

Chapter 35

Rules of Engagement*

Captain J. Ashley Roach, JAGC, U.S. Navy

There is a very real need for greater knowledge of Rules of Engagement on the part of strategy and policy personnel, tacticians and operators, and even by our civilian leaders. At present these rules are rarely, if ever, exercised and too few planners and commanders seek contingent approval for additional or relaxed rules. Particularly telling is the fact that the requirement for an annual compiling and sending to JCS of the effective Rules of Engagement is all but ignored—and few appear to care! Why?

Definitions

Rules of engagement (ROE) are directives that a government may establish to delineate the circumstances and limitations under which its own naval, ground, and air forces will initiate and/or continue combat engagement with enemy forces.¹

Under this JCS definition, ROE should *not* delineate specific tactics, should *not* cover restrictions on specific system operations, should *not* cover safety-related restrictions, should *not* set forth service doctrine, tactics or procedures. Frequently these matters are covered in documents called ROE.² ROE should never be “rudder orders,” and certainly should never substitute for a strategy governing the use of deployed forces, in a peacetime crisis or in wartime.

Figure 1 is a Venn diagram showing two concentric circles, one wholly inside the other. The area of the larger circle encompasses all those actions permitted under the law (domestic law and the law of armed conflict). The area of the inner circle represents those fewer actions permitted by the ROE.

The law of armed conflict binds the actions of nations and their armed forces. The United States government can, by its own action, change its ROE; international law, however, can be changed only by international agreement or consistent practice of nations. The law of armed conflict and domestic law are, of course, important influences in drafting the ROE, but they are not the only influences. ROE also reflect the influence of operational, political, and diplomatic factors.

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480 Readings on International Law

Figure 2, another Venn diagram, illustrates that ROE result from a composite of these four factors. We have four circles centered on different points. They generally will be of differing diameters, since the relative influence of these four factors will vary depending on the circumstances. The common intersection of these four circles represents ROE. ROE then shape the force that may be used in order to achieve the political purpose and thus form the plane upon which Clausewitz's observation (that war is the execution of politics by other means) is brought into focus.

These Venn diagrams illustrate that ROE restrict military operations far more than do the requirements of international or domestic law. Indeed, the judge advocate in reviewing ROE under the law of war (law of armed conflict)

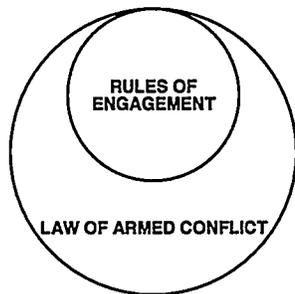


FIGURE 1.
RULES OF ENGAGEMENT
AND THE LAW OF ARMED CONFLICT

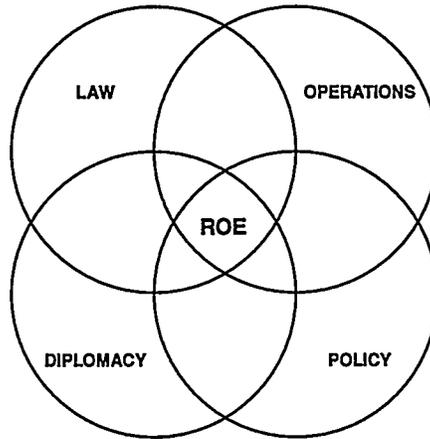


FIGURE 2.

program³ performs a valuable service when he or she recommends that the ROE not be more restrictive than the law requires unless for clearly articulated operational, political or diplomatic reasons.

Purposes of ROE

ROE represents the primary means by which the National Command Authorities (NCA) can, through the JCS, provide guidance to deployed forces in peacetime for handling crises and in wartime for controlling the fighting. ROE are one of the most effective tools for implementing strategic decisions made at

higher levels, and provide a mechanism for controlling the shift from peace to war. They can be viewed as having three, more specific, purposes.

Political Purposes

ROE represents a measure of assurance that national policy will be followed in wartime or in sudden emergencies which do not allow time for communications between Washington and the field.⁴ The rules should be flexible enough to accommodate changing circumstances. They should be designed to allow military courses of action that advance political intentions with a minimum chance for undesired escalation or reaction. It is for this reason (among others) that authority to employ certain weapons is generally reserved to the NCA (e.g., nuclear and chemical weapons, riot control agents and chemical herbicides).⁵ Peacetime rules, in particular, are intended to preserve to the NCA, and all levels of operational command, the full range of options consistent with exercise of the right of self-defense and national policy.

