International Manuals in International Humanitarian Law

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1. Introduction

Manuals have become an increasingly popular choice in responding to the challenges of evolving technologies and the changing nature of war and conflict. Key features of manual development include: a process of research among an (often) close circle of international humanitarian law scholars and military experts; institutionalized debate during the drafting process with the goal of achieving consensus on the rules suggested in the manuals and an accurate reflection of the spectrum of diverging views in the commentary to these rules; the explicit aim of creating impact through influence on the training and practice of military state actors (impact on state practice); and the potential use of formulated rules in domestic military manuals (impact on state practice and *opinio iuris*). These aims are achieved either through a broad and inclusive drafting process and/or through the close cooperation of states and those delivering training courses, in particular to military personnel.

Manuals have increased in number and in terms of thematic substance. Stagnating norm development processes in the area of war and conflict despite the rapid development of new technologies potentially necessitating legislative adaptation partially explain this trend.[1] When manuals plug into the void that develops because of this disparity, their importance and impact may be enhanced. After all, it seems safe to say that the Tallinn Manual - in light of states' reluctance to clarify their views and legal position on issues pertaining to cyber security[2] - has become "the" reference for legal discussions about cyber warfare and cyber security more generally. Against this backdrop, reflection on the nature and role of manuals and experts (groups) is ever more important. So too, is the legitimacy and transparency of the processes that bring them about, including how

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[1] See Werner G. Wouter, 'The Law at Hand - Paratext in Manuals on International Humanitarian Law' in this volume, pp. x-y.
[2] See Group of 7 (G7), 'G7 Declaration on Responsible States Behavior in Cyberspace' (Lucca, Italy: G7, 2017), 11 April 2017, https://www.mofa.go.jp/files/000246367.pdf, calling on States 'to publicly explain their views on how existing international law applies to States' activities in cyberspace to the greatest extent possible … giv[ing] rise to more settled expectations of State behavior.'

they are "injected" and "filtered" into international norm development processes. Especially in areas where there is a perceived "knowledge gap", such as in the as yet not fully understood domain of cyberspace. In these circumstances, the information contained in manuals is in high demand and quickly finds its way into law development processes more broadly. In that way a "non-binding" expert manual can have significant influence on the formation of international law. So much that some authors have recently called on states to reclaim their law-making role and to engage more assertively with normative development in the cyber domain.[3]

From the 1880 Oxford Manual to recent and forthcoming international manuals in the making, for example the Woomera Manual on the International Law of Military Space Operations[4] and the Manual on International Law applicable to Military Uses of Outer Space[5], history allows for a broad-brush categorization of international manuals according to three distinct generations. Beginning with the 1880 Oxford Manual on The Law of War on Land, the first generation coincides with the early period of codification of international humanitarian law. The second generation of manuals starts with the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea (hereafter 1994 San Remo Manual) and reflects the need for international humanitarian law to be adjusted to changing conflict structures and new technologies. Recently, arguably a new generation of manuals has started to emerge leaving the narrow realm of the laws of war behind and addressing broader questions pertaining to military operations generally. The projects addressing outer space, together with the Tallinn 2.0 Manual, mark what might loosely be categorized as a new generation of more holistic international manuals, i.e. a category of manuals in the military/security domain addressing legal questions pertaining to military operations in times of peace as well as during armed conflict.

2. The fine line - restating, interpreting, and developing

[3] Kubo Macak, 'From Cyber Norms to Cyber Rules: Re-Engaging States as Law-Makers', *Leiden Journal of International Law* 30, No. 4 (2017): pp. 877-889.
[4] 'The Woomera Manual', The University of Adelaide, 13 February 2019, https://law.adelaide.edu.au/woomera/the-woomera-manual.
[5] 'Manual on International Law Applicable to Military Uses of Outer Space', McGill, https://www.mcgill.ca/milamos/.

