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SOVIET INTERPRETATION OF INTERNATIONAL LAW

A lecture delivered
at the Naval War College
on 9 September 1957 by
Professor Oliver J. Lissitzyn

Captain Robertson, Ladies and Gentlemen of the War College:

Does it do any good at all to talk about international law when it comes to dealing with the Soviet Union and its allies? I am sure that this question must have occurred to most of us from time to time.

Can we expect the Soviets to pay heed to any rules of international law, or to carry out any obligations that they assume?

Is there anything in common between their attitude toward international law and ours, or is the gap so great that there is no place at all for international law in the relations between the two sides in the cold war? Is the gap in fact so great as to make impossible any understanding or agreement between the U. S. S. R. and the West?

In order to be able to approach the answers to these questions, which I think you will agree are of considerable importance to us, we should try to look first at the distinctive factors in the Soviet interpretation of international law.

There are three distinctive factors which make for a special interpretation of international law by the Soviets.

First, there are the traditional interests of the Russian State, whose territory the Soviet Union occupies. Second, there is the nature of the Soviet political and economic systems. Third, and most important, there is the nature of Communist ideology.

Let me point out some concrete manifestations of each of these three distinctive factors in the Soviet interpretation of international law and endeavor to evaluate their importance in our attempts to answer the questions that I have asked.

First, then, there are the traditional interests of Russia as a state. What is distinctive about Russia as a state, and what was distinctive of it before the Soviet Union emerged on the foundation of Communist ideology, is its geographical position. I need not point out to you where Russia is — I am sure you all know that. You can see that it is a great land mass which has relatively few convenient exits to the sea and relatively little convenient access to the open ocean. Russia, historically, has been a land power. As a maritime or naval power, it has never been of first-class rank.

As a continental land power, Russia has always been interested in pushing its frontiers outward at sea as much as possible for protective purposes. We find that even before the First World War, before the Communists took over power, the Russian government showed a tendency to claim a larger zone of waters in which it exercised jurisdiction than was at that time customary in the West. More and more, it was moving towards the assertion of a twelve-mile zone, whereas, as you know, the great maritime states of the world — Great Britain, the United States, Germany, France, Japan — at that time all stopped at the three-mile limit.

Similarly, the Russian State was always interested in getting control of the relatively limited and largely landlocked seas to which it had exits or from which it could be attacked by a superior naval power: the Baltic Sea, the Black Sea, and the Seas of Okhotsk and Japan in the Far East. The only area in which it had access to the open ocean was in the north, which, for climatic reasons, was not very convenient.

The tendency to control the seas adjoining Russia was quite clearly marked before the Revolution. The Russian Empire tried

to get hold of the Turkish Straits, or, at least, to obtain special privileges so as to be able to protect itself and at the same time to safeguard its egress to the outer seas.

These traditional interests (largely geographical in nature), which were distinctive of the Russian State, have been inherited by the Soviet Union as the occupant of largely the same piece of territory. By themselves, these consequences of the geographical position of Russia and these traditional national interests of Russia would not mean any insuperable barrier to a real understanding with the outside world. Until the Revolution, although Russia was occasionally in a state of hostilities with certain Western Powers, it was never thought of as threatening the very existence of the rest of the world and its culture as we think of the Soviet Union today. In other words, the traditional interest of the Russian State as such would not be an insuperable barrier to the creation of a single World Community — especially since, as I may point out, these rather wide claims to territorial waters and these tendencies to close off certain seas were not peculiar to Russia. Certainly in our day we see other powers, even small Latin American States, claiming, for instance, 200-mile zones of territorial waters.

The second special characteristic that I mentioned was the nature of Soviet political and economic systems.

Politically, the Soviet Union has a totalitarian regime. This means that the government must of necessity, in order to preserve the nature of the regime, exercise almost total control over the population. It means, among other things, that it is not to the interest of the Soviet government to permit free communication between the population of the Soviet Union and the rest of the world. There have been some signs of relaxation in recent years, since the death of Stalin. Certainly the Stalin regime intensified this tendency toward isolation of the people of Russia from the outside world to a much greater extent than the pre-Stalin regime in the early days of Soviet power. Nevertheless,

no matter what the fluctuations may have been, and are going to be in the immediate future, there is a definite interest on the part of the Soviet regime to control very strictly whatever communication takes place between the peoples of the Soviet Union and the satellite countries, on one hand, and the people of the outside world on the other. That is where we find many roots of the restrictions on travel — especially on the travel of diplomats — on freedom of reporting, and, I believe I am correct in saying, on the basic unwillingness (despite some talk to the contrary) on the part of the Soviets to open up Russia to outside inspection on a really meaningful and effective basis.

Similarly, I believe that the Soviet regime — not only for reasons of military securtiy but for reasons of the necessity to control the population, to prevent free exchange of visits, ideas, and so forth — has been unwilling to give much freedom, if any, to foreign air lines to enter the Soviet Union. They have now permitted the Scandanavian airlines system and the Finnish Air Line (on a very restricted basis) to fly to Moscow. But I do not believe that it is possible to expect the same kind of relatively free air navigation by foreign nationals in the Soviet Union that we have, for instance, among Western European countries and the United States and Latin America.

Then I also mentioned the economic system. Of course the distinctive feature of Soviet economy is almost complete state control of all economic activity. First of all, this eliminates private interests of an economic or business nature. That is very significant, because in the development of international law in the West one of the elements that has played a very important role is the interest of private commerce, private business, private merchants, private investors and private people who travel from country to country in search of opportunities for work, trade or investment, and who put pressures upon their governments to observe certain rules which permit them, with a certain measure of stability and protection, to do business across the frontiers

of many states. Much of our traditional maritime law grew up on the basis of such interest. Our commercial treaties and the rules for the protection of nationals abroad are in a large degree all designed to safeguard private business or economic interests — and even beyond that, not merely economic interests but just private personal interests — in other countries and in communication between various countries.

That particular foundation (one of the many foundations) of international law is lacking in the Soviet Union. Everything is controlled by the state. There is no private business. Therefore, there is no group of people inside the state who can put pressure on their own government and say, "Now, don't do this — this is going to interfere with the normal conduct of business abroad. Don't put too many restrictions upon foreigners coming to us because they might put more restrictions upon us, and we could not do business." The Soviet government is not under any pressure of that kind.

Also, since the Soviet government is in complete control of economic activities, it emphasizes the traditional doctrine (and, incidentally, this is very curious because it is the "traditional" doctrine — it is not new; it is not revolutionary; it is very conservative) of immunity of state-owned merchant vessels from local jurisdiction when they enter foreign waters or foreign ports. In the West, there has been a tendency toward giving up this immunity since so many states — to a limited extent in the West and to a greater extent in some other parts of the world — nowadays engage in business activities. In this country, it is now the policy of the Department of State in certain cases to deny immunity to foreign states and their instrumentalities, such as vessels, when they are engaged in ordinary commercial activities. Of course the Soviet Uinon — which, itself, is the greatest example today of the state engaging in what we would call "commercial activities" — is interested in continuing to enjoy this immunity, except to the limited extent that it chooses to waive this immunity for particular reasons and in particular circumstances.

So, curiously enough, we have the Communist States insisting on this very conservative doctrine that foreign states and their instrumentalities — vessels, and so on — doing business abroad are completely immune from local jurisdiction. These are just two examples of the influence of this factor which I call the nature of the Soviet political and economic systems. Incidentally, I may add that this tendency to control everything, to prevent the spontaneous flow of ideas, of people, of trade, between the Soviet Union and other countries also intensifies some of the traditionally Russian interests, such as expanding territorial waters. As you can see, wider territorial waters not only serve military security, but also enhance the opportunities which the Soviet State wants to have to control any approach by foreign interests, foreign ships, etc., to Soviet territory.

Now I would like to come to the most important factor, in my opinion, which is Communist ideology itself. I think that so long as the Communist ideology is taken seriously by the Soviet rulers (and I see no evidence that it has ceased to be taken seriously) international law cannot serve as a real basis for an understanding between the two sides in the cold war. The reason for this is that Communist ideology is based upon and permeated by the idea of an inevitable, irreconcilable conflict between what they call the "Capitalist class" and the "Proletariat."

All history is interpreted by the Orthodox Communists in terms of a struggle between classes. In our era, the two classes which are struggling for control everywhere in the world, according to the Communists, are the Capitalists and the Workers or the Proletariat. Of course, the Communists claim to be the vanguard of the Proletariat, or the shock troops so to speak. They say that the state and law are nothing but instruments of policy of the ruling class. Therefore, in that part of the world which is controlled by the Capitalist class the state and its law serve the purposes of that class, the Capitalist class. They say that in the part of the world which is ruled by the Workers, the state and

its law serve the purposes of the Worker's class. However, they say that there is an irreconcilable conflict between the two classes; there is antagonism which is bound to persist until the Workers win. Of course, the Communists believe that this is inevitable, that sooner or later the Workers will win. Our time is a period of transition, a period of what they call "the general crisis of Capitalism." Although I do not believe they have any definite schedule or timetable, nevertheless they say that this transitional period is going to end with a victory of what they call the Working Class (meaning themselves).

Let me stop here, go back a little bit, and ask: What importance does this have in terms of the questions which I asked at the beginning of this period?

First of all, I pointed out that the traditional interests of the Russian State, insofar as they have been inherited by the Soviet Union, are not of themselves an insuperable barrier to a real understanding between Russia and the rest of the world. The Soviet political and social systems are a greater barrier, but perhaps in the absence of Communist ideology this barrier also could be overcome to some extent, since there are other parts of the world in which there are dictatorial regimes and we do not think of them as being a threat to our vital interests, but get along with them somehow. It is the Communist ideology which prevents any real agreement on the basic understanding of international law by the East and West.

Why? Because international law in the West — traditionally founded on the concept of the sovereign state — is really only possible on the presupposition that no one state is out to destroy all other states. It is based on the presupposition that there is no inevitable clash of interests which can be overcome only by the final victory of one side over the other. We have had wars with many states. We had a war with Great Britain at the beginning, and a limited war with France. We had wars with Mexico, with Spain, with Germany, with Japan, and with Italy. Generally

speaking (although there may have been some aberrations in the heat of war), we have always taken it for granted, even in time of war, that these states will continue to exist; that — at least after a period of occupation — some sort of agreement will be made and states will continue to coexist. Certainly that is the attitude which we take toward states with which we are not at war — the ones with which we are friends, or toward which we are indifferent, or with which we deal at arms' length — but also, in time of war we do not regard other states as doomed to extinction by our effort, and vice versa.

It is this basic expectation of continuity of the state system that I believe is necessary for international law to be taken seriously as a means of adjusting conflicting interests of a less vital character and as a reason for behaving toward other states as we would like them to behave towards us. In the long run, we know that we have to get along with them and have to live with them; therefore, it is better to have some rules and some common understanding on how to get along than not to have such rules. This basis obviously does not exist with respect to a state which is based on the ideology of Communism, which considers itself as unavoidably hostile to states that are not Communist, and, furthermore, which does not expect an indefinite period of coexistence. Of course, the Communists talk about coexistence and they do mean it in the sense that there is a certain transitional period during which both systems will continue to exist, side by side. But in the end, if they take their own ideology seriously, they believe that their system will prevail. So this long-range interest in international stability, reciprocity, and so forth, is really lacking.

