities, from those who may not be so subject. It also separates legitimate targets, namely military objectives, from civilian objects.’

27. In paragraph 2.5.2, line 1, delete ‘are permitted’ and insert instead ‘have the legal right’.

28. In paragraph 2.5.2, lines 2-4, delete the second sentence of the paragraph and insert instead:

‘Civilians are protected from attack unless and for such time as they take a direct part in hostilities’.

Retain footnote indicator 13 at the end of the sentence.

29. In paragraph 2.5.3, in lines 2, 6 and 7, delete ‘targets/target and insert ‘objectives/objective.

30. In paragraph 2.5.3, delete ‘This obligation is dependent’ and insert instead:

‘The reliable discharge of this obligation will in practice depend’.

31. In paragraph 2.5.3, delete ‘he does not automatically violate’ and insert ‘he is unlikely to violate’.

32. At the end of paragraph 2.5.3, insert new footnote indicator 14 *bis*. Insert new footnote:

‘14 *bis* See UK statement (c) on ratification of Additional Protocol I.’

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33. In paragraph, 2.6, delete text and insert instead:

‘The principle of proportionality requires that the expected losses resulting from a military action should not be excessive in relation to the anticipated military advantage.’

34. In paragraph 2.6.3, delete the first sentence and insert instead:

‘A munitions factory may be such an important military objective that the death of civilians working there would not be excessive in relation to the military advantage anticipated from destroying the factory.’

CHAPTER 3

Page 30

35. In paragraph 3.4.2.a, delete the second sentence: ‘The threshold of violence required to render the situation an armed conflict is the same as that required for internal armed conflicts, see paragraph 15.3.’

36. At the end of paragraph 3.4.3, insert new footnote indicator 14 *bis*. Insert new footnote:

‘14 *bis* See UK statement (d) on ratification of Additional Protocol I.’

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37. In paragraph 3.5, line 4, delete ‘Customary law’ and insert ‘Relevant customary international law’.

38. In paragraph 3.5, line 10, after ‘Additional Protocol II,’ insert ‘as the United Kingdom is a party,’.

39. In paragraph 3.5.1, line 1, after ‘is not defined’, insert ‘in treaty law’.

40. In paragraph 3.5.1, at the end of the paragraph, after ‘application’, insert ‘in such situations’.

41. In paragraph 3.5.2, at the end of the paragraph, after ‘occurred’, insert:

‘other than in cases where the participants were internationally recognized as having belligerent status’.

Insert at end of the paragraph a new footnote indicator 18 *bis*. Insert new footnote:

‘18 *bis* See paragraph 3.1.2.’

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42. In paragraph 3.9, add at the end of the paragraph:

‘This is in addition to any relevant customary international law.’

CHAPTER 4

Page 38

43. In paragraph 4.2.1, lines 6-8, after “‘lawful’ or ‘unlawful’.”, delete the rest of the paragraph and insert instead:

‘The use of the words ‘lawful’ or ‘unlawful’ is unhelpful and possibly misleading in view of the status definition of ‘combatant’ in Additional Protocol I, set out in paragraph 4.2. A person who takes a direct part in hostilities when not entitled to do so does not become a ‘combatant’ under this definition simply by such conduct. For the meaning of ‘taking a direct part in hostilities’, see paragraph 5.3.3.’

44. In paragraph 4.2.2, lines 5-8, delete the last sentence of the paragraph beginning ‘Although members of the civilian population’ and insert instead:

‘Under the law of armed conflict, members of the civilian population lose their civilian protection when they participate in hostilities. However, when they take part in the exceptional circumstances of a levée en masse, they also lose their civilian status, become combatants and are entitled to prisoner of war status.’

45. In paragraph 4.2.3, line 6, delete ‘status’ and insert ‘protection’.
46. In paragraph 4.2.3, line 11, insert after ‘armed’, ‘with light individual weapons’.

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47. In paragraph 4.3.5, delete the first 2 lines and insert:

‘Any member of the United Kingdom reserve forces called out pursuant to a call out notice under the provisions of the Reserve Forces Act 1996 is a “member of the armed forces” under the terms of Article 43(1) of Additional Protocol I. The reserve forces comprise the following:’

48. In paragraph 4.3.5, subparagraph a, delete ‘the Marine Reserve’ and insert ‘the Royal Marines Reserve’.
49. In paragraph 4.3.5, subparagraph c, delete all text and insert ‘The Royal Air Force Reserve and the Royal Auxiliary Air Force’.
50. In paragraph 4.3.7, lines 3, delete ‘non- combatants’ and insert ‘civilians’. In line 9, delete ‘non-combatant’ and insert ‘civilian’.

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51. In paragraph 4.9.4, delete the first 2 sentences, including footnote 37.
52. In paragraph 4.9.4, line 6, delete ‘Similarly’ and replace with ‘Furthermore, in an international armed conflict’.

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53. In paragraph 4.10.2, lines 2-3, delete “and any form of discrimination towards prisoners of war was forbidden” and insert:

‘and a mercenary who was otherwise entitled to prisoner of war status could not be subject to any discrimination’.

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54. At the end of footnote 46, add:

‘This statement was confirmed when the United Kingdom ratified the Optional Protocol on 24 June 2003.’