

PREFACE

SCOPE

This publication sets out those fundamental principles of international and domestic law that govern U.S. naval operations at sea. Part I, Law of Peacetime Naval Operations, provides an overview and general discussion of the law of the sea, including definitions and descriptions of the jurisdiction and sovereignty exercised by nations over various parts of the world's oceans; the international legal status and navigational rights of warships and military aircraft; protection of persons and property at sea; and the safeguarding of national interests in the maritime environment. Part II, Law of Naval Warfare, sets out those principles of law of special concern to the naval commander during any period in which U.S. naval forces are engaged in armed conflict. Although the primary emphasis of Part II is upon the rules of international law concerned with the conduct of naval warfare, attention is also directed to relevant principles and concepts common to the whole of the law of armed conflict.

PURPOSE

This publication is intended for the use of operational commanders and supporting staff elements at all levels of command. It is designed to provide officers in command and their staffs with an overview of the rules of law governing naval operations in peacetime and during armed conflict. The explanations and descriptions in this publication are intended to enable the naval commander and his staff to comprehend more fully the legal foundations upon which the orders issued to them by higher authority are premised and to understand better the commander's responsibilities under international and domestic law to execute his mission within that law. This publication sets forth general guidance. It is not a comprehensive treatment of the law nor is it a substitute for the definitive legal guidance provided by judge advocates and others responsible for advising commanders on the law.¹

1. Although The Commander's Handbook on the Law of Naval Operations is a publication of the Department of the Navy, neither The Handbook nor its annotated supplement can be considered as a legislative enactment binding upon courts and tribunals applying the rules of war. However, their contents may possess evidentiary value in matters relating to U.S. custom and practice. See *The Hostages Trial (Wilhelm List et al.)*, 11 TWC 1237-38, 8 LRTWC 51-52 (U.S. Military Tribunal, Nuremberg, 8 July 1947-19 Feb. 1948); *The Peleus Trial*, 1 LRTWC 19 (British Military Ct., Hamburg, 1945); *The Belsen Trial*, 2 LRTWC 48-49 (British Military Ct., Luneburg, 1945); *The Abbage Ardenne Case (Trial of Brigadefurher Kurt Meyer)*, 4 LRTWC 110 (Canadian Military Ct., Aurich, Germany, 1945).

(continued...)

Officers in command of operational units are encouraged to utilize this publication as a training aid for assigned personnel.

APPLICABILITY

Part I of this publication is applicable to U.S. naval operations during time of peace. Part I also complements the more definitive guidance on maritime law enforcement promulgated by the U.S. Coast Guard.

Part II applies to the conduct of U.S. naval forces during armed conflict. It is the policy of the United States to apply the law of armed conflict to all circumstances in which the armed forces of the United States are engaged in combat operations, regardless of whether such hostilities are declared or otherwise designated as “war.”² Relevant portions of Part II are, therefore, applicable to all hostilities involving U.S. naval forces irrespective of the character, intensity, or duration of the conflict. Part II may also be used for information and guidance in situations in which the United States is a nonparticipant in hostilities involving other nations. Part II complements the more definitive guidance on land and air warfare promulgated, respectively, by the U.S. Army and U.S. Air Force.

STANDING RULES OF ENGAGEMENT (SROE)

The National Command Authorities (i.e., the President and the Secretary of Defense or their duly deputized alternates or successors—commonly referred to as the NCA) approve and the Chairman of the Joint Chiefs of Staff promulgates SROE for U.S. forces (Chairman of the Joint Chiefs of Staff Instruction 3121.01 1 October 1994).³ These rules delineate the circumstances under which U.S. forces will initiate and/or continue engagement with other forces encountered.

1.(...continued)

In the course of these cases, the question of the status of such official publications and the British and U.S. military manuals arose on various occasions. Although the courts recognized these publications as “persuasive statements of the law” and noted that, insofar as the provisions of military manuals are acted upon, they mold State practice, itself a source of international law, it was nevertheless stated that since these publications were not legislative instruments they possessed no formal binding power. Hence, the provisions of military manuals which clearly attempted to interpret the existing law were accepted or rejected by the courts in accordance with their opinion of the accuracy with which the law was set forth. NWIP 10-2, para. 100 n.1; FM 27-10, para. 1; 15 LRTWC, Digest of Law and Cases 21-22.

2. DODDIR 5100.77, Subj: DOD Law of War Program, implemented for the Department of the Navy by SECNAVINST 3300.1A, para 4a. Similar directions have been promulgated by the operational chain of command, e.g., MJCS 0124-88 4 August 1988; USCINCLANTINST 3300.3A; CINCPACFLTINST 3300.9.

