



## Military Manual on Laws of War

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### Introduction

Warfare has always been subject to certain principles and customs, and the law of war is rooted in the rules of ancient civilisation and religions. Historically, India has held a leadership position in the development of laws for its military and those who command them to ensure compliance with the obligations of the law of war. Kautilya's *Arthashastra*, dating back to 400 BC, contains principles and practices to be followed during the war. Kautilya's laws for the military were founded on the principle of humanity and the *Arthashastra* clearly recognises the distinction between military targets, which can be attacked, and non-military persons and objects which could not be attacked. The *Arthashastra* also provides a detailed description of the methods and means to be used in warfare. These provisions essentially resemble the modern manuals of the law of war. The *Mahabharata* and the laws of Manu also contain provisions that prohibit the killing of an adversary who is *hors de combat*, forbid the use of certain weapons such as poisoned or burning arrows, and regulate the protection of enemy property and prisoners of war.

India has the world's largest volunteer military. The armed forces have fought four major wars and since the last four decades, its army has been actively engaged in internal armed conflicts. It has also taken pro-active action in neutralising

non-state actors across the international borders. There have been number of incidents in which the members of the armed forces have been accused of serious violations of human rights during their employment in internal conflicts. However, till date there is no written manual on the law of war that specifies the duties and obligations of the members of the armed forces engaged in various armed conflict.

### The Need for a Manual

The armed forces of a nation are created to safeguard its boundaries against external aggression and maintain its integrity and sovereignty. Their primary purpose is to fight wars, if the need arises. A number of states have developed manuals on the law of war<sup>1</sup>, which are fundamentally consistent with the military doctrines which form the basis of effective combat operations.

The armed forces must have a written manual on the law of war because in the event of an armed conflict, their forces have to comply with a set of obligations and they need to be trained on these obligations in advance. This would be possible only if there was an appropriate structure in place. Also, the manual should not be confused with military 'doctrine' or military 'legal system'.

The necessity of a Manual is envisaged in Article 1 of the 1899 Hague Convention II, with respect to the laws and customs of war on land.

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The Convention makes it obligatory on a State Party to issue instructions [...] which shall be in conformity with the “regulations [...] attached to the present Convention”. The use of the word ‘instructions’ speaks of a direct commitment by the State Parties to act in a manner consistent with their treaty obligations, providing elaboration and explanation. The provision does not obligate the governments merely to reprint the texts of treaties that they have ratified.

The 1949 Geneva Conventions, to which India is a party, necessitates preparation of a law of war manual. According to the terms of Articles 48, 49, 128 and 145, which are common to the four Geneva Conventions of 1949, the State Parties must communicate to one another the official translations of the treaties and the laws and regulations they have adopted to ensure their implementation. The term ‘laws and regulations’ is to be understood in the broadest sense. It covers all legal instruments issued both by the executives and the legislative powers that have any bearing on the implementation of the treaties in question. The word ‘implementation’ covers all measures that must be taken — both wartime and peacetime — to ensure the rules of the law of war are fully respected.

India is a signatory to a number of international treaties relating to the regulations of means and methods of warfare. Prominent amongst these are the 1949 Geneva Conventions, 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1972 Biological Weapon Convention, 1976 ENMOD, all five Protocols of the 1980 Convention on Conventional Weapons, 1989 Convention on the Rights of Child and its Optional Protocol of 2000, and 1993 Chemical Weapon Convention. Signatories to the 1954 Hague Convention on the Protection of Cultural Property have an obligation to introduce in peacetime into their military regulations or instructions

such provisions as may ensure observance of the Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples. Under the Convention, the States are required to position specialist personnel within the armed forces to foster respect for cultural property and to cooperate with the civilian authorities responsible for safeguarding it.<sup>2</sup> There is a need to incorporate a brief text of these treaties in the manual for the law of war.

