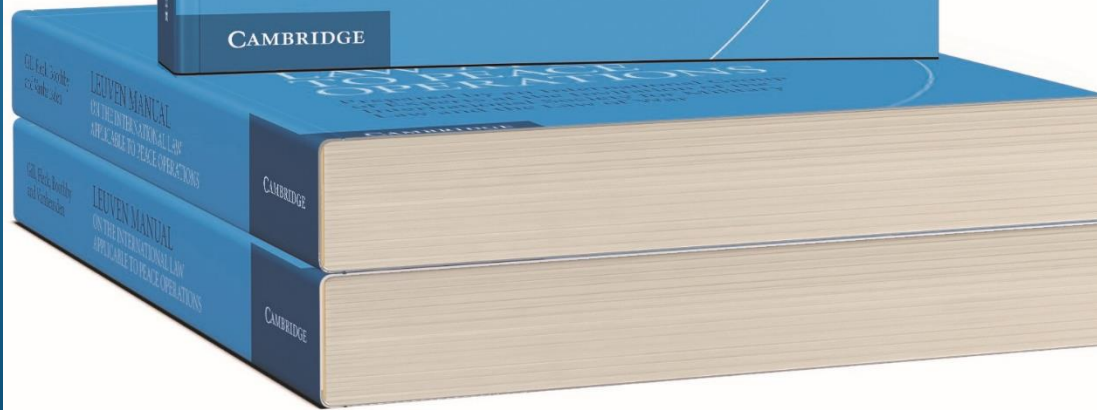


LEUVEN MANUAL ON THE INTERNATIONAL LAW APPLICABLE TO PEACE OPERATIONS

Prepared by an International Group
of Experts at the Invitation of the
International Society for Military
Law and the Law of War

CAMBRIDGE



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“Consensual” Peace Operations

- Traditional peacekeeping
- Multi-dimensional Peace Operations

Based on three bedrock principles:

- Consent
- Impartiality
- Limited use of force

Black letter rules & accompanying commentary

- Rules reflecting legal obligations
- Best practice rules
- Consensus of the participating experts



Advisory Board

- Professor Fausto Pocar, President of the San Remo International Institute of Humanitarian Law
- Mr. Dirk Dubois, Director of the European Security and Defence College
- LtGen (ret.) Abhijit Guha, India, Member of the United Nations' Independent High-level Panel on Peace Operations (HIPPO)

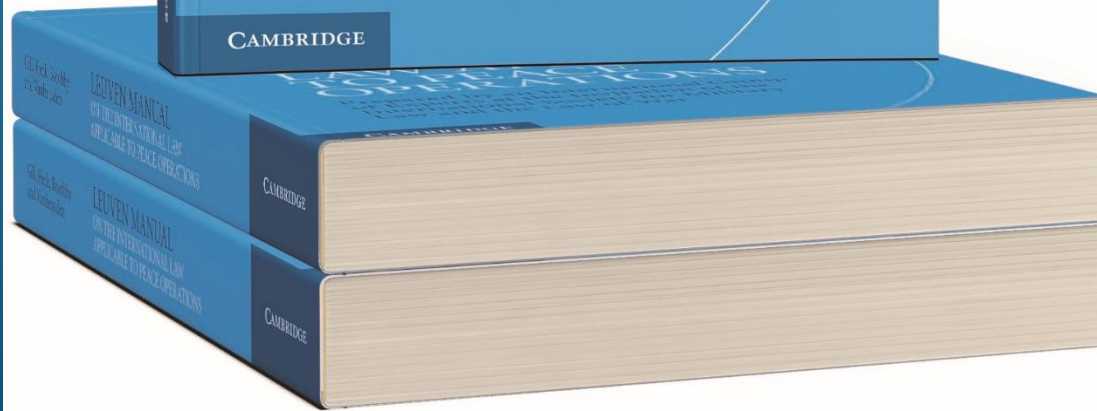




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Protection of Civilians

- [HIPPO Report 2015
- Right to life, principle of distinction and the prohibition of ill treatment and torture
- Primary obligation of the Host State
- Rule 1.8 of the UN Master List of Numbered ROE
- POC Mandate vs no POC Mandate]
- *Ius ad bellum vs. IHRL & IHL*