Are manuals a restatement of existing law, a technical description as one can find in 'product manuals'[6], or simply a distinct category of scholarly (group) writing? Or do they entail an element of genuine norm development? Contemporary manuals typically address areas in which international law suffers or is perceived to suffer from a lack of clarity, caused in particular by rapid technological advancement and by the changing nature of armed conflict itself. However, as Lauterpacht critically remarked in 1952, 'the radical change in the character of war in scope and method, the creation of new law is substantially a matter of political decision not necessarily related to any existing generally recognized legal principles.' [7] Thus, although generally understood as restatements of the law, international manuals inherently tread the fine line between interpretation and law-making.[8]

Repetition and restating the law are meant to consolidate our understanding of a given rule. These techniques, however, can also lead to a blurring of our understanding of what the underlying (restated) rule actually is, namely when different restatements (manuals) feature small and competing textual differences There is at least a risk that the on-going inflation of such "restatements", in light of the growing corpus of international manuals seeking to present the "correct" or at least an agreed interpretation of contemporary law, the underlying rules become blurred and contested. Increasing complexity and nuanced divergences from one manual to the other might defy the drafters' intention to facilitate our understanding of the law as it applies in new contexts. Indeed, with the ever-growing number of existing manuals and guidebooks on a diverse range of topics such as non-international armed conflicts, aerial and missile warfare as well as naval and cyberwarfare it is hard not to lose sight of the forest for the trees. Another potential risk is that if the legal system lacks sufficiently clear distinctions between law and non-law, or between law and 'other normative prescriptions', the actors within the international community may invoke the most

[6] See Werner (n 1).
[7] Hersch Lauterpacht, 'The Problem of the Revision of the Law of War', *British Yearbook of International Law* 29 (1952): pp. 360, 379.
[8] William H Boothby, *Conflict Law: The Influence of New Weapons Technology, Human Rights and Emerging Actors* (The Hague: T.M.C. Asser Press, 2014), p. 65.

convenient position as 'law' in support of their interests.[9] This would lead to the inevitable result of a 'decline in the authority and normative power of the law.'[10]

Against this backdrop, it is important to reflect on the nature of the 'offering' made by manuals. Gustave Moynier, the drafter of the 1880 Oxford Manual, described it upfront as an 'offering' to governments to progressively develop the law. Such an offering necessarily entails something new, something that has not yet been framed in the way that it is being offered now. The drafters of any of the second-generation manuals, however, have been cautious to avoid any claims of law-making. Indeed, they have adamantly emphasized the restatement character of manuals. The 'offering' towards governments reverberates in claims that these manuals serve as 'assistance to legal advisers and operators as to the current state of the law' and 'set forth a useful framework against which any inadequacy in the law can sensibly be assessed and addressed.'[11]

Wouter Werner offers an insightful analysis for what it means to restate the law. According to him, it necessarily includes the claim that rules already exist that are fit to address the identified challenge and it includes reshaping the law through repetition in a novel context.[12] The communicative processes at the core of manual making contain an exercise of applying old rules to new challenges and contexts. Such repetition is not neutral but inherently contains selection processes, as an act of emphasis, of what is remembered and taken into account. This selective element inherent in the drafting process of manuals runs alongside the process changing the meaning of the repeated material.[13] Furthermore, transposing existing laws to new contexts inherently entails a law-making and developing element. An offering can be concealed as a restatement, but if the law is set or transposed ('restated') into new contexts any such restatement will also contain an offering. Manual drafters therefore continuously walk a fine line between restatement, reinterpretation, and law-making. A

[9] Gennady M. Danilenko, *Lawmaking in the International Community* (Dordrecht, Boston, London: Martinus Nijhoff, 1993), pp. 16-17.
[10] Ibid.
[11] Boothby (n 8), p. 94.
[12] Werner (n 1), pp. 5-7.
[13] See Werner (n 1), p. 10.

clearer recognition of these inherent tensions - instead of futile attempts to conceal them - would support the drafters' cause.

