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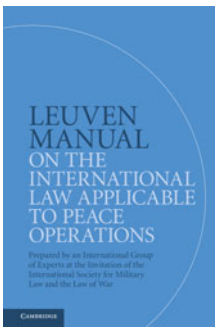
BOOK REVIEW




# Leuven Manual on the International Law Applicable to Peace Operations

**Terry D. Gill, Dieter Fleck, William H. Boothby and Alfons Vanheusden (eds)***

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The *Leuven Manual on the International Law Applicable to Peace Operations* (Leuven Manual) belongs to the class of publications that deserve a prominent place in every bookshelf on peace operations and public international law. The Leuven Manual provides a restatement of all international norms applicable to peace operations,[1] thereby filling a gap in a field where political priorities and situational specificities hinder a comprehensive legal regulation. Its systematic analysis of the applicable international law responds to pressing calls by practitioners, policy-makers and academics, and will serve as an indispensable tool for better decision-making in future operations.

* Published by Cambridge University Press, Cambridge, 2017.

The book is solid and balanced, relying on robust research and an editorial process that involved input from many stakeholders. Prepared at the initiative of the International Society for Military Law and the Law of War, the Leuven Manual is the result of scrupulous research and drafting extended over six years. Terry D. Gill, Dieter Fleck, William H. Boothby and Alfons Vanheusden were general editors, supported by an international Group of Experts who jointly worked on the entire text, with the input of observers from the International Committee of the Red Cross (ICRC), the United Nations (UN) and several regional organizations.[2] The final version was adopted by consensus, which gives the work a high level of authoritativeness. This methodology was certainly necessary for the achievement of a proper restatement of the norms. Also, this was the most suitable approach for dealing with the bulk of difficult legal questions related to an area of law which, in addition to lacking any codification, has developed and continues to operate as the result of political compromise between respect for national sovereignty and maintenance of international peace and security.[3]

The Leuven Manual's main text is composed of 145 black-letter rules, each supported by an accompanying commentary. These rules comprise both existing law and best practices, sometimes blended in the same rule, but phrased so as to reflect the difference between legal obligations ("must", "shall", "have to") and policy recommendations ("should"). The book is intended to be of assistance to those involved in the research, planning and conduct of operations. The audience thus includes national and intergovernmental policy-makers, military officers, policy officers in non-governmental organizations, and the academic community. The scope of the Manual, including its take on peace operations, is defined by its reaffirmation of the continuing validity of the principles comprising the "trinity of virtues": consent of the parties, impartiality and limited use of force.[4] Based on this framework, the Manual covers "consensual" peace operations. It does not cover "enforcement operations" (operations directed against a State and based on a UN Security Council resolution under Chapter VII of the UN Charter) or "peace enforcement operations" (operations mandated to participate as a party to a non-international armed conflict (NIAC) on the side of the government against

1 The Leuven Manual, and this book review, refer to "peace operations" as including both peacekeeping missions and peacebuilding and conflict resolution operations. This choice reflects current United Nations (UN) terminology. On 1 January 2019, the UN Department of Peace Operations (DPO) replaced the Department of Peacekeeping Operations (DPKO). The new DPO combines the functions of the former DPKO with responsibility over field-based political missions previously under the purview of the Department of Political Affairs. See *Restructuring of the United Nations Peace and Security Pillar: Report of the Secretary-General*, UN Doc. A/72/525, 13 October 2017, para. 20 (approved by UNGA Res. 72/262 C, 5 July 2018), available at: www.un.org/en/ga/search/view_doc.asp?symbol=A/72/525 (all internet references were accessed in March 2019).

2 The composition of the Group of Experts and Observers and of the Advisory Board can be consulted at the beginning of the book: Leuven Manual, p. ix.

3 Chapter 2 of the Leuven Manual presents a short history of the law of peace operations: Leuven Manual, pp. 6–24. For an extensive account of political and legal theories on peace operations, see Alex J. Bellamy, Paul D. Williams and Stuart Griffin, *Understanding Peacekeeping*, 2nd ed., Polity Press, Cambridge, 2010, pp. 18–41.

4 Leuven Manual, p. 3.

one or several armed groups).[5] This choice is appropriate since enforcement and peace enforcement operations remain the exception despite the increasing robustness of peace operations' mandates.[6] Yet, consensual peace operations for the purposes of the Leuven Manual are not limited to traditional peacekeeping, but extend to multi-dimensional operations tasked with peacebuilding and conflict resolution mandates. The rules apply to missions conducted by the UN as well as regional organizations and other arrangements. They aim to cover all relevant stages of the planning and conduct of an operation.

