The International Law Studies “Blue Book” series was initiated by the Naval War College in 1901 to publish essays, treatises and articles that contribute to the broader understanding of international law. This, the seventy-fourth volume of the series, publishes The Tanker War 1980-88: Law and Policy, written by George K. Walker, Professor of Law, Wake Forest University School of Law. Professor Walker has served as the Charles H. Stockton Professor of International Law at the Naval War College (1992-93) and is a retired Captain in the U.S. Naval Reserve.

This volume provides an in-depth analysis of the legal issues surrounding the “Tanker War” between Iran and Iraq, with a focus on law of the sea, the law of armed conflict, the UN Charter, and environmental issues. In addition to discussing the legal aspects of the conflict, there is a summary of the factual record of the Tanker War and a general prologue of the history of the Arabian Gulf. Professor Walker’s work is a significant contribution to the literature on this subject. His meticulous and thorough research ensures it will be a standard reference for its study. While the positions and 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 work provides valuable insights into international law developments experienced in the Iran-Iraq War.

The Tanker War was brought to publication with the assistance of the Naval War College’s Oceans Law and Policy Department. Professor Emeritus Jack Grunawalt provided invaluable service by volunteering his time as editor. On behalf of the Secretary of the Navy and the Chief of Naval Operations, I extend to Professor Walker and the others who participated in the development of this publication my gratitude and thanks.

A. K. CEBROWSKI
Vice Admiral, U.S. Navy
President, Naval War College

The opinions shared in this paper are those of the author and do not necessarily reflect the views and opinions of the U.S. Naval War College, the Dept. of the Navy, or Dept. of Defense.
PREFACE

The Tanker War 1980-88: Law and Policy, written by George K. Walker, Professor of Law, Wake Forest University School of Law, is the culmination of a process that began over ten years ago. Professor Walker conducted research and wrote the book while maintaining a schedule as a full-time law professor, in addition to his many other personal and professional obligations. He brings an extensive international law background to this subject. Besides his teaching responsibilities in the field of international law and admiralty at Wake Forest, he served as the Charles H. Stockton Professor of International Law at the Naval War College during the 1992-93 academic year. He also was a participant in the development of the San Remo Manual, a contemporary restatement of the law applicable to armed conflicts at sea. The Oceans Law and Policy Department of the Center for Naval Warfare Studies, Naval War College is indebted to Professor Walker for the superb scholarship exhibited in this volume.

The International Law Studies “Blue Book” series is published by the Naval War College and distributed throughout the world to academic institutions, libraries, and both U.S. and foreign military commands. The Tanker War will greatly enhance the series by presenting an insightful work on a topic previously not fully addressed.

Thank you again to Professor Walker and the others who assisted in the development and publication of this volume. We also extend our sincere thank you to Dr. Alberto Coll, the Dean of the Center for Naval Warfare Studies, for his support of the “Blue Book” series.

Dennis Mandsager
Professor of Law
Chairman, Oceans Law
and Policy Department
This book has taken better than a decade to research and write. Soon after the Iran-Iraq conflict began in 1980, I began to study the war. That conflict ended in 1988, and it was succeeded by the Gulf War, whose active hostilities began in August 1990 and ended in early 1991, although final resolution of that war, like the 1980-88 conflict, may be decades in coming.

Factual accounts of the Iran-Iraq war, and its maritime component, the Tanker War, were scattered among many sources. Unlike wars in which the United States or other States that are open societies are belligerents, access to primary accounts from either Iran or Iraq were difficult to find. The large number of participants—ranging from the UN Security Council and Secretary-General through multinational organizations to individual countries and nongovernmental organizations, whose pronouncements, although critical, were often difficult to find—also made building a solid factual foundation difficult. It was only with publication of The Iran-Iraq War (1980-1988) and the Law of Naval Warfare and The Tanker Wars that I could be sure that a relatively complete factual record could be consulted. Media reports and summaries appeared soon after events, but these books and the first round of analysis required a cross-check for accuracy and completeness.

The law itself was also in transition. Protocol I to the 1949 Geneva Conventions was signed in 1977, and today it is virtually universally applicable as treaty law, although the United States has not ratified it. In 1980 the Conventional Weapons Convention and its Protocols were signed, and today have many States as parties, including the United States for all but one of its Protocols. These treaties for the most part do not apply to war at sea, but they restate principles—e.g., discrimination, proportionality, necessity—applying to all warfare. In 1982 the UN Convention on the Law of the Sea (LOS) was signed, and today it is moving toward universal acceptance, with an amending protocol, to replace the 1958 LOS Conventions; thus far the United States has not ratified it. However, many countries, including the United States, accept the LOS Convention navigational articles as restatements of customary law.

Important secondary sources also matured during the war and are now generally available. In 1987 the Restatement (Third), Foreign Relations was published, and it may have influence like its predecessor Restatement (Second). In 1987 Naval Warfare Publication (NWP) 9 was also published; it was the first complete revision of the US Navy's law of war manual since NWIP 10-2, first published in 1955. Capping nearly a decade of conferences, the San Remo Manual, the first of its kind...
since the 1913 Oxford Manual on the law of naval warfare, was published in 1995. Besides these sources, the new treaties generated commentaries comparable to Pictet’s respected series on the 1949 Geneva Conventions.