## Purpose of Military Manual

A manual of military law serves four important purposes. First, it reaffirms the commitment of the highest authorities of the armed forces or the government for respecting the law of war in general, *i.e.*, of all sources including treaty law, customary law and general principles, as well as accepted state practices. Second, it provides the information necessary for training armed forces

personnel and others who need to be familiar with relevant aspects of the law of war. Third, it serves as an example or a model for other states and their armed forces which have not yet adopted such a manual. Lastly, a manual advises members of the armed forces and civilians, who are involved in a decision-making process on issues relating to armed conflict, both during the preparation of military operations

or during the course of such operations.<sup>3</sup> In 2006, the Supreme Court of Israel, in a case of the legality of targeted killings of Palestinian militants by the Israel Defence Forces, specifically cited military manuals from the UK, France, the Netherlands, Australia, Italy, Canada, Germany and New Zealand, in addition to the US’s Air Force Manual as evidence for the customary nature of the prohibition of attacking civilians unless they were taking a direct part in hostilities.

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The government must ensure that both military personnel and civilians are familiar with the rules of the law of war and that the structure and administration is in place to ensure compliance with the law. India has also acquired semi-autonomous weapon systems (drones), which are being used by the armed forces. There is a strong possibility that lethal autonomous weapon systems with the capability to fire on their own initiative will also be used in the near future. A manual on the law of war can do away with the uncertainties associated with the uses of such weapons in war and internal security situations.

## Internal Armed Conflicts

The Indian Armed Forces, in particular the army, have been deployed in internal security situations since the last four decades. Internal conflicts are gaining importance and attention all over the world. Military analysts have tried to differentiate between low-intensity conflict, insurgency, militancy and operations other than war. However, these are really one and the same thing for a soldier who faces the situation on the ground. No military can draft rules of engagement (ROE) for different situations; therefore, a soldier deployed in such situations always faces a dilemma about the use of force.

The ROE are rules, issued by the competent authorities, to military forces and associated groups and forces that regulate the use of force and other activities. They assist in the delineation of the circumstances and limitations within which forces may be employed to achieve their objectives. ROE appear in a variety of forms in national military doctrines, including executive orders, operation orders, deployment orders, operation plans or standing directives. Whatever may be their form, they provide authorisation for and/ or limits on the use of force, the positioning and posturing of forces, and the employment of certain specific capabilities. The ROE also clarifies the use of force in specific conditions in self-defence. In some states ROE have the status of guidance, in others they may be lawful commands.

In India, the Manual of Military Law Vol I, revised by the Ministry of Defence in (2010), as well as the Regulations for the Army (1987) has certain guidelines which relates to the duties in the aid of civil power.<sup>4</sup> These guidelines essentially deal with the a temporary situation of maintenance of law and order in any part of the country, where the armed forces can be called in the aid of civil power under the provisions of the 1973 Criminal Procedure Code.<sup>5</sup> They do not relate to the deployment of the armed forces in anti-insurgency or low intensity armed conflicts within the country; where soldiers are required to take life-and-death decisions swiftly based on imperfect information and they need to do so in conformity with the law. Since a soldier could be subjected to penal action in the event of failure, he is entitled to know the standards by which he would be judged. There is an urgent need to come up with an authoritative restatement of the law governing these conflicts as the existing provisions contained in the Regulations for the Army and the Manual of Military Law are inadequate.

## UN Peacekeeping Operations

India is major contributor to the UN peacekeeping force. Important principles and rules of International Humanitarian Law (IHL) apply both in armed conflicts and peace operations alike, irrespective of whether or not peacekeepers are *in fact* engaged in an armed

conflict. According to the UN Secretary-General's Bulletin issued in 1999, "[...] the fundamental principles and rules of IHL set out in the bulletin are applicable to United Nations (UN) forces in situations of armed conflict, when they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions or in peacekeeping operations when the use of force is permitted in self-defence".<sup>6</sup> However, the Security Council resolutions may modify the applicable rules of IHL in an armed conflict (for example, during the occupation phase of the 2003 Iraq War). The military manual need to

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specifically state when IHL would be applicable during peacekeeping operations in which Indian armed forces are participating. At present, there is no international treaty on the law applicable to peacekeeping operations and the applicable customary international law is far from clear. Therefore, it is the government's duty to provide its armed forces with the necessary guidance on applicable law during deployment.

