

FOREWORD

The International Law 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. This, the sixty-ninth volume of the series, consists of papers written for and presented at a recent Naval War College Symposium on the Law of Naval Warfare: The Protection of the Environment During Armed Conflict and Other Military Operations, and includes the proceedings of that Symposium.

Participants in the Symposium represented a broad range of expertise in the increasingly important field of environmental protection during armed conflict and other military operations. Included were government officials, operational commanders, environmental scientists, international law scholars, military and civilian lawyers and environmental advocates. Representatives from Argentina, Australia, Canada, Germany, the Netherlands, Switzerland, the United Kingdom and the United States contributed to the Symposium and to this volume. The result is a thorough and well-balanced discussion of the compelling necessity to protect the natural environment, to the fullest extent possible, from the ravages of war and other military operations, and of the adequacy of existing international law to accomplish that purpose. While the opinions expressed in this volume are those of the individual participants and not necessarily those of the United States Navy or the Naval War College, they collectively provide a valuable contribution to the study and development of the law of naval warfare. On behalf of the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps, I extend to the editors and the contributing authors of this informative and provocative work our gratitude and thanks. I also extend our special thanks to the Honorable Walter B. Slocombe, Under Secretary of Defense for Policy, for providing the means to allow the Naval War College to conduct the Symposium and to publish this volume.

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PREFACE

In September 1995, the Naval War College, with the encouragement and support of the Under Secretary of Defense for Policy, hosted a Law of Naval Warfare Symposium on The Protection of the Environment During Armed Conflict and Other Military Operations. This volume comprises the proceedings and the papers of that Symposium.

International outrage at the environmental depredations visited upon Kuwait and upon the waters of the Persian Gulf during the Gulf War drew renewed attention to the ongoing debate among environmentalists, scientists, lawyers, policy-makers and military officials over the adequacy of international law designed to protect our natural heritage. This subject rapidly became a source of sharp controversy as those who advocated a stronger role for environmental protection measures during armed conflict were challenged to acknowledge the realities of warfare. Similarly, those responsible for the national security of their respective nations, and for the effective utilization of modern weapons and weapons systems in the defense of their vital national interests, were being admonished that they must be cognizant of the very real danger to the environment that combat operations inescapably entail. Unfortunately, much of that debate tended to polarize, rather than mediate these often disparate positions. The principal purpose of the Naval War College Symposium was to provide a forum for U.S. and foreign experts representing the breadth of that spectrum to enlighten one another. To that end, forty eminent government officials, legal scholars, scientists, environmentalists and operational commanders from the United States, the United Kingdom, Australia, Argentina, Canada, Germany, Switzerland and the Netherlands assembled in Newport to engage in a broad ranging investigation of these issues. The product of that endeavor, as reflected in this volume, has been a marshaling of views that will further the development of an international consensus along rational and effective lines.

The Symposium looked first at the strategic imperatives of international armed conflict and of non-international military operations involving the use of force, that of necessity may impact adversely on the natural environment. This was followed by an appraisal of the nature and relative severity of that impact. The Symposium next examined the existing framework of international law and its effectiveness in providing an acceptable level of protection for the environment. Finally, the Symposium assessed the need for new international accords to establish additional norms for protection of the environment across the spectrum of operations involving armed conflict or to provide enhanced means of enforcement for existing measures.

This volume is comprised of 39 Chapters organized into ten Parts. Part One, entitled Introduction, consists of welcoming remarks by Rear Admiral James R.

Stark, President of the Naval War College and by Professor Jack Grunawalt, Director, Oceans Law and Policy Department of the College and Symposium host. The Opening Address, presented by the Legal Advisor to the U.S. Department of State, Mr. Conrad Harper, provides an overview of U.S. policy regarding protection of the environment during armed conflict. Part One concludes with an address by Rear Admiral Carlson LeGrand, JAGC, U.S. Navy, the Deputy Judge Advocate General of the Navy. Rear Admiral LeGrand's presentation, "Framing the Issues", provided the conferees with an outline of the matters that were to be addressed and set exactly the right tone for the subsequent proceedings.

Parts Two through Five and Seven through Nine report the proceedings and papers of the seven Symposium panels. Each of those Parts devotes a separate chapter to the papers of the individual panelists while the final chapter reports verbatim the proceedings of that panel. This reporting methodology ensures a full, albeit somewhat redundant, accounting of the work of each panel.