It is therefore hoped that a combination of a more complete factual record and, at least for the time being, a more stable format of international law will make this book useful for general and academic readers.

I began research on the war in 1980, continued it through a semester of academic leave and as I could while carrying a full academic schedule at Wake Forest University and coping with post-Vietnam War tumult in academia, which had ripple effects for a decade. I completed most of the basic research and writing during and after service as Charles H. Stockton Professor of International Law at the Naval War College, Newport, R.I., truly an outstanding experience, for which I remain grateful.

Chapter II B summarizes the factual record of the Tanker War; a general prologue of the history of the Persian Gulf precedes it in Chapter II A. Chapter III applies the law of the UN Charter to the conflict; a short summary of other factors that may govern during war, e.g., the impact of armed conflict on treaties, is in Chapter III D. Chapter IV focuses on LOS issues that applied during the war, e.g., straits passage. Chapter V examines law of armed conflict (LOAC) issues in the Tanker War. Chapter VI explores issues affecting the Persian Gulf environment during the war. A general summary and conclusion follows in Chapter VII.

Parts of this book have appeared in other publications. In some cases the prior text has been published, and in most situations references are given to prior publications.

Part A. Acknowledgments

There are many who have helped with the thinking, research and writing of The Tanker War 1980-88: Law and Policy. John Donne rightly wrote that no one is an island, and this applies to this book’s preparation.

My first and greatest debt is owed my wife, Phyllis, and our children, Charles and Mary Neel, who endured many times when I was engrossed in thinking, research and writing during graduate study and absences at libraries, carrels, offices and elsewhere. Part of the personal experience for preparing The Tanker War was duty with the US Navy, with which I was privileged to serve with Atlantic Fleet destroyer forces (1959-62) and in the Naval Reserve (1957-59, 1962-89). From 1966 until retirement in 1989, my family supported absences for Naval Reserve duty as a line officer that took me away at least two weeks a year and more weekends and other times than they or I would like to remember.

My father, J. Henry Walker, never saw active military service. He held an Army commission for a time after World War I and before World War II. He was too young for the First World War and too senior for the Second World War. In the
family tradition, he was active in Civil Defense during World War II and taught physics to Army Air Force cadets while teaching premedical studies at the University of Alabama. He had been prevailed upon by the President of the University to stay on and teach future doctors for that war. He encouraged my brother, Lieutenant Commander Rufus H. Walker, USNR, and me to seek naval commissions and was never more proud of his sons than when my brother chose a naval career and I remained in the active reserves through the Cold War. I remain grateful for his insights that grew more meaningful as I matured\textsuperscript{22} and for his supporting my decision to enter academic life. Cancer claimed my brother in mid-career, but his sea service stories added to thoughts for this book.

At the University of Alabama several great teachers quickened my interest in the larger world, its history, politics and diplomacy, and unconsciously directed me toward an eventual career in the law. These included John F. Ramsey, one of the truly great teachers and mentors for many at the University and for whom an annual student award is given to this day; Captain Hubert E. Mate, USNR, professor and College of Arts and Sciences assistant dean, an academic and Navy mentor; Commander John S. Pancake, USNR, professor of history and another Navy mentor who introduced me to diplomatic history; and Walter H. Bennett, a demanding member of the political science department, who immersed me in political theory.

At Duke University Harold T. Parker, who with William Newton supervised my history master's thesis on the Franklin Roosevelt - Winston Churchill correspondence, 1939-41, taught me how history moves and insisted on the highest academic standards in researching the thesis. Many years later, another Duke faculty member encouraged my study of the law of naval warfare. Rear Admiral Horace B. Robertson, Judge Advocate General's Corps, USN and Judge Advocate General of the Navy, later a Duke law faculty member and vice dean, has my special thanks.

From my Vanderbilt University law school experience, I remember the excellent grounding that Professor and Dean John W. Wade gave me. My teacher and now colleague and friend Harold G. Maier encouraged my study of international law there and has supported my academic career since then. I also mention Vanderbilt's great teacher of conflict of laws, Elliott E. Cheatham, who knew my grandfather when he practiced law in Georgia and my grandfather was a superintendent of schools. He opened my eyes to thinking factorially in ways reflected in this book, particularly Chapter VI.

Service as US District Court law clerk to John D. Butzner, Jr., now Senior US Circuit Judge for the US Court of Appeals for the Fourth Circuit, and as a trial lawyer with what is today the law firm of Hunton & Williams in Richmond, Virginia, was probably the best postgraduate education I could have asked for. George C. Freeman, Jr., who had active naval service on \textit{U.S.S. Wasp}; Lewis F. Powell, Jr., who saw distinguished World War II service and was later an Associate Justice of the Supreme Court of the United States; H. Merrill Pasco, General of the Army
George C. Marshall's aide; Lewis T. Booker, later promoted Brigadier; and Robert F. Brooks, were among the outstanding lawyers with and for whom I worked. With that kind of leadership by example, excellence was the expected norm.\textsuperscript{23}

A decision and commitment to legal education led me to the University of Virginia School of Law, and I am grateful for the wonderful intellectual growth experience the Master of Laws program gave me. I express thanks to great teachers and research supervisors, all of whom became good friends and colleagues: A.E. Dick Howard, White Burkett Professor of Law and Public Affairs; Richard B. Lillich, late Howard W. Smith Professor and a Stockton Professor of International Law at the Naval War College; and John Norton Moore, director of the graduate program and Walter L. Brown Professor. The Virginia law library supported my masters in law and later research, and I remain grateful to the late Frances Farmer and her staff for support they gave.

