



# The Manual on International Law applicable to Air and Missile Warfare

# ■ The Manual on International Law applicable to Air and Missile Warfare

1

Introduction

2

What is the Harvard Manual

3

What is it not?

4

The drafting and adoption of the Manual (the Black-letter Rules)

5

Commentary on the Black-letter Rules

6

A brief overview of the content of the Manual



**DEFENCE**

# ■ Introduction

Commonly known as 'The Harvard Manual', 'HPCR Manual', 'AMW Manual, ...

- Officially 'Program on Humanitarian Policy and Conflict Research at Harvard University Manual on International Law applicable to Air and Missile Warfare'
- Program started in 2003, under the guidance of Prof. Dr. Yoram DINSTEIN
- Informal contacts between an international Group of Experts (international scholars and practitioners (incl. Mil & Civ governmental circles) & ICRC) in different conferences
- Culminating in the adoption of the Manual in BERN on 15th May 09

So, a recent document, yet the question arises whether it should be amended...

'In time, the *HPCR Manual* may have to be revised to reflect future changes in the law.'



**DEFENCE**

# What is the Harvard Manual?

- Restatement of existing international law applicable to air and missile warfare in international armed conflicts (Ius In Bello)
- **Clarify** and **consolidate** existing rules (treaty law & International Customary Law)
- Using the **San Remo Manual** on Int'l Law Applicable to Armed Conflicts at Sea (2005) as a model
- Provide **guidance for military and legal practitioners** in applying international law during operations
- **promote better protection of civilians** and compliance with humanitarian principles
- serve as a **practical tool** (ROE, plan and conduct Ops in any domain)
- Why adopting a Manual?
  - From the Hague Rules (1923) on, technology in airspace and air warfare has evolved;
  - International Humanitarian Law (GCs, APs, other treaty law) doesn't always address air & missile Ops
  - New methods of warfare, such as airliner hijackings (9/11)



**DEFENCE**

# What is it not?

- Not a legally binding treaty or new law!
- Not an **official position** of Harvard University or the Program
- Not (necessarily) an official position of the contributing Governments or institutions.
- Although as extensive as possible, it **doesn't cover every possible scenario**: if not addressed, general principles apply.
- Not a 'Lex Ferenda'
- No attempt to conceal any blemishes or inadequacies
- Not Ius Ad Bellum



# ■ The drafting and adoption of the Manual (the Black-letter Rules)

- First meeting of Group of Experts: Jan 04 at HARVARD
- Plan of action: more than 20 topics to develop research papers
- Group of experts met several times, to examine the research papers and debate
- Draft Manual in BRUSSELS in Mar 06
- Discussed with approx. 25 States, leading to revision of the draft, and regional & bilateral meetings (participation to meetings does not mean approving the content of the Manual)
- Final text of the Black-letter Rules adopted in BERN at 15<sup>th</sup> May 09
- **Overall consensus** of the Group of Experts
  - No more than TWO participants disagreed
  - If no compromise: adoption of the majority view, with full exposure in Commentary



# ■ Commentary on the Black-letter Rules

- Each Rule is discussed in a commentary, a user-friendly explanation for LEGADs and the “Ops Officer”.
- The Rules represent the views of the Group of Experts, but the commentary is the sole responsibility of HPCR
- Different goals in the commentary, amongst which:
  - Cite treaties or case law (but no academic writings, can be found in the research papers);
  - Controversial issues not covered by the rules;
  - Give full expression to differing positions;
  - Add text to a rule that was removed by the Group of Experts to achieve consensus;
  - Indicate whether a rule is also applicable in a NIAC (entirely, not at all or in a different fashion).



