THE IRAN - IRAQ CONFLICT

RECENT DEVELOPMENTS IN THE INTERNATIONAL LAW OF NAVAL ENGAGEMENTS

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C O N T E N T S

INTRODUCTION

NB

Iraq invaded Iran on the 20 September 1980. Initial advances into Iranian territory were repulsed and by 1982 Iraq had withdrawn to previously recognised international boundaries. The war on land lapsed into statemate with neither side being capable of launching a sufficiently strong offensive to terminate hostilities. Partly in retaliation for Iran's successful blockade of Iraqi shipping and partly in an attempt to cripple Iranian oil exports and undermine the enemy war effort, Iraq expanded the conflict onto the waters of the Persian Gulf. Exclusion zones were declared in the northern Gulf, and shipping calling at the Iranian oil terminal at Kharg Island singled out for unannounced missile attacks. Iraq has hit over 170 tankers in the Gulf war. Iran has made fewer attacks but most of these have occurred outside both the Iranian and Iraqi war zones. Neutral shipping calling at neutral Gulf ports are considered lawful targets for destruction. Recently Kuwaiti-bound vessels have been hit. Neutral merchant shipping is being stopped and searched at the entrance to the Gulf. The United States, having committed itself to upholding the freedom of neutral navigation in the region, has transferred Kuwaiti tankers to US registration and is escorting the re-flagged vessels to protect them from Iranian interference and attack.

The United Nations Security Council has passed Resolutions calling for an end to the hostilities and has denounced attacks on neutral shipping in international waters. No Chapter Vll procedures for collective security enforcement under the Charter have been invoked and not one of the Resolutions is binding. A typical post-1945 conflict situation has emerged. The UN having failed to make an objective determination as to the cause

of the conflict or the identity of the aggressor, third States have decided for themselves who is guilty of aggression and who is the victim. Both sides accuse each other of starting the war and of having escalated hostilities to their present level. Both parties state that they are acting in self-defence under the UN Charter.

The intensification of the tanker war since 1984 has failed to resolve the stalemate. A new impasse has been reached. It is unlikely to be resolved by UN Security Resolutions or the convoying of merchant shipping by individual States. The US intervention is perceived by Iran as a challenge and the recent placing of missiles in the Straits of Hormuz is seen as a demonstration of Iran's ability and willingness to close the Gulf to all shipping.

It is clear that any conflict of this nature requires legal regulation. The United Nations has failed to resolve the dispute. Neutral States are steadily being drawn into the conflict. At the end of World War Two the coming into force of the UN Charter heralded a new era in which it was thought war and the law of war would be rendered obsolete. Despite these predictions however international conflicts continued to occur and since these like any 'war', needed to be controlled, those rules of conventional warfare limiting the excesses of violent combat and introducing an element of humanitarian consideration into the conduct of military operations were deemed appropriate to regulate armed conflict. States have, moreover, observed certain restrictions in their conduct of naval operations. Modern State practice has assumed that there are severe restraints on the way in which armed force may be wielded. The prohibition on the use of force and the restriction of the grounds on which States are permitted to use force has imposed restrictions not only on the initial resort to force but also on the way in which

force is used. The principles of necessity and proportionality dictate that the use of armed force must at all times during any armed conflict, whether recognised as war or not, be reasonable and proportionate to the achievement of a legitimate objective.

Very few of these limitations have been observed during the Gulf war. The fear has been raised that a new rule of international law is developing which may gradually limit the freedom of international shipping. There is a danger that repeated breaches of the principle of freedom of navigation on the high seas may establish a precedent for the conduct of future naval operations.

This danger and the legality or otherwise of the attacks on foreign shipping in international waters is usually analysed as a matter for the traditional law of war at sea, the assumption being that the classical rules of blockade and contraband are applicable whatever the legality of the use of force by Iran or Iraq. Very little reference is ever made to the principles regarding the use of force under the Charter (ius ad bellum). The attacks on shipping and interference with neutral navigation is discussed in terms of the ius in bello and hardly ever in terms of the principle of self-defence as a restraint upon the conduct (as opposed to the initiation) of hostilities(1). One writer has observed that the Iran-Iraq conflict poses important questions vis-a-vis both the right to use force in self-defence and the traditional ius in bello (2). Professor O'Connell has noticed that States have altered the way in which naval operations are fought(3).

Are these rules of international law or merely the way in which States have behaved for political and other reasons? Is the ius in bello still applicable or is it, as some would have it, obsolete? What is the importance of the ius ad bellum and the principles of

necessity and proportionality in the adjudication of a dispute that has lasted seven years and has seen the biggest attack on neutral merchant shipping since 1945?

The international community has indicated that it does not agree with belligerent assertions that the right of free navigation on the high seas is qualified by the right to act in self-defence: there is a consensus that neutrals are insulated from belligerent interference and attack. No State has admitted to any right on the part of Iran or Iraq to exercise belligerent rights against neutrals. States appear to be operating on the assumption that the ius ad bellum has interfered with classical belligerent rights at sea. New rules have developed which immunise non-belligerents from the conduct of naval conflict. The right of belligerents to exercise limited control over the conduct of neutral commerce with the enemy has been restricted, if not eliminated.

The attitude of the non-belligerents in the Iran-Iraq conflict indicates that neutrals are not prepared to submit to belligerent interference and attack. The belligerents, on the other hand, have justified their attacks on international shipping by reference to the right of self-defence (ius ad bellum) and the law of war (ius in bello).

These and other issues are discussed in the following chapters. The ius in bello and the ius ad bellum are dealt with in Chapters 1 and 11. The Gulf war is described in Chapter 111 and the legal aspects of the tanker war and the visit and search of neutral shipping are analysed in Chapter 1V in the context of contemporary developments in the law of naval engagements.

CHAPTER 1

SELF-DEFENCE, THE LAW OF WAR AND THE CONTEMPORARY LAW OF NAVAL ENGAGEMENTS

1. INTRODUCTION

Traditional international law is based on the existence of a clear-cut distinction between war and peace. There is no intermediate stage. As soon as war is declared, the law of war operates automatically by virtue of the declaration and governs the relationship between belligerents inter se and between belligerents and non-belligerents. War is a situation which forces third States to decide whether to participate with their armed forces or whether to remain outside the conflict as neutral non-participants. The United Nations Charter ban on the use of force and the sole exception to that prohibition, the right to use force in self-defence under Article 51, has caused war to cease to exist as a technical condition. No State may lawfully initiate the use of force. Since war is a threat or use of force no State is allowed to resort to war. States have subsequently avoided declaring war and the law of war has been neglected. The main question is how far the outlawry of war has affected the traditional law of war and of neutrality. Armed conflicts still occur despite the shift in the position of war. During these hostilities some of the traditional laws have been invoked and applied, usually on the grounds of self-defence.

Is the old-fashioned law of war obsolete? In there a lex specialis for limited naval engagements? Or does the traditional law still apply, albeit in a modified form? The concept of self-defence, its effect on the traditional law of war and the evidence collected in

support of the development of new rules for contemporary naval warfare are discussed in this chapter. The traditional law of neutrality is dealt with in some detail in the next chapter.

11. SELF-DEFENCE : IUS AD BELLUM

The aim of the United Nations is to establish an international legal order in terms of which the unilateral use of force by States not acting under the authority of the UN is prohibited with the sole exception of the right derived from general international law to use force in self-defence[4]. Article 2, paragraph 4 states that:

> 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations'.

Article 2(4) and 51 have to be read together:

> 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security'.

The unauthorised use of force is unlawful except in limited circumstances. The apparent conclusion to be drawn from a reading of Article 2(4) and Article 51 is that the threat or use of force is illegal except when used in individual or collective self-defence 'if an armed attack occurs', or as authorised by the Security Council under the provisions of Chapters VI and VII[5]. The exact scope of Article 2(4) is unclear however. Some writers argue that the prohibition on the use of force is absolute and that any use of force is contrary to the ban contained in the Article[6]. According to others however Article 2(4) does not forbid the use of force alto-

gether. The use of force is only unlawful if directed against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the UN[7].

Article 51 has created some uncertainty about the exact scope of the right to use force in self-defence. What is an 'armed attack'? When is a State justified in resorting to armed force? What are the restrictions (if any) on its use? Are there any formalities to observe?[8] Clearly international law has established a specific exception to the general ban of the use of force and has subjected this exception to certain limitations, inter alia the requirements of 'armed attack', necessity and proportionality. In addition certain procedural requirements are laid down.

(1) 'Armed Attack'

UN Member States may use force in response to an 'armed attack' by the armed forces of another State[9]. An actual armed attack is distinguishable from an anticipated attack or from various other forms of unfriendly conduct falling short of an armed attack. The concept of an actual attack is much narrower than that of aggression and excludes any attack which is merely 'imminent'[10]. According to Brownlie the phrase 'armed attack' excludes any form of aggression falling short of offensive operations by the forces of a State. An armed attack is nothing more nor less than an attack launched by the forces of one State upon the territory of another[11]. Considerable differences of opinion exist as to what amounts to an 'armed attack' justifying armed defence. Some writers believe that an imminent attack justifies the use of force in self-defence under Article 51, for example, a major troop concentration on the border[12].

