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Chapter 22

International Law and the Use of Force in Peacetime: Do U.S. Ships Have to Take the First Hit?*

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Because one missile may sink a ship, naval officers often ask:

I know I can use force in self-defense if my ship is actually attacked. *But do I have to take the first hit?*

This paper discusses how international law, Navy Regulations and naval rules of engagement (ROE) answer this question for the on-scene commander. It also deals with the more general question sometimes asked by the President and other national command authorities: Are there circumstances when the United States may use force first?

In general, international law, Navy Regulations and ROE permit the use of force in peacetime only in self-defense. Their policy is to restrain aggression, to prevent the outbreak of hostilities, and to limit escalation if shooting starts. There are, however, a few circumstances where shooting first is permitted.

First, Navy Regulations and typical peacetime ROE authorize an on-scene commander to shoot first when necessary for *anticipatory* self-defense of forces under his command—for example, to shoot a kamikaze aircraft diving on a ship in time to ward off the blow. This is called *unit* self-defense.

Second, shooting first may be specifically authorized by higher command in a few other cases, including:

- when necessary for anticipatory self-defense of *other* U.S. forces, citizens or territory ("national" self-defense);
- when authorized by the United Nations or a regional collective security agency to deal with a threat to the peace;
- to protect Americans in danger in foreign territory because, for example, of an internal insurgency or civil war; or
- at the request of an established government to help put down an insurgency within its territory.

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Third, force may of course be used first when necessary for *law enforcement* in internal and territorial waters and occasionally in international waters.

The Law of Self-Defense

The law of self-defense is like the rule parents use to restrain violence between their kids. What parent has not asked, "Who started it?" when confronted with a fight. Kids learn early that they need especially good justification for hitting first.

In our own national practice of international law, we need to go back only 150 years for a classic statement of the law of self-defense. During an 1837 rebellion against British rule in Canada, the insurgents secured recruits, weapons and supplies from across the border in New York and used an island on the American side to train recruits. As a result, an armed band working for the British crossed the border from Canada to attack a small steamer, the *Caroline*, used by the insurgents to transport recruits, weapons and supplies to Canada. The attacking party killed several Americans, set fire to the *Caroline* and sent her over Niagara Falls.

The British claimed "self-defense" as a justification for using force on American soil. Secretary of State Daniel Webster admitted that self-defense could sometimes justify an attack across a border, but insisted that the United States Government itself had remained neutral even if American soil was used to aid the insurgents. He concluded that there was no necessity for self-defense in this case. Webster's description of the law of self-defense has become a classic:

> The only exception to the "inviolable character of the territory of independent states" is self-defense, and that should be confined to cases in which the "necessity of that self-defense is instant, overwhelming and leaving no choice of means and no moment for deliberation." An attack on another state's territory "justified by the necessity of self-defense must be limited by that necessity and kept clearly within it."[1]

The British did not disagree with this statement of the rule and finally offered an apology, while insisting that their intervention was within the rule. Webster did not require more.

By 1946, Webster's statement had become so widely accepted that the Nuremberg War Crimes Tribunal said it reflected general international law. In rejecting a plea of self-defense by German leaders to a charge involving first use of force, the Tribunal adopted Webster's words in the *Caroline* case as its own. Relying also on a 1928 treaty which renounced recourse to war as an instrument of foreign policy, the Tribunal convicted Germans of the war crime of initiating aggression for invading Norway. The Germans had attempted to justify their

invasion as self-defense against an anticipated British attack using Norway as a base.[2]

Today, the U.N. Charter repeats both Webster's concern for the "inviolable character of the territory of independent states" and his acceptance of a right of self-defense. The Charter calls on all members to settle their disputes by peaceful means and enjoins them from using "force against the territorial integrity or political independence of any state." But it recognizes "the inherent right of individual or collective self-defense if an armed attack occurs. . . ."[3]

U.S. alliances, reflecting this language, typically state that an "armed attack" against one ally will be considered an attack against all—justifying *collective* self-defense. The North Atlantic Treaty so provides. In the Americas, the Rio Treaty of alliance contains similar language. And the parallel charter of the Organization of American States contains a rule like that of the United Nations against intervention "in the internal or external affairs of any state."[4]

How does this body of law work in practice? The military enforcement machinery contemplated by the U.N. Charter to enforce its rule against shooting first was never created. Agreements allocating armed forces permanently to the U.N. Security Council could not be negotiated, and the veto has been exercised repeatedly, first by the Soviet Union and increasingly by the United States. The Security Council does not provide reliable central authority to enforce the rule against first use of force. Does this mean the rule has no value?