Military Purposes

ROE represent limitations, or upper bounds, on the freedom of an on-scene commander to dispose his forces toward successful completion of his mission. They must be designed, however, not to interfere with his right and responsibility to protect his command against attack or an imminent threat of such an attack. The ROE should be designed to remove any legal or semantic ambiguity which could lead a commander inadvertently to violate national policy by underreacting or overreacting to some foreign action.⁶

The conduct of operations in a tension situation always involves a balance of threat and counterthreat on the part of both sides. The main purpose of ROE is to prevent that balance from being disturbed by thrusting the apparent necessity of self-defense too obviously upon the opponent.

Legal Purposes

ROE represent operational guidance, including that required for self-defense, which allows the commander to do whatever is necessary to achieve his military task within the constraints of stated national policy. ROE thus are a major tool for ensuring that a commander's actions stay within the bounds of national and international law.

Peacetime and Wartime ROE Distinguished

Peacetime ROE are distinct from ROE applicable during armed conflict (WROE). Peacetime ROE generally limit military actions, including the use of force, to defensive responses to hostile acts or demonstrations of hostile intent in situations short of armed conflict. They are premised on the right of self-defense and provide rules for the exercise of that right. ROE during armed conflict do not limit military responses to defensive actions alone but do place limits, consistent with national objectives, strategy and the law of armed conflict, on the means and methods of warfare and will necessarily affect tactics. These include restrictions on certain weapons and targets, and ensure the greatest possible protection for noncombatants consistent with military necessity, proportionally and national policy. WROE are thus a useful tool to ensure that force is used toward achieving the desired military objectives and political goal.

Right of Self-Defense

As previously noted, all peacetime ROE are premised on the right of self-defense. Every commander must understand that this right of self-defense is applicable for two distinct purposes: protecting his command and protecting the nation. Most every peacetime ROE contains a warning to the effect that “nothing in these rules is intended to limit the commander’s right of self-defense.” One might wonder what that warning means, particularly in light of all the detailed rules that accompany it. It means that the ROE do not address the right to protect the individual, the commanding officer, the unit commander and his command from attack or from threat of imminent attack, in situations involving localized conflict, or in low-level situations that are not preliminary to prolonged engagement. Those situations are always covered by the inherent right of unit self-defense (but little or no operational guidance is given on how and where to exercise that right). Rather, peacetime ROE provide guidance on when armed force can be used to protect the larger national interests, such as the territory of the United States, or to defend against attacks on other U.S. forces not under your command. This concept relates to regional or global situations even if a high-level commander knows that no hostile acts have been committed, or no hostile intent is evident, at a particular local level. When this distinction is understood, the disclaimer should be understandable and the purpose of the rules clearer.

The *Nimitz*’s two F-14s exercised their right of unit self-defense when they responded to the attack on them by two Libyan Su-22 fighters on 19 August 1981, in international airspace over international waters in the south central Mediterranean. Nevertheless, the open ocean missile exercise, which the F-14s

were assisting, was operating under the general peacetime ROE that covered such a contingency.⁷

It is a common misperception that under the peacetime ROE a commander must “take the first hit” and cannot act in self-defense until the opposing force has missiles away.⁸ That is not the law and is not required by our general peacetime ROE.

Definition of Self-Defense

The legal standard for the use of armed force in self-defense is the same whether to protect the individual, a ship or aircraft, or the nation. First, there must be a situation requiring the use of force (i.e., necessity) and, second, the amount of force used must be proportional to the situation giving rise to the necessity. The requirement of necessity, or present danger, obviously arises when an armed attack occurs. However, the right of self-defense may also involve the use of armed force against a threat of imminent attack. In either case, proportionality requires that the use of force be limited in intensity, duration and magnitude to what is reasonably required to counter the attack or threat of attack. In peacetime, force may never be used with a view to inflicting punishment for acts already committed.⁹ Reprisals should not be undertaken until authorized by the NCA.¹⁰