(2) 'Necessity and Proportionality'

The unilateral and unauthorised use of force is only lawful if it is limited to what is 'reasonably necessary and proportionate to the achievement of a legitimate and limited objective'[13]. It has long been a requirement of customary international law that force used in self-defence must be proportionate to the threat posed[14]. It must not involve anything unreasonable or excessive 'since the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it'[15]. The actual use of force in self-defence must be reasonably proportionate to the threat it is designed to meet. Force is only permitted insofar as it is necessary to restore the status ante quo[16]. Thus even if a State's initial recourse to armed force is justified, the degree of force used must not become excessive otherwise the State purporting to act in self-defence will be going beyond the boundaries of self-defence and be guilty of a violation of international law: 'self-defence authorises nothing more than self-defence'[17].

Some writers are prepared to tolerate a more extensive use of force[18]. There is a danger however that if the requirements of necessity and proportionality are relaxed the right contained in Article 51 is open to abuse. It is preferable to maintain that an armed response can only be lawful if and only if an armed attack has occurred. Whether or not the action taken subsequently is proportional to the danger posed is largely a question of fact to be decided and adjudicated on the facts of each particular case[19].

(3) The Security Council

The right to use force under Article 51 is an exceptional right and is not a substitute for collective action by the Security Council[20]. The Security Council bears the primary responsibility for the maintenance of inter-

national peace and security. The use of force in self-defence is permitted only for as long as the Council has not taken the necessary steps to restore peace and is subject to the Council's review. Until the Council does make a determination however a State is entitled to decide for itself whether it is the victim of an armed attack and what steps are necessary to resist it. Steps taken in self-defence must be reported to the Security Council. Although the defending State has a right to decide whether there is a danger an objective assessment of the situation is required. The Security Council is the ultimate judge of the correctness of the use of force. Having taken the necessary steps to maintain international peace and security only the Council is competent to decide if an armed attack has occurred and by whom. UN Members are obliged to abide by the decision of the Council and, if so directed, to suspend individual or collective self-defence(21). Unfortunately, the Council has rarely acted decisively in these matters and States have been left free to invoke Article 51 to justify their actions.

There are two schools of thought on the question of the exact scope of Article 2(4) and the right of self-defence under Article 51. The one view is that Article 2(4) contains an absolute prohibition on the use of force. The right to use force is severely restricted and is limited to self-defence in the event of a prior armed attack. According to the other view the Charter does not prohibit the use of force <u>simpliciter</u>. Force is only banned when directed against the territorial integrity or political independence of a State or in any other manner inconsistent with the purposes of the UN. Armed force is lawful if used in pre-emptive self-defence against an imminent attack(22).

It is submitted that the preferable view is along the lines of the 'extreme' view, namely, that the prohibition in Article 2(4) is absolute and that Article 51 contains

the only right of self-defence under the Charter. The use of force in contemporary international law can only be justified as a necessary and proportional response to an earlier armed attack. The injured State may only use 'force against force'[23]. There is nevertheless an influential minority view that armed force in pre-emptive self-defence is permissible in the event of an imminent attack, especially if the need to act in such circumstances is instant and overwhelming[24].

111. THE LAW OF WAR : IUS IN BELLO

The UN Charter's ban on the use of force has profoundly affected the traditional law of war at sea. Since war is no longer lawful, States have avoided declaring war and questions arise as to the compatibility and hence applicability of the traditional laws governing the conduct of conventional sea warfare. Traditionally international law has only distinguished states of 'war' and 'peace' and it is unclear how much of the traditional law of war at sea is applicable in limited conflicts which are neither war nor peace but which nevertheless require some sort of legal regulation. Some writings refer to the need to retain the classical rules of sea warfare in case general war should occur and because of the use of many aspects of the traditional law during limited naval conflicts[25]. Since few writers have recognised the concept of limited war they frequently state that if 'war' does occur the laws of war will continue to operate. This is a misleading statement. The regulation of armed conflict on land and at sea is usually treated as a matter for the law of war only (ius in bello). Although references are made to the principles of self-defence that govern the use of force under the Charter (ius ad bellum) few acknowledge the restraints imposed by the modern ius ad bellum upon the old-fashioned ius in bello. It is impossible to discuss the relevance of the law of war without taking into

account the outlawry of war and the principles of necessity and proportionality inherent in the right of self-defence contained in Article 51 of the UN Charter.

There was a popular belief in the early days of the UN that the structure of international law had been altered to such an extent that the traditional concepts of 'belligerency' and 'neutrality' had been rendered obsolete[26]. The assumption was that the Security Council would determine the existence of an act of aggression, identify the aggressor and supervise collective enforcement action. There was no room for the continued operation of the traditional laws of war at sea. It was suggested that new rules were needed to govern international police action[27]. Owing to the large number of conflicts which have subsequently taken place a large part of the traditional law came to be applied to every armed conflict irrespective of its status as war or otherwise. Motives of humanity were put forward to explain the application of the humanitarian laws of war to limited armed conflict[28]. These laws were also regarded as being compatible with the principles of self-defence applicable in limited conflicts. The humanitarian law of war emphasises the restrictions imposed by the concept of self-defence, limiting the scope of the conflict and reducing the possibilities for excessive violence. Since however there are no similar motives justifying the application of the law of economic warfare and of neutrality, the laws of visit and search have not been invoked except in those instances where at least one of the parties to the conflict has recognised a state of war[29]. States have been reluctant to justify the seizure of merchant ships as being necessary measures of self-defence under Article 51[30].

The idea that a State can acquire new rights from the illegal use of force has been sufficiently offensive to cause some observers to argue that the law of war ought to be applicable on a discriminatory basis[31]. Any

State unlawfully engaged in war should not acquire any of the conventional belligerent powers. The victim of aggression on the other hand is entitled to protect himself and no bar exists therefore to his claiming all the belligerent powers including the right to interfere with neutral commerce at sea. The law-breaking State is subject to the whole range of belligerent duties but to none of the rights. The traditional law is applied on a differential basis except for the humanitarian rules of war which are applicable equally to both sides(32).

This differential approach was not welcomed by Sir Hersch Lauterpacht who relied on three arguments in support of his assertion that the law of war is applicable on an equal basis(33). Lauterpacht concluded that armed conflict requires legal regulation by rules which do not discriminate against an aggressor(34). The need for rules to govern de facto war in the interests of humanity and minimum violence justifies the retention of the, largely humanitarian, law of war governing inter alia the treatment of non-combatants, the types of weapons that may be used and the targets against which they may be used(35).

The principles of self-defence have influenced the traditional law of war at sea in a fundamental way. Substantial limitations have been imposed not only upon the right to go to war but also on the way in which force may be used. The ius ad bellum has ensured that States have avoided invoking a full array of belligerent rights and have always tried to justify belligerent measures as the lawful exercise of the right of self-defence(36).

The principal source of the modern ius ad bellum is Article 2(4), Article 51 and subsequent State practice(37). Greenwood states that the ius ad bellum is applicable throughout the duration of any conflict. The self-defence principle of proportionality ensures that a State cannot justify the legality of its initial recourse to force by reference to the right of self-defence and then show that

it has subsequently complied with the customary ius in bello. Every act involving the use of force must be justified by reference to the principle of self-defence. Every measure must be shown to be a reasonably necessary and proportional act of self-defence(38). Given the applicability of the ius in bello in every armed conflict, any consideration of the lawfulness of a State's conduct must take account of both the ius ad bellum and the ius in bello. Both are separate branches of international law but they are both applicable concurrently:

> '... only if the use of force is a legitimate act of self-defence and the manner of its execution is within the limits of the ius in bello is there no breach of international law' (39).

IV. SELF-DEFENCE AT SEA : THE DEVELOPING LAW OF NAVAL ENGAGEMENTS

The UN Charter has failed in its objective to outlaw armed conflict. More than one hundred naval engagements have taken place since 1945. However no country has issued a formal declaration of war. The use of force has not been justified as the exercise of a traditional belligerent right of warfare : instead it has been justified as the necessary and proportional use of force in self-defence. Every post World War 11 conflict has been a 'limited' war: limited in area, scale and level of weaponry. Each incident has varied widely in scale of intensity and level of violence but they have all shared the one characteristic of a limited operational goal. In all cases the objective has been the same. The prohibition in Article 2(4) of the Charter has forced States to describe their naval operations as the attainment of a limited military objective in self-defence(40). Every incident at sea has been clothed in the language of self-defence. Article 2(4), Article 51 and recent State practice have imposed restrictions on the conduct of force, its location and the scale of its conduct:

> 'Limited war implies limitations as to operational areas and operational conduct' (41).

O'Connell has studied all naval engagements since 1945 and has concluded that there are three categories of limitations. They relate to:

1) the theatre of operations;

2) the scale of operations and the level of weaponry;

3) the graduation of force and the scale of response (42).

The assumption behind the UN Charter, namely that States will not resort to armed force to settle disputes but will resolve them peacefully through UN peace enforcement procedures, has proved to be inaccurate and armed conflicts at sea have continued. These require legal regulation. Most of them have been conflicts falling far short of conventional or 'total' war and the notion of self-defence has significantly limited the ability of States to invoke traditional belligerent rights and pursue conventional methods of warfare. The categories listed by O'Connell suggest in some instances the development and consolidation of new rules of international law governing the use of force during naval engagements:

> 'There are now limitations upon what forces engaged in self-defence may do and where they may do it, for self-defence is not a release from all constraints but is a measured reaction necessary to the occasion and proportional to the threat' (43).