## Human Rights during Armed Conflict

Human rights are applicable at all times even in armed conflicts, by virtue of the fact that people are human and they always possess them. Though human rights treaties allow parties to derogate them in times of war, the 'hard-core' rights remain non-derogable. These are the right to life, the right against torture and other inhuman treatment, the right against slavery and retroactive criminal legislation or punishment. Recent human rights jurisprudence has stressed the importance of this, and the continued applicability of certain judicial guarantees that are essential in order to give effective protection to the 'hard-core' rights. The armed forces are an integral part of a democratic State and society. Their role is not merely to defend the State and its citizens against internal and external threats but also to protect and uphold the human rights and fundamental freedoms on which democratic societies are based. As representatives of the State, armed forces personnel are bound to respect human rights and the law of war in the exercise of their duties. It follows that they must be entitled to the same rights and protections as all other persons, subject to certain limitations imposed by military life.

We can expect armed forces personnel to be sensitive to the human rights of others only if we respect their human rights and make them feel

that they are a valued members of society, and if we protect them against misuse and oppression by the government or the by their commanders. When the members of the armed forces function in internal armed conflict they are required to integrate human rights into their day-to-day operations. They would be better prepared for this if they themselves operate in an environment in which these rights are protected. Contrary to the perceived conflict between human rights and combat effectiveness, respect for human rights actually serves to increase combat effectiveness. The members of the armed forces cannot be expected to respect human rights in their operations without their own rights being protected: these are two sides of the same coin. Thus, there is a need to educate military leadership on what human rights are and the protection they confer to an individual.

**The law of war manual is a 'politico-legal' document issued by the government to its armed forces and in which it describes its understanding and interpretation of the existing law. It is intended to serve as an important tool for operational guidance and training; therefore, it must have a combination of academic and military approaches.**

## Contents of Manual on Law of War

The law of war manual is a 'politico-legal' document issued by the government to its armed forces and in which it describes its understanding and interpretation of the existing law. It is intended to serve as an important tool for operational guidance and training; therefore, it must have a combination of academic and military approaches. It should be a joint service manual and must cover emerging areas, such as the deployment of armed forces in internal conflicts and UN peace operations. Some of the areas which could be covered in a law of war manual are as follows:

- The basic principles of international law, the law war and human rights law
- Application of law of war principles like distinction, military necessity, humanity, proportionality and honour
- Classification of armed conflicts and legal framework for each type of armed conflict, including special operations



- Fundamental guarantees during international and non-international armed conflict
- General obligations that apply to military operations during the conduct of hostilities, other than the rules on targeting
- The obligation to search, collect and care for victims of combat
- Feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks
- Rules on the use of the distinctive emblem of the medical service as well as other distinctive signs and symbols
- Civil defence
- The fundamentals legal rules of targeting decisions during an armed conflict, lawful targets and protected zones
- Prohibited means and methods of warfare during an armed conflict
- Detention and interment during an armed conflict
- Command responsibility
- The responsibility to respect and ensure respect for the law of armed conflict and enforcement mechanism
- The evacuation of captured persons and treatment of prisoners of war
- The protection of cultural property
- The development or acquisition of new weapons
- Deployment in UN peacekeeping operations
- Deployment of the armed forces in internal conflicts, the applicable law for the use of force, treatment of detainees and medical help
- The laws of war in air operations, special rules applicable for air operations and precautions in attack

- Maritime operations, means and methods of naval warfare, capture of enemy vessels and blockade
- The enforcement of law of war, grave violations of the Geneva Conventions of 1949 and penal action for violations

The manuals will not create new laws. It will restate or interpret the rules that already exist in the treaties to which the Government of India has ratified. More than 75 countries have manuals on the law of war for the effective functioning of their armed forces. The following is a brief description of such manuals issued by a few States:

- **Australia:** The Australian Chief of the Defence Force issued the manual, 'Law of Armed Conflict' ADDP 06.4 in 2006 for guidance to commanders for the planning and conducts of Australian Defence Forces (ADF) operations in armed conflict. The manual also specifies the responsibilities and obligations for ADF members. The Manual states, "It is essential that ADF commanders are aware of their legal duties and responsibilities under Law of Armed Conflict (LOAC) and that operational planning and the conduct of operations comply with LOAC".<sup>7</sup>
- **Canada:** The Canadian Law of Armed Conflict (LOAC), which is applicable at the operational and tactical levels, was issued in 2001 under the authority of the Chief of the Defence Staff. The manual is a complementary publication to the Code of Conduct for the armed forces personnel. The manual explains the basic principles and spirit of the LOAC which should be applied, as a minimum, by all members of the armed forces taking part in military operations. It covers the law related to the conduct of hostilities (Hague Law) and the protection of victims of armed conflict (Geneva Law). The manual does not apply to domestic law enforcement operations.
- **Germany:** In 1992, Germany published the Handbook of Humanitarian Law in Armed Conflicts, the first of its kind in the country. The handbook was written by

Dieter Fleck, a long-serving civilian lawyer with the Bundeswehr. Unlike manuals of other States, this handbook was not a national effort alone. It was the product of a joint effort involving government experts from eighteen States as well as other IHL experts such as those from the International Committee of Red Cross (ICRC) and the International Institute of Humanitarian Law (IIHL). The German handbook was, in reality, a statement of IHL as understood by the Federal Republic of Germany. In May 2013, it was replaced by the Law of Armed Conflict Manual, a joint service regulation applicable to all the services. This publication has been issued by the Federal Ministry of Defence. The text of the manual is based on important documents of international law.

- **The United Kingdom:**

In England, rules of conduct in war were issued during the reign of Richard II in the fourteenth century. By the seventeenth century, England had a full system of Articles of War regulating the behaviour of the armed forces in armed conflict.

The official Manual of Military Law, which contained the text of the Army Act 1881, was amended in 1914 to include a new chapter (Chapter XIV), on the law of war on land. Following the experience of the WW II and the various war crimes trials that took place afterwards, as well as the adoption of the Geneva Conventions of 1949, a new work devoted to the subject was published in 1958. This was Part III of the Manual of Military Law, sub-titled 'The Law of War on Land'. The UK adopted the Additional Protocols of 1977, which necessitated a new manual. 'The Joint Service Manual of the Law of Armed Conflict', a new common manual for all three Services---namely, the Royal Navy, the British Army and the Royal Air Force (RAF)---was published in 2004. It has been amended on a few occasions, the latest amendment being in 2014.<sup>8</sup>

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- **The United States:** The Instructions for the Government of Armies of the United States in the Field, commonly known as the Lieber Code or the General Order No. 100 was the first manual on the laws of war applicable for the US Army during the civil war. A similar code related to naval warfare titled "The Law and Usages of War at Sea: A Naval War Code" was approved by the US President in 1900. In 1914, the "Rules of Land Warfare" were issued by the US War Department. These were revised in 1940 as field manual FM 27-10, and were replaced by the US Army Field Manual in 1956.

In June 2015, the US issued an updated 'Law of War Manual'. This 1205-page manual, revised in 2016, represents the legal views of the US Department of Defence and prescribes legal conduct for service members in all branches during military operations.<sup>9</sup> In its opening paragraph, the Manual acknowledges that it is 'not a definitive explanation of all law of war issues', however, it 'seeks to address the law of war that is applicable to the United States, including treaties

to which the United States is a party, and applicable customary international law'. The purpose of the manual is to provide information to armed forces personnel responsible for implementing the law of war and executing military operations. It serves as a guide for military commanders, legal practitioners and other military and legal personnel, and focuses mainly on the principles of international law that govern the use of force in armed conflicts. The Manual addresses many modern operational realities. For example, the Manual speaks to an array of modern themes such as the use of human shields, the modern meaning of the commander's duty to take 'feasible measures' to eliminate human suffering and damage to protected property.<sup>10</sup> It provides an excellent, comprehensive and much-needed statement of the US Department of Defence's view of the law of war.<sup>11</sup>

