# Table of Contents

FOREWORD .......................................................... xv

PREFACE ............................................................. xvii

CHAPTER I — INTRODUCTION ........................................... 1
   Part A — Acknowledgments ........................................ 2
   Part B — A Note on Sources ....................................... 6
   Part C — Citation Format: Recurring Citations, Abbreviations,
            Acronyms .................................................. 6
   Part D — Short Form Citation ...................................... 7
   Part E — A Note for Readers and Reviewers ...................... 28

CHAPTER II — THE TANKER WAR, 1980-88 .......................... 33
   Part A — Prologue .................................................. 34
      1. The United Kingdom and France; UK Interventions and
         Reactions .................................................... 34
      2. The United States; Preliminary Gambits in the Gulf ........ 35
      3. The Soviet Union ............................................. 36
      4. Worldwide Dependence on Persian Gulf Oil and
         Foreign-Flag Shipping ........................................ 36
      5. The Environment .............................................. 37
      6. Geography of the Persian Gulf ............................... 37
      7. Vital Shipping Chokepoints .................................. 38
   Part B — The Course of the War and Others’ Responses ........ 39
      1. 1980: Opening Moves; First Efforts at Ending the War .... 40
      2. 1981: Efforts at Settlement; the Gulf States Organize
         the GCC ..................................................... 44
      3. 1982: More Efforts at Peacemaking; Iraq’s Maritime
         Exclusion Zone ............................................... 47
      4. 1983: Assault on the Environment; The UN Supports
         Freedom of Navigation ....................................... 48
      5. 1984: Attacks on Tankers and Other Shipping;
         Responses .................................................. 50
      6. 1985: War of the Cities Renewed; The Tanker War
         Continues; Heightened Responses ............................ 55
<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>7. 1986: Boarding of Merchant Ships; Attacks on Shipping and Port Facilities</td>
</tr>
<tr>
<td>59</td>
<td>8. 1987: Escalating US Involvement; Reflagging and Convoys; Attack on U.S.S. Stark</td>
</tr>
<tr>
<td>67</td>
<td>9. 1988: End Game: Intensity of Responses; Collapse and Ceasefire</td>
</tr>
<tr>
<td>73</td>
<td>Part C — Conclusions</td>
</tr>
<tr>
<td>74</td>
<td>1. The Tanker War</td>
</tr>
<tr>
<td>76</td>
<td>2. The Marine Environment</td>
</tr>
<tr>
<td>77</td>
<td>3. The Role of the United States and the Soviet Union</td>
</tr>
<tr>
<td>78</td>
<td>4. The Role of International Organizations</td>
</tr>
<tr>
<td>78</td>
<td>5. The Ensuing Chapters</td>
</tr>
<tr>
<td>107</td>
<td>CHAPTER III — CLAIMS TO MINIMUM WORLD PUBLIC ORDER ON THE OCEANS</td>
</tr>
<tr>
<td>108</td>
<td>Part A — UN Charter Norms; Related Issues</td>
</tr>
<tr>
<td>108</td>
<td>1. Norms Stated in the Charter</td>
</tr>
<tr>
<td>108</td>
<td>a. The Preamble, Purposes and Principles of the Charter</td>
</tr>
<tr>
<td>120</td>
<td>b. The Inherent Right of Self-Defense Under Article 51; Other Concepts</td>
</tr>
<tr>
<td>161</td>
<td>2. Related Issues</td>
</tr>
<tr>
<td>161</td>
<td>a. State of Necessity and Self-Preservation in the Charter Era</td>
</tr>
<tr>
<td>163</td>
<td>b. Retorsion</td>
</tr>
<tr>
<td>163</td>
<td>Part B — UN Mechanisms for Breaches of the Peace, Threats to the Peace, and Aggression</td>
</tr>
<tr>
<td>164</td>
<td>a. The Korean War</td>
</tr>
<tr>
<td>164</td>
<td>b. Arab-Israeli Conflicts</td>
</tr>
<tr>
<td>167</td>
<td>c. Rhodesia: 1965-79</td>
</tr>
<tr>
<td>170</td>
<td>d. India-Pakistan: 1965, 1971</td>
</tr>
<tr>
<td>170</td>
<td>e. Falklands/Malvinas: 1982</td>
</tr>
<tr>
<td>170</td>
<td>f. The Iran-Iraq Conflict and the Tanker War, 1980-88</td>
</tr>
<tr>
<td>173</td>
<td>g. Appraisal of Security Council Lawmaking</td>
</tr>
<tr>
<td>175</td>
<td>2. Making the Rules and Stating the Principles: The General Assembly</td>
</tr>
<tr>
<td>175</td>
<td>a. The UFP Resolution</td>
</tr>
<tr>
<td>177</td>
<td>b. Concurrent Action with the Council</td>
</tr>
<tr>
<td>178</td>
<td>c. Appraisal for the Tanker War</td>
</tr>
</tbody>
</table>
3. The Constitutive Process of Decisionmaking in the Charter Era ................................................. 178
   a. Implementation: Original Intent and Trends ................................................................. 178
   b. Regional Arrangements Under the Charter ................................................................. 179
   c. The Work of Nongovernmental Organizations and the Tanker War ............................. 180
Part C — Maritime Neutrality in the Charter Era ................................................................. 180
   1. Neutrality, 1928-41, and in the Charter Era; “Non-Belligerency” ............................... 181
   2. The Law of Neutrality in the Context of UN Action Under the Charter ............................. 186
   3. Appraisal of Neutrality in the Charter Era ........................................................................ 189
Part D — Sources of the Law, Principles of the Law of Treaties and Treaty Succession ......... 189
   1. Principles of the Law of Treaties and Treaty Succession ............................................... 190
   2. War and Termination or Suspension of Treaty Obligations ............................................. 190
   3. The LOS Conventions and the Law of Armed Conflict: “Other Rules” Clauses ............... 191
Part E — Conclusions .................................................................................................................. 192