The points I have already made about Communist ideology are, first, the concept of antagonism between different classes, and, second, the belief in the eventual victory of Communism. The third point is the Communists' idea of morality. Communists believe that morality, law, religion and state are really a means

toward class ends. Capitalist morality and religion (according to Communist ideology) are designed to enslave the workers, to keep them in subjection, and so forth. The same is true of Capitalist law, of course.

Communist morality is different. Mind you, I am not saying the Communists are immoral, because that would be a gross misinterpretation. Their moral standard is completely different from ours. They have their own moral standard. What does their moral standard consist of? It is this: anything that is conducive to the final triumph of Communism is moral. Perhaps this sounds very cynical, but it is not really so, because it requires the subordination of individual interests to this (for them) higher interest in Communist victory. In that sense, a good Communist is a highly moral being. He completely subordinates his personal and family interests to the ideal of Communism. But, of course, it is a standard which is completely different from ours. On that basis, also, we cannot see any foundation for the observance of international law in good faith by Orthodox Communists.

Does this necessarily mean that Communists reject international law as we know it? First of all, let me say that the Communist writers and spokesmen in the UN, in diplomatic notes, in public speeches, in textbooks on international law, in legal periodicals and in newspaper articles come out very often and in effect say, "Oh, yes, we do recognize international law — and it is a very important thing! We teach it in our universities; we put emphasis upon it; we publish a great deal about it; we consider it as a very important prerequisite for real culture, civilization and so forth. We reject the nihilistic attitude of certain Western writers towards international law — there are people in the West who say that international law is not real. That is horrible! That just shows how bad the West is. We believe in international law — and there is such a thing."

They use international law arguments constantly. This is interesting, because in strict logic it would be very difficult to

find a Communist explanation of what international law really is. They say, "The Capitalist States have a Capitalist system of law which is created and used by the Capitalist class to serve its own purpose." On the other side, they say, are the Workers (the Communists), who use their own system of law for their own purposes. The two are in conflict. So, how can there be something in between which is above both of them, or something which unites, so to speak, both sides? Whose class interest does international law represent, those of the Capitalists or the Communists?

Well, that is a logical difficulty — and they have struggled with it many times. Sometimes, some of their writers come up with suggestions that maybe there are two systems of international law — a Capitalist system and a Socialist or Communist system. The official line now is to reject this explanation. They now say, "No, there is only one system of international law. It is true that there are some peculiar rules and institutions of international law which we do not accept. But, overall, there are certain basic principles which are equally good for both sides."

Why should the Communists adopt this somewhat contradictory position — a position which is not quite explainable in terms of Communist ideology? Well, I think the reason is very simple: because they find that international law serves their interests to some extent. What interests?

First of all, it has a protective function for them. It especially had that function in the earlier periods when they were much weaker than the West. They were constantly afraid of intervention from the West. They were afraid of the Capitalists coming in and crushing the young Workers' Republic and of supporting internal forces hostile to Communism (of course they had some actual examples of that during the Russian Civil War). So they used arguments of international law to say: "Look, you should not do this — this is contrary to international law. Furthermore, if you do this we are going to appeal to public opinion. We will say, 'Look at who is breaking the law! They say that the

Communists are not law-abiding, but now look at who is breaking the law' It is you that is breaking the law."

So we find one constant refrain, even today, when the Communist State is much stronger: they insist upon state sovereignty. Again, a very conservative doctrine, mind you! There is nothing new about it. On the contrary, it is the good old-fashioned, nineteenth-century doctrine of sovereignty: that each state is completely sovereign; that it cannot have anything imposed upon it against its will — any kind of rules or obligations; that it should be free from intervention from the outside, and so forth.

This concept of sovereignty serves the protective function because, even today, the Communist States are still in a minority. For instance, if they should accept (for some purposes, at least) the jurisdiction of the International Court of Justice, or a system of arbitration, or some system of majority rule in the United Nations, or if they should give up their veto power in the Security Council and so forth, they could be outvoted by Capitalist nations or judges. Therefore, if they gave up the concept of sovereignty, they would be at a disadvantage.

They are a minority, striving to become the dominant power in the world, and, until they have become the dominant power, it is not in their interest to admit that sovereignty can be restricted except on a purely voluntary basis for *ad hoc* or special purposes. Of course they do enter into treaties and agreements, and to that extent they agree to certain rules which you might say restrict their sovereignty to some extent. But they insist that all of this has to be done by negotiation and by agreement — not by decisions of some international organs by a majority vote, even if those organs are judicial. In their concept of law, any Western lawyer sitting on the International Court of Justice is bound to favor the interests of the Capitalist States. That is one reason why they do say there is such a thing as international law.

At the same time there is another function of international law which is related to the protective function that I have mentioned, but which goes beyond it: the propaganda function. This not only serves the purpose of protecting them against outside encroachment, but it also serves them in their efforts to disrupt the outside world. For instance, they have continually advanced the principle of self-determination. We might point out their inconsistent behavior in the case of Hungary, the case of East Germany, and cases inside the Soviet Union — but that does not worry them. Continually in the United Nations (and other places) they speak up and say, "Ah, but look at the Imperialists suppressing Colonial peoples, not permitting them to express their own desires for their own future; in other words, denying to them self-determination." In this particular, of course, they are going beyond traditional international law. It may be a moral or a political principle, but it is not yet an accepted legal principle. However, the Soviets claim it is. There are many other instances of how they use either actual or pretended international law principles and rules to further their propaganda offensive against their opponents.

I think that the third function is also very significant. The third function of international law for the Communists is that it does facilitate relations with other states, even the states which they believe are inherently hostile to them. After all, they are not yet ready — and perhaps will never be ready — for an all-out showdown or an all-out war with the West. So, at least for the period of transition, they do want coexistence. The observance of certain rules of international law does help to avoid excessive friction which might lead to open conflict. For instance, if they began to stop foreign vessels on the high seas, indiscriminately seizing them, and that sort of thing, obviously that would lead to conflict. Again, if they ceased respecting at least certain minimum diplomatic immunities of foreign representatives or missions in Moscow and other Communist capitals, that would break up relations, which is something that they do not want to do.

Also, there are many routine matters on which continued cooperation between the Communist and the non-Communist World is possible. After all, you usually do receive a letter which is addressed to you from Moscow — *if* one is addressed. The Soviet Union belongs to the Universal Postal Union, like most other states, and it does cooperate in that sort of thing. It also cooperates in the regulation of whaling, just to give one example of some interest from the maritime point of view. There are many international conventions of nonpolitical, technical, and, to a limited extent, economic character to which the Soviet Union is a party and which the Soviets observe on the whole fairly well because it is in their own interest to do so.

But, of course, in anything that has a political implication — and for them practically everything has a political implication — they have to be highly flexible and pragmatic, and they can afford to be so in terms of their own ideology. Even in the process of adjustment, and, in a measure, cooperation between the two worlds, they see also an element of struggle. So they will always try to get a little ahead of the other side. In some of their writings, they say quite openly that the process of cooperation between antagonistic classes is itself a process of struggle, or, at least, that it includes an element of struggle.

What answers can we give, then, to the questions which I have asked? It seems to me that the answers which we can give are about as follows. They are not very simple or very unqualified.

Does it do any good to talk about international law when it comes to dealing with the Soviet Union? Certainly it does, because there are certain matters in which today, it is possible for the two sides to cooperate, or, at least, to get along. For instance, if we want to have diplomatic relations with the Soviet Union, or if they want to have diplomatic relations with us, we must have some common understanding at least to the extent of knowing what will happen to the Soviet diplomats when they come to Washington and what will happen to American diplomats when they

go to Moscow. There are many things of that sort. So long as it is the policy of both sides to maintain relations — not to push things to open, all-out conflict — there is room for something in the nature of rules of international law.

Furthermore, here is a suggestion on which I do not pass any judgment but merely mention to you. Henry Kissinger in his recent book, *Nuclear Weapons and Foreign Policy*, says that if we should adopt a policy of limited war rather than all-out war with the Soviets (since there may be occasions when we have to repel their aggression in a particular place without resorting to all-out nuclear war, which might mean our destruction as well as theirs), we might reach some tacit understanding, for instance, on not bombing certain centers of population and so forth; or, perhaps there might even be neutral commissions, making sure that we do not exceed the bounds which we set for ourselves. All of this is on the supposition, of course, that the Soviets will also see the advantages of limited war and accept the same limitations. As I said, I am not passing judgment on that suggestion, but at least it indicates there is still room for thinking about and possibly applying international law even in a situation of open conflict with the Soviet Union.

Can we expect the Soviets to pay any heed to any rules of international law, or to carry out any obligations which they assume? Well, I think the answer to that is quite simple. Yes, so long as it is in their interest to do so. In other words, we cannot expect the Soviets to carry out any obligation because of a feeling that from our point of view it is the moral thing to do, or because of the feeling that good faith or a very long-range interest in the stability of the world require it. So far as they are concerned, these considerations are not effective. But, so long as it is in their interest to do so, we may expect them to obey rules and to carry out their obligations.

Is there anything in common between their attitude toward international law and ours? Well, I think the honest answer to

that must be a qualified "Yes," and I will tell you why. It is true that we have the feeling — or, at least, there is a very strong sentiment in the West and I hope we all share it — of some moral obligation towards international law. If the Soviets are true to their own ideology, they do not in the same sense share this feeling. It is also true, however, that in the West (as well as among the Communists) international law and its observance have roots in considerations of self-interest and utility. To that extent, there is a common element. But it is a very qualified common element because, as I said before, our self-interest and our concept of utility of international law are based on the presupposition of indefinitely continuing coexistence of various states which are not hostile to each other and which do not expect one of them to finally dominate the whole world. For the Communists, these suppositions do not hold true.

I think that the other questions can be answered more or less by way of corollaries of what I have just said. The gap is not so great that there is no place for international law in our relations with the Soviets. On the other hand, any understanding or agreement between the two sides can be only provisional so long as the Communists continue to believe and follow their ideology. International law may have a limited role to play under those circumstances. But, basically, to my mind, all of this hinges on whether the Communists continue or do not continue to believe in what they preach today — in their own ideology.

It is possible for states, or ruling groups in states, to modify their ideology; to give up the ideology as an operational code, as a real precept for, or guide to, action; perhaps to continue to pay lip service to it; perhaps, as a distant aspiration, to think about it as coming true in some future millennium, but to give it up for practical purposes. I think that in the relations between the Moslem and Christian States that has largely happened; in the relations between the Catholics and Protestants it also appears to have happened; in the relations between Titoist Communism and

the West (or Yugoslavia and the West), whether the Titoist understanding of Communist ideology is so different from the Orthodox Communist understanding that it is really no longer basically hostile to the West, I am not prepared to say because I do not know enough about it. To my mind, Titoist policies have been so skillful and so devious that it is very hard for any of us to understand the underlying ideas. But, at least this suggests the possibility that sooner or later Communist ideology will be transformed, or, if not entirely given up, modified to the extent that it is no longer of practical significance, and that the Communists will give up as a practical purpose or goal the ideal of world domination by Communism. That is possible. As yet, I do not see any evidence that this has happened, although there are some slight indications that there is perhaps some long-range trend in that direction.

