

Appendix II

A History of United States Navy Regulations Governing the Use of Force to Protect the Lives and Property of Nationals Abroad*

CONTENTS

Introduction.	187
I. Regulations and Instructions Relating to His Majesty's Service at Sea (11th Ed. 1772)	188
II. Rules for the Regulation of The Navy of The United Colonies of North America (1775)	190
III. An Act for The Government of the Navy of the United States (1799)	190
IV. United States Navy Regulations (1802).	191
V. United States Navy Regulations (1814)	192
VI. United States Navy Regulations (1818)	192
VII. United States Navy Regulations (1821).	193
VIII. United States Navy Regulations (1841)	194
IX. United States Navy Regulations (1853).	194

*The author wishes to acknowledge the research assistance provided by Stephen T. Bolton, Esq., Class of 1972, University of Virginia School of Law and Member of the Ohio Bar, and Captain J. Ashley Roach, USN, Office of the Legal Adviser, US Department of State, in the preparation of this Appendix. Punctuation and capitalization has been standardized to modern usage.

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.

Forcible Protection of Nationals Abroad

X.	United States Navy Regulations (1858).....	195
XI.	United States Navy Regulations (1863).....	195
XII.	United States Navy Regulations (1865).....	196
XIII.	United States Navy Regulations (1869).....	197
XIV.	United States Navy Regulations (1870).....	200
XV.	United States Navy Regulations (1876).....	202
XVI.	United States Navy Regulations (1893).....	203
XVII.	United States Navy Regulations (1896).....	206
XVIII.	United States Navy Regulations (1900 and 1905).....	208
XIX.	United States Navy Regulations (1909).....	210
XX.	United States Navy Regulations (1913).....	212
XXI.	United States Navy Regulations (1920).....	215
XXII.	United States Navy Regulations (1948).....	217
XXIII.	United States Navy Regulations (1973).....	220
XXIV.	United States Navy Regulations (1990).....	223
	Summary.....	226

Introduction

The United States has long viewed military intervention in foreign countries to protect the lives and property of US nationals as a proper use of naval power.¹ US Navy Regulations dating back to 1775 have provided naval commanders with the authority to undertake such action. Additionally, throughout much of this period the accepted norms of international law countenanced such activity under such headings as self-preservation or nonpolitical intervention.²

In recent years, however, the international political and legal context has changed drastically. With the emergence of the United Nations and the post-colonial proliferation of independent States, new norms and new needs have been generated. For instance, under Article 2(4) of the UN Charter the use of force is proscribed, except when used in self-defense or when sanctioned by the United Nations. Article 51, however, preserves the possibility of the valid use of force in situations involving self-defense. At the same time, emergent nations have demonstrated an anti-colonial attitude bent on the elimination of many formerly accepted practices, such as intervention for the protection of foreign nationals and their property, which are now viewed as tools of imperialistic control.³

Despite this substantial shift in international norms, the regulations governing the conduct of the US Navy in this area remained essentially unchanged until 1973. With the promulgation of the 1973 and 1990 Regulations however, it appears that the Navy Regulations have become more congruent with the realities of present-day international life, thus attenuating much of the former criticism regarding their compatibility with contemporary international law.⁴

This Appendix constitutes a textual analysis of the regulations which have guided and continue to guide the US Navy in its use of force to protect the lives and property of US nationals abroad. The analysis proceeds with a listing of those regulations in each edition of US Navy Regulations that relate to the protection of nationals and then following each by a brief commentary addressed to the question of how each edition fits in with the overall development of the current Navy regulations.

The regulations analyzed in this study begin with the British Navy Regulations of 1749 and 1772 and continue with their offspring,⁵ the US Navy Regulations of 1775, 1799, 1802, 1814, 1818, 1821, 1841, 1853, 1858, 1863, 1865, 1869, 1870,

1876, 1893, 1896, 1900, 1905, 1909, 1913, 1920, 1948, 1973 and 1990. Histories of the various editions of British or US Navy Regulations until 1973 are not available, for reasons partially explained in the paragraph that follows.

Although the Constitution grants Congress sole authority to issue regulations for the armed forces,⁶ Congress, except for the first three Regulations of 1775, 1799 and 1800, merely ratified the rules compiled by the President and the Secretary of the Navy.⁷ Even this limited supervisory rule was abdicated in 1862, when Congress gave the Secretary of the Navy the authority to issue regulations subject to the approval of the President.⁸ As a practical matter, this delegation probably ensured that regulations were written and revised at the behest of senior naval officers.⁹ In any event, records of the administrative process in the formulation of US Navy Regulations prior to 1973 are unavailable. Therefore, authorship and the intended results remain unclear for earlier regulations. This leaves the actual language of the regulations and the interpretations subsequently given to them by naval commanders as the only sources of interpretative standards.

As noted above, the regulations in force until 1973 did not differ greatly from those regulations in force during the nineteenth century. The 1973 and 1990 Regulations vary considerably from their predecessors by omitting out-of-date passages from earlier regulations. It is the purpose of the following analysis to examine the extent to which these new revisions have brought the US Navy Regulations into line with contemporary international law.

I. Regulations And Instructions Relating To His Majesty's Service At Sea (11th ed. 1772)

The Flag-Officer or Commander-in-Chief

Article VI. To direct the Naval Officers abroad, according to the Rules of the Navy. When he is in Foreign Parts, where Naval or other Officers are established, he is to conform himself, as much as possible, to the standing Rules of the Navy, in such Directions as he shall have Occasion to give them; and never to put them upon any extraordinary Expenses, unless the Service shall absolutely require the same.

The Captain or Commander

Article XLII. Not to go into Port unnecessarily. He is not to go into any other Port than such as his Orders direct him, unless by inevitable Necessity,

and then to make no unnecessary Stay there. If he is employed in a cruising Station, he is to keep the Sea the Time required by his Orders; but if he is compelled by any Accident to return sooner into Port, he is to send in Writing the Reasons thereof to the Secretary of the Admiralty, and also to the Commander-in-Chief, if any such be there, and to put to Sea again so soon as the Ship's Wants are supplied.

Article XLV. To demand English Seamen out of foreign Ships. When he meets with any Foreign Ship or Vessel, he is to send a Commission Officer to inquire if any Seamen, who are His Majesty's Subjects, be on Board her, and to demand all such, obliging their Masters to pay them their Wages to that Day. But this is to be done with civil and friendly Behavior on the Part of His Majesty's Officers, who are to be very careful not to offer any Violence or ill Treatment to the Subjects of His Majesty's Friends or Allies.¹⁰

Commentary

The Eleventh Edition of *Regulations and Instructions Relating to His Majesty's Service at Sea*, established by His Majesty in Council in 1772, is the direct ancestor of all subsequent editions of US Navy Regulations. This text is a restatement of the Sixth Edition, published in 1749 to update British Navy Regulations from a code which originated during the reign of Henry VIII. The three articles cited above are identical in both the Sixth and Eleventh Editions.

Article VI is concerned with the relationship between a Flag-Officer or Commander-in-Chief and the agents of the British government already established in foreign ports. The "unless" clause at the end of the article qualifies the instructions to conform to the "Rules of the Navy" and the rule against extraordinary expenditures placing the needs of the service paramount. The Flag-Officer, as the senior officer present in foreign waters, is the person best-qualified to determine the needs of the service.

On the other hand, according to Article XLII, a Captain or Commander acting independently may not even enter a foreign port without orders unless "inevitable necessity" forces him to do so. Again the Captain is the person who determines whether inevitable necessity exists. The second sentence, dealing with a return from cruising station, refers to the home port of the ship.

Article XLV was the cause of much hostility in the United States, since it was the legal justification used for impressment of American sailors during the Revolutionary and Napoleonic wars. While this rule provided a vehicle whereby British sailors could be liberated from foreign employment, it often was used to conduct a forced draft.

