

# Preface

## BACKGROUND AND ACKNOWLEDGEMENTS

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.

It has distinguished antecedents. Chapter XIV of the *Manual of Military Law*, published by the Army in 1914, was written jointly by Colonel J E Edmonds and Professor Lassa Oppenheim. This was revised in 1936 and was the principal source of guidance throughout the Second World War and Korean War. During the 1950s the law of armed conflict element of the *Manual of Military Law* was completely redrafted to form a volume entitled *The Law of War on Land, being Part III of the Manual of Military Law* (London, HMSO, 1958). This volume was written by Sir Hersch Lauterpacht QC with the assistance of Colonel (later Professor) Gerald Draper OBE and came to be regarded internationally as a classic text on its subject. The current volume owes a great deal to the work carried out by these earlier authors but, clearly, has been influenced a very great deal by changes that have taken place within the law of armed conflict since the 1950s. It is also, significantly, a Joint Service Publication and not merely a manual for use by the Army during land operations. As such, it incorporates the relevant law dealing with both maritime and air operations.

This new Manual is the result of work put in by a great many people over a long period of time, almost 25 years. The need for a new manual became apparent when the 1977 Additional Protocols to the Geneva Conventions of 1949 were adopted and drafting first got underway in 1979. The full list of contributors during the years since then would be too great to reproduce and an attempt to compile it would, in any case, risk offence by leaving out some whose input was significant at the time but whose names are no longer on record. Nevertheless, mention of some key contributors is appropriate. The first General Editor was Colonel (later Major General) Michael Fugard, with the first full version of a draft text completed by 1986 under the general editorship of Colonel (later Major General) David Selwood. At that point publication was delayed to await the United Kingdom's ratification of the Additional Protocols. However, it took a further 12 years for ratification to occur. In the meantime, in the period 1994–97, as ratification became increasingly likely, Colonel Charles Garraway took on the general editorship and

*Original*

form of coercion may be used to obtain information. Nor may those who refuse to answer be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.<sup>110</sup>

Wounded and sick prisoners of war may be interrogated, but not if it would seriously endanger their health,<sup>111</sup> so medical advice should be taken in case of doubt. **8.34.1**

Blindfolding and segregation may be necessary in the interests of security, the physical restraint of prisoners of war, or to prevent collaboration prior to interrogation, but these discomforts must be truly justified and be for as short a period as possible. **8.34.2**

The NATO states have agreed humane interrogation procedures.<sup>112</sup> Interrogation is best done by skilled, well-briefed interrogators who are able to build up a rapport with prisoners of war. **8.34.3**

## E. EVACUATION OF PRISONERS OF WAR

The following rules are to be observed during evacuations.<sup>113</sup> **8.35**

- a. As soon as possible after capture, prisoners of war must be evacuated to camps far enough from the fighting to be out of danger. Only those who because of wounds or sickness would run greater risks by being moved than by remaining where they are may be kept temporarily in a danger zone.<sup>114</sup>
- b. Prisoners of war must not be exposed unnecessarily to danger whilst awaiting evacuation.
- c. Evacuation must be carried out humanely and in conditions which are not inferior to those used for moving the forces of the detaining power.<sup>115</sup> This would rule out marches that are beyond the physical capabilities of prisoners of war or movement in overcrowded or unhygienic conditions. Where possible, their transport should be marked with large letters 'PW' or 'PG' so that they are not unwittingly attacked.<sup>116</sup>
- d. During evacuation, prisoners of war must be supplied with sufficient food, water, clothing, and medical attention.
- e. A list must be made of those evacuated.

<sup>110</sup> GC III, Art 17. In *Re Killinger and others* (1945) 3 WCR 67, some of the accused were convicted of having placed PW in excessively heated cells in order to extract information.

<sup>111</sup> GC III, Art 13. <sup>112</sup> NATO STANAG 2033.

<sup>113</sup> GC III, Arts 19 and 20. See also JWP 1-10, 3B, 11-13.

<sup>114</sup> See also JWP 1-10, 3B, 2.

<sup>115</sup> See JWP 1-10, 3B, 3.

<sup>116</sup> Failure to mark PW transports caused many casualties during WW II.

*Original*

## ADMINISTRATION

**11.19** The occupying power assumes responsibility for administering the occupied area.<sup>39</sup> Whether the administration imposed by the occupying power is called a military government or civil government is not important. The legality of its acts will be determined in accordance with the law of armed conflict. The occupying power cannot circumvent its responsibilities by installing a puppet government or by issuing orders that are implemented through local government officials still operating in the territory (see paragraph 11.7). Further, an occupying power is also responsible for ensuring respect for applicable human rights standards in the occupied territory. Where the occupying power is a party to the European Convention on Human Rights, the standards of that Convention may, depending on the circumstances, be applicable in the occupied territories.<sup>40</sup>

## OFFICIALS, CIVIL SERVANTS, POLICE, AND JUDGES

**General**

**11.20** Officials of the occupied territory owe no duty of allegiance to the occupying power and may refuse to serve that power.<sup>41</sup> If they have fled, the occupying power will have to form its own administration. Local authority officials who remain may be employed for this purpose.

**Duties of officials**

**11.21** The occupying power may not alter the status of officials, nor apply any sanctions or take measures of coercion or discrimination against them if they decide to abstain on grounds of conscience from fulfilling their functions.<sup>42</sup> A belligerent cannot compel officials to take part in military operations against their own country, even if they were in the belligerent's service before the commencement of the armed conflict.<sup>43</sup> Those who refuse to serve may, nevertheless, be compelled to do certain types of work, see paragraph 11.52.<sup>44</sup>

**11.21.1** Officials will normally be given instructions by their own government whether or not to remain at their posts in the event of occupation. In the

<sup>39</sup> HR, Art 43.

<sup>40</sup> See the decision of the European Court of Human Rights in *Banković and others v Belgium and others* (2003) 41 ILM 517.

<sup>41</sup> GC IV, Art 54. See also, Pictet *Commentary on GC IV*, 302–308.

<sup>42</sup> GC IV, Art 54. See also, Pictet, *Commentary on GC IV*, 302–308. However, see para 11.22.

<sup>43</sup> HR, Art 23.      <sup>44</sup> GC IV, Art 54. See also GC IV, Art 51(2).

*Original*