Since I have not ruled out the utility of international law in the relations between the West and the Soviet Bloc, I think it is of some importance to know what the doctrines or the practices of the Soviets are on certain matters, always remembering that their approach to international law is highly pragmatic, highly flexible; that they are apt to reverse themselves whenever it is to their advantage to do so.

Also, the practice of the Communist States does enter into the main stream of development of international law to some extent. For instance, the twelve-mile zone — although perhaps it is an expression of a traditional Russian interest undoubtedly reinforced by Communist interests — is a part of the influences that are today undermining the doctrine of the three-mile zone.

We have to have some idea of what direction Communist practice and Communist legal claims are taking. It is very difficult to do so because Soviet literature on international law is generally extremely vague and not always dependable as a guide to what the Soviet government will say and do. Soviet officials have repeatedly said, "Oh, but Soviet writers are not writing on

behalf of the Soviet State. We are not bound by what the Soviet writers say." Of course that is very much to their advantage because it means that the writers can discuss certain ideas, at the same time, the state retains freedom to deny that it is bound by what the writers say.

International law may be important today and in the immediate future to a greater extent if the political and economic factors in the cold war tend to predominate over the purely military factor. In politics and economics, the role of international law is somewhat greater because there is no all-out showdown or all-out struggle for final victory, for unconditional surrender, and that sort of thing.

I would therefore conclude that there is a continuing need for an objective and calm study and understanding of Communist practice and, also, Communist ideas in the field of international law, and that it is not an entirely useless task to talk about international law in our relations with the Soviet Bloc.

Thank you!

BIOGRAPHIC SKETCH

Professor Oliver J. Lissitzyn

Professor Lissitzyn attended Columbia University, where he received his B.A., LL.B., and Ph.D. degrees. Prior to World War II, he was Assistant Reporter on the Law of Neutrality, Harvard Research in International Law, from 1937 to 1939. The following year, he was a Research Fellow of the Council on Foreign Relations.

During the war, Professor Lissitzyn was attached to the Office of Strategic Services from 1941 to 1943, after which he served with the United States Army until 1946. Following the war, he was a legal consultant with the American Airlines for two years. He became an Assistant Professor of Public Law at Columbia University in 1946, where he is presently Associate Professor of Public Law.

He is a member of the Board of Editors of the *American Journal of International Law;* a member of the Executive Committee of the American Branch of the International Law Association; an Honorary Fellow and Vice President of the Consular Law Society; a member of the Editorial Advisory Board of the *Journal of Air Law and Commerce.* Professor Lissitzyn is the author of *International Air Transport and National Policy* and *The International Court of Justice.*

SPECIAL ASPECTS OF JURISDICTION AT SEA

A lecture delivered
at the Naval War College
on 11 September 1957 by
Captain Wilfred A. Hearn, U. S. N.

Captain Robertson, Ladies and Gentlemen:

My subject this morning is rather timely, and one which should be of interest to you not only because of its significance in the field of international law but because of its importance to you in your future role of planning and executing naval operations at sea. Specifically, I am going to discuss the law of the sea, with particular emphasis upon those principles affecting the freedom of the seas.

For almost three hundred years, the law of the sea has been controlled by two opposing concepts, namely: the doctrine of freedom of the seas, which proclaims that the seas are open to all nations on an equal basis; and the doctrine which recognizes that the coastal State may exercise jurisdiction and control over the marginal area in order to enforce its fiscal, customs, and sanitary laws, and to meet its defensive needs.

These two concepts would be in hopeless conflict if reasoned to their logical extremes. Notwithstanding, they have coexisted over the years without doing violence to each other. This was achieved because of the general view that the high seas, which are common to all nations, should not be appropriated to the exclusive control of any single State beyond that which is strictly necessary to meet a State's essential needs.

But the emphasis has been shifting in recent years. It has become the tendency for individual States, acting unilaterally and without the consent or the acquiescence of other States, to lay claim to vast areas of the sea abutting their coasts. These

claims, if valid, effectively deny to all of the nations of the world the free use of vital areas of the sea. If invalid, they constitute a cloud upon the right of other nations to navigate these seas, and thereby breed international incidents. In either event they do violence to the fundamental principle of freedom of the seas, and establish what may be an ever-increasing threat to sea communications among nations.

Thus, the principles which we will discuss this morning are not relics of the past, without current interest or purpose; rather, they are very much alive today, and, in many instances, very much in controversy. These same rules of international law are now being studied by some 75 nations in preparation for a world conference which will convene early next year. This conference, which is sponsored by the United Nations, will attempt to codify the law of the sea. The conference will have before it the draft articles on the law of the sea, which have been prepared by the International Law Commission.

A great deal of work is underway in the Executive Branch of our own Government in preparation for this conference. The Navy has been designated Executive Agent for the Department of Defense. The Judge Advocate General of the Navy is the Defense Representative on the Interdepartmental Committee, which will coordinate the interests of all government agencies. A working group, consisting of representatives of the Chief of Naval Operations and the Judge Advocate General, has been studying each draft article in the preparation of the Department of Defense position, based upon the interests of national defense. Teams of naval officers have visited many friendly foreign countries and explained to military and foreign office officials the strategic considerations in support of a narrow territorial sea. Two naval officers have just returned from briefing all naval commands and the senior naval officer of all NATO commands in the European and Mediterranean areas.

These intense and thorough preparations reflect our concern over the threat to the doctrine of freedom of the seas which is abroad in the world today. This doctrine is generally accepted to mean that the high seas are open to all nations, and that no nation may subject any part of it to its sovereignty. It includes, among other things, freedom of navigation on the high seas and freedom to fly over the high seas.

The strength of the Navy is measured in part by the mobility of our fleets and air arms and in the ability of fleets to disperse over vast areas of the sea if threatened by atomic attack. We are vitally concerned, therefore, with the freedom to maneuver in all of the seas of the world and in any proposed changes to the rules of international law which would restrict that freedom.

It has been said that the Navy is the precision instrument of national power because of its ability to move rapidly into troubled areas without crossing frontiers and, yet, get close enough to the trouble to show that we can apply force, if necessary. It has the further psychological advantage of possessing massive striking power which may be employed or held back without previous disclosure of its intentions. As Admiral Burke stated in a recent interview, "When the fleet moves in and shows its flag, it gives pause to an aggressor." The Sixth Fleet has demonstrated this point in the Suez and Jordan crises. The very presence of the Sixth Fleet in the eastern end of the Mediterranean on those occasions was a show of force which is credited by many as having deterred Communist aggression. The Seventh Fleet has been equally effective as a deterrent to aggression in the western Pacific.

An important factor contributing to these results has been our freedom to move into the areas of the sea where there could be in fact a show of force. This right is being threatened by the claims of many States which would close off vast areas of the open sea to our forces.

International law recognizes that the coastal States have a variety of interests and rights in the sea. That part of the sea which is termed "landlocked" (such as San Francisco Bay) is considered to be internal water and an integral part of the coastal State. Once an arm of the sea has been recognized as internal water, it moves outside the sphere of international law and becomes wholly within the jurisdiction of the coastal State, except for the rules to be applied in determining its outer limits.

The territorial sea is recognized as an area over which the coastal State has sovereignty. In effect, it is as though the territory of the coastal State has been extended to the outer limit of this marginal belt. Within these limits — except for the right of innocent passage — the coastal State has absolute sovereignty over the subsoil, the sea-bed, the water above the sea-bed, the living resources in the water, and the air space above the water.

This principle was developed in recognition of the needs of the coastal State to control a maritime belt in order to insure its well-being. It evolved as a consequence of world acceptance of the Grotius theory that the seas were open to all. But, because the principle of sovereignty over an area of the sea was in derogation of the more compelling principle of freedom of the seas, sovereignty was asserted initially only to the extent necessary to meet the essential requirements. By the beginning of the nineteenth century, a territorial sea of one marine league (or three nautical miles), as claimed by the maritime nations of the world, had become established as a part of customary international law.

The adherence of the United States Government to the three-mile rule was first announced in 1793, when Mr. Jefferson, as Secretary of State, informed the British and French officials that the United States would confine the enforcement of certain orders to an area not more than one league (or three miles) from the shore. This position has been restated and reaffirmed

on many occasions in diplomatic notes, Acts of Congress, and decisions of the Supreme Court; and it is the position of the United States today.

But the jurisdiction of the coastal State does not end at the outer limits of the territorial sea for all purposes. In a contiguous area of the high seas, the coastal State may exercise a limited jurisdiction or control in relation to customs, sanitation, and fiscal matters. The United States first asserted the right to enforce its customs laws within a zone twelve miles from the coast by an Act of Congress in 1790. Legislation for this purpose has been in effect ever since, and is in effect today. Our pioneering in this field has led to universal recognition of such a practice. It is now well settled that a State may exercise authority on the high seas in order to secure itself from injury and to give effectiveness to the jurisdiction which it exercises within its own territory. It is important to note that the right of the coastal State to exercise a limited control of jurisdiction in the contiguous zone does not change the character of the high seas nor confer any right of sovereignty or general jurisdiction over any area outside the territorial sea.

Another example of the exercise of limited control beyond the territorial sea is the air defense identification zones, which are maintained by the United States and Canada. Here, we have two coastal States imposing certain identification and control requirements on foreign aircraft entering these zones, which, off the east coast of the United States, extend some 300 miles to sea. These controls are exercised in the interest of national security. Clearly, under the fundamental principle of self-defense, a State in times of peace as well as in times of war may take reasonable measures to protect its national security, even though these measures take place upon the high seas. I think that the comments of Mr. Elihu Root were very much in point when he stated that every sovereign state has a right to protect itself by preventing a condition of affairs in which it would be too late to protect itself.

It is interesting to note that the establishment of these identification zones has not resulted in a single protest. Furthermore, all nations engaged in international air commerce in the North American areas are cooperating in the enforcement of the regulations.

The regime of the continental shelf recognizes in coastal States certain rights in the sea-bed and in the subsoil beneath the high seas. The Truman Proclamation of 1945, which was one of the earliest pronouncements on this subject, announced this doctrine as recognized by the United States. It announced that the United States regards the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.

This concept was quickly accepted by the Family of Nations. Mr. Lauterpacht, writing in 1950, stated that seldom has an apparent major change in international law been accepted by peaceful means more rapidly and with more general acquiescence and approval than is the case of claim to the resources of the continental shelf.

Because of the newness of this doctrine, however, international law relating to the continental shelf must be considered in a state of development. Consequently, there are questions which can be foreseen but for which there are no immediate answers. One such question reserved for future resolution is the outer limit of the continental shelf. The International Law Commission proposes that the continental shelf be considered as extending out to the 100-fathom curve, or beyond that limit to where the depth of the water admits the exploitation of the natural resources. No substantial objection to this proposal appears to have been expressed, and perhaps it represents the best rule which can be devised at this time.