II. Rules For The Regulation Of The Navy Of The United Colonies Of North America (1775)

Article 21. If any ships of the Thirteen United Colonies shall happen to come into port in want of provisions, the warrant of a Commander-in-Chief shall be sufficient to the agent or other instrument of the victualling to supply the quantity wanted; and in urgent cases where delay may be hurtful, the warrant of the Captain of the ship shall be of equal effect.¹¹

Commentary

As stated in the Introduction to this Appendix,¹² for the most part these rules were copied from the British Regulations of 1749 and 1772. They are concerned with the prerogatives and responsibilities of command and matters affecting supply, discipline and conduct in action. Articles VI and XLV of the British Regulations were not included. The only provision which might be said to govern conduct in foreign ports short of an actual engagement is Article 21, which corresponds roughly to Article XLII of the British Regulations. Reference to purchases in foreign ports, however, is omitted. This omission was consistent with the coastal character of the continental Navy.

III. An Act for the Government of the Navy of the United States (1799)

Article 18. Warrant for supply of provisions. If any ships of the United States shall happen to come into port in want of provisions, the warrant of the commander of the squadron, or of a captain where there is no commander of a squadron present, shall be sufficient to procure the supply of the quantity wanted, from the agent, or navy agent at such port.¹³

Commentary

Article 18 is based on Article 21 of the 1775 Rules for the Regulation of the Navy of the United Colonies of North America, amended to reflect the independence won two decades earlier. Perhaps in recognition of the infant Navy's engagement in an undeclared war with France in the West Indies, any squadron commander's warrant was now sufficient even in non-urgent cases.

This provision was not included in the 1800 revision, which repealed the 1799 statute entirely.¹⁴ No reason for this omission is apparent.

IV. United States Navy Regulations (1802)

Of the Duties of a Commander-in-Chief, or Commander of a Squadron

Article 16. When he is in foreign parts where naval or other officers are established, he is to conform himself as much as possible to the standing rules of the navy, in such directions as he shall have occasion to give them, and never to put them under any extraordinary expenses, unless the service should absolutely require the same.

Of the Duties of a Captain or Commander

Article 40. He is not to go into any port, but such as are directed by his orders, unless necessitously obliged, and then not to make any unnecessary stay; if employed in cruising, he is to keep the sea the time required by his orders, or give reasons for acting to the contrary.¹⁵

Commentary

Of the Duties of a Commander-in-Chief, Article 16, is almost an exact reproduction of Article VI of the 1772 British Regulations for the Flag-Officer or Commander-in-Chief. It allows an American Commander-in-Chief identical discretion as to expenditures as his British counterpart, and similarly ignores the situation of where provisions are located in a port where naval authorities are not established. It is reasonable to assume that both the British and American regulations were concerned more with the possibility of commanders putting into port too often or making extravagant purchases than with any danger of intervention by force in foreign countries.

Of the Duties of a Captain or Commander, Article 40, succeeded Article 18 of the 1799 Rules. It is a close paraphrase of Article XLII of the 1772 British Regulations for the Captain or Commander.

The reinsertion of both these articles may be explained by the fact that the US Navy by this time had become transoceanic and had begun a series of engagements in the Mediterranean using ships of substantial size and fire-power. Visitation of foreign ports by necessity was thus a distinct possibility. There is no indication, however, that the necessity standard refers to anything other than matters concerning the administration and operation of the vessel itself.

V. United States Navy Regulations (1814)

Of the Duties of Commander of a Squadron

Article 16. When he is in foreign parts, where naval or other agents are established, he is to conform himself, as much as possible, to the standing rules of the navy, in such directions as he shall have occasion to give them; and he is never to put them under any extraordinary expenses, unless the service should absolutely require the same.

Of the Duties of a Captain or Commander

Article 41. He is not to go into any port, but such as are directed by his orders, unless necessitously obliged, and then not to make any unnecessary stay; if employed in cruising, he is to keep the sea the time required by his orders, or give reasons for acting to the contrary.¹⁶

Commentary

Article 16 is repeated from Article 16 of the 1802 Regulations governing the duties of a Commander-in-Chief or Commander of a Squadron with certain clarifying changes. “Agents” is substituted for “officers” who may be in foreign parts. The words “he is” are added at the beginning of the last clause, as are several commas.

Article 41 repeats Article 40 of the 1802 Regulations governing the Duties of a Captain or Commander.

VI. United States Navy Regulations (1818)

Commanders of Fleets or Squadrons

Article 15. Conform to established rules. He shall conform to the standing rules of the navy, in such directions as he shall give to established agents, and incur no expense that the public service does not render absolutely necessary.

Regulations for the Promotion of Discipline, Cleanliness, etc.

Article 28. To visit no port without orders. He [the Captain] is not to go into any port, but such as may be directed by his orders, unless by absolute necessity,

and then not to make any unnecessary stay. If employed in cruising, he is to keep the sea, the time required by his orders, or give reasons for acting to the contrary, to the Secretary of the Navy.¹⁷

Commentary

Article 15 repeats the substance of Article 16 of the 1814 Regulations governing Squadron Commanders but with significant differences.

The section of the regulations was entitled “Commanders of Fleets or Squadrons” to reflect the increased size of the Navy in the preceding four years. The language referring to “foreign parts” was omitted, applying the regulation everywhere there were “established agents.” This latter term replaced the phrase “where naval or other agents are established.” “Extraordinary” was deleted from the last clause, which was reworded for clarity.

Article 28 is derived from Article 41 of the 1814 Regulations governing the duties of a Captain. The subject matter is now under the heading “Regulations for the Promotion of Discipline, Cleanliness, etc.,” perhaps also reflecting the expanding navy. The remaining changes are for purposes of clarification. The report of reasons for not keeping to sea as required is now specified to be made to the Secretary of the Navy.

VII. United States Navy Regulations (1821)

Commanders of Fleets or Squadrons

Article 15. He shall conform to the standing rules of the navy, in such directions as he shall give to established agents, and incur no expense that the public service does not render absolutely necessary.

Regulations for the Promotion of Discipline, Cleanliness, etc.

Article 28. He is not to go into any port but such as may be directed by his orders, unless by absolute necessity, and then not to make any unnecessary stay. If employed in cruising, he is to keep the sea the time required by his orders, or give reasons for acting to the contrary to the Secretary of the Navy.¹⁸

Commentary

The 1821 Regulations are identical to the 1818 Regulations with respect to these articles.

VIII. United States Navy Regulations (1841)

Commanders of Vessels

Article 186. When directed to cruise, he is to keep the sea the time required by his orders, or produce satisfactory reasons for acting to the contrary.

Article 187. He is not to go into any port but such as may be designated or permitted by his instructions, unless from necessity, and then to make no unnecessary stay.¹⁹

Commentary

The 1841 edition of the regulations was never approved by Congress, but evidently the Navy adhered to them as if they had been.

Article 28 of the 1821 Regulations concerning the Promotion of Discipline, Cleanliness, etc. was split into two articles, 186 and 187, in the 1841 Regulations. Reasons for failure to keep to the sea (Article 186) are no longer specifically to be submitted to the Secretary of the Navy. Entering an undesignated port is now permitted merely "from necessity." The other changes are for purposes of clarity.

The direction to conform to the standing rules of the Navy in Article 15 of the 1821 Regulations governing the duties of Commanders of Fleets or Squadrons is omitted from this and succeeding editions.

IX. United States Navy Regulations (1853)

Commanders of Vessels

Article 21. When directed to cruise, he is to keep the sea the time required by his orders, or produce satisfactory reasons for deviating from them.

Article 22. He is not to go into any port but such as may be designated or permitted by his instructions, unless from necessity, and then to make no unnecessary stay.²⁰

Commentary

Articles 21 and 22 are identical to Articles 186 and 187 of the 1841 Navy Regulations, except for a clarifying change to Article 21. If a Commander does not keep to the sea the time required by his orders, he must now produce

satisfactory reasons for “deviating from them” rather than for “acting to the contrary.”

X. United States Navy Regulations (1858)

Commanders of Vessels

Article 28. To keep the sea the time required by his orders. When directed to cruise, he is to keep the sea the time required by his orders, or produce satisfactory reasons for deviating from them.

