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MODERN ECONOMIC WARFARE

(LAW AND THE NAVAL PARTICIPANT)

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S.

Government, the U.S. Department of the Navy or the Naval War College.

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By  
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## FOREWORD

Since the Naval War College was founded in 1884, the study of International Law has been an important part of its curriculum. From 1894 to 1900, certain lectures given on International Law together with the situations studied were compiled and printed, but with very limited distribution. Commencing in 1901, however, the first formal volume of the Naval War College's "Blue Book" series was published.

This book represents the fifty-sixth volume in the series as numbered for cataloging and reference purposes. The present volume is written by Professor Neill H. Alford, Jr. of the University of Virginia School of Law, who occupied the Chair of International Law at the Naval War College during the 1961-1962 academic year. It is considered that Professor Alford's book presents an excellent, informative, and comprehensive work in the field of economic warfare.

The opinions expressed in this volume are those of the author and are not necessarily those of the United States Navy or the Naval War College. The fact of publication does not imply endorsement of content but indicates merely that the subject treated is one which merits attention.

JOHN T. HAYWARD

*Vice Admiral, U.S. Navy*

*President, Naval War College*



## PREFACE

The manuscript for this book was commenced in the spring of 1962 and substantially completed in the fall of 1964. Economic warfare and its political environment changes rapidly and parts of this book will certainly be obsolete before its publication. Strangely anachronistic references will be found to "Soviet" and "Sino-Soviet Blocs." These may have existed in 1962 but could hardly be said to exist today. The book was completed before the United States became heavily involved in Vietnam and reflects no substantial part of our experience there. The lengthy discussion of economic warfare with Cuba through sugar-market controls breaks off in 1962, although supervening events tend to bear out the writer's observations. National institutions for trade control have altered somewhat since the writer described them in Chapter II. All in all, a highly fluid area is difficult to write about, although the writer comforts himself with the hope that his basic analysis of economic warfare, the relation of this analysis to legal institutions, and the relation of both to naval decision making, may become increasingly relevant as relations between the United States, the Soviet Union, and Communist China continue their process of change.

Work on the book was commenced during the administration of Vice Admiral Bernard L. Austin, USN, as President of the Naval War College. Admiral Austin's intimate knowledge of naval decision making and interest in law proved stimulating to the writer during his year of Residence. The writer's thanks are also due to Vice Admiral Charles L. Melson, USN, and Vice Admiral John T. Hayward, USN, Presidents of the Naval War College, who have extended him its facilities and have shared infinite patience with his delays to which lawyers unfortunately are prone.

During his tenure at the Naval War College the writer profited greatly from his opportunities to discuss and argue points of international law of naval interest with Commander (now Captain) Charles R. Davis, USN, and is heavily indebted to a series of classes of officers at the Naval War College between 1962 and 1965 whose international legal problems are reflected in this book.

The burden of preparing the manuscript for publication and of

soliciting comments upon it has fallen upon Commander Henry S. Palau, USN, and Lieutenant Commander Joseph M. Battaglino, USN. It is sufficient to say that without their editorial help the book would never have been published.

The materials in substantially the form presented here were also submitted in partial fulfillment of the requirements for an advanced degree in law at the Yale Law School. In this connection, Professor Myres S. McDougal and Dr. B. S. Murty of the Yale Law School read the original manuscript and made many helpful suggestions. Dean Hardy Cross Dillard of the University of Virginia Law School has done much to encourage the writer to press forward with his work on this book and to seek its publication.

Two Elizabeth Alford's have been extremely patient with the writer as the book was in preparation and his gratitude to them is here acknowledged.

Responsibility for what appears in the book rests entirely upon the writer.

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## INTRODUCTION

Modern economic warfare is “material resource” warfare. Modern economic warfare involves intentional disturbances of the flow of material resources among people and of the processes by which these resources are used to produce values. Under the rubric “modern economic warfare” are embraced such apparently disparate practices as the preemption of scientific knowledge and skill to deny them to an adversary and interferences with the transport of materials, such as nuclear and biological weapons, not regarded as wealth in a conventional sense. Traditionally, economic warfare has been associated with manipulations of *wealth* to affect *power*. But these manipulations are treated in this book as disturbances of processes by which resources are used to produce values through the medium of wealth.