The Leuven Manual addresses all aspects of peace operations, from the mandate to specific legal issues related to the conduct of a mission. The chapters on the applicability of international human rights law (IHRL)[7] and international humanitarian law (IHL),[8] the responsibility of States and international organizations,[9] and the individual criminal liability of peace forces' members[10] are among the most complete overviews in the academic literature. Besides presenting the many settled aspects concerning the sources, scope and consequences of relevant international norms, these chapters do not hesitate to engage with unsettled questions and provide policy guidance. In this sense, they stand out for their ability to strike a balance between advocacy for a higher respect for the rule of law in peace operations, on the one hand, and the current practice of States and international organizations, which occasionally are still reluctant to acknowledge the full application of relevant norms, on the other. An extensive analysis is dedicated to the institutional frameworks of regional and sub-regional organizations conducting peace operations.[11] The chapter on the implementation of a gender perspective will hopefully be adopted as a point of reference to ensure compliance with recognized legal obligations and successful practices fostering the mainstreaming of gender issues throughout the entire life-cycle of an operation.[12]

5 The distinction between "peace operations", "enforcement operations" and "peace enforcement operations" is today a conventional one. See Terry D. Gill, Dieter Fleck, Patrick C. Cammaert and Ben F. Klappe, "Peace Operations", in Terry D. Gill and Dieter Fleck (eds), *The Handbook of the International Law of Military Operations*, 2nd ed., Oxford University Press, Oxford, 2015, p. 153; Trevor Findlay, *The Use of Force in UN Peace Operations*, Oxford University Press, Oxford, 2002, pp. 3–7.

6 There have been only two uncontroversial examples of enforcement operations (in Korea from 1950 to 1953 and Operation Desert Storm against the Iraqi invasion of Kuwait in 1991) and a few more cases of peace enforcement operations. The latter include the mandate of the UN Operation in the Congo between 1961 and 1963, and, more recently, the Force Intervention Brigade of the UN Stabilization Mission in the Democratic Republic of the Congo since 2013. It is still disputed whether the robust mandate attributed to the UN Multidimensional Integrated Stabilization Mission in Mali qualifies as peace enforcement. Examples of non-UN peace enforcement operations are the International Security Assistance Force in Afghanistan and the Kosovo Force, both led by NATO. See T. Findlay, above note 5, pp. 374–381; T. D. Gill *et al.*, above note 5, pp. 96–97.

7 Leuven Manual, pp. 76–90.

8 *Ibid.*, pp. 91–104.

9 *Ibid.*, pp. 267–287.

10 *Ibid.*, pp. 311–327.

11 *Ibid.*, pp. 52–75.

12 *Ibid.*, pp. 105–119.

The Leuven Manual does not have any major flaws in its legal findings. A limited number of issues, however, deserve closer scrutiny because of their considerable practical relevance for the establishment and conduct of peace operations. The following paragraphs of this review will selectively focus on some of them.

Rule 1.1, recalling the three principles of peace operations, should be read – and its commentary should eventually be reformulated – so as to reflect the distinction between the legal obligation for host State consent and the Manual's policy recommendation to seek the consent of all major parties to the conflict before deployment. The rule defines the first of the three principles of peace operations as "consent of the parties". The accompanying commentary explains that consensual peace operations "rely on consent of the Host State and at the outset also on the consent, or at least acquiescence, of all major parties to the former conflict".[13] However, this does not reflect existing law. Under *jus ad bellum*, military operations deployed abroad, absent Chapter VII authorization or self-defence justification, need only the consent of the host State to avoid violating its territorial integrity. The consent of other parties to an ongoing conflict is not a legal requirement to the extent that their territorial integrity is not at stake. This also applies for peace operations, both when deployed in or after an international armed conflict (IAC) and when deployed in or after a NIAC. In IACs, the mission is bound to operate on the territory of the States party to the conflict having consented to the mission. In NIACs, the prohibition against violation of territorial integrity does not affect non-State actors. The distinction, drawn by Christine Gray, between "the legal requirement of host-state consent and the practical requirement of cooperation from all significant parties involved"[14] is decisive and reaffirmed by other legal literature.[15] It does not deny the relevance of gaining the consent of the other parties to the conflict. As explained by Terry D. Gill and Dieter Fleck, "[*i*]*n addition* to the legal requirement of Host State consent, Peace Operations are *also* dependent upon the consent, or at the least acquiescence, of all the parties to the conflict or dispute, *in order to function and carry out their mandate*".[16] Accordingly, acceptance of a peace operation by all parties concerned remains a crucial condition to ensure success of the mission and the safety of its members but is not a requirement enshrined in law.

Similarly, the Leuven Manual is ambiguous when requiring a Security Council mandate for all non-UN operations using force beyond self-defence, even when they rely on the invitation or consent of the host State.[17] Rule 3.1 correctly

13 *Ibid*., p. 3.

14 Christine Gray, "Host-State Consent and United Nations Peacekeeping in Yugoslavia", *Duke Journal of Comparative & International Law*, Vol. 7, No. 1, 1996, p. 242.