CHAPTER IV — CLAIMS RELATED TO THE LAW OF THE SEA (LOS) ................................................. 241
Part A — The Charter, the LOS and the Law of Armed Conflict (LOAC) .................................. 241
   1. The LOS and the LOAC ...................................................................................................... 242
   2. Relationship of the 1982 LOS Convention and Other LOS-Related Treaties ..................... 244
   3. The 1982 LOS Convention and the Tanker War ............................................................. 245
Part B — Claims to Oceans Use .................................................................................................. 245
   1. Trends in Claims to Ocean Usages on the High Seas ....................................................... 246
   2. Trends in Claims of Restrictions on High Seas Rights: From Fisheries to the EEZ .......... 247
      a. From Fishery Claims to Sovereignty Claims to the EEZ Concept .................................. 247
      b. Conclusions .................................................................................................................. 252
      c. High Seas Fisheries, EEZs, Pipelines, Freedoms of Navigation and Overflight, and the Tanker War .............................................................. 252
   3. The Regime of the Continental Shelf in the Persian Gulf .................................................. 254
      a. Developments Since World War II .................................................................................. 255
### Table of Contents

**Part A - Access to the High Seas**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. Conclusions</td>
<td>258</td>
</tr>
<tr>
<td>c. The Continental Shelf in the Persian Gulf and the Tanker War</td>
<td>259</td>
</tr>
</tbody>
</table>

**Section 4 - The Territorial Sea and the Contiguous Zone**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Analysis: From a Three-Mile Rule to a Twelve-Mile Norm Under the 1982 LOS Convention</td>
<td>260</td>
</tr>
<tr>
<td>b. Conclusions</td>
<td>268</td>
</tr>
<tr>
<td>c. The Territorial Sea, the Contiguous Zone and the Tanker War</td>
<td>268</td>
</tr>
</tbody>
</table>

**Section 5 - Access to Ports, Roadsteads and Internal Waters**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Analysis</td>
<td>269</td>
</tr>
<tr>
<td>b. Conclusions</td>
<td>277</td>
</tr>
<tr>
<td>c. The Tanker War and Access to and from Inland Waters and Ports</td>
<td>278</td>
</tr>
</tbody>
</table>

**Section 6 - Passage Through International Straits: The Strait of Hormuz**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Straits Connecting High Seas or EEZ Areas</td>
<td>279</td>
</tr>
<tr>
<td>b. Passage Through the Strait of Hormuz</td>
<td>281</td>
</tr>
<tr>
<td>c. Conclusions</td>
<td>284</td>
</tr>
</tbody>
</table>