These dimensions of new offerings are not problematic as such. Any private actors, writers or groups of writers, are free to engage in a straightforward norm development exercise outlining progressively developed norms or develop and propose entirely new norms. A competition of ideas and suggestions is important for progress in democratic processes and precisely one of the tasks that legal academics should contribute to. Such propositions might come in the form of a manual, a handbook or something else. In addressing new spheres, groups of writers could for example devise entirely new rules from scratch and present a manual on what the law governing cyber space should ideally be instead of asking how existing (old) laws apply in this novel context. What is problematic, however, is that potential law-making contributions are often, intentionally or unintentionally, concealed - hidden behind the claim of mere restatement. The underlying incentive for this concealment presumably relates to simple marketing. A restatement of the existing law or, more precisely, the branding of a product as a restatement of existing law is likely to appeal to states. Suggestions of new rules and overt assumptions by non-state groups regarding their role as ‘progressive norm developers’ are more likely to provoke resistance and counter-reactions from states. International actors may be inclined to use such offerings as if this were the law as it stands without following established law-making procedures. Manuals appeal to and are directed towards a broad audience including actors ‘on the ground’, legal advisers, and military personnel. The crucial point is that they appear as authoritative sources of law capable of conveying normative expectations. Bringing to light the inherent law-making elements in the drafting processes of international manuals is therefore important, as Wouter Werner has done in his contribution.

3. Normative processes at work (post publication) - injection into the system

The content offered by manuals is injected into the 'system' through citation and referencing, by courts and other relevant actors, and through the inclusion in training materials for military personnel. Through these different routes, international manuals intrinsically - whether intended or unintended - shape state practice. Indeed, states play multiple roles in the normative processes triggered through the development of

Manuals. States may provide direct or more indirect sponsorship for the development of Manuals and participate in the drafting process, signalling at least some form of approval of the process without implicating 'ownership' or endorsement of the end product, i.e. the manual. Such approval may for example be expressed through direct interaction between scholars and governmental experts who take on observer roles or through international organisations as is the case regarding the Tallinn Manuals that were produced under the auspices of the NATO Cyber Defence Centre without being official NATO documents. Additionally, and more importantly, states play a key role by utilizing, endorsing, ignoring and/or explicitly rejecting parts of the regulatory framework offered in Manuals. For example, Attorney General Jeremy Wright in his speech on "Cyber and International Law in the 21st Century" delivered on 23 May 2018 implicitly engaged and rejected the position expressed in Tallinn 2.0 on sovereignty as a principle prohibiting certain cyber operations even if they do not meet the requirements of a prohibited intervention.[14] Apart from implicit or explicit engagement with the positions laid out in a manual, utilization of international manuals can take various forms such as referencing and adoption of international manuals in domestic military manuals or the commissioning and design of tailor-made training courses for the military and other government officials based on international manuals. States may of course also decide to explicitly reject or tacitly ignore the formulated normative expectations in the proposed rules. In one assessment of state practice in relation to cyber space, a recent study argues that the Tallinn Manuals seem to have had only limited normative pull so far.[15] At the same time, important speeches by former US legal advisers Koh and Egan were clearly informed by discussions underlying the Tallinn Manuals and the mere existence of these drafting processes and expert discussions may have contributed to state perceptions of a need to position themselves on certain (contested) cyber issues that the Tallinn processes brought to light. Therefore, discussions triggered by manual development may inform legal debate, state practice and subsequent norm development. It is noteworthy that the Tallinn Manuals are

[14] Attorney General Jeremy Wright, 'Cyber and International Law in the 21st Century', speech delivered on 23 May 2018, https://www.gov.uk/government/speeches/cyber-and-international-law-in-the-21st-century.

[15] Dan Efrony and Yuval Shany, 'A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyber Operations and Subsequent State Practice', Hebrew University of Jerusalem Legal Research Paper No. 18-22, 4 May 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172743.

frequently invoked and have quite likely acquired a relevance and prominence exceeding that of any other international legal manual.

