

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 seventy-second volume of that series, is a collection of articles prepared by friends of Professor Richard J. “Jack” Grunawalt to mark the occasion of his retirement as the Director, Oceans Law and Policy Department of the Center for Naval Warfare Studies, Naval War College.

Jack Grunawalt came to the Naval War College in 1986 as the Charles H. Stockton Professor of International Law, and held that Chair until becoming the Director, Oceans Law and Policy Department in 1989. Under his leadership of its international law program, the Naval War College has regained its historic stature as the world’s preeminent military institution for the study and articulation of the rules of law governing the world’s oceans, both in time of peace and in time of war.

It is the renaissance of the “Blue Books” during Professor Grunawalt’s tenure that has contributed significantly to the restoration of the Naval War College’s stature in the study of international law. Indeed, this is the ninth volume in the series that has been published since 1990. Thus, it is most appropriate that Jack Grunawalt’s contributions to the Naval War College be recognized through the publication of a “Blue Book” in his honor. It is also a testament to the high regard in which he is held that so many notable contributors, both military and civilian, would prepare articles for this special edition, which is unique in the long history of the “Blue Book” series.

While the opinions expressed in this volume 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 the contributing authors and the editor our gratitude and thanks. I would also like to thank Jack Grunawalt on behalf of the faculty and students of the Naval War College who have been privileged to be associated with him and to have learned from him.

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Preface

Every so often someone comes along who makes a real difference—the kind of difference that, in the great scheme of things, matters. Professor Jack Grunawalt is one such individual, for it is no exaggeration to label him the father of operational law in the United States military. Indeed, before I came to the Naval War College, an Air Force colleague pulled me aside to “warn” me about Jack Grunawalt, the man who saw himself as the “keeper of the ROE” (rules of engagement). After three years of working for him, I am convinced he is not only the “keeper,” but that this is a good thing for our nation. Today, there are simply no military operations conducted by U.S. forces, or even those of other countries, that do not evidence the hand of Jack Grunawalt. Whether directly through application of the Standing Rules of Engagement he helped to craft or indirectly through the thousands of Grunawalt-trained judge advocates and operators around the world, his influence is omnipresent. This “keeper” has guarded and nurtured his charge well.

Moreover, he also authored what is clearly the lead law of military operations manual in the world, *The Commander’s Handbook on the Law of Naval Operations*, NWP-9 (now 1-14M). Copies of that masterpiece can be found from the bridges of Latin American warships and the ICRC Legal Adviser’s Office to the Yale Law School Library and the Combined Air Operations Center for Operation NORTHERN WATCH. I know of no other work in recent times that can pretend to make a comparable claim.

His greatest legacy, however, lies not in these accomplishments or those described in the introduction to this book. Rather, it lies in his influence on the individuals who will continue to shape operational law in the years to come. He is very much the Myres McDougal of this *corpus* of law, for the mark of Jack Grunawalt, like McDougal, is indelibly imprinted on all those who have had the good fortune to have worked with him or benefited from his selfless mentorship. Of course, the Grunawalt experience is not always pleasant; a crusty opinionated sea captain he remains—even in the ivory halls of academia. But it is always an experience from which one emerges bettered.

So as Jack Grunawalt prepares to head off to the adventure-filled retirement he justly deserves, those of us who have had the honor of working closely with him over the years deemed it appropriate to honor him with this *Liber Amicorum*, this book of friends. The topic was self-evident—the law of military operations—Jack’s law. Who the contributors should be was also obvious. Jack Grunawalt often talks of the Oceans Law and Policy (OLP) “family.” It includes present and former faculty members of the Naval War College, members of the

OLP advisory board, holders of the Stockton Chair of International Law at the College, and “special friends.” It is to the OLP family that we turned to produce this work.

Hopefully, the end product is a book that represents what Jack Grunawalt is all about. Consider the contributors, who range from vice admirals to lieutenant colonels; Army, Air Force, Navy, Marine, and Coast Guard officers; service academy and law school professors; a war college dean; CINC legal advisers; and a Joint Chiefs legal adviser. Indeed, the age gap between the youngest and oldest contributor is a half-century. It is a high tribute to Jack that his influence is felt across such a diverse group.