(1) <u>The Theatre of Operations</u>

Wars have traditionally been conducted without limitation as to the area of naval operations, the assumption being that belligerent rights were exercisable against enemy and neutral shipping at sea anywhere in the world. Since 1945 States have not sought to rely on traditional methods of warfare nor have they allowed naval engagements to spill over onto the high seas. State practice has by and large assumed that belligerent measures against international shipping must be confined to belligerent territorial waters(44). During the Vietnam war (1961-1973) Operations

'Market Time' (South Vietnam) and 'Sea Dragon' (North Vietnam) were restricted to an area 12 miles off the coast of South and North Vietnam[45]. Both shared constraints common to the concept of self-defence. Merchant shipping could not be captured as prize, positive identification procedures were unusually strict and no belligerent operations were supposed to take place more than 12 miles at sea. The sinking of the Israeli gunboat the Eilat by Egyptian forces during the Arab-Israeli war (1948) was analysed by the UN Security Council on the basis of the assumption that the limit of Egyptian territorial waters was the legal limit for the use of force in self-defence. The United Kingdom was careful not to attack Argentine air bases on the Argentine mainland during the Falklands war (1982) even though these were used to attack warships of the Royal Navy: in traditional warfare this would have been perfectly legal. The UK also stressed that no measures were being taken to restrict the shipping of neutral South American countries on the high seas.

The Indo-Pakistan war was fought without limitation as to area or scale, attributable in part to the fact that at least one of the parties recognised a state of war. The hostilities were too short for any definite conclusions to be reached on the apparent acquiescence of third States in India's attacks on neutral shipping on the high seas. The Algerian War of Independence was also fought without regard to international law. Some European States protested loudly at France's measures against international shipping and these are usually set aside as being an example of abnormal and hence unlawful State practice[46].

There is no certainty whether State practice was crystallised into a new rule of international law or whether States have merely observed geographical restrictions for political and other reasons[47]. Greenwood observes that the self-defence requirements of necessity and proportionality dictate that force used in self-defence must generally be confined to the area of the threat[48]. In naval operations

this would almost always mean the territorial waters of at least the victim and probably the aggressor as well. However because self-defence is a flexible concept defensive measures may be invoked, in accordance with the rules of graduated force, beyond the territorial waters if the conflict has reached levels of superior force and eventually total war(49).

(2) The Scale of Operations and the Level of Weaponry

The scale of operations must not exceed those normally required for defence against an armed attack and the restoration of the status ante quo. Immediate resort to powerful and destructive weapons in the initial stages of a low-level engagement is unnecessary. The State relying on self-defence must not use weapons which are likely to cause a degree of destruction disproportionate to the attack or unnecessary to repel it. A missile response to a machine-gun attack in the course of a fishing dispute is almost impossible to justify as a reasonably necessary and proportional response by way of self-defence. Higher modes of weaponry may only be resorted to under the rules of the theory of graduated force. Once higher levels of violence are reached more powerful weaponry is justified. Before that, the mode and scale of weapons required in armed defence is a matter of fact to be decided in accordance with the principles of necessity and proportionality(50).

(3) The Graduation of Force and the Scale of Response

The primary characteristics of O'Connell's theory of graduated force are control and limitation(51). A subtle game of escalation must be played by both sides. It is difficult to explain the first use of force as an act of self-defence. Self-defence is by definition a measured response. The instantaneous use of high levels of force and weaponry is difficult to justify as lawful self-defence. No force should be resorted to unless every alternative has been tried.

Only then may force-minimum force-be used. The response must be in the same mode and confined to the geographical area of the attack[52]. *The overriding criterion is proportionality. The victim is thus entitled to respond to an attack by moving up the scale of force provided always that the move to a higher mode of weaponry is not disproportionate to the threat. Each graduation of force must be 'discriminating', 'deliberate' and have 'clearly defined and limited goals in view'*[53].

In order to be capable of a measured response in naval engagements States must be properly equipped to deal, firstly, with the fact of an armed attack and, secondly, with the subsequent need to maintain a proportional response. They must possess naval forces which are flexible and well-suited to all levels of escalation, from 'low tension' to 'hostilities'. Lawful self-defence can only be conducted if there is adequate provision for naval operations at various levels of capability[54].

States may no longer use any amount of force they think it proper to use. Their choice of weaponry is restricted. The changes in the traditional law are far-reaching. Gone is the simple distinction between 'war' and 'peace', 'winning' and 'losing'[55]. *There is a new obligation to control and restrict the use of force. There still remains a need to attain certain military objectives however. The other side still has to be defeated. Proper self-defence is still linked to a successful military campaign. The use of force requires legal regulation. The use of force at sea needs to be controlled by rules and regulations more precise and objective than the rather loosely worded principles of self-defence. The need to fight a 'limited' war, each step of which is carefully controlled and analysed in the context of the operational goal sought, enhances the need for laws of maritime conflict*[56].

The importance of O'Connell's rules is the emphasis placed on the new restrictions imposed by the principles of self-

defence on the traditional law of naval warfare. The former (ius ad bellum) has not rendered the latter (ius in bello) obsolete. The traditional law retains vitality. During the limited naval engagements of the post-Charter era States have relied heavily on 'certain of the traditional institutions'[57]. According to Greenwood the ius ad bellum supplements the ius in bello[56]. The principles of self-defence place restrictions upon the conduct of armed conflict in addition to those already contained in the traditional law of war. They do not interfere with the classical rules, except perhaps in the context of interference with neutral shipping on the high seas. The humanitarian laws of war are retained but these and the other conventional rules are subject now to additional limitations; limitations which have restricted the area and duration of the conflict, the choice of weapons and targets, and the amount of force which may be used against neutrals[59].

There is less certainty whether the law of neutrality and economic warfare insofar as it permits belligerents to exercise traditional rights against neutral shipping on the high seas is still relevant. There are strong grounds for arguing that they are incompatible with the concept of self-defence. Some writers have suggested the need for new rules derived from the traditional law and the principles of self-defence. The uncertainty surrounding the applicability of the accepted rules of neutrality and economic warfare and the possibility of new rules for modern naval engagements is discussed in the following chapter.

CHAPTER 11

THE CONTEMPORARY LAW OF NEUTRALITY

1. INTRODUCTION

The law of war is based on the assumption that States have an unfettered right to go to war. The laws of war were originally only concerned with the concept of military necessity. States which had resorted to war were preoccupied only with the need to win. Only those rules compatible with the easiest attainment of this simple objective were recognised. Gradually, however, the interests of non-participants were recognised as the rules governing the conduct of warfare developed into a more coherent body of law placing some restrictions on the means and methods of war and preventing belligerent States from exploiting an unlimited discretion in their pursuit of victory(60).

The traditional law of neutrality is designed to restrict the scope of armed conflict by bringing into operation certain rules defining the rights and duties of belligerents and neutrals inter se(61). Account is taken of the belligerents' desire to achieve a 'maximum negative impact' upon the enemy(62). At the same time it recognises the right of non-participating, neutral States to pursue normal commercial relations as in time of peace and for this purpose to navigate the high seas without interference or restriction. A special body of rules govern the conduct of economic warfare and define reciprocal rights and duties. The law of economic warfare permits belligerents to conduct war on enemy commercial shipping without necessarily drawing neutral States into the war. The extensive rights acquired by belligerents in time of war are balanced against a neutral's right to trade freely in an attempt to avoid additional conflict between belligerents and third countries.

Twentieth century developments have challenged some of the basic assumptions of the classic rules of warfare. Modern methods of warfare during both World Wars threatened the traditional compromise reached between belligerent and neutral. Belligerents expanded their conduct of economic warfare at sea at the expense of neutral commercial commerce. The attempts by the Kellog-Briand Pact (1928) and the Covenant of the League of Nations (1919) to outlaw war culminated in 1945 in the United Nations Charter prohibition of the use or threat of the use of force. Some writers predicted that under this new international legal regime neutrality was thought to be incompatible with the ban on the use of force and the duty of every Member State to assist the UN Security Council in its duty of maintaining international peace and security.

It is unlikely that neutrality has disappeared. The traditional rules of neutrality are still regularly invoked and State practice has assumed that particular rights and duties retain their vitality. It has also been suggested that the concept of neutrality is compatible with the UN Charter's collective security regime. If this is correct the classical rules of neutrality are still applicable in contemporary international law. It is not at all clear however to what extent the traditional rules still apply. Given the fact that States never declare war and rarely recognise a state of war, neutrality can no longer be predicated upon the traditional assumptions of belligerency and neutrality. The need to balance these conflicting interests would seem to have been blurred by the just war concepts of 'self-defence' and 'aggression', of 'lawful' and 'unlawful' war. Since the idea of neutral status remains relevant it is clear that not all of the traditional rules of neutrality have been abolished. They retain their importance, especially in conflicts of long duration involving a substantial degree of violence.

In a world where international relations continue to be conducted by the use of force there remains a need for the

regulation of violent conflict. Any aspect of the classical rules of warfare that assists in the isolation of the conflict and reduces the scope for its expansion will be relevant. Prior to an in-depth treatment of modern developments in the law of neutrality the theory and content of the traditional concept of neutrality, both generally and in sea warfare, will be looked at. An understanding of the traditional law is important so that the debate surrounding the applicability of the neutrality rules in contemporary international law can be understood.

11. THE TRADITIONAL LAW OF NEUTRALITY

States are neutral when in time of war they are not in a state of war with any of the belligerents(63). They are non-participants. Non-participation is the key aspect of the concept of traditional neutrality which is defined by Oppenheim as an 'attitude of impartiality adopted by third States towards belligerents and recognised by belligerents, such attitude creating rights and duties between the impartial States and the belligerents(64).

The declaration of war between two States forces third States to make a simple choice between participation and neutrality(65). There is no duty to choose one attitude rather than the other but they must choose one or the other(66).