Another question which is eventually to occur concerns the possible conflict between the demands of navigation in the waters

above the continental shelf and the obstructions which are created in order to exploit its natural resources. There have been suggestions that shipping be routed through specific channels in order to prevent interference with the expoitation of the natural resources. These suggestions have been opposed on the grounds that such action would be in derogation of the character of the waters as high seas. Equally objectionable — for the same reason — would be a proposal that the exploitation of resources of the continental shelf and the rights of navigation, fishing, and conservation be placed upon equal footing.

It is important to note that the language of the Truman Proclamation limits the claim of the United States to the sea-bed and the subsoil and disclaims expressly any control in the waters *above* the continental shelf. It is evident that this language was chosen with great care in order to dispel the idea of any claim of sovereignty to either the subsoil of sea-bed of the continental shelf, or the superjacent waters.

After stating that the United States regards the natural resources of the sea-bed and the subsoil of the continental shelf as being under its jurisdiction and control, the Proclamation provides specifically as follows: "The character as high seas of the water above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."

Notwithstanding the clarity of this language, claims have been made by other States, relying upon the Truman Proclamation as a precedent, which state that the continental shelf and the waters thereon are subject to the sovereign powers of the coastal State. The United States has informed each of these claimants that it could not recognize sovereignty of the coastal State over the continental shelf and over seas adjacent to its coast outside of the generally recognized limits of the territorial sea.

Notwithstanding the rights which a State may exercise beyond the territorial sea — that is, the right to exploit the natural resources of the continental shelf and the right to exercise

a limited jurisdiction over adjacent waters for such purposes as defense, customs, fiscal matters — there is the view, strongly supported in some quarters, that a coastal State should be entitled to exercise sovereignty over vast areas of the sea. Those who support this position, Russia among others, consider the question one of domestic concern, and believe that international law does not prohibit a coastal State from extending the breadth of its territorial sea to meet what it considers to be its domestic needs, without regard to the interests or the needs of the Community of Nations and without their acquiescense or consent.

Acting in accordance with this view, a number of States have extended their claim of sovereignty to various limits. The most extravagant claims have been made by the Declaration of Santiago in 1952. This Declaration, after noting that the former breadth of the territorial sea and of the contiguous zone was inadequate, stated in part:

> "The Governments of Chile, Ecuador and Peru proclaim as a norm of their international maritime policy, the sovereignty and exclusive jurisdiction that corresponds to each of them over the sea off the coasts of their respective countries up to a minimum distance of 200 marine miles."

The United States and the other adherents of the three-mile rule have never accepted this principle nor acquiesced in the claims of sovereignty over extended areas of the high seas. While nations that have made these claims do not now agree that three miles is the maximum breadth of the territorial sea recognized in international law, neither do they agree among themselves on any other limit.

A recent tally of the various claims discloses the following box score:

CLAIMS OF SOVEREIGNTY BY STATES

3-Mile Limit	4-Mile Limit	6-Mile Limit	7-Mile Limit	9-Mile Limit	10-Mile Limit	12-Mile Limit	200-Mile Limit	Positions Unannounced
23	4	14	1	1	1	9	4	10

Most of the States claiming in excess of three miles have been motivated by one of the following considerations: (1) because of the economic advantages to be gained by acquiring exclusive control over fishing in the waters adjacent to their coast; (2) because of the necessity of keeping up with neighboring States that have increased the breadth of their territorial seas. An official of one such State has stated quite frankly that they had no real desire to increase the breadth of their territorial sea, but felt bound to do so since their neighbor, State "X," had increased its territorial sea, and that if State "X" would go back to three miles so would they; (3) because of considerations of security.

A broad territorial sea has a certain superficial attraction to States looking for means of keeping future wars away from their door. If it could be assumed that all belligerents would respect the territorial sea of a neutral, certainly twelve miles would serve this end better than three miles. But, there are many historical illustrations which demonstrate that belligerents have been less than circumspect in their observance of the sovereignty of neutral waters. Experience also shows that the broader the territorial sea, the better haven it offers to belligerent submarines seeking to avoid detection by any enemy anti-submarine aircraft and surface vessels; and the more usable it is a means of moving to and fro from areas of the high seas without risking contact with enemy forces.

The Norwegian territorial sea created just such a situation during the early part of World War II, even though in time of war Norway has claimed a territorial sea of only three miles for

defense purposes. The British were concerned over ways of stopping the steady stream of ships carrying contraband to Germany and U-boats making way to and from the high seas. It was of importance to Germany to insure the continued availability of this corridor as a safe covered way to and from its home waters. The result was the Invasion of Norway in April, 1940.

Winston Churchill, reporting on the event in the House of Commons, had this to say:

> "The extraordinary configuration of the Norwegian western coast provides a kind of corridor or covered way, as every one knows, through which neutral trade and German ships of all kinds, warships and others, could be moved to and fro through the Allied blockade within the territorial waters of Norway and Sweden until they were under the effective protection of the German air force in northern Germany . . . The existence of this geographical and legal covered way has been the greatest disadvantage which we have suffered, and the greatest advantage which Germany has possessed in her efforts to frustrate the British and Allied blockade."

Russia and the Communist Bloc claim a twelve-mile territorial sea. One of the reasons the Communists desire a broad territorial sea was expressed by the Bulgarian delegate to the Sixth Committee which met in New York last December. He said that such a broad belt was necessary in order to keep foreign shipping from approaching close enough to the shore to observe military and naval installations.

Normally, States do not recognize territorial seas greater than their own. This absence of uniformity has been the source of much international friction and increased tensions. For example, many fishing vessels have been seized for violation of extended territorial seas. In a great number of instances the exact

position of the fishing vessel at the time of the seizure was in dispute, and in other instances the vessels were fishing within nine or twelve miles from the coast unintentionally and only because of difficulty in determining exact position without having reference to the shore line.

There was the case in 1950 of two Swedish fishing boats seized by a Rusian patrol craft in Danzig Bay, and charged with fishing eleven and ten and a half miles respectively from the coast, in violation of Russia's twelve-mile limit.

In 1954, Peru seized a whaling ship of Panamanian registry approximately one hundred miles at sea and levied a fine of approximately $3,000,000 for unauthorized whaling operations in Peruvian territorial waters.

In 1955, two United States fishing vessels were seized — one fourteen and the other twenty-four miles off the coast of Ecuador — and fined a total of $49,000 for fishing without a permit in Ecuadorian jurisdictional waters.

There have been many instances of Mexican authorities seizing United States shrimp boats on charges of shrimping within the nine-mile territorial sea claimed by Mexico.

Of course the obvious effect of extending the territorial sea is to decrease the area of the high seas; that is, the area of the seas where there is freedom of operation. The extent of that reduction is startling. Some three million square miles of high seas would be lost if the territorial sea were extended from three to twelve miles. This is an area three times as large as the Mediterranean. If a twelve-mile territorial sea were applied to the Mediterranean, it would take away over 13% of its open water.

But the real significance of a broadened territorial sea, from the standpoint of our maritime and national defense interests, becomes apparent when we consider some of the restrictions

that are imposed on the right to navigate areas of the seas not included in the high seas. Ships of all States have the right of innocent passage through the territorial seas. However, in order to enjoy this right the passage must be innocent; that is, a ship does not use the territorial seas for committing any acts prejudicial to the security of the coastal State. On the other hand, the coastal State may not hamper innocent passage. It must give notice of any dangers to navigation of which it has knowledge, and is under the obligation to use all means at its disposal to insure respect for innocent passage in its territorial sea. But, in the interest of its own security, a coastal State may temporarily suspend innocent passage in definite areas and it may designate specific courses for ships to follow upon navigating the territorial sea. The ship is bound to comply with the rules and regulations imposed by the coastal State concerning such passage and may, under certain circumstances, come within the civil and criminal jurisdiction of the coastal State.

I mention these various rights and responsibilities to point out the fact that although there is a right of innocent passage through the territorial sea, it is subject to many possible interferences and harassments not to be experienced on the high seas.

Thus, the extension of the territorial sea could in many areas of the world bring the sea lanes within the sovereignty of coastal States. Conceivably, this could result in the lengthening of sea lanes because of the unwillingness of shippers to subject their vessels to possible interferences which are inherent in the passage through the territorial sea. This might well result in increasing sailing time, and, hence, the cost of the voyage.

While a warship is not subject to the jurisdiction of a coastal State while it is in a territorial sea, it is nevertheless expected to comply with all security, quarantine, and similar rules and regulations or face expulsion. But, more important, international law, as it presently exists, does not forbid a coastal State

from subjecting the passage of a warship through its territorial sea to prior authorization or notification. Thus, there is no inherent right of innocent passage for warships, as in the case of merchantships.

Perhaps the basis for this principle was stated by Mr. Elihu Root in the North Atlantic Coast Fisheries Arbitration when he said that warships may not pass into the zone because they threaten, but merchantships can pass and repass because they do not threaten. This same reasoning may be responsible for the generally accepted view that a submarine must remain on the surface while navigating the territorial sea.

It is interesting to note that when the International Law Commission met in 1954 it took the view that passage should be granted to warships without prior notice or authorization. The following year, the Commission modified its position so as to stress the right of the coastal State to make the right of passage of warships through the territorial sea subject to previous notification or authorization. It is in this latter form that the Article will be considered by the Conference in 1958.

It is said that there is no controlling practice of the United States regarding the passage of our warships in foreign waters or the passage of foreign warships in our waters. In determining a position on this Article, it would be expected that the recognized breadth of the territorial sea would have a bearing upon the conclusion reached. Conceivably, a State might be willing to accept the view that innocent passage of a warship may be subject to authorization or notification if the territorial sea was but three miles, and yet be unwilling to adopt such a position if the territorial sea were extended to, let us say, twelve miles.

The rule as to the right of innocent passage of warships is different when the territorial sea comprises an international strait; that is, when it connects two parts of the high seas and is used for international navigation. In such a case, innocent pas-

sage in time of peace cannot be made the subject of either authorization or notification. It is, of course, the requirement for warships — as well as for all other ships — that the passage be innocent and that there be compliance with the regulations issued by the coastal State concerning the use of a strait. This rule reflects the holding of the International Court of Justice in the Corfu Channel case.

This right of innocent passage does not exist unless the strait serves as a connecting link, or as a means of communication between two parts of the high seas. If the area of sea at either or both ends of the strait does not have the character of high seas, then the strait does not meet the test of an international strait. This becomes highly significant when we consider the possible effect of broadened territorial seas.

As an example, let us consider the Gulf of Aqaba. As you probably know, the Gulf is approximately 125 miles long and 14 miles wide at its widest point. It is connected to the Red Sea by the Strait of Tiran, which is wholly within the territorial seas of Egypt and Saudi Arabia. The Gulf is bound by Egypt, Saudi Arabia, Israel and Jordan. On the basis of a three-mile territorial sea, there is an area of high seas within the Gulf. Accordingly, under the rule of the Corfu Channel case, the Strait of Tiran constitutes an international strait, and the right of innocent passage exists. However, if a twelve-mile territorial sea were to be recognized, then the Gulf would be comprised entirely of the territorial seas of the coastal States, and the Strait would no longer have the characteristics of an international strait.