15 See, among others, Alexander Orakhelashvili, *Collective Security*, Oxford University Press, Oxford, 2011, p. 315; Patryk I. Labuda, "Peacekeeping and Peace Enforcement", *Max Planck Encyclopedia of Public International Law*, September 2015, para. 21.

16 T. D. Gill *et al.*, above note 5, p. 154 (emphasis added).

17 As clarified above in the text, this would be the case for all non-UN operations covered by the Leuven Manual, whose scope of application is limited to consensual peace operations.

presents the mandate of an international organization and the consent of the host State as alternative rather than cumulative requirements. Rule 3.3 states further that "a mandate issued by the Security Council will complement and provide an *additional legal basis* alongside such consent".[18] Nevertheless, according to the commentary to Rule 3.1, in case of peace operations conducted by regional organizations or other arrangements, a Security Council mandate will not be sought "when the operation does not involve the proposed use of force beyond personal self-defence".[19] This latter sentence seems to place an unjustified limit on non-UN peace operations as it conflicts with the host State's sovereign right to regulate the use of force on its territory by foreign troops. The host State can consent to the use of force by peace operations beyond personal self-defence, such as in defence of the mandate or to protect civilians. The consent of the host State also constitutes a sufficient legal basis for such use of force in the absence of a Security Council mandate. As clarified by Eric P. J. Myjer and Nigel D. White:

> Without any UN authority a NATO or other regional organization peace support operation with a coercive protection mandate will be in conflict with the UN Charter provisions, but if force is used against spoilers and not the government then the prohibition on the use of force in Article 2(4) arguably is not being violated, since the use of force is not directed against the State.[20]

The commentary to Rule 3.1 instead introduces an unnecessary burden to establishing non-UN peace operations.

Three additional issues strictly related to the application of IHL in the Leuven Manual are worth highlighting. To begin with, there appears to be no reason why the Manual should exclude from its scope of application peace operations deployed in IACs without taking part in the conflict. Surely, peace operations considered in the Leuven Manual can never become party to an IAC because this would turn the mission into an enforcement operation, falling outside the scope of the book. Rule 6.2 seems to stem from this logic when it maintains that "Peace Operations which are the subject of this Manual are operations deployed to situations of non-international armed conflict".[21] Yet the formulation used is misleading: peace operations can be deployed to situations of IAC and still remain consensual, provided they rely on the consent of the State on whose territory they are stationed. Going between warring States is notably the traditional peacekeeping function. Chapter 6 should therefore differentiate between deployment and participation in an IAC, and only exclude the latter.

Furthermore, the Manual associates the right to use force in personal self-defence with the right to use force in defence of others in Rule 12.3, though these two rights are based on different rationales. Their conflation risks hiding the different consequences that their exercise entails in terms of direct participation in

18 Leuven Manual, p. 29 (emphasis added).
19 *Ibid*., p. 27.
20 Eric P. J. Myjer and Nigel D. White, "Peace Operations Conducted by Regional Organizations and Arrangements", in T. D. Gill and D. Fleck (eds), above note 5, p. 197.
21 Leuven Manual, p. 93.

hostilities.[22] Members of a peace force are considered civilians for the purposes of IHL, and civilians do not directly participate in hostilities if they use force in defence of themselves or others against violence prohibited under IHL.[23] While every attack directed against a civilian is prohibited under IHL,[24] and therefore the use of force in personal self-defence against such an attack does not amount to direct participation in hostilities, attacks against others are not necessarily unlawful. Thus, the use of force in defence of others might result in direct participation in hostilities and provoke the loss of protected status. The same applies for the protection of property, covered by Rule 12.4. Accordingly, members of a peace force directly participate in hostilities each time they use force for one of the following purposes related to the defence of others:[25] defence of another member of the peace operation who is directly participating in hostilities; defence of a member or the property of the military component of a peace operation which has become a party to an armed conflict (provided they are not already members of the military component); and defence of a member or the property of a State armed force with which the peace force is cooperating. Since all the described attacks are directed against lawful targets, they cannot be repulsed without losing protected status and therefore becoming legally targetable.[26] Moreover, when mandated to use force for the mentioned purposes on a regular basis, peace forces even risk becoming a party to the conflict, realizing the fear of most troop-contributing countries that they will be drawn towards enforcement action.[27] Given the very significant relevance of this consequence, the Manual should draw the attention of the readers more explicitly to these implications.