Then there are the topics. Contributors were given only the guidance (bearing in mind the book was a tribute to Jack Grunawalt) that they should write about operational law. Look carefully at the result. The subjects range from the law of war to the law of the sea; rules of engagement for “occupying” a Caribbean island to enforcing no-fly zones over Iraq; collective self-defense to covert action; the use of nuclear weapons to peace operations. Yet, the very diversity of topics reflects the diversity of operational law itself. It also represents the range of issues to which the Grunawalt influence has been brought to bear. Jack Grunawalt is no more or less at ease talking about maritime intercept operations than nuclear warfare . . . or theoretical international relations . . . or exploitation of resources in the exclusive economic zone. He is a man of extraordinary scope, and the only defining parameter of this book was that contributions somehow involve military operations.

Many have been involved in the creation of this expression of admiration for Professor Jack Grunawalt. The Naval War College Foundation provided a generous grant to support its publication. Captains Dan Brennock and Ralph Thomas of the Center for Naval Warfare Studies creatively ensured additional funding whenever needed. Captain Thomas also agreed to proof drafts during my absence on an extended hardship research trip to London, Bonn, and Geneva. Lieutenant Commander Sarah Supnick, USNR, selflessly volunteered her own time, and friendship, as associate editor for over two months during a critical period of production. Ms. Gina Vieira at the War College’s Publications Division generated draft after draft, always with an unfailing sense of humor. Lieutenant Colonel James Duncan of the Oceans Law and Policy Department took the book from proofs to publication with typical Marine determination. Special thanks is due to the Naval War College Press, particularly this volume’s editor, Ms. Pat Goodrich. Few can imagine Pat’s professionalism in managing a gaggle of type-A lawyers, oblivious to any rules of style or grammar, seemingly

concerned only with the travails of endnotes. Finally, a personal thanks to Lorraine and Danielle who, as always, suffered silently through my preoccupation with the task at hand.

On behalf of all Jack's friends, we wish him fair winds and following seas.

MICHAEL N. SCHMITT, Lieutenant Colonel, U.S. Air Force
Professor of Law
United States Air Force Academy

Sailor-Scholar

Ralph Thomas

I MUST BEGIN WITH A MODIFICATION of the standard disclaimer that each of us in government service is required to include with any publication: "The views expressed herein are my own and not necessarily those of Jack Grunawalt's friends, whose reflections on Jack I've been asked to represent." Though the memories of Jack that I relate are my own, they also attempt to synthesize all that he means to each of us. The only debate would be in the selection of adjectives that most aptly describe him. Should it be the "highest" or "greatest" respect? Should it be "enormous" or "extraordinary" accomplishments?

To capture the essence of the legend (a word used to describe him only when he is out of earshot) that is Jack Grunawalt seemed an impossibly presumptuous task for me. There are others who have known him longer, those he counts as his closest friends, and those to whom he turns for the wise counsel that has guided and assisted him in his careers as an active duty Navy judge advocate and then as a professor on the faculty of the Naval War College. I have had, however, the unique opportunity (and the greatest personal and professional privilege) of not only knowing Jack for many years but of having been closely associated with him for seven years here at the Naval War College. For five of those years I have served as the Deputy Director, Oceans Law and Policy Department, but whenever I am asked what my position is, I normally answer, "Jack Grunawalt's deputy." The former (and formal) title often generates quizzical expressions, while the latter prompts immediate recognition.

I have deliberately not included specific references to those who have worked with Jack over the years and whose friendship and advice he values so highly. Among them are individuals who have measurably contributed to the

development of operational law as it is practiced today in the armed services, as well as many who have assisted Jack in his efforts to restore the tradition of excellence in the study of law at the Naval War College. Were I to do so, I would almost certainly omit many deserving of mention—something I would not want to do. Each of you knows who you are. I would also like to apologize in advance to Jack, who, while he can never be described as retiring, has always been uncomfortable with introductions that describe his many accomplishments. His typical response is often a deflecting “I wish my mother had heard that.” Well, Mrs. Grunawalt you should hear what your son has accomplished.

