The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.
Studies in the Law of Naval Warfare: Submarines in General and Limited Wars

by

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FOREWORD

The study of International Law has been an important part of the curriculum at the Naval War College since its founding in 1884. From 1894 to 1900, certain lectures given on International Law together with the situations studied were compiled and printed, but with very limited distribution. Commencing in 1901, however, the first formal volume of the Naval War College's "Blue Book" series was published.

This book represents the fifty-ninth volume in the series as numbered for cataloging and reference purposes. The present volume is written by Professor William T. Mallison, Jr. of The George Washington University National Law Center who occupied the Charles H. Stockton Chair of International Law at the Naval War College during the 1960-1961 academic year. It is considered that Professor Mallison's book presents an orderly, objective and concise discussion of the laws of naval warfare with special emphasis on submarines.

The opinions expressed in this volume are those of the author and are not necessarily those of the United States Navy or the Naval War College. The fact of publication does not imply endorsement of content but indicates merely that the subject treated is one which merits attention.

JOHN T. HAYWARD
Vice Admiral, U.S. Navy
President, Naval War College
PREFACE

The historic function of the laws of war has been to impose restraints upon international violence in the common interest of the community of the states. This study provides analysis of some of the more important juridical issues arising in naval warfare. These issues concern the submarine, but the significance of a number of them extends beyond the juridical control of submarine warfare.

The major claims arise in four principal categories in Chapters II through V: the lawfulness of particular combatants, areas of operation, objects and methods of attack, and weapons. In each functional category a central object is to focus juridical analysis upon some of the actual fact situations in warfare where the laws of war are applicable. The issues concerning the long-distance surface naval blockade considered in Chapter III provide context for the appraisal of submarine operational areas. The problems concerning the lawfulness of particular objects and methods of attack in Chapter IV are relevant also to surface and aerial naval warfare. Some of the weapons juridically appraised in Chapter V transcend naval warfare and raise issues concerning the juridical control of strategic aerial bombardment.

The writer believes that this study will perform a constructive task if it assists naval officers in understanding the practical importance of the laws of war and, in particular, the basic consistency between considerations of humanity and those of military efficiency. In the same way, the writer hopes there will be a constructive role for the study in assisting international lawyers to appreciate the capacity of the laws of war to at least minimize the destruction of human and material values in situations of international coercion.

In order to determine the modern adequacy of the laws of war in performing their humanitarian functions, certain future projections must be made. A dichotomy projecting general and limited wars appears to cover the two principal alternatives in a world where international coercion has not yet been eliminated. The two World Wars provide the principal general war experience in which the juridical control of submarines has been attempted. Since 1945 the only actual experience concerning international coercion has been with limited war or hostilities. It seems probable that such limited coercion is of future as well as contemporary signifi-
cance. Its effective control through law, consequently, is likely to be of continuing importance. For these reasons the systematic attempt to appraise the principal claims categories in the context of contemporary and future limited war seems necessary.

Even if it is concluded that the laws of war can be used to provide some significant protection for humanity under modern conditions, it seems clear that additional steps must be taken to achieve humanitarian objectives by improving world order. The contemporary minimum world public order system may be described as one which simply prohibits coercion for aggressive purposes while retaining the right to employ it for national and collective defense. An optimum world public order system may be conceived as retaining the elements of the minimum system and also involving a peaceful and democratic environment in which each individual may seek values without regard to discriminations which are irrelevant to his worth and capacity as an individual.

The instability and general inadequacy of the contemporary minimum system based in substantial part upon nuclear deterrence when compared with a possible optimum order based upon improved institutions and sanctions is obvious. Although beyond the scope of the present study, it is clear that effectively sanctioned disarmament would provide a practical means of building optimum world order. Modest steps have already been taken including the establishment of the Washington-Moscow “hot-line” communications system in 1963, to promote the prevention of an accidental triggering of world holocaust, and the Limited Nuclear Test Ban Treaty (1963). An additional constructive step would be the implementation of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies drafted in the United Nations in 1966. In taking the further steps which are necessary to improve the world order system, it should be recognized that the historic failures of disarmament in earlier times and under different conditions are of reduced relevance today.

Finally, it may be suggested that the contemporary minimum order system, although inadequate in many respects, is consistent with and indeed the indispensable first step toward the objective of achieving an optimum world order. Because of this, the laws of war will continue to have a practical humanitarian role until all international coercion is effectively eliminated.

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The analyses and conclusions of the study are those of the author alone.

W. T. Mallison, Jr.
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