- **New Zealand:** The New Zealand's Manual of Law of Armed Conflict (DM 69, Volume 4) is divided into 18 chapters and contains two unique features not found in other manuals. Chapter 17 of the Manual deals with prevention and punishment of breaches of law of armed conflict and other international crimes. Chapter 18 covers law of armed conflict training programme and legal advisors for commanders. NZDF commanders do not have authority to order reprisals of their own initiative.<sup>12</sup> Members of the NZDF are not to conduct reprisals against any person or object unless expressly ordered by CDF on the authority of the Minister of Defence. If faced with breaches of LOAC by the opposing force, the commander of a New Zealand force is to bring the matter to the attention of CDF without delay. The Manual provides that New Zealand courts have universal jurisdiction and can try any person including non-citizens, alleged to have committed crimes against humanity, genocide or war crimes.<sup>13</sup>

**Commanders at various hierarchical levels are responsible for ensuring that the forces under their command follow the law of war while participating in an armed conflict. The command or superior responsibility is a form of responsibility for acts of omission. A superior may be held criminally responsible where, despite his awareness of the crimes of subordinates, he culpably fails to fulfill his duties to prevent and punish these crimes.**

- **Denmark:** In 2014, the Danish Ministry of Defence for the first time issued a Military Manual on International Law relevant to Armed Forces in international operations.<sup>14</sup> The opening part of the Manual states, Denmark has deployed several military contingents that have taken on a variety of tasks under very different and often very difficult conditions. The Manual will provide a legal framework for planning the participation of the Danish Defence in international operations and, in particular, for preparing operational orders tailored to the specific international operation. The Manual offers a broad spectrum of specific instructions and directions that are useful

for the conduct of military operations and will serve as an important tool for planning staffs, commanders, and military legal advisers in Denmark and in the missions. The Manual will provide a platform for training of military and civilian personnel of the armed forces in the rules of international law during international military operations. The Manual is divided into 15 chapters and air operations are exclusively dealt under chapter 13. What makes the Danish manual especially interesting is that it does not only include obligations under international humanitarian law, but also obligations under human rights law. Thus, the manual makes giant strides compared to other military manuals on the acknowledgement of the importance of human rights in international operations. The manual draws especially on case law from the European Court of Human Rights.<sup>15</sup>

## Doctrine of Command Responsibility

The conduct of military hostilities and military operations is the responsibility of a commander. Holding a military commander responsible for the conduct of his subordinates in an armed conflict is not new in international law. Commanders at various hierarchical levels are responsible for ensuring that the forces under their command follow the law of war while participating in an armed conflict. The command or superior responsibility is a form of responsibility for acts of omission. A superior may be held criminally responsible where, despite his awareness of the crimes of subordinates, he culpably fails to fulfill his duties to prevent and punish these crimes. This doctrine may apply, in principle, to military commander at every level in the military hierarchy. The commission of a crime attributable to a subordinate is a pre-requisite for

the application of the doctrine. The following requirements have been identified as forming part of the doctrine of superior responsibility under customary international law:

- A relationship of superior-subordinate, linking the accused and those who committed the underlying offences at the time of the commission of the crime.
- The knowledge on the part of the superior that his subordinates have committed or taken a culpable part in the commission of a crime or are about to do so.
- The failure on the part of the superior to take necessary and reasonable measures to prevent or to punish those crimes.<sup>16</sup>

In addition, military commanders and other superiors are criminally responsible for serious human rights violations committed by subordinates pursuant to their orders both during international and non-international armed conflict. A subordinate cannot take a plea that he acted in pursuant to superior's order. In 1921, a German War Trial Court found the accused guilty of killing wounded and sick soldiers in life-boats during WW I and rejected the plea that they acted in accordance with the superior's order, stating that the plea was inadmissible if the orders were known to be against the law.<sup>17</sup>