Before considering the effect of extending the breadth of the territorial sea on other narrow passages between two points of the high seas, I want to invite your attention to the status of aircraft in international law. While an airplane enjoys the freedom to fly over the high seas, it does not have the right of innocent passage over territorial waters. This prohibition is not changed

because the territorial sea happens to be an international strait, through which warships may sail as a matter of right. Thus, the extension of the territorial sea would, in certain areas of the world, deny aircraft access to large areas of open water. Let me cite examples.

The Strait of Gibralter is seven miles wide at its narrowest point. In the event of the recognition of a territorial sea greater than three miles, the entire Strait would be within the territorial sea of the coastal States. Thus, aircraft would not have the right to fly from the Atlantic through into the Mediterranean without getting permission from the coastal States. The same result would occur in the Strait of Bab el Mandeb, which connects the Gulf of Aden to the Red Sea.

If a twelve-mile territorial sea were accredited to each of the islands in the Aegean Sea, there would be a solid barrier of territorial water over which an airplane could not fly. Thus, an airplane would be denied the right to fly from any point in the Mediterranean to points in the Aegean, or beyond. Similar results would occur in the Straits connecting the Gulf of Pohai with the Yellow Sea, and in several areas in the Baltic.

The rule of international law relating to the recognition of bays as internal water determines the status of many large areas of the sea. For instance, when a bay is recognized as internal water, and thus considered a part of the territory of the coastal State, the territorial sea is measured from the outer limits of the bay rather than from the low-water mark along the sinuosities of the coast. Thus, where this rule is applied, it places within the exclusive control of a State large areas of water which would otherwise be high seas.

Normally, in order to be recognized as internal water, a bay must possess certain geographical characteristics. One of the departures from the recognized criteria proposed by the International Law Commission is an increase in the allowable width

of the mouth of such a bay from ten to fifteen miles. Here, again, we see the influence of those who desire to make it easier for States to gain exclusive control over large areas of the high seas.

In addition, a bay may be considered internal water if it is a "historic" bay; that is, where the claim is based on a prescriptive right gained by reason of its geographical characteristics and coupled with long usage and control. The "historic bay" concept is subject to great abuse, as where a State unilaterally declares areas of its coastal water to be internal water and thereby excluded from the areas of the high seas.

It was less than sixty days ago that the Council of Ministers of Russia announced the establishment of Peter the Great Bay as internal water, with the territorial sea measured seaward from the line running from the mouth of the Tumen River to Cape Povorotny. There was a further announcement that navigation of foreign vessels and flights of foreign aircraft in this area may now take place *only* with the permission of competent Soviet authorities.

About three weeks later, the Associated Press reported from Tokyo this very ominous news item: "Russia has warned that Japanese fishing boats coming within twelve miles of Russian territory will be confiscated."

From headland to headland, Peter the Great Bay is 115 miles wide at its mouth and 55 miles long. By this act, Russia laid claim to roughly 2,000 square miles of high seas and closed off traditionally important Japanese fishing grounds in the Bay and in the adjoining areas of the Sea of Japan. Of course this Bay is not internal water, and cannot be recognized as internal water under any concept of international law.

The United States immediately protested, charging that the Russian decree was an unlawful attempt to appropriate a large area of the high seas by unilateral action; that such an attempt

has no foundation in international law, and encroaches upon the well-established principle of freedom of the seas.

In conclusion, I think it is significant that many of the States asserting claims are not in fact interested in securing a uniform breadth of the high seas throughout the world, even though it might coincide with their particular claims. What they really seek is the blanket sanction of international law to establish whatever limit best suits their purpose at the time — whether it be twelve miles, today, or a thousand miles tomorrow.

This theory was best illustrated in a Soviet note which replied to our protest in connection with the shooting down of a B-29 in the Kurils in 1954:

> "Establishment of limits of territorial waters is regarded as within the competence of the littoral States, which define their extent in accordance with their national interests and also with interests of international navigation."

Such a concept, if universally accepted, would produce chaos in the sea lanes of the world. It would take us back to the era when Spain and Portugal divided up the oceans by degrees.

I think it also appears somewhat incongruous that many of the most sweeping assertions of sovereignty have been made by the smaller nations, possessing not the slightest means of the enforcement of their claims. On the other hand, the major maritime powers who have the wherewithal are staunch defenders of freedom of the seas.

It may be argued, as indeed it has been, that the three-mile rule is an archaic doctrine — good for the days of cannon shot and sailing ships, but little related to this era of guided missiles and nuclear power. To meet the missile threat, it has been contended that we should extend our sovereignty to fifteen hundred miles and concentrate our efforts on patrolling the zone. On the

face, it is an appealing theory. In effect, it is a retreat to the "Fortress of America" concept. We could not long survive in some magical island surrounded by a world we abandoned to hostile forces.

The best defense is a good defense. Our system of collective security is a maritime alliance dependent upon mobile forces and effective sea communications. Recent events in sensitive areas demonstrate beyond the shadow of a doubt that the security of this country and of the Free World can best be protected if the present areas of the high seas remain open to our naval forces, both on the surface and in the air.

Thank you very much!

BIOGRAPHIC SKETCH

Captain Wilfred A. Hearn, U. S. N.

Captain Hearn attended the University of Maryland and received his LL.B. degree from George Washington University in 1931. He is a member of the bars of the District of Columbia and the State of Tennessee.

Prior to entering the naval service in 1942, Captain Hearn was engaged in the private practice of law. He served throughout World War II as an aviation ground officer. During this period, he attended the United States Navy School of Military Government at Princeton University.

In 1946, Captain Hearn transferred to the Regular Navy as a law specialist. He has served tours in the Office of the Judge Advocate General as Chief Tax Officer, Director of the General Law Division, and Director of the International Law Division.

In addition, Captain Hearn served as Legal Officer in the FOURTEENTH Naval District from 1950 to 1952, and in 1955-1956 attended the Advance Course of the Army's Judge Advocate General School at the University of Virginia.

STATUS OF ARMED FORCES ABROAD

A lecture delivered
at the Naval War College
on 11 September 1957 by
Lieutenant Colonel Edwin G. Schuck, U. S. A.

Since the end of World War II, plans for the mutual defense of the United States and of the rest of the Free World have included the requirements that foreign troops be stationed in various countries throughout the world, and, for the most part, those troops are American. This peacetime stationing of our forces abroad for long periods of time on the soil of sovereign States has made it necessary for us to conclude fairly detailed agreements, defining the rights and obligations of those forces in the territory of those States. The terms of the various agreements differ, and so the status of our forces varies from country to country.

For example, with regard to the very important matter of criminal jurisdiction, in a few countries such as China and Korea, we enjoy exclusive criminal jurisdiction over our personnel. We also have exclusive jurisdiction in Germany, but even now we are negotiating a new agreement with that country under which the Federal Republic will very soon exercise criminal jurisdiction over our personnel under a formula based on the NATO Status of Forces Agreement.

At the other end of the scale, we have no agreement regarding criminal jurisdiction with such countries as Iran and the Republic of Panama. Consequently, under what are well-accepted principles of international law, those States have the right to exercise criminal jurisdiction over our forces in those countries.

Between these two extremes, in some thirteen NATO nations, including the United States, the provisions of the NATO

Status of Forces Agreement are in effect. Under these arrangements there is provision for the simultaneous existence of the right to exercise criminal jurisdiction on the part of both the sending and the receiving States. There is also provision for the primary right of one or the other of those States to exercise its jurisdiction in any given case under conditions prescribed by the Agreement. Our troops in Japan are covered by practically identical provisions, and a similar bilateral agreement is in effect with Iceland.

In all, we have agreements with about 64 countries concerning the stationing of our troops abroad. As I have indicated, the provisions of those agreements vary considerably. The status of the great majority of our forces overseas, however, is governed by the NATO Status of Forces Agreement. Therefore, any examination of the status of our armed forces abroad must necessarily focus on the provisions of that Agreement.

In all that follows, I shall assume (what is usually the case) that the United States is a sending State; that is, a State which sends its forces to be stationed on the soil of the receiving State.

I would like to approach my task by discussing some of the specific problems which have arisen in our operations under this Agreement, rather than by venturing into an article-by-article analysis of the Treaty. I think you would find that boring, and I am quite sure that I would.

The Agreement describes our rights and obligations in detail in several areas of importance. It includes such matters as passport and visa regulations; identity cards; movement orders; expulsion of undesirables; the issuing of drivers' licenses; the exercise of criminal jurisdiction; the payment of claims; the procurement of goods, services, facilities, and labor; taxation; customs regulations; the free import of household goods and automobiles, and a host of other subjects.

Most of our problems, however, have arisen out of the provisions on criminal jurisdiction. Under those provisions, there is a relatively small number of offenses over which either the receiving State or the sending State, as the case may be, has an exclusive right to exercise its criminal jurisdiction over offenses committed by our personnel. These are the offenses committed by our people which are contrary to the law of one State but not to the law of the other. As I said, these are a relatively small group of offenses.

The great bulk of the offenses committed by our people, however, are offenses against the law both of the sending and the receiving States. In such cases the Agreement provides for concurrent jurisdiction; both States have a right to try the offender. But, one State or the other, under the provisions of the Agreement, has the primary right (or first right) to try the offender. The United States has the primary right to try either a member of the force or the civilian component — that is, roughly, a civilian employee — in only two circumstances. The first circumstance is where the offense is committed solely against the United States, or a member of its force or civilian component, or against a dependent. The other case is "where the offense arises out of an act or omission done in the performance of official duty." In all other cases of concurrent jurisdiction the receiving State has the primary right to try the offended.

No problems have been presented by the first of these two criteria which I have mentioned as determining the right of the United States to exercise its jurisdiction, because when the victim is the United States, or a member of its force or civilian component, or a dependent, the status of the victim is relatively easy to ascertain, and that ordinarily settles the question.

The second class of offenses, however — those arising out of the performance of official duty — has presented some very vexing problems. One of these — the problem which has recently

received wide publicity in the case of Specialist 3/C William S. Girard — is the question of just exactly what is meant by "offense arising out of an act or omission done in the performance of official duty." The vagueness of the term invites differences of opinion.

The problem of interpretation of this phrase, however, is even further complicated by the fact that the Agreement fails to specify *who* shall make the determination as to whether an act was done in the performance of official duty. Since it fails to specify, there are, again, differences of opinion.

The authorities of both France and Turkey, for example, have agreed to accept as conclusive of this question the certificate of the American military commander concerned to the effect that a given offense did arise out of the performance of official duty. The French acceptance of this certificate, I might add, is conditioned on the certificate's being made out by a staff judge advocate or other legal officer. Naturally, the feelings of military lawyers have not been hurt by this expression of confidence in their professional qualifications.