A system with central law-giving and law-enforcing authority may produce better compliance with rules than does a decentralized system of sovereign States. But even with enforcement authority, domestic laws against murder or assault are often violated, as are family rules against hitting first. Yet we keep them "on the books."

So it is with the rules against first use of force. There have been many uses of force which seem unjustifiable as self-defense in the 40 years since the U.N. Charter was adopted. But despite this and the lack of reliable central enforcement authority in the U.N. Security Council, States have not repealed the rule against first use of force. And they usually attempt to justify their uses of force by claiming self-defense.

Let us look at a recent application of the rule—the Argentine invasion of the Falkland-Malvinas Islands in 1982. Argentina was not deterred from invading the Falklands by the U.N. Charter's rule against first use of force. It claimed the islands as its own: How, it argued, could protecting its territory from British occupation be illegal (even if the British had settled and occupied most of the Falklands for over a century)?

The rule against first use of force did assist the British in justifying their response in self-defense. Aware, of course, that no U.N. peace force would come to British aid, Prime Minister Thatcher said that Britain had "a duty to the whole world to show that aggression will not succeed,"[5] a duty to exercise self-defense to

enforce the rule against first use of force. This justification mobilized both domestic and allied public opinion to her cause. Indeed, Secretary of State Haig's memoirs show that enforcing the rule against first use was important in gaining American support for Britain rather than for our other ally, Argentina.[6] In the end, the rule gave moral strength and allied assistance to the British and it helped isolate the Argentines, even from some of their most important Latin American allies. Indeed, the U.N. Security Council called upon Argentina to withdraw with only Panama voting no, though the Security Council offered no force to help the British.[7]

The Intervention Exceptions to the General Rule Against Shooting First

The Falklands case was a clear-cut armed invasion, as was Grenada in 1983. In both cases, the invader was condemned at first by most of the other States of the world. In the Grenada case, the United States justified its invasion on three grounds: the intervention was requested by the Governor General of Grenada to put down an insurgency; the intervention was undertaken to protect American medical students in danger because of the insurgency; and the intervention was authorized by a regional collective security organization, "standing in the shoes" of the U.N. Security Council. I will discuss each of these justifications.

Intervention of the Request of the Sovereign Government. The Governor General of Grenada had asked for assistance from outside in defending the island's government from a military coup which had resulted in the murder of the Prime Minister and some of his cabinet. The U.N. Charter, of course, permits collective self-defense against an armed attack from the outside.[8] Many nations justify assistance to an established government against a domestic insurgency on similar grounds, especially if the insurgency is assisted from the outside.[9] But the Governor General had been captured by the insurgents. Moreover, the United States could not make his request public while he was in captivity for fear of endangering his life.[10] As a result, this justification was not described in initial press accounts.

Intervention to Protect Nationals. The second justification was that the American medical students on the island were in danger following the coup, and there seemed to be no established government to protect them. Protecting a State's nationals *abroad* as well as *at home* can be a part of self-defense. Many States recognize a right of intervention when: there is an imminent threat of danger to nationals of the intervenor; the government of the State intervened is unable or unwilling to protect them; and the intervention is confined to providing for their protection.[11]

Intervention Authorized by a Regional Collective Security Agency "Standing in the Shoes" of the Security Council. The third justification was that the Organization of Eastern Caribbean States had authorized a multilateral peace force to take over Grenada long enough to bring back peace and order. Under the U.N. Charter, the Security Council has authority to use peace forces which nations put at its disposal to deal with threats to the peace and acts of aggression.[12] Without a large permanent peace force and with repeated exercise of the veto, the Security Council has usually been unable to perform such a function.