Today, many people know Jack primarily for his accomplishments as the Stockton Professor of International Law and the Director, Oceans Law and Policy Department at the Naval War College. In fact, he has been at the War College long enough for me to have learned to refer to him as “Professor” Grunawalt—after all those years when he was “Captain” Grunawalt, Judge Advocate General’s Corps, United States Navy. Indeed, it was as Commander and then as Captain Grunawalt that he began to exert the influence that eventually rendered him the honorary title of “the father of operational law” as we know it today. While he was not the first Navy judge advocate we would refer to as an “operational lawyer,” he is acknowledged as the officer who firmly established judge advocates as key advisers to operational commanders on all aspects of their mission. It is he who led the effort to integrate lawyers onto the battle staff and into the command center and to acquire the security clearances necessary for their participation in the decision-making process. Navy judge advocates now accept those as “givens”—not so long ago they were not. That today they are, we owe largely to Captain Grunawalt.

In the process of becoming what I consider to be the finest operational lawyer the Navy JAG Corps ever raised, Jack Grunawalt served under a generation of Navy leaders that are themselves legends—Admiral Thomas Hayward, Admiral James Holloway, Admiral James Watkins, Admiral William Crowe, and Admiral Robert Long. His assignments, which included Special Counsel to the Chief of Naval Operations and Staff Judge Advocate to the Commander in Chief, United States Pacific Command, reflect the high regard in which he is held.

Following service in Vietnam as the Deputy Director, U.S. Naval Law Center, Da Nang, then-Commander Grunawalt was presented with his first opportunity to be heavily involved in the practice of operational law when he was assigned as the Staff Judge Advocate to the Commander, Seventh Fleet, the command responsible for directing the Navy’s efforts during the Vietnam

War. There Jack had the opportunity to see the results of flawed rules of engagement. I've never heard him say so, but I suspect his career-long (both careers) drive to ensure that rules of engagement never again produced such results began with that assignment.

But had that not been the motivation, clearly his service as the Counsel for the Long Commission that investigated the tragic bombing on 16 October 1983 of the Marine Battalion Landing Team (BLT) Headquarters in Beirut, Lebanon, focused his attention on the critical role of rules of engagement. Specifically selected to be the Counsel by Admiral Long, who headed the Commission, Jack learned of the now infamous Blue Card/White Card Rules of Engagement (ROE) that the Marines used in carrying out their security responsibilities. The robust Blue Card ROE set forth the rules for guarding the relocated U.S. Embassy following its destruction by a car bomb in April 1983. Much more restrained were the "peacekeeping" White Card ROE in effect at Beirut International Airport where the Marines were headquartered. It was the latter that substantially reduced the ability of the Marines on perimeter security to stop the explosive-laden truck that destroyed the BLT Headquarters. In one moment, 241 American military personnel, mostly Marines, died. I believe Jack's experience on the Long Commission resulted in a personal crusade (a word I've never heard him use) to do whatever he could to ensure that no more American military personnel would never die because of a failure of rules of engagement.

Captain Grunawalt capped his active duty service by authoring *The Commander's Handbook on the Law of Naval Operations*, or as it is better known, NWP 9. Regarded as the finest military manual of its kind in the world, it provides legal guidance to operational commanders on the many complex situations they confront, both in peacetime and during conflict.

NWP 9 evidences one of the consistent themes that have characterized Jack Grunawalt's service—an appreciation of the difficult role of the line officer, who sails the Navy's ships and flies her aircraft. (Many times I've heard him say during a rules of engagement presentation to a group of commanding officers, "Rules of engagement can be hard, just like everything else you do.") With that in mind, Jack wrote NWP 9 not for lawyers, *but for operators*, recognizing that they make the decisions on how to operate and fight their ships and aircraft. Therefore, and as Jack often notes, there are no footnotes, case citations, nor Latin phrases in *The Commander's Handbook* (now in its third iteration, it is today known as NWP 1-14M).