The United Kingdom, on the other hand, unlike France and Turkey, has taken the view that only the courts of the United Kingdom may determine with finality whether an offense did arise out of the performance of official duty and that, consequently, the certificate of the American commander in this connection is merely evidence for the court to consider, along with whatever other evidence may be available.

It is interesting to note, in this connection, that the minutes of the negotiators who drafted the NATO Status of Forces Agreement indicate quite clearly the general acceptance of all the countries concerned, at the time of the drafting of the language, of the position urged by the United States: that only the military authorities of the sending State could make this determination.

Unfortunately for that very clear U. S. position, however, the Senate Hearings prior to the ratification of the NATO Status of Forces Agreement by the United States indicate with equal clarity the position of the United States, when the United States is the receiving State, that only the courts of the United States may determine whether an offense arose out of official duty when the offense is committed by foreign NATO personnel on duty here. We are therefore in a somewhat anomalous position, and unable to object very strenuously to the position which the United Kingdom has taken, since it is in full accord with our own when we happen to be the receiving State.

Not only does the Agreement not specify, as I have indicated, who shall make the determination, but it also fails to define the meaning of "offenses arising out of an act or omission done in the performance of official duty." A few simple examples, I think, will serve to illustrate the difficulty which arises out of this omission.

Take the case of a military policeman, or, if you like, shore policeman on routine patrol who stops his jeep, enters a house, and commits rape. Clearly, he was on duty at the time of his offense. But the question seems to be: Was the rape done in the performance of official duty?

We had just such a case, the case of Private C. in Japan. Although the MP's commanding officer initially issued a certificate certifying that Private C. had committed his offense while "on duty," it was necessary for him to withdraw that certificate — in the face of Japanese protests — and to submit another in proper form, certifying that C. was not "in the performance of official duty" in committing rape. The Japanese could argue very effectively that if the parties to the treaty had intended to give the United States, or the sending State, the primary right to exercise jurisdiction in every case in which an offense was committed while the offender was on duty, the Agreement could have

said so very clearly and very easily. But it does not. The offense in this case clearly did not arise out of the performance of any official MP duty; rather, it partook of the nature of an independent venture of his own. The fact that he was on duty at the time, then, seems to be irrelevant to the determination of this question. Certainly, it is not conclusive.

On the other hand, if an MP on routine jeep patrol should, by negligent operation of his vehicle, run over and injure or kill a pedestrian, I think this offense clearly does arise out of the performance of his official duty, his duty being to drive the jeep on routine patrol. Again, the fact that he was "on duty" at the time of the offense is not conclusive.

By way of further illustration of the wide possibilities for disagreement in the interpretation of the Agreement in this "official duty" area, even in the kind of case that I have just posed of a driver who runs a pedestrian over in the course of driving while on duty, an early Turkish interpretation of the Agreement held that this kind of offense could not possibly arise out of the performance of official duty, for the simple reason that it was no part of the driver's duty to run over Turkish pedestrians. This difficulty arose out of a faulty Turkish translation of the Treaty (there is always a reason for these things), and it was corrected by later enactment of a Turkish statute which clarified the language. At the same time, the Turks agreed to accept as conclusive the military commander's certificate of official duty. So, between these two factors this kind of difficulty should not again occur in Turkey.

Another hypothetical case illustrates perhaps an additional misunderstanding of the "official duty" problem. A seaman, absent with permission from his station and driving his private automobile, runs over and kills a pedestrian. Under service regulations, he would properly be considered to be in "line-of-duty" status at the time. But it can hardly be argued that he injured his victim in the *performance* of official duty, because he simply

did not have any duty to perform. Neither could it logically be argued that a member of the military establishment is on duty 24 hours a day and, therefore, is always subject to the primary jurisdiction of the United States. Nor, finally, is it conclusive (although it might well be significant) that the offender committed his offense within the limits of a United States military reservation. Since the question of the right to exercise jurisdiction in this area depends on the *performance* of his official duty — whether on or off the reservation — his presence on the reservation is usually largely immaterial.

If I seem to belabor this point too much, it is only because all of these factors entered into the dispute between the United States and Japan in connection with William S. Girard, whose case is now being tried in the Maebashi District Court in Japan. In this case, both the United States and Japan conducted separate investigations into the offense. From the conflicting evidence which was developed (and it *did* conflict), both sides could argue logically enough for their own interpretation of the "performance of official duty" clause as applied to Girard. Both the United States and Japan, moreover, have adhered to their divergent opinions in this connection. So, whether Girard's act in killing a Japanese national did in fact arise out of his performance of official duty is a question which has not been settled as between the two countries. The United States Supreme Court's opinion in the case did not resolve this question. All the Court decided was that the United States could determine not to exercise the jurisdiction which it claimed to have over Girard, but could constitutionally, instead, decide to turn him over to Japan for trial.

The meaning of the treaty language out of which the difficulty arose therefore remains nebulous, and could conceivably arise to plague us in the future. In an effort to clarify this problem, the suggestion has been made that "an act of omission done in the performance of official duty" should be considered to be one which is done during a period of time within which the of-

fender has an official task to perform and which has some reasonable relation to the performance of that task. The adoption of such a criterion of construction by all parties to the treaty would, I think, go far toward reducing the possibility of future conflict on this point.

It seems to me, however, that it is extremely unlikely that another Girard case would occur. The Girard case was a peculiar one on its facts — as those facts were developed in the separate investigations conducted by the two countries concerned. In the great majority of cases, it is perfectly obvious from the circumstances surrounding the commission of the offense whether the offense did in fact arise out of the performance of official duty. Only in a very rare borderline case like this one could a dispute arise. In such a case, it seems to me that each side would be very well advised to reexamine all the facts and circumstances carefully, objectively, and unemotionally — and particularly the latter. If they are then unable to agree, they must follow whatever procedures are laid down in the Agreement itself for the resolution of disputes. If agreement cannot then be reached, there is final recourse to a diplomatic resolution of the problem. I will not say anything more about the Girard case — particularly about its facts — because the case is now under consideration in court.

Jurisdiction over dependents has always posed a minor problem under the NATO Status of Forces Agreement, because the primary right to exercise jurisdiction in the kinds of cases which we have been discussing is accorded the United States only with respect to offenses committed by members of the force or members of the civilian component. Consequently, dependents are always subject to the primary jurisdiction of the receiving State.

This has not posed a very great problem in the past because some receiving States have seen fit to consider that dependents are subject to the same jurisdictional provisions as are members of the military establishment, even though the Agreement

does not so provide. In any event, it has always been possible to request a waiver of the receiving State's jurisdiction in favor of the United States under a provision of the Treaty which requires that the State having primary jurisdiction give "sympathetic consideration to a request for waiver from the other State.

Unfortunately, however, the recent decision of the United States Supreme Court in the cases of *Reid vs. Covert* and *Kinsella vs. Krueger* has left the jurisdiction of courts-martial over dependents (and perhaps over civilians generally) in a somewhat hazy state. Four members of the Court stated unequivocally that a court-martial has no jurisdiction over any civilian for any offense. Two members of the Court limited their opinion to finding that a court-martial has no jurisdiction over a dependent in peacetime for a capital offense. So, the only thing we can conclude that a majority of the Court would agree upon is the opinion of the two members which I have just mentioned: that is, a court-martial does not have jurisdiction to try a dependent in peacetime for a capital offense.

Whether this failure of court-martial jurisdiction will ultimately extend to other than capital crimes committed by dependents, and to capital and noncapital crimes committed by other civilians, must await the decision of the Court on other cases which will undoubtedly be brought before it in the not too distant future by dependents convicted of noncapital crimes, and by civilians — civilian employees, for example — convicted of both types of crimes.

One such case has already been decided in a Federal District Court. Mrs. Louise Smith, tried by court-martial in Germany on a charge of unpremeditated murder (a noncapital offense) arising out of the stabbing of her husband, was convicted of voluntary manslaughter (also a noncapital offense). She brought a writ of *habeas corpus* in the same court which had originally denied the writ in the Krueger case, and the judge — having been overruled in the Krueger case, and perhaps being a little gun-shy — granted

the writ. If this case is not appealed to the Supreme Court, the law as decided by the District Court apparently is that a court-martial has no jurisdiction over a dependent for any offense. Unfortunately, the military services may not appeal their own cases to the Supreme Court. This is the function of the Solicitor General, and we do not know whether he will see fit to appeal the case. The Army, of course, is urging him to do so.

Another case which would, I think, furnish an excellent vehicle for the clarification of this question is the case of Sergeant and Mrs. D., both of whom were convicted in a common trial in Germany of manslaughter for the killing of their child. If they are confined, and if they bring a writ (which I am sure that Mrs. D. will), and if the writ is granted, Mrs. D. will be set free and Sergeant D. will serve his sentence for a crime of which they both have been convicted.

The immediate result of the two cases already decided *Reid vs. Covert* and *Kinsella vs. Krueger,* insofar as operations under our international agreements are concerned, is that any dependent who henceforth commits a capital crime abroad must be tried in a foreign court, if at all. No Federal Court in the United States has jurisdiction over common crimes committed abroad, and certainly we cannot request a waiver of jurisdiction, or even attempt to exercise our own primary jurisdiction, if our military courts do not have jurisdiction to try the offender. Courts-Martial, for the present, will continue to try dependents for noncapital crimes, and other civilians for all offenses in every case in which we can either get a waiver of jurisdiction or in which we have primary jurisdiction in the first instance.

It has been suggested that Congress might fill the gap created in our jurisdiction by the *Krueger* case by extending the jurisdiction of Federal District Courts to include common crimes committed abroad by Americans. Even if this were done, and if the many other legal problems involved in the resulting procedures (and I assure you there are many of them) could be

overcome, it would still be necessary to execute a new agreement with every country to which dependents, or civilians generally, as the case might be, might go, in order to insure that the jurisdiction of the receiving State could be waived to a United States Court sitting in the United States, or a civilian court sitting overseas. Experienced observers have indicated their belief that it would be practically impossible to obtain such agreements. So, we may safely conclude that the loss of court-martial jurisdiction over civilians overseas will certainly result, to the full extent of that loss, in the trial of these civilians in foreign courts.

One other interesting question affecting criminal jurisdiction has arisen recently. The Agreement provides that an offender may not be tried by both the sending and the receiving State, in the receiving State, for the same offense. This has been loosely referred to as the "double-jeopardy provision." There is no prohibition in the Agreement, however, against an accused being tried twice — that is, placed twice in jeopardy — for a given offense by the State which does try him. This is probably for the reason that the parties presumed, when they signed the Agreement, that every civilized system of justice included a double-jeopardy provision — as they do.