4. The legitimacy of exerting law-making influence through international manuals

Undermining the political process of norm creation through the suggestion that old rules are fit to address new challenges could ultimately undermine law itself. If it is difficult to distinguish law from non-law, international actors might pick and choose convenient positions as law, a process that can lead to a loss of normative power and authority of international law.[16] This would contradict the entire exercise of manual making as this is aimed at strengthening the legal framework and the rule of law. The role of manuals in law-making therefore calls into question the rightfulness and legitimacy of such projects, a central theme in this volume, and speaks directly to the issue of why the legitimacy of international manuals matters. [17] However, legitimacy is a multidimensional notion, there is not one simple answer to the question of when and under what circumstances a specific project might be legitimate. Questions at the heart of the legitimacy debate are: What is the authority that allows a circle of experts to act as (quasi)lawmakers in international law?[18] Does it matter how the outcome of these informal processes of law-making are injected into the system? Are the resulting legal rules satisfactory, or can they produce unsatisfactory results?[19]

5.Experts, authority and legitimacy

The authority of manual drafters is mainly based on their status as scholars. Authority, of course, is not the same as legitimacy. But both entail an element of external acknowledgment. The authority of legal scholarly writing can normatively be derived

[16] Danilenko (n **Error! Bookmark not defined.**).

[17] Thomas Franck, 'Legitimacy in the International System' *American Journal of International Law* 82 (1988): p. 705 has provided some key insights into the importance of legitimacy such as the interconnection between legitimacy in a legal order and its normative pull or power to persuade.

[18] Ruediger Wolfrum 'Legitimacy in International Law from a Legal Perspective' in *Legitimacy in International Law*, edited by Ruediger Wolfrum and Volker Roeben (Berlin, Heidelberg, New York: Springer 2008), pp. 1, 6ff.; Jean D'Aspremont and Eric De Brabandere, 'The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise', *Fordham Journal of International Law* 190 (2011): pp. 190, 192 propose the concept 'legitimacy of origin with which this question resonates.

[19] Mattias Kumm, 'The Legitimacy of International Law: A Constitutionalist Framework of Analysis', *European Journal of International Law* 15 (2004): p. 907 proposes a framework of analysis that includes outcome legitimacy as one pillar.

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from article 38 (1)(d) of the ICJ Statute that assigns 'teachings of the most highly qualified publicists of the various nations' a role 'as subsidiary means for the determination of rules of law.' However, those publicists might not necessarily have to be lawyers or academics. International Manuals of the second and third generation strongly emphasize the expert status of their authors, which implies the claimed authority to restate the law. The emphasis on the 'expert' status is striking and suggests a form of self-assertive authority. But it seems unlikely that article 38 of the ICJ Statute envisaged the inclusion of technical experts in a specific field who, through their position in the armed forces, *de facto* represent the interests of individual states.[20] The striking argument for the participation of military experts is international humanitarian law's intrinsic requirement to function on the battlefield. This area of law needs to be particularly user-friendly to increase the potential for compliance in the inherently dire circumstances of armed conflict. Groups of specific experts in the field 'might even induce legitimacy because of their expertise that is being brought into the law-making process.'[21] The combination of legal scholars and technical experts in the drafting of manuals can offer the potential to a rightful claim to authority that receives external acknowledgment because of the specific combination of different, yet complementary, forms of expertise.

Manuals that propose rules for activities in entirely new and possibly still incompletely understood environments such as cyberspace or outer space are confronted with a specific problem: The novelty of space and related activity entails that there will be very few who can claim to be experts in the field as experience can only be very limited. In contrast, drafters of manuals in long-established fields can more easily claim authority and produce respected results. To illustrate the point: the 1994 San Remo Manual was drafted by lawyers and naval experts as part of a seven-year project on the modernization of the law of armed conflict at sea, attempting to 'apply the principles

[20] It seems fictitious that military experts, who as part of their work, participate in the drafting of manuals leave any state's interests behind. Such interests might be internalised through years of service for one country. The disclaimer that expert views do not represent that of governments or international organisations needs to be understood in this light. See the example of the Tallinn Manuals: 'The expanded edition of the Tallinn Manual, like its predecessor, represents the views of its authors, and not of NATO, the NATO CCD COE, its Sponsoring Nations, or any other entity.': https://ccdcoe.org/research/tallinn-manual/.

