

Foreword

The International Law Studies series was initiated by the Naval War College to publish essays, treatises, and articles that contribute to the broader understanding of international law. With this volume we recognize Rear Admiral Charles H. Stockton, on the 100th anniversary of his assumption of duties as the President of the Naval War College, for his contributions to the study of international law at the College, and his influence on the development of the law of naval warfare. Indeed, Admiral Stockton is largely responsible for this series, which has become known as the "Blue Books."

As the 20th Century draws to a close, it is particularly fitting to look into the future to examine how the law of armed conflict, and the international community's effort to effectively enforce adherence to it, may develop in the next millennium. Over the past century, the changes in this body of law have been dramatic. From a law based largely on custom and practice, and primarily focused on basic humanitarian protections for combatants and noncombatants, today the law is increasingly based on conventions addressing the means and methods of war. Yet as significant as these changes have been, those in the nature of conflict and the manner in which war is conducted have been even greater. Low-intensity conflict within nations has become increasingly frequent over the last half of the century. Accelerating technological advances have made possible weapons with capabilities that have fundamentally altered the manner in which wars are fought. Even space looms as a potential battlefield. It has been and continues to be a challenge to adapt the law to what has appropriately been described as a revolution in military affairs.

This volume consists of articles written by some of the world's most highly regarded experts on the law of armed conflict. While the opinions expressed are those of the individual authors, and not necessarily those of the United States Navy or the Naval War College, they collectively provide valuable insights into possible developments in the law regulating armed conflict, and how that law will be enforced. 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 our gratitude and thanks.

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Charles H. Stockton

Introduction

One century ago, Commander Charles H. Stockton assumed the Presidency of the United States Naval War College. Although not a lawyer, his appointment heralded an important milestone in the development of international law, particularly the law of armed conflict, during the 20th Century. For instance, in 1890 he prepared the U.S. Navy's first Naval War Code, *The Law and Usages of War at Sea*. Issued the following year as General Order 551, this work is fairly characterized as the naval equivalent of the Lieber Code. Stockton was also primarily responsible for the tradition of bringing renowned international law scholars to the War College, including Brown's George Grafton Wilson and Columbia's John Bassett Moore. Convinced of the need to "link the college with the universities of the country and place the service in greater sympathy with our more thoughtful men," Stockton also maintained close working relationships with many other luminaries of academia, such as Thomas Woolsey of Yale.

Following his tenure as President, Stockton went on to command the battleship *USS Kentucky*, serve as the U.S. Naval Attaché in London, and achieve the rank of Rear Admiral before retiring in 1907. Despite retirement from active service, Stockton continued his efforts in international law. An original member of the American Society of International Law, he addressed its first annual meeting in 1907, became a frequent contributor to the *American Journal of International Law*, and served on its Executive Committee until 1924. In 1908 Stockton led the U.S. delegation to the London Conference, which was tasked with drafting a code of naval warfare. The Conference eventually produced the Declaration of London of 1909. Although never ratified by any country, the Declaration has been applied in a number of conflicts and continues to influence the practice of naval warfare even today.

Stockton received his first law degree in 1909, an honorary doctorate from George Washington University. He was soon thereafter appointed to the faculty of the University, where he wrote two of his most influential works, *Manual of International Law for the Use of Naval Officers* and *Outlines of International Law*. Stockton was appointed President of George Washington University in 1910; today Stockton Hall houses its law school.

Two visible legacies of Admiral Stockton's influence remain at the Naval War College. First, since 1951 his vision of hosting recognized scholars of international law has been reborn in the form of the Stockton Chair of International Law. Holders have included, *inter alia*, Manley Hudson, Hans

Kelsen, Richard Lillich, Howard Levie and Robert Turner. Their presence has added a dimension of inquiry into international legal problems unavailable at any other such institution in the world. Second, the War College's International Law Studies series (colloquially known as the "Blue Books") continues a tradition of War College publication in international law that began during the Stockton era. Indeed, the third Blue Book was written by Stockton himself in 1899, and the first numbered volume was authored by Stockton's friend, John Bassett Moore. Since then, over seventy of the volumes have been published.