Protection of personal data

- Modernized Convention 108 Council of Europe
- GDPR
- National legislation
- UNHCR Policy on the Protection of Personal Data of Persons of Concern to UNHCR
- Art. 17 ICCPR
- 1990 UN General Assembly Guidelines for the Regulation of Computerized Personal Data Files
- ICRC's Handbook on Data Protection in Humanitarian Action
- 2009 Madrid Resolution adopted at an international conference of Data Protection and Privacy Commissioners
- ...

Protection of the environment

- [UN special rapporteur for the UN International Law Commission
- Articles 35 and 55 of the First Additional Protocol to the Geneva Conventions
- General IHL rules about distinction, precaution and proportionality
- Local environmental standards
- Environmental risk management]
- Report of the International Law Commission, 71st Session, 29 April – 7 June and 8 July – 9 August 2019 (A/74/10)

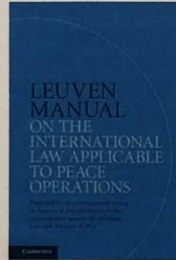
Derogation

- Rule 5.7 of the Leuven Manual

Other

- International policing
- UN Administrations/transitional authority
- Cyber in peace operations?
- ...

BOOK REVIEW



Leuven Manual on the International Law Applicable to Peace Operations

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

Book review by Tobias Vestner, Head of the Security and Law Programme at the Geneva Centre for Security Policy (GCSP), and Alessandro Mario Amoroso, Programme Officer of the Security and Law Programme at the GCSP.

.....

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.

**Armed Conflict Involving
Foreign Intervention and
International Humanitarian Law
(IHL)**



Thank you for your kind attention!

Armed Conflict Involving Foreign Intervention and International Humanitarian Law (IHL)

Introduction

- Focus on questions of IHL (or *ius in bello*) - not *ius ad bellum* nor the law of international responsibility
- ‘Armed conflict’
 - International armed conflict (IAC)
 - Resort to armed force between States / belligerent relationship between two or more entities with international legal personality
 - Geneva Conventions (GC); Additional Protocol I; Regulations Annexed to Hague Convention IV; customary IHL of IACs
 - Non-international armed conflict (NIAC)
 - Armed conflicts in which one or more non-governmental armed groups are involved as a party to the conflict
 - Common art. 3 GC; Additional Protocol II; customary IHL of NIACs

Armed conflict involving foreign intervention

- In the past also called ‘internationalised internal armed conflict’
- Pre-existing NIAC which at some point experiences (a) foreign military intervention(s)
 - In support of a State involved in a NIAC against an organised armed group; or
 - In support of an organised armed group involved in a NIAC against a State; or
 - Mixed situations
- ‘Foreign intervention’ = (a) foreign State(s) or an international or regional organisation contributes to the collective conduct of hostilities / co-belligerency

Armed conflict involving foreign intervention

- How does a State (or by analogy an international or regional organisation) normally become a party to a NIAC?

Protracted armed violence between the State's authorities and organised armed groups

- Indicative factors regarding the intensity of the violence
 - Number, duration and intensity of individual confrontations
 - Type of weapons and other military equipment used
 - Number of persons and type of forces partaking in the fighting
 - Number of casualties
 - Extent of material destruction
 - Number of civilians fleeing combat zones

Armed conflict involving foreign intervention

Protracted armed violence between the State's authorities and organised armed groups