Article 29. To visit no port not designated in his instructions. He is not to go into any port but such as may be designated or permitted by his instructions, unless from necessity, and then to make no unnecessary stay.²¹

Commentary

Articles 28 and 29 are identical to Articles 21 and 22 of the 1853 Regulations.

XI. United States Navy Regulations (1863)

Article VI.

General Duties of Line Officers

The Commander-in-Chief of a Fleet or Squadron

To place himself in communication with the diplomatic agents of the United States.

On arriving within the limits of his station on foreign service, he is to place himself in communication with the diplomatic agents of the government of the United States thereabouts, and he is to afford them, on his own responsibility, such aid and cooperation in all matters for the benefit of the government as they may require, and as he may judge to be expedient and proper.

Officers Commanding Vessels

To keep the sea the time required by his orders.

When directed to cruise, he is to keep the sea the time required by his orders, or produce satisfactory reasons for deviating from them.

To visit no port not designated in his instructions.

He is not to go into any port but such as may be designated or permitted in his instructions, unless from necessity, and then to make no unnecessary stay.²²

Commentary

That portion of the 1863 Regulations governing the duties of officers commanding vessels is identical to Articles 28 and 29 of the 1858 Regulations. However, that portion of the 1863 Regulations governing the duties of the Commander-in-Chief of a fleet or squadron reflects the different Navy of 1863. In contrast to Article 15 of the 1821 Regulations concerning commanders of fleets or squadrons, there is no mention of the “rules of the navy” or “expenses,” but rather “co-operation in all matters for the benefit of the government.” The emphasis shifted from the simple maintenance of ships in foreign waters to the implementation of foreign policy through the use of naval forces.

Moreover, the actions of the Commander-in-Chief are “on his own responsibility” and as he judges to be “expedient and proper.” The regulations vest an individual commander with the discretion to aid and cooperate with diplomatic officials in foreign ports as he sees fit. Presumably, he may exceed their recommendations if he feels such action to be appropriate. This article, then, is the first instance where naval commanders were given the authority to take matters into their own hands and intervene in foreign lands to protect US nationals under the umbrella phrase “for the benefit of the government.”

XII. United States Navy Regulations (1865)

General Duties of Line Officers

The Commander-in-Chief of a Fleet or Squadron

Article 310. On arriving within the limits of his station on foreign service, he is to place himself in communication with the diplomatic agents of the government of the United States thereabouts, and he is to afford them, on his own responsibility, such aid and cooperation in all matters for the benefit of the government as they may require, and as he may judge to be expedient and proper.

Officers Commanding Vessels

Article 346. Should he find it necessary to go into a port not designated or permitted by his instructions, he will make no unnecessary stay, and will report the cause of the necessity and of any delay that may occur.²³

Commentary

These 1865 Regulations are the last of the original sailing instructions that were closely related to the 1775 and 1802 editions of the Regulations.

Article 310 repeats verbatim that portion of Article VI of the 1863 Regulations pertaining to the Commander-in-Chief of a fleet or squadron previously quoted.

Article 346 is based on that portion of Article VI of the 1863 Regulations pertaining to the duty of officers commanding vessels to keep to sea the time required by his orders. The revised version no longer prohibits entry into an undesignated port. The change in tenor reflects the Navy's increased role. For the first time, however, the commanding officer must report the cause of the necessity for entering the undesignated port and of any delay that may occur.

No longer is there a requirement to keep to the sea when directed to cruise.

XIII. United States Navy Regulations (1869)

Instructions for Officers, Afloat: Commander-in-Chief

Article 52. The Commander-in-Chief is not to attempt the arrest of a deserter, whatever may be his class, by sending an officer under his command after him, but he is to make the proper application to the civil authorities of the place where he may be.

Article 53. No Commander-in-Chief is ever to take upon himself the power of inflicting punishment upon the subjects of any civilized nation, with whom we have treaties, for any alleged violation of treaties or international law.

Article 54. In the absence of a United States Minister he is to enter into diplomatic discussions on all matters of this kind, with the nation which is supposed to be the aggressor, and will take the earliest opportunity to lay the correspondence before the United States Government.

Article 157. A Commander-in-Chief is on all occasions to do his utmost to protect American commerce in all quarters.

Article 165. If he finds an American seaman employed on board a foreign vessel who complains that he is there contrary to his will, he will institute all necessary inquiries, and if he finds that the said seaman is improperly detained, the Commander-in-Chief will apply to the proper authority to have him released and will give him a passage to the nearest American port.

Article 169. The Commander-in-Chief should observe himself that all under his command comply with the laws of blockade when a harbor or port is blockaded by a nation with whom we are at peace.

Article 170. He is to observe the strictest neutrality, and afford no assistance to either party not called for by the interests of humanity.

Article 171. He is at the same time to make every effort to protect the lives and property of American citizens that may be within the lines of the belligerents.

Article 172. In time of war, a Commander-in-Chief will cause all the laws of neutrality to be strictly observed by those under his command.

Article 173. A Commander-in-Chief will also take upon himself to exercise particular authority over all American letters-of-marque and privateers that come within the limits of his command, and will ascertain if they have made any fraudulent seizures or captured vessels belonging to neutral powers, which they had no right to capture.

Article 174. He will exercise his judgment as to what disposal to make of said privateers or letters-of-marque.

Article 175. In every case investigated by the Commander-in-Chief, he will send a report to the Secretary of the Navy as soon as possible.

Article 176. When on a foreign station, it is desirable that the best feeling should exist between the Commander-in-Chief of a United States fleet or squadron and the American Minister, Chargés and Consuls, but while every courtesy should be paid to these officials, it must be understood that the Commander-in-Chief is responsible to the Secretary of the Navy alone, for his acts.²⁴

Commentary

These regulations, which Secretary of the Navy George M. Robeson promulgated after the Civil War, are direct ancestors of the 1990 Regulations currently in effect. The most obvious explanation for the break between the 1865 and 1869 Regulations is the emergence of a powerful ironclad US Navy during the Civil War. Although the Royal Navy resumed its role as the most powerful afloat in the decade after the Civil War, the United States had become a significant force. Navy Regulations from 1869 to the present day have reflected this fact, dealing extensively with the duties of commanders in foreign waters and ports.

This edition of the regulations was in effect for only one year. Yet the direct ancestors of the articles quoted below from the 1990 Regulations all appear for

the first time in 1869. Textually, these articles are the first “modern” Navy regulations. Geopolitically, they are an extension of the 1865 Regulations in that they reflect the Navy’s increased awareness of its new foreign relations role.

Article 52 is a clear prohibition against sending forces ashore in a foreign land to pursue and arrest a deserter from a US ship, such matters are left to the local civil authorities.

Article 53 is repeated in conjunction with Article 54 in several other editions. The prohibition against retorsion or reprisal by a naval Commander-in-Chief acting on his own authority is restricted to “civilized nation[s], with whom we [the United States] have treaties.” Presumably, “civilized” States meant European or Latin American ones. In any event, the regulation contains an open invitation to ignore treaties or international law with regard to “savage” nations such as Hawaii, most African tribal kingdoms, and most East Asian kingdoms. The article is thus narrow in its scope and permits a Commander-in-Chief to punish in most instances.

Article 54 requires diplomatic discussions with an alleged civilized aggressor with whom the United States has treaties. Those areas excluded from Article 53 are similarly excluded here. These articles establish the Commander-in-Chief as the arbiter of whether there has been a breach of treaty or violation of international law towards the United States. They further leave it to him to determine whether a nation is civilized. Freedom to use force is contingent on these determinations.

Article 157 appears in one form or another in all succeeding editions of the Regulations. It makes the US Navy the guardian of US commerce both on the high seas and in foreign waters. There is no element of discretion. A Commander-in-Chief must do everything he can to protect American commerce.

Article 165 corresponds roughly to Article XLV of the 1772 British Regulations. The US counterpart does not allow boarding, and it becomes operative only when a complaint is received. It may be implemented only by foreign authorities. The only affirmative actions a Commander-in-Chief may make in such a case are “necessary inquiries” and passage of the seaman to the nearest American port.

