

ASPECTS OF INTERNATIONAL LAW AFFECTING THE NAVAL COMMANDER

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Today the United States faces grave international problems of defense against an ideology which desires to enslave the free peoples of the world. To further that defense we have entered into international alliances and pacts which far surpass any similar peacetime alliances that the world has ever known. We have thrown our national resources into the fight. It is an extremely ambitious program and one in which the United States, as prime mover, carries an overwhelming burden of responsibility, a responsibility which must be properly assumed if the program is to be successful and its aims attained. Success will depend upon the efforts of every United States national who may be thrown into contact with our friends abroad.

Some of you may feel that international relations are of small concern to you. In order to disabuse you of this idea I want to take a couple of minutes to quote from Navy Regulations, 1948.

Section 0505 reads:

1. In the event of war between nations with which the United States is at peace, a commander shall observe, and require his command to observe, *the principles of international law*. He shall make every effort consistent with those

principles to preserve and protect the lives and property of citizens of the United States wherever situated.

2. When the United States is at war he shall observe and require his command to observe, the principles of international law and the rules of human warfare. He shall respect the rights of neutrals as prescribed by international law and by pertinent provisions of treaties, and shall exact a like observance from neutrals.

Section 0620 reads:

So far as lies within his power, acting in conformity with international law and treaty obligations, the senior officer present shall protect all commercial vessels and aircraft of the United States in their lawful occupations, and shall advance the commercial interests of his country.

Section 1214 reads:

All persons in the naval service, in their relations with foreign nations, and with the governments or agents thereof, shall conform to international law and to the precedents established by the United States in such relations.

Section 0613 reads:

On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the senior officer present shall consult with the diplomatic or consular representatives of the United States, if possible, and shall take such action as the gravity of the situation demands. The responsibility for any action taken by a naval force, however, rests wholly upon the senior officer present. He shall immediately report all the facts to the Secretary of the Navy.

The above regulations impose upon the commander far-reaching responsibilities and duties in the field of international law, responsibilities he may not escape. To carry out those responsibilities, considerable *on hand* knowledge of the subject is required. It is not practical for most commanders to be experts in this field nor is it possible for his staff legal officer to have on board or access to an adequate library on the subject. There are, however, certain general principles and areas with which he can be familiar and which will furnish general temporary guidance until exact advice may be obtained. I will discuss some of these with you.

If this introduction has impressed you with the importance of your function in international law two questions have probably occurred to you. They are:

1. What, in outline, are the important danger points and aids with which I generally should be familiar?

2. Where can I supplement most readily my present knowledge and familiarize myself with the details of these matters?

I shall answer the latter question first. Here at the Naval War College two excellent methods are available. (1) In the regular academic program you are

now following and (2) through the correspondence course service available to all officers. Both services are staffed by experts and the curriculum is carefully thought out and designed to meet your needs. They form the best method of securing the necessary basic knowledge. Additional knowledge may, of course, be secured through reading and experience.

In reply to the first question it seems to me that the following matters are of primary importance although not necessarily in the order named:

1. Criminal jurisdiction over our personnel in foreign countries.

2. Administration of foreign claims.

3. Contact with foreign flag vessels on the high seas, questions of blockade and violations of foreign territory.

4. Naval responsibilities in U.S. territorial waters and contiguous zones.

5. General administration of bases located in foreign countries.

To understand the importance that I place on these matters it is necessary to understand the attitude of the foreign nations involved. The matter is not a simple one. It involves problems of national pride and economics as well as problems of defense. Many of our citizens are inclined to take the position that we are acting for the defense of the free world and that by our unselfish contributions of men and money we should be permitted to have pretty much our own way in foreign countries. That we should be free of restrictions and other petty limitations which seem subordinate to the compelling necessity for establishing an adequate defense system. The attitude is, "We're doing them a favor, why should they be less than fully cooperative?" Unfortunately the attitude of our allies does not permit such an approach. Almost without exception their attitude is that by permitting the establishment of bases within their territories they are doing the United States a favor. This attitude of governments accurately reflects the

attitude of their citizens and is understandable when the factors of local administration are considered.