Under the U.N. Charter, regional collective security organizations may deal with threats to the peace if authorized to do so by the Security Council.[13] In several cases, regional organizations have taken collective action without prior Security Council authorization but then reported their action to the Security Council.[14] This is what happened in Grenada. But the Security Council would have condemned the action as an invasion in violation of international law if the United States had not exercised its veto. The General Assembly did vote overwhelmingly for such a condemnation, with almost all of our allies deserting us in the final vote.[15]

One lesson of the Falklands and Grenada cases is certainly that a clear-cut first use of force to cross boundaries is difficult to justify to the world, but self-defense against such an invasion is not. If the general rule against first use of force has no other meaning, it means this much. That is one reason why general peacetime rules of engagement typically provide no authority for an on-scene commander to use force first except for an imminent threat of armed attack on his command, such as a kamikaze aircraft diving on his ship. First uses of force based on other grounds must ordinarily be authorized by the national command authorities so that the responsibility will rest ultimately where it belongs, on the President.

The Anticipatory Self-Defense Exception to the General Rule Against Shooting First

Many States contend that self-defense is only permitted against and *actual* "armed attack" under the U.N. Charter language quoted above. But U.S. practice has long recognized an inherent right "to counter either the use of force or an immediate threat of the use of force," to quote a Navy regulation.[16] Typical naval rules of engagement for an on-scene commander are likely to provide something like this: "The right to exercise self-defense is based on 'necessity' and 'proportionality.' The requirement of 'necessity,' or *present* danger, arises when an armed attack occurs. The requirement may also be satisfied when there is *a threat of imminent attack*, in order to prevent that attack or reduce its impact. In either case, 'proportionally' requires that the use of force be limited in intensity, duration and magnitude to what is reasonably necessary to counter the attack or threat of attack."[17]

This language is but an elaboration of Daniel Webster's rule of self-defense in the *Caroline* Case. He probably contemplated anticipatory self-defense when the imminence and magnitude of the threat were great enough. The British justification for attacking the *Caroline* was that she would be used in the future to support the insurgency.

Threats move faster and can result in more violence than in Webster's day. When confronted with a truck bomber driving full speed towards a Marine barracks, or a kamikaze aircraft diving on a ship, most people would agree that force can be used first to ward off the blow. The situation is not different from the domestic legal defense against a charge of murder for shooting a man about to shoot you. If you can convince the prosecutor or jury that those were the facts, you will be exonerated.

When is an armed attack sufficiently imminent to justify anticipatory self-defense?

- The official justification given by the United States for its forceful quarantine of Cuba in 1962 to persuade the Soviet Union not to bring more ballistic missiles to Cuba (and to remove those already there) did not rely expressly on self-defense.[18] The use of those missiles to attack the United States was not yet immediately threatened. If a State was justified in using force first—preemptively—against its neighbor whenever that neighbor acquired threatening new weapons, there might be little left of the rule against first use.
- In the 1981 Gulf of Sidra incident, U.S. pilots were authorized to shoot two Libyan aircraft after the Libyans had shot first, missed and turned away.[19] The Libyan aircraft represented a continuing present danger. They had shown their hostility clearly and could have turned around at any moment.
- Are there circumstances *before* an opponent's first shot when the threat is sufficiently imminent to justify self-defense? What if the Cuban missiles were known to have nuclear warheads and an attack on the United States appeared imminent? I have already referred to the truck bomber and the kamikaze pilot where the attack had been initiated but had not yet struck.