Hostile Acts and Hostile Intent

A hostile act is simply the actual use of armed force—attacking. The commission of a hostile act gives rise to the right to respond with the use of proportional force in self-defense by all authorized means available. Hostile intent is the threat of the imminent use of force. Evidence of hostile intent may lead to the force being declared hostile. Whether or not a force is declared hostile, where the hostile intent amounts to a threat of imminent attack, the rights exists to use proportional force in self-defense by all authorized means available.¹¹

Pursuit

ROE frequently provide rules regulating the pursuit of hostile forces, but sometimes confuse the legal limits of pursuit in self-defense with the law of the sea (LOS) law-enforcement concept of hot pursuit.¹²

Self-defense pursuit, often called *immediate pursuit*, properly refers to pursuit of hostile forces initiated in response to and in defense against the hostile acts of those forces. Although such pursuit does not have to be undertaken immediately, since it is a response taken in self-defense, pursuit may be lawfully taken only so long as the hostile force is an immediate threat to your force. Frequently the

484 Readings on International Law

ROE will impose geographical restraints, such as prohibiting pursuit into the territory of third (neutral) countries, or even into the territory of the hostile force (to minimize risk of escalation). There may be exceptions to those restrictions for situations when the hostile force attacks from either territory, or persists in committing hostile acts after it has entered the neutral territory and that nation is unable or unwilling to neutralize the hostile actions of the foreign force. The right to pursue in self-defense obviously ceases when the prerequisite for the exercise of that right disappears, for example, when a hostile ship ceases to constitute an immediate threat because it can no longer bring its weapon systems to bear.¹³

Hot Pursuit

Frequently it is stated that pursuit must be continuous and immediate. At sea those restrictions are not legally required to pursue in self-defense. Rather, the requirement for continuous and immediate pursuit derives from the LOS right of "hot pursuit" set forth in article 23 of the 1958 High Seas Convention. The right of hot pursuit *only* relates to a coastal State's attempts to enforce its domestic laws against foreign ships violating those rules in the coastal State's internal waters, territorial sea, and contiguous zone. (The U.S. Coast Guard Peacetime ROE extends this to fisheries zones and over the continental shelf.)

Hot pursuit may not be commenced on the high seas, yet that is where pursuit is generally irrelevant in maritime self-defense ROE, and is clearly distinguishable from self-defense pursuit.¹⁴

ROE as Implementation of the Law of Armed Conflict

All ROE must be consistent with domestic law as well as the law of armed conflict, and where used to control the use of armed force, implement the principles of military necessity, proportionality and humanity.¹⁵

JCS Requirements

Volume 1 of the Joint Strategic Capabilities Plan (JSCP) routinely provides that commanders of unified and specified commands will establish and maintain ROE in conformity with rules issued by higher authority applicable to their areas of responsibility. (There are better than a dozen JCS directives that provide the unified and specified commanders with ROE guidance.) Their ROE are required to be in accordance with applicable law. Proposed ROE for situations not covered by existing rules and revisions of existing rules are to be submitted to the JCS for review and approval. ROE for U.S. maritime forces are to be consistent with those approved for NATO maritime forces. Whenever possible,

ROE are to be standardized for use by all major commands to facilitate movement between those commands. The Joint Operations Planning System (JOPS) (volume I) provides a format for the ROE appendix to the operations annex of all unified and specified commanders' operations plans.

Compilation of ROE

The JSCP also requires the unified and specified commanders and COMRDJTF to compile all rules (and changes thereto) for their commands in formats such as instructions, letters, operation plans, or messages. The compilations are to be prepared no later than 1 October each year and provided to the JCS, Chiefs of the Services, USCincRed, CincSac, the commanders of other affected unified and specified commands and COMRDJTF if affected, and to commanders of other unified and specified commands or COMRDJTF upon request if unaffected. A typical unified commander's compilation would list the commander's central document promulgating his basic peacetime ROE, plus any special ROE contained in his operations plans.

Review of Compilation of ROE

The JSCP provides that the JCS will assure appropriate Joint Staff and Service review of such compilations and changes thereto, including a legal review by the Services, to assure consistency of the ROE with applicable domestic and international law, including the law of armed conflict. This can occur, obviously, only when such compilations are submitted, although this has not always been done.