I do not wish to argue the merits of either position. The proper attitude is, of course, a realization by both parties of the difficulties involved and a firm resolution by cognizant persons to eliminate as much friction as possible.

Proceeding now to a general discussion of the above-mentioned items.

CRIMINAL JURISDICTION

The stationing of large numbers of troops within the boundaries of a friendly foreign nation *in peace time* is an idea entirely new to the world community. It immediately raises serious problems of criminal jurisdiction because of two equally well-established principles of international law. The first is the theory of sovereignty which gives to a state exclusive jurisdiction over all persons within its boundaries. The second is the rule that a State has exclusive jurisdiction over its armed forces. The North Atlantic Treaty nations recognized the clash between these two principles and recognized the necessity for abandoning the traditional military concept of exclusive jurisdiction if the sovereign dignity of the host State was to be maintained.

In frank recognition of this problem the signatories to the North Atlantic Treaty have agreed to share jurisdiction over military forces and civilian components of one nation stationed within the boundaries of other signatories to the treaty. The formula established is contained in Article VII of the NATO Status of Forces Agreement. Without reading the Article to you its provisions are generally as follows:

1. Subject to certain enumerated provisions the sending state retains the authority to exercise jurisdiction over its people concurrently with the authorities of the receiving state. In other words—the principle of equal and

concurrent jurisdiction is established.

2. Specific provisions governing the exercise of this jurisdiction are as follows:

a. The sending state has exclusive jurisdiction over offenses punishable under its laws, including security offenses, but not under the laws of the receiving state. (Security offenses include: treason, espionage, sabotage and violation of law relating to official secrets.)

b. The receiving state has exclusive jurisdiction over offenses punishable under its laws but not under the laws of the sending state.

3. In all other cases the jurisdiction is concurrent and subject to the following rules:

a. The sending state has primary jurisdiction over offenses against its property or security offenses, offenses solely against the property or person of another member of the force or civilian component and offenses arising out of an act or omission done in the performance of official duty.

b. The receiving state has the primary authority to exercise jurisdiction in all other cases.

4. Provision is made for waiver of jurisdiction by either of the parties.

Thus you can see that stripped of its legalistic trimmings the NATO Status of Forces formula for exercise of jurisdiction lodges with the receiving state the primary right to exercise jurisdiction over our people in the great majority of cases and in almost all cases which may cause serious friction between the two countries. Such cases, for example, as armed robbery, murder, rape, assault and other offenses of the type commonly committed by members of the military while mixing with civilian populations.

This formula has been adopted by our government in bilateral negotiations with several countries and you may expect that it will be the standard in most foreign countries you will visit. I

say this even though there are and will be exceptions to it. In some countries we have found it convenient to secure exclusive jurisdiction over our people and have done so because, from our standpoint, it is the most practical method of operation. In other countries, we do not even have concurrent jurisdiction over offenses against the laws of the host state. This is rare and is a situation we will make every effort to alter. It exists under agreement previously negotiated between our country and the host country and which we hope will be altered by having the NATO Status of Forces Agreement come into effect if it is not altered earlier as the result of bilateral negotiations.

I do not wish to leave you with the impression that our people always will be subject to the primary criminal jurisdiction of the host state. We shall continue to seek exclusive jurisdiction in bilateral negotiations. However, the trend and precedent established by the NATO formula are such that we may expect a reduction in our rights to exercise it even in countries where it is now enjoyed. Nor do I wish to leave you with the idea that you may rely in the NATO formula for all North Atlantic Treaty countries. In many of them we are still operating under previous agreements of such a varied nature as to prohibit their being the subject of general discussion.