Article 169, in conjunction with the following seven articles, is repeated in some form in all succeeding editions of the regulations. In this edition Articles 169 through 176 should be read together.

Article 169 specifically requires compliance with the laws of blockade when the United States is at peace with the blockading nation. Article 170 commands that US naval forces shall remain neutral in the face of a blockade, except where assistance is called for in the interests of humanity. Article 171

gives the Commander-in-Chief the responsibility to protect the “lives and property of American citizens within the lines of the belligerents.” Article 172 commands US forces shall remain neutral “in time of war” when the United States is not a party. Article 173 gives American Commanders-in-Chief jurisdiction over letters-of-marque and privateers operating in areas under their command and makes them a prize court of original jurisdiction. Article 174 authorizes judgment on letters-of-marque and privateers within the jurisdiction of a Commander-in-Chief. Article 175 requires that a report of such cases be sent to the Secretary of the Navy. Article 176 makes the Commander-in-Chief solely responsible to the Secretary of the Navy for his acts while on foreign station.

The thrust of these seven articles is that Commanders-in-Chief are urged to respect blockades by friendly nations and to comply with the laws of neutrality when the United States is not at war. At the same time, Commanders-in-Chief are authorized, on their own initiative, to intervene in wars to which the United States is not a party on humanitarian grounds. Commanders-in-Chief are also obliged to engage in forcible self-help for the protection of American lives and property, at least with respect to wars to which the United States is not a party. They must justify such actions only to the Secretary of the Navy.

XIV. United States Navy Regulations (1870)

Duties of Commander-in-Chief

Section 52. He will preserve, so far as in him lies, the best feeling and the most cordial relations with the ministers and consuls of the United States on foreign stations, and will extend to them every official courtesy. He will also duly consider such information as they may have to give him relating to the interests of the United States, but he will not receive orders from such sources, and he will be responsible to the Secretary of the Navy, in the first place, for his acts.

Section 53. He will not take upon himself the power of inflicting punishment upon the people of any civilized nation with whom we have treaties, for any violation, alleged or otherwise, of such treaties or of international law.

Section 54. In the absence of a diplomatic representative of the United States, he will enter into correspondence on matters of this kind with the authorities of the nation which may be supposed to have been the aggressor, and

will take the earliest opportunity to communicate all the information in his possession to the government of the United States.

Section 55. He will do his utmost on all occasions to protect the commerce of the United States.

Section 94. During wars to which the United States is not a party, he shall himself observe the strictest neutrality between the belligerents, and shall require every one under his command to practice the like observance.

Section 95. He shall comply with the laws of blockade, when a harbor or port is blockaded by a nation with whom the United States is at peace, and will require the like compliance by all under his command.

Section 96. He shall at the same time make every effort to protect the lives and property of citizens of the United States within the lines of the belligerents, and will so instruct the Commanding Officers of his fleet or squadron.

Officers Commanding Vessels

Section 247. When not acting under the orders of a superior officer, he will be governed by the regulations for the Commander-in-Chief, so far as they may be applicable to his case.²⁵

Commentary

Section 52 repeats the substance of Article 176 of the 1869 Regulations. Sections 53 through 55 repeat the substance of Articles 53, 54 and 157 of the 1869 Regulations. Section 94 generally repeats Articles 170 and 172 of the 1869 Regulations. The regulation clarifies the scope of responsibility by placing the context as “[d]uring wars to which the United States is not a party.” Otherwise, it is a combination of the two earlier articles.

Section 95 repeats Article 169 of the 1869 Regulations, while Section 96 repeats Article 171 of the 1869 Regulations. In addition, the Commander-in-Chief is to extend his responsibility to the commanding officers of his squadron or fleet.

Section 247 incorporates the regulations for a Commander-in-Chief by reference, the first instance of such an incorporation, and there is no indication of a captain’s responsibilities while on foreign station except as mentioned previously.

The most interesting aspect of the 1870 Regulations is what they do not include. Omitted from the 1869 Regulations are Article 52 on the arrest of deserters, Article 165 on American seamen held aboard foreign vessels, and

Articles 173, 174 and 175 on letters-of-marque and privateers. The “civilized nations” distinction is retained in Section 53, however, so that the right to conduct reprisals in many areas of the world remains along with the right of self-help to protect American lives and property.

XV. United States Navy Regulations (1876)

Instructions for Officers, Afloat: Commanders-in-Chief

Article 21. Punishment of people of any civilized nation. He will not inflict punishment upon the people of any civilized nation with whom the United States has treaties, for any violation, alleged or otherwise, of such treaties or of international law; but in the absence of a Diplomatic Representative, he will enter into correspondence with the authorities of the nation, and will take the earliest opportunity to communicate all the information in his possession to the Navy Department.

Article 22. Protection of commerce of the United States. He will do his utmost on all occasions to protect the commerce of the United States.

Article 49. Neutrality of the United States; Protection of lives and property. During wars in which the United States are neutral, he will observe the strictest neutrality and require the same of everyone under his command. He will comply strictly with the laws of blockade, when a harbor or port is blockaded by a nation with whom the United States is at peace, making every effort to protect the lives and property of citizens of the United States within the lines of the belligerents, and will so instruct the commanding officers of the vessels of his fleet or squadron.

Officers Commanding Vessels.

Article 101. Acting singly. When acting singly, he will be governed by the regulations for the Commander-in-Chief, so far as they may be applicable to his case.²⁶

Commentary

Article 21 consolidates Sections 53 and 54 of the 1870 Regulations. Article 22 repeats Section 55 of the 1870 Regulations. Article 49 consolidates Sections 94, 95 and 96 of the 1870 Regulations. Article 101 repeats in substance Section 247 of the 1870 Regulations.

XVI. United States Navy Regulations (1893)

A Commander-in-Chief

Duties in Time of War

Article 276. To protect and convoy merchant vessels. He shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 277. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, he, and all under his command, shall observe the laws of neutrality and respect a lawful blockade, but at the same time make every possible effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 278. To observe the principles of international law and treaty obligations. When the United States is at war, he shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals, he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 283. Intercourse with Foreigners.

1. Territorial authority. He shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed force to be landed. No armed force for exercise, target practice, funeral escort, or other purpose shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice within. Great-gun target practice, even at floating targets, shall not take place within foreign territorial waters or at any point from which shots may fall therein, without permission.

Article 284. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, he shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any

action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 285. Use of force. The use of force against a foreign and friendly State, or against anyone within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It can never be exercised with a view to inflicting punishment for acts already committed. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

Article 286. Landing an armed force in foreign territory. Whenever in the application of the above-mentioned principles it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

Article 288. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief and captains of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of their country, always acting in accordance with international law and treaty obligations.

Article 289. Dealings with foreigners. He shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed; and that a feeling of good will and mutual respect should be cultivated.²⁷

Commentary

This edition of the regulations is the earliest to use the text still found in the 1948 Navy Regulations, which remained in force until 1973. The articles dealing with conduct and intervention in foreign lands reflect the policy of wide

discretion intended to promote maximum flexibility expressed in the 1869, 1870 and 1876 editions.

This edition, however, is even more insistent on the duty to intervene in a foreign land when an American interest is threatened. Article 285 in particular sets forth the right of self-preservation as the justification for self-help by the United States. Although the doctrine of self-preservation must be read against the background of the times—1893 falls in the midst of the age of imperialism—it also must be remembered that similar language was retained through the 1948 edition of the regulations, which until 1973 were the law of the Navy.²⁸

Article 277 corresponds in substance to Article 49 of the 1876 Regulations. For the first time the “civilized nations” qualification is applied to the neutrality and blockade rule, no longer confined to the punishment rule. See Article 21 of the 1876 Regulations. The responsibilities the article imposes upon a Commander-in-Chief remained unchanged.

Article 284 corresponds roughly to Article 21 of the 1876 Regulations. The thrust of the article is changed from punishment to prevention. The clear import here is that the Commander-in-Chief is to take only such action as is necessary to forestall injury to the United States or its citizens or to put a stop to harmful acts in progress. The necessity to report to the Secretary of the Navy is unchanged, but the responsibility for any action taken rests entirely with the Commander-in-Chief himself.