Given his practical approach to the law, it should come as little surprise that when asked to define the phrase "operational law," a new phrase coined to

describe the practice within the Department of Defense of what had previously been referred to as international law, Professor Grunawalt stated quite simply that it “is whatever it is that assists the commander in accomplishing the mission. Perhaps it’s providing advice on a difficult law of the sea or law of armed conflict question, or assisting with the development of rules of engagement for a sensitive operation, or perhaps it’s assisting in the convening of a court-martial, or drafting a will or power of attorney.” These few words capture the essence of Jack Grunawalt—it’s the lawyer’s role to do whatever it takes to help the operational commander—but Jack always adds an important caveat. While the lawyer’s role is to be proactive and creative in assisting the commander to accomplish a desired result, it is the lawyer’s responsibility to ensure that the result and the manner in which it is accomplished are consistent with the rule of law. As Jack has observed so frequently, the values of the United States as a nation and the personal values of American military professionals are reflected in the law, and no action must ever be taken which compromises those values. It was to this principle—the conduct of military operations within the rule of law—to which he dedicated himself most fully upon his move to the Naval War College following retirement from the Navy.

The study and teaching of law had been an integral part of the Naval War College program for decades. Indeed, it is reflected in Admiral Stephen B. Luce’s first Order, dated 2 September 1885, to the first Naval War College class: “Lectures will begin on September 7. The working days will be Monday, Tuesday, Wednesday, Thursday, and Friday. The lectures on International Law will be delivered daily at 10 am. . . .” The first civilian professor joined the War College faculty over 110 years ago, when James R. Soley was appointed to teach international law. That professorship, which became the Stockton Chair in 1967, has been held by some of the most eminent international legal scholars in the world. They include John Bassett Moore, later a judge of the Permanent Court of International Justice; Professor Manley O. Hudson, who went on to become a judge on the International Court of Justice; Berkeley Professor Hans Kelsen; and Newport’s own, Professor Howard Levie.

In 1986, now retired Captain Jack Grunawalt was appointed to the Chair. The first chairholder in the history of the Stockton Chair to move directly from a military career into the College’s oldest and most prestigious chair, he held it for an unprecedented three years. Then in 1989, he proposed the creation of an Oceans Law and Policy Department within the Center for Naval Warfare Studies.

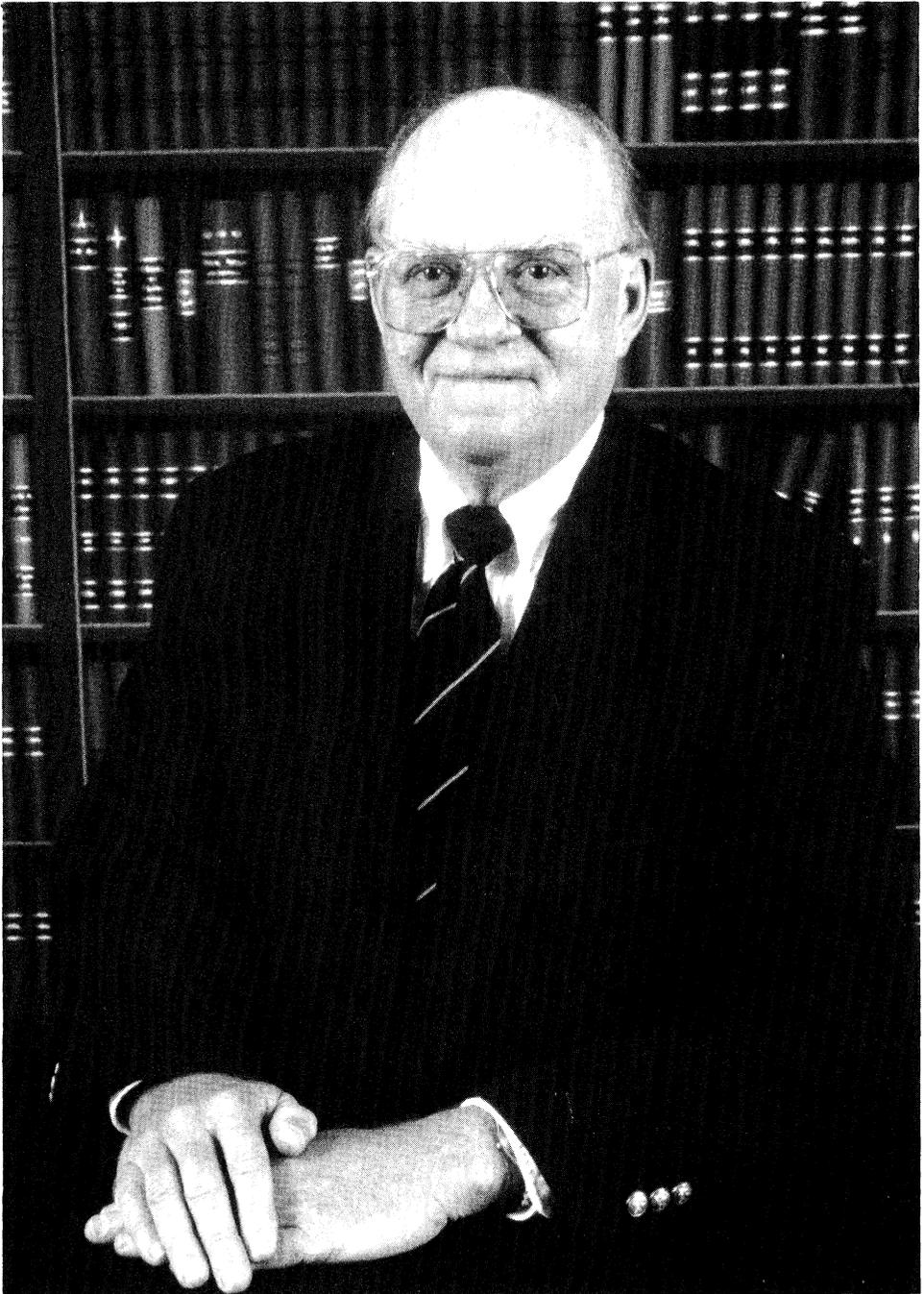
As Dr. Bob Wood, then and now the Dean of the Center for Naval Warfare, observed, “When [Jack] first came into my office to propose an Oceans Law and Policy Department, it was evident he spoke with considerable authority.

