The Handbook of International Humanitarian Law

SECOND EDITION

Edited by

DIETER FLECK

In collaboration with

Michael Bothe, Horst Fischer, Hans-Peter Gasser, Christopher J. Greenwood, Wolff Heintschel von Heinegg, Knut Ipsen, Ben F. Klappe, Jann K. Kleffner, Nilendra Kumar, Stefan Oeter, Roger O’Keefe, Rüdiger Wolfrum

OXFORD UNIVERSITY PRESS
Contents

Introduction  Dieter Fleck xi
List of Contributors xix
Table of Abbreviations xxi
Table of International Instruments xxvii
Table of Judgments and Decisions xxxiii

1. HISTORICAL DEVELOPMENT AND LEGAL BASIS 101–150 1
   Christopher Greenwood
   I. Definition of the Term ‘Humanitarian Law’ 101–104 1
   II. Historical Development 105–124 15
   III. Legal Sources 125–130 27
   IV. Humanitarian Requirements and Military Necessity 131–133 35
   V. Binding Effect of International Law for the Soldier 134–146 39
   VI. Tasks of the Legal Adviser 147–150 43

2. SCOPE OF APPLICATION OF HUMANITARIAN LAW 201–263 45
   Christopher Greenwood
   I. Armed Conflicts 201–211 45
   II. Acts of War 212–215 57
   III. Area of War 216–221 59
   IV. Termination of Hostilities 222–250 62
      1. Parlementaires and Protecting Powers 223–232 63
      2. Cease-fire and Armistice 233–241 66
      3. Capitulation 242–245 70
      4. Conclusion of Peace 246–250 70
   V. Relevance of Other Fields of International Law 251–262 72
      1. Peacetime Rules 252–253 73
      2. Human Rights 254–261 74
      3. International Criminal Law 262 78
   VI. Relevance of International Humanitarian Law in Peacetime and Post-Conflict Military Operations 263 78
3. COMBATANTS AND NON-COMBATANTS 301–331

Knut Ipsen

I. General Rules 301–303 80
II. Combatants 304–313 84
III. Non-Combatants 314–318 96
IV. Persons Accompanying the Armed Forces 319 106
V. Civilian Contractors 320 107
VI. Special Forces 321 108
VII. Spies 322–325 110
VIII. Special Aspects of Aerial and Naval Warfare 326–331 113

4. METHODS AND MEANS OF COMBAT 401–479

Stefan Oeter

I. General Rules 401–405 126
II. Means of Combat 406–440 137
2. NBC Weapons 430–441 160
   a) Nuclear weapons 430–435 160
   b) Chemical weapons 436–438 170
   c) Bacteriological (biological) and toxin weapons 439–440 174
III. Methods of Combat 441–479 175
1. Military Objectives 441–450 175
2. Protection of Civilian Objects 451–463 193
3. Protection of Works and Installations Containing Dangerous Forces 464–470 221
4. Ruses of War and the Prohibition against Perfidy 471–473 226
5. Psychological Warfare 474–475 231
6. Reprisals 476–479 232

5. PROTECTION OF THE CIVILIAN POPULATION 501–591

Hans-Peter Gasser

I. General Rules 501–519 237
II. Civil Defence 520–523 263
III. Humanitarian Assistance 524–525 269
IV. Belligerent Occupation 526–574 270
1. General Provisions 526–537 273
2. Legal Status of the Population 538–543 283
3. Rights and Duties of the Occupying Power 544–548 286
4. Requisition of Civilian Resources by the Occupying Power 549–560 290
### Contents

5. Supply Activities in Occupied Territory 561-564 297
6. Penal Responsibility in Case of Violation of International Humanitarian Law 565-574 303
V. Aliens in the Territory of a Party to the Conflict 575-582 311
VI. Internment of Civilians 583-591 319