Article 285 is similar to Article 277 in that it is designed to give Commanders-in-Chief the authority to intervene in situations where US interests are threatened. Unlike Article 277 and its predecessors, Article 285 can be invoked in peacetime. All previous regulations permitting intervention in foreign countries to protect American lives and property either refer to a wartime situation or call for consultation with local authorities before action is taken, except in the most extreme circumstances. While the exercise of “sound judgment of responsible officers” may give rise to the use of force only as a last resort, and then only to the degree necessary to end the threat to American interests, the breadth of the right of self-preservation means that any prospect of violence that could threaten the United States or its citizens may be sufficient grounds for intervention by a naval force.

It is noteworthy that the “civilized nations” qualification is not included in this article. Instead, mention is made in the first sentence of “a foreign and friendly state.” There is no indication, however, that application of Article 285 is in any way limited to friendly States. The essential prerequisite is the threat to US interests, wherever they are.

Article 286 requires the Commander-in-Chief to seek the assent of local authorities before he lands an armed force pursuant to Article 285. The wording of this article makes it clear that "local authorities" can mean any of the factions which might claim to rule a city or country. Also, assent is to be obtained only if it does not involve further danger to US interests. Thus, this article is not an important limitation on the discretion of the Commander-in-Chief. Article 286 is otherwise interesting because it is the first to mention consent rather than consultation when dealing with the prospect of armed intervention. If nothing else, it reflects a desire on the part of the United States to justify its actions through the consent of the authority structure in the locality in which it is intervening.

Article 288 repeats in substance Article 22 of the 1876 Regulations. The duty to protect the commerce of the United States is narrowed to include only merchant vessels in lawful occupations. Advancement of the commercial interests of the United States, which involves the policing of sea lanes and other tasks which ensure the free flow of commercial traffic, must be accomplished in accordance with international law and treaty obligations. The effect of this article is to make the protection of commerce a less-aggressive task. There is no attempt to hold all American ships inviolate, no matter what actions they take, as might be inferred from the earlier regulations.

Article 289 is a new rule requiring moderate conduct on the part of US Navy personnel while in foreign ports as invitees.

XVII. United States Navy Regulations (1896).

A Commander-in-Chief

Duties in Time of War

Article 277. To protect and convoy merchant vessels. He shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 278. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, he, and all under his command, shall observe the laws of neutrality and respect a lawful blockade, but at the same time make every possible effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 279. To observe the principles of international law and treaty obligations. When the United States is at war, he shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals, he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 284. Intercourse with Foreigners.

1. Territorial authority. He shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed forces to be landed. No armed force for exercise, target practice, funeral escort, or other purpose shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice without permission. Great-gun target practice, even at floating targets, shall not take place within foreign territorial waters or at any point from which shots may fall therein, without permission.

Article 285. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, he shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 286. Use of force. The use of force against a foreign and friendly State, or against any one within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It can never be exercised with a view of inflicting punishment

for acts already committed. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

Article 287. Landing an armed force in foreign territory. Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

Article 289. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief and captains of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of this country, always acting in accordance with international law and treaty obligations.

Article 290. Dealings with foreigners. He shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed; and that a feeling of good will and mutual respect should be cultivated.²⁹

Commentary

Articles 277, 278, 279, 284, 285, 286, 287, 289 and 290 of the 1896 Regulations are identical to Articles 276, 277, 278, 283, 284, 285, 286, 288 and 289, respectively, of the 1893 Regulations.

XVIII. United States Navy Regulations (1900 and 1905)

A Commander-in-Chief

Duties in Time of War

Article 297. To protect and convoy merchant vessels. He shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 298. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, he, and all under his command shall observe the laws of neutrality and respect a lawful blockade, but at the same time make every possible

effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 299. To observe the principles of international law and treaty obligations. When the United States is at war, he shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals, he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 304. Intercourse with Foreigners.

1. Territorial authority. He shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed force to be landed. No armed force for exercise, target practice, funeral escort, or other purpose shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice without permission. Great-gun target practice, even at floating targets, shall not take place within foreign territorial waters or at any point from which shots may fall therein, without permission.

Article 305. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, he shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 306. Use of force. The use of force against a foreign and friendly State, or against any one within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the

extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

Article 307. Landing an armed force in foreign territory. Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

Article 309. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief and captains of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of this country, always acting in accordance with international law and treaty obligations.

Article 310. Dealings with foreigners. He shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed; and that a feeling of good will and mutual respect should be cultivated.³⁰

Commentary

These articles of the 1900 and 1905 Regulations are identical to their 1896 counterparts.

XIX. United States Navy Regulations (1909)

A Commander-in-Chief

Duties in Time of War

Article 333. To protect and convoy merchant vessels. He shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 334. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, he and all under his command shall observe the laws of neutrality and respect a lawful blockade, but at the same time make every possible

effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 335. To observe the principles of international law and treaty obligations. When the United States is at war, he shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals, he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 340. Intercourse with Foreigners.

1. Territorial authority. He shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed force to be landed. No armed force for exercise, target practice, funeral escort, or other purposes shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice without permission. Great-gun target practice, even at floating targets, shall not take place within foreign territorial waters or at any point from which shots may fall therein, without permission.

Article 341. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, he shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 342. Use of force. Self-preservation. The use of force against a foreign and friendly State, or against anyone within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of

self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

Article 343. Landing an armed force in foreign territory. Whenever in the application of the above-mentioned principles it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

Article 345. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief and captains of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of their country, always acting in accordance with international law and treaty obligations.

Article 346. Dealings with foreigners. He shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed; and that a feeling of good will and mutual respect should be cultivated.³¹

Commentary

The substance of these articles is identical to that of the 1900 and 1905 Regulations.

XX. United States Navy Regulations (1913)

A Commander-in-Chief

Duties in Time of War

Article 1632. To protect and convoy merchant vessels. The Commander-in-Chief shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 1633. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, the Commander-in-Chief and all under his command

shall observe the laws of neutrality and respect a lawful blockade, but at the same time make every possible effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 1634. To observe the principles of international law and treaty obligations. When the United States is at war, the Commander-in-Chief shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals, he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 1645. Intercourse with Foreigners.

1. Territorial authority. The Commander-in-Chief shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed force to be landed. No armed force for exercise, target practice, funeral escort, or other purposes shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice without permission. Target practice with guns or torpedoes shall not take place without permission from the government of the country concerned within foreign territorial waters or at any point from which shots may fall or torpedoes enter therein.

Article 1646. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the Commander-in-Chief shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 1647. Use of force. Self-preservation. The use of force against a foreign and friendly State or against anyone within the territories thereof, is illegal. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to

the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

Article 1648. Landing an armed force in foreign territory. Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

2. Due to the ease with which the Navy Department can be communicated with from all parts of the world, no Commander-in-Chief, division commander, or commanding officer, shall issue an ultimatum to the representative of any foreign Government, or demand the performance of any service from any such representative that must be executed within a limited time, without first communicating with the Navy Department, except in extreme cases where such action is necessary to save life.

Article 1650. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief, division commanders, and commanding officers of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of this country, always acting in accordance with international law and treaty obligations.

Article 1651. Dealings with foreigners. The Commander-in-Chief shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed, and that a feeling of good will and mutual respect should be cultivated.³²

Commentary

Articles 1632, 1633, 1634, 1645, 1646 and 1647 repeat Articles 333, 334, 335, 340, 341 and 342 of the 1909 Regulations. Article 1648(1) repeats Article 343 of the 1909 Regulations. Article 1648(2) was added by Change No. 7 of September 15, 1916. It takes into account the Navy's use of radio

communications. The sentence forbidding ultimatums to foreign governments without prior consultation with the Navy Department restricts the right of a Commander-in-Chief to apply the self-preservation doctrine. Henceforth, the right to self-preservation can be invoked by a Commander-in-Chief, acting on his own, only when it is a life-or-death situation calling for immediate action.