Until the Israeli destroyer *Eilat* was destroyed by Styx missiles from an Egyptian patrol boat in 1967, naval commanders usually assumed that they could "take the first hit" and still have time to defend themselves effectively. In ROE lingo, having to take the first hit means that potential enemy forces cannot be declared "hostile" even in times of high tension unless they have been guilty of a "hostile act" (e.g., shooting first). As D.P. O'Connell, an authority on the influence of law on navies, put it: "Following that event [the *Eilat* sinking] naval speculation experimented with clarifying the ambiguous borderland between 'hostile intent' and 'hostile act,' so as to encompass the possibility of *anticipating immediate attack* so that tactical advantage would not pass irrevocably to the potential assailant. This has usually [included] . . . combinations of such matters as the unhousing of a missile or the locking on of a fire-control radar in firing positions."[20]

O'Connell described several circumstances in which political intelligence and technical sensors give the commander sufficient information to make a determination of "hostile intent" (i.e., imminent threat of armed attack). Peacetime ROE tell the commander what to do in such a circumstance to avoid "taking the first hit." In the case of a possible missile attack by a ship or aircraft identified as a potential adversary by intelligence and local observation, the ROE might authorize a "hostile" designation in the judgment of the on-scene commander "when the potential attacker's radar guidance system has 'locked on' to target, supposing that the missile is 'beam-riding.' It has been argued that this is the moment of 'armed attack' and the moment when measures of force in self-defense may be undertaken."[21] Based on this argument, ROE may provide detailed criteria for an on-scene commander's decision whether an attack on his unit is so imminent as to justify shooting first in self-defense.

The Law Enforcement Exception to the Rule Against Shooting First

Navies and coast guards around the world may use force first if necessary for law enforcement in waters and for crimes over which they have enforcement jurisdiction. The U.S. Navy is limited by domestic regulations from stopping vessels and aircraft for law enforcement purposes.[22] That function is ordinarily performed by the Coast Guard or other civilian agencies. But when the primary purpose of the enforcement actions is a military or foreign affairs function, or when civilian agencies do not have ships or aircraft available to perform the function, naval commanders may receive orders to do so.[23]

A coastal nation in its own internal and territorial waters has sovereign authority to enforce its own laws against ships of other nations, though there are exceptions for certain crimes committed on board ships in transit or even in port.[24] In "international" waters, that is, beyond its territorial seas (which may now extend 12 miles from its coast), a nation may enforce its laws against ships flying its flag.[25] Moreover, against foreign flag ships, it may enforce customs, fiscal, immigration, sanitary and resource-protection laws out as far as 24 miles from its coast: if it has claimed a 12-mile territorial sea, it may claim 12 more miles as a contiguous zone in which it may enforce laws on these subjects.[26] Resource-protection jurisdiction may continue even further to 200 miles from its coast if it claims an exclusive economic zone of that width.[27] Resources include, of course, fish and minerals. In these two zones (contiguous and economic) and on the high seas beyond (all referred to as "international" waters here), a coastal nation may also engage in "hot pursuit" to arrest vessels which have violated certain of its laws while they were in its internal or territorial waters, or sometimes even in the contiguous or economic zones.[28]

Thus, the general rule permitting only a ship's *flag State* to use force in order to stop the ship in international waters has exceptions for a few crimes of particular concern to a coastal nation. In the case of offenses committed aboard civil aircraft, the general rule is also that only the flag State, the nation of registry, has jurisdiction to force the aircraft down over international water in order to arrest and prosecute. Another State "may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction." There are, however, exceptions including when the offense was committed "by or against" a national of the arresting State.[29]

For both ships and aircraft, there are thus important exceptions to the general rule that only the flag State may use force to arrest when in international waters or airspace. Moreover, for at least one offense, treaties permit any State which is a party to stop ships or aircraft on or over international waters even though they do not fly its flag. The 1982 U.N. Convention on the Law of the Sea permits "every State" to seize a pirate ship or aircraft on or above international waters even if it is flying the flag of another nation.[30]

The international law dealing with terrorism may be moving in this direction. There are now treaties against aircraft hijacking and sabotage, and against hostage-taking whether on aircraft or elsewhere.[31] Each of these treaties expands criminal jurisdiction over the offenders to party nations *beyond* the nation having sovereignty over the aircraft, ship or territory where the offense occurred. For example, in addition to this State, these treaties give jurisdiction to any party where the aircraft later lands with offenders on board or where an offender is later found. In the case of the hostage-taking treaty, the nation-party of which the offenders are nationals and any other party of which the hostages are nationals may also exercise jurisdiction.[32]

Each of these treaties requires States which are within one of these interested classes "to take such measures as may be necessary" to arrest and prosecute offenders. Each of them establishes a basic obligation on a nation which is party and which gets its hands on an alleged offender: either turn him over to your own prosecutors or to those of another nation-party classed as interested by the treaty, for example, one whose nationals had been held hostage.