Part Two reflects the proceedings of the first panel - The Strategic Imperative, moderated by Brigadier General Walter Huffman, JAGC, U.S. Army. Panel I sought to determine what impact on the environment must the military be allowed in order to win across the spectrum of conflict. Panelists were Rear Admiral William Wright, IV, U.S. Navy; Brigadier General Joseph G. Garrett, U.S. Army; and Major General Robert E. Linhard, U.S. Air Force. Each panelist provided an operational commander's analysis from the perspective of his service.

Part Three addresses the Environmental Threat of Military Operations. Vice Admiral James Doyle, Jr., U.S. Navy (Ret.), served as moderator. Dr. Ronald A. DeMarco, Director of Environmental Programs in the Office of Naval Research, and Colonel Frank R. Finch, U.S. Army, Director of Army Environmental Programs, discussed, respectively, the impact on the marine and land environment of both combat and non-combat operations. Mr. William Arkin, long associated with the environmental movement and an internationally recognized voice on the military-environmental human rights nexus, assessed the impact of the Gulf War on Kuwait, Iraq and the waters of the Gulf. Dr. Arthur Gaines, Jr., of the Marine Policy Center at Woods Hole Oceanographic Institute, served as commentator for the panel. Dr. Gaines focused principally on the extent that environmental protection concepts can reasonably be applied to military operations and the harm to the environment caused by such operations relative to harm caused by natural disaster phenomena.

The Existing Legal Framework - Protecting the Environment During International Armed Conflict, was the topic of Panel III and is reported in Part Four. Dr. Myron Nordquist, Professor Of International Law at the Air Force Academy and the 1995-96 Stockton Professor of International Law at the Naval War College, served as moderator. Professor George Walker, Professor of Law at Wake Forest University, and Professor Adam Roberts, Montague Burton

Professor on International Relations at Oxford University, presented the principal papers for Panel III. Professor Paul Szasz, former Principal Legal Officer and Deputy to the Legal Counsel of the United Nations, was the commentator for the panel. Professors Walker, Adams and Szasz outlined the development and current status of the international legal order pertaining to environmental protection during armed conflict. Their presentations, and the lively discussions that followed, provide a comprehensive assessment of existing international customs and conventions that apply directly or derivatively to the environment in time of war.

Part Five continues the analysis of current international law but does so with respect to the use of force below the threshold of international armed conflict. Panel IV, *The Existing Legal Framework - Protecting the Environment During Non-International Armed Conflict Operations Involving the Use of Force (i.e. Military Operations Other Than War - MOOTW)*, was moderated by Rear Admiral Horace B. Robertson, JAGC, U.S. Navy (Ret.), and Professor Emeritus of Law at Duke University School of Law. Panelist were Rear Admiral Bruce A. Harlow, JAGC, U.S. Navy (Ret.), former Assistant Judge Advocate General of the Navy; and Colonel James A. Burger, JAGC, U.S. Army, Staff Judge Advocate, Allied Forces Europe/Headquarters AFSOUTH; both of whom presented principal papers. Dr. Raul Vinuesa, Professor of International Law and Human Rights at the University of Buenos Aires; and Professor Theodor Meron, Professor of International Law at New York University School of Law, served as commentators. Panel IV examined that body of international environmental law that pertains to internal conflicts as well as to the utilization of the military for such peacetime purposes as humanitarian intervention, peacekeeping, non-combatant evacuation operations and disaster assistance. The elusive concept of "MOOTW" was also addressed in this context. Colonel Burger's report on the manner in which NATO forces in Bosnia are incorporating environmental protection considerations into operational planning and rules of engagement was particularly timely and germane.

Mr. Gary Vest, Principal Assistant to the Deputy Under Secretary of Defense for Environmental Security, addressed the conferees at a luncheon on the second day of the Symposium. Mr. Vest's remarks and the ensuing questions and answers are set forth in Part Six of this volume. The extraordinarily robust environmental protection program of the U.S. Department of Defense, currently funded at an annual rate in excess of five billion U.S. dollars, coupled with a well-developed environmental ethic within U.S. armed forces generally, led Mr. Vest to conclude that protection of the environment throughout the spectrum of military operations is a high priority for the United States.

