

FOREWORD

The study of International Law has been an important and integral part of the curriculum at the Naval War College since its founding in 1884. This, the sixty-third volume of the "Blue Book" series, continues a Naval War College tradition begun in 1901 of publishing scholarly treatises and articles that contribute to the development and understanding of International Law.

Professor Alfred P. Rubin of the Fletcher School of Law and Diplomacy of Tufts University, the author of this volume, has contributed a work of exceptional scholarship that will long be regarded as an authoritative reference material not only with respect to the law of piracy, but to the whole of international law. Professor Rubin's work is considered to be informative, comprehensive, and provocative.

The opinions expressed in this volume are those of the author and are not necessarily those of the United States Navy nor of the Naval War College.

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THE LAW OF PIRACY

by

Alfred P. Rubin

PREFACE

This book began many years ago, when, as a student at the University of Cambridge, looking into the legal rationalizations used by British leaders to justify using gunboats to secure the remote fringes of their commerce, I found that in the first three quarters of the 19th century in the Malay Peninsula it was common to refer to the bands headed by young nobles as "pirates." It is true that they robbed merchants, primarily Malay merchants, in the waters of the Archipelago and the rivers of the Peninsula. But it is also true that few of their depredations occurred on the high seas in the nineteenth century British conception of the term, i.e., further than three nautical miles from the nearest governed land; that the nobles had at least the kindly acquiescence of the Sultans accepted by the British and the Malays of the Peninsula as possessors of sovereign authority to grant privateering licenses; and that "pirate hunting" expeditions by the British occasionally hunted their prey ashore.

This use of the term "piracy" as a justification for military action seemed to me inconsistent with its use in courts of law, and, indeed, as my research progressed I found that there were cases in British courts in the Malay area arising out of some incidents in which the courts and the naval authorities disagreed as to what "piracy" meant. The results of this research were published as parts of two books whose principal focus was elsewhere, and an article included in the *Grotian Society Papers 1968*. Having completed my studies of the legal rationalizations for European imperial adventures in the Malay area, of which the "piracy"-suppressing justification was a significant but not dominating part, I laid aside that work for other things.

My appointment in 1981 as Charles H. Stockton Professor of International Law at the U.S. Naval War College, Newport, Rhode Island, gave me the opportunity to return to the subject of "piracy" and I have happily done so. It has been a fascinating legal challenge to disentangle the threads of ancient, renaissance and modern municipal and international law and politics, and to analyze how the current confusion regarding the law of "piracy" arose and is maintained. Among the very many works on various aspects of the subject there are scholarly analyses that seem to have been overwhelmed by the mass of less thoughtful writing and adversary briefs for definitions of "piracy" that would serve parochial political or legal ends

at the expense of legal integrity or objectivity. What seems to have happened is not a mere evolution of legal and political thought, but the use of a legal word to justify political action that is justifiable neither by the law nor by wise policy. In a few cases, the use of the word “piracy” to justify a quick “solution” through military action has even obscured the availability of sounder, more persuasive and better based legal rationales—to the cost of the political leaders who might have done better had they known more about the law. But that tale belongs to the text itself.

I must thank the administration and staff of the Naval War College at Newport, Rhode Island, for unfailing support, particularly the three Staff Judges Advocate, Dave Albrecht, Dennis Mandsager and Jim Brush, and the staff of the Naval War College Library. The administrators of The Fletcher School of Law & Diplomacy allowed me a sabbatical year at the Naval War College to conduct the research; they were very understanding of the continuing pulls on my time and energy. Finally, the staffs of the Widener, Langdell and International Legal Studies Libraries at Harvard University were most helpful when I had trouble finding obscure works that no other library in the world would have had at all.

Special acknowledgment must also be made for the help of Donald Lippincott, a student at The Fletcher School of Law & Diplomacy, whose knowledge of classical Greek was indispensable; Guive Mirfendereski, also a student at The Fletcher School, whose work on the history of the Persian Gulf was more than useful; Professor Martin Glassner of Southern Connecticut State College, whose eagle eye and strategic presence made it possible to keep up on some important recent developments; Professor Edward Gordon of Albany Law School and The Fletcher School of Law & Diplomacy, who referred me to an important article I had overlooked; Frank Uhlig, Jr., Publisher of the Naval War College Press, for finding maps and pictures and editorial help; Professor George Bunn, a successor to the Stockton Chair at the Naval War College, whose comments and suggestions, particularly regarding the organization of the first chapter, Daniel Webster’s contributions to the American tradition and the final conclusions were most valuable and perceptive; and Robert Laske, Editor of the *Naval War College Review*, and his sterling associates from the Publications Division who did all those things necessary to bring this work from manuscript to printing. Several others have read parts of the book and given encouragement that helped me to get through the interminable middle stages. To all I am grateful.

Of course, all responsibility for errors of scholarship, as well as for misstatements, confusions and the difficulties of reading my infelicitous prose, is mine alone, alas.

Alfred P. Rubin