Modern economic warfare is similar in its major features to economic warfare waged in the past. Differences stem from the fact that modern economic warfare is waged during a period of general military stalemate. This military stalemate is of uncertain duration. It is subject to intentional or inadvertent disturbances, being based upon a balance between major adversaries in arsenals of ultra-decisive weapons of a nuclear, biological and chemical nature.

Thus, when modern economic warfare is waged during insurgencies, counterinsurgencies and “limited” wars, coercive economic practices may escalate into violent power exchanges. When this escalation is not desired by the policy makers concerned, there is a premium upon selecting economic warfare techniques which reduce the risk of escalation to a minimum.

The writer seeks to demonstrate in Part I of this book that economic warfare by “protracted harassment,” the usual posture of the United States and other major powers when employing economic coercion, has been rendered marginally effective, prohibitively costly and extremely hazardous by political and technical changes. He recommends, as an alternative to economic warfare by “protracted harassment,” preference for economic warfare by “economic sortie.” Economic warfare by “economic sortie” has been waged frequently and effectively in the past. It is adaptable to current “military stalemate” conditions whether or not employed concomitantly to limited military hostilities.

In Part II of this book, principles developed and discussed in



Part I are applied in a series of hypothetical cases in which naval officers participate in decision making, often simply in an advisory capacity, at various policy levels. The convenience of the casual reader has been sacrificed to realism by developing the hypotheticals in factual sequence. Consequently, a reader referring to a single hypothetical will perhaps find useful a review of the preceding fact situation.

Two islands (logical targets for economic warfare by sea) figure in the hypotheticals. These are Nueva and Antioka, adjacent and fictitious countries, placed in the Western Hemisphere only to involve in the discussions the Organization of American States. A map appears at the beginning of Part II and as Appendix A.

The situations commence with naval activity relating to a civil disturbance in Nueva in which property of United States citizens is threatened with loss. The situations then progress through a civil war in Nueva which results in overthrow of its government by the insurgents; strained relations between the new government in Nueva and Antioka; development of Nueva as a Scythian satellite, Scythia, also a fictitious state, appearing as a major political adversary of the United States; overthrow of the Antiokan government by Nueva with Scythian aid; and end with a series of hypotheticals in which the United States establishes a naval blockade of Antioka and Nueva and later participates in peace enforcement action against Antioka and Nueva by the Organization of American States under the Rio Pact.

The purpose of the book is to alert naval officers to the bearing of law upon economic warfare confrontations and to demonstrate to them how law relates to the discharge of their economic warfare duties. No economic warfare primer is attempted, although in concentrating upon decision making at low policy levels and in relating law to this process, the writer found useful a delineation of major principles of strategy and tactics in economic warfare. Other commentators, stressing either the use of economic warfare techniques to support military operations or the impact of economic warfare upon national economies, have not attempted this emphasis.

In hammering out his own provisional and crude framework of strategy and tactics in economic warfare, the writer is aware he has trampled upon niceties of economic theory with Gothic abandon. Perhaps those better equipped for the task will recognize the need for principles of economic warfare to guide executive officers at all levels of government and will provide a more workable and satisfactory analysis.

The use of naval power in economic warfare is familiar. Admiral

Mahan, in his classic *The Influence of Sea Power Upon History* \* \* \* <sup>1</sup> defined with infinite care the relationships between naval power and the distribution and use of material resources. Sharing with other 19th century thinkers the conviction that principles of growth, useful to explain the past and guide predictions of the future, could be discovered by a sophisticated and diligent analysis of value processes, Mahan related naval power to principles of *political change* discoverable in processes for producing and using material resources.