This does not establish universal jurisdiction over terrorists but its purpose is to deny them sanctuary anywhere. Nor does it clearly authorize using force to arrest ships in international water or to bring down aircraft in international airspace in order to arrest terrorists. But the new treaties impose obligations on many States to take various measures to arrest hijackers, saboteurs and hostage-takers, and to turn them over to their own prosecutors or to those of another party within an interested class.

How do these rules fit the measures taken by Egypt, Italy and the United States to deal with hijackers in the recent *Achille Lauro* case? Taking control of the *Achille Lauro* by force and holding its passengers as hostages clearly constituted

"hostage-taking" if not piracy. Hostage-taking includes seizing, detaining or threatening to kill other persons (hostages) in order to compel a third person to do something as a condition for release of the hostages.[33] Under the hostage-taking treaty, the United States was authorized to take necessary measures to arrest the hijackers because Americans were hostages. Italy, though not yet a party to the treaty, could have stopped the ship in international waters to arrest the hijackers for violating Italian law because the ship flew the Italian flag.

When the hijackers gave themselves up to Egypt, that country had an obligation under the hostage-taking treaty (to which it is a party) to turn them over to its own prosecutors or to extradite them to one of the other States in the interested classes (including the United States and all the other parties whose nationals were taken hostage or whose nationals were among the hijackers). Instead of doing so, Egypt planned to turn them over to the Palestinian Liberation Organization, ostensibly for prosecution. When the Egyptian airliner, under police or military control, in which the hijackers were aboard was intercepted by American naval aircraft over international waters, it had been denied landing permission in both Tunisia and Syria where different PLO factions had headquarters. The U.S. aircraft then forced it to land in Italy.

Forcing the aircraft down to assert criminal jurisdiction would have fit an exception to the general rule limiting jurisdiction in international waters to the flag State if the hijacking had occurred on a civil airliner rather than on the *Achille Lauro* because, among other reasons, Americans were among the hostages.[34] In actuality, the hostage-taking occurred earlier aboard ship, and the offenders were under Egyptian police or military control on the aircraft. But since Egypt had failed to exercise its responsibility to prosecute or extradite under the hostage-taking treaty, forcing the plane down was important for the United States to carry out its obligations to "take necessary measures" to assure prosecution under that treaty. Did this justify the United States taking the law into its own hands—violating its cherished notions of freedom of navigation and overflight in international waters? I believe it did, to fulfill the international duty which Egypt had but failed to perform.[35]

Customary international law is made by the action and reaction or acquiescence of States. A new rule may be in the making permitting seizure of terrorists by those States within the interested classes specified in the treaties when another party with an obligation to do so refuses.

Conclusion

The policy of international law, ROE and Navy Regulations is to discourage on-scene commanders from starting wars which nobody wants—from shooting first in peacetime—unless the survival of their ships or aircraft depends upon it. According to O'Connell, the basic assumption is that naval force, when used,

"will be progressively applied to achieve or defeat political goals without resulting in hostilities; that if hostilities do occur they can be brought to a successful termination without progression to another mode of warfare or to other areas of conflict. Intrinsic to this assumption is the requirement, to put it simply, that the other side fires first, for then the use of force can be presented as self-defense . . . . The rules of the game . . . require that the burden [of shooting first] be shifted, if possible, to the other side in the event of a confrontation of warships, or at least that the opening of fire be necessary to enforce the law. . . ."[36]

But modern technology can make taking the first hit lethal. Yet the rule against shooting first remains on the books. And U.S. experience with the exceptions to the rule should convince any reader that a successful political justification for using force is extraordinarily difficult except when based upon self-defense or law enforcement, as O'Connell says. It is therefore not surprising that the only justification for shooting first given the on-scene commander by typical peacetime general ROE is anticipatory self-defense of his unit.