At the Yale Law School while on sabbatical I came to know W. Michael Reisman. Michael, then Wesley N. Hohfeld Professor of Jurisprudence, and today Myres S. McDougal Professor of International Law, has supported my work through the years. I also remain grateful for the comments and support of Myres S. McDougal, Sterling Professor of Law Emeritus, and for a particular insight that Eugene F. Rostow, Emeritus Dean and Sterling Professor of Law, gave me. My uncle, Rufus C. Harris, later a law dean and university president, always reflected the broad base of J.S.D. work he did at Yale after returning as a wounded World War I veteran, and his experience and example were reasons I wanted to research there. Lastly, I remain grateful for the facilities of the Yale Law and Sterling Libraries and their support.

To recount names of those within the sea services who influenced my thinking during 32 years of enlisted and commissioned service would fill a volume. Often I learned great truths from, or was inspired by, those with whom I served, who led me, or whom I was privileged to lead. Two must be mentioned. Captain J. Ashley Roach, Judge Advocate General's Corps, US Navy (Ret.), and I met just after my time at Yale. He suggested the developing Middle East situation would be interesting research, and so it was. During my 1992-93 appointment as Charles H. Stockton Professor of International Law at the Naval War College, I gained Richard J. Grunawalt, Captain, Judge Advocate General's Corps, US Navy, (Ret.), and now Emeritus Professor and former Director of the Oceans Law and Policy Department of the College's Center for Naval Warfare Studies (CNWS), as a great colleague and friend. I remain grateful for his positive leadership, encouragement and insistence on the highest standards of scholarship. Jack was principal editor of this volume.\textsuperscript{24} He was ably assisted by Lieutenant Colonel James E. Meyen, U.S. Marine Corps.

Three Naval War College Presidents are owed a special debt of thanks. Rear Admiral Joseph C. Strasser, US Navy, was President during my Stockton year.
Admiral Strasser solidly supported my teaching and research at the College; he cared about people as he led the College. His leadership will not be forgotten. Rear Admiral James R. Stark, US Navy, who succeeded Admiral Strasser as President, has also supported the College’s law program. Vice Admiral Arthur K. Cebrowski, US Navy, succeeded Admiral Stark and wrote the Foreword for this book. Within the College, I remain grateful for comments, insights, research suggestions and corrections of Professors Grunawalt and Dennis Mandsager, current Oceans Law and Policy Department Chairman, and his staff. Dr. Robert S. Wood, former Dean of the CNWS, has my thanks for his research suggestions, comments and insights. I also express thanks to Hugh Lynch, Captain USN (Ret.), of the CNWS faculty, for reading Chapter II for factual accuracy. The Nation remains in good hands, due in part to the administrative, academic, military and moral leadership of these dedicated people.

Wake Forest University generously gave me leave to attend Yale, to accept the Stockton appointment, and for research. I express special thanks to a good friend and colleague, Edwin G. Wilson, Emeritus Provost and Professor of English, like me a Reserve destroyer officer (but separated by a few years in time of service, although shipboard experiences we shared were remarkably alike). I remain grateful for the support and counsel of Dean and Professor J. Donald Scarlett, who laid the foundation of the reputation the law school enjoys.

Other libraries besides those at Yale helped with research. At Wake Forest University, Professor Thomas M. Steele and the staff of the Worrell Professional Center Library that houses the law library deserve thanks for support and unfailing help in obtaining unusual sources that were so important. I am also grateful for the resources of the University’s Reynolds and Army ROTC Libraries. At the Naval War College Robert E. Schnare, Director of its Library, and his staff deserve equal thanks. Dean Wood helped me obtain a carrel for research summers after the Stockton appointment, which enabled me to continue my studies. The Redwood Library, Newport, and the Winston-Salem - Forsyth County libraries lent books.

Behind every academic there is a wonderful secretary. Peggy W. Brookshire has been my mainstay for so many years and so many projects that we have given up counting. Besides voluminous correspondence, work with me on editing several books, public service projects with bar associations, appellate briefs, class assignments, and similar papers, she prepared sheafs of correspondence, fitness reports and other documents when I commanded Naval Reserve units. She typed many drafts and helped prepare the manuscript for this book. As the sea service signal has it, “Bravo Zulu.”25 I also express thanks to the secretarial staff at the Naval War College who helped with my research manuscripts there, particularly Virginia Lautieri and Lucy Dunlea.

