

Foreword

The International Studies “Blue Book” series was initiated by the Naval War College in 1901 to publish essays, treatises and articles that contribute to the broader understanding of international law. With this, the seventy-fifth volume of the historic series, we honor and recognize Professor Leslie C. Green for his many decades of outstanding scholarship and contributions to the study and practice of the law of war.

We also express our appreciation to Professor Green for his service to the Naval War College during the two years from 1996-1998 that he held the Charles H. Stockton Chair of International Law, as the first non-United States scholar to fill the College’s most prestigious and respected Chair. It was a wonderful opportunity and privilege for our faculty and students to learn from him.

It is fitting that this volume is published on the occasion of Professor Green’s eightieth birthday, for his mentor, Professor Georg Schwarzenberger, another international legal thinker of great renown, was also honored on his eightieth birthday through the publication of a treatise dedicated to him. Just as that volume contained articles authored by eminent scholars, Professor Green and the Naval War College are honored and complimented that so many of the world’s most highly respected international law scholars would contribute to this work. While the opinions expressed herein are those of the individual authors, and not necessarily those of the United States Navy or the Naval War College, they make a valuable contribution to the study of the varied areas of international law that are addressed.

On behalf of the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps, I extend to Professor Green, the contributing authors, and to the editor, Professor Michael N. Schmitt, our gratitude and thanks.

A. K. CEBROWSKI
Vice Admiral, U.S. Navy
President, Naval War College

Preface

God grant that men of principle shall be our principal men.

Thomas Jefferson

Some years ago, I was fortunate to be posted as the Air Force judge advocate on the faculty of the United States Naval War College. It was fascinating and fulfilling work in a truly joint environment, and I was blessed with a dynamic group of colleagues in the Oceans Law and Policy Department, then led by a living legend in the field of operational law, Professor Jack Grunawalt. The year of my arrival also marked Professor Leslie Green's appointment to the first of his two terms as holder of the Stockton Chair of International Law. Although I knew his work, for it would be difficult to participate seriously in the law of war field and not be familiar with his voluminous writings, I had never met Professor Green. As we awaited his arrival at the College, advance billing portrayed him as a brilliant and rigorous scholar of international repute, one charged with irrepressible vitality and unafraid of controversy. We were not to be disappointed.

I will leave it to Bill Fenrick's introductory contribution to recount Leslie Green's impact on the study and application of international law over the decades. Few know him as well as Bill, who has benefited from the Professor's mentorship over the years. However, I would be remiss if—as both a student and faculty alumnus of the Naval War College—I failed to highlight the extent to which he contributed to the revitalization of international law at this institution long renowned for its study of the subject. He co-edited two volumes of the acclaimed International Law Studies (Blue Book) series, completed the second editions of his *Essays on the Modern Law of War* and *The Contemporary Law of Armed Conflict*, and represented the War College at conferences spanning the globe. Perhaps most importantly, he shared his great wisdom on the legal aspects of conflict with the many hundreds of senior military officers that attended the College during his tenure. Those officers have since gone on to such momentous duties as commanding major surface combatants and air wings,

conducting peace operations, and leading troops in combat. Some have already achieved flag rank. There is not one doubt that Leslie Green profoundly shaped the way in which they approach such tasks—no officer left the War College during his watch unaware of the normative and humanitarian aspects of their chosen profession.

During his time in Newport (and indeed since then), Professor Green also dedicated himself to mentoring the College's law faculty. I know I speak for all of the beneficiaries of his guidance when I say his influence on our attitude towards, and understanding of, the law of armed conflict was profound. If Jack Grunawalt was the "Father" of the Oceans Law and Policy Department extended family, Leslie Green was surely our "Grandfather." For my part, his encouragement and support, as well as the many doors he opened, made possible my transition to civilian academia, a dream long held. Not unexpectedly, his mentorship continues today, a gift that I and the rest of the Oceans Law and Policy family cherish deeply.

Given the extraordinary scope and nature of his contributions to the Naval War College and, more generally, to furthering the role of law in limiting the violence that international conflict so tragically and far too frequently visits on the global citizenry, the then Dean of the Naval War College's Center for Naval Warfare Studies, Dr. Bob Wood, enthusiastically supported the proposal to honor Professor Green with a collection of essays in the Blue Book series. This volume is the product of that effort, and it is my great honor to have played a part in its realization.

The first quandary the project organizers had to resolve was how to frame it. Our goal was a *liber amicorum* that held together as an integrated whole, but one with subject matter wide enough to avoid excluding any "significant others" who wished to contribute. We finally settled on international conflict in the context of normative systems and structures. Though many of the pieces address armed conflict, others take up "peaceful" conflict and resolution mechanisms therefor. This common thread of conflict writ large characterizes Professor Green's own contributions to the field of international law, not only as a scholar but also as a government legal adviser, diplomat, and soldier.