[21] Ruediger Wolfrum, Volker Roeben, eds., *Legitimacy in International Law* (Berlin, Heidelberg, New York: Springer 2008), p. 18 provide examples from the law of the seas and groups of experts in other areas of law.

and basic rules of international humanitarian law to modern naval warfare.'[22] It was aimed at the promotion of the 'comprehension of contemporary law', the coherent development of the law, and the promotion of respect for that law.[23] This manual had considerable impact on state military manuals, the UK for example drawing heavily on its text.[24] It also triggered a broader development that saw attempts to progressively restate international humanitarian law in the form of manuals in areas in which contemporary law was lacking because of the changing nature of conflict as well as the means and methods used. Naval warfare, although it has changed drastically, enjoys a long history that allows the development of genuine expertise and experts who are knowledgeable regarding the challenges through evolution within the field.

In contrast, it is more difficult for lawyers and military personnel alike, to claim authority as experts in fields only recently inhibited with human activity.[25] Whether states actively reject the proposed rules, accept them but decide not to comply, do not apply them because of technical problems such as the timely attribution of responsibility, or policy considerations such as the quest not to escalate conflicts are the decisive factors at play in this context, is yet to be seen. The lack of established practice can therefore produce more controversial results. The claim to authority – 'we are the experts and can show you how to apply the rules' – therefore is less persuasive in new contexts.

But does it matter for the legitimization process if the drafting process is a 'one-man-show', involves a small group of experts with military backgrounds, or, larger - potentially even global - groups of experts that might include stakeholders from different backgrounds?[26] The more international manuals venture into new spaces and

[22] Louise Doswald-Beck, 'The San Remo Manual on International Law Applicable to Armed Conflicts at Sea', *American Journal of International Law* 89 (1995): pp. 192, 194. Doswald-Beck had a central role in the drafting process of the manual, her article provides a comprehensive overview over the making of the San Remo Manual.
[23] Ibid., p. 208.
[24] UK Ministry of Defence, *Manual on the Law of Armed Conflict* (Oxford: OUP, 2004), para. 13.2; Sandesh Sivakumaran, 'Who Makes International Law? The Case of the Law of Armed Conflict', *Current Legal Problems* (2017-18): pp. 1, 7-8. See also Boothby (n 2), pp. 75-76 tracing the San Remo Manual's influence on UK, Canadian, Australian and German manuals and handbooks.
[25] Dan Efrony and Yuval Shany (n 15).
[26] Naz K. Modirzadeh, 'Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance', *Harvard National Security Journal* 5 (2014): pp. 225, 235-236 analyses: '[T]he military discipline of the field discourages entering into intellectual and professional projects that are not obviously and immediately linked to

contexts, the more they unavoidably venture into the political domain. The legitimacy derived from the level of personal expertise combined in the drafters is less strong. Hence, projects such as the MILAMOS project on military operations in outer space are seeking legitimization through their claim to inclusivity, fairness, and the truly global nature of the project.[27] In spite of an existing regulatory framework for outer space, in many ways and especially in relation to various aspects of military operations, this particular context remains legally unregulated. The project is therefore more politically loaded and an inclusive process with a more internationalized group of contributors can enhance its legitimacy. The process can on that basis appear less interest-driven and allows room for perspectives from a diverse range of backgrounds. This can increase the value as an offering to states of what the relevant interpretation of international law could be in relation to military operations in outer space.

Inclusivity of the drafting process is linked to outcome legitimacy, which questions the satisfactory nature of rules. Measuring such satisfactory results is a near impossible task and strongly depends on perspective. Having said that, international law struggles with considerable hegemonic historical ballast. Particularly in international humanitarian law whereby historically, state practice of a few dominant states in the field has contributed to the formation of custom.[28] The Tallinn Manuals with their close affiliation to one particular political alliance feeds into this perception of a few select states having assumed a dominant role also in projects of informal law-making. Beyond this perception, can international humanitarian law's unique mission of safeguarding humanity in warfare produce outcome legitimacy because of the deeply moral impetus to alleviate and limit human suffering in times of armed conflict? Whenever

reality. The macho nature of IHL stems not so much from its predilection for violence or its interest in war, but rather from the pride the discipline takes in its perceived rigor, form, method, clarity of argumentation, and what all of that means in terms of shaping a particular kind of legal discourse.'