Truly, no academic is an island.26
Part B. A Note on Sources

US Senator Hiram Johnson said in 1917 that the first casualty of a war is truth.\(^{27}\) Oliver Wendell Holmes, Associate Justice of the Supreme Court of the United States, said that a word is the skin of a living thought,\(^{28}\) and that a page of history is worth a volume of logic.\(^{29}\) My good friend, the late Myres McDougal, emphasized that a writer’s observational standpoint must be taken into account.\(^{30}\) These truths are important in this book. Recent history is difficult to research and write. Only after a decade has separated the end of the war have more complete and relatively balanced accounts begun to appear. Many contemporary reports appear to be mis-dated, misstated, or sometimes wrong, and this at times applies to government sources. Another problem is the language and availability of sources. I am not versed in Farsi or Arabic, and many sources may be only in those languages. Many critical sources lie hidden in government archives, to be revealed only after several decades, if at all. Even when fundamental documents, e.g., treaties, will be published is less than clear, owing to publication lags and national security.\(^{31}\) The same can be said for deducing custom and objections to claims.\(^{32}\) More has been written from Iran and Western sources; whether the archives of Iraq and the former USSR will ever be available is less than certain. Even readily available and reliable sources, e.g., the *Foreign Relations of the United States* (FRUS), appear only after decades to protect national security, and they are necessarily selective.\(^{33}\) The same can be said for the digests; the 1980-88 *Digest* of the Reagan Administration is only in its third volume.

The factual account, and the history of foreign and domestic policies, are therefore necessarily less than absolutely complete or accurate. I have tried to distill out rhetoric and bias but may not have always succeeded. My own intellectual bias as an academic lawyer, my cultural bias as an American, my prior experiences, e.g., as a serving line officer in the US Navy and later as a Naval Reservist,\(^{34}\) may have affected the story of the war in Chapter II and succeeding chapters of legal analysis.\(^{35}\)

Nevertheless, I hope that this analysis will be helpful.

Part C. Citation Format: Recurring Citations, Abbreviations, Acronyms

Although this volume conforms generally to another “bluebook,”\(^{36}\) short form citations, abbreviations and acronyms replace full citations for recurring references (e.g., LOS for law of the sea; LOAC for law of armed conflict); institutions (CMI, Comite Maritime Internationale); States, e.g., the United Kingdom (UK) or the United States (US); international organizations, e.g., the United Nations (abbreviated to UN); or, occasionally, agencies, e.g., the International Committee of the Red Cross (acronymed ICRC). For short form citations listed below, references to published sources have been omitted; to conserve space, periods have been omitted from commonly used citations. For example, a “bluebook” citation,
Introduction


Certain citation formalities have been shortened. Most treaties not listed below are referenced to the article or other material cited, preceded by a note where they first appear, rather than repetitive citation of, e.g., “UST at . . .”, or “UNTS at . . .”. Letters, e.g., do not follow the “from . . . to” rubric,37 “letter” follows the writer or the writer’s title. Government officials’ titles have been abbreviated; e.g., the United States Permanent Representative to the United Nations is cited as “US UN Permanent Representative.” Treaty titles omit superfluous articles and substitute “&” for “and.”38

Reference signals, supra, infra and hereinafter, have been eliminated insofar as possible.39 Material cited to a reprint source is designated as “in” instead of “reprinted in.”40 When cited within the same chapter, notes to previous or future material are cited, as, e.g., “n. 2 or Part B”. If cited from another chapter, a reference will read, e.g., “n. II.2,” meaning the second note in Chapter II. Similarly, a Part cited from Chapter II will read, e.g., “Part II B”. More than one note is abbreviated to “nn.” The word “at,” interposed between note numbers and page numbers, has been deleted except where needed for clarity. Book titles and authors are printed in large and small caps. Article titles and like material are printed in italics.41 The objective is to combine information with brevity, any style manual’s goal.

### Part D. Short Form Citation

<table>
<thead>
<tr>
<th>Abbreviation or Acronym</th>
<th>Full Citation</th>
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<tbody>
<tr>
<td>ADIZ</td>
<td>Air Defense Identification Zone.</td>
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<tr>
<td>AGL</td>
<td>Above ground level.</td>
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<td>AJIL</td>
<td>American Journal of International Law.</td>
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<td>AMC</td>
<td>American Maritime Cases.</td>
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<tr>
<td>American Foreign Policy</td>
<td>American Foreign Policy: Current Documents (year follows abbreviated citation).</td>
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<tr>
<td>ASIL Proc.</td>
<td>Proceedings of the Annual Meeting of the American Society of International Law; year of annual meeting precedes citations; publication dates omitted.</td>
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<td>AWACS</td>
<td>Airborne Warning and Control System.</td>
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<td>BENEDICT</td>
<td>BENEDICT ON ADMIRALTY (7th ed. rev., Frank L. Wiswall, Jr., ed. 1999), volumes 6-6F.</td>
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<td>BEVANS</td>
<td>CHARLES I. BEVANS, Treaties and Other International Agreements of the United States of America 1776-1949 (13 v. 1968-76).</td>
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<td>BFSP</td>
<td>British Foreign &amp; State Papers.</td>
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<td>Bothe et al.</td>
<td>MICHAEL BOthe et al., NEW RULES FOR VICTIMS OF ARMED CONFLICT (1982).</td>
</tr>
</tbody>
</table>
BROWNLIE, INTERNATIONAL LAW

BROWNLIE, USE OF FORCE

BSFHV
Bochumer Schriften zur Friedenssicherung und zum Humanitaren Volkerrecht.