Whether "wealth" principles provide complete explanations of events in the past or sound guidelines for forecasts of the future are matters now hotly disputed. But, in addition to securing deserved recognition of the influence of navies in history, quite apart from their sporadic use in war to destroy the people and commerce of an enemy, Mahan articulated an enduring relationship between navies and the distribution and use of material resources. This relationship deserves attention when the United States Navy is considered as a force to execute a national policy of "graduated response to coercion."

However, Mahan's advocacy of the need for a revival of United States naval strength, which had fallen into desuetude in the late 19th century, led him to define the mission of a naval establishment primarily as one of trade protection. This was a modest demand, ably attuned to the trend of American thought and the changing political position of the United States.

Many Americans of Mahan's day questioned the necessity even for the feeble fleet then flying our flag. They shared, nevertheless, a pervasive belief that a major purpose of government was positive, but benign and unobtrusive, protection of private activity in producing, transporting and using wealth.

Sensitive to this opinion, and foreseeing a stimulus to American interest in sea trade following completion of the then contemplated Isthmian canal, Mahan accurately and effectively projected an image of the Navy as the indispensable protector of sea commerce. His arguments supported claims by the Navy to an increasing share of the national budget during the lean fiscal years preceding the Spanish-American War and during the period of almost equal general military impoverishment preceding World War I. Educated by Mahan to the intimate relationship between a powerful Navy and the peaceful maintenance and expansion of sea commerce, the American taxpayer bore his increasing financial burden with little complaint.

Influenced also by Mahan's definition of the purpose of a United States naval establishment, the Navy accepted the strategic and tactical concept of "organic" *operational* control advocated by Mahan

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<sup>1</sup> Mahan, *The Influence of Sea Power Upon History, 1660-1783* (1890).

and a number of his contemporaries. "Organic" *administrative* control had prevailed in the Navy for many years. But many officers, particularly senior officers of Civil War vintage, adhered staunchly to the concept that the normal and proper employment of naval power was by the dispatch of individual cruisers for raids upon enemy commerce.<sup>2</sup> Mahan and others, who viewed the mission of the Navy principally as one of *protecting* sea carriers to and from American ports, saw centralized operational control as an essential institution to accomplish this end.

By the time of the Spanish-American War the "Mahan concept" was beginning to prevail. The flamboyant individualism of independent naval operators, such as Cushing, was on the wane. Efficient electronic communications sealed the victory of "organic" operational control.

Reasonably well-financed, in part at least as an outgrowth of Mahan's effective public appeal, the Navy kept abreast of improvements in naval hardware. Coupled with this was adherence to a new tactical and strategic concept which proved effectively geared to the requirements of major naval warfare in the early 20th century. During World War I, the protection of commerce, as Mahan had foreseen, was the dominant mission of the United States Navy; and although World War II imposed diverse requirements upon the Navy, commerce protection again demanded a significant part of its effort.

The nuclear age has reinforced the importance of "organic" operational control. But features of existing and potential military conflict in the nuclear age have revived a shadow of the old decentralized decision making familiar in the early period of Mahan's naval career. The more dramatic aspects of this current individualization of policy making inhere in such current naval functions as the use of naval units to strike, by means of aircraft or missiles, deep within continental land masses and the provision of second-strike capabilities by units at sea. Yet changes of greater subtlety also are occurring.

In the past, naval officers have figured in economic warfare most prominently while maintaining blockades, enforcing contraband lists and preventing unneutral service during general hostilities. During World Wars I and II, as will be pointed out in further detail in Chapter V, there was a shift in the responsibility for major economic warfare decision making from the sea officer to administrative officers ashore. The administration of economic warfare was centralized and an effort was made to apply administrative controls to contraband at

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<sup>2</sup> See Mahan, *From Sail to Steam*, 271 (1907).

source—or before the contraband was shipped by sea. Under these circumstances, the “policy-voices” of naval officers were muted.