The duty of neutrality implies sincere and loyal abstinence from real participation in a war by those States which have vowed not to participate(67). The non-participants are obliged to conform to a certain pattern of behaviour requiring firstly, abstinence from real participation and interference in any lawful operation of war between belligerents and secondly, not allowing the use of neutral territory for the conduct of warlike operations(68). Abstinence and impartiality are the basic postulates of neutrality. They exclude the giving of assistance to one of

the belligerents which is detrimental to the other and the infliction of injury on one which is beneficial to the other[69]. *These passive duties are supplemented by active duties on the part of neutral States not to allow the adversaries to make use of their neutral territories or resources for military or naval operations and to prevent the commission of certain acts by anyone within their jurisdiction*[70]. *In addition a neutral must prevent a belligerent from interfering in the legitimate relations between himself and the other belligerent*[71].

The duty of impartiality is not limited to the observance of active and passive measures of non-participation. Absolute abstention from any active or passive co-operation with the belligerents is required. Any facility whatever directly concerning military and naval operations is unlawful even though granted to both belligerents[72]. *Facilities which do not relate to the conduct of hostilities between belligerents are legal provided they are granted equally and without discrimination between the belligerents. What is offered to the one must be granted to the other in the same degree. Likewise, refusal of facilities to the one must be matched by a refusal to the other*[73].

The duty to be even-handed does not prevent States from sympathising with one of the participants and disapproving of the other. Political, public and press opinion may be mobilised in support of one of the belligerents. Humanitarian acts may be performed for one adversary only, as long as there is no violation of the duty of impartiality[74]. *The duty to be impartial does not mean that neutral States must refrain from doing things merely because a belligerent is thereby strengthened. General commerce, for example, with either adversary is lawful even though commerce amounts to economic support and strengthens the country with whom it is carried on*[75]. *Neutral States are not forced to suffer violations of the law of war either and are permitted to prevent these where appropriate*[76].

The duties of impartiality and abstention do not alter the relationship between neutrals and belligerents. Neutrality is only a limited withdrawal from the conflict. Contact is maintained between the participants and the non-participants in spite of the war[77].

The existence of a state of war is vital for the operation of the rules of neutrality. When war is declared or announced or has become known to third parties positions of belligerency and neutrality are taken up whereupon rights and duties are conferred upon the belligerent and neutral States. The traditional law of neutrality is usually defined as the 'totality of duties imposed and rights conferred upon participants and non-participants'[78]. *These rights and duties are a compromise between divergent interests*[79]. *Whilst the participants have gone to war in order to win, neutral States have opted for non-involvement in the hostilities and therefore contend that they have a right to remain outside the conflict and continue their relations with both the belligerents. The adversaries argue, in reply, that their military operations should not be interfered with and that they are permitted to adopt measures preventing the enemy from acquiring the means to continue the war even if neutral rights are thereby ignored*[80]. *Neutrality can only be maintained if a certain course of conduct is observed and the rules of neutrality contain correlative rights and duties. Neutrals and belligerents have two rights and two duties each, namely, the duties of neutrals to the rights of belligerents and the duties of belligerents to the rights of neutrals*[81]. *Neutrals must treat belligerents impartially. They must acquiesce in restrictive belligerent measures being imposed upon their nationals and property at sea*[82]. *Belligerents must act impartially towards neutral States, and are forbidden to interfere in normal relations between neutrals and the enemy*[83]. *Both neutral States and the adversaries are capable of violating the duties of neutrality.*

Neutral States must not use force against either belligerent[84]. Neutrality is violated if a belligerent is provided with troops or warships even if the same facilities are granted to both sides[85]. Passage of troops and war material through neutral territory is an unneutral act as is *a fortiori* the organisation of a hostile campaign on neutral territory against a belligerent[86]. The supply of arms, ammunition, vessels and military provisions is also unlawful[87]. This rule is not applicable to neutral subjects however and their national States are not obliged to prevent them from carrying on trade in arms and ammunition with a belligerent, even though the supply of these arms and ammunition tends to encourage and prolong war[88]. It is not just the provision of certain items that is illegal: the extension of certain services to belligerents such as loans and subsidies are also forbidden[89]. Subjects of neutral States are however permitted to raise loans for a belligerent and may grant subsidies. Neutrality is violated however if a State allows a public appeal for contributions to such subsidies to take place[90].

In the same way as neutrality creates duties so it establishes rights and these, in turn, correlate to the duties of belligerents to respect neutrality. Belligerents are bound to act impartially to all neutral countries and must not interfere in normal relations between such States and the enemy. The underlying principle of belligerent obligations is respect for a neutral's position and the duty not to use force against a neutral State[91].

111. NEUTRALITY IN NAVAL WARFARE

Naval warfare poses the greatest challenge to the claim of neutral Powers to maintain normal commercial intercourse[92]. The law of naval warfare is historically a compromise between opposing rights:

> '... the right of a belligerent to bring the the utmost pressure to bear on his adversary, short of violating certain fundamental rules of international law and humanity, and the right of the neutral to continue his commercial and other intercourse with the enemy States with which he is at peace' (92A).

The concept of neutral duties as being the subject of conflicting interests is particularly apt[93]. Traditionally, naval warfare has been a contest for naval supremacy, that is, the undisturbed use of sea routes[94]. A naval Power's main aim is to deprive the enemy of the use of the high seas. The element of economic warfare is preponderant[95]. The enemy navy has to be defeated and the enemy merchant fleet destroyed. Moreover, the enemy's maritime trade with third countries must be cut off. Any commerce inimical to the belligerent's aims is a likely target. Sea warfare is directed against a fixed number of objects the chief of which are enemy vessels, public or private. Included in the list are neutral vessels 'attempting to break blockade, carrying contraband or rendering unneutral service to the enemy'[96].

The neutral duties of impartiality and abstention have a specific application in maritime armed conflict. Neutral States are prohibited from supplying or assisting either belligerent with ammunition or war material. The provision of facilities for warlike operations is likewise an unneutral act. In return for compliance with the duties of impartiality, belligerent States are required to treat neutral Powers with impartiality and must not suppress normal contact between neutrals and the enemy[97].

Neutral States are forbidden from supplying ammunition or war materials to a belligerent warship. They may not permit the fitting-out or arming of any ship in their jurisdiction which they know is intended for use in a hostile campaign against foreign shipping. If any ship has been adapted for war operations in a neutral port the neutral State must do all it can to prevent the ship's departure. It is illegal to allow belligerent warships to use neutral

ports and the territorial seas as a base for a hostile campaign against enemy shipping(98). Belligerent warships are only allowed to enter neutral ports to obtain emergency supplies and to carry out emergency repairs necessary to ensure their seaworthiness. The time limit for any such stay is 24 hours, after which the warship and her crew must be interned(99).

The neutral State must also prevent the commission of certain unneutral acts by anyone under its jurisdiction. The corrollary of these neutral duties at the right to demand impartial treatment(100). Belligerents have to respect neutral territorial waters and may not commit belligerent acts inside them or use them as a base for hostile operations. Prizes captured within neutral waters must be released. Mere passage by a belligerent warship through neutral territorial seas is permitted provided such passage is not exercised in such a way as to assimilate the neutral waters to an operational area(101).

The suppression of intercourse between the neutral Powers and the enemy is forbidden. Formerly all neutral commerce was intercepted even though no blockade had been established and no lists of contraband drawn up. No distinction was drawn between neutral and enemy merchantmen. Now that the freedom of neutral citizens to trade has been recognised belligerents have to regulate aspects of neutral sea commerce, requiring of neutral subjects that they do not break a blockade, carry contraband of war or render unneutral service to the enemy.

The rule prohibiting the supply of war materials to belligerent warships does not extend to the subjects of neutral countries. States are under no duty to stop their citizens from carrying on trade in ammunition and war supplies with the adversaries in which they themselves are forbidden to engage(102). The supply of such articles is lawful. The refusal of neutral States to be answerable for the acts of their nationals does not compromise their neutrality and

the actions of the neutral traders does not imply an unneutral act on the part of their States. Belligerents try to prevent neutral nationals from trading not because what they are doing is illegal but because they are causing harm to the belligerents[103]. *The right of neutral citizens to trade is therefore recognised, subject to the right of belligerents to inflict penalties by way of confiscation of goods*[104]. *The neutral State is obliged to acquiesce in the lawful interception and capture of neutral merchant ships and their cargo when this is done in accordance with the rules of international law. The law of economic warfare governs the imposition of belligerent measures against neutral nationals and their property at sea under the law of blockade, contraband and unneutral service. Belligerents are permitted to visit and search neutral ships on the high seas and, if necessary, to capture them and their cargo. The law of prize regulates the capture and condemnation of such vessels*[105].

In theoretical terms the belligerent-neutral relationship is not affected by war. Normal relations are supposed to continue subject to the additional duties of impartiality and abstention. In reality however this is undermined by the duty of neutral States to agree to measures being taken against their own commerce[106]. *The conflicting aims of belligerents and neutrals mean that it is inevitable that the belligerent's campaign against enemy maritime commerce will compromise the claim of neutrals to freedom of trade and freedom of the seas. Compared with times of peace, freedom of the seas is severely curtailed. Nevertheless, since neutral nationals are not required to observe the same duties as their States and are permitted the broad right to pursue trade purely for personal profit, the corresponding right of belligerents to curtail these activities and to prevent the breaking of blockades, the carrying of contraband and the rendering of unneutral service is not unreasonable. It reflects the compromise that has been reached and which has been incorporated in the traditional law of neutrality at sea.*

IV. THE CONTEMPORARY LAW OF NEUTRALITY

The traditional concept of neutrality is closely allied to the classic (pre-1914) conception of war. States enjoyed the right to declare war. Once announced to third countries this was a fact and represented a situation over which they had no control. Their only choice lay between belligerency and neutrality. The neutral duties of impartiality and abstention were predicated upon the assumption that the belligerents possessed equal status with respect to the war itself. Inter-War developments challenged the traditional assumptions of neutrality. A trend towards outlawing war was established(107). The Covenant of the League of Nations marked the beginning of a revolutionary new order banning the use of force. The Kellog-Briand Pact continued the attempts to outlaw war. Many writers began to believe that the law of neutrality was inappropriate in the context of this new legal order(108). An attitude of impartiality appeared to be unjustified where one of the belligerents has unlawfully resorted to war(109).