Bulletin
Department of State Bulletin.

BYBIL
BRITISH YEARBOOK OF INTERNATIONAL LAW.

CABLE

CENTCOM
US Central Command.

CFR
Code of Federal Regulations.

CHUBIN & TRIPP

1969 Civil Liability Convention

COL & AREND

COLOMBOS

COLREGS
Collision Regulations, the short form of rules of the nautical road found in treaties like, e.g., Regulations for Preventing Collisions at Sea, July 15, 1972, 28 UST 3459, 1050 UNTS 16.

Continental Shelf Convention

Convention on Maritime Neutrality

Conventional Weapons Convention
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<td>CYBIL</td>
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<td>DIGEST</td>
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DINSTEIN

Yoram Dinstein, War, Aggression and Self-Defence (2d ed. 1988).

Dispatch

US Department of State Dispatch.

1972 Dumping Convention

Convention on Prevention of Marine Pollution by Dumping of Wastes & Other Matter, Dec. 29, 1972, 26 UST 2403, 1046 UNTS 120.

ENMOD Convention


ENVIRONMENTAL PROTECTION


First Convention

Convention for the Amelioration of the Condition of Wounded & Sick in Armed Forces in the Field, Aug. 12, 1949, 6 UST 3114, 75 UNTS 31.

Fishery Convention


FON

Freedom of navigation, an acronym used in naval operations.

Fourth Convention

Convention Relative to Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 UST 3516, 75 UNTS 287.

Fragments Protocol


FRANKLIN


FRG

Federal Republic of Germany, now part of Germany; see Walker, Integration and Disintegration 8-9.

FRUS  FOREIGN RELATIONS OF THE UNITED STATES (preceded by year number and volume number bracketed if more than one was issued for that year; publication dates omitted).


G.A. Res.  UN General Assembly Resolution, for which UN Document numbers have been generally omitted. Resolutions have been cross-referenced to reprint sources, e.g., ILM.

GCC  Gulf Cooperation Council, formed in 1981 by Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.


HACKWORTH  GREEN H. HACKWORTH, DIGEST OF INTERNATIONAL LAW (7 v. 1940-43). The rule for citing digests has not been followed with particularity.43
1899 Hague II  

1899 Hague III  

Hague II  

Hague III  

Hague IV  

Hague V  

Hague VI  

Hague VII  
Hague Convention (VII) Relating to Conversion of Merchant Ships into War-Ships, Oct. 18, 1907, 205 CTS 319, SCHINDLER & TOMAN 797.

Hague VIII  

Hague IX  

Hague X  

Hague XI  
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<td>High Seas Convention</td>
<td>Convention on the High Seas, Apr. 29, 1958, 13 UST 2312, 450 UNTS 82.</td>
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Introduction


**ICAO Convention**

Convention on International Civil Aviation (Chicago Convention), Dec. 7, 1944, 61 Stat. 1180, 15 UNTS 295; see also Protocol on Authentic Trilingual Text of Convention on International Civil Aviation with Annex, Sept. 24, 1968, 19 UST 7693, 740 UNTS 21; Process-verbal of Rectification to Protocol, 20 id. 718; there are numerous amendments and protocols to the ICAO Convention, most of which are not relevant to this analysis, and many of which are not in force for some or all States. See Bowman & Harris 110-11; id. 168 (Cum. Supp. 1995); TIF 380-81.

**ICJ**

International Court of Justice (the "World Court," successor to the PCIJ in 1945); abbreviation for reports of its decisions.

**ICLQ**

International & Comparative Law Quarterly.

**ICO**


**ICRC**

International Committee of the Red Cross.

**ILA**

International Law Association

**ILM**

International Legal Materials.

**ILR**

International Law Reports.

**IMCO**

International Maritime Consultative Organization, later renamed International Maritime Organization (IMO).

**IMO**

International Maritime Organization, formerly International Maritime Consultative Organization (IMCO).

**Incendiary Weapons Protocol**

INCSEA

Acronym for agreements between States to regulate navigation and other behavior of their warships, State aircraft and other platforms. See, e.g., INCSEA Agreement & INCSEA Protocol.

INCSEA Agreement


INCSEA Protocol


1917 Instructions

US Department of the Navy, Instructions Governing Maritime Warfare: June 1917 (1918).

1969 Intervention Convention

Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Nov. 29, 1969, 26 UST 765, 970 UNTS 211.

Intervention Protocol


Joyner


Karsh


Keesing

KEESING'S CONTEMPORARY ARCHIVES.

Key Resolutions


Law of Naval Warfare


Levie, Code


Liber Amicorum

Lieber Code

LNTS
League of Nations Treaty Series.

LOAC
Law of armed conflict, synonymous with law of war (LOW).

London Declaration

1930 London Naval Treaty

1936 London Naval Treaty

London Protocol

LONW
Law of naval warfare, a component of the LOAC or LOW.