We then turned to the easy task—finding contributors. Indeed, the dilemma at this point was not a paucity of contributors but rather the extraordinary reach of Professor Green's influence on international law and its practitioners/thinkers. In the end, the offers to contribute were made somewhat arbitrarily, based upon individuals whom I had heard him speak highly of in our all too short time together. Surely, many of those whom he regards with special affection and respect were not given an opportunity to contribute. I offer them

my apologies, but ask that they forgive the oversight if only on the basis that an all-inclusive collection would have run many volumes and taken years to complete.

As to those that have honored Professor Green with a chapter, a quick glance at the table of contents will immediately illustrate the high regard in which the international legal community holds him. Contributors come from Canada, Germany, Israel, Sweden, the United States, and the United Kingdom. They include professors, diplomats, a university president, civil servants, military officers, human rights experts, and practitioners before international tribunals. Each is an extraordinary individual in his or her own right, with a reputation that is international in scope. That every one of them took on the not insignificant task of writing to honor their friend is a true testament. Of perhaps particular note is the contribution by Georg Schwarzenberger, the great University of London international law scholar. As many may know, Professor Schwarzenberger was the young Leslie Green's first true mentor. Indeed, Professor Green once confided in me that even after he had developed an international reputation, he still sent a copy of every publication to Professor Schwarzenberger—and waited on pins and needles for the always-frank verdict. The particular article that has been included, reprinted here with the kind permission of the American Society of International Law, is, in Professor Green's estimation, Schwarzenberger's finest work of article length.

All books are the products of many hands; this one more than most. First, I would like to thank each of the contributors. As they know, publication of the book encountered a number of unforeseeable obstacles. Their patience in the face of delays was much appreciated. This volume of the International Law Studies series also marks the reunion of the Oceans Law and Policy Department and the Naval War College Press. The Editor-in-Chief of the Press, Professor Tom Grasse, has always been a champion of international law, and his support and personal friendship is warmly appreciated. The Press editor of this volume, Ms. Pat Goodrich, deserves particular commendation. Few can understand the difficulties she encountered—and overcame—in pulling together a project that involved an editor based in Germany, authors on three continents, and a new word-processing department which had never before done a Naval War College publication. But for her selfless efforts, this book would simply not exist. It would also have remained a mere aspiration without the financial and personal support of the College's then Dean of the Center for Naval Warfare Studies, Dr. Bob Wood. That his successor, Dr. Alberto Coll, himself a former Blue Book editor, continues to back the College's cutting edge work in international law is a tribute to his vision. Of course, primary responsibility for

production of the Blue Books falls on the shoulders of the superb attorneys of the Oceans Law and Policy Department who operate under the guidance of Professor Dennis Mandsager. Of this group, Captain Ralph Thomas merits special praise. His efforts to keep the project on track, and the many hundreds of hours he spent in tirelessly proofreading, are evidence of his legendary selflessness. He retired from the Navy earlier this year, thereby leaving a void in operational law expertise that will not soon be filled. Finally, and as always, I reserve my warmest thanks for Lorraine and Danielle . . . who cheerfully put up with the late hours and short tempers that all too often accompany such projects.

It is my singular privilege to have been allowed to edit this small effort to honor Professor Leslie C. Green—a great scholar and practitioner, my mentor, and a very dear and cherished friend. May he, with his ever-charming Lilian at his side, continue to work in the support of humanitarian principles for many years to come. We are all indeed fortunate that he is one of our principal men.

Professor Michael N. Schmitt
George C. Marshall European Center for Security Studies
Garmisch-Patenkirchen, Germany

Introduction

Leslie Claude Green International Law Teacher

William J. Fenrick

LESLIE C. GREEN HAS TAUGHT INTERNATIONAL LAW for over fifty years, and throughout that period he has influenced international law significantly through his writings, teaching, conference participation, advising, and informal exchanges of views. The peer group for international lawyers, at least for those who reside outside the single superpower, is that of other international lawyers throughout the world. Describing Leslie Green as the leading international lawyer in the Canadian province of Alberta, where he has resided for most of the last thirty years, or as a leading Canadian law of war expert is not necessarily conferring an effusive compliment. For non-American international lawyers, the standard must be that set by the world community of international lawyers. By that standard, Leslie Green, author of nine books and of over three hundred articles, and teacher of thousands of students and colleagues, is a major figure in contemporary international law, particularly in law of armed conflict, a field of international law to which he has devoted much of his finest work.

Comments are made in a personal capacity and necessarily reflect neither the view of the Office of the Prosecutor nor of the United Nations.

