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 eightieth volume of the series, contains edited proceedings of a colloquium entitled Current Issues in International Law and Military Operations hosted here at the Naval War College on June 25–27, 2003.

The colloquium’s mission was to examine the latest developments in international law, drawing on issues from then ongoing military operations. In doing so, the colloquium participants focused on the applicability and operation of the law of occupation, the perspective of military judge advocates at the strategic, operational, and tactical levels in Operation Iraqi Freedom, maritime operations issues in armed conflict and military operations other than war, including navigational freedoms in international waters and airspace, the increasingly complex considerations of combatant status and coalition operations, developments in the laws of targeting and information operations, and challenges faced in the interpretation and application of the law of armed conflict in current and future conflicts.

Renowned international scholars and practitioners, both military and civilian, representing government and academic institutions from throughout the world participated in the colloquium, which was co-sponsored by the Strategic Studies Institute of the United States Army War College at Carlisle Barracks; the Israeli Yearbook on Human Rights, Tel Aviv, Israel; the United States Coast Guard Academy; the Francis Lieber Society of the American Society of International Law; the Judge Advocate General of the Navy; the Naval War College Foundation; the Pell Center for International Relations and Public Policy of Salve Regina University, Newport, Rhode Island; and the International Law Department of the Center for Naval Warfare Studies, United States Naval War College.
On behalf of the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps, I extend to all the co-sponsors and contributing authors our thanks and gratitude for their invaluable contributions to this project and to the future understanding of the laws of war.

J. L. SHUFORD
Rear Admiral, U.S. Navy
President, Naval War College
Introduction

Operation Iraqi Freedom, in which the United States and her coalition partners conducted military operations for the express purpose of removing Saddam Hussein from power in Iraq, implicated a host of international law issues, in both theory and practice. Many of those issues are still being debated today, more than 3 years later. Was Operation Iraqi Freedom undertaken consistent with international norms on the use of force? Are targeting norms, as traditionally understood, adequate in the age of precision strategic strike capability and/or against an enemy who intentionally fails to distinguish himself from civilians? Or who purposefully uses protected places from which to launch attacks? Or who purposely attacks protected persons, places and objects? How do States reconcile competing views of what the law of war is, or requires, or forbids, in dealing with captured foes? Discussing and debating these questions, and others raised by characteristics of the conflict with “rogue” nations and international terrorists, was the purpose of the colloquium that this book, Volume 80 of the International Law Studies (“Blue Book”) series, memorializes.

In June, 2003, the Naval War College conducted a symposium entitled *Current Issues in International Law and Military Operations*. The colloquium, organized by the International Law Department’s Commander Don Rose, US Coast Guard, was made possible with the support of the Strategic Studies Institute of the United States Army War College at Carlisle Barracks; the Israel Yearbook on Human Rights, Tel Aviv, Israel; the United States Coast Guard Academy; the Francis Lieber Society of the American Society of International Law; the Judge Advocate General of the Navy; the Naval War College Foundation; and the Pell Center for International Relations and Public Policy of Salve Regina University, Newport, Rhode Island. Without the support and assistance of these organizations, the colloquium would not have been the success that it was. Their support is greatly appreciated.

Two members of the International Law Department served as primary editors of this volume. Lieutenant Colonel Jim Friend, JA, US Army, initially performed editorial work on this volume until the exigencies of war intruded and he was
transferred, prior to his normal rotation date, to Kuwait. Major Richard Jaques, US Marine Corps, eventually assumed these duties and carried them through to fruition. Their dedication and perseverance are responsible for the production and completion of this excellent addition to the “Blue Book” series.

A special thank you is necessary to Rear Admiral Rodney P. Rempt, former President of the Naval War College for his leadership and support in the planning and conduct of the colloquium.

The “Blue Book” series is published by the Naval War College and distributed throughout the world to US and foreign military commands, academic institutions, and libraries. This volume, entitled *Issues in International Law and Military Operations (2003)* to more accurately reflect the fact that the perspectives provided at the colloquium depicted events as known and perceived at the time, is a fitting and necessary addition to the series as nations continue to wrestle with developing consensus on how to best deal with groups and tyrants whose willful belligerence pose unacceptable threats to international peace and security.

