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THE LAW OF WAR AND NEUTRALITY AT SEA

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APPENDIX:

LAW OF NAVAL WARFARE



CHAPTER 1

INTRODUCTION

100 SCOPE AND METHOD OF PRESENTATION OF LAW OF NAVAL WARFARE ¹

Law of Naval Warfare has been prepared as a reference covering international law affecting the conduct of the naval forces in armed conflict. Although primary emphasis is upon the rules concerned with the conduct of naval and aerial warfare, attention is also directed to certain principles and problems common to the whole of the law of war.

The method of presentation consists in the exposition and clarification of those substantive portions of international law relating to naval warfare. The *text* contains the law as currently interpreted. The *notes* at the end of each chapter are keyed to the text and are included to present material in clarification of the law and to illustrate examples of deviation from the law.

Appendixes are included for further reference in connection with the text and footnotes.

110 STATUS AND APPLICABILITY OF LAW OF NAVAL WARFARE

Although a publication of the Department of the Navy, the *Law of Naval Warfare* cannot be considered as a legislative enactment binding upon courts and tribunals applying the rules of war.²

The laws of naval warfare will be considered to be applicable in any of the following situations:

1. A war formally declared by the Congress of the United States, or
2. Any armed conflict in which the naval forces of the United States are engaged, and in which the President, or a responsible official so empowered by him, directs the application of the laws of war.³

NOTES FOR CHAPTER 1

¹ Many of the articles of *U. S. Navy Regulations* (1948) are concerned with international law and with international relations of the United States. Article 0505, Observance of International Law, is quoted herewith:

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 humane 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.

The following Articles of *U. S. Navy Regulations* (1948) are concerned with international law and with international relations:

| <i>Article</i> | <i>Title</i> |
|-------------------|--|
| 0505..... | Observance of International Law |
| 0610..... | Relations With Diplomatic and Consular Representatives |
| 0613..... | Violations of International Law and Treaties |
| 0614..... | Use of Force Against a Friendly State |
| 0615..... | Issue of Ultimatum |
| 0616..... | Important Circumstances To Be Reported |
| 0617..... | Requests for Services Through a Consular Representative |
| 0618..... | Communications With Foreign Officials |
| 0619..... | Absence of Diplomatic or Consular Representative |
| 0620..... | Protection of Commerce of the United States |
| 0621..... | Granting of Asylum |
| 0622..... | Territorial Authority of Foreign Nations |
| 0623..... | Dealing with Foreigners |
| 0625 (2) (3)..... | Shore Patrol |
| 0627..... | Medical or Dental Aid to Persons Not in the Navy |
| 0629 (1)..... | Assistance and Repairs to Ships and Aircraft in Distress |
| 0630..... | If Refused Assistance |
| 0632..... | Libel Against a Foreign Vessel |
| 0642..... | Exercise of Power of Consul |
| 0647..... | Boarding Calls |
| 0707..... | Prisoners of War |
| 0730..... | Search Not Permitted |
| 0731..... | Discharge or Desertion of Aliens |
| 0732 (1)..... | Persons Found Under Incriminating Circumstances |
| 0733..... | Rules for Visits |
| 0758..... | Hospital Ship or Aircraft |
| 0760..... | Leaving Foreign Port With Outstanding Financial Obligations |
| 0764..... | Customs and Immigration Inspections |
| 0765..... | Quarantine |
| 0777..... | Marriages on Board |
| 1214..... | Relations With Foreign Nations |
| 1215..... | Foreign Religious Institutions |
| 1267..... | Appointments in the Diplomatic or Consular Service |
| 1355..... | Detail of Persons in Noncombatant Status |
| 1606 (4) (5)..... | General Rules for Official Correspondence |
| 2005..... | Hospital Ships and Aircraft |
| 2102..... | Honors Restricted to Recognized Governments |
| 2103..... | International Honors Modified by Agreement |
| 2106 (2)..... | Procedure During Playing of National Anthems |
| 2108 (3)..... | Salutes to the National Ensign |
| 2117..... | Gun Salute to a Foreign Nation |
| 2118..... | Returning Salute to the Nation Fired by Foreign Warship |
| 2119..... | Gun Salutes to the Flag of a Foreign President, Sovereign, or Member of a Reigning Royal Family |
| 2120..... | Gun Salutes When Several Heads of State are Present |
| 2123..... | Gun Salutes to Foreign Flag Officers |
| 2126..... | Inability To Render or Return a Gun Salute |