Article 1650 repeats Article 345 of the 1909 Regulations, except that the words “division commanders, and commanding officers” are substituted for the word “captains.” This change reflects organizational growth in the Navy.

Article 1651 repeats Article 346 of the 1909 Regulations, except that the phrase “The Commander-in-Chief” is substituted for the pronoun “he,” a change for clarity’s sake only.

XXI. United States Navy Regulations (1920)

A Commander-in-Chief

Duties in Time of War

Article 714. To protect and convoy merchant vessels. The Commander-in-Chief shall afford protection and convoy, so far as it is within his power, to merchant vessels of the United States and to those of allies.

Article 715. Duties during a war between civilized nations at peace with the United States. During a war between civilized nations with which the United States is at peace, the Commander-in-Chief, and all under his command, shall observe the laws of neutrality and respect a lawful blockade, but at the same time make very possible effort that is consistent with the rules of international law to preserve and protect the lives and property of citizens of the United States wherever situated.

Article 716. To observe the principles of international law and treaty obligations. When the United States is at war, the Commander-in-Chief shall require all under his command to observe the rules of humane warfare and the principles of international law. When dealing with neutrals he shall cause all under his command to observe the rules of international law and the stipulation of treaties, and expect and exact a like observance from others.

Article 721. Intercourse with foreigners.

1. Territorial authority. The Commander-in-Chief shall exercise great care that all under his command scrupulously respect the territorial authority of foreign civilized nations in amity with the United States.

2. No armed force to be landed. No armed force for exercise, target practice, funeral escort, or other purposes shall be landed without permission from the local authorities; nor shall large bodies of men be granted leave to visit the shore without a similar permission; nor shall men be landed to capture deserters.

3. No target practice without permission. Target practice with guns or torpedoes shall not take place without permission from the Government of the country concerned within foreign territorial waters or at any point from which shots may fall or torpedoes enter therein.

Article 722. Violation of international law and treaty obligations. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the Commander-in-Chief shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

Article 723. Use of force. Self-preservation. The use of force against a foreign and friendly State, or against anyone within the territories thereof, is illegal.

The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

Article 724. Landing an armed force in foreign territory.

1. Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

2. Due to the ease with which the Navy Department can be communicated with from all parts of the world, no Commander-in-Chief, flag officer, or commanding officer shall issue an ultimatum to the representative of any foreign Government, or demand the performance of any service from any such representative that must be executed within a limited time, without first communicating with the Navy Department, except in extreme cases where such action is necessary to save life.

Article 726. To protect the commerce of the United States. So far as lies within their power, Commanders-in-Chief, division commanders, and commanding officers of ships shall protect all merchant vessels of the United States in lawful occupations, and advance the commercial interests of this country, always acting in accordance with international law and treaty obligations.

Article 727. Dealings with foreigners. The Commander-in-Chief shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners moderation and courtesy should be displayed, and that a feeling of good will and mutual respect should be cultivated.³³

Commentary

Articles 714, 715, 716, 721, 722, 723, 724, 726 and 727 repeat Articles 1632, 1633, 1634, 1645, 1646, 1647, 1648, 1650 and 1651 of the 1913 Regulations.

XXII. United States Navy Regulations (1948)

Commanders-in-Chief and Other Commanders

Article 0505. Observance of International Law.

1. In the event of war between nations with which the United States is at peace, a commander shall observe, and require his command to observe, the principles of international law. He shall make every effort consistent with those principles to preserve and protect the lives and property of citizens of the United States wherever situated.

2. When the United States is at war, he shall observe, and require his command to observe, the principles of international law and the rules of humane warfare. He shall respect the rights of neutrals as prescribed by international law and by pertinent provisions of treaties, and shall exact a like observance from neutrals.

The Senior Officer Present

Article 0613. Violations of International Law and Treaties. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the senior officer present shall consult with the diplomatic or consular representatives of the United States, if possible, and shall take such action as the gravity of the situation demands. The responsibility for any action taken by a naval force, however, rests wholly upon the senior officer present. He shall immediately report all the facts to the Secretary of the Navy.

Article 0614. Use of Force Against a Friendly State.

1. The use of force by United States naval personnel against a friendly foreign State, or against anyone within the territories thereof, is illegal.

2. The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation cannot be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

3. Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in a foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some of them, shall first be obtained, if it can be done without prejudice to the interests involved.

Article 0620. Protection of Commerce of the United States. So far as lies within his power, acting in conformity with international law and treaty obligations, the senior officer present shall protect all commercial vessels and aircraft of the United States in their lawful occupations, and shall advance the commercial interests of this country.

Article 0622. Territorial Authority of Foreign Nations.

1. The senior officer present shall, in the exercise of his command, scrupulously respect the territorial authority of nations in amity with the United States.

2. Unless permission has been obtained from local authorities:

a. No armed force for exercise, target practice, funeral escort, or other purposes shall be landed.

b. No persons shall be allowed to visit the shore, except as necessary to conduct official business.

c. No men shall be landed to capture deserters.

3. Target practice with guns, torpedoes, rockets, guided missiles or other weapons shall not take place, without permission from the government of the country concerned, within foreign territorial waters and at any point from which projectiles, torpedoes, or missiles may enter therein.

Article 0623. Dealings with Foreigners. The senior officer present shall uphold the prestige of the United States. He shall impress upon officers and men that when in foreign ports it is their duty to avoid all possible causes of offense to the authorities or inhabitants; that due deference must be shown by them to the local laws, customs, ceremonies, and regulations; that in all dealings with foreigners, moderation and courtesy should be displayed; and that a feeling of good will and mutual respect should be cultivated.³⁴

Commentary

Article 0505 restates in substance Articles 715 and 716 of the 1920 Regulations. The old term “civilized nations” is finally dropped. The phrase was an anachronism and had become offensive to many countries by 1948. The phrase “principles of international law” takes the place of “the laws of neutrality and respect a lawful blockade.” This change is not significant, since Article 715 had mentioned the “rules of international law.” In short, Article 0505 reflects the same rules that had been used since 1893.

Article 0613 is a restatement of Article 722 of the 1920 Regulations, with minor alterations. “[T]he senior officer present” is substituted for the “Commander-in-Chief” in the first sentence. Consultation with diplomatic or consular representatives is to be had “if possible. . . .” The facts of the problem are to be reported to the Secretary of the Navy immediately, as in Article 722, but the change in priority is obvious. Again, this article is fundamentally the same as its 1893 counterpart.

Article 0614 repeats in substance Article 723 of the 1920 Regulations. The phrase “by United States naval personnel” is inserted in section 1 and the words “friendly” and “foreign” are reversed. Section 2 repeats the second paragraph of Article 723. Section 3 repeats verbatim Article 724 of the 1920 Regulations.

Article 0620 is a close paraphrase of Article 726 of the 1920 Regulations. Enforcement is now in the hands of the “senior officer present” and protection is extended to “all commercial vessels and aircraft. . . .” Otherwise the article is identical to its predecessor.

Articles 0622 and 0623 repeat the substance of Articles 721 and 727 of the 1920 Regulations.

XXIII. United States Navy Regulations (1973)

Commanders-in-Chief and Other Commanders

Article 0605. Observance of International Law. At all times a commander shall observe, and require his command to observe, the principles of international law. Where necessary to fulfillment of this responsibility, a departure from other provisions of Navy Regulations is authorized.

The Senior Officer Present

Article 0914. Violations of International Law and Treaties. On occasions when injury to the United States or to citizens thereof is committed or threatened in violation of the principles of international law or in violation of rights existing under a treaty or other international agreement, the senior officer present shall consult with the diplomatic or consular representatives of the United States, if possible, and he shall take such action as is demanded by the gravity of the situation. In time of peace, action involving the use of force may be taken only in consonance with the provisions of the succeeding article of these regulations. The responsibility for any application of force rests wholly upon the senior officer present. He shall report immediately all the facts to the Secretary of the Navy.