Both the League's Covenant and the Pact of Paris failed to abolish war. War remained legal in some circumstances. Loopholes in the Covenant left opportunities for legitimate war during which traditional neutrality was invoked(110). There were very few occasions when the international community agreed to invoke sanctions against a State which had unlawfully resorted to war. The Pact of Paris lacked enforcement machinery so that in reality there was no international agreement on which State was acting legally and which illegally. A mere legal change in the position of war failed to abolish neutrality. Third States tended to reach different conclusions and those not immediately caught up in the conflict relied upon the traditional institution of neutrality and its rules whenever expedient(111).

At the beginning of the Second World War several States had withdrawn from the League of Nations and some European countries had asserted their right to be neutral despite their

obligations under the Covenant. The whole system of collective security had collapsed. The UN Charter tackled the weaknesses of the Covenant and the Pact of Paris. Legal loopholes permitting legitimate warfare were closed, enforcement machinery was strengthened, the provisions for collective security were centralized and an objective binding authority was established. The Charter deals with 'acts of aggression', 'breaches of the peace', 'armed force' and 'the threat or use of force'. UN Members have renounced the threat or use of force under Article 2(4), reserving its use solely for the purposes of self-defence under Article 51. The cumulative effect of Articles 1(1)(112), 2(5)(113), 24(114), and 25(115), together with the Articles under Chapter Vll of the Charter is to bind all Member States, on the express authorisation of the Security Council, to take discriminatory measures against a State violating the Charter(116).

The general obligations incurred by UN Members under Articles 2(5) and 25 find their practical application in Chapter Vll. Article 39 stipulates that the Security Council shall determine the existence of a breach of the peace. All Members are bound by this finding. Having identified an illegal act of aggression the Council must decide what collective measures are needed to restore international peace and security. The Security Council may authorise acts involving (Article 42)(117) or not involving (Article 41)(118) the use of force(119).

Until the Security Council has made a determination States are empowered to resort to armed force in individual or collective self-defence. Theoretically this right terminates as soon as the Council takes the necessary steps to maintain law and order. The temporary use of force in self-defence is treated like authorised armed force under the enforcement provisions of Chapter Vll(120).

The Security Council is supposed to act quickly to identify any breach of the peace and to take direct measures necessary

to restore the status ante quo. UN Member States are bound to carry out the obligations imposed upon them(121). In theory there should be few wars in which any country remains a non-participant(122).

The fundamental purpose of the UN Charter is different from traditional international law. Members are obliged to refrain from the use of or threat of the use of force contrary to the purposes of the United Nations Organisation, to assist the UN in collective security action and to abstain from assisting an aggressor State(123). The sovereign right of all States to go to war, upon which the traditional law of neutrality rests, has been removed(124). Any Member State using force contrary to the provisions of the Charter is an 'aggressor'. Other Member States are obliged to prevent the aggressor from benefitting from his act of aggression, to differentiate in their treatment of aggressor and victim, to co-operate in order to stop the aggression and to restore the status ante quo(125). The participants in an armed conflict no longer enjoy equal belligerent status. One side will be using unauthorised, hence illegal force; the other will be the victim of an illegal armed attack.

States have traditionally adopted a position of neutrality in response to a declaration of war. The fundamental change in the status of war has challenged the legal relationship which brought the system of neutral rights and duties into operation. This has raised the question of how far the traditional law remains significant in view of the requirement that any use of force must be justified by reference to the principles of necessary and proportional self-defence(126). Belligerent interference with international merchant shipping is a hallmark of traditional naval warfare and an integral part of the law of neutrality at sea. Participants in naval conflicts have always been allowed considerable freedom to exercise powers of visit, search and seizure on the high seas. To what extent therefore are belligerent States permitted to claim equal status with the other side, impartial treatment and the right to

exercise powers derived from the law of economic warfare?(127) The traditional law of neutrality has always been regarded as a system which responded at least in part to the needs of old-fashioned belligerents. Contemporary international law has moved away from a system designed merely to control the power of States to wage war and towards a new order outlawing the unauthorised use of force. In this climate there is considerable doubt whether there is a place for the law of neutrality(128). The motives of humanity which prompted the application of many of the classical laws of war did not extend to the application of the law of economic warfare and of neutrality. An attitude of impartiality during armed conflict has been viewed with suspicion(129). The positive obligations undertaken in advance by every UN Member to go to the assistance of a victim of aggression are not compatible with traditional neutral duties(130).

A considerable body of opinion has concluded that the traditional concept of neutrality has been superseded. The UN Security Council may direct that some or all States assist it in taking non-military (Article 41) or military (Article 42) enforcement action(131). Moreover, every State must offer mutual co-operation and assistance in the maintenance of international peace and security and refrain from aiding the State against whom the UN is taking enforcement action:

> 'It is clear ... that when authorised and therefore lawful armed force is being used against an aggressor State, the performance of neutral duties to that State would be a violation of the positive obligations assumed by members under the Charter and would be unlawful interference with the enforcement action in progress' (132).

The right to use force in self-defence on a temporary basis is preserved under Article 51 until the Security Council has taken affirmative action under Chapter VII. In relying on the right of self-defence States are not limited to using force. They may rely on measures not involving the use of force against an aggressor. There is a general duty to take

some form of discriminatory action however. Until the Security Council has made a binding determination other States are not allowed to invoke traditional neutral rights and duties[133]. If it is impossible to decide which belligerent has violated international law third States should opt for a status of strict non-intervention, withholding any kind of assistance until the guilty State has been identified[134].

Article 1(1) defines the purpose of the UN as being to take effective measures for the suppression of acts of aggression. According to Wright, Article 1(1) binds all Members, so precluding an attitude of neutrality[135]. States are permitted to take discriminatory action against the law-breaking State and are morally required to do so[136]. Soviet commentators, amongst others, have argued that neutrality is now only an exceptional attitude. Aggression is now an international crime. Neutrality during an illegal act of aggression is a form of connivance at this crime[137]. There is no place for impartiality with its equal attitude to the participants. One of them is an international criminal and should be treated as such[138]. The rules of neutrality have therefore ceased to apply. It is suggested that to permit a retreat into neutrality is a tacit admission of the UN Charter's failure : 'an acknowledgement of the failure of law to modify traditional international law'[139]. The classical rules are of historical interest only[140]. In short, because States cannot remain neutral (even if the Security Council fails to take action), the law of neutrality has ceased to operate[141].

A substantial body of opinion disagrees with these conclusions and opts for the more pragmatic solution that the concept of neutrality has been modified but not completely superseded[142]. The accepted rules of neutrality remain in force[143]. There are still opportunities for the old-fashioned law of war and neutrality to operate. It is often said that there are as many opportunities for practising traditional neutrality as there are loopholes for resorting

to unlawful aggression under the Charter[144]. The law of collective self-defence and the law of neutrality are therefore alternative forms of legal behaviour[145]. There is overall agreement that insofar as a UN Member is bound to apply enforcement measures involving the use of force under Article 42 the traditional rules of neutrality are obsolete[146]. This is not the case however in those instances where the UN has failed to make a determination (Article 39)[147], or has only made a 'recommendation' under Article 39[148], where States are using force in self-defence (Article 51)[149], where the Security Council has taken affirmative action but has not asked all Member States to participate with their armed forced (Article 48)[150], and where Members are only obliged to assist the Council in affirmative measures not involving the use of force (Article 41)[151].

The main reason for the UN's failure to abolish the law of neutrality is attributed to the inability of the Security Council to operate effectively[152]. Should the Council fail to determine the existence of a breach of the peace or fail to order authoritative, binding collective defence measures (or having ordered these be unable to implement them)[153] States will not be obliged to take Chapter Vll enforcement measures against a State which has violated the Charter's ban on the use of force. No alternative method exists under the Charter to bind Members to take measures involving the use of force or other measures not involving the use of force. Being under no immediate obligation to take discriminatory action third States are in substantially the same position they were in under customary international law[154]. They may abstain from all participation in the conflict and choose an attitude of strict neutrality[155].

States may choose to come to the aid of a victim of an unlawful attack despite the lack of a binding Security Council resolution[156]. In terms of Article 51 Members may

participate in collective self-defence, be it armed force or measures falling short of the use of force[157]. If the latter alternative is preferred, and non-violent discriminatory action is chosen, States take up a position of 'unqualified' neutrality or 'non-belligerency'. Once again the accepted rules of neutrality are not completely superseded. In this situation it is thought that the classical rules still have a role to play.

Complete neutrality is also a possibility under the UN Charter regime. The lack of an authoritative determination by the Security Council often means that third States reach contradictory conclusions as to the identity of the aggressor. In the long run both guilty and innocent parties become the object of rival discriminatory measures[158]. In these circumstances States choose to safeguard their own neutral status rather than participate in collective law enforcement measures[159]. The usual choice for most States which are not under an immediate duty to implement Security Council measures is to opt for complete neutrality[160].