Leslie was born in London, England, on November 6, 1920. He graduated from the University of London in 1941 with an LLB with first-class honours. As the Second World War began while he was studying, international law became one of his fields of specialization. On graduation, he joined the British Army, King's Royal Rifle Corps, and was then sent to the School of Oriental and African Studies where he was taught to read and translate Japanese. In 1943 he was commissioned as a lieutenant in the Intelligence Corps and posted to GHQ (India) as a translator. He was stationed in India from 1943 to 1946. In the later stages of his time there, he was made available to the Adjutant-General's Department, first to defend and later to prosecute members of the (British) Indian Army who had joined the Japanese-sponsored Indian National Army; they had been charged with waging war against the King and with war crimes. Many years later, Leslie wrote an article in which he recounted his experiences as a defending officer and as a prosecutor, including the fact that his first two clients were hung.¹ In 1946, he was discharged from the army in the rank of major.

Although his wartime experience heightened his interest in international law, Leslie and his many friends would unanimously agree that his most important wartime experience was meeting and, on September 1, 1945, marrying 2nd Officer Lilian Meyer of the Women's Royal Indian Naval Service. Leslie and Lilian have now been married for over fifty years and, as befits any happy and loving marriage, their lives are centred around each other. It is not possible to picture them apart, and their lives together have kept them young. Lilian's grace, sense of style, and intelligence have contributed immeasurably to Leslie's success. Their marriage has been blessed with one daughter, Anne, an authority on Canadian theater.

Leslie commenced his teaching career in 1946 and from 1946–1960 he was Lecturer in International Law at University College, London. While in London, he published the first two editions of *International Law Through the Cases*. This casebook, now in its fourth edition, is widely used in law schools throughout the British Commonwealth. Under the rigorous mentorship of Georg Schwarzenberger, Leslie also began his prolific writing career. In all of his work, Schwarzenberger focused on what States actually do. Thus, for instance, in international relations, he emphasized power politics. In international law, he belonged to the inductive school, focusing rigorously on State documents, treaties and judicial decisions to determine the law's content. Leslie was deeply influenced by Schwarzenberger's approach to international law and to international relations, and also by his insistence on high scholarly standards as well as high productivity. Schwarzenberger insisted that at least

one scholarly article be produced per quarter. Leslie published sixty articles between 1946 and 1960.

In 1960, he moved to the University of Singapore, where he was Professor of International Law from 1960–1965 and also Dean of the Law Faculty in 1964–1965. He published another twenty-seven articles during this period.

In 1965, Leslie moved to the University of Alberta in Edmonton, where he was a Professor of Political Science from 1965–1969, and then a University Professor affiliated with the Department of Political Science until he became Professor Emeritus in 1992. During his time at Alberta, he produced numerous articles, two more editions of his casebook, and several other books: *Law and Society* (1975), *Superior Orders in National and International Law* (1976), *International Law—A Canadian Perspective* (1984, 2nd ed. 1988), *Essays on the Modern Law of War* (1985, 2nd ed. 1999), and *The Law of Nations and the New World* (1989) (with O.P. Dickason).

Following his retirement from the University of Alberta in 1997, Leslie continued to teach on a full-time basis. He was a Distinguished Visiting Professor at the College of Law, University of Denver, in 1995–1996. The culmination of his teaching career, to date, consists of two one-year appointments to the U.S. Naval War College as Charles H. Stockton Professor of International Law from 1996–1998. He continues to write numerous articles and has just completed the 2nd edition to his most recent book, *The Contemporary Law of Armed Conflict* (1993).

Although most of his professional life has been spent in an academic environment, Leslie has devoted a substantial part of his professional career to advising government officials. In particular: during 1972–1975, he was a consultant to the Judge Advocate General of the Canadian Forces on the superior orders issue; during 1974–1975, he was Academic in Residence to the Legal Bureau of the Canadian Department of External Affairs; during 1975–1977, he was a member of the Canadian delegation participating in the negotiation of the Additional Protocols of 1977; and during 1979–1980, he was a resident consultant to the Judge Advocate General of the Canadian Forces and wrote the first draft of the Canadian Forces Manual on the Law of Armed Conflict. Today, in 2000, he is updating the Canadian Forces Manual.

Professor Leslie Green has received many awards for his outstanding service to international law and to Canada. In 1976 he was awarded an LLD by the University of London for his contribution to international law and sociology of law. He became a Fellow of the Royal Society of Canada in 1980 and a member of the Order of Canada in 1993. In 1994 he received an honorary LLD from the University of Alberta. His Canadian colleagues honoured him for his

contribution to the discipline by awarding him the John Read Medal in International Law in 1997.

Hence, while notable for his life's work, the sum of Leslie Green is much more, as evidenced in his friendship, valued so highly by so many. Although Leslie has performed some tasks at the request of governments, he is an outstanding example of the independent scholar, reaching his own conclusions and standing by them, come what may. By intellectual predisposition, he is a gadfly, not a legal cheerleader. He has acted as a mentor to younger international lawyers, encouraging them to write and assisting in the development of their careers. As a mentor, however, he did not foster the development of a Green school in international law. He encouraged those who sat at his feet—many of whom are no longer so young—to develop in their individual ways. Thus, disagreement on legal issues has never been a barrier to friendship.