LOS
Law of the Sea.

1958 LOS Conventions
Territorial Sea Convention; Continental Shelf Convention; High Seas Convention; Fishery Convention.

LOS Convention

LOW
Law of war, synonymous with law of armed conflict (LOAC).

MACCHESNEY


MCDougAL & FELICIANO  MYRES S. MCDougAL & FLORENTINO FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER (1961).

MCDougAL, LASSWELL & CHEN  MYRES S. MCDougAL, HAROLD LASSWELL & LUNG-CHU CHEN, HUMAN RIGHTS AND MINIMUM WORLD PUBLIC ORDER (1980).


Mine Protocol

MOORE
JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW (8 v. 1906). The rule for citing digests has not been followed with particularity.44

MOORE, ARBITRATIONS
JOHN BASSETT MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY, TOGETHER WITH APPENDICES CONTAINING THE TREATIES RELATING TO SUCH ARBITRATIONS, AND HISTORICAL AND LEGAL NOTES (6 v. 1898).

Naff, GULF SECURITY
GULF SECURITY AND THE IRAN-IRAQ WAR (Thomas Naff ed. 1985).

NAFF, THE IRAN-IRAQ WAR

NATO
North Atlantic Treaty Organization.

1900 Naval War Code
US Naval War Code of 1900, in NAVAL WAR COLLEGE, INTERNATIONAL LAW DISCUSSIONS, 1903 (1904).

NAVIS & HOOTEN

Nicaragua Case

nm or NM
Nautical mile(s).

Nordquist
This multivolume series, edited by Myron H. Nordquist, has different authors or editors; volume numbers precede abbreviated citations:


NOTAM
Notice to Airmen.

NOTMAR
Notice to Mariners.

NWC REV.
Naval Warfare Information Publication.

NWIP

NWP
Naval Warfare Publication.

NAVAL WAR COLLEGE REVIEW. Review articles analyzing international law issues have been reprinted in READINGS IN INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1947-1977 (NAV. WAR C. INT'L L. STUD., v. 61 & 62, Richard B. Lillich & John Norton Moore ed. 1980) and READINGS ON INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1978-1994 (NAV. WAR C. INT'L L. STUD., v. 68, John Norton Moore & Robert F. Turner ed. 1994). Parallel citations to these volumes have not been added in chapters that follow. Articles on international law published after 1994 and articles dealing with other topics, e.g., military operations, are not included in the INTERNATIONAL LAW STUDIES reprints, and resort to the Review is necessary.
<table>
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<td>Nyon Supplementary Agreement</td>
<td>Agreement Supplementary to the Nyon Arrangement, Sept. 17, 1937, 181 LNTS 151.</td>
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<td>Ocean Development &amp; International Law.</td>
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<tr>
<td>1954 Oil Pollution Convention</td>
<td>Convention for Prevention of Pollution of the Sea by Oil, May 12, 1954, 12 UST 2989, 327 UNTS 3; amendments, Apr. 11, 1962, 17 id. 1523, 600 UNTS 332; Oct. 21, 1969, 28 id. 1205.</td>
</tr>
<tr>
<td>OPEC</td>
<td>Organization of Petroleum Exporting Countries.</td>
</tr>
</tbody>
</table>
22 The Tanker War

OPPENHEIM

This multivolume series has different editors; volume numbers precede abbreviated citations:


1 OPPENHEIM (1955)

1 LASSA OPPENHEIM, INTERNATIONAL LAW (Hersch Lauterpacht ed. 1955).

1880 OXFORD MANUAL

INSTITUTE OF INTERNATIONAL LAW, THE LAWS OF WAR ON LAND (1880), in SCHINDLER & TOMAN 35.

OXFORD NAVAL MANUAL


Paris Declaration

Declaration Respecting Maritime Law, Apr. 16, 1856, 115 CTS 1.

PCIJ

Permanent Court of International Justice (the "World Court," 1920-45, succeeded by the ICJ).

PICTET


PILLOUD, COMMENTARY


1973 Pollution Convention


PRC

People's Republic of China.

PROCEEDINGS

U.S. NAVAL INSTITUTE PROCEEDINGS.

PROTECTION OF THE ENVIRONMENT

Protocol I
Protocol Additional to Geneva Conventions of 12 August 1949, & Relating to Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 UNTS 3.

Protocol II
Protocol Additional to Geneva Conventions of 12 August 1949, & Relating to Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 UNTS 609.

Public Papers
Public Papers of the Presidents of the United States (volume number precedes, and president's surname and document year follow, abbreviated citation).

Rajaee, IRANIAN PERSPECTIVES
IRANIAN PERSPECTIVES ON THE IRAN-IRAQ WAR (Farhang Rajaee ed. 1997).

Rajaee, IRAN-IRAQ WAR

RCADI
Academie de Droit International De La Haye, Recueil des Cours.

RDJTF
Rapid Deployment Joint Task Force, later folded into CENTCOM.45

RESTATEMENT (SECOND)
RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES (1965).

RESTATEMENT (THIRD)

ROACH & SMITH
J. ASHLEY ROACH & ROBERT W. SMITH, UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS (2d ed. 1996).

