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Published National Doctrines of Nuclear Weapon States

The following paragraphs cannot be a comprehensive compilation of the relevant doctrine of all nuclear weapon-capable States. The aim of this Section is simply to draw attention to some of the statements that some relevant States have made about nuclear weapons, in order to clarify, so far as possible, State views on what the law is.

I.1 FRANCE

The *Manuel de droit des conflits armés*¹ notes that a nuclear weapon is a non-conventional weapon that uses the energy generated by nuclear fusion or fission. The *Manuel* makes brief and general reference to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), to the Comprehensive Nuclear-Test-Ban Treaty and to measures addressing outer space, the deep ocean, Antarctica and nuclear-free zones. The *Manuel* comments that nuclear weapons are not specifically and absolutely prohibited by international law but are subject to the law of armed conflict, which limits the methods and means of combat, prohibiting weapons of a nature to have indiscriminate effects and those that cause superfluous injury or unnecessary suffering.² After drawing attention to the ICJ Nuclear Opinion, the *Manuel* observes that a policy of deterrence is accordingly possible in certain circumstances.

¹ Ministère de la Défense, *Manuel de droit des conflits armés* [Legal Handbook on Armed Conflicts] (2012).

² *Ibid.* at 21: 'Cela pose évidemment problème pour la politique de dissuasion nucléaire.' [That clearly poses a problem for nuclear deterrence policy.]

I.2 UNITED KINGDOM

The UK Manual of the Law of Armed Conflict devotes a page to the issue. It asserts that there 'is no specific rule of international law, express or implied, which prohibits the use of nuclear weapons. The legality of their use depends upon the application of the general rules of international law, including those regulating the use of force and the conduct of hostilities.'³ In a footnote the reader is directed to Chapter 5 of the Manual dealing with the conduct of hostilities. That chapter includes a description of the indiscriminate attacks rule that does not exclude the application of the rule to nuclear weapons. Paragraph 6.17 makes the point that the rules on the use of force and on the conduct of hostilities cannot be applied in isolation from the factual context to imply a general prohibition. In an associated footnote, an example of such an impermissible argument is given – namely, 'the argument that attacks with nuclear weapons are necessarily indiscriminate'.⁴ While, according to the Manual, nuclear weapons 'fall to be dealt with by reference to the same general principles as apply to other weapons', rules introduced by API apply exclusively to conventional weapons and do not have any effect on or regulate nuclear weapons.⁵

Referring to some of the findings in the ICJ Nuclear Opinion, the Manual notes that '[t]he threshold for the legitimate use of nuclear weapons is clearly a high one' and comments that '[t]he United Kingdom would only consider using nuclear weapons in self-defence, including the defence of its NATO allies, and even then only in extreme circumstances'.⁶

The Manual points out that the United Kingdom has given a unilateral assurance that it will not use or threaten to use nuclear weapons against States that are parties to the NPT. The Manual then notes as follows: 'In giving this assurance, the UK has emphasised the need for universal adherence to and compliance with the NPT, and noted that this assurance would not apply to any state in material breach of those non-proliferation obligations.'⁷ The United Kingdom also noted that 'while there is currently no direct threat to the UK or its vital interests from States developing capabilities in other weapons of mass destruction, for example chemical and biological, the UK

³ UK Manual, para. 6.17, first two sentences.

⁴ UK Manual, para 6.17 n. 83.

⁵ UK Manual, para. 6.17, quoting the statement made by the United Kingdom on ratification of API and noting the nuclear weapons statements made by Belgium, Canada, Germany, Italy, the Netherlands and Spain on ratification, and by the United States on signature, of API.

⁶ UK Manual, para 6.17.1 (footnote omitted).

⁷ UK Manual, para 6.17.2.

reserved the right to review this assurance if the future threat, development and proliferation of these weapons make it necessary'. The Manual noted that similar assurances had been given to Belarus, Kazakhstan, Ukraine and, in treaty form, to Latin American, African and South Pacific States that were parties to treaties establishing nuclear weapon-free zones in those regions.⁸

1.3 UNITED STATES

Section 6.18 of the US DoD Law of War Manual addresses nuclear weapons.⁹ It starts with a clear statement that '[t]here is no general prohibition in treaty or customary international law on the use of nuclear weapons'. This assertion is stated to be consistent with a Written Statement of the Government of the United States of America dated 20 June 1995 and evidently associated with the proceedings of the International Court of Justice that gave rise to the ICJ Nuclear Opinion. While the Manual states that nuclear weapons are lawful weapons for the United States, it recognises that the law of war governs the use of nuclear weapons, as it does conventional weapons. 'For example, nuclear weapons must be directed against military objectives. In addition, attacks using nuclear weapons must not be conducted when the expected incidental harm to civilians is excessive compared to the military advantage expected to be gained.'¹⁰

In a footnote, attention is drawn to a report by the Secretary of Defense entitled 'Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C.', dated June 2013. That guidance evidently makes it clear that all plans must be consistent with the fundamental principles of the law of armed conflict. The plans will, reportedly, apply the principles of distinction and proportionality and will seek to minimise collateral damage to civilian populations and civilian objects. The report apparently makes it clear that the United States will not intentionally target civilian populations or civilian objects.¹¹

The Manual then draws attention to US policy on the use of nuclear weapons, noting that 'the United States has stated that it would only consider

⁸ UK Manual, para. 6.17.2.

⁹ It should be borne in mind that the Manual is issued with the authority of the US Department of Defense and does not necessarily reflect the views of the US government as a whole; see Introduction to the Manual.

¹⁰ US DoD Law of War Manual, para. 6.18 (footnotes omitted).

¹¹ US DoD Law of War Manual, para 6.18 n. 412, also citing the Written Statement of the Government of the United States of America dated 20 June 1995 and E. R. Cummings, 'The Role of Humanitarian Law', 25 September 1982, III (1981–8) *Cumulative Digest of United States Practice in International Law* 3421, 3422.

the use of nuclear weapons in extreme circumstances to defend the vital interests of the United States or its allies and partners', adding that it 'will not use or threaten to use nuclear weapons against non-nuclear-weapon States that are party to the Nuclear Non-Proliferation Treaty and in compliance with their nuclear non-proliferation obligations'.¹² The Manual then draws attention¹³ to the nuclear statements made by a number of States on ratification of API and referred to above in the discussion of the United Kingdom's doctrinal position, commenting that it was US understanding when participating in the negotiations leading to the adoption of API that the rules on the conduct of hostilities established by the Protocol were not intended to have any effect on, and do not regulate or prohibit, nuclear weapons.¹⁴

The final paragraph on the subject is short but important and will be quoted in full. It reads:

Authority to Launch Nuclear Weapons. The authority to launch nuclear weapons generally is restricted to the highest levels of government. The domestic law and procedures concerning nuclear weapons employment are beyond the scope of this manual.¹⁵

Such procedures are of course highly classified and the provisions they contain are beyond the intended scope of this book. However, it is interesting and highly significant – for example, in relation to the question of potential criminal liability – that the US DoD Law of War Manual specifies that the authority to launch is governmental in nature and, accordingly, is not a matter for an individual military commander.

¹² US DoD Law of War Manual, para. 6.18.1.

¹³ US DoD Law of War Manual, para. 6.18.2.

¹⁴ See, in particular, the statement made by the United States, 1125 UNTS 434, cited in US DoD Law of War Manual, para. 6.18.3 n. 418.

¹⁵ US DoD Law of War Manual, para. 6.18.4.