



A U.S. Army AH-64 Apache assigned to 1-229th Attack Battalion "Tigarsharks," 16th Combat Aviation Brigade, 7th Infantry Division, prepares to perform a deck landing on the USS *Ronald Reagan* (CVN 76) during deck landing qualifications while underway in the Strait of Juan de Fuca. (Credit: SGT Brandon Bruer)

## Practice Notes

# A Waterproof Guide to the Law of the Sea and the Law of Naval Operations

*By Colonel Susan McConnell and Lieutenant Colonel John C. Tramazzo*

The U.S. Army's primary mission is to "organize, train, and equip its forces to conduct . . . land combat."<sup>1</sup> However, no military Service can ignore the "interconnectedness of sea and land."<sup>2</sup> A majority of people on earth live on land masses near or surrounded by water.<sup>3</sup> Further, recent incidents involving cutting undersea cables, which impact communications on land, and ground-based attacks on commercial vessels in the Red Sea highlight the domain overlap.<sup>4</sup>

Indeed, as Field Manual 3-0 reflects, the Army must be prepared to operate in a maritime environment.<sup>5</sup> The maritime domain includes littoral regions where salt water and wind might impact operations on land. It also includes the Arctic region, where ice can render roadways, seaports, and airfields unusable.

In a future armed conflict, Army forces may be required to conduct offensive operations under these conditions, and they may be required to defend against enemy amphibious assaults. In our view, Army commanders and staffs, including judge advocates (JAs), must grapple with the unique challenges associated with the sea. This includes understanding the law of the sea and the law of naval operations.

We had the pleasure of studying these issues at the U.S. Naval War College from August 2022 to June 2023.<sup>6</sup> The U.S. Navy's Senior Service College (i.e., the College of Naval Warfare) and Intermediate-Level Education Course (i.e., the College of Naval Command & Staff) are co-located at Naval Station Newport in Rhode Island. Senior officers from all six Services and approxi-

mately seventy nations attend the “senior course,” while officers in the grade of O-4 from all Services and approximately ninety nations attend the “junior course.” The core curriculum for each cohort includes military history, strategic theory, security decision-making, joint maritime operations (including operational maritime law), and leadership in the profession of arms.<sup>7</sup>

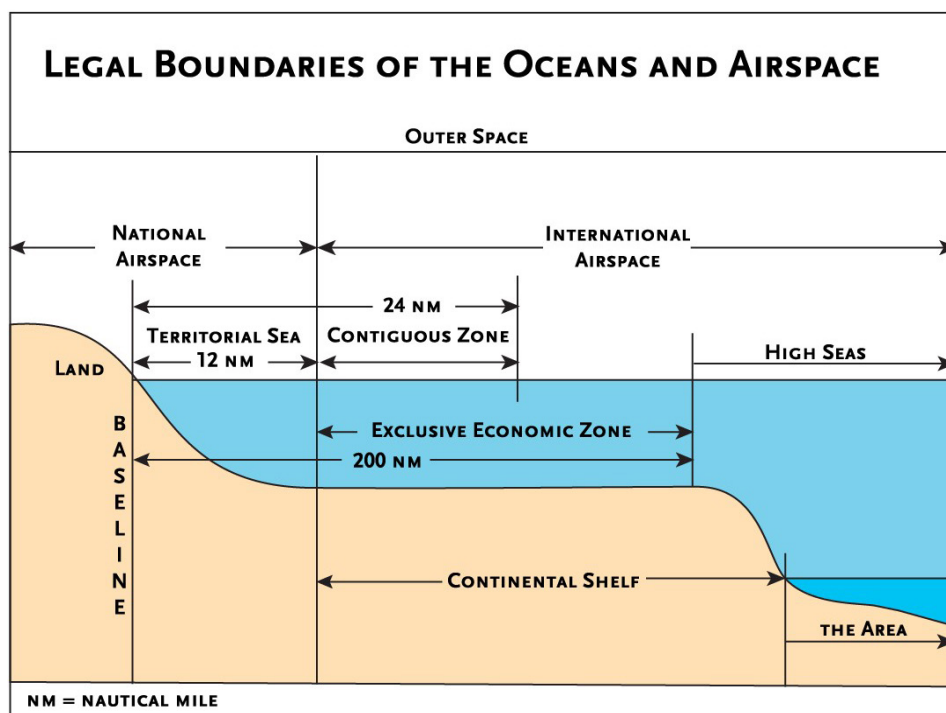
After a year of considering strategic, operational, and some tactical-level issues from a naval perspective, we compiled a list of materials and recommendations for Army JAs interested in learning more about the law of the sea and the law of naval operations and for those who may provide legal advice in support of multi-domain operations in the future.