Modern technology assists him in determining the imminence of an attack on his unit—just as it makes his adversary's weapons come further, faster, more accurately and more destructively, toward him. In the end, the high standard given by Daniel Webster is useful to have in mind even if it must be interpreted in light of modern technology: Anticipatory self-defense should be confined to cases in which the necessity is "instant, overwhelming and leaving no choice of means and no moment for deliberation."

This raises a difficult question with which I will conclude this paper: Should the United States avoid shooting first (with the exceptions of self-defense and law enforcement) whether or not the Soviet Union and other hostile States regularly do so? My answer is yes, for the following reasons:

- The rule against first use of force is based on long-held Western values and diplomatic goals. When our allies perceive us as departing from the rule, we are likely to lose their support, at least temporarily—as we did in Grenada. In the long run, we may consider the strength of our alliances to be more important to our security than exercising the freedom to flout the rule.
- A long-term U.S. diplomatic goal is, to quote Woodrow Wilson, "to make the world safe for democracy."[37] Democracies cannot flourish as well in a lawless, "might-makes-right" world. To sustain support for our leadership in the direction of a world which respects the rule of law, we need to comply ourselves.
- The rule against first use of force probably still has some deterrent effect, though that is difficult to prove. States never say: "But for the rule we would have committed aggression." Because we hear about interventions in violation of the rule, we tend to conclude it no longer deters aggression. Even if the rule lacks deterrent effect, however, it clearly helps justify mobilization at home and assistance from aboard when using force in self-defense against a clear armed attack—as the British found in the Falklands conflict.

• It is hard to conceive a scenario in which the rule would prevent us from protecting our vital interests. It is not inflexible, as the creativity of American precedents suggests.

• The rule's opposition to aggression means that it generally favors the status quo. We have become a status quo power. We usually support the existing territorial and political integrity of nation States. We usually urge the peaceful settlement of disputes. In these respects, the rule serves our foreign policy goals more often, probably, than those of the Soviet Union.

• Since World War II, the rule has been part of a broader effort to prevent hostilities of a sort which might escalate to a third world war and a nuclear exchange. That effort continues to be essential.

Professor Bunn was serving as the Stockton Chairholder at the Naval War College when this article was first published.

Notes

1. MOORE, 2 A DIGEST OF INTERNATIONAL LAW 409-412 (1906); HERTSLET, 29 BRITISH AND FOREIGN STATE PAPERS 1129, 1137-1138 (1857); and *Id.*, 30 at 193-194, 201 (1858).

2. 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL: PROCEEDINGS, 27 AUGUST-1 OCTOBER 1946 411, 427-428, 446-450, 460-461, 463 (1948).

3. U.N. Charter, Arts. 2(4) and 51.

4. Inter-American Treaty of Reciprocal Assistance (Rio Treaty), 62 Stat. 1681; 21 U.N.T.S. 77 (1947); Charter of Organization of American States, 2 U.S.T. 2394; 119 U.N.T.S. 3 (1948).

5. Text of Falkland Speech by Prime Minister Thatcher in House of Commons, *The New York Times*, 21 May 1982, p. A10.

6. HAIG, CAVEAT 266, 268-269, 276, 291 (1984); see also Franck, *Dulce et Decorum Est: The Strategic Role of Legal Principles in the Falklands War*, Am. J. Int'l L. 109, 111-114(January 1983).

7. U.N. Security Council Resolution 502, 3 April 1982. The European Economic Community voted to impose economic and military sanctions on Argentina on 10 April 1982, The New York Times, 11 April 1982, sec. 1, at 1, 12; Franck, at 114-124.

8. U.N. Charter, Art. 51.

9. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW 242-243 (1984); Cutler, *The Right to Intervene*, 96, 100-101 Foreign Affairs (Fall 1985).

10. Letter of D.R. Robinson, The Legal Advisor to the State Department, to Chairman, Committee on Grenada, section on International Law and Practice, American Bar Association, The International Lawyer 381-387 (Spring 1984).