6. PROTECTION OF THE WOUNDED, SICK, AND SHIPWRECKED 601-634 325
   *Jann K. Kleffner*
   I. Wounded, Sick, and Shipwrecked Persons 601-607 327
   II. The Dead and Missing 608-609 337
   III. Medical Units and Transport 610-612 340
   IV. Medical Personnel 613-619 344
   V. Medical Aircraft *Wolff Heintschel von Heinegg* 620-623 351
   VI. Hospital and Safety Zones and Localities; Neutralized Zones 624-627 353
   VII. The Distinctive Emblem 628-634 358

7. PROTECTION OF PRISONERS OF WAR 701-735 367
   *Horst Fischer*
   I. General 701-706 367
   II. Beginning of Captivity 707-715 383
   III. Conditions of Captivity 716-728 396
   IV. Escape of Prisoners of War 729-731 410
   V. Termination of Captivity 732-735 412

8. RELIGIOUS PERSONNEL 801-846 419
   *Nilendra Kumar*
   I. General Rules 801-817 420
   II. Protection of Religious Personnel 818-826 425
   III. Legal Status of Religious Personnel Retained by a Foreign Power 827-846 428

9. PROTECTION OF CULTURAL PROPERTY 901-935 433
   *Roger O'Keefe*
   I. Definition of 'Cultural Property' 901 436
   II. Respect for Cultural Property 902-920 442
      1. General Rules 902-908 442
      2. Special Protection 909-915 453
      3. Enhanced Protection 916-920 456
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>III. Safeguarding of Cultural Property</td>
<td>921 - 461</td>
</tr>
<tr>
<td>IV. Protection of Cultural Property during Occupation</td>
<td>922-926 - 464</td>
</tr>
<tr>
<td>V. Transport of Cultural Property</td>
<td>927-929 - 468</td>
</tr>
<tr>
<td>VI. Personnel Engaged in the Protection of Cultural Property</td>
<td>930-931 - 470</td>
</tr>
<tr>
<td>VII. Distinctive Marking of Cultural Property</td>
<td>932-935 - 471</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. THE LAW OF ARMED CONFLICT AT SEA</td>
<td>1001-1064 - 475</td>
</tr>
<tr>
<td>Wolff Heintschel von Heinegg</td>
<td></td>
</tr>
<tr>
<td>I. General</td>
<td>1001-1020 - 476</td>
</tr>
<tr>
<td>1. Definitions</td>
<td>1001-1009 - 476</td>
</tr>
<tr>
<td>2. Scope of Application</td>
<td>1010-1013 - 481</td>
</tr>
<tr>
<td>3. Acts of Naval Warfare, Competences, and Principles</td>
<td>1014-1020 - 487</td>
</tr>
<tr>
<td>II. Military Objectives and Protected Objects in Armed Conflicts at Sea</td>
<td>1021-1038 - 498</td>
</tr>
<tr>
<td>1. Enemy Warships and Military Aircraft</td>
<td>1021 - 498</td>
</tr>
<tr>
<td>2. Enemy Merchant Ships, their Cargo, Passengers, and Crew</td>
<td>1022-1033 - 499</td>
</tr>
<tr>
<td>a) Enemy merchant ships</td>
<td>1022-1026 - 499</td>
</tr>
<tr>
<td>b) Cargo of enemy merchant ships</td>
<td>1027-1031 - 505</td>
</tr>
<tr>
<td>c) Crews and passengers of enemy merchant ships</td>
<td>1032-1033 - 508</td>
</tr>
<tr>
<td>3. Protected Enemy Vessels (Except Hospital Ships and Ships Under Similar Protection)</td>
<td>1034-1035 - 510</td>
</tr>
<tr>
<td>4. Protected Enemy Aircraft (Except Medical Aircraft)</td>
<td>1036 - 513</td>
</tr>
<tr>
<td>5. Other Protected Objects</td>
<td>1037 - 514</td>
</tr>
<tr>
<td>6. Targets on Land</td>
<td>1038 - 515</td>
</tr>
<tr>
<td>III. Special Provisions Concerning Methods of Naval Warfare</td>
<td>1039-1053 - 517</td>
</tr>
<tr>
<td>1. Mine Warfare</td>
<td>1039-1043 - 517</td>
</tr>
<tr>
<td>a) Types of mine warfare: principles</td>
<td>1039-1040 - 521</td>
</tr>
<tr>
<td>b) Mine laying prior to the beginning of an armed conflict</td>
<td>1041 - 525</td>
</tr>
<tr>
<td>c) Mine laying during armed conflicts</td>
<td>1042 - 528</td>
</tr>
<tr>
<td>d) Duties after the cessation of hostilities</td>
<td>1043 - 531</td>
</tr>
<tr>
<td>2. Torpedoes</td>
<td>1044 - 534</td>
</tr>
<tr>
<td>3. Missiles</td>
<td>1045 - 535</td>
</tr>
<tr>
<td>4. Submarine Warfare</td>
<td>1046-1047 - 535</td>
</tr>
<tr>
<td>5. Maritime Exclusion Zones</td>
<td>1048-1050 - 540</td>
</tr>
<tr>
<td>6. Blockade</td>
<td>1051-1053 - 551</td>
</tr>
</tbody>
</table>
IV. Hospital Ships 1054–1064 558
  1. General 1054 558
  2. Conditions for Protection and Identification 1055–1056 560
  3. Rights and Obligations 1057–1061 562
  4. Discontinuance of Protection 1062 567
  5. Personnel and Crew 1063–1064 568