ADMINISTRATION OF FOREIGN CLAIMS

One of the most serious sources of friction arises from the behavior of our people abroad or from accidental injuries which occur from noncombatant operations of our forces. Cases of drunken driving resulting in deaths of local citizens or the crash of an airplane in a populated area to mention two fairly common occurrences.

To combat this friction, the naval

commander possesses a very potent weapon which was given to him by the Foreign Claims Act. This Act, passed in 1942, was, and I quote, "for the purpose of promoting and maintaining friendly relations by the prompt settlement of meritorious claims in foreign countries." Under it the field commander may consider and settle claims up to \$2500. The Secretary of the Navy may settle those between \$2500 and \$5000 and may certify claims in excess of \$5000 to Congress for consideration.

Under the Act you can scarcely conceive of an act of a member of the armed forces resulting in injury or damages to an inhabitant of a foreign country or to his property which is not compensable. When properly used, this weapon alone will greatly increase the respect for our forces and will do much to still the clamor of local citizens who become outraged by such incidents. Most of them can understand the incidents having occurred in the first instance, but few can understand failure or delay in compensating the injured parties. You should be ever conscious of the availability of this procedure and its flexibility.

Additional methods of settling claims arising incidental to our presence in foreign countries are established by the NATO Status of Forces Agreement and eventually will be available. They also are directed at easing friction between the two countries concerned.

CONTACT WITH FOREIGN FLAG VESSELS ON THE HIGH SEAS, QUESTIONS OF BLOCKADE AND VIOLATIONS OF FOREIGN TERRITORY.

Naval commanders or their representatives are frequently in contact with foreign flag vessels on the high seas. The existence of a state of war gives rise to certain well-recognized belligerent rights which are in contravention to the traditional concept of the "freedom of the

seas." One of these is the privilege of visiting and searching foreign flag merchant vessels to determine if they are carrying contraband. In doing this the naval commander is exercising a right which contributes to eventual victory, but also he is interfering with the commerce of nations which are neutral to the struggle. The right to search is given by international law; the methods to be followed are strictly established and must be followed if the searching vessel is to avoid offense to the foreign flag and the possibility of bringing her into the war on the side of the opposing power.

Another situation in which naval commanders or their representatives are frequently in contact with foreign flags is in blockade situations where all commerce is denied entry to the ports or parts of the ports of an opposing belligerent. This requires the stopping and turning away of neutral vessels. Here too, definite rules are established by international law and must be strictly followed if offense is to be avoided. Other than the possibility of seriously offending a neutral is the possibility of subjecting the United States to damage claims by reason of the spoilage of cargo or delay in delivery.

In both of these situations the captain obviously must be familiar with the applicable rules and regulations. He must know how to make a visit and search and what to do if contraband is discovered. Similarly, he must know why a blockade must be effective and about such matters as pursuit and the effect of leaving station.

Rules for these problems are contained in a volume called "instructions for the Navy of the United States Governing Maritime and Aerial Warfare," which will be replaced with a revised and modernized volume sometime this year.

An additional problem is raised by the violation of foreign territories by our ships or aircraft. Such incidents,

aside from the friction caused, may be extremely expensive. For example, the Hungarian incident of a year ago cost the United States \$123,000 in ransom for four aviators forced down in Hungary. Incidents of this type may only be avoided by proper indoctrination of personnel and assiduous care in approaching such areas and an understanding of the extent of foreign territory including territorial waters.

NAVAL RESPONSIBILITIES IN TERRITORIAL WATERS AND CONTIGUOUS ZONES

This subject is one of great importance to the naval commander. Important because the performance of the Navy's primary mission of defense may in some degree conflict with the rights of citizens of the United States as well as those of foreign nations.