### The Law of the Sea

The contemporary law of the sea proceeds from the three 1958 Geneva Conventions on the Law of the Sea.<sup>8</sup> Those treaties left several critical issues (e.g., the width of “territorial seas”) unsettled. Thus, between 1973 and 1982, the United Nations (U.N.) convened a conference to update the 1958 treaties.<sup>9</sup> The resulting U.N. Convention on the Law of the Sea (UNCLOS) came into effect in 1994 after ratification by the requisite sixty countries.<sup>10</sup>

UNCLOS is considered a constitution for the world’s oceans, including the airspace above and the seabed and subsoil below them. Although the United States has not ratified UNCLOS, it recognizes that most of the Convention’s provisions reflect customary international law (CIL) and are binding on all nations.<sup>11</sup> The 2022 *National Security Strategy* includes a vow that the United States will “stand up for freedom of navigation and overflight, support environmental protection, and oppose destructive distant water fishing practices by upholding international laws and norms, including the customary international law rules in [UNCLOS].”<sup>12</sup>

UNCLOS and CIL govern military operations in the maritime domain, which includes “the oceans, seas, bays, estuaries, islands, coastal areas, seabeds, and littoral zones, including the airspace above these geographical areas.”<sup>13</sup> UNCLOS and CIL also regulate maritime navigation,



U.S. Dep’t of Navy et al., NWP 1-14M, the CoMMaNDer’s haNDbook oN the laW of Naval OperatioNS 1-3 (Mar. 2022).

commerce, and the conservation, regulation, and exploitation of ocean resources.<sup>14</sup> Understanding this body of law is critical considering ongoing disputes and malign behavior in vital locations like the South China Sea and the Persian Gulf.<sup>15</sup> As some scholars have argued, “[T]he threat of naval war is growing.”<sup>16</sup> Additionally, as the Arctic Ocean melts, the law of the sea will impact how states traverse newly navigable waterways and conduct or protect new commercial activity.<sup>17</sup>

To deepen their understanding of the law of the sea, we recommend that practitioners read the full text of UNCLOS,<sup>18</sup> the 1983 U.S. Ocean Policy Statement,<sup>19</sup> Senate Treaty Document 103-39,<sup>20</sup> the 1989 USSR-U.S. Joint Statement with Attached Uniform Interpretation of Rules of International Law Governing Innocent Passage,<sup>21</sup> and the U.S. Position on UNCLOS (prepared in 2021 by Professor Raul (Pete) Pedrozo for the Stockton Center’s *International Law Studies*).<sup>22</sup> We also recommend *A Practical Guide to the Law of the Sea* by James P. Benoit,<sup>23</sup> Tuft University’s internet-based policy primer on the law of the sea,<sup>24</sup> and *The Law of the Sea and Naval Operations*, a straight forward law review article written in 1997

by Professors John Astley III and Michael N. Schmitt.<sup>25</sup> These documents and resources are vital to understanding the laws applicable to the maritime domain.

### The Law of Naval Operations

The Navy proclaims it will “fly, sail, and operate—safely and responsibly—wherever international law allows.”<sup>26</sup> Many other nations’ navies do the same. Navigational freedom allows access to strategic areas of the world, facilitates support of deployed forces, enables military forces to operate worldwide, and ensures uninterrupted global commerce.<sup>27</sup> However, this freedom is increasingly under threat. As the Chief of Naval Operations wrote in his 2021 Navigation Plan, “China and Russia are undermining the free and open conditions at sea that have benefited so many for so long.”<sup>28</sup> The growing challenges that these nations and their actions bring to freedom of navigation have an outsized impact on U.S. maritime operations. Unlike land operations, which occur on states’ territory, only some naval operations occur in areas subject to the territorial sovereignty of states. Many naval operations occur in areas *not* subject to the territorial sovereignty



7th Special Forces Group performs an amphibious assault demonstration during the Hyundai Air and Sea Show and U.S. Army SaluteFest in Miami Beach, FL. (Credit: MSG Justin P. Morelli)

of any state (i.e., international waters and international airspace). Military interactions in these global commons are ordinary occurrences for naval personnel, which is why an understanding of the law of naval operations is essential for them.