11. THE LAW OF NEUTRALITY 1101–1155 571
  Michael Bothe

  I. General 1101–1107 571
  II. The Rights and Duties of Neutral States 1108–1155 582
    1. General Provisions 1108–1114 582
    2. War on Land 1115–1117 587
    3. Naval Warfare 1118–1148 589
      a) General 1118–1125 589
      b) Innocent passage through territorial sea and archipelagic waters; transit passage 1126–1137 592
      c) Control by the parties to the conflict 1138–1146 595
      d) Protection of neutral merchant shipping 1147–1148 599
    4. Aerial Warfare 1149–1155 601

12. THE LAW OF NON-INTERNATIONAL ARMED CONFLICTS 1201–1220 605
  Dieter Fleck

  I. General 1201–1206 605
  II. Applicable Law 1207–1212 620
  III. Legal Distinction Between International and Non-International Armed Conflicts 1213–1215 627
  IV. Compliance 1216–1220 629

13. INTERNATIONAL PEACE OPERATIONS 1301–1352 635
  Ben F. Klappe

  I. General 1301–1304 635
  II. Applicable Law 1305–1309 642
  III. Mandates 1310–1315 648
  IV. Rules of Engagement (ROE) 1316–1333 655
  V. Search, Apprehension, and Detention 1334–1342 662
  VI. Child Soldiers 1343–1347 667
  VII. Humanitarian Assistance by Armed Forces 1348–1352 670
14. ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW 1401–1434 675

Rüdiger Wolfrum and Dieter Fleck

I. General 1401–1402 686
II. Public Opinion 1403 689
III. Reciprocal Interests of the Parties to the Conflict 1404 689
IV. Maintenance of Discipline 1405 690
V. Reprisals 1406 690
VI. Command Responsibility 1407 690
VII. Penal and Disciplinary Measures 1408–1416 691
   1. War Crimes at National Courts 1409–1413 693
   2. War Crimes at International Courts 1414 706
   3. Disciplinary Action 1415–1416 706
VIII. Reparation 1417 707
IX. Protecting Powers and their Substitutes 1418–1419 709
X. International Fact-Finding 1420–1421 711
XI. The International Committee of the Red Cross 1422 713
XII. Implementation Roles of the UN 1423–1424 715
XIII. The Security Council and International Humanitarian Law 1425–1429 716
XIV. Diplomatic Activities 1430 719
XV. The Role of Non-Governmental Organizations 1431 721
XVI. National Implementing Measures 1432 721
XVII. Dissemination of Humanitarian Law 1433 722
XVIII. Personal Responsibility of the Individual 1434 722

ANNEX: Distinctive Emblems 723

Bibliography 725
Index 759