By definition territorial waters are the belt of sea surrounding the territory of the state, its territories and possessions. The width of that belt has been the subject of continuing debate among the states of the world and as recently as last August was the subject of a world-wide convention. The United States traditionally has adhered to the position that this belt of water is three miles wide. By adopting this position it has been in concurrence with most of the states of the world, but other states have advocated an increase of the width to one more in keeping with the concepts of modern defense. Historically, the width was established as the range of shore defense batteries; this basis alone obviously is archaic. To understand the importance of territorial waters, it is necessary to realize that within these waters a state is considered to have essentially the same powers of jurisdiction and control and regulation that it exercises over land areas within its boundaries. There are many reasons advanced as to why the United States should change its position and advocate

an increase of the width of territorial waters. It seems almost self-evident that present weapons would support this position and that we never should permit a potential enemy to approach so close without serious challenge. There are, however, other considerations which override these basic self-evident factors. Consider, for example, the difficulty and cost of patrolling a much more extensive area, or, and this also is important from a defense or war standpoint, the limiting effect upon our operations if we were to recognize a considerably broader belt as applied to other states. Assume, for example, a belt 12 miles wide, and then consider the difficulties of exercising the well-recognized belligerent right of visit and search of neutral vessels in time of war outside their territorial waters. An additional consideration is the restrictions placed upon our citizens in the fishing industry if forced to fish further from shore than three miles or come under the regulations of the foreign state. I do not advocate either view of the problem, but merely remark on them as a matter of introduction.

The Navy normally is charged in wartime with the responsibility for patrolling and enforcing regulations for the control of vessels in territorial waters. While primarily exercised by vessels, it also involves the use of aircraft. In peacetime the responsibility rests with the Coast Guard.

The degree of sovereignty which a state may exercise over these territorial waters has been the subject of an abundance of contradictory writing by authorities and further has been complicated by the conflicting practice of the various world states. It appears that the most acceptable and workable rule would restrict the exercise of sovereignty to that necessary to ensure security and defense and the protection of its interests in territorial waters without excluding the peaceful navigation of the area by foreign vessels. Note that it

is only within these waters that the *uncontested* exercise of sovereignty has been recognized. I think as naval commanders you should realize that the exercise of control within these waters is subject to much less criticism than in the additional zones I shall discuss.

Areas beyond the territorial waters are part of the high seas and normally are not subject to the control or sovereignty of any state. However, as a matter of self-defense, large areas of the high seas frequently have been designated as "Maritime Control Areas" and control exercised over them. There seems to be no substantial argument with the proposition that a state is entitled to preserve the integrity of its personality as a state. In the exercise of this right of self-defense it is entitled to take such measures as are necessary. These measures are subject only to the test of reasonableness, but no nation can long maintain such control legally if it is unreasonable under the circumstances. The right of self-defense does permit the establishment of such zones and control under certain regulations. Of importance to the naval commander is the fact that in his exercise of the powers conferred upon him in relation to such zones he must be ever-conscious of the scrutiny of foreign states and assiduously must prevent his acts or those of his subordinates from violating this reasonableness test.

Another type of contiguous zone is the "Defensive Sea Area." As the name implies, it is a zone established for defense around land areas of the state. It may be restricted to the territorial waters but also may extend beyond them. In mode of operation, it is like a "Maritime Control Area" with regulations established for its administration. The naval commander is responsible for the enforcement of those regulations and likewise must be conscious of the possibility of his vessels violating defensive sea areas established by other nations.

GENERAL ADMINISTRATION

Under this general heading come such things as cooperation and liaison with local foreign authorities. Internal administration of a ship is much the same abroad as it is in the United States. But administration of a naval base abroad under the provisions of the North Atlantic or other treaties may differ considerably from that of a base in this country. Language barriers and the necessity of conforming to local laws of industrial relations and labor, currency restrictions, use of military payment certificates, potential black-market activities, customs and imports, hiring of indigenous labor, passive and active hostility of local populations to the presence of U.S. personnel and many other items complicate the general administration of the foreign base.

Most of these things are provided for under technical bilateral agreements. Because of their seriousness, all of them require a healthy respect if our mission is to be successful. All of them require knowledge on the part of the naval commander.