Article 0915. Use of Force Against Another State.

1. The use of force in time of peace by United States naval personnel against another nation or against anyone within the territories thereof is illegal except as an act of self-defense. The right of self-defense may arise in order to counter either the use of force or an immediate threat of the use of force.

2. The conditions calling for the application of the right of self-defense cannot be precisely defined beforehand, but must be left to the sound judgment of responsible naval personnel who are to perform their duties in this respect with all possible care and forbearance. The right of self-defense must be exercised only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

3. Force must never be used with a view to inflicting punishment for acts already committed.

Article 0916. Territorial Integrity of Foreign Nations. The senior officer present shall respect the territorial integrity of foreign nations. Unless permission has been obtained from foreign authorities:

a. No armed force for exercise, target practice, funeral escort, or other purposes shall be landed.

b. No persons shall be allowed to visit the shore, except as necessary to conduct official business.

c. No men shall be landed to capture deserters.

d. No target practice with guns, torpedoes, rockets, guided missiles or other weapons shall be conducted within foreign territorial waters or at any point from which projectiles, torpedoes or missiles may enter therein.

Article 0917. Dealings with Foreigners. The senior officer present shall uphold the prestige of the United States. He shall impress upon officers and men that, when in foreign ports, it is their duty to avoid all possible cause of offense to the authorities and inhabitants; that due deference must be shown by them to local laws, customs, ceremonies, and regulations; that moderation and courtesy should be displayed in all dealings with foreigners; that a feeling of good will and mutual respect should be cultivated.

Article 0920. Protection of Commerce of the United States. Acting in conformity with the international law and treaty obligations, the senior officer present shall protect, insofar as lies within his power, all commercial craft of the United States in their lawful occupations; and he shall advance the commercial interests of this country.³⁵

Commentary

Article 0605 is a rough paraphrase of Article 0505 of the 1948 Regulations. Its thrust, however, is somewhat different. By deleting the sentence exhorting the commander “to preserve and protect the lives and property of citizens of the United States wherever situated,” the Article becomes less self-serving and appears to place primary emphasis upon observance of the principles of

international law. Further evidence of this shift in emphasis is the statement that the commander is authorized to ignore other provisions of Navy Regulations where necessary for the fulfillment of his general responsibility to observe the principles of international law. Thus, the effect of the article is to make more explicit the subordination of Navy Regulations to the principles of international law.

The administrative history of this article clearly establishes that such subordination was the drafter's intent.

The first sentence [of Article 0605] is a simple and straight forward statement reflecting the traditional Navy position with regard to international law. The second sentence provides necessary flexibility in those areas where a convention or treaty ratified by the United States might make other specific Navy Regulations inapplicable or inappropriate in a given circumstance. Because the present world situation is one in which rules in the international arena change so rapidly, and because the United States often takes a leading role in these changes, it is felt that flexibility is necessary in this general article.³⁶

The second paragraph of Article 0505 was deleted from the 1973 Regulations "to make clear that Commanders shall observe international law" at all times. The 1973 revisers felt that "as currently phrased, [Article 0505] might support an interpretation which restricts the application of international law to situations of war or armed conflict." They correctly pointed out that "certainly this is true and has never been the Navy position."³⁷

Article 0914 restates in substance Article 0613 of the 1948 Regulations. The only substantial change made is the insertion of a sentence emphasizing that in time of peace action involving the use of force is proscribed except in self-defense, as described in Article 0915.

Article 0915, defining the criteria by which a commander may be justified in the use of force in self-defense, roughly parallels Article 0614 of the 1948 Regulations. However, both the language and the thrust of the article have been altered somewhat. The more modern phrase "self-defense" is substituted for that of "self-preservation." The 1973 Regulation states that the right of self-defense "may arise in order to counter either the use of force or an immediate threat of the use of force." The 1948 Regulation states a much broader rationale, including "the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury." The deletion in the 1973 Regulation of language specifically authorizing the forcible protection of the lives and property of US nationals abroad indicates that the circumstances

under which a commander may justifiably resort to force for such purposes are greatly restricted today.

The administrative history clearly indicates that the above changes were designed to bring the regulations into conformity with contemporary international law. Article 0614.1, Navy Regulations 1984, according to the drafters,

discusses restraints on the use of force against a *friendly* State. It could be viewed by implication then that there are no prohibitions on the use of force against an *unfriendly* State. Such a distinction has no foundation in international law.³⁸

Further, the drafting history refers to the applicable provisions of the UN Charter and to Security Council practice prescribing the permissible uses of force as the basis for these revised articles.

Article 0916 is a modernization of Article 0622 of the 1948 Regulations. The first sentence of Article 0916 is based on Article 0622, section 1. Respect for the territorial integrity of foreign nations is now properly extended to all nations, and is no longer limited by implications to those nations “in amity with the United States.” Such was the drafters’ intent:

[Article 0622, section 1] contains a phrase limiting the article’s general applicability to nations “in amity” with the United States. Such a grammatical construction could lead to the interpretation that the principles of this article do not apply to nations not in amity with the United States. This view is inconsonant with international law and the view of the United States.³⁹

In the second sentence of Article 0916, “foreign” has been substituted for “local” to make clear just whose permission is required to do the subsequently listed acts. Subparagraphs a, b and c are duplicates of Article 0622, section 2, subparagraphs a, b and c of the 1948 Regulations. Subparagraph d is based on Article 0622, section 3, only grammatical changes have been made.

Article 0917, other than a minor repositioning of words in the penultimate clause, is almost a verbatim copy of Article 0623 of the 1948 Regulations.

Article 0920 restates in substance Article 0620 of the 1948 Regulations. The thrust of both articles is identical.

XXIV. United States Navy Regulations (1990)

Commanders-in-Chief and Other Commanders

Article 0705. Observance of International Law. At all times, commanders shall observe, and require their commands to observe, the principles of

international law. Where necessary to fulfill this responsibility, a departure from other provisions of Navy Regulations is authorized.

The Senior Officer Present

Article 0914. Violations of International Law and Treaties. On occasions when injury to the United States or citizens thereof is committed or threatened in violation of the principles of international law or in violation of rights existing under a treaty or other international agreement, the senior officer present shall consult with the diplomatic or consular representatives of the United States, if possible, and shall take such action as is demanded by the gravity of the situation. In time of peace, action involving the use of force may be taken only in consonance with the provisions of the succeeding article of these regulations. The responsibility for any application of force rests wholly upon the senior officer present. The senior officer present shall report immediately all the facts to the National Command Authority, keeping the operational chain of command and the Secretary of the Navy informed.

Article 0915. Use of Force Against Another State.

1. The use of force in time of peace by United States naval personnel against another nation or against anyone within the territories thereof is illegal except as an act of self-defense. Naval personnel have a right of self-defense against hostile acts or hostile intent (imminent threat to use force). This right includes defending themselves, their subunits and, when appropriate, defending US citizens, their property and US commercial assets in the vicinity.

2. The conditions calling for application of the right of self-defense cannot be precisely defined beforehand, but must be left to the sound judgment of responsible naval personnel who are to perform their duties in this respect with all possible care and forbearance. The use of force must be exercised only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

3. Force must never be used with a view to inflicting unlawful punishment for acts already committed.

Article 0916. Territorial Integrity of Foreign Nations. The senior officer present shall respect the territorial integrity of foreign nations. Unless permission has been obtained from foreign authorities:

a. No armed force for exercise, target practice, funeral escort or other purpose shall be landed.

b. No persons shall be allowed to visit the shore, except as necessary to conduct official business.

c. No persons shall be landed to capture deserters.

d. No target practice with guns, torpedoes, rockets, guided missiles or other weapons shall be conducted within foreign territorial waters or at any point from which projectiles, torpedoes or missiles may enter therein.

Article 0917. Dealings with Foreigners. The senior officer present shall uphold the prestige of the United States. He or she shall impress upon officers and enlisted personnel that, when in foreign ports, it is their duty to avoid all possible cause for offense to the authorities and inhabitants; that due deference must be shown by them to local laws, customs, ceremonies and regulations; that moderation and courtesy should be displayed in all dealings with foreigners; and that a feeling of good will and respect should be cultivated.