His vision entailed it as no less than a center of excellence which would become the authority on operational law—a repository of current practice, a place of original scholarship, and the teacher not only of U.S. Armed Forces, but of the forces of friendly States as well. He envisioned that the Oceans Law and Policy Department would draw the parameters of operational law into the 21st century.” Dr. Wood continued, “An ancient proverb proclaimed that young men would dream dreams and old men would have visions. I concluded either that Jack was subject to psychedelic hallucinations or that he was a dreamer and visionary of tremendous power. Happily for the nation,—and for me—he was certainly the latter.”

Jack was appointed the first director of the newly formed department, a position he occupied until his retirement in the summer of 1998. In the years preceding Jack’s arrival, the War College had witnessed a decline in the emphasis placed on international law. But the dedicated visionary that spoke to Dr. Wood of his dream of a center of excellence oversaw the restoration of the College’s reputation as the world’s pre-eminent institution for the study and teaching of the law of naval operations, both in peacetime and during conflict.

In his contribution to this volume, Admiral James H. Doyle describes the truly remarkable “Grunawalt era” at the Naval War College, and speaks of Professor Grunawalt’s many accomplishments. I will defer to Admiral Doyle and refrain from repeating them here; rest assured, however, that they can be described as enormous, indeed, extraordinary. Among them was his revitalization of a program that had in great part established the College’s position on the international legal scene—the publication of the “International Law Studies” series, recognized throughout the world for its contribution to the understanding of international law. Through Jack’s diligence and dedication, the series is now as productive and useful as it has ever been in its nearly 100-year history. Therefore, on the occasion of his retirement from the Naval War College, Jack’s closest friends, colleagues, and mentors have collaborated to honor him with this “Blue Book”—Jack’s “Blue Book” if you will. We could think of no more fitting tribute to this sailor-scholar. On behalf of all those whose lives have been touched, either professionally or personally, by the legend that is Jack Grunawalt, we humbly ask that he accept this token of our respect and admiration.

So, Mrs. Grunawalt, if you are proud of all your son has accomplished . . . you should be. He has served his Navy and his country with unparalleled devotion during times of both peace and war. Along the way, he selflessly shared his knowledge and vision with us. It is our honor to have had that great opportunity.



Professor Richard J. Grunawalt