It had always been necessary for naval officers to have some understanding of economic warfare other than that immediately involved in their sea duties. This requirement exists today. All economic warfare tends to evolve towards defensive or offensive postures by adversaries requiring an interdiction of sea or air transport. The naval administrative (NAVAD) blockades of World Wars I and II were founded in part upon economic warfare postures of the contestants antedating military hostilities. While the diverse backgrounds of officers on blockade duty during the two great wars did not provide an officer corps well versed in general economic warfare techniques, the better the grasp by an officer of the administrative framework for economic warfare, the more efficiently he performed his duties. All economic warfare practices tend to interrelate—and effective or ineffective action in one zone of economic warfare is likely to be reflected in others.

Yet modern economic warfare, waged during insurgencies, counter-insurgencies and limited wars, is conducted without the major administrative structures which have been hastily assembled during the two great world conflicts and as hastily demolished at the end of them. Although the United States is prepared because of its extensive resources to wage economic warfare, it is deficient in economic warfare organization and theory. Our greatest neglect in this area has been our failure to recognize economic warfare as a coercive practice pattern deserving the attention of a permanent corps of professionals.

Absent such a corps of economic warfare professionals, the burden to grasp economic warfare theory and develop and use economic warfare techniques tends to rest heavily upon military officers—and particularly upon those in the naval service because of the intimate relation between naval power and the transport and use of material resources so ably spelled out by Mahan. In none of the other military services does the spectrum of decision making responsibility in economic warfare range from the situation in which tight central control leaves little discretion to the commander to the situation in which this commander is likely to find an economic warfare decision of the greatest national importance resting squarely upon his shoulders—nor in the other military services do these situations tend to shift with equal rapidity.

Furthermore, the tasks required of naval officers have become remarkably diverse in the nuclear age. In the time of Mahan, it was sufficient for a naval officer in a senior command position to be a good seaman and able fighter. Today he may have to serve as a diplomat or

political advisor or may perform sundry other tasks having political overtones required by the exigencies of a situation. He must understand the entire power structure in which he operates and cannot limit his study or inquiry simply to the details of naval administration and organization.

It is this new trend back to a form of decentralized decision making compatible with "organic" operational control, coupled with the increasingly diverse responsibilities which a naval officer is expected to discharge, which justifies an emphasis upon "legal strategy" in economic warfare at the comparatively low policy level here considered. In economic warfare which involves naval sea and air power only provisionally or peripherally, naval officers, although perhaps filling roles less conspicuous than those of civilian officials, may participate in economic warfare policy making as advisors even when not participating as commanders.

When one examines the minutiae of an economic warfare transaction—and a major effort to do this is made in this book—it is apparent that most of the critical decisions—those from which there is no turning back—are made at the level of application (or execution) of economic warfare policy. It is at this point that a naval officer is most likely to participate as an advisor or commander. As administrators, these officers also engage in administrative or "effective" lawmaking as they apply their orders to the facts.

The major responsibility of any military officer, including those in the Navy, is to understand and execute legal orders given them by their military or civilian commanders. A military officer has no license to formulate his own "law" or to engage in legal experiment. But in discharging his professional responsibilities, the officer becomes, consciously or not, both a contributor of new legal institutions and an assayer of existing legal institutions. As an "administrative lawmaker," a naval officer may contribute concretely to developing legal doctrines and techniques which take current facts and postulated future facts realistically into account. He may also induce authoritative decision makers to reject legal doctrine that has become irrelevant to contemporary fact. The process by which these developments occur is described in greater detail in Chapter I of this book. The process is as difficult to escape as it is to describe; although to suggest a naval officer may *make* new law, rather than simply administer laws passed or proclaimed by a constitutional body or civilian officer, appears superficially to invite unwarranted breaches of the mercurially sensitive lines defining civil-military relationships.

An understanding by naval officers of the distinctions between formal and effective lawmaking functions may sharpen their appre-

ciation of the importance of impingements of "law" upon economic warfare missions. Such an understanding may also dispel any false image these officers may entertain of "law" as an arbitrary or unreasonable restriction upon imaginative measures in economic warfare.