DENNIS L. MANDSAGER  
Professor of Law & Chairman  
International Law Department
Preface

It should be no surprise that, coming as it did in June 2003, a colloquium that focused on “current” issues in international law and military operations would by necessity devote most of its time to the issues and challenges raised by Operation Iraqi Freedom, the then nascent occupation of Iraq, and the developing efforts to apply long established maritime rules and principles based on, and designed to respect, State sovereignty, against a Stateless belligerent. What may be surprising (or perhaps sadly ironic) is how current the issues, challenges, analyses, positions, and arguments for and against various interpretations and/or applications of international law to military operations voiced in 2003 remain today. This suggests that despite the passage of three years, little consensus on the nature, scope and degree of the threat faced, and the appropriate responses thereto, has yet developed.

Readers unfamiliar with the International Law Studies (“Blue Book”) series may wonder why a work that largely captures the proceedings of a colloquium held in 2003 is only now, in 2006, finding its way to print. Long-time supporters and contributors who have patiently anticipated publication for some time (especially those who participated in the colloquium) may well wonder why this volume does not serve, as previous volumes have, to fully capture all speaker and panelist comments and audience discussion or reflect the order in which those comments and discussions occurred. To both groups of readers an explanation is warranted, if for no other reason than to ensure that those deserving of credit in making this book a reality receive their due.

For reasons of detail that are unnecessary here, most of the record of this colloquium was not available to the editors of this publication. Compounding this problem was the fact that the first two assigned editors found their tenure in the International Law Department cut short or interrupted by the exigencies of war. In significant portions, this work largely reflects an effort starting some 18 months after the event to recreate the colloquium and capture key portions of it.
Typically, “Blue Books” that serve as a record of colloquium proceedings will reflect the order in which the panel discussions occurred. In this case, however, because it was impossible to recreate the “give and take” of panelists with each other and with the audience, and because not all the panels could be included in the book, the most logical arrangement was to group articles within the major subject areas addressed (the legality and legitimacy of Operation Iraqi Freedom, the tactical and operational challenges in air and land warfare, the wide variety of issues affecting operations in the maritime domain, and the question of how the law of armed conflict needs to develop to adequately address current and anticipated challenges) as reflected in the Table of Contents. Articles in which the author refers specifically to another article are grouped within the same major category.

I also decided to eschew the past practice of attempting, in this Preface, to summarize the key points of each article around a central theme or themes. The choice of articles and organization of the book itself essentially reflect my perspective on the key points and themes. Moreover, readers will find it of much more value to decide for themselves what arguments and positions set forth herein have merit. The only suggestion I offer the reader in making those assessments is to remember that whatever the law of armed conflict was in the past, is today, or will be in the future, it is not merely a subject for a panel discussion or an academic debate or an intellectual position. For those affected by it, it is a matter of life or death.

As with all works such as this, a number of individuals were involved in the publication process. Thanks must go to Lieutenant Colonel Jim Friend, JA, US Army, the first editor, who initiated this effort. A special note of thanks is due to Mr. Matthew Cotnoir in the Naval War College’s Desktop Publishing office. He served as the “point man” in converting draft after draft into publishable form, tirelessly and patiently enduring numerous rewrites, reconfigurations, and re-edits without complaint. Thanks must also go to the contributors to this volume long after the fact, for their great patience and understanding over the last three years. In particular, a debt of thanks is owed to Professor Wolff Heintschel von Heinegg and Colonel Charles H. B. Garraway, CBE, British Army (Ret.), both of whom served as the Naval War College’s Charles H. Stockton Professor of International Law during my tenure, and both of whom are contributors to this volume, for their knowledge, expertise, perspective on law (and, more importantly, on life itself), and comradeship.

Finally, two individuals, for both of whom the “Blue Books” are a labor of love, deserve the lion share of the credit for ensuring that this work has come to fruition. Simply put, without the leadership and vision of Professor Emeritus Jack Grunawalt and the painstaking detailed editing and review of Captain Ralph
Thomas, JAGC, US Navy (Ret.), both of whom devoted countless hours to this project, Volume 80 would still be barely a work in progress. Even more, they have served as mentors, teachers, advisors, confidants, leaders, and friends to the undersigned in more ways than can be expressed. By all rights, theirs should be the names printed on the binding of this volume. For everything that is good about this book, the credit is theirs. For everything that is not, the blame is mine.

RICHARD B. JAQUES
Major, US Marine Corps