11. *Id.*; Waldock, *The Regulations of the Use of Force by Individual States in International Law*, Recueil de Cours, 451-467 (1952); HENKIN INTERNATIONAL LAW, CASES AND MATERIALS 922-924 (1980).

12. U.N. Charter, Chap. VII.

13. U.N. Charter, Art. 53.

14. Whiteman, *U.S. Quarantine of Cuba in Missile Crisis of 1962*, 4 DIGEST OF INTERNATIONAL LAW 523-524 (1965); Meeker, *Defensive Quarantine and the Law*, Am. J. Int'l L. 515, 523-524 (July 1963); *OAS Intervention in Dominican Republic in 1965*, 4 I.L.M. 594 (Merillat ed. 1965); 52 U.S. Dept. of State Bulletin 862 (1986); Stevenson, *Principles of U.N.-OAS Relationship in the Dominican Republic*, 52 U.S. Dept. of State Bulletin 975-977. Compare 1968 Warsaw Pact Organization's intervention in Czechoslovakia, The New York Times, 27 September 1968. See HENKIN *supra* n. 11 at 926-929, 951-953.

15. U.N.G.A. Resolution 38/7, 2 November 1983; Richard Bernstein, *U.N. Assembly Adopts Measure 'Deeply Deploring' Invasion of Isle*, The New York Times, 3 November 1983, p. A21.

16. U.S. Navy Regulations, 1973, Art. 0915.

17. Roach, *Rules of Engagement*, Naval War College Review 46, 49-50 (January-February 1983); Naval War College, Operations Dept., "General Rules of Engagement," *Extracts from Legal Sources*, NWC-1008 (1985) p. 14-1.

18. Meeker, *supra* n. 14 at 523-524.

19. Neutze, *The Gulf of Sidra Incident: A Legal Perspective*, U.S. Nav. Inst. Proc. 26 (January 1982).
20. O'CONNELL, THE INFLUENCE OF LAW ON SEA POWER 71 (1975).
21. *Id.* at 82.
22. U.S. Dept. of Navy, SECNAVINST 5820.7A, OP-642 (Washington: 1984).
23. *Id.*, par. 9.
24. *Id.*, parts 10, 14.
25. U.N., *The Law of the Sea, Official Text of the United Nations Convention on the Law of the Sea* (hereinafter LOS Convention) (1983), Art. 92. Though the United States has not signed this treaty, it accepts the provisions cited in this article as a valid reflection of customary international law binding on the United States in its dealings with other States which comply with the freedom of navigation and overflight rules in the treaty in their dealings with us.
26. LOS Convention, Arts. 11, 55, 56.
27. LOS Convention, Arts. 56-57.
28. LOS Convention, Art. 111.
29. Convention on International Civil Aviation (Chicago, Ill.: 7 December 1944), 15 U.N.T.S. 295, Art. 12; Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, Japan: 14 September 1963), 704 U.N.T.S. 219, Art. 3-4.
30. LOS Convention, Arts. 105, 110; but compare RUBIN, 63 U.S. NAVAL WAR COLLEGE INTERNATIONAL LAW STUDIES, THE LAW OF PIRACY (1986).
31. Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), (The Hague: 16 December 1970) 22 U.S.T. 1641, Art. 4; Convention for the Suppression of Unlawful Acts Against the Safety Civil Aviation (Sabotage), (Montreal, Canada: 23 September 1971) 24 U.S.T. 564, Art. 5; International Convention Against the Taking of Hostages, (New York: 17 December 1979) TIAS 11081.
32. International Convention Against the Taking of Hostages, Art. 5.
33. *Id.*, Art. 1.
34. Treaties cited in n. 31, *supra.*
35. Murphy, *Legal Aspects of International Terrorism: Summary Report of an International Conference*, Am. S. Int'l L. 30 (1980); Sheehan, *The Entebbe Raid: The Principle of Self-Help in International Law as Justification for State Use of Armed Force*, The Fletcher Forum 135 (Spring 1977).
36. *Supra* n. 20 at 70; see also 53-55.
37. PALMER & COLTON, A HISTORY OF THE MODERN WORLD 673 (1978).