It is not only the lack of a Chapter VII determination that leads to a legal vacuum causing the traditional rules to be invoked. Even when the UN does act, there are opportunities for taking up positions of neutrality. Article 43 states that all Member States undertake to make armed forces available to the Security Council but Article 48 qualifies this duty somewhat by stating that not all UN Member States may always be required to participate with their armed forces. According to some writers where States are not obliged to contribute forces to the Security Council's campaign they may remain neutral for as long as they are non-participants[161].

There is disagreement however amongst some authorities who maintain that a complete status of neutrality can only be claimed upon the <u>express</u> exemption of a Member from collective Security Council measures. When the assistance of a

State is simply not required and no express exemption has been granted Komarnicki argues that 'we can hardly speak of neutrality'[162]. Nevertheless most writers have assumed that if a Member is not asked to contribute to UN action the invariable choice of most is to take other measures which, whilst denying them a legal status of full neutrality, entitles them to 'qualified' neutrality. Such an attitude of 'non-belligerency' is also regarded as being possible whenever States are asked to participate by the Security Council but are only asked to help with measures not involving the use of force in terms of Article 41[163].

V. CONTEMPORARY STATE PRACTICE

There has been widespread interference with international merchant shipping during the past 40 years. Traditional belligerent rights have been exercised against neutral non-participants. Naval blockades have been mounted and visit and search procedures conducted on the high seas. Total exclusion zones have been maintained. Neutral shipping has been the target for indiscriminate attacks both on the high seas and within neutral territorial waters. Neutral countries have, in response, anticipated the need to invoke traditional neutrality and when confronted with the need to define relations with belligerents and non-belligerents in particular situations have in fact invoked it[164].

France conducted an extended and sustained operation against neutral shipping during the Algerian War of Independence (1955-1962). Foreign merchant ships were stopped and visited on the high seas and articles of contraband seized. Some third States protested at France's actions and invoked their neutrality, arguing that there was no legal basis for French interference with international shipping[165].

During the Indo-Pakistani War (1965) Pakistan detained ships belonging to India in Pakistani ports. India responded by detaining Pakistani vessels. Neutral goods in neutral ships were subjected to contraband control by both States without prior notice and regardless of whether or not their States of origin had formally declared neutrality. A Prize Court was set up by Pakistan to adjudicate the capture and condemnation of detained ships and cargoes(166). Beyond these measures however no attempt was made to impose a more comprehensive system of neutral rights and duties(167). Neutrality was sporadically invoked. Third countries avoided having to define their attitude to the conflict. Only one country, Sri Lanka, formally invoked neutral status(168).

In the Indo-Pakistani war of 1971 the Indian navy blockaded the coast of Bangladesh. Six merchant ships were captured and several small craft were sunk(169). Naval operations spilled over into the high seas, neutral ships in the Bay of Bengal were boarded and machine-gunned, and the Liberian registered ship, the Venus Challenger, was sunk 26.5 miles offshore. The application of the rules of neutrality was ad hoc. Neutral rights and duties were not comprehensively invoked(170). O'Connell has argued that India ignored international law. Indian naval operations accepted no limitations as to area or scale(171). Protest from third countries, however, was muted although, in at least one instance the Spanish government submitted a claim for compensation for damage caused to a Spanish merchant ship(172).

In the other post-1945 conflict recognised as war, namely the Arab-Israeli war (1948), Egypt invoked aspects of the customary law of neutrality. Contraband controls were instituted in Egyptian territorial waters and a prize court established. Egypt also claimed a blockade of Eilat and the Gulf of Aqaba in 1967. A similar blockade was imposed on the Bab al-Mandeb in 1973(173). Norton points out that the law of neutrality, in particular the law of eco-

nomic warfare, was frequently and comprehensively invoked during the war: 'belligerent contraband rights and duties not to supply belligerents with war materials have been especially recurrent issues'[174]. There were no significant protests except from Israel, although a UN Security Council Resolution of 1 September 1951 did state that the exercise of the traditional right of visit, search and seizure under the prevailing circumstances could not be justified as being necessary for self-defence[175].

The US-UN naval forces in the Korean war (1950-1953) were vastly superior to the North Korean naval forces which posed no threat to the reinforcement of UN forces on land. A naval blockade of the Peoples Republic of China was rejected, apparently on the grounds that it would affect neutral forces[176]. A traditional naval blockade of the North Korean coast was imposed however. In an announcement dated 4 July 1950 it was stated that all merchant ships were barred from North Korean ports with the exception of the Russian-occupied port city of Rashin[177]. This blockade had little significance and no major incidents involving neutral ships were recorded[178]. In many other respects the law of neutrality was consistently observed[179]. Non-participants at times asserted their neutrality but the majority of States did not find it necessary to reach a decision one way or the other[180].

Naval operations have at times been restricted to the territorial seas. In the Vietnam war (1961-1973) belligerent activities were confined to Vietnamese territorial seas and the contiguous zone. Operations 'Sea Dragon' and 'Market Time' took account of the powers of visit and search in the contiguous zone, and the right of innocent passage by foreign shipping in North Vietnamese territorial waters, respectively. Both operations stipulated that merchant shipping could not be taken in prize and particular emphasis was placed upon strict identification. No

right of belligerent operations more than 12 miles at sea, other than the right of self-defence, was permitted(181).

The traditional law of neutrality has been invoked in a wide variety of conflicts since 1945. This is not to say however that State practice has acknowledged the continued relevance of the traditional law. Traditional rights and duties have been invoked only on an uneven and unpredictable basis. The classical rules have been vaguely and haphazardly invoked. The law of neutrality is often described as being in a chaotic condition(182). Its use has become arbitrary and manipulative(183). In most cases States have not relied on classical rules. They have usually avoided taking up any stance at all. Particular rights and duties have been invoked only to justify particular policy decisions or armed activities(184). Ideological, political and commercial considerations have caused third States to avoid facing the question whether their relations with the participants are governed by the customary law of neutrality(185). The traditional law has only rarely been consistently applied and only then because the belligerent States were in a position to enforce adherence(186). In general the traditional law has been ignored. Despite this, neutrality retains its vitality if only for those States which are powerful enough to ensure compliance with neutral rights and duties(187).

VI. CONCLUSIONS

It is not possible to draw the conclusion from State practice that there is an agreed stance on the applicability of the classical rules of neutrality. The law of neutrality has become caught between attempts to make neutrality obsolete and the fact that conflicts do occur during which there is a need to regulate the relationship of de facto belligerent and non-belligerent(188). There is no general feeling that States are obligated to apply or to obey the

old-fashioned rules. At best it can be said that States have assumed that it is necessary to recognize a state of war before neutral rights and duties can lawfully be imposed[189]. In an armed conflict not amounting to war non-participants are not bound by the law of neutrality. The application of traditional visit and search procedures has always been explained in terms of the traditional law. Although some belligerent powers have been invoked in other conflicts these have not been comprehensively applied. The ideological barrier caused by the outlawry of war is responsible for this confusing approach. Neutrality is in a decline. Impartiality has become a difficult attitude to take up[190]. Nevertheless conflicts do occur and wars are still occasionally recognised. The UN Security Council has never designated an aggressor on any of these occasions[191]. The UN has failed to implement collective defence measures: what was initially hoped would be an unusual situation has become the norm. In these circumstances it has been left to individual States themselves to decide which State is guilty of aggression. Conflicting decisions have been taken up and various attitudes to belligerency and traditional neutrality adopted[192].

(1) <u>The Law of Economic Warfare</u>

It is widely believed that for pragmatic reasons the classical rules are still applicable in modern armed conflicts. Belligerent rights and neutral duties still retain their validity despite the outlawry of war[193]. This belief is based on the assumption that the powers of visit, search and seizure under the law of economic warfare are not inappropriate in contemporary naval engagements: such a conclusion is thought to be 'neither logical nor realistic'[194].

If belligerents are allowed to impose belligerent rights the logical assumption is that both sides enjoy equal status with respect to the conflict (irrespective of which is the guilty party and which is the aggressor) and are there-

fore entitled to impartial treatment. It is doubtful if neutral duties of impartiality and abstention are compatible with the provisions of the UN Charter and it is submitted that the better view is that the prohibition of the use of force inconsistent with the purposes of the UN has deprived belligerents of the rights which previously they possessed against neutrals(195). States have forfeited these rights. Non-belligerents are not bound by the dutites of neutrality which include the obligation to submit to belligerent interference with their maritime commerce and to act in an impartial manner towards both protagonists. Lauterpacht has pointed out that the principal explanation and justification for the modern law of neutrality has disappeared(196). There can no longer be 'war' and a State can no longer avail itself of belligerent 'rights'(197). Moreover, and most importantly, the traditional rules of economic warfare are inappropriate for limited conflicts governed by the principles of self-defence. The objective of States in conducting a campaign against international shipping is incompatible with the self-defence principles of necessity and proportionality.

Modern State practice has assumed that a state of war is necessary for the lawful maintenance of a naval blockade. During both the Arab-Israeli and Indo-Pakistan conflicts the participants attempted to justify their actions by invoking the traditional law of war and by recognising a state of war. The French blockade of the Algerian coast is usually set aside as an example of unlawful State practice(198). The blockade of North Korea during the Korean war was insignificant. The Russian-controlled port of Rashin was exempted. In the Vietnam war traditional blockade measures were deliberately restricted to Vietnamese territorial waters and the contiguous zone in order to prevent interference with foreign shipping.

