

FOREWORD

The International Law Studies “Blue Book” series was initiated by the Naval War College in 1901 to publish essays, treaties and articles that contribute to the broader understanding of international law. This, the sixty-fourth volume of that series, coincides with a renaissance in the study of international law within the Naval War College and the return of the “Blue Book” series to the forefront of analysis and development of the rules of law governing the world’s oceans both in time of peace and in time of war.

As editor and contributing author to this volume, Professor Horace B. Robertson has made a singular contribution to this tradition of legal scholarship. The principal focus of this work is the *Commander’s Handbook on the Law of Naval Operations* promulgated within the Department of the Navy for the guidance of operational commanders and supporting staff elements of all levels of command of the Navy and Marine Corps. The thirteen contributors to this volume are among the world’s most highly respected authorities in the field. Each has addressed a separate facet of oceans law and all have provided an independent, and sometimes critical, assessment of the articulations of law set forth in the *Handbook*. While the opinions expressed in this volume are those of the individual authors and are not necessarily those of the United States Navy nor the Naval War College, they collectively provide a valuable contribution to the study and development of the rules of law governing the conduct of nations on and over the world’s oceans. On behalf of the Secretary of the Navy, the Chief of Naval Operations and the Commandant of the Marine Corps, I extend to Professor Robertson and the contributing authors of this informative and provocative work our gratitude and thanks.

Joseph C. Strasser
Rear Admiral, U.S. Navy
President, Naval War College

PREFACE

It is in accord with the highest traditions of the United States Naval War College that it should be in the forefront of the development, debate, and exposition of international law. It is therefore appropriate that in connection with the promulgation of *The Commander's Handbook on the Law of Naval Operations* (NWP 9) by the Department of the Navy in 1987 the War College should authorize the publication under its auspices of a volume in its "Blue Book" series marking that event and serving to bring it to the attention of an audience beyond the Department of the Navy.

The promulgation of *The Commander's Handbook on the Law of Naval Operations* is a welcome event. Its predecessor publication, *Law of Naval Warfare* (NWIP 10-2), was first published in 1955, and although amended on several occasions, was in need of updating. Further, since naval operational manuals are an important vehicle for expressing the official views of a government as to its official position with respect to the international norms governing the conduct of naval forces in both time of peace and time of war, it is important that governments publish such manuals at reasonable intervals so that their positions may be known to other governments, international organizations, scholars, and others with a concern for the behavior of the Navy in the international arena. The process of obtaining intra-government agreement on the norms promulgated also serves as a means of requiring the various elements of the government that have a legitimate concern with naval operations to focus on the evolving standards of the relevant international law and agree as to how naval commanders shall be instructed in this respect.

The structure of the *Commander's Handbook* differs from its predecessor manual in two major respects, namely: (1) it is divided into two parts, Part I dealing with "The Law of Peacetime Naval Operations," and Part II covering the "Law of Naval Warfare." NWIP 10-2, the predecessor manual, dealt exclusively with the law of naval warfare; and (2) it is not footnoted and annotated but rather is written for "the operational commander," to enable him "to understand better the commander's responsibilities under international and domestic law [and] to execute his mission within that law." (*Handbook*, Preface.)

Both of these changes are applauded. The addition of Part I, with its extensive and up-to-date elaboration of the international law of the sea, provides a much needed guidebook for peacetime operations for naval commanders and their staffs. The elimination of footnotes, both those providing sources of the rules and those elaborating or qualifying the rules, though criticized by some, is, in my opinion, a major improvement. The footnotes in NWIP 10-2 tended to confuse and frustrate the lay reader.

As stated in the Preface to the *Handbook*,

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.

For the benefit of "judge advocates and others responsible for advising commanders on the law," there is an encyclopedic *Annotated Supplement to The Commander's Handbook on the Law of Naval Operations*, prepared under the auspices of the Judge Advocate General of the Navy and the Naval War College, which has been distributed to appropriate Navy and Marine Corps legal officers. It contains a section-by-section analysis of the *Handbook* with full discussion of the concepts involved and the sources of the rules stated.

The present volume in the "Blue Book" series, *The Law of Naval Operations*, was conceived as a vehicle for bringing broader attention to the publication of the *Handbook* and stimulating a renewed debate on naval operational law and the law of armed conflict at sea. The essays that constitute the volume are not intended to be a comprehensive treatment of all of the subjects dealt with in the *Handbook* but rather are focused on some of the more controversial and significant areas of the law dealt with in it. In some cases they are in the nature of a critique of the *Handbook's* treatment of a subject (see, for example, Professor A. V. Lowe's chapter V, "The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea," and Professor Frits Kalshoven's chapter X, "Noncombatant Persons: A Comment to Chapter 11 of the Commander's Handbook on the Law of Naval Operations"). In others, the authors use the *Handbook* as a take-off point for discussions of particular areas of naval operational law or maritime policy (see, for example, Professor Bernard Oxman's chapter II, "International Law and Naval and Air Operations at Sea," and Professor Louis B. Sohn's chapter III, "Peacetime Use of Force on the High Seas").

In all cases, the authors have been free to express their own opinions, whether such opinions are consistent with those stated in the *Handbook* or the positions of the Naval War College or the Department of the Navy. Such freedom of expression is consistent with the long-standing policy of the Naval War College to foster open debate by its students, instructors, speakers, and authors on governmental and naval policies. The editor and authors of this volume are grateful to the President and staff of the Naval War College for encouraging this policy of freedom of expression.

The *Handbook* has been modestly revised since its initial promulgation to the Fleet in July, 1987 and it is the revised text, denoted "(Rev. A)" that appears in the Appendix. Because the authors of the essays within this volume

had before them the original text, the changes in the revised *Handbook* set out in the Appendix have been underlined. While attachment of the original text would have been more faithful to the commentary of the authors, it was considered appropriate that the most up-to-date iteration of the *Handbook* be appended to this volume.

I wish to thank each of the authors represented in this volume for their contributions. I also wish to thank Professor Richard J. Grunawalt and the other members of the Naval War College faculty and staff for their invaluable assistance, support, and patience.

Horace B. Robertson, Jr.