There is also a lack of clarity concerning the temporal scope of application of IHL to the military contingents of a peace operation that has become party to a conflict. Rule 6.4 recognizes that the conditions for the application of IHL to peace operations can be met not only by individual members of a peace force directly participating in hostilities, but also when the entire military component of an operation becomes a party to the conflict.[28] This statement is a decisive step forward regarding the law applicable to peace operations, with impact on the status of members of the military contingents involved. When IHL applies to the operation, they can be the object of attack at all times, as acknowledged by the accompanying commentary. Yet the Leuven Manual blurs

22 *Ibid*., p. 147.
23 This is because these actions lack the necessary belligerent nexus. See Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, p. 61.
24 Unless he or she is directly participating in hostilities.
25 Provided that notably the requirement of belligerent nexus is fulfilled.
26 In order to determine whether an attack is unlawful for the purposes of direct participation in hostilities, what must be taken into consideration is the nature of the target, not the nature of the attacker or the means used. For an extensive argumentation, see Lindsay Cameron and Vincent Chetail, *Privatising War*, Cambridge University Press, Cambridge, 2013, pp. 464–476.
27 It is noteworthy that this should not concern the active protection of civilians.
28 Leuven Manual, p. 98.

this conclusion by providing in the same rule that members of the military component lose their protection "if and for such time as the operation has become a party to the conflict", a formula which is traditionally used to limit the temporal scope of loss of protection of individual civilians directly participating in hostilities.

With regard to the application of IHL to the military contingents of a peace operation, the Leuven Manual takes a similar approach to the UN Secretary-General's 1999 Bulletin, which recognizes the application of IHL to UN forces engaged in a conflict as combatants only "to the extent and for the duration of their engagement".[29] However, as explained by Tristan Ferraro, the Bulletin's approach conflates the temporary and activity-based loss of protection by civilians with the continuous and status-based loss of protection of combatants.[30] The result for peacekeepers would be "an illogical disparity between them and their opponents and would give an operational advantage to the multinational forces, because the opposing party in the armed conflict would continue to be subject to lawful direct attack at any time."[31] The Leuven Manual misses the chance to rule out this disparity by excluding the notion that peace operations' contingents can begin and end their participation in an armed conflict on their own terms by merely deciding to engage in and disengage from hostilities. This option creates a revolving-door mechanism for entire contingents. Taking a stance in this debate would have contributed to settling one of the thorniest practical issues associated with the application of IHL to peace forces.

With these considerations in mind, the ambitious objectives of the Leuven Manual can be considered altogether met. To date, there is no other contribution that has taken up the challenge of collecting, analyzing and restating the entire body of law applicable to peace operations.[32] The Manual has therefore at least as much merit as comparable projects realized in other areas of international law, notably the San Remo Manuals,[33] the HPCR Manual[34] and the Tallinn Manual.[35] The choice to supplement the restatement of existing law with best practices in the form of policy recommendations goes even beyond the book's main purpose

29 "Observance by United Nations Forces of International Humanitarian Law", Secretary-General's Bulletin, UN Doc. ST/SGB/1999/13, 6 August 1999, Section 1.1, available at https://conduct.unmissions.org/secretary-general%E2%80%99s-bulletin-observance-united-nations-forces-international-humanitarian-law.

30 Tristan Ferraro, "The Applicability and Application of International Humanitarian Law to Multinational Forces", *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013, p. 605.

31 Leuven Manual, p. 606.

32 The Manual does not cover the protection of personal data. This topic has been discussed at the international conference convened in Dublin by the International Society for Military Law and the Law of War, from 14 to 17 November 2018.

33 Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge University Press, Cambridge, 1995; Michael N. Schmitt, Charles H. B. Garraway and Yoram Dinstein, *The Manual on the Law of Non-International Armed Conflict*, International Institute of Humanitarian Law, Sanremo, 2006.

34 Program on Humanitarian Policy and Conflict Research at Harvard University, *HPCR Manual on International Law Applicable to Air and Missile Warfare*, 2009.

35 Michael N. Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare*, Cambridge University Press, Cambridge, 2013.

and will hopefully contribute to the settling and development of law by practice. Certainly, this process would be bolstered if States decide to endorse the Leuven Manual, or at least parts of it. To reach that aim, the involvement in a future revision process of relevant countries, including the top troop-contributing countries and financial-contributing countries, would be highly beneficial. Twenty years after the publication of the UN Secretary-General's Bulletin and ten years after the adoption of the Capstone Doctrine,[36] the adoption of the Leuven Manual as the leading guidance for the conduct of UN missions would also represent a great step forward.

As shown by Lise Morjé Howard, one key factor for successful peace operations is their capacity to learn from the environment in which they are deployed.[37] The Leuven Manual allows for a better understanding of the legal environment of operations, and as such, it will enable better decision-making and become an irreplaceable support for the success of peace operations.

36 *United Nations Peacekeeping Operations: Principles and Guidelines* (Capstone Doctrine), 18 January 2008, available at www.un.org/ruleoflaw/files/Capstone_Doctrine_ENG.pdf.

37 Lise Morjé Howard, *UN Peacekeeping in Civil Wars*, Cambridge University Press, Cambridge, 2008.