Article 0920. Protection of Commerce of the United States. Acting in conformity with international law and treaty obligations, the senior officer present shall protect, insofar as lies within his or her power, all commercial craft of the United States in their unlawful occupations.⁴⁰

Commentary

Article 0705 is a nearly verbatim repetition of Article 0605 of the 1973 Regulations, the only difference being the substitution of the pronoun “their” for the pronoun “his.” Similar changes in the interest of gender neutrality, made throughout the 1990 regulations, will not be mentioned below.

Article 0914 repeats in substance Article 0914 of the 1973 regulations. Under the 1990 Article, the senior officer present reports to the “National Command Authority, keeping the operational chain of command and the Secretary of the Navy informed.” The 1973 Article requires a report only to the Secretary of the Navy.

Article 0915 includes a broader description of the right to use force as an act of self-defense than was found in Article 0915 of the 1973 Regulations. Under the 1990 Regulations, “[n]aval personnel have a right of self-defense against hostile acts or hostile intent (imminent threat to use force),” while under the 1973 Regulations the right “may arise in order to counter either the use of force or an immediate threat of the use of force.” Further, under the 1990 Regulations, naval personnel may defend “themselves, their subunits and, when appropriate, . . . US citizens, their property and US commercial assets in the vicinity.” In comparison, Article 0915 in the 1973 Regulations does not define the ambit of the right of self-defense.

Articles 0916 and 0917 are exact replicas of Articles 0916 and 0917, respectively, in the 1973 regulations.

Article 0920 omits the requirement that the senior officer present “shall advance the commercial interests of this country” but is otherwise a verbatim repetition of Article 0920 in the 1973 regulations.

Summary

In summary, it can be seen that for nearly a century — between 1893 and 1973 — the Navy Regulations governing the use of force to protect US nationals and their property abroad remained virtually unchanged. With the promulgation of the 1973 Regulations, however, a shift in attitude toward the use of forcible self-help in such cases is evident. Omission of phrases relating directly to the protection of nationals, as well as the inclusion of positive statements relating to the supremacy of international law, indicate that the type of interventionary practice sanctioned by prior regulations no longer passes muster. The 1990 Regulations make no change in this regard. Just what measures of forcible self-help to protect nationals abroad remain permissible today is a controversial question, upon which it is hoped Chapters IV and V have shed some light.

NOTES

1. See Woods, US Navy Regulations, International Law, and the Organization of American States, 22 Naval War College Rev. 66 (Feb. 1970).
2. See Chapter I. See also Woods, *supra* note 1, at 74-76.
3. See generally A. Bozeman, *The Future of Law in a Multicultural World* (1971).
4. For a pre-1973 discussion of ways to update US Navy Regulations in this area, see Woods, *supra* note 1, at 80-81.
5. Admiral Strauss notes that the 1775 Rules for the Regulation of the Navy of the United Colonies of North America, “were in the main based on the Regulations and Instructions Relating to His Majesty’s Service at Sea (1772) and on An Act Relating to the Government of His Majesty’s Ships . . . Vessels, and Forces by Sea (1749).” Admiral Strauss further states that “[e]ntire articles from these were taken verbatim; others were converted only to the extent that American political philosophy demanded; a few, but very few, were original.” See Rules for the Regulation of the Navy of the United Colonies, Introductory Note, Naval Historical Foundation Reprint Series I, No. 1.
6. US Const. art. I, § 8.
7. Bolander, *A History of Regulations in the United States Navy*, 73 US Naval Institute Proceedings 1355, 1360 (1947).
8. Act of July 14, 1862, ch. 164, § 5, 12 Stat. 565 (1862) (codified as amended at 10 USC. § 6011 (1988)).
9. In 1981, Congress struck the words “with the approval of the President” from 10 USC. § 6011 (1988), leaving with the Secretary of the Navy sole authority to issue the regulations. See *id.*

Appendix II

10. Regulations and Instructions Relating to His Majesty's Service at Sea, established by His Majesty in Council 2-3, 33, 34 (11th ed. London 1772).
11. Rules for the Regulation of the Navy of the United Colonies of North America 6 (1775); 3 Journals of the Continental Congress 1774-1789, at 380-81 (Ford ed. 1905).
12. See note 5 *supra*.
13. Act of March 2, 1799, ch. 24, § 1, 1 Stat. 711.
14. An Act for the better government of the Navy of the United States, Apr. 23, 1800, ch. 33, § 11, 2 Stat. 53 (1856).
15. Naval Regulations issued by Command of the President of the United States of America, January 25, 1802, at 3, 10 (date and place of publication unknown).
16. Naval Regulations, issued by command of the President of the United States of America 3, 9 (Washington, 1814).
17. Rules, Regulations and Instructions for the Naval Service of the United States 14, 29 (Washington, 1818).
18. "Rules, Regulations, and Instructions, for the Naval Service of the United States," in Letter from the Secretary of the Navy, at 20, 37 (Washington, 1821).
19. General Regulations for the Navy and Marine Corps of the United States, 1841, at 45 (Washington, 1841).
20. Orders and Instructions for the Direction and Government of the Naval Service of the United States, and for the Exposition of the Duties and Relations of Officers and Men in the several branches thereof 70-71 (Washington, 1853) (ruled "destitute of legal validity or effect" by the Attorney General on April 5, 1853, 6 Op. Atty Gen. 10, 19 [1856]).
21. "A Code of Regulations for the Government of the Navy," in Annual Report of the Secretary of the Navy, at 78 (Washington, 1858). This Code was prepared and laid before Congress for its approval pursuant to the Act of March 3, 1857, ch. 111, § 7, 11 Stat. 247 (1859). Such approval never was given. See Bolander, *supra* note 7, at 1360.
22. Regulations for the Navy of the United States, 1863, 55, 60-61 (Washington, 1863).
23. Regulations for the Government of the United States Navy, 1865, at 56, 62 (Washington, 1865).
24. Regulations for the Government of the United States Navy, 1868, at 7, 18-19 (Washington, 1869).
25. Regulations for the Government of the United States Navy, 1870, at 7, 11-12, 28 (Washington, 1870).
26. Regulations of the Government of the Navy of the United States, 1876, at 25, 27, 30, 35-36 (Washington, 1877).
27. Regulations for the Government of the Navy of the United States, 1893, at 65, 67-68 (Washington, 1893), as amended, US Navy Regulation Circular No. 13 (Aug. 15, 1894).
28. Other authorities have dealt at length with the changes in international law and practice between 1893 and recent times, especially as they affected the meaning of the regulations. See Woods, note 1 *supra*. See also Hallo, The Legal Use of Force . . . Short of War, 92 US Naval Institute Proceedings 88 (1966).
29. Regulations for the Government of the Navy of the United States, 1896, at 64, 65-66 (Washington, 1896).
30. Regulations for the Government of the Navy of the United States, 1900, at 75, 76-77 (Washington, 1900) and Regulations for the Government of the Navy of the United States, 1905, at 75, 76-77 (Washington, 1905).

31. Regulations for the Government of the Navy of the United States, 1909, at 85, 86-87 (Washington, 1909).
32. Regulations for the Government of the Navy of the United States (Navy Regulations), 1913, at 161R, 162R-163R (Washington, 1913), *as amended*, Change No. 7 of September 15, 1916.
33. United States Navy Regulations, 1920, at 219, 220-22 (Washington, 1920).
34. United States Navy Regulations, 1948, at 66, 73, 74 (Washington, 1948).
35. United States Navy Regulations, 1973, at 11, 28, 39 (Washington, 1973).
36. Office of the Judge Advocate General of the Navy, Memorandum from International Law Division to Administrative Law Division, JAG: 102, para. 2 (Sep. 9, 1970).
37. *Id.*
38. *Id.* at para. 8 (emphasis in original).
39. *Id.* at para. 10.
40. United States Navy Regulations, 1990, at 39-40, 71-72 (Washington, 1990).