Structure of ROE

ROE should be structured in accordance with JOPS, and with two distinct ideas in mind. Basic peacetime ROE, which are to serve as an unambiguous guide for the commander in the conduct of his mission, should be declarative, that is, written as action which define both the conditions and limits of that combat. Additionally, there should be available a series of supplemental measures that may be implemented to expand the authority of, or relax the restrictions on, the commander when the situation exceeds the bounds of the general case.¹⁶

Content of ROE

Depending on the level of the promulgating commander and the contemplated circumstances of application, ROE should contain appropriately generalized or specific guidance on the employment of systems and platforms for

486 Readings on International Law

surveillance, targeting and ordnance delivery. ROE may delimit the conditions for employment of the systems and platforms, but should not delineate specific tactics. All ROE should contain political and military policy guidance as well as guidance on those areas of international and domestic law that are subject to misinterpretation. They should not cover safety-related restrictions. They should not set forth service doctrine, tactics or procedures, for example, relating to airspace management. In essence, ROE should never be designed as “rudder orders,” and never substitute for a strategy for the employment of the forces.

Subject Matter of ROE

ROE may be general and comprehensive, so as to constitute part of the fighting instructions of a fleet, and in this case they must envisage a range of contingencies. Or they may be issued specifically for a particular operation.¹⁷ Peacetime ROE cover such matters as general maritime operations, interception and engagement of aircraft, and defense operations for specific locations.

Problems with Existing ROE

Frequently ROE are not well understood by those who need to know them, and often are neither clearly nor comprehensively written.¹⁸ ROE are often best known by the junior officer who has custody of the documents. Occasionally even the existence of the ROE is known only to him! ROE are rarely seen by anyone else, except the commander and his operations and intelligence officers.¹⁹ Perhaps it was this state of affairs that led VAdm Thomas Weschler, USN (Ret.), while Chairman of the Naval Operations Department of the Naval War College, to advise the *senior* College of Naval Warfare students to read the ROE held by their commands as soon as they report to each duty station.²⁰

The rules are often perceived as being either too detailed or complex, or as being mere tools to implement decisions. Yet they reflect current policy which may not be found elsewhere, particularly in an emergency. Obviously they cannot be found by reference to a compilation if it does not exist—even in the command center. Nor is an emergency the time to locate and learn the rules.²¹ Additionally, the current set of peacetime ROE is too narrow and too specific to be of general use—because the ROE were developed in response to particular situations. The result is patchwork guidance. There exists no overall national policy guidance to the unified and specified commanders for the use of armed force in all environments during peacetime or in armed conflict. Some have told me no coherent and overarching ROE are needed, since the system has shown its inherent flexibility without them. Perhaps so, but no timely effort was mounted to aid the *Pueblo*, in part, because “we had to check with higher authority since the ROE were not clear enough” despite ample legal authority

and the military necessity for immediately scrambling and using the F-4s or ROKAF assets to halt the procession to Wonson.²²

Further, there does not appear to be anywhere enough training in the use of ROE or enough contingency planning for seeking additional or relaxed authority. The tactical training commands and the PCO/PXO schools must undertake on an urgent basis to teach ROE, particularly the new peacetime ROE and their mechanism for changing ROE.

Another problem with general ROE that encompass a variety of situations in which our forces may find themselves in the discharge of their political tasks, is the difficulty of providing adequate guidance for the contingencies. Frequently, this problem is sidestepped in planning—until the nature of the crisis is analyzed—by the expedient of including in the general ROE references to further guidance that will be received when the situation changes.

This approach reflects a widespread assumption that the theory of graduated escalation will allow the leisurely evolution of specific ROE by the ordinary process of governmental policy-making, by committee. Yet the suddenness with which political situations erupt means we may not have the luxury of time to formulate a reasoned set of ROE.

In the absence of precise thinking and sufficient theoretical preparation, ROE are not likely to express clearly the detailed controls that contemporary political constraints require of military conduct. Such vagueness and imprecision in the ROE can only compound the dangers of uncontrolled escalation. The Navy, for example, is often required to deploy units or fleets for the purpose of catalytic force without any clear objectives in mind, and in the hope that the Navy will do something to resolve the situation and nothing to aggravate it. Such assignments should be undertaken with precise ROE, in pursuance of a definite and coherent policy; precise ROE are, however, impossible to write when the government has not made up its mind—and this is usually the case in any catalytic use of seapower.