The law of naval operations includes those facets of international law, U.S. domestic law, U.S. military regulations, and the domestic law of other nations affecting military planning and operations at sea. During the deterrent or pre-hostilities phase of an operation, naval forces must respect the sovereignty of nations regarding their national airspace and territorial seas.<sup>29</sup> During the hostilities phase of an operation, when the law of armed conflict (LOAC) governs the situation, the movement of military forces may be conducted without regard to the sovereign territorial rights of the enemy belligerent nation.<sup>30</sup> However, the traditional sovereignty of other states (e.g., neutral states) must continue to be respected as a matter of law.<sup>31</sup>

To deepen an understanding of these foundational legal principles, we recommend that practitioners review the Second Geneva Convention,<sup>32</sup> the *2023 Newport Manual on the Law of Naval Warfare*,<sup>33</sup> the Chief of Naval Operations' 2024 Navigation Plan,<sup>34</sup> the 2022 U.S. Indo-Pacific Strategy,<sup>35</sup> Navy Warfare Publication 1-14M (*The Com-*

*mander's Handbook on the Law of Naval Operations*),<sup>36</sup> the *Newport Rules of Engagement Handbook*<sup>37</sup> (particularly its provisions on maritime operations), and the *U.S. Freedom of Navigation Program*.<sup>38</sup>

### The Army's Role in the Maritime Domain

Finally, as Field Manual 3-0 makes clear, "Army and joint force planning must reflect an understanding of the dynamic nature of the threats and constraints to land forces in maritime regions."<sup>39</sup> Army forces rely on maritime capabilities for deployment and sustainment.<sup>40</sup> Maritime forces depend on the joint force for protection and to "secure geographic choke points," "influence populations," and "mitigate long timelines associated with maritime movement."<sup>41</sup>

The Army is adapting its doctrine to integrate with the Navy's "distributed maritime operations" concept, which relies on small, dispersed naval formations.<sup>42</sup> Additionally, the Army must prepare to support the U.S. Marine Corps's "expeditionary advanced base operations" (EABO) concept, which relies on "stand-in forces" in the littorals and the U.S. Air Force's "agile combat employment" (ACE) concept.<sup>43</sup> Army forces can enable maritime operations in multiple ways. Some of these ways include attacks against land-based threats to naval assets,

protecting ports and defending land areas that control maritime choke points, denying maritime areas with surface-to-surface fires and surface-to-air fires, integrating joint all-source intelligence to identify threats to maritime capabilities, and providing directed logistics support to maritime-oriented forces operating from land. The Army's multi-domain task forces, for example, are designed to support the sea Services with long-range fires and nonkinetic capabilities (e.g., electronic warfare support, cyber and space operations).<sup>44</sup>

JAs supporting multi-domain operations must be prepared to advise on issues relating to expeditionary basing and operational contracting; information operations; strikes against maritime targets; rules applicable to stopping, boarding, and searching vessels; rules applicable to the treatment of shipwrecked persons; support to displaced civilians; and command authorities (rules of engagement, collective self-defense, detention operations, etc.). By articulating the legal bases for operations, JAs can enable warfighting commands and counter adversaries' incorrect claims that U.S. forces act in violation of international law. The legitimacy of U.S. operations is tied to international law and the narratives around it.