In administering these problems there is no substitute for excellent relations with local authorities. The naval commander who insures that all things possible are done to improve those relations will not hit serious snags in his international relations. Problems which could result in an exchange of diplomatic notes often may be avoided entirely if cordial relations are established between the Commander and the Mayor of the town—the Legal Officer and the local judiciary—and the Provost Marshall and the local Chief of Police. There is no substitute for good public relations abroad as well as in the United States.

Having stressed a few of the spots in which you may anticipate trouble, I shall now mention a few cases, in illustration, that have been in our office.

1. A little over a year ago, a sailor

attached to the Naval Base at Port Lyautey, French Morocco, went on a drinking binge. During its course, he drove his vehicle in such a manner that two people were struck and killed and another seriously injured. We had been exercising what was in effect concurrent jurisdiction and had been enjoying a local arrangement whereby the local authorities would surrender our persons to us for trial upon receipt of a simple request from the Base Commander. This particular case was so flagrantly offensive to local citizens that the local authorities refused to permit us to exercise jurisdiction over him and undertook his trial and punishment. The entire situation turned into a comedy of errors. On one hand the Navy was insistent on his return, even though not legally entitled to him; on the other hand, the French were adamant in their refusal to surrender him. The final solution was even more farcical. The French court finally tried and convicted him, sentenced him to pay a \$520 fine and to be confined for four months, and then suspended the confinement.

Clearly, the outcome was a miscarriage of justice; one which would not have happened if we had been entitled either to primary or exclusive jurisdiction within that area.

2. An officer stationed in a foreign country as a part of the Military Mission accidentally struck a child with a small stone, resulting in a slight abrasion to his scalp. In the particular country we have no jurisdictional rights over our people for violation of local law and are bound to permit our people to be tried by local courts in accordance with their rules of evidence. This offense started as a misdemeanor in the lowest court but, as the result of political manipulations of the child's father for financial gain, was successively removed to higher courts and the officer charged with "putting a life in danger" and subject to a minimum punishment of one year's confinement in a local penitentiary.

You may be sure that many foreign jails do not approach the standards of our worst in cleanliness. You also might be interested to know that their local judicial system does not permit the defendant to introduce expert witnesses or to cross-examine those produced by the state. This case illustrates two things: (1) the difficulties caused by lack of jurisdiction, and (2) a problem which might have been resolved quickly and promptly if handled under the Foreign Claims Act and the father placated.

3. A sentry aboard one of our ships in a foreign harbor discerned a native rowing rapidly away from another ship in the nest and heard shouts from persons aboard that ship. The sentry ordered the native to halt and repeated the order several times. When the native did not halt, he fired a shot, intending it to pass over the head of the man in the boat. Instead it passed through his chest and resulted in immediate death. When the matter was brought to our attention in Washington, it had been the subject of much comment in the local press and, as the result of the protests of the victim's dependents, had been the subject of a diplomatic note to our government demanding immediate indemnification. From the information received, it appeared that the Navy had been waiting for the results of a court of inquiry before taking any steps to contact the victim's dependents. At that point the demands were well under the \$2500 limit imposed on the local Commander under the Foreign Claims Act. While the sentry was absolved from wrongdoing, the Judge Advocate General ruled that the force used was excessive and the matter cognizable under the Act. The same determination could have been made in the field. This is an example of an incident where prompt action under the Foreign Claims Act would have prevented considerable local comment and ill will.

4. Each foreign country has local

labor laws which must either be complied with in the hiring of indigenous labor or must be avoided by governmental agreement. Sometimes it is difficult, if not illegal, for us to comply with those laws. For example, local laws in the United Kingdom requires the employer to make a regular contribution to the United Kingdom's Health Insurance Fund. It thus would follow that the United States, as an employer of United Kingdom nationals, would be required by their laws to make this contribution. The matter is complicated by United States law. Under currently effective statutes, the Comptroller General has ruled that: In the absence of a statute or treaty to the contrary, payroll deductions may not be made pursuant to foreign social security laws from the salaries of indigenous employees nor may employer contributions be made by the Navy Department for such employees under such laws. In the United Kingdom we have had an express agreement exempting the United States from such payments. As this authority is temporary in nature, we must secure legislation which would permit such payments or be sure that provisions for them are incorporated into future agreements between our governments.