When developing specific operations, planners should anticipate what additional ROE will be needed in the event of changed circumstances, particularly if they run into increasingly tense or hostile situations—and then ask for revised or additional ROE ahead of time, on a contingency basis. That way, there will be time to figure out what additional ROE measures are needed and are best; time to get approval for them; and time to use them to tactical advantage.²³

Wartime ROE

Some feel that wartime ROE (WROE) are simple to prepare and therefore need not be prepared in advance in peacetime. Some go so far as to say that the service law of war manuals²⁴ are the WROE. Anyone who served in Vietnam or who has read the declassified portion of the WROE used in that conflict²⁵

488 Readings on International Law

will have a different view of the matter. The service manuals are not up to date (albeit the Navy and Army are updating their manuals, by completely rewriting them).

In any event, at least in limited wars, the ROE will constrain military operations to less than the full range of legally permissible options.

More fundamentally, if we are to practice how we are going to fight in combat it seems less than sensible not to know in peacetime what the rules are going to be. Others may suggest in private that WROE is too hard to write, perhaps because of their own uncertainty of the future, or perhaps because of an uncertainty regarding what would be legally permissible.

Nevertheless, the basic principles for those rules are to be found in the law of armed conflict and relevant military doctrine. If not, then we should be developing new doctrine and fresh interpretations of the law to meet changing circumstances, e.g., doctrine and laws relating to the employment of missiles against targets located beyond visual range or over the horizon.

Summary

ROE are one of the main instruments used to interpret policy and ensure that armed force is used to achieve and not to defeat the desired political goal.

In peacetime, ROE reflect significant legal, political, diplomatic, and military restrictions on the employment of military forces.

In wartime, ROE permit a wider range of uses of military force, but still are used to ensure that force is employed toward the achievement of desired political goals.

Every commanding officer retains the right to use force to protect his command in self-defense. He also has the obligation to do so.

Authority to employ certain weapons is generally reserved to the NCA (e.g., nuclear and chemical weapons, riot control agents and herbicides).

The new maritime ROE have mechanisms for changing—including relaxing—specific aspects of the ROE to provide precise responses to changing threats.²⁶ There should be developed similar mechanisms for the other peacetime ROE. All should be included in exercise play whenever possible. Appropriate modifications should be approved, in advance, for use if specified contingencies occur.

Captain Roach was the Head of the Law of Armed Conflict Branch of the International Law Division in the Office of the Judge Advocate General of the Navy when this article was first published.