In light of these legacies, it is particularly apropos that the centenary of the Stockton presidency be commemorated with a Blue Book consisting of contributions by an internationally distinguished group of scholars. Moreover, much as Stockton's work reflected on the state of the law of military operations at the turn of a new century, it is a propitious moment in history to reflect on the direction this *corpus* of jurisprudence is likely to take as we enter a new millennium—thus, *The Law of Armed Conflict: Into the Next Millennium*.

As editors, we took a rather unorthodox approach to our task. Most edited works are developed thematically. An editor develops a theme, fleshes it out into sub-topics, and seeks experts to comment thereon. By this method, we would have selected topics which we (perhaps presumptuously) anticipated to likely be of normative significance in the future and parse them out to contributors. However, our purpose was not to peer into the future as *we* saw it, but rather to gather a distinguished, provocative, and insightful group and provide them an unconstrained forum in which to reflect on the future as *they* perceived it. Thus, we were less editors than we were facilitators of the essays contained in this book. Though we did at times suggest topics to certain of our contributors, we only did so because of our sense that they might have something particularly fascinating to say on the subjects. Some wrote on entirely different topics, and that was fine because in great part we were interested not only in what contributors had to say, but also in what issue they chose to comment on at this point in history.

The result is a collection of insightful essays which are analytical, predictive, and aspirational in nature. Moreover, while some of the authors took a macro approach towards evolution (revolution?) of the law, others elected to examine a micro issue which they believed to be particularly significant for the next millennium. Interestingly, though a number of contributors highlight common features of tomorrow's normative environment—such as the role of non-State actors and the effect of next generation weaponry—the only thread that

consistently seems to run through most of the essays is that of implementation of the law of armed conflict by way of effective enforcement measures. The calls for new law are rather muted; instead, the emphasis of most contributors is on rendering the existing prescriptive architecture effective. This diversity was as we had hoped, for our intent was to produce a work that caused others to think beyond the present, to reflect on where, as a global normative community, we might—and should—be headed.

In the production of any such work, there are many friends and colleagues to thank. Obviously, we are most grateful to the distinguished group of scholars who gave of their time and thoughts to make this book possible. Working with each and every one of them has been an absolute pleasure. At the Naval War College's Center for Naval Warfare Studies, Dean Robert Wood and Captain Dan Brennock were, as always, extraordinarily supportive of the project, both financially and substantively. So, too, was Colonel "Buck" Buckwalter, the Senior Air Force Adviser at the Naval War College. Dean Barbara Safriet of Yale Law School graciously extended the offer to host Lieutenant Colonel Schmitt as a Visiting Scholar for the year during which the book was developed, thereby making possible editing in an intellectually rich environment. We also extend our gratitude to two of our colleagues in the War College's Oceans Law and Policy Department—Professor Jack Grunawalt and Colonel Lou Reyna—who selflessly devoted themselves to the often thankless task of proofreading. Further, we are grateful to Captain Ralph Thomas and Lieutenant Colonel James Duncan, the unsung heroes of the International Law Studies series. They are the ones who make the series work, from design to publication to distribution. We were also most fortunate to have had the superb support of two naval reservists, Lieutenant Commanders Sarah Supnick and Tom Wingfield, who during critical periods in the production of the book served as editors while we were away. But for their hard work, the project would have been delayed many months. We owe a special debt of gratitude to Mr. Pel Boyer of the Naval War College Press for making his editorial expertise available to us throughout the project. We are also grateful to Ms. Carole Boiani and Ms. Gina Vieira of the War College's Publications and Printing Division. They managed the herculean task of pulling together manuscripts prepared in disparate styles and with sundry software from around the world, and then suffered a sea of revisions, with unflappable grace and good humor. Finally, as anyone who has ever taken on such a project surely realizes, in the end it is the family which suffers as the best laid plans become rushed deadlines and missed dinners. Therefore, it is

to Lilian, Lorraine, and Danielle that we owe our most heartfelt expression of gratitude.

By the time this book is published, both of us will have departed the Naval War College for other venues. Our time here has been enjoyable, beneficial, and productive—we cannot imagine how it could have been improved. As we leave, it is our hope that those who come here to consider international law in the next one hundred years find it to be the fertile intellectual environment that it has been over the past century.

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