The Indian Army Act 1950 states that a subordinate is not bound to obey the illegal orders of his superiors. However, the doctrine on superior responsibility is missing in the Indian military legal system<sup>18</sup>, though several international criminal statutes and military legal systems have codified the doctrine. The doctrine has been recognised within the United States military since the aftermath of the Second World War. Under Article 77 of the Uniform Code of Military Justice, any military leader that 'counsels, commands, or procures' the commission of a crime is punishable as if he committed the crime

himself. The Australian military manual provides, 'the commander will be held responsible if he: (i) knows subordinates are going to commit war crimes and does not prevent them, or (ii) knows subordinates have committed war crimes and does not punish them'. Likewise, the Canadian Manual on the Law of Armed Conflict states that 'superiors are guilty of an offence if they knew, or had information which should have enabled them to conclude, in the given circumstances ruling at the time, that the subordinate was committing or about to commit a breach of law of armed conflict and they did not take all feasible measures within their power to prevent or repress the breach'.

A military commander must believe in the law and demonstrate by his actions. He must be trained to know the law and his responsibilities within it. Setting a bad example or giving unclear and

ambiguous orders has caused problems in the past and has been principal cause of grave breaches of the law.<sup>19</sup> The Geneva Conventions of 1949 also lay down that during an armed conflict; the State Parties are obliged to maintain discipline, law and order at all times. They also have a responsibility to monitor the conduct of the members of its armed forces;

and in case of any breach, the violators are to be prosecuted before military or civil courts of the State.<sup>20</sup> There is a need to evaluate and incorporate the doctrine of command responsibility into the future manual on the law of war in our country.

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## Likely Objections from the Armed Forces

In India, the military leadership adapts a safer approach, claiming that ours is a time tested system. They prefer to remain ignorant about advancements in the field of laws relating to the armed forces. India is a signatory to the 1949 Geneva Conventions; a treaty which the Government has ratified in 1960 and its violation would amount to a war crime in international law.<sup>21</sup> Over the past two decade the Indian



military have faced a foe of a different kind: a large number of cases have been brought against the military in the courts which could dent military efficiency. Many of the legal challenges come from so called human rights activists or organisations.

The Indian Armed Forces may take the position that a military manual is unnecessary because its nature is such that it would be far too general to give guidance during an operation. While this is true when it comes to operational questions that are better answered in ROE, such a stance would underestimate the intrinsic value of military manuals. Military manuals are a unique opportunity for States to clarify their understanding of international treaty and customary laws applicable to military operations. Military manuals are designed to describe legal and policy rules applicable in armed conflicts; both international and internal. The international rules of law of war and human rights are phrased in a manner that is too general to be of practical use and a manual could help bring clarity to their content. For instance, fundamental principles of distinction, military necessity, proportionality and avoidance of unnecessary suffering provide the foundation for the rules applicable in both, during non-international and international armed conflicts. Manual would benefit both the armed forces and the members of the civil society and contribute to the progressive development of the law of war. The absence of a manual may lead to absence of a clear and considered instruction on potentially crucial matter.<sup>22</sup>

The development and publication of the law of war manual require a thorough research and will not be an easy process, particularly so when relatively new technologies and weapons such as cyber, drones, and missiles are involved, which are subject of few international treaties. The manual must be written in a simple language so that it can be understood by the junior officers and applied in operational situation. The manual must not contain technical terms and jargon to

enable those without military or legal training to understand it. The provisions of international treaties to which India is a party must be briefly included in the manual. Further, military manual must not be classified and should be available in public domain for future scrutiny and development.<sup>23</sup>

The types of adversaries and operational environments in that the Indian armed forces may face in the future is likely increase the difficulty of distinguishing between combatants and civilians and limiting collateral damage. The military personnel may have to wear cameras during certain combat operations to deter misconduct and provide a record that can be used to dispute adversary accusations of law of

violations of law of war. In addition, the armed forces need to comply with own national laws. Certain, military options, available under both international and national law, may not comply with national policy intent with respect to a specific operation. For example,

under certain circumstances, the government may allow permissible levels of incidental injury or collateral damage to levels that are less than those required under law of war, while others may not allow their military to conduct law enforcement activities. The law of war treaties and the customary law of war are understood to regulate the conduct of hostilities, regardless of where they are conducted, which would include the conduct of hostilities in outer space. A well drafted manual would clarify the stand of the government and provide freedom of operations to military commander.