[27] See the description of the project on its website https://www.mcgill.ca/milamos/our-people: '[The] impressive list of persons involved in the Project, each of whom enjoy a distinguished career and carry a wealth of experiences, is testament to the **fair, inclusive, and interdisciplinary and truly global nature of MILAMOS** Process and the McGill Manual.'

[28] Charles J. Jr. Dunlap, 'Law of War Manuals and Warfighting : A Perspective', *Texas International Law Journal* 47 (2012): pp. 265, 273 diagnosing that 'in the area of air and missile warfare especially, the U.S. view will doubtless be authoritative if not controlling.' See Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2010), pp. 4, 6 similarly emphasizes the overriding importance of state practice of those states that are among the few that dominate a specific area, in particular in the 'more esoteric areas of state activities'. See generally Michael Byers, *Custom, Power and the Power of Rules* (Cambridge: Cambridge University Press, 1999).

international manuals aim to give (better) effect to international humanitarian law in the field, this reliance and promotion of the humanitarian claim can arguably indeed induce and affirm outcome legitimacy. For manual projects venturing beyond this exclusively humanitarian objective, aiming to regulate military conduct in times of armed conflict e.g. for strategic reasons, this source of outcome legitimacy - albeit not necessarily blocked entirely - is significantly less relevant.

6. Blockade or progress?

International manuals tread a fine line between progressive (interpretative) development and the potential blockade of genuine normative progress through established, state-driven law-making processes. The increasing number and substantive scope of manuals is often explained by the slowness and stagnation of contemporary international norm setting processes. However, it is up for debate whether international manuals actually remedy normative stagnation or contribute to its perpetuation. Manuals as ready-made application facilitators - in analogy to Werner's comparison with product manuals - focus on how to make existing law fit to challenges which arise - for example as a result of new technologies. Inherently and in line with their overriding aims and objectives therefore, manuals do not necessarily search for or seek to explore areas in which the law may not fit and where different (new) rules may be more adequate to deal with the actual challenges posed. In this regard they may help to conceal genuine gaps in the existing body of law and obfuscate normative demands for further development of the law. The suggestion that with the help of a manual all relevant issues and challenges can be adequately addressed - is very much the tenor of the Tallinn Manuals and largely in line with Western states' views on how international law regulates cyber space. Even though the Tallinn Manuals comprehensively address all central controversies regarding the interpretation of international law, a greater openness to critically interrogate whether central principles and rules are still fit to fulfil their actual purpose when applied to cyberspace would have been desirable. Thus, while the Tallinn Manuals reflect every view and possible permutation regarding the application of the principle of distinction in cyber space and in spite of the alarming insight that '[i]n theory, the application of the definition of military objectives could lead to the conclusion that the entire Internet can become a military objective, if used

for military purposes'[29], no further reflection is devoted to the central question of whether the principle of distinction can still embody the humanitarian protection it was originally designed to uphold when applied in the specific context of cyber space. In this regard and precisely because the Tallinn Manual goes into such detail in its exploration of how the principle of distinction applies in cyber space, considered as a whole it does send a clear message that the existing rules of the *ius ad bellum* and *ius in bello* are fit to address all relevant cybersecurity issues. Such a message may inhibit initial discussions about potential gaps in the law and normative needs for future development, thereby forestalling normative evolution.[30] In addition, states may not feel the need to clearly position themselves if the general message is that the law as it stands is still fit for purpose. In light of the absence of a clear positioning of states on cyber issues, in a rather unusual step the G7 in their declaration on 'Responsible Behaviour in Cyberspace' called on states 'to publicly explain their views on how existing international law applies to states' activities in cyberspace'.[31]