In his analysis of naval conflict since 1945 O'Connell has concluded that restraint has become a common pattern in the

contemporary conduct of limited naval warfare[199]. Naval operations have been restricted to the territorial seas on some occasions. Only rarely have hostilities spilt over onto the high seas. This may be because States have decided that it is convenient to limit their naval operations to the territorial seas or because States assume that there is a modern rule of international law derived from the UN Charter's prohibition of the use of force[200]. If there is such a rule O'Connell argues that the doctrines which accorded belligerents the right of visit and search on the high seas and the seizure of contraband are not obsolete[201]. The right of self-defence limits the geographical scope of the engagement to the territories of aggressor and victim. The international community must be insulated from the exercise of the right of self-defence. Third States are not a legitimate object of the right of self-defence and must be protected[202]. According to the same writer the principles of necessity and proportionality do not justify interference with shipping on the high seas except to counter an immediate threat[203].

These views are not universally agreed upon as being a correct interpretation of the effect of the outlawry of war on the traditional law of neutrality. Many writers maintain that neutrality remains as a legal status in a considerable number of situations[204]. The classical rules are not likely to disappear or be replaced. No agreement is in existence on new rules to replace the old. The old rules are likely therefore to remain relevant even if only as a measure of the deviation of practice[205]. The view is also expressed that it would be unfair to forbid all measures of economic warfare, so denying a State acting in self-defence useful defensive methods. There is no rule stating that in the absence of formal war economic warfare is not possible[206]. The conclusion of these observers is that visit and search measures at sea are not inappropriate in contemporary naval engagements and that it would be unreasonable to expect belligerents

to be happy to exercise lesser rights than those traditionally exercised in classical war[207]. According to Fenrick:

> 'The UN Charter does not constitute an insurmountable barrier prohibiting the invocation of belligerent rights against non-participants ...' (208).

The prohibitive character of the traditional law which helps to curb violence by limiting those measures which belligerents are entitled to inflict on neutrals is often stressed. It is pointed out that the law helps to protect neutral States by 'keeping coercion within the permissible limits established'[209].

There is a tendency, as can be noted above, to rationalize State practice ex post facto. Conclusions reached on modern State practice are usually, more often than not, justifications for past practices. The attitude of States to the applicability of the traditional law is an important indication of contemporary international law but too much emphasis tends to beg the question whether States have been acting lawfully in invoking the classical rules. The inconsistency of recent State practice leads one to believe that the only conclusions that can be reached are that the prohibition on the use of force has made States reluctant to rely on the traditional law. There has been a marked reluctance to interfere with neutral shipping[210]. There has been no repetition of the economic warfare practices of the two World Wars[211]. It is wrong to assert that those aspects of the traditional law which concede to belligerents the right to conduct old-fashioned warfare are still applicable. There is definitely a trend towards restricting the number of objects of limited naval engagements. O'Connell's views on the geographical limits within which naval operations can be conducted are important: they stress the need to protect neutral ships from interference and attack. There is mounting evidence of a new rule restricting the area of naval operations in favour of the principle of the freedom of the seas. The immunity

from interference and attack this offers to neutrals severely restricts the scope for successful belligerent interference with neutral sea commerce:

> *'... it is unlikely that the international community would tolerate interference of that degree today and it is difficult to see how such measures, with the enormous inconvenience and sometimes danger to neutral vessels and their crews, could be justified as necessary and proportionate measures of self-defence' (212).*

(2) Impartiality and Abstention

The ideological barrier caused by the UN Charter's prohibition of the use of force has also challenged the right of non-participants to declare themselves neutral by invoking traditional neutrality. Conventional neutrality has been invoked and applied on a number of occasions on an intermittent basis. It is difficult to assess on what basis States have relied on a classical declaration of neutrality. On some occasions States have come to the assistance of one side or the other whilst remaining outside the conflict itself(213). Original expectations were that only in unusual situations would customary neutrality still operate. Unfortunately the anticipated exception has become the rule and because of the UN Security Council's failure to act it has theoretically become possible to assume neutral status in every armed conflict since 1945. Despite this States have not returned to the customary practice of declaring neutrality. There has been no sense of obligation that third States are bound to choose between belligerency or neutrality. Rather, as Schindler has noted, States have come to treat neutrality as a voluntary attitude not dependant on a state of war(214). There is a realisation that to declare neutrality in a conflict subject to UN debate and resolution may legitimize the legal status of the conflict(215). As a result is is uncertain under exactly what circumstances a non-belligerent is entitled to declare itself a neutral for legal purposes(216).

There is substantial authority against the proposition that the adoption of a traditional attitude of impartiality is compatible with the general duty of all UN Members to assist the Organisation in the maintenance of international peace and security[217]. *Modern developments have challenged the classical rules and it appears logical to assume that old-style neutrality is legally out of the question for UN Members*[218]. *Third States are now under an obligation to take discriminatory action against an aggressor. For this reason it is submitted that the arguments of those writers who maintain that the conventional duty of impartiality is obsolete are correct. This conclusion accords best with the ban on the use of force and the duty of Member States to discriminate against and penalize an aggressor.*

(3) General Conclusions

Contemporary international law is plagued by the number of armed conflicts which do occur. Neutral shipping has been the object of indiscriminate interference and attack. The practice of the French authorities during the Algerian war is probably the most controversial example of the unlawful use of force in modern State practice. In the Indo-Pakistan war the measures imposed on neutral ships portended the kind of problems with which non-participants are likely to be faced in the future. In that war the hostilities at sea were short-lived. During the past seven years of the Iran-Iraq war however international shipping has been the target of a sustained campaign of visit and search measures and attacks on the high seas and in neutral territorial waters. The vulnerability of third States in such instances to indiscriminate interference and attack has been highlighted by the Iranian blockade of the Straits of Hormuz and the Iraqi (and Iranian) war on tankers in the Persian Gulf. The inability of the Security Council to take effective enforcement action has forced States to fall back on aspects of the traditional law of neutrality.

The conclusions adopted above with respect to the laws of economic warfare and the neutral duties of impartiality and abstention are, it is suggested, correct but in the light of the unsatisfactory state of affairs brought about by unlawful State practice and the weaknesses of the Security Council there is a need to regulate belligerent and non-belligerent relations during armed conflict or de facto war. Third States ought to be entitled to immunity from interference, attack, damage, and to compensation when these occur. The need to isolate neutrals is even more relevant in self-defence operations(219).

The problems of neutrality (in the sense of unwarranted interference with third States) are far from dead(220). The possibilities for violence at sea have been enhanced and the need for legal regulation has increased(221). It has been argued that third States should not be left the unprotected victims of violence because to do so would not be in accordance with the aspirations of contemporary international law(222). These conclusions should not be interpreted however so as to justify the wholesale application of the traditional law. It is submitted that there exist contemporary rules of international law which are applicable to limited naval conflicts. These extend adequate protection to third States. Limitations have been imposed on the area and scope of naval engagements by the principles of necessity and self-defence. State practice has realised the need to isolate neutrals from self-defence operations. It is thought to be unlikely that the principles of self-defence permit the exercise of belligerent rights against neutral property at sea. If measures are taken against third party shipping these should be restricted to belligerent territorial waters(223). Ships on the high seas should enjoy the strictest immunity from belligerent operations on the high seas(224). Insofar as the conventional rules of neutrality are compatible with these restrictions on the use of force at sea, they are preserved. They retain vitality and are still appli-

cable in modern international law. However to the extent that the old rules are based on the assumption that third States have to comply automatically with duties of impartiality and abstention they are obsolete. Only the rules which protect neutrals from interference and damage and are therefore a defence of neutrality retain their validity:

> '... there thus continues to be room for the operation of those neutral principles of international law that promoted detachment and maintained international order before the adoption of the Charter' (225).

The powers of visit, search and seizure and the right to maintain a traditional naval blockade have been superseded. States find it difficult to justify the involvement of the international community in a limited operation designed to repel the initial act of aggression and to restore the status ante quo(226). As pointed out above it is unlikely that States will tolerate this degree on interference except perhaps in an armed conflict which has escalated rapidly to a total war situation resembling the two World Wars. The principles of necessity and proportionality dictate that in these circumstances there will be a resort to traditional naval warfare(227). Such a development would then justify the application of the traditional law of war and would be in line with the general principles governing the use of force. At the lower levels of the use of force the principles of self-defence dictate however that measures which imply the existence of a lawful state of war are not relevant.

Greenwood has pointed out that it is too extreme to say that States engaged in armed conflict are forbidden to take measures against international shipping(228). In some situations it may be necessary to intercept a cargo of arms where these are destined for enemy use. It may be possible to justify the interception on the grounds of self-defence if it can be proved that the supply of arms

posed a serious threat to the belligerent State. Severe restrictions limit the power of States to seize contraband however. In addition it is likely that close blockades have replaced long-distance blockades. The seizure of a neutral ship under the law of prize is also not a reasonable measure of self-defence under any circumstances. According to Greenwood the traditional law retains vitality as an upper limit to the rights which may be exercised against neutrals(229). *The principles of self-defence are too vague simply to replace the detailed provisions of the customary law of war. These two exist as separate branches of the law which complement each other: the principles of self-defence impose limitations upon the conduct of armed conflict additional to those contained in the laws of war*(230). *The abolition of the traditional rules and their replacement by the principles of self-defence is not required. Instead a new body of rules is needed which is derived from the traditional law of maritime neutrality and the principles of self-defence, together with a greater degree of humanitarian protection for those involved in maritime conflicts*(231).