Leslie's influence on international law developments may at times be inadvertent. In the latter half of the 1980s, the Government of Canada was considering ratification of the Additional Protocols of 1977. An interdepartmental review was completed and everything was set to go. The then Legal Adviser to the Department of External Affairs put everything on hold because he understood that Leslie Green had indicated he was opposed to ratification and that he would go public if implementing legislation was introduced in the House of Commons. I was somewhat surprised to learn about Leslie's opposition. I had spoken to him about the protocols on many occasions, and it was my impression that he regarded them as more or less acceptable. Some weeks later I met Leslie at a conference, informed him of the legal advisor's understanding about his position on the protocols, and asked him when and why he had become opposed to ratification. Leslie began to laugh when I outlined the situation. He explained that he had been to a cocktail party some months before, where he had had a conversation with the legal adviser. They had not spoken about the Additional Protocols, but Leslie had indicated with characteristic vigour his opposition to certain war crimes legislation that had been recommended by a Royal Commission on Nazi War Criminals in Canada. The legal adviser had confused the two issues. Leslie was delighted to learn that he could hold up the Government of Canada for some months by expressing his opinion, even if it was misunderstood. Some time later, Canada did ratify the two Additional Protocols.

As an example of both the depth of Professor Green's research and the width of his readership, I can recollect a relatively recent incident that occurred during the oral argument on a jurisdictional motion before the International Criminal Tribunal for the former Yugoslavia (ICTY). Just as I was about to

commence what I hoped would be a cogent and inspiring argument to the effect that the conflict in Bosnia must be classified as international, counsel for the defence quoted a passage from page 299 of Professor Green's *The Contemporary Law of Armed Conflict*, which appeared to indicate that I had earlier held the position that, at the time in question, the conflict was internal.

A substantial amount of Professor Green's best work has focused on the law of war, in particular his books on *Superior Orders in National and International Law*, *Essays on the Modern Law of War* (the second edition of which has just been published), and *The Contemporary Law of Armed Conflict*. All of Leslie's articles and books are written in an extremely lucid style, rooted in history, and sensitive to current military and political realities as well as to trends in scholarly writing and decided cases. He has a tendency to throw buckets of cold water on overheated and overly progressive legal arguments.

Although he may criticize impractical suggestions for development of the law, Leslie continues to favour pragmatic progressive development to address practical problems. Indeed, in one of his recent articles, he put forward quite a radical suggestion:

...it is time to dispense with the differentiation between genocide, grave breaches and war crimes. All of these are but examples of the more generically termed "crimes against humanity," in respect of which there is no longer any doubt as to their amenability to universal jurisdiction. Issues relating to classification of a conflict, the significance of the law of war to that conflict, or the jurisdiction of a tribunal over an alleged act of genocide would all fade into insignificance if they were brought within the rubric of crimes against humanity.²

Professor Green does, of course, go on to concede that under current international law, crimes against humanity have not yet supplanted war crimes. He suggests that perhaps the International Committee of the Red Cross should support the idea of merging the two concepts and, simultaneously, add depth to the concept by, for example, specifying precisely which acts constitute crimes against humanity.

The underlying reason for Leslie's suggestion is that reliance on the concept of crimes against humanity would provide a common list of crimes which could be prosecuted on the basis of the universality principle without requiring a prosecutor to establish facts such as the existence of an international conflict which would be difficult to prove but irrelevant to moral fault. It is probable that a catalyst for this suggestion is the experience of the ICTY, which is compelled to grapple with the conflict classification issue on a daily basis because of the complexity of the recent conflict(s) in the territory of the former

Yugoslavia. Indeed, in some cases, presentation of evidence related to conflict classification can occupy more time than presentation of evidence related to the alleged misdeeds of the accused.

One can disagree with Professor Green on this issue, or at least regard his proposed solution as premature. I do.³ At the same time, one can but admire his continuing creativity and love for new ideas. His lifelong and continuing dedication to international law teaching and to independent scholarship is a model for others to follow in their individual paths.

Notes

1. *Problems of a Wartime International Lawyer*, (1990) 2 PACE UNIVERSITY YEARBOOK OF INTERNATIONAL LAW 93.

2. "Grave Breaches" or Crimes Against Humanity, 8 USAF ACADEMY JOURNAL OF LEGAL STUDIES (1997-98) 19, at 29.

3. W.J. Fenrick, *Should Crimes Against Humanity Replace War Crimes?*, 37 COLUMBIA JOURNAL OF TRANSNATIONAL LAW (1999) at 767-85.