Indeed, where human activity poses entirely new security challenges, normative expectations might better develop through a broad debate between a variety of stakeholders rather than being left to a group of experts. This resonates with Lauterpacht's words cited above, reminding jurists that the radical change in the nature and methods of conflict might require political decisions rather than attempting to apply existing rules. Lauterpacht continues in his analysis:

> [I]t may not be conducive to the progressive international regulation, on a humanitarian basis, of [radical changes] to represent them as being governed by any recognized rules of international law. The law on these subjects must be shaped - so far as it can be shaped at all - by reference not to existing law but to more compelling considerations of humanity, of the survival of civilization, and of the sanctity of the individual human being.[32]

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[29] Michael Schmitt, ed., *Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge: Cambridge University Press, 2013), p. 136.
[30] Theodore Christakis, Karine Bannelier, 'Reinventing Multilateral Cybersecurity Negotiation after the Failure of the UN GGE and Wannacry: The OECD Solution', blog post ejiltalk.org, 28 February 2018, https://www.ejiltalk.org/reinventing-multilateral-cybersecurity-negotiation-after-the-failure-of-the-un-gge-and-wannacry-the-oecd-solution/, document the failure of UN mechanisms. Russia has been a long-standing proponent of a cybersecurity treaty, whereas the US is opposed to such a treaty. Ido Kilovaty and Itamar Mann, 'Towards a Cyber-Security Treaty', blog post justsecurity.org, 3 August 2016, https://www.justsecurity.org/32268/cyber-security-treaty/.
[31] G7 Declaration on Responsible States Behavior in Cyberspace (n 2).
[32] Lauterpacht (n 7), p. 379.

7. Outlook

Manuals dealing with long-standing issues such as naval or air and missile warfare can indeed serve as a useful inventory helping to facilitate the application of a largely agreed body of law in practice. The manuals, however, that have come to the forefront of recent legitimacy debate are primarily manuals dealing with novel contexts and technologies such as cyberspace or outer space. These manuals have proved to be helpful in addressing new pressing issues and changing social realities at a time when states and other relevant actors are, for various reasons, still reluctant to do so. They can help to identify novel challenges and issues of controversy, chart and thereby influence the formation of new research fields and provide a basis and impetus for further discussions. Scholars and groups of experts are of course free to engage in whatever kind of manual - interpretative or law - developing exercise they wish to engage in, but in light of the various direct and indirect ways in which the increasing number of manuals are filtered into the complex system of international law-making and shaping, critical analysis and reflection on the nature and impact of international manuals is a most timely undertaking. When dealing with entirely novel contexts and potentially sea-changing technologies, the very format of a manual as a ready-made tool aiming to facilitate the application of the law in practice may be at odds with some of the greater challenges posed: In particular a naturally required reconsideration as to whether the law as it stands still reflects an adequate balancing of interests and the demands and considerations at play in this novel context. The main problem is not that these manuals are in a way mono-dimensional, focusing only on the question of how existing law will play out in new contexts rather than the question which kind of rules would be optimal to regulate these contexts. Nevertheless, and as Wouter Werner has rightly shown, manuals are designed and promoted as a mere restatement of the law. A manual, however, is never just that and the very act of restating the law in novel contexts inherently and unavoidably entails a certain law-making element that should be acknowledged more openly. In our view, however, the main problem is that in light of the unique format of a manual, which inherently suggests that overall that the law is clear and that simplified application possible, its content may be perceived and/or promoted as a comprehensive and conclusive assessment of regulatory needs, thereby forestalling broader political debate, (re-)consideration of regulatory objectives, and the most adequate legal mechanisms to deliver these. With two new manuals currently in

the making, namely the MILAMOS and WOOMERA Manuals on the international legal framework applicable to military operations in outer space, it seems safe to say that international manuals in the *ius ad bellum* and *ius in bello* field will continue to play a role in the coming years. To do justice to the very objective of these manuals and to contribute to the clarification of international law, continuous critical debate about the nature and functionalities of international manuals as well as recognition and reflection about the potential shortcomings of the manual format - not least on behalf of their drafters - is certainly called for. Wouter Werner's skilful analysis provides an inspiring contribution to this important debate.