Notes

1. JCS Pub 1, *Department of Defense Dictionary of Military and Associated Terms* 298 (1979). "Combat Engagement" is not defined in JCS Pub 1. A most insightful description of ROE and the law in relation to naval operations appears in the chapter on ROE in O'CONNELL, *THE INFLUENCE OF LAW ON SEA POWER* 169-180 (1975).
2. E.g., JCS Pub 12, *Tactical Command and Control Planning Guidance and Procedures for Joint Operations, Vol. IV, Joint Interface Operational Procedures*, Part IV (Air Control/Air Defense Procedures for Joint Services Operations), Chapter III (Air ROE/Hostile Identification Criteria) (Washington, DC: U.S. Govt. Print. Off., 1981); OPNAVINST 3710.7J, Subj: NATOPS General Flight and Operating Instructions, paragraph 436c (ACM ROE).
3. SECNAVINST 3300.1A, 2 May 1980, Subj: Law of Armed Conflict (Law of War) Program to ensure compliance by the naval establishment.
4. In this connection O'Connell correctly adds that "In the absence of precise thinking and sufficient theoretical preparation, rules of engagement are unlikely to express sufficiently the detailed controls that contemporary political constraints and military conduct require." O'CONNELL, *supra* n. 1 at 170.
5. U.S. Navy Dept., *Law of Naval Warfare* NWIP 10-2 (1974), paragraph 613 n.8 (nuclear weapons) and 612 n.7 (chemical weapons); Executive Order 11850 (riot control agents and chemical herbicides).
6. Morse, *ASUW: Getting a Run for Our Money*, U.S. Nav. Inst. Proc. 100 (July 1982): "Commanders commonly have diverse interpretations of the criteria for conducting offensive or defensive operations. Although these rules (ROE) will never be comprehensive enough to cover all situations, questions related to specific points (i.e., if fired upon, must a U.S. or allied unit be hit before returning fire? What constitutes hostile intent? etc.) must be clarified by higher authority prior to any operation in order for surface forces to maintain a tactical advantage within the ROE."
7. Lieut. Gen. Philip J. Gast, USAF, Director of Operations of the Joint Staff, and Secretary of Defense Weinberger news conference on 19 August 1981, *The New York Times*, 20 August 1981, A-8; *U.S. Navy Fighters Shoot Down 2 Libyan Jets*, *The Washington Post*, 20 August 1981, A-1; McNeil-Lehrer Report interview with Deputy Secretary of Defense Carlucci, 19 August 1981; Tillman, *Comment and Discussion*, U.S. Nav. Inst. Proc. 87 (August 1982); Neutze, *The Gulf of Sidra Incident: A Legal Perspective*, U.S. Nav. Inst. Proc. 26, 30 (January 1982).
8. Parker, *Thinking Offensively*, U.S. Nav. Inst. Proc. 29 (April 1981).
9. U.S. Navy Regulations 1973, Article 0915.
10. The service law of war manuals reflect a diversity of views on whether reprisals may be ordered by a subordinate commander on his own authority. Compare Air Force Pamphlet 110-31, *International Law—The Conduct of Armed Conflict and Air Operations* paragraph 10-7c(8) (1976) and Air Force Pamphlet 110-34, *Commander's Handbook on the Law of Armed Conflict* (1980), paragraph 8-4b(2) with NWIP 10-2, paragraph 310b, U.S. Army Field Manual 27-10, *The Law of Land Warfare* (1956), paragraph 497b, and Department of the Army Pamphlet 27-161-2, *International Law—Volume II* 66 (1962).
11. U.S. Navy Regulations 1973, Article 0915; O'CONNELL, n.1 at 71, 172; Weschler, *Rules of Engagement*: (Lecture at the Naval War College, 17 April 1979).
12. O'CONNELL, *supra* n. 1 at 177.
13. Air Force Pamphlet 110-34, paragraphs 2-5c, 2-6c.
14. 12 WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 75-76 (1971), quoting BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* 38-41 (1958): *Self-Defense Actions of Military Forces Distinguished from "Hot Pursuit," Contemporary Practice of the United States Relating to International Law*, 63 Am. J. Int'l L. 122 (1969); Borck, *Hot Pursuit and the Rights of Pursuit*, JAG J. 18, 19-20 (March-April 1969).
15. These principles are explained in NWIP 10-2, Section 220.
16. O'CONNELL, *supra* n. 1 at 177. The distinction between an action and a supplemental measure is this: an action is a complete military concept for accomplishing a specified purpose. A supplemental measure restrains or liberates a limited area force capability; it is more restricted in scope and purpose than an action. Many supplemental measures may be needed to make an action feasible.
17. *Id.* at 169.
18. "Vagueness and imprecision in the rules of engagement can only compound the dangers of uncontrolled escalation." *Id.* at 170.
19. *Supra* n. 8 at 26, 29.
20. O'Connell also notes that the study of ROE "still forms an inadequate part of the defense curriculum." O'CONNELL, *supra* n. 1 at 170.
21. O'Connell puts it more eloquently in the context of naval operations: "... the suddenness with which political situations erupt means that naval staffs may not have the luxury of time to formulate a reasoned set of

490 Readings on International Law

rules of engagement, and in the absence of these, naval operations are likely to be too hesitant for want of certainty or too uncontrolled to be politically acceptable." *Id.*

22. Inquiry into the USS Pueblo and EC-121 Plane Incidents, Report of the Special Subcommittee on the USS *Pueblo*, House Armed Services Committee Report No. 91-12, 91st Congress, 1st Session, 28 July 1969, at 1668-73.

23. Luckow, *Victory over Ignorance and Fear: The U.S. Minelaying Attack on North Vietnam*, Naval War College Review 17 (January-February 1982). ("Peacetime contingency planning should contain one or more sets of rules of engagement to fit the expected variations of possible scenarios in a time of tension," Luckow, at 26.)

24. NWIP 10-2, U.S. Army Field Manual 27-10, and Air Force Pamphlet 110-31.

25. Printed in the 6 June 1975 *Congressional Record*, the 1975 DIGEST OF U.S. PRACTICE IN INTERNATIONAL LAW, and the *Peers Report*, Volume I, Chapter 9, and Volume III, Book 2, Exhibits D-4 *et seq.*

26. Pease, *Comment and Discussion*, U.S. Nav. Inst. Proc. 83 (June 1982).