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## Conclusion

Today, both domestic and international law, play an increasingly important part in the activities of the armed forces. The law of war is a part of the world's military heritage and the members of the armed forces are bound to obey it. There need not be any conflict between the law of war and military doctrines that form the basis for effective

combat operations. To prevent violations, the law must become an integral part of operations. Unlike the US, the UK, Australia, Germany and Canada, India has no written manual on the laws of war. The conduct of military operations is governed by international law, including the law of war, applicable international human rights law, and the UN Charter. States and individuals are obliged to comply with law of war. All States are obliged to train their forces to comply with law of war and with other provisions of international law that impact upon military

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operations. Civilians and military personnel responsible for implementing the law of war should be informed about the applicable rules. The national military manuals serve two main functions: they are an instrument for disseminating the laws of war and for expressing a nation understands of its legal obligations. Even wars have rules, and those rules must be disseminated. It is high time that a committee consisting of experts in international law and military law was appointed by the government to draft a manual on the law of war, applicable to the international and internal armed conflicts in India.

#### End Notes

- 1 The law of war is a set of rules which limit the effects of an armed conflict. It is not a single law but rather a collection of international treaties and customary international law having a profound influence on the conduct of warfare. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. The law of war is also known as international humanitarian law (IHL) or the law of armed conflict (LOAC).
- 2 Article 7, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954.
- 3 Gasser Hans-Petter, 'Military Manuals, Legal Advisers and the First Additional Protocol of 1977', in Nobuo Hayashi (ed), *National Military Manuals on the Law of Armed Conflict*, (Forum for International Criminal and Humanitarian Law, 2010) pp. 55-63.
- 4 These provisions are contained in Chapter VII (paragraphs 1-14) of the 2010 Manual of Military Law Vol I, and in Chapter VII (paragraphs 301-307) of the 1987 Regulations for the Army (Vol. I). In addition, the Supreme Court of India has approved a list of do's and don'ts to be observed while acting under the Armed Forces (Special Powers) Act.
- 5 Section 130 of the 1973 Criminal Procedure Code provides that in any unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate may cause it to be dispersed by the armed forces. Such Magistrate may require any officer in command of force to disperse the assembly and to arrest and confine such persons forming part of it to have them punished according to law. Every such officer of the armed forces is to obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.
- 6 Observance by United Nations forces of International Humanitarian Law, United Nations, Secretary General's Bulletin, ST/SGB/1999/13, August 6, 1999.
- 7 The Australian Manual states that the main purposes of the LOAC, which is part of international law, are to protect combatants and non-combatants from unnecessary suffering; to safeguard certain fundamental rights of persons who fall into the hands of an enemy, such as prisoners of war, the sick and civilians; to maintain the distinction between combatants and non-combatants; and to facilitate the restoration of peace. The Manual is divided into 13 chapters: Introduction and Historical Background; Principles of the Law of Armed Conflict; Application of the Law of Armed Conflict; Weapons; Targeting; Maritime Operations and the Law of Armed Conflict; Land Operations and the Law of Armed Conflict; Air Operations; Protected persons and objects; Prisoners of War and Detained Persons; Rights and Duties of neutrals; Occupation; and Compliance.