In France, however, where the problem has arisen, this double-jeopardy concept receives a somewhat different application from its application in the United States, and it is from this that the problem has arisen. In France, where the Civil law is in effect (a system which is in effect in most of the countries of Europe), criminal procedure usually involves several steps, just as it does in the United States. The offender is first brought before a magistrate, who determines what the charges should properly be and determines where the case should be tried. He then refers the case for trial. After trial in the trial court, either the defense or the prosecution may appeal on errors of law. In addition, the prosecution may appeal for no better reason than that in the prosecutor's opinion the accused should not have been

acquitted, or the sentence is inadequate to the offense. On appeal, the case is heard *de novo* in the Appellate Tribunal; that is, as though the first trial had never occurred, and the whole case is tried over again. Under this procedure there is, of course, always the possibility that an acquittal on trial may be appealed and that a conviction may result in the Appellate Court, or that a light sentence imposed on trial may be increased in the Appellate Court. This possibility has materialized in the case of several of our personnel in France.

In the United States, it is highly probable that an appeal by the prosecution based on other grounds than error, which should result in an increased sentence or in a conviction after acquittal, would be held to be invalid. So the question arises: What should we do about this?

The Department of Defense has requested that the Department of State make diplomatic representations to France in cases of this kind. The Department of State has not agreed unqualifiedly that all such cases are proper cases for the institution of diplomatic procedures — and perhaps logically, since a practice so fundamental to civil jurisprudence as the one which we are discussing must have been known at the time of the negotiation of the Agreement and at the time of the signing and ratifying to the parties to that Agreement. Since they knew about it and did not object or prohibit the practice, they must be presumed to have accepted it; to object, at this point, would be futile. I think it would be absurd to expect that European countries would change so fundamental a facet of their system of justice merely because the United States has decided that the procedure is unfair.

There is also the feeling that this procedure is not contrary to the spirit of the "double-jeopardy provision," although it might be contrary to its letter, because even in civil jurisprudence there is no possibility of having an uninterrupted succession of appeals by the prosecution in a case of this kind. After the first appeal is concluded, the double jeopardy is prohibited

in the civil law countries — including France — in the same sense as it is in the United States. So, presumably, no further action will be taken in connection with this matter.

I think that perhaps I should not devote my entire time to jurisdictional problems, although a great many problems in this area could be explored profitably, and you may run into a good many of them in your next tour of overseas duty. There are other matters of importance in the Agreement, however, and I would like to spend a little time on them.

I would like to close this discussion of the jurisdictional provisions of the Treaty by giving you a few statistics on the operation of the Treaty during the six-month period ending 31 May 1957. Of all the offenses committed during this period by members of our forces abroad, world-wide, and including all three services, 6,256 offenders were subject to trial by foreign jurisdictions. However, the foreign authorities waived their jurisdiction in over 62.5 per cent of these cases. Only 2,266 cases were therefore tried by receiving-State courts; 149 of these involved serious crimes, and 151 were acquitted. Of those convicted, 158 were sentenced to confinement, but only 72 were actually confined. In the other cases, the confinement was suspended, and fines or reprimands were imposed. So, of the original 6,256 cases subject to foreign jurisdiction only 72 were confined, or something a little over one per cent. As of my departure from the Pentagon, there were 51 American personnel languishing in *durance vile* in foreign jails.

Let's examine for a moment some problems which have arisen out of the tax provisions of the NATO Status of Forces Agreement. Article 10 of that Agreement exempts members of the forces and members of the civilian component from three categories of foreign taxes: (1) taxes on the income from service pay; (2) taxes on personal property which is present in the receiving State solely because the individual is; (3) taxes whose legal incidence depends upon residence or domicile in the receiving State. At first glance, these tax exemptions seem fairly

generous. I have no doubt that they are highly beneficial to, for example, a French soldier on duty in the United States, where the largest single source of Federal income is the income tax and where income and property taxes are important sources of State income for the 48 States, for he would be exempted from these kinds of taxes.

The provisions do little, however, to benefit the American who is stationed in France. In that country, the main source of revenue for the government is not the income tax, but a whole complex of direct taxes as to which the Agreement gives us no exemption whatever. One such tax in France, for example, is the *Contribution Mobiliere.* This tax is imposed on the occupancy of a dwelling. Anyone who occupies a dwelling in France is subject to the payment of this tax. It was first contended by our military authorities in Europe that United States personnel were not liable for this tax since, as I have indicated, the Agreement exempts us from liability for taxes based upon residence. Our people in Europe contended (with some logic, I think) that the occupancy of a dwelling is very much the same as residence in the receiving State.

Investigation of the negotiating history of the Treaty, however (which is the first place you go when the language seems to be ambiguous), indicated that when the Agreement was being negotiated and when this very Treaty language was under discussion, the American representative acceded to a French request that, regardless of the language of the Agreement, American personnel would not be exempt from payment of the *Contribution Mobiliere,* or other taxes whose legal incidence was on the occupancy of premises. We are bound by this commitment, just as though it were written into the Agreement. So our personnel must pay the *Contribution Mobiliere* and also another tax, whose name I will not attempt to pronounce, but whose legal incidence is also based on the occupancy of quarters.

Certain other French taxes are also payable under the Agreement: the radio tax, for instance, which is imposed upon possession of radio and television sets; the *taxe de prestations*, or in lieu of that tax the *taxe vicinale*, are levied for the maintenance of roads, and the Agreement expressly does not exempt us from taxes imposed for the maintenance of roads. We must also pay certain social security taxes, which are imposed in connection with the employment of servants (these are very much like our own taxes).

The only French taxes from which we are exempt under the Agreement are the dog tax and the musical instrument tax, both of which are taxes on personal property — and therefore we are exempt from them under the Agreement — neither of which, I might add, is a very large source of French revenue.

There are good legal arguments on both sides of the question: should we or should we not pay these taxes? I am not going to go into them now because of time limitations. Problems of direct taxation of this kind, however, have not arisen elsewhere, but only in France up to this point.

A tax problem has arisen in the United Kingdom, but in a somewhat different connection. Article 11 of the Agreement provides that a force may import, free of duty, reasonable quantities of goods for use of the force — and, under certain conditions, for the use of the civilian component and dependents. It is under this provision that we import cigarettes, coffee, food, and all the consumables and so on which we then resell, duty free, to our personnel in ship's stores, PX's, commissaries, and the like.

The United States has taken the position that under this provision we may also import gasoline, duty free, for use in private vehicles. In spite of the very high price of gasoline in the United Kingdom — or, perhaps because of it — that country does not agree that we may import, duty free, gasoline for this purpose

under the Agreement. Negotiations on the subject are now going on.

Gentlemen, my time is going to run out very shortly. Lest I leave you, because of my emphasis on our problems in connection with these agreements, with the impression that the arrangements under which our troops are stationed abroad perhaps leave a great deal to be desired, I hasten to assure you that reports of the commanders of all three services in the field indicate that the agreements *are* working — and working very well.

We have encountered a great many problems in our operations under these agreements, but I think this is simply the result of the fact that this is the first time in our history that we have had forces overseas in the territories of other sovereign States for extended periods of time. It is the first time we have had to operate under agreements of this kind for long periods of time, and problems were bound to arise.

We have solved a great many of our problems, and, with the continued cooperation of receiving State authorities, I am quite sure that we will continue to solve our problems satisfactorily as they arise in the future. Probably the excellent day-to-day relationships which have been established by our personnel in the field with the receiving State authorities are largely responsible for the success of the operations up to now. I cannot stress too much the importance of establishing at all command levels cordial relationships with the authorities of the receiving State with whom you must deal. The Navy, of course, is an old hand at that kind of thing, having been in the international business much longer than the Army and Air Force, so perhaps I need not stress that to you, although it has been a very, very important factor in our successful operations under these agreements.

Commanders have reported that the jurisdictional arrangements have not in any way been detrimental to the accomplishment of the military mission; they have not adversely affected

the morale of the troops. Indeed, we have seen many cases in which trial by a foreign court is certainly desirable, from the point of view of the accused, and preferable to trial by a court-martial. This possibility was strikingly illustrated by a case which we had in France long before the NATO Status of Forces Agreement was in effect:

A civilian employee of the Army killed his wife in what has been described as "a physical beating characterized by the utmost savagery." The French charged him with "involuntary homicide," for which offense the maximum penalty is confinement for three years. A United States Senator (who shall be nameless) saw fit to intervene in behalf of the accused in this case, who was one of his constituents. As a result of protracted diplomatic negotiations, the French waived jurisdiction to the United States. He was thereafter tried for murder by an Army court-martial, convicted, and sentenced to life imprisonment.

The extent to which morale may be adversely affected, and to which operational efficiency may be reduced, by the *lack* of an Agreement has also been demonstrated to us; that is, the lack of an Agreement which defines the rights and obligations of our forces in a foreign territory, and, at the same time, limits the jurisdiction of the foreign country over us.

Evidence is found in reports from the military commander in the Panama Canal Zone (you will recall that when I opened this talk I mentioned that we do not have an agreement with this country regarding jurisdiction over offenses committed by our personnel who are assigned to the Canal Zone but who commit offenses while they are in the status of tourists, on leave or on pass in the territory of the Republic of Panama), from which it appears that some of our personnel tried in Panamanian courts have not received fair trials.

The Commanding General of the United States Army, Caribbean, complains particularly of trials conducted by the

judge's secretary, rather than by the judge; of trials held when the accused is so drunk that he cannot understand what is going on; of refusal to call witnesses whom the accused would like to have called in his behalf; and of the introduction of unsworn testimony. Most of these cases, I must admit, are police court cases, and perhaps in our own police courts we have a similar summary procedure. As I indicated, moreover, the personnel involved are not stationed in the Republic of Panama, but are present only as tourists. Nevertheless, these deficiencies would be prohibited under a NATO Status of Forces-type Agreement.

I think that this example speaks eloquently in support of a system of agreements like those under which we operate elsewhere, defining the rights and obligations which we must have in order to accomplish our missions overseas.

I thank you!

RECOMMENDED READING

The evaluation of books listed below include those recommended to resident students of the Naval War College. Officers in the fleet and elsewhere may find them of interest.

The listing herein should not be construed as an endorsement by the Naval War College; they are indicated only on the basis of interesting, timely, and possibly useful reading matter.

Many of these publications may be found in ship and station libraries. Books on the list which are not available from these sources may be obtained from one of the Navy's Auxiliary Library Service Collections. These collections of books available for loan to individual officers are maintained in the Bureau of Naval Personnel; Headquarters ELEVENTH, FOURTEENTH, FIFTEENTH Naval Districts; and Commander Naval Forces, Marianas, Guam. Requests for the loan of these books should be made by the individual to the nearest Auxiliary Library Service Collection (See Article C9604, Bureau of Naval Personnel Manual, 1948).

Title: *Legal Problems Under Soviet Domination.* 132 p.

Author: Nagorski, Z., ed. New York, Association of Polish Lawyers in Exile in the U. S., 1956.

Evaluation: Of the several legal researches executed by as many authors, two are concerned with recent developments in Polish domestic law: labor law, and the new Civil Code of Poland. Another research deals with Marxist interpretation of general legal terminology: the State, law, justice, equality and the Constitution. These terms are shown to be carefully defined and strictly construed in application wherever the Marxist-oriented State has jurisdiction. This method of subverting law to the policies of the State has precluded any notion of "Human rights," as we know them. Of special interest to international law and relations is the research dealing with intervention and its relationship to the "satellite state," a status which lacks legal definition at international law.

