

## CONCLUDING REMARKS

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I want to thank Anne Millet-Devalle for the invitation to come here. From the very beginning I welcomed the opportunity to come to the University of Nice Sophia Antipolis, inasmuch as – being a member of the Council of the San Remo International Institute on Humanitarian Law – I was eager to see the place where the University Diploma in International Humanitarian Law is offered. I have heard a lot about this project from my colleague, Michel Veuthey (Vice-President of the Institute), and I wanted to see the surroundings with my own eyes. The Grand Château in which our meeting takes place adds an aesthetic dimension to the enjoyment of the intellectual exchange.

In the event, I was pleasantly surprised to find here a group of eager young French academics who specialize in the law of air warfare. You have to understand that, only a few years ago – in 2004 – when I initiated work on the HPCR (Harvard Program of Humanitarian Policy and Conflict Research) Manual on Air and Missile Warfare, interest in the law of air warfare within French academic institutions was almost non-existent. Naturally, I invited Louis Balmond to join the Group of Experts charged with preparation of the text. Regrettably, he had to decline. I then searched high and low for a replacement. I pestered for a number of years Eric Steynmiller to identify a French academic with the necessary credentials. Neither he nor others approached could do so. Ultimately, we managed to get very useful input from a French Colonel, Pascal Dupont, and we even had a full day workshop with additional specialists from the French armed forces at the Ecole Militaire in Paris in 2008. But these were all practitioners, rather than scholars. You can well imagine my delight to encounter all of you here. One thing is crystal clear: should an attempt be made in the years ahead to review or revise the Manual, there will no longer be any scarcity of French academics qualified for such a project.

I am sincerely gratified that the HPCR Manual has been repeatedly cited in the presentations submitted to this Colloquium. There are nevertheless five comments that I would like to make in this context:

While the presentations revealed intimate familiarity with the Black-Letter Rules of the Manual (finalized by consensus in 2009), I did not detect a similar acquaintance with the extensive Commentary (formulated by a Drafting Committee in 2010) that accompanies the Manual. This is regrettable. Let me urge you to consult the Commentary, without which it is sometimes impossible

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to fully grasp the tone and tenor of the Manual. Apart from expounding and elaborating the Black-Letter Rules (citing sources), the Commentary airs the differences of opinion that emerged in the Group's debates and explains the manner in which they have been resolved by compromise.

It must be kept in mind that the Manual reflects general *lex lata*. Treaty law (primarily, Additional Protocol I of 1977) is relied upon continuously, but we searched for a consensus elaboration of customary international law in this field, binding both contracting and non-contracting parties (the Commentary points out where contracting parties to given treaties have obligations that transcend customary international law). In many instances, the Group of Experts was tempted to offer its own *lex ferenda* solutions to challenging problems that have arisen in practice and have led to considerable disagreement. However, these temptations were not yielded to. The reason is that Governments expected us to picture the law as it is, and not as it should be. That is what we have done.

The Manual was worked out in an informal process of producing a non-binding restatement of the law of air and missile warfare. It was modeled after the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea. The need for the new Manual was derived from the fact that there is no binding treaty codifying the law of air warfare. The only competitive instrument was a non-binding restatement drawn up by a Commission of Jurists (established by the 1922 Washington Conference on the Limitation of Arms), namely, the Hague Rules of Air Warfare of 1923. I do not think that it is necessary to persuade anyone that a lot has happened in the world in general, and in air warfare in particular, since 1923.

Although the HPCR Manual is a product of an informal process – rather than a treaty – the project originated at the request of Governments, it was funded by Governments and finally launched by Governments (at NATO Headquarters in 2010, under the aegis of the Belgian Minister of Defence). Moreover, earlier versions of the Manual were submitted to a series of bilateral and regional meetings with Governments (altogether, more than 45 Governments were involved in the process – including all "players" in the arena of air and missile warfare – plus the ICRC). Surely, participating Governments did not necessarily commit themselves to the text in the same way that they do to treaties: they were certainly not asked to approve any specific provision (there are no less than 175 Rules in the Manual). Yet, they gave the Manual a general thumbs-up signal. *Aufond*, the Manual should be seen as an up-to-date authoritative reflection of State practice.

Law is a living organism, and IHL continues to develop and grow. In time, there will be a need to take a fresh look at the law of air warfare. But for now there is no better source for identifying the norms that States go by in this branch of IHL.

Air warfare is very much on the public mind today. Appreciation of its importance is constantly growing in recent decades. This is true not only of military circles. There are increasing attempts by the media, by various civil