Part Seven addresses the issue of State responsibility and civil reparation for environmental damage arising during armed conflict. The moderator for Panel V,

which undertook this effort, was Mr. Todd Buchwald, the Assistant Legal Adviser for Political Military Affairs in the U.S. Department of State. Panelists were Professor Christopher Greenwood at Magdalene College, University of Cambridge in the United Kingdom, and Professor Leslie C. Green, University Professor Emeritus and Honorary Professor of Law at the University of Alberta, Canada. Dr. Glen Plant, Director of the Centre for Environmental Law and Policy at the London School of Economics was the commentator for this panel. (The aptness of the names of the panelists - Greenwood, Green and Plant - was noted by Mr. Buchwald to the delight of the conferees). All three panelists stressed that while States are legally responsible for environmental damage that they cause which impacts beyond their own borders, the reality is that there have been very few instances where States have consented to arbitral or judicial resolution of claims brought against them. Absent a Security Council-mandated resolution (such as the U.N. Compensation Commission for Iraq), mechanisms for international enforcement of State responsibility for environmental damage are essentially non-existent.

Part Eight of this volume examines criminal responsibility for environmental damage, particularly during armed conflict. Dr. Anne Hollick, U.S. Department of State, served as moderator for Panel VI. Panelists were Professor Michael Bothe of Johann Wolfgang Goethe University in Frankfurt, Germany, and Dr. Gerard Tanja, General Director of the T.M.C. Asser Institute for International Law in The Hague, the Netherlands. Professor Howard S. Levie, Professor Emeritus of Law at Saint Louis University, was the panel commentator. This group of eminent scholars focused on criminal responsibility for environmental damage under the existing law of armed conflict. Once again the conclusion was reached by the panelists that although the current framework of the law on this issue is not as well-developed as it might be, particularly as it applies to non-international armed conflict, the principal failure is in the arena of enforcement.

Part Nine reports the papers and proceedings of Panel VII: The Debate to Access the Need for New International Accords. The moderator for Panel VII was Colonel James Terry, USMC (Ret.), formerly the Legal Advisor to the Chairman of the Joint Chiefs of Staff and now with the U.S. Department of the Interior. Panelists were Dr. Hans-Peter Gasser of the International Committee of the Red Cross, Dr. Dieter Fleck of the German Ministry of Defence, Dr. John H. McNeill, Principal Deputy General Counsel of the U.S. Department of Defense; and Professor Ivan Shearer of the University of Sydney, Australia. Commentators were Captain J. Ashley Roach, JAGC, USN (Ret.), and now of the U.S. Department of State; and Professor Bernard H. Oxman of the University of Miami School of Law. The third commentator for Panel VII, Professor Wil D. Verwey of the University of Groningen, the Netherlands, was unable to attend the Symposium. Professor Verwey's provocative paper was nonetheless presented to the conferees by Captain

A. Ralph Thomas, JAGC, U.S. Navy, Deputy Director of the Oceans Law and Policy Department at the Naval War College. The strong, albeit not unanimous, conclusion of the panelists and commentators of Panel VII was that although a good deal of work remains to be done to further develop the framework of international law protecting the environment during armed conflict and other military operations involving the use of force, pressing for additional international accords at the current time would likely be counter-productive. There was, however, general consensus that it is the failure of enforcement of existing norms rather than the lack of standards for protection of the environment that is the principal deficiency of this area of international law generally, and of the law of armed conflict in particular.

Part Ten, Conclusion, consists of the Concluding Remarks of Professor John Norton Moore of the University of Virginia. Professor Moore's remarks provided a powerful and articulate capstone to the Symposium. Professor Moore noted that there is nothing inherent in modern warfare that compels environmental destruction of the magnitude visited on Kuwait and the Persian Gulf by Saddam Hussein during the Gulf War. Professor Moore agreed with the overwhelming majority of speakers before him that the existing legal framework provides the necessary basis for protection of the environment from wanton destruction during armed conflict. The principal task in enhancing the rule of law is not "tweaking the normative system" but ensuring "compliance with the existing legal regime." Professor Moore concluded by noting that the core concept for enhancing the rule of law is controlling governmental actions and that it is the leadership of "rogue" totalitarian regimes that is the fundamental problem. The importance of effective deterrence under the rule of law is the key to controlling the behavior of that criminal elite.

The purpose of this volume is to faithfully report the extraordinary breadth of operational experience, scientific expertise, legal acumen and public policy sagacity represented by the papers, presentations and discussion at the Naval War College Symposium on Protection of the Environment During Armed Conflict and Other Military Operations. The editors would like to add their collective voices to that of the President of the Naval War College in thanking all of the participants for their role in ensuring the success of the Symposium and for their contribution to this volume and to the study of the Law of Naval Warfare. The views represented in this work will indeed further the development of an international consensus to facilitate more effective protection of the natural environment across the spectrum of conflict.

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