## TABLE OF CONTENTS

<b>SECTION A: DEFINITIONS .....</b>	<b>1</b>
<i>Rule 1</i>	
<b>SECTION B: GENERAL FRAMEWORK.....</b>	<b>6</b>
<i>Rules 2–4</i>	
<b>SECTION C: WEAPONS.....</b>	<b>7</b>
<i>Rules 5–9</i>	
<b>SECTION D: ATTACKS.....</b>	<b>9</b>
<i>Rules 10–21</i>	
I. General rules	9
II. Specifics of air or missile operations	11
<b>SECTION E: MILITARY OBJECTIVES.....</b>	<b>12</b>
<i>Rules 22–27</i>	
I. General rules	12
II. Specifics of air or missile operations	13
<b>SECTION F: DIRECT PARTICIPATION IN HOSTILITIES.....</b>	<b>14</b>
<i>Rules 28–29</i>	
<b>SECTION G: PRECAUTIONS IN ATTACKS.....</b>	<b>16</b>
<i>Rules 30–41</i>	
I. General rules	16
II. Specifics of air or missile operations	17
III. Specifics of attacks directed at aircraft in the air	18
<b>SECTION H: PRECAUTIONS BY THE BELLIGERENT PARTY SUBJECT TO ATTACK.....</b>	<b>19</b>
<i>Rules 42–46</i>	
<b>SECTION I: PROTECTION OF CIVILIAN AIRCRAFT .....</b>	<b>20</b>
<i>Rules 47–57</i>	
I. General rules	20
II. Enemy civilian aircraft	21
III. Neutral civilian aircraft	21
IV. Safety in flight	21
<b>SECTION J: PROTECTION OF PARTICULAR TYPES OF AIRCRAFT .....</b>	<b>23</b>
<i>Rules 58–70</i>	
I. Civilian airliners	23
II. Aircraft granted safe conduct	24
III. Provisions common to civilian airliners and aircraft granted safe conduct	25

<b>SECTION K: SPECIFIC PROTECTION OF MEDICAL AND RELIGIOUS PERSONNEL, MEDICAL UNITS AND TRANSPORTS .....</b>	<b>26</b>
<i>Rules 71–74</i>	
<b>SECTION L: SPECIFIC PROTECTION OF MEDICAL AIRCRAFT .....</b>	<b>28</b>
<i>Rules 75–87</i>	
<b>SECTION M: SPECIFIC PROTECTION OF THE NATURAL ENVIRONMENT .....</b>	<b>32</b>
<i>Rules 88–89</i>	
I. General rule	32
II. Specifics of air or missile operations	32
<b>SECTION N: SPECIFIC PROTECTION OF OTHER PERSONS AND OBJECTS.....</b>	<b>32</b>
<i>Rules 90–99</i>	
I. Civil defence	32
II. Cultural property	33
III. Objects indispensable to the survival of the civilian population	35
IV. UN personnel	35
V. Protection by special agreement	36
<b>SECTION O: HUMANITARIAN AID .....</b>	<b>36</b>
<i>Rules 100–104</i>	
I. General rules	36
II. Specifics of air or missile operations	37
<b>SECTION P: “EXCLUSION ZONES” AND NO-FLY ZONES .....</b>	<b>37</b>
<i>Rules 105–110</i>	
I. General rules	37
II. “Exclusion zones” in international airspace	38
III. No-fly zones in belligerent airspace	39
<b>SECTION Q: DECEPTION, RUSES OF WAR AND PERFDY.....</b>	<b>39</b>
<i>Rules 111–117</i>	
I. General rules	39
II. Specifics of air or missile operations	40
<b>SECTION R: ESPIONAGE .....</b>	<b>42</b>
<i>Rules 118–124</i>	
I. General rules	42
II. Specifics of air or missile operations	42
<b>SECTION S: SURRENDER .....</b>	<b>43</b>
<i>Rules 125–131</i>	
I. General rules	43
II. Specifics of air or missile operations	43

# of the Manual

<b>SECTION T: PARACHUTISTS FROM AN AIRCRAFT IN DISTRESS .....</b>	<b>44</b>
<i>Rules 132–133</i>	
<b>SECTION U: CONTRABAND, INTERCEPTION, INSPECTION AND CAPTURE.....</b>	<b>45</b>
<i>Rules 134–146</i>	
I. Enemy aircraft and goods on board on such aircraft	45
II. Neutral civilian aircraft	46
III. Safeguards	47
IV. Determination of enemy character	47
<b>SECTION V: AERIAL BLOCKADE.....</b>	<b>48</b>
<i>Rules 147–159</i>	
<b>SECTION W: COMBINED OPERATIONS .....</b>	<b>51</b>
<i>Rules 160–164</i>	
<b>SECTION X: NEUTRALITY .....</b>	<b>52</b>
<i>Rules 165–175</i>	
I. Scope of application	52
II. General rules	52
III. Specifics of air or missile operations	53



**DEFENCE**





**DEFENCE**

# ■ Questions