Robertson

Robertson, New LOS
ROE

Rules of Engagement.

Roe-rich Pact


Ronzitti, *The Crisis*


S.C. Res

UN Security Council Resolution, for which UN Document numbers have been omitted. For recent resolutions, document numbers have been S/RES/[Resolution number], followed by date. Resolutions have been cross-referenced to ILM or WELLENS where published there.

San Remo Manual


Schindler & Toman


Schoenbaum


Schwarzenberger


Seabed Arms Control Treaty


Second Convention

Convention for Amelioration of Wounded, Sick & Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 UST 3217, 75 UNTS 85.
Second Protocol


Second Report


SIMMA


SINCLAIR


SOLAS

Safety of Life at Sea, the short form for safety regulations published in treaties like, e.g., Convention for Safety of Life at Sea, Nov. 1, 1974, 32 UST 47.

1960 SOLAS

Convention for Safety of Life at Sea, June 17, 1960, 16 UST 185, 536 UNTS 27.

1974 SOLAS

Convention for Safety of Life at Sea, Nov. 1, 1974, 32 UST 47.

Stockholm Declaration

Stockholm Declaration Regarding Similar Rules of Neutrality, May 27, 1938, 188 LNTS 294, a series of rules among Denmark, Finland, Iceland, Norway and Sweden restating principles of maritime neutrality as they applied to these States. In most cases the five agreements are identical and will be cited as one. If there are significant differences among them, this will be noted in the analysis.

STONE

JULIUS STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT (1959).

SWARZTRAUBER


Symposium, State Succession


1941 Tentative Instructions

US Department of the Navy, Tentative Instructions Governing Maritime and Aerial Warfare (May 1941).
| 1943 Tentative Instructions | US Department of the Navy, Tentative Instructions Governing Maritime and Aerial Warfare (May 1944); *id.*, cover, n.1 indicates US Secretary of the Navy correspondence modified some provisions of 1941 Tentative Instructions in 1942 and 1943, hence the abbreviated title. |
| Third Convention | Convention Relative to Treatment of Prisoners of War, Aug. 12, 1949, 6 UST 3316, 75 UNTS 135. |
| TIAS | Treaties and other International Agreements Series of the United States, followed by number; cited when UST citation is not available; TIAS followed by a blank space indicates that the TIAS number has not been published but that the United States is a party to the treaty. |
| TIF | US Department of State, Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 1998 (1998). Other volumes are cited as, e.g., 1990 TIF. |
| UAE | United Arab Emirates. |
UN

United Nations, when appearing as an adjective.

1999 UN Treaties

United Nations, Multilateral Treaties Deposited with the Secretary-General, Status as at 30 April 1999, UN Doc. ST/LEG/SER.E/17, UN Sales No. E.99.V.5 (1999).

UNCIO


UNCLOS III


UNTS


US

United States, when appearing as an adjective.

USC

United States Code.

UST

United States Treaties and Other International Agreements. UST preceded and followed by blank spaces indicates the treaty has not been published in UST, but that the United States is a party.

Vienna Convention


VJIL

VIRGINIA JOURNAL OF INTERNATIONAL LAW.

Walker, Crisis Over Kuwait


Walker, Integration and Disintegration


Walker, Interface


Walker, Oceans Law

George K. Walker, Oceans Law, the Maritime Environment and the Law of Naval Warfare, in PROTECTION OF THE ENVIRONMENT at 185-221.
<table>
<thead>
<tr>
<th>Source</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>WEU</td>
<td>Western European Union.</td>
</tr>
<tr>
<td>WHITEMAN</td>
<td>Marjorie M. Whiteman, <em>Digest of International Law</em> (15 v. 1963-73). The rule for citing digests has not been followed with particularity.46</td>
</tr>
</tbody>
</table>

Part E. A Note for Readers and Reviewers

As stated in the Foreword, this book represents the views of the author and does not necessarily represent the position of the Naval War College, the Department of the Navy, the Department of Defense, or any other department of the US Government. Comments, correspondence and reviews are welcome. If the book is the subject of a published review, or if those who comment desire to do so, copies of comments or correspondence may be sent to:

Chairman, Oceans Law and Policy Department  
Center for Naval Warfare Studies  
Naval War College  
686 Cushing Road  
Newport, R.I. 02841-1207 U.S.A.
Facsimile correspondence may be sent to 401-841-3989, and E-mail may be sent to (lautierv@nwc.navy.mil). Another copy of published reviews, comments or correspondence should be sent to the author, whose current facsimile number is 336-758-4496, or by mail.