- 8 This Manual is a reference work for members of the United Kingdom's Armed Forces and officials within the Ministry of Defence and other departments of Her Majesty's Government. It is intended to enable all concerned to apply the law of armed conflict when conducting operations and when training or planning for them. The Manual contains 16 chapters: Historical and General Background; Basic Principles of the Law of Armed Conflict; The Applicability of the Law of Armed Conflict; The Armed Forces of the Belligerents; The Conduct of Hostilities; Weapons; The Wounded, Sick, and Dead and Medical Services; Prisoners of War; Protection of Civilians in the Hands of a Party to the Conflict; Negotiations Between Belligerents; Occupied Territory; Air Operations; Maritime Warfare; Application of the Law of Armed Conflict During Peace Support Operations; Internal Armed Conflict; and Chapter Enforcement of the Law of Armed Conflict.
- 9 The Law of Armed Conflict (LOAC) as applied by the US military is based on several international treaties, such as the 1949 Geneva Conventions; customary international law; and numerous domestic laws, regulations, and interpretations, such as US Army Field Manual 27-10. While the Manual may not be a forward-looking document, it is likely to be a tremendously helpful reference for both commanders and scholars seeking to become familiar with current US Department of Defence interpretations and implementations of the or IHL. Frederick Bryan and Jhonson David E., the Continued Evolution of US Law of Armed Conflict Implementation: Implications for the US Military, (RAND Corporation, 2015), p. 135.
- 10 Newton Michael A. (ed), *The United States Department of Defence: Law of War Manual, Commentary and Critique*, (Cambridge: Cambridge University Press, 2018) p. 4.
- 11 Dunlap Charles J., the DoD Law of War Manual and its Critics: Some Observations, *International Law Studies* (Vol. 92, 2016), pp. 85-119.
- 12 A reprisal is an action taken by a party to conflict, which would otherwise be unlawful, for the purpose of forcing an opposing party to comply with law of war. To be justified, a reprisal must be preceded by a breach of law of war by the other party. Reprisals are not a means of punishment or arbitrary vengeance but are rather a means of coercion which can be applied only when other methods of encouraging or requiring an opposing force to comply with law of war has failed. The power is essentially limited to attacks on persons and objects that were already lawful targets.
- 13 Para 17.3.7, The New Zealand's Manual of Law of Armed Conflict.
- 14 The Military Manual was produced on the basis of the 2010-2014 Defence Agreement in which the Parties to Agreement decided that Denmark, like many other States should have a military manual. The manual was produced by a task force established in 2012 under the auspices of the joint Operations Staff at Defence Command Denmark.
- 15 Luna Mariager, The Danish Military Law Manual: Applying a Human Security Approach, (Unpublished Master Thesis, 2018), p. 124.
- 16 Guenael Mettraux, The doctrine of superior/command responsibility, available at: <http://www.peaceandjusticeinitiative.org/implementation-resources/command-responsibility>, accessed on 03 July 2022; Also see: Parks, W., Command Responsibility for War Crimes, (*Military Law Review*, 62: 1973) p.1.
- 17 For more details on the subject see: Mark J. Osiel, Obeying Orders: Atrocity, Military Discipline, and the Law of War, (*California Law Review*, 86: 1998), p. 939.
- 18 There is only one provision under the Army Act, 1950. Section 64(a) of the Act provides that a person: "being in command at any post or on the march, and receiving a complaint that anyone under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority;" shall, on conviction by court-martial, be liable to suffer imprisonment up to seven years.
- 19 For more details, see: Roberts David Lloyds, Teaching the Law of Armed Conflicts to Armed Forces: Personal Reflections, *International Law Studies*, (82: 2006), pp. 121-134.
- 20 Common Articles 49/I, 50/II, 129/III and 150/IV of the Geneva Conventions of 1949.
- 21 The Geneva Conventions Act, 1960: An Act to enable effect to be given to certain international Conventions done at Geneva on the twelfth day of August, 1949, to which Indian is a party, and for purposes connected therewith.

- 22 In June 2022, the Nagaland police has charged 30 soldiers in connection with a botched army operation in the Oting-Tiru area of Mon district of Nagaland, which killed 13 civilians. Probe revealed that the ops team of 21 Para Special Forces had not followed Standard Operating Procedure (SOP) and the rules of engagement. Their disproportional firing led to immediate killing of villagers on 4 December 2021.
- 23 For more details, see: Handbook on International Rules Governing Military Operations, (Geneva: International Committee of the Red Cross, 2013), pp. 459.

#### About the Author



**Wing Commander Umesh Chandra Jha (Retd)** has extensive field and academic experience in international law, human rights law and military law. He was awarded PhD in Law and Governance by Jawaharlal Nehru University in 2007. His work comprises 29 books and over 125 articles published in various journals and newspapers.

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