We recommend that Army JAs familiarize themselves with Joint Publication 3-32 (*Joint Maritime Operations*),<sup>45</sup> Army Field Manual 3-0's provisions relating to the maritime domain, particularly chapter 7 (*Army Operations in Maritime Environments*),<sup>46</sup> and other Services' multi-domain operating concepts.<sup>47</sup>

### Conclusion

The United States is a maritime power that relies on the sea for food, security, projecting power, and facilitating economic prosperity. The oceans connect societies and businesses and create opportunities for cooperation, even with strategic competitors. The U.S. military plays a vital role in defending our Nation's access to the sea by ensuring the openness of these massive global commons. Army forces are rapidly posturing to enable operations in the maritime domain, particularly in the Indo-Pacific theater, where China seeks to degrade U.S. influence and impede its freedom of movement. Army JAs must also prepare to enable

multi-domain operations across the competition continuum. An understanding of the law of the sea and the law of naval operations is vital in this “decisive decade.”<sup>48</sup> **TAL**

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## Notes

1. U.S. Dep't of Army, field manual 3-0, Operations para. 1-1 (1 Oct. 2022) [hereinafter FM 3-0].
2. Yusuke Saito, *Indo-Pacific Legal Topics for Operational Lawyers*, Arts. of War (Jan. 27, 2025), <https://lieber.westpoint.edu/indo-pacific-legal-topics-operation-al-lawyers>.
3. See FM 3-0, *supra* note 1, para. 7-1.
4. See Johan Ahlander et al., *Two Undersea Cables in Baltic Sea Cut, Germany and Finland Fear Sabotage*, Reuters (Nov. 18, 2024), <https://www.reuters.com/business/media-telecom/telecoms-cable-linking-finland-germany-likely-severed-owner-says-2024-11-18>; Magne Frostad, *Houthi Attacks on Merchant Vessels in the Red Sea*, Arts. of War (June 10, 2024), <http://lieber.westpoint.edu/houthi-attacks-merchant-vessels-redsea>.
5. See FM 3-0, *supra* note 1, ch. 7.
6. Title 10 U.S.C. § 2152 requires the Department of Defense to offer Joint Professional Military Education for senior and intermediate grade officers in “joint matters” and to prepare them for joint duty assignments.
7. College of Naval Warfare Core Curriculum, U.S. Naval War Coll., <https://usnwc.edu/college-of-naval-warfare/Core-Curriculum> (last visited Dec. 9, 2024); College of Naval Command and Staff Core Curriculum, U.S. Naval War Coll., <https://usnwc.edu/collegeof-naval-command-and-staff/Core-Curriculum> (last visited Dec. 9, 2024).
8. The Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 516 U.N.T.S. 205, The Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. 11, The Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958, 559 U.N.T.S. 285, and The Convention on the Continental Shelf, Apr. 29, 1958, 499 U.N.T.S. 311, were the product of the (first) United Nations Conference on the Law of the Sea, held in Geneva from 24 February to 27 April 1958. *United Nations Conference on the Law of the Sea*, Codification Div. Publications: United Nations, <https://legal.un.org/avl/ha/gclos/gclos.html> (last visited Dec. 9, 2024).
9. *Third United Nations Conference on the Law of the Sea*, Codification Division Publications: United Nations, [https://legal.un.org/diplomaticconferences/1973\\_los](https://legal.un.org/diplomaticconferences/1973_los) (last visited Dec. 9, 2024).
10. *Id.*
11. Off. of the Staff Judge Advoc., *U.S. Position on the U.N. Convention on the Law of the Sea*, 97 Int'l. StUD. 81 (2021); see also *U.S. Participation in Law of the Sea Conference before the H. Merchant Marine and Fisheries Comm.*, 97th Cong. 61 (1982) (statement of Ambassador James L. Malone, Special Rep. of President for Third U.N. Conf. on L. of the Sea).
12. The White House, National Security Strategy 45 (2022) [hereinafter 2022 NSS].
13. Joint Chiefs of Staff, Joint Pub. 3-32, Joint Maritime Operations, at xi (4 Dec. 2023).
14. See *id.* at III-1, IV-25.