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| 2127..... | Returning Gun Salutes |
| 2128 (1) (4) (7)..... | Restrictions on Gun Salutes |
| 2133..... | Passing Honors to Foreign Dignitaries and Warships |
| 2135 (1)..... | Dispensing With Passing Honors |
| 2141..... | Table of Honors for Official Visits of Foreign Officials and Officers |
| 2148..... | Official Visits With Foreign Officials and Officers |
| 2167..... | Dipping the National Ensign |
| 2180..... | Display of Foreign National Ensign During Gun Salutes |
| 2181..... | Display of National Ensigns of Two or More Nations |
| 2182..... | Choice of Foreign Flag or Ensign in Rendering Honors |
| 2183 (3)..... | Dressing and Full-Dressing Ship |
| 2188..... | Foreign Participation in United States National Anniversaries or Solemnities |
| 2189..... | Observance of Foreign Anniversaries and Solemnities |
| 2196..... | Burial in a Foreign Place |
| 2198..... | Death of Diplomatic, Consular, or Foreign Official |

² In the course of the war crimes trials conducted after World War II the question of the status of such official publications as the British and United States military manuals arose on various occasions. Although the courts recognized these publications as "persuasive statements of the law" and noted that insofar as the provisions of military manuals are acted upon they mould state practice, itself a source of international law, it was nevertheless stated that since these publications were not legislative instruments they possessed no formal binding power. Hence, the provisions of military manuals which clearly attempted to interpret the existing law were accepted or rejected by the courts in accordance with their opinion of the accuracy with which the law was set forth.

³ Thus, the laws of war may apply in the following situations, among others:

1. Declared wars between the United States and one or more states.
2. Armed conflict between the forces of the United States and the forces of one or more states.
3. The employment of naval forces of the United States pursuant to the decision or recommendation of an international organization, e. g., the United Nations.

In his message to the Congress on December 8, 1941, President Roosevelt declared that "hostilities exist" and asked the Congress to declare that since December 7, 1941, "a state of war has existed between the United States and the Japanese Empire." On December 11, 1941, following a declaration of war against the United States by Germany and Italy, the President requested Congress

" . . . to recognize a state of war between the United States and Germany, and between the United States and Italy." *U. S. Naval War College, International Law Documents, 1941 (1942)*, pp. 70-3.

In general, it has been, and continues to be, the policy of the United States to apply the laws of warfare to those situations in which the armed forces of the United States are engaged in armed conflict regardless of whether or not such hostilities are designated as "war."

There is a growing tendency among states to apply the laws of war not only to that status formally designated as "war" under traditional international law, but also to other forms of international armed conflict. The 1949 Geneva Conventions for the Protection of the Victims of War are important indications of this trend. Article 2, paragraph 1, common to all four of these Conventions, states that the provisions of the Conventions

" . . . shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."

In the Charter of the United Nations the term "war" does not even occur, save in the pre-

amble. The Charter speaks of "the use of force," "armed attacks," "breach of the peace," "enforcement actions," etc., but not of "war." This should not be taken to imply that the laws of war are inapplicable in an enforcement action taken by states in accordance with the provisions of the Charter. In the Korean action—significantly called, using the terminology of the Charter, an "enforcement action" but not a "war"—the United States military commander of those forces acting on behalf of the United Nations specifically declared the 1949 Geneva Conventions applicable to the conduct of hostilities.