**Part C - Nationality of Ships, Cargo and Other Interests**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Defining “Ships”</td>
<td>285</td>
</tr>
<tr>
<td>2. Ownership in Merchant Ships and Cargoes; Crews; Insurance</td>
<td>286</td>
</tr>
<tr>
<td>3. Nationality of Merchant Vessels</td>
<td>291</td>
</tr>
<tr>
<td>4. Warships; Other Public Vessels</td>
<td>295</td>
</tr>
<tr>
<td>5. Ocean Transit in Company; Warship Formation Steaming; Convoys</td>
<td>297</td>
</tr>
<tr>
<td>6. The Tanker War: Analysis</td>
<td>298</td>
</tr>
</tbody>
</table>

**Part D - General Conclusions and Appraisal for the Law of the Sea**

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. High Seas Freedoms: Navigation and Overflight</td>
<td>302</td>
</tr>
<tr>
<td>2. EEZs, Fishing and the Continental Shelf in the Persian Gulf</td>
<td>302</td>
</tr>
<tr>
<td>3. The Territorial Sea and Contiguous Zone in the Persian Gulf; Entry into Neutral Ports</td>
<td>303</td>
</tr>
<tr>
<td>4. Passage Through the Strait of Hormuz</td>
<td>303</td>
</tr>
<tr>
<td>5. Merchantmen and Warships: Reflagging and Other Issues</td>
<td>304</td>
</tr>
<tr>
<td>6. Final Thoughts</td>
<td>305</td>
</tr>
</tbody>
</table>
CHAPTER V — THE TANKER WAR AND THE LAW OF ARMED CONFLICT (LOAC) ........................................ 349
Part A — Basic Principles: Necessity and Proportionality; ROE; the Spatial Dimension ............ 350
  1. Necessity and Proportionality in Self-Defense and in the Conflict Context .............. 352
  2. The Temporal Factor: When Does Liability Accrue? ........................................ 354
  3. Rules of Engagement (ROE) ................................................................................. 354
  4. The Spatial Dimension ....................................................................................... 355
Part B — Visit and Search; Capture, Destruction or Diversion ........................................... 357
  1. Visit and Search Pursuant to the Law of Naval Warfare .................................... 357
  2. Visit and Search: Tanker War Issues .................................................................. 362
  3. Projections for the Future .................................................................................... 364
Part C — Belligerents' Seaborne Commerce; Belligerents' Convoys .................................. 365
  1. The Law of Naval Warfare and Belligerents' Seaborne Commerce ......................... 365
  2. Acquiring Enemy Character ............................................................................... 377
  3. Convoying by Belligerents .................................................................................. 377
  4. Principles of Contraband ...................................................................................... 377
  5. The Tanker War ................................................................................................... 377
Part D — Neutral Flag Merchantmen: Enemy Character; Reflagging; Contraband .............. 380
  1. Vessels and Aircraft that Have or Acquire Enemy Character ............................... 380
  2. The Effect of Reflagging ....................................................................................... 382
  3. Contraband Issues ............................................................................................... 382
  4. The Tanker War .................................................................................................... 387
Part E — The Law of Blockade and the Tanker War ......................................................... 389
  1. The UN Charter and the Law of Blockade .......................................................... 389
  2. Blockade Under the Law of Naval Warfare ....................................................... 389
  3. The Tanker War and the Law of Blockade ......................................................... 392
Part F — Zones: Excluding Shipping, Aircraft from Area of Belligerents' Naval Operations; High Seas Self-Defense Zones; War Zones; Air Defense Identification Zones; Ocean Zones Created for Humanitarian Law Purposes ........ 394
1. Excluding Shipping and Aircraft from Immediate Areas of Belligerents' Naval Operations; High Seas Self-Defense Zones (SDZs) .......... 395
   a. Excluding Shipping and Aircraft from Immediate Areas of Belligerents' Naval Operations .......... 395
   b. High Seas Self-Defense Zones (SDZs) .......... 398
   c. Other Self-Defense and UN Charter Issues for SDZs .......... 400
2. War Zones .......................................... 403
3. Air Defense Identification Zones (ADIZs) .......... 410
4. Ocean Zones Created for Humanitarian Law Purposes .......... 412
5. The Tanker War ...................................... 413

Part G — Weapons and Weapons Use; Mine Warfare. ................................................................. 416
2. Mine Warfare ........................................... 418
3. Mine Warfare Principles and the Tanker War .......... 419

