

## BOOK REVIEWS

INTERNATIONAL LAW—THE CONDUCT OF ARMED CONFLICT AND AIR OPERATIONS. U.S. Department of the Air Force, 1976. Pp. iii, 127. \$2.70.

This pamphlet responds to the directive of the Department of Defense establishing a Law of War Program.<sup>1</sup> As such, it represents the first major publication of the Department of the Air Force regarding its responsibilities under international law, domestic legislation and executive orders. This Review will emphasize the significant portions of the publication in terms of air operations since other reviews have surveyed in a more general fashion the work in its entirety.<sup>2</sup>

Entitling this work as a pamphlet is a misnomer in that it represents a substantive discussion of the range of issues it refers to as the law of armed conflict.<sup>3</sup> All fifteen chapters of the publication contain sufficient footnotes to substantiate the discussions of the various subdivisions leading the reader to other relevant information. Additionally, the publication is designed to serve as a training text along with other instructional materials for judge advocates and air crew members in this constantly evolving subject area. Therefore, the pamphlet has more appropriately been called an international law monograph,<sup>4</sup> and because of the documentation, succinctness of discussion and dimension of evaluation in the presentation, this reviewer agrees that monograph is a better description of the work's purpose and execution.

Four particular chapters emphasize subjects of direct interest to the Department of the Air Force: Chapter 2—Status of Airspace and Aircraft, Chapter 4—Conflict in the Air and at Sea, Chapter 5—Aerial Bombardment, and Chapter 6—Aerial Weapons. Each of these chapters are highlighted *infra*.

Chapter 2 explains the legal regimes of airspace,<sup>5</sup> including a discussion of air defense identification zones and outerspace. Control of airspace and outerspace is approached from the view of international agreements affecting same with emphasis given to the established rules of international law concerning the sovereign state's complete control over national airspace.<sup>6</sup> The chapter concludes by defining types of aircraft,<sup>7</sup> followed by a discus-

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<sup>1</sup> U.S. DEP'T OF THE AIR FORCE, INTERNATIONAL LAW—THE CONDUCT OF ARMED CONFLICT AND AIR OPERATIONS (1976) [hereinafter cited as AFP 110-31].

<sup>2</sup> O'Brien, Book Review, 17 VA. J. INT'L L. 583 (1977); Stefan, Book Review, 9 CASE W. RES. J. INT'L L. 167 (1977).

<sup>3</sup> AFP 110-31, *supra* note 1, at 1-1.

<sup>4</sup> O'Brien, *supra* note 2, at 583.

<sup>5</sup> AFP 110-31, *supra* note 1, at 2-1.

<sup>6</sup> *Id.* at 2-2a.

<sup>7</sup> *Id.* at 2-4.

sion of access to airspace during peacetime,<sup>8</sup> and access to airspace during hostilities.<sup>9</sup>

Chapter 4 examines conflict in the air and at sea. The right to attack military aircraft outside neutral territory is affirmed.<sup>10</sup> Explanation of the principle of *hors de combat* is addressed as it applies in the air to air environment.<sup>11</sup> However, a caveat is offered to the general principle based upon the impossibility of verifying the true status of an enemy aircraft, which although disabled, may or may not have lost its means of combat. This explanation may offend some purists but acknowledges the practical aspects of surrender in the air environment. The chapter outlines basic considerations involving the protected nature of medical aircraft,<sup>12</sup> and examines the historical development and present law of the protections afforded civilian aircraft.<sup>13</sup>

Chapter 5 discusses aerial bombardment and is the most extensive chapter in the monograph in terms of substance. Developing the present law based upon a historical perspective, the reader finds that concern in this area has been consistent since the flight of the Wright Brothers at Kitty Hawk in 1903. This historical development is perhaps the best example of how the publication seeks to relate present day technology to the humanitarian expectations of the international community.<sup>14</sup> Specific restrictions on aerial bombardment are explained including the protection of civilian populations and objects, the requirement that military operations be directed at military objectives, and the exercise of precautions in attack.<sup>15</sup> The legal requirements are correlated with existing military doctrines of economy of force, accuracy in targeting and concentration of effort. Emphasis is placed upon the obligations of all parties to the conflict to minimize the damage of bombardment to the noncombatant civilian population by identifying combatants as such, refusing to use civilians to mask military operations and locating military objectives away from population centers.<sup>16</sup>

Chapter 6 discusses the key legal principles of necessity and proportionality in relation to aerial weapons. The Hague Regulations serve as the substantive legal basis for this examination. The publication stresses the necessity of balancing the military advantage to be gained against the foreseeable injury and suffering associated with the particular weapon in

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<sup>8</sup> *Id.* at 2-5.

<sup>9</sup> *Id.* at 2-6.

<sup>10</sup> *Id.* at 4-2.

<sup>11</sup> *Id.* at 4-2d.

<sup>12</sup> *Id.* at 4-2f.

<sup>13</sup> *Id.* at 4-3.

<sup>14</sup> *See id.* at 5-2.

<sup>15</sup> *Id.* at 5-3.

<sup>16</sup> *Id.* at 5-4.

question.<sup>17</sup> Specific attention is given to the international legal considerations governing chemical and biological weapons,<sup>18</sup> nuclear weapons,<sup>19</sup> and conventional weapons.<sup>20</sup>

Several other chapters of the publication deserve attention in the opinion of this reviewer in addition to those discussed above. Chapter 8 explains the customary rules and treaty obligations against treachery touching upon the misuse of flags of truce, red crosses, enemy flags and uniforms. Chapter 10 surveys the various methods used to enforce the law such as protests, demands for compensation, procedures of the United Nations and requirements for reprisals. Lastly, Chapter 15 examines command responsibility, the need for military discipline and individual responsibility to explain obligations of states in insuring that international law is followed.

This work represents more than an instructional pamphlet on this very complex subject. Its principal author, Lieutenant Colonel James R. Miles, United States Air Force, is to be commended for the seriousness of his efforts. While avoiding policy pronouncements, the work clearly articulates the expectations and obligations of the international community in armed conflict. As such, the publication contributes to the developing concepts of armed conflict involving air operations and will serve as a basic reference in further study of the law of war.

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<sup>17</sup> *Id.* at 6-3.

<sup>18</sup> *Id.* at 6-4.

<sup>19</sup> *Id.* at 6-5.

<sup>20</sup> *Id.* at 6-6.

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