- Indicative factors regarding the level of organisation
 - Existence of a command structure and disciplinary rules and mechanism within the group
 - Existence of a headquarters
 - The fact that the group controls a certain territory
 - The ability of the group to gain access to weapons, military equipment, recruits and training
 - The ability to plan, coordinate and carry out military operations
 - The ability to define a unified military strategy and use military tactics
 - The ability to speak with one voice and to negotiate and conclude agreements

Armed conflict involving foreign intervention

- Quid in the specific case of a foreign intervention in a pre-existing NIAC?
 - Criteria for determining the existence of a NIAC have already been met, but...
 - Vis-à-vis the supported party to the NIAC.
 - Could the foreign intervener claim that it is protected from attacks under the principle of distinction, based on the argument that vis-à-vis the foreign intervener the intensity criterion has not (or not yet) been met?
 - Need to define the *ratione personae* scope of application of the law of NIACs

The “Support-based approach” theory

- The ICRC’s theory of the “support-based approach”:
 - A third power supporting one of the belligerents can be regarded as a party *to the pre-existing NIAC* when the following conditions are met:
 - There is a pre-existing NIAC taking place on the territory where the third party intervenes
 - Actions related to the conduct of hostilities are undertaken by the intervening power in the context of that pre-existing conflict
 - The military operations of the intervening power are carried out in support of one of the parties to the pre-existing NIAC
 - The action in question is undertaken pursuant to an official decision by the intervening power to support a party involved in the pre-existing conflict

The “Support-based approach” theory

- Assessment on the basis of the nature of the support – Covered by the theory:
 - Direct involvement in combat operations
 - Logistical support involving the transportation of the troops of one of the belligerents on the frontline
 - The provision of intelligence used immediately in the conduct of hostilities
 - The involvement of members of the third power in planning and coordinating military operations conducted by the supported party
 - ...

Possible situations and implications if one uses the theory / legal position

- Support to a party to a NIAC, without overall control over that party, e.g.
 - Pooling of military resources in joint military operations; but also
 - More unilateral military action designed to support one of the parties to the detriment of the other
- If support to the State: Intervening power becomes a party to the pre-existing NIAC (extension of the *ratione personae*)
- If support to an armed group: Parallel application of the law of NIAC (i.e. between the initial parties to the NIAC) and the law of IAC (i.e. between the State and the intervening power)
- Remark: the potential applicability of IHL is not affected by the fact that the intervening power operates under a UN Security Council mandate (separation between *ius ad bellum* and *ius in bello*)

Possible situations and implications if one uses the theory / legal position

- Mixed situation of multiple foreign interveners in support of both a State and of one or more armed groups in a NIAC (without overall control)
 - If support to the State against the armed group: Intervening power becomes a party to the pre-existing NIAC (extension of the *ratione personae*)
 - If support to (an) armed group(s): Parallel application of:
 - The law of NIAC (i.e. between the initial parties to the NIAC + between the armed group(s) and the intervening power in support of the State) and
 - The law of IAC (i.e. between the State and the intervening powers supporting the armed group(s) + between the intervening powers supporting the State and the intervening powers supporting the armed group(s))

Possible situations and implications

- Overall control over a party to a pre-existing NIAC
 - Typically the case of an armed group which progressively receives more and more support from a foreign power until the situation becomes a kind of subordination of the group to the foreign power
 - Attribution rules of general public international law
 - Members of the armed group become agents of the intervening power => the law of IAC applies

Possible situations and implications

- Notion of overall control (*Tadic* case)

In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity. Only then can the State be held internationally accountable for any misconduct of the group. However, it is not necessary that, in addition, the State should also issue, either to the head or to the members of the group, instructions for the commission of specific acts contrary to international law.

The “Support-based approach” theory

- Eds. Terry Gill, Dieter Fleck, William H. Boothby and Alfons Vanheusden
 - *Leuven Manual on the International Law Applicable to Peace Operations* (Cambridge University Press (December 2017))
 - Page 103: ... views differ on this point and it is therefore not settled law.



Thank you for your kind attention!