While a naval officer's participation in "legal strategy" in economic warfare usually occurs at the administrative or operational level as a commander or staff officer, he may participate in formulating economic warfare policy, including its legal elements, on a formal basis and at a high executive, legislative or judicial echelon. Rarely, he will serve as a member of a court or commission dealing with economic warfare policy. Perhaps he will be a delegate to an international convention dealing with legal issues in economic warfare from the perspective of the general community. Typically, however, his participation in economic warfare policy making on a formal level will be advisory only.

Thus, he may have special knowledge concerning some confrontation in which an application of economic warfare techniques is considered. His advice may then be sought at high executive levels. He may testify before a Congressional committee which seeks to define an economic warfare problem of naval interest and devise legislation to deal with it. He may offer testimony before courts. In one relatively recent case before the World Court, testimony by naval officers (none of them from the United States) had an important bearing upon the decision.<sup>3</sup>

In his participation in policy making at the various informal and formal policy levels mentioned, a naval officer deals with both national and international law. The major obstacle to his effective use of "legal strategy" is his tendency to regard national and international law simply as networks of rules to regulate conduct.

For this reason, Chapter I of this book offers a brief survey of the participants in economic warfare, their objectives and techniques and the conditions under which these techniques are employed. Chapter II then bears upon claims and counterclaims opposed in economic warfare and processes by which community decisions concerning these claims and counterclaims are formulated.

In Chapter II the confrontation between the United States and Cuba concerning elimination of the Cuban sugar quota in the United States closed market is used as a framework for discussion. Although conflict concerning a sugar quota seems at first glance to have little

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<sup>3</sup> The Corfu Channel Case, mentioned at page 371 *infra*. For a roster of the witnesses (British, French, Dutch, Swedish, Norwegian, Bulgarian and Yugoslav) and a summary of their testimony, see Alford, "Fact Finding by the World Court," 4 *Villanova Law Review*, 37, 69-74 (1958).

relevance to participation by a naval officer in economic warfare, it facilitates an examination of Communist economic warfare techniques with which naval officers are vitally concerned and an examination also of United States law bearing principally upon "defensive" economic warfare. The "sugar encounter" demonstrates how coercive economic techniques tend to escalate towards situations requiring naval action and displays the complexity of decision making in economic warfare waged by the United States.

There is no attempt in Part I or in the problems developed in Part II to do more than examine "legal strategy" in economic warfare from the decision-making perspective of a participating United States naval officer. Thus, the concentration is upon "claim processes": Who are the claimants and counterclaimants in economic coercion? What types of claims are asserted? In what conflict situations are they asserted? What strategies are emphasized? And what are the outcomes? Since *legal* strategy in economic warfare is emphasized, there is also concentration upon the processes of "decision" concerning these claims; but no effort is made to view the instrument of economic coercion in multiperspective as part of a world social and power process.

Policy statements by decision makers in the general community concerning economic warfare are quite sparse. It has been difficult in the past to generate issues in economic warfare which could be presented to an organ of the general community for decision. Moreover, the economic practices of the United States (coercive and persuasive) apparently thus far have been compatible with the demands of the general community; although this will not necessarily continue to be the case. If divergences occur, and as general community policy is gradually formulated in this area, analyses of economic warfare from a general community perspective, clarifications of general community policy and recommendations for alternative policies and procedures will become of increasing value. The groundwork in this book may facilitate a more ambitious analysis.

A multiperspective study, for example, will require the "economic instrument of coercion" to be located within the pattern of community coercive processes. The participants, their immediate and ultimate objectives, the conflict situations, the strategies of the participants and the effects of these strategies all should be accurately defined. The *claim* processes, as considered in this book, should then be examined, with emphasis, however, not simply upon the role in this process of a single type of executive officer, but upon the full spectrum of national claims and counterclaims and claims and counterclaims by participants other than states. The process of *decision*

likewise should be examined in detail from the perspective of the territorially organized communities and also from the perspectives of officials of international organizations and tribunals: their objectives; decisional situations; strategies; and the outcomes of their decisions being considered. An analysis in detail, such as this, might then permit a rational clarification of policy for the general community with alternative policies and procedures suggested in the light of current trends and conditions.