The point of importance to you is an understanding that such payments should be considered carefully and evaluated under current agreements or laws in order to avoid paying unreimbursable amounts and also so that we can explain to foreign governments our inability to make such payments. New agreements ordinarily will contain a provision relative to this matter and will provide for their payment or avoidance.

5. Taxes encountered in foreign countries frequently are quite different from those imposed by our State and Federal Governments in this country. For example, one foreign government has a tax imposed on the tenant which depends upon the number of doors and

windows in the dwelling, coupled with the size of the living area involved. To my knowledge, we have no similar tax in the United States. Other taxes include personal property and road taxes. All of these matters are important because they reduce—at least indirectly—the pay of personnel. They also determine, in part, the attractiveness of foreign duty for personnel. They are all subject to governmental agreement and wherever possible will be eliminated. Their importance to you is primarily one of knowing that such taxes may have to be paid and that it is necessary to make a proper determination of this matter in order that personnel may be advised correctly.

6. Jurisdiction over civilian personnel as exercised under the NATO and other agreements and as a result of supporting operations raises the responsibility for trying civilians by courts-martial or other appropriate military tribunals. This responsibility may arise on any leased base area or within the Military Sea Transportation Service. Under the Uniform Code of Military Justice (Articles 2(10, 11 and 12)), appropriate Commanders may try civilian personnel employed by, serving with, or accompanying the armed forces.

Trial of civilians is not unknown to the Navy and little trouble in establishing proper tribunals and effecting the trials is anticipated.

The problem as it may affect you is whether, in a particular case, a civilian is subject to your authority and trial.

A recent case in our office involved the problem of the trial of civilian employees serving aboard MSTs vessels. As you probably know the Military Sea Transportation Service is made up of various types of vessels—some are owned by the Government—others are chartered on a space or bareboat basis. The Judge Advocate General was recently of the opinion with regard to MSTs vessels that those civilian per-

sonnel employed on Government-owned vessels or vessels chartered on a bareboat basis and integrated in the MSTs fleet were subject to court-martial jurisdiction when the vessels were operating outside the continental United States. He was of the further opinion that personnel of vessels owned by commercial steamship companies under voyage or space charter were not sufficiently under military command to subject them to trial by court-martial unless they became integrated into a task force engaged in military operations.

You can understand from the above remarks that the solution of the problems of the military commander in this regard well might depend upon the geographical location of the vessel and the mission to which it is committed.

Exercise of jurisdiction depends also upon underlying agreements with the government within whose jurisdiction—outside the United States and off the high seas—the alleged crime occurs.

It would be possible for me to multiply these examples almost ad infinitum but no useful purpose would be served thereby. Enough has been said to indicate the concrete nature of the problems involved.

CONCLUSION

In conclusion let us sum up the message that I have tried to bring to you.

I have taken for major treatment in this talk the problems which face Staff and Command Officers in foreign countries and have tried to point out some of the more important areas of possible friction with which you will have to deal.

I have said to you that some of these problems revolve around:

1. Criminal jurisdiction in foreign countries.
2. Administration of foreign claims.
3. Contacts with foreign flag vessels

on the high seas as the result of blockade and visit and search and the results of violation of foreign territory.

I have discussed briefly:

4. Naval responsibilities within contiguous zones.

5. General administration of foreign bases

and I have attempted to impress upon

you the necessity for considerable *on hand* knowledge of the pertinent parts of international law and to point out some of the sources of information available.

If I have accomplished this, I feel that I have done as much as time permits and that my visit with you has been successful.

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