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# Book Review

## THE LAW OF WAR: A DETAILED ASSESSMENT OF THE U.S. DEPARTMENT OF DEFENSE LAW OF WAR MANUAL

BOOK BY WILLIAM H. BOOTHBY AND WOLFF HEINTSCHEL VON HEINEGG

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The Department of Defense's (DoD) *Law of War Manual* (*Manual*) has been lauded as a comprehensive guide for practitioners and mocked as an inept effort to describe the law of war. One notable commentary asks of the *Manual*, “**What is it good for?**”<sup>[1]</sup> thus channeling the rhetorical question about war posed by Edwin Starr's 1970 classic soul smash hit. Starr's unequivocal conclusion is “Absolutely nothing.” The commentary that invokes Starr reaches a similar conclusion regarding the *Manual*, and that observer is certainly not alone in this criticism.

Comprehensive compilation or good-for-nothing paper-weight, the *Manual* is *the* authority related to the law of armed conflict presented by the DoD as a “resource for DoD personnel—including commanders, legal practitioners, and other military and civilian personnel.”<sup>[2]</sup> Despite any perceived flaws and limitations, the *Manual* offers a

consolidated collection of commentary on a vast array of topics involving the law of war. The tome attracts a great deal of criticism, but that is to be expected—it is, after all, a big target.

The criticism and commentary directed at the *Manual* can be a valuable resource for practitioners by highlighting limitations and provisions that may be contested outside (and sometimes inside) the DoD. This outside perspective is particularly useful in the coalition context, where competing legal interpretations and perspectives can impede effective interoperability. Though the outside commentary directed at the *Manual* can be a useful resource, on whole it is fragmented—scattered across various platforms, and sometimes emanates from sources whose credibility may be mediocre at best. These factors limit the effectiveness of the outside commentary for practitioners and other users of the *Manual*.

In light of this, *The Law of War: A Detailed Assessment of the U.S. Department of Defense Law of War Manual (Detailed Assessment)* provides a remedy to the limitations of existing outside commentary. The *Detailed Assessment* offers a consolidated, comprehensive, and thoroughly-researched assemblage of commentary on the *Manual* from two of the most knowledgeable and respected scholars in the field of the law of armed conflict. The authors have engaged in a meticulous review of the *Manual*, offering a paragraph-by-paragraph assessment of the content expressed in the *Manual*. Chapters 1 through 19 of the *Detailed Assessment* track the 19 chapters of the *MANUAL* as it was first published, and Chapter 20 of the *Detailed Assessment* considers the two revisions to the *MANUAL* published to date. The authors “plan to publish comment on any amendment” to the *MANUAL* “by electronic means” as additional revisions are issued.[3]

The consolidated and informed perspective provided by the *Detailed Assessment* is a valuable tool for practitioners and users of the *Manual*. The authors’ intent is “to place before the reader their own appreciation based on their own collective experience.”[4] Readers familiar with the authors’ collective experience will appreciate the extensive nature of that expertise. The meticulous review on offer in the *Detailed Assessment* provides constructive commentary on each provision of the *Manual* while situating the perspectives in a broader practical and scholarly context.

While the value of the *Detailed Assessment* as a practice and research tool is commendable, its significance in a coalition context cannot be overstated. As the widespread criticism of the *Manual* indicates, there are many U.S. perspectives that are not shared, or are outright refuted, by current or potential future coalition partners. Anticipating, identifying, and coordinating such friction points can mitigate the impact of these unavoidable differences on effective interoperability. It is in this context that the value for practitioners of the *Detailed Assessment* is immeasurable.

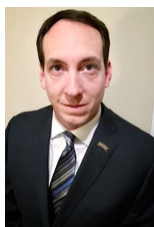
Consider, for example, the assertion reflected in the *Manual* that the term “military objective” includes objects that

make an “effective contribution to the war-fighting or war-sustaining capability of an opposing force.”[5] The authors of the *Detailed Assessment* express their own concern that “broadening of the military objectives notion” to include objects that make an effective contribution to the war-sustaining capability of an opposing force “may place the intransgressible principle of distinction in some peril.”[6] Nonetheless, the authors go on to surmise that a perspective such as the one expressed in the *Manual* “might imply that States party to [Additional Protocol I to the 1949 Geneva Conventions] are accepting a more restrictive interpretation of the military objective notion that would not, according to that view, be binding on all States”[7] as a matter of customary international law. The authors observe that if States attack war-sustaining objectives, although they are bound by the arguably more restrictive definition for military objectives reflected in Additional Protocol I, they “must have an explanation for their adoption of such a position” and that the approach expressed in the *Manual* may “help them to develop such a narrative.”[8] This author has encountered this specific issue in a coalition context, as have no doubt many other judge advocates. Anticipating and coordinating for such differences in military legal practice in a coalition context can go a long way to mitigate the effects of these inevitable variations on interoperability. The analysis provided by the *Detailed Assessment* is an indispensable tool to support that endeavor.

For any practitioner or scholar in search of the DoD perspective on a given topic involving the law of armed conflict, the *Manual* is the natural starting point. The practitioner or scholar in search of the perspective on the DoD view from outside the DoD may discover such an additional perspective through individual research, though the results of such a search may be of questionable value. Instead, the practitioner or scholar can turn to the consolidated, organized, and informed analysis provided by the *Detailed Assessment*. In this context, the *Detailed Assessment* is an indispensable companion to the *Manual* that will serve as a valuable resource for any practitioner or scholar working in the field of the law of armed conflict.

## ABOUT THE REVIEWER

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## ENDNOTES

- [1] David Glazier, *The DOD Law of War Manual: What Is It Good For?*, JUST SECURITY (July 28, 2015), <https://www.justsecurity.org/24977/dod-law-war-manual-good-for/>.
- [2] DoD LAW OF WAR MANUAL (June 2015 updated December 2016) [hereinafter MANUAL].
- [3] WILLIAM H. BOOTHBY & WOLFF HEINTSCHEL VON HEINEGG, *THE LAW OF WAR: A DETAILED ASSESSMENT OF THE DEPARTMENT OF DEFENSE LAW OF WAR MANUAL 4* (2018).
- [4] *Id.*
- [5] MANUAL, *supra* note 2, at para. 5.7.6.2. (emphasis added).
- [6] BOOTHBY & VON HEINEGG, *supra* note 3, at 119.
- [7] *Id.* at 122.
- [8] *Id.*