3. The unclassified portion of the SROE is at Annex A4-3 (p. 277).

Combatant commanders may augment the standing rules as necessary to reflect changing political and military policies, threats, and missions specific to their area of responsibility (AOR). Such augmentations to the standing rules are approved by the NCA and promulgated by the Joint Staff, J-3, as annexes to the standing rules.

This publication provides general information, is not directive, and does not supersede guidance issued by such commanders or higher authority.

INTERNATIONAL LAW

For purposes of this publication, international law is defined as that body of rules that nations consider binding in their relations with one another. International law derives from the practice of nations in the international arena and from international agreements.⁴ International law provides stability in international relations and an expectation that certain acts or omissions will effect predictable consequences. If one nation violates the law, it may expect that others will reciprocate. Consequently, failure to comply with international law ordinarily involves greater political and economic costs than does observance. In short, nations comply with international law because it is in their interest to do so. Like most rules of conduct, international law is in a continual state of development and change.⁵

Practice of Nations. The general and consistent practice among nations with respect to a particular subject, which over time is accepted by them generally as a legal obligation, is known as customary international law. Customary international law is the principal source of international law and is binding upon all nations.⁶

International Agreements. An international agreement is a commitment entered into by two or more nations that reflects their intention to be bound by

4. Art. 38 of the Statute of the International Court of Justice (59 Stat. 1031, T.S. 993, 3 Bevans 1179) provides that, in adjudicating disputes brought before it, the Court shall apply international agreements, custom (as evidence of a general practice accepted as law), general principles of law recognized by civilized nations, decisions of national and international courts, texts on international law, and (where the parties to the dispute agree) general principles of equity. The Statute is set forth in AFP 110-20 at 5-19. Walker, *The Sources of International Law and the Restatement (Revised) Foreign Relations Law of the United States*, 37 Nav. L. Rev. 1 (1988) provides a comprehensive, yet basic, analysis of the sources of international law and their impact on the municipal law of the United States.

Countries are generally called "States" in international law. To avoid confusion with the states of the United States, the term "nation" is used in this publication to include countries and States in the international law sense of the term.

5. This concept is expanded upon in Joyner, *The Reality and Relevance of International Law*, in Kegley & Wittkopf, *The Global Agenda: Issues and Perspectives* 186-97 (2d ed. 1988).

6. See also paragraph 5.4.1 (p. 297).

its terms in their relations with one another. International agreements, whether bilateral treaties, executive agreements, or multilateral conventions, are the second principal source of international law. However, they bind only those nations that are party to them or that may otherwise consent to be bound by them.⁷ To the extent that multilateral conventions of broad application codify existing rules of customary law, they may be regarded as evidence of international law binding upon parties and non-parties alike.⁸

U.S. Navy Regulations. U.S. Navy Regulations, 1990, require U.S. naval commanders to observe international law. Article 0705, Observance of International Law, states:

*At all times, a commander shall observe, and require their command to observe, the principles of international law. Where necessary to fulfill this responsibility, a departure from other provisions of Navy Regulations is authorized.*⁹

7. The particular name assigned to the arrangement, *e.g.*, treaty, executive agreement, memorandum of understanding, exchange of notes or letters, technical arrangement or plan, does not alter the fact that it is an international agreement if the arrangement falls within the definition of international agreement provided in this paragraph. Procedures within the U.S. Government for negotiating international agreements may be found in State Department, DOD and Navy regulations which impose stringent controls on the negotiation, conclusion and forwarding of international agreements by organizational elements of the Department of the Navy. Those requirements are set forth in 22 C.F.R. part 181; DODDIR 5530.3, Subj: International Agreements, 11 June 1987. Implementing Navy instructions include SECNAV Instruction 5710.25 (series), Subj: International Agreements; OPNAV Instruction 5710.24, Subj: International Agreements Navy Procedures; and OPNAV Instruction 5710.25, Subj: International Agreements OPNAV Procedures. Questions regarding the definition and processing of international agreements should be referred to the Office of the Chief of Naval Operations (N3L/N5L) or the Office of the Deputy Assistant Judge Advocate General of the Navy (International and Operational Law (Code 10)).

8. Vienna Convention on the Law of Treaties, arts. 1, 26 & 38, *reprinted in* 8 Int'l Leg. Mat'l's 679 (1969) and AFP 110-20, at 7-2.

9. UCMJ, art. 92, provides that a violation of a lawful general regulation, such as art. 0705, Navy Regulations, 1990, is punishable by court-martial.

PART I

LAW OF PEACETIME NAVAL OPERATIONS

- Chapter 1 — Legal Divisions of the Oceans and Airspace
- Chapter 2 — International Status and Navigation of Warships and
Military Aircraft
- Chapter 3 — Protection of Persons and Property at Sea and
Maritime Law Enforcement
- Chapter 4 — Safeguarding of U.S. National Interests in the
Maritime Environment