Part H — Other Humanitarian Law Issues. ................................................................. 421
1. Merchant Ship Crews Trapped in the Shatt al-Arab at the Beginning of the War .......... 421
2. Rescue of Those in Peril on the Sea .......... 422
3. Neutrals' Repatriation of Belligerent Armed Forces Members .......... 423

Part I — Deception During Armed Conflict at Sea: Ruses and Perfidy ................................................................. 424
1. Legitimate Ruses of War and Actions Constituting Perfidy .......... 424
2. Ruses and Perfidy During the Tanker War .......... 427

Part J — General Conclusions and Appraisal; Projections for the Future ................................................................. 429
1. Basic Principles: Necessity and Proportionality; ROE; the Spatial Dimension .......... 429
2. Visit and Search; Capture, Destruction or Diversion .......... 430
3. Belligerents' Seaborne Commerce; Belligerents' Convoys .......... 431
4. Neutral Flag Merchantmen; Enemy Character; Reflagging; Contraband .......... 432
5. The Law of Blockade and the Tanker War .......... 432
6. Zones ....................................................... 433
7. Weapons and Weapons Use; Mine Warfare .......... 434
8. Other Humanitarian Law Issues .......... 434
9. Deception During Armed Conflict at Sea: Ruses and Perfidy .......... 435
CHAPTER VI — THE TANKER WAR AND THE MARITIME ENVIRONMENT

Part A — Not a New Phenomenon


1. The UN Charter and the Environment

2. The 1982 LOS Convention and Environmental Protection
   a. The Relationship Between the 1982 LOS Convention and Other Environmental Treaties
   b. “Other Rules” Clauses in the Conventions
   c. The LOS Convention and Provisions Governing the Maritime Environment
   d. General Conclusions on the Law of the Sea, the Law of the Marine Environment, and the Law of Naval Warfare

3. Environmental Standards During Armed Conflict at Sea
   a. The Law of Naval Warfare as Part of the LOAC; Protection of the Environment
   b. Final Thoughts
   c. The San Remo Manual; Other Analyses of the Place of the Environment During War
   d. The ICRC Guidelines for Military Manuals
   e. NWP 1-14M and Environmental Protection During Armed Conflict

4. The Tanker War; Proposed Resolution of Issues Raised by the San Remo Manual, the ICRC Guidelines and NWP 1-14M
   a. The Specifics of the Proposed Analysis
   b. Method of Analysis
   c. The Content of Due Regard; Factors to be Considered
   d. Testing the Proposed Analysis
   e. Conclusions

Part C — General Conclusions and Projections for the Future

1. The Proliferation of Players

2. The Right to a Clean Environment as a Human Right

3. The Carryover of Land Warfare Concepts, Particularly from Protocol I
4. A New Treaty to Protect the Environment During Armed Conflict? ....................... 559
5. Final Thoughts ................................................................. 559

CHAPTER VII — GENERAL CONCLUSIONS AND APPRAISAL:

POLICY AND LAW ................................................................. 605
Part A — Self-Defense, Charter Law and Neutrality Issues. ............. 606
Part B — The Law of the Sea and the Tanker War ......................... 609
Part C — The Tanker War and the Law of Armed Conflict ............... 610
  1. Basic Principles: Necessity and Proportionality; ROE; the Spatial Dimension ... 610
  2. Visit and Search; Capture, Destruction or Diversion ................. 612
  3. Belligerents' Seaborne Commerce; Belligerents' Convoys .......... 613
  4. Neutral Flag Merchantmen: Enemy Character; Reflagging; Contraband. 613
  5. The Law of Blockade and the Tanker War ............................ 614
  6. Zones: Excluding Shipping, Aircraft from Area of Belligerents' Naval Operations; High Seas Defense Zones; War Zones; Air Defense Identification Zones; Ocean Zones Created for Humanitarian Law Purposes ................. 615
  7. Weapons and Weapons Use: Mine Warfare ............................ 616
  8. Other Humanitarian Law Issues ........................................ 617
  9. Deception During Armed Conflict at Sea: Ruses and Perfidy ........ 618
Part D — The Tanker War and the Law of the Maritime Environment ........................................ 618
Part E — Projections for the Future ........................................ 620
  1. Geopolitical and Other Trends Emerging During the Tanker War ...................... 620
  2. Developments in the Law: Trends for the Future ........................ 623
  3. Final Thoughts ................................................................. 625

INDEX .................................................................................... 629