The author makes a case that the satellite state, in fact, lacks sovereignty and, consequently, is not competent to act in international intercourse; that the fiction of the satellite possessing attributes of sovereignty vitiates the United Nations' power of the right of intervention for the purpose of re-establishing peace (as with Hungary). The chief value of the volume is the source material relating to Soviet jurisprudence and international law.

Title: *Private Foreign Investment.* 108 p.

Author: Rubin, Seymour F. Baltimore, Johns Hopkins Press, 1956.

Evaluation: This book contains four lectures by Mr. Rubin dealing with the broad field of private foreign investment, and international law relating to the status and protection of such investment. Mr. Rubin analyzes the legal aspects of the problem; discusses current thinking in the diplomatic and business fields, both at home and abroad; and, finally, suggests the scope or kind of protection, on the international level, that should be accorded foreign investors against both direct and indirect expropriation.

Title: *Dew Line.* 184 p.

Author: Morenus, Richard. New York, Rand McNally, 1957.

Evaluation: This is a narrative story of the establishment of the DEW line from the beginning, as the end product of the original study group to the completion of the system. The author has not attempted to write a technical manual, but has written the story in a language that the average individual can understand. He outlines and describes many of the various problems arising in the development and support of this system, and then tells how these many problems were met and solved.

Title: *Mr. Lincoln's Navy.* 328 p.

Author: West, Richard S., Jr. New York, Longmans, Green, 1957.

Evaluation: This is a history of the Union Navy in the Civil War. It is a straight narrative account which, because of its brevity, covers the high spots of that war. It is, however, one of the few books on the naval side of the Civil War that has come out since the publication of the official Records.

Title: *Status of Forces Agreement: Criminal Jurisdiction.* 167 p.

Author: Snee, Joseph M. and Pye, Kenneth A.

Evaluation: An excellent reference for the Status of Forces Agreement in the study and even management of armed forces overseas. It is easy reading and examines not only the agreements, but the practical applications by the various theatre commanders. A full discussion of the Girard case is included, which is of interest to all.

Title: *International Equilibrium.* 223 p.

Author: Liska, George. Cambridge, Harvard University Press, 1957.

Evaluation: This volume is a theoretical essay, presenting a proposed aeross-the-board approach to the understanding of international relations. The author insists that neither the power approach nor the institutional approach in themselves ean explain the international maneuvers of sovereign States seeking security. He postulates, instead, that all actions can be explained as different stages of an equilibrium between power and norm (i.e., between the employment of sanctions and the conformation to the law of international organizations). In developing the theory, he shows how the balance-of-power system has changed since the Concert of Europe. He explores the effect of collective security commitments on great and small powers and on international organizations. Delving deeper, he considers the development and effect of functional international organization on cooperation among nation-states. Regional organizations, both as evidences of the breakdown of global organization and as initial efforts toward cooperative security, are discussed in terms of power, normative action and implications. He concludes that there is a "power-normative reality centering around a central dynamic of continually balanced military power, but that this equilibrium is only seriously disturbed in times of crisis — situations implying conflict over sheer physical or political survival as the minimum immediate political objective." In noncrisis situations, there will be cooperative organization for goals above and beyond survival such as individual freedoms, general welfare and justice.

Title: *International Stability and Progress.* 184 p.

Author: The American Assembly. New York, Columbia University, 1957.

Evaluation: The American Assembly was established by Dwight D. Eisenhower in 1950, while President of Columbia University, and consists of representatives of business, labor, agriculture, the professions, both political parties and government. The aim of the Assembly is "to throw impartial light on the major problems which confront America so that citizens can take effective steps toward solving these problems." This book deals with the eleventh Assembly to meet. The subject under discussion was a consideration of United States military assistance programs, world competition with the Soviets, and economic and technical aid as instruments of foreign policy. Most of the book covers background papers prepared for the members of the Assembly by a group of prominent authorities engaged for that purpose. The last few pages of the book are devoted to the final report of the Assembly, a brief statement of their findings and recommendations. The first chapter, written by Professor Jessup, provides a broad background discussion of the ends and means of foreign policy, emphasizing the historical development of both our objectives and policy instruments. The next chapter, prepared by Professor Grossman, describes the evolution of the Soviet economy as a basis of Russian influence in world affairs, with its bearing on military potential, foreign economic policy, and possible attractiveness, or unattractiveness, of the Soviet Union as a model of rapid industrialization for other countries bent on accelerated economic development. Dean Mason, in the third chapter, deals with the general nature of our national interest in foreign economic assistance, but his treatment is focused mainly on Southeast Asia. In the next chapter, Mr. Nitze sketches the main alternative lines of strategy open to us, suggests certain conclusions as to the strategic alternatives, and draws from these conclusions a number of basic issues on the future of military assistance in Europe, the Middle East, and the Western Pacific. The last author, Professor Schelling, presents an analytical summary and review of the principal recent official and unofficial appraisals of aid programs.

Title: *Strengthening the United Nations.* 276 p.

Author: Commission to Study the Organization of Peace. New York, Harper, 1957.

Evaluation: A summary of recommendations to strengthen the U N is followed by the full text of the tenth report of the Commission to Study the Organization of Peace, after which appear the reports of the Special Study Commit-

tees of the Commission. This excellent organization, plus the very readable text, allows the reader to go just as far as he pleases as each section goes into more background detail of the reasoning behind the recommendations. Generally, the changes are recommended to correct past weaknesses and inaction brought about by member states' attitudes toward, and actions in, the UN. These same members must change their attitudes and actions to make the strengthening of the UN possible, which seems to be a most idealistic hope, and yet the recommendations made are sufficiently conservative to leave some hope of accomplishment.

Title: *Isolation and Security.* 204 p.

Author: DeConde, Alexander. Durham, N. C., Duke University Press, 1957.

Evaluation: A collection of seven essays which examine the nature and role of the doctrines of isolation and of collective security in American diplomacy during the twentieth century. While its scope is limited to these two aspects of American diplomacy, it is one of the more comprehensive treatments of these basic and conflicting tenets of American foreign policy to be found in a single book. The volume is the result of an interuniversity seminar held at Duke University, in which the subject was examined by scholars in the disciplines of economics, history, and political science. Consequently, each essay — and the collection as a whole — represents a diversity of viewpoints associated with three distinct fields of study. It goes beyond the generalities, cliche's, and slogans often used to identify foreign policy, to examine some of the basic ideas from which foreign policy springs and to oxplore the philosophies of twentieth-century policy-makers. Several of these essays deal generally with isolationism and collective security as ideas in American diplomacy. Others deal specifically with particular aspects of these basic ideas — such as the relation of military force, economic programs and "peace movements" to American policy.

PERIODICALS

Title: *Law Must Precede Man Into Space.*

Author: Haley, Andrew G.

Publication: MISSILES AND ROCKETS, November, 1957, p.67-70.

Annotation: Urges that problems of international law applying in space be taken up now, and suggests several jurisdictional regimes.

Title: *Nasser — One Year Later.*

Publication: U. S. NEWS & WORLD REPORT, November 22, 1957, p. 95-97.

Annotation: Tells how Egypt is losing enthusiasm for the Soviet Union, and how internal economic problems are making Nasser look to the West again for aid.

Title: *The Showcase War.*

Author: Dreher, Carl.

Publication: THE NATION, November 16, 1957, p. 335-339.

Annotation: Discusses the changing nature of war and military technology. Sees future conflict as competition to gain positions of strength rather than actual fighting.

Title: *The Challenge to Military Thinking Today.*

Author: Adams, Hewitt, D., Colonel, U. S. M. C

Publication: MILITARY REVIEW, October, 1957, p. 57-59.

Annotation: Argues that it is the role of the military to furnish the statesman, when required, a discrimination in the use of force for the attainment of our political objectives.

Title: *NORAD: Defense of A Continent.*

Publication: TIME, November 25, 1957, p. 58-67.

Annotation: Describes the operations of the North American air defense systems. Map shows location of the main elements in our air defenses.

Title: *Afro-Asia: Facing the Music.*

Publication: NEWSWEEK, November 25, 1957, p. 50-52.

Annotation: Tells how the Soviet Union is influencing Asian and African nations by propaganda and by economic aid.

Title: *War and the Atom.*

Author: Sokol, Dr. Anthony E.

Publication: MARINE CORPS GAZETTE, November, 1957, p. 10-21.

Annotation: A timely article of interest to the student of national strategy. Discusses the types of warfare and their effect on achieving the national objective as well as the requirements of a successful strategy.

Title: *To Meet the Russian Challenge.*

Publication: BUSINESS WEEK, November 16, 1957, p. 39-41.

Annotation: Outlines the step being taken by the President and by Congress to set the nation on a new defense course.

Title: *Can U. S. Still Win Missile Race?*

Publication: U. S. NEWS & WORLD REPORT, November 15, 1957, p. 52-60, 104-112.

Annotation: Three experts on missiles and space vehicles, in interviews, answer questions concerning Russia's lead in missile development and space travel and how the U. S. can catch up.

Title: *Problems Facing the United Nations.*

Publication: VITAL SPEECHES OF THE DAY, November 1957, p. 34-61.

Annotation: Statements made before the United Nations, concerning the questions of disarmament, the Middle East and Algeria, by representatives of the nations involved.

Title: *The Middle East and the Balance of Power.*

Publication: CURRENT HISTORY, November, 1957.

Annotation: This issue is devoted to a discussior of Middle East problems, treating such topics as the Suez Canal, oil in world politics, our stake in the Middle East, Russia's interest in the Middle East and Arab nationalism.

Title: *The Organization of American States: A Guide to the Future.*

Author: Travis, Martin B., Jr.

Publication: THE WESTERN POLITICAL QUARTERLY, September, 1957, p. 491-511.

Annotation: Analyzes this organization to determine its effectiveness in maintaining peace and security and in the enforcement of international law.

Title: *Toward a Nuclear-Powered Seaplane.*

Author: Struble, Arthur D., Commander, U. S. N.

Publication: UNITED STATES NAVAL INSTITUTE PROCEEDINGS, November, 1957, p. 1168-1173.

Annotation: Describes various developmental problems in perfecting a nuclear-powered seaplane and explains how the Navy is overcoming some of these obstacles.

Title: *U. S. Accelerates Moon Plans.*

Publication: AVIATION WEEK, November 4, 1957, p. 27.

Annotation: Tells of plans being made for an unmanned flight to the moon to offset Soviet advances in this field.

Title: *Our Changing Foreign Policy.*

Author: Stanford, Neal.

Publication: FOREIGN POLICY BULLETIN, November 1, 1957. p. 27.

Annotation: Notes the changes in United States foreign policy and in the attitude of Mr. Dulles, the Secretary of State.

Title: *The Concept of Economic Potential for War.*

Author: Knorr, Klaus.

Publication: WORLD POLITICS, October, 1957, p. 49-62.

Annotation: Refutes the contention that economic potential for war is meaningless in the nuclear age and explains how economic factors are as important as ever in military power calculation.