15. As the 2022 *National Security Strategy* provides, “We will affirm freedom of the seas and build shared regional support for open access to the South China Sea—a thoroughway for nearly two-thirds of global maritime trade and a quarter of all global trade.” 2022 NSS, *supra* note 12, at 37.
16. James Kraska, *The Newport Manual on the Law of Naval Warfare Facilitates Interoperability*, JUST Sec. (June 14, 2023), <https://www.justsecurity.org/86854/the-newport-manual-on-the-law-of-naval-warfare-facilitates-interoperability>.
17. As the 2022 *National Security Strategy* provides, to maintain a peaceful Arctic, “we will uphold U.S. security in the region by improving our maritime domain awareness.” 2022 NSS, *supra* note 12, at 44.
18. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force on Nov. 16, 1994).
19. *Statement on United States Oceans Policy*, Ronald Reagan Pres. Lib. & Museum (Mar. 10, 1983), <https://www.reaganlibrary.gov/archives/speech/statementunit-ed-states-oceans-policy>.
20. S. Treaty Doc. no. 103-39, <http://www.foreign.senate.gov/imo/media/doc/treaty-103-39.pdf>.
21. Joint Statement with Attached Uniform Interpretation of Rules of International Law Governing Innocent Passage, U.S.-U.S.S.R., Sept. 23, 1989, 28 I.L.M. 1444.
22. Off. of the Staff Judge Advoc., *U.S. Position on the U.N. Convention on the Law of the Sea*, 97 Int'l. StUD. 81 (2021).
23. James P. Benoit, *A Practical Guide to the Law of the Sea* (2021).
24. *Law of the Sea: A Policy Primer*, Fletcher Sch., Tufts Univ., <https://sites.tufts.edu/lawofthesea> (last visited Dec. 10, 2024).
25. John Astley III & Michael N. Schmitt, *The Law of the Sea and Naval Operations*, 42 Air Force L. Rev. 119 (1997).
26. E.g., *USINDOPACOM Statement on Unprofessional Intercepts of U.S. Aircraft Over South China Sea*, U.S. Indo-Pacific Command (May 30, 2023), <https://www.pacom.mil/Media/News/News-Article-View/Article/3410337/usindopacom-statement-on-unprofessional-intercept-of-us-aircraft-over-south-chi>.
27. See James Kraska, *The Law of the Sea Convention: A National Security Success – Global Strategic Mobility Through the Rule of Law*, 39 Geo. Wash. Int'l. Rev. 543 (2007).
28. U.S. Dep't of Navy, Chief, Naval Operations, CNO NAVPLAN 2 (2021).
29. See, e.g., Convention Concerning the Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 36 Stat. 2415.30. See generally Off. of Gen. Couns., U.S. Dep't of Def., Department of Defense Law of War Manual ch. V (12 June 2015) (C1, 31 July 2023) (addressing the conduct of hostilities).31. Convention Concerning the Rights and Duties of Neutral Powers in Naval War, *supra* note 29, art. 1.32. Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, arts. 22-27, Aug. 12, 1949, 6 U.S.T. 3114; 75 U.N.T.S. 85. 33. James Kraska et al., *The Newport Manual on the Law of Naval Warfare*, 101 Int'l. StUD. 1 (2023).34. U.S. Dep't of Navy, Chief, Naval Operations, Chief of Naval Operations Navigation Plan for America's Warfighting Navy (2024) [hereinafter 2024 NAVPLAN].35. The White House, Indo-Pacific Strategy of the United States 5 (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>.36. U.S. Dep't of Navy, nwp 1-14m, the Commander's Handbook on the Law of Naval Operations (Mar. 2022).
30. *Newport Rules of Engagement Handbook*, 98 Int'l. StUD. 1 (2022).
38. *U.S. Freedom of Navigation Program*, 97 Int'l. StUD. 70 (2021).
39. See fm 3-0, *supra* note 1, para. 7-1.
40. *Id.* para. 1-91.
41. *Id.* para. 1-90.
42. 2024 NAVPLAN, *supra* note 34, at 14-15.
43. U.S. Marine Corps, Tentative Manual for Expeditionary Advanced Base Operations paras. 1.1, 1.3 (9 May 2023) [hereinafter Tentative Manual for eAbo]; U.S. Dep't of Air Force, Doctrine Note 1-21, Agile Combat Employment (23 Aug. 2022) [hereinafter AFDN 1-21].
44. See FM 3-0, *supra* note 1, para. 1-90.
45. Joint Chiefs of Staff, Joint Publication 3-32, Joint Maritime Operations (4 Dec. 2023).
46. FM 3-0, *supra* note 1, ch. 7.
47. Commander, Naval Surface Forces, Surface Force Strategy: Return to Sea Control (2020); Tentative Manual for eAbo, *supra* note 43; AFDN 1-21, *supra* note 43.
48. 2022 NSS, *supra* note 12, at 6.