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NOTES

1. Cited in this book as DE GUTTRY & RONZITI; see Part D.
2. Cited in this book as NAVIS & HOOTEN; see Part D.
3. Although occasional media articles are cited, primary reliance has been placed on digests such as FACTS ON FILE AND KEESING'S CONTEMPORARY ARCHIVES.
4. E.g., the America and the World section of FOREIGN AFFAIRS. See n. II.2.
5. HIRO (1991) is among the earlier accounts; see also e.g., 2 & 3 CORDESMAN & WAGNER; DEKKER & POST; KARSH; NAFF, GULF SECURITY.
6. I.e., First-Fourth Conventions. See Part D.
7. See n. III.622 and accompanying text.
8. See n. III.627 and accompanying text.
9. See nn. VI.403, 541-42 and accompanying text.
10. See Part V.A.
11. Cited in this book as LOS Convention; see Part D.
12. See n. IV.3 and accompanying text.
13. Id.
14. Cited as RESTATEMENT (THIRD) and RESTATEMENT (SECOND) respectively; see Part D.
15. Cited in this book as NWP 9; see Part D.
16. See also n. VI.595 and accompanying text.
17. E.g., BOTTIE et al., analyzing Protocol I.
18. 1-4 PICTET; see also Part D.
19. See Part A.
20. These include: Walker, Crisis Over Kuwait; Walker, Integration and Disintegration; Walker, Interface; Walker, Maritime Neutrality; Walker, Oceans Law; Walker, Sources; Walker, State Practice; and Walker, United States National Security Law and United Nations Peacekeeping or Peacemaking Operations, 29 WAKE FOREST L. REV. 435 (1994).
21. JOHN DONNE, DEVOTIONS UPON EMERGENT OCCASIONS, No. 17 (1624) ("no man is an island, entire of itself; every man is a piece of the continent, a part of the main.")
22. Mark Twain is reported to have said that when he was a boy of 14, his father was so ignorant he could hardly stand to have the old man around. But when he got to be 21, he was astonished at how much the old man had learned in seven years. See also Jerry Romansky, Search for Twain Books on Adventure, DUBUQUE TELEGRAPH HERALD, Dec. 19, 1999, at E13.
23. **Anne Freeman, The Style of a Law Firm: Eight Gentlemen from Virginia** 144-90 (1989) ably tells the story of what Hunton, Williams, Gay, Powell & Gibson was like in those days. The firm name changed with death of partners and appointment of Lewis F. Powell, Jr. as Associate Justice of the Supreme Court of the United States. My first memorandum as an associate in the firm was written to him.

24. Jack has been justly honored by publication of **LIBER AMICORUM**, volume 72 in the International Law Studies series.

25. The universal maritime flag code (BZ) for “well done.”

26. See n. 21 and accompanying text.


30. *E.g.*, McDougal, Lasswell & Chen 167-84, 368-74. One example from the Gulf War is Reza Ra’iss Tousi, *Containment and Animosity: the United States and the War*, in RAJAEI, *IRANIAN PERSPECTIVES* 49: “I contend that the United States followed a conscious policy to contain or destroy the [Islamic] revolution [in Iran], encouraging Iraq to impose a war on the newly formed revolutionary government.” It is highly doubtful if this is true as to all US actions during the 1980-88 Iran-Iraq war. Unfortunately, not all sources that report, comment upon, or analyze facts, history, policies or law applicable to this war are as candid. While I do not agree with Tousi on his thesis, I commend his candor.

31. **Restatement (Third) § 312 r.n.5.**

32. I refer to the principle of the persistent objector. See generally Brownlie, *International Law* 10; Oppenheim § 10, at 29; Restatement (Third) § 102 cmts. b, d; Michael A. Kesten, *Custom as a Source of Law*, BYBIL 1, 23-27 (1974); C.J.M. Waldock, General Course on Public International Law, 106 RCADI 1, 49-53 (1962); but see Jonathan Charnley, *Universal International Law*, 87 AJIL 529, 538-41 (1993) (existence of persistent objector rule open to serious doubt). Roach & Smith’s exhaustive study of US objections to LOS claims indicates that the persistent objector rule is alive and well, at least for LOS issues. Undoubtedly there are thousands of protests filed annually on many issues in chancelleries, few if any of which are published. It cannot therefore be assumed, as some commentators do, that the rule of the persistent objector is in desuetude.

33. This is a familiar problem for US lawyers. Since their beginning the **Federal Rules Decisions** and **Federal Supplement** series have selectively published US District Court cases, relying on judges or counsel to submit what they consider more important opinions. Recently the **Federal Reporter** and reports of state appellate courts have published only the more significant opinions, usually determined by the courts pursuant to their rules. It is therefore always hazardous to declare what is custom, based on a nose count of nations and what may be said in the national digests, even as it has become ever more difficult to determine the “majority rule” among courts. That is probably a reason why international law has traditionally relied on factorial approaches, *e.g.*, ICJ Statute, art. 38(1); Restatement (Third) §§ 102-03.

34. *Cf.* Alfred, Lord Tennyson, *Ulysses*, in G. Robert Stange, *The Poetical Works of Tennyson* 88 (1974) (“I am part of all that I have met; Yet all experience is an arch wherethro’ Gleams that untravell’d world whose margin fades For ever and for ever when I move.”).


37. See id., Rule 17.1.3.

38. See id., Rules 20.1(a), 20.4.


40. See id., Rule 1.6(b).
41. *See id.*, Rule 2.1.
42. *Id.*, Rule 20.10.
43. *Id.*, Rule 20.10.
44. *Id.*, Rule 20.10.
45. *See nn. II.77 & 78 and accompanying text.*
46. *Id.*, Rule 20.10.