There is considerable merit in this largely pragmatic suggestion as long as the emphasis is placed firmly on the O'Connell principles of limited naval warfare and the illegality of belligerent powers against neutrals rather than on merely allowing the traditional law to survive as an all-too-frequent upper limit on the use of force. The above conclusions on the duties of impartiality and with respect to the laws of economic warfare remain a goal which States should seek to attain. The development of a new body of rules is a top priority. The retention of the detailed provisions of those classical rules which complement the principles of self-defence will be a useful contribution to a new set of rules and will help to clarify the very general terms in which the requirements of self-defence are cast.

CHAPTER III

THE IRAN - IRAQ WAR : 1980 - 1987

1. INTRODUCTION

The war between Iran and Iraq is a complex and controversial conflict with obscure origins. In its seventh year with a death toll exceeding one million it is well-known for the controversial methods of warfare resorted to by both sides. The war on land has escalated into a war on international merchant shipping in the Persian Gulf. With the hostilities on land and in the air deadlocked neither belligerent possesses the ability to launch a decisive enough military offensive to end the conflict. The tanker war in the Gulf continues to take an increasing toll on international shipping. What started as an attempt to settle old scores by military might has degenerated into a long drawn out war of attrition. The international community has been content to remain in the background and allow the hostilities to continue for as long as they remain localised in the Persian Gulf region[232]. The political and economic importance of the Gulf however has ensured that Western powers and the Superpowers in particular have retained a keen interest in the war's progress especially insofar as the supply of oil and its safe passage through the Gulf is concerned[233].

The origins of the war are difficult to establish but are primarily the result of a long history of uneasy relations[234]. The dispute over control of and access to the Shatt al-Arab waterway is the main source of friction and has been for hundreds of years. Both countries signed the Algiers Agreement in 1975 in an effort to settle the Shatt al-Arab and other outstanding border issues[235]. In 1979 the Ayatollah Khomeini's Islamic Revolution in Iran caused a further deterioration, revealing, on the one hand, the Iraqi

regime's dislike of the Islamic Revolution and its simmering dissatisfaction with the terms of the Algiers Agreement (1975), and on the other hand, Iran's distrust of the Iraqi leadership[236]. Iraq protested frequently at what is called Iran's constant interference in the internal affairs of Iraq and what it alleged were Iranian attempts to export the Khomeini Revolution to Iraq by encouraging the majority Shi-ite population to rise up and overthrow the minority Sunni Arab Ba-thist Government of President Saddam Hussein[237]. Tensions heightened when Shi-ite opposition groups started protesting in support of the Khomeini regime. Relations became bitter and these were reflected in escalating acts of violence: cross-border raids developed into full-scale border clashes, artillery duels, aerial dogfights, political subversion and attempted assasinations. Finally, years of tension culminated in what is seen as an inevitable outbreak of hostilities. On the 17 September 1980 Iraq unilaterally denounced the Algiers Agreement (1975)[238]. Iraq's troops crossed the border into Iran on the 22 September and by so doing effectively inaugurated the present conflict[239]. Large parts of the Khuzistan and Kurdistan provinces were occupied by Iraq. Although these military operations were not preceded by any warning, announcement or declaration of war by Iraq, the large movement of Iraqi troops across the Iran-Iraq border on the 22 September is generally understood to mark the start of the war:

> 'The facts seem clear to the extent that a large scale military action took place on the part of Iraq on 22 September 1980. Six days later ... Iraq had occupied large areas of Iran' (240).

11. THE LAND WAR

The invasion of Iran by Iraq has been described as 'one of this century's worst strategic miscalculations'[241]. Iraqi forces failed to consolidate their early gains or to capitalise on early successes[242]. They encountered an unexpec-

tedly strong Iranian response. The Iraqi advance was stopped by hundreds of thousands of volunteers; soon the war became a national cause rallying support behind the new Iranian Government. Iraqi predictions that the Arab population in Khuzestan would rise up in a spontaneous revolt against the Iranian regime were hopelessly over-optimistic. If anything the invasion strengthened the hand of the Khomeini Government: the invaders were met with a 'holy blood-lust'(243).

Although large parts of Iran were occupied in the period following the invasion, the Iraqi advance ground to a halt and by July 1982 Iraq had retreated from nearly all the territory it had initially captured. The military initiative passed to Iran and three massive land and air assaults were launched against Iraq. Although Iraq managed to defend itself successfully it could do no more than hold off the attackers and has never subsequently regained the initiative(244). The war lapsed into stalemate and has remained there ever since. Troops have been occupying positions roughly equivalent to the international frontiers between the two countries.

The course of the conflict can be divided into roughly two parts. They are the 'first' and 'second' phases(245). The first covers the period from September 1980 to July 1982; the second from July 1982 to the present date(246). During the first phase hostilities took place on Iranian ground. But after the withdrawal of Iraq's forces in July 1982 the battleground shifted to Iraqi territory(247). This defines the start of the second phase. It has been characterised chiefly by Iranian offensives, withdrawals, defensive tactics, 'guerre de position'(248), on the one hand, and by Iraqi counter-attacks and defensive measures, on the other(249). Neither side has successfully managed to initiate a strong enough offensive and so render the <u>coup de grace</u> that is required to end years of prolonged misery(250).

111. THE TANKER WAR

The naval conflict in the Persian Gulf has escalated into a key element in the strategies of both belligerents[251]. Attacks on shipping were few and far between in the early part of the war. There were sporadic attacks on shipping in the Shatt al-Arab in the opening moments of the war and some random attacks in the Gulf during the first phase and early part of the second phase. These escalated into what has become known as the 'tanker war' in the first quarter of 1984. Iraq started to enforce its blockade of the Iranian oil terminal on Kharg Island and directed missile attacks from the air against tankers calling to load or discharge their cargoes. This inevitably caused damage to ships belonging to third countries and signalled the start of a new phase of operations separate from the 'local war' on land. Iraq carried the war over the waters of the Gulf in an extension of what on land had turned into general economic warfare. Attacks were launched against merchant shipping in the northern part of the Gulf in a deliberate attempt to discourage foreign oil trade with Iran[252]. Iran responded with its own set of retaliatory measures and these combined with the Iraqi attacks pose a serious threat to navigation in the Gulf.

The first foreign ships to be attacked in the Iran-Iraq war were mostly cargo ships caught in the Shatt al-Arab waterway at the start of the war[253]. Iraq attacked some commercial vessels during 1981. Shipping hit during the following years (1982 and 1983) were nearly all cargo ships and tankers calling at Iranian ports. The attacks took place in the northern Gulf in the vicinity of the Iranian ports of Bandar Khomeini and Bouchir[254]. A typical example is the damage caused to two cargo ships during August 1982; the Greek ship, Litsion Pride and the Korean ship, Saambow Banner[255]. Both incidents occurred in the neighbourhood of Bandar Khomeiny. Later in the month came the official Iraqi announcement to wage

war on international shipping. A Maritime Exclusion Zone was announced on 9 August 1982 in the northern part of the Persian Gulf(256). This extended beyond Iraq's territorial seas, onto the high seas and was defined as an area within which any ship found without prior authorisation would be treated as hostile and would become liable to immediate attack without warning(257). In addition, a total blockade of Kharg Island was announced on the 15 August 1982(258). Foreign shipping was told to stay clear of the Island. Any vessel found approaching (or departing) the Island would be attacked, irrespective of nationality.

Iraq's offensive increased after these announcements. Although the tanker war had not yet begun, more and more cargo ships (rather than oil tankers) were hit; in September and October 1982 12 ships were damaged in the region of Bandar Khomeiny and Kharg Island. At this stage the Iraqi offensive failed to deter ships from trading with Iran and Iran suffered no serious economic consequences(259).

It is probably for this reason that Iran's response was low-key. There was no reaction to Iraq's attacks(260). However the Iranian Government did issue a warning that if Iranian oil exports were harmed, Iran would respond by closing the Straits of Hormuz to all international maritime traffic. Prior to this warning to impose a blockade, Iran had instituted some measures of a belligerent nature; in August 1981, for example, the Danish ship, the Elsa Cat, was stopped and arrested in the Straits of Hormuz, 85 miles from the Iranian coast, on the basis of allegations that the ship's cargo contained military equipment bound for Iraq(261).

In 1983 the Iraqi's continued to enforce their exclusion zone. In the process damage was inflicted on several neutral ships(262). In response to Iraq's acquisition of French Super Etendard fighters equipped with Exocet anti-ship missiles, the Iranians warned that if Iraq succeeded

in halting their oil exports they would close the Hormuz Straits(263). Following Iraq's attacks on neutral shipping, the UN Security Council passed Resolution 540 (1983)(264) affirming the right of free navigation and commerce. Referring to this, Iran warned that if Iraq escalated the naval conflict Iran would retaliate(265). In addition Iran pointed out that it had not committed any acts of violence threatening security or freedom of navigation in the Gulf:

> 'On the contrary, the Islamic Republic of Iran has been the victim of numerous Iraqi acts of aggression in the Persian Gulf and has so far demonstrated a high degree of restraint vis-a-vis such Iraqi provocations' (266).

It appears that Iran did indeed refrain from attacking commercial shipping during 1983(267). Some belligerent measures were invoked however when the Iranians imposed shipping restrictions in all Iranian territorial waters and over parts of the high seas: ships were warned to stay clear of the southern Gulf islands and ordered to sail to the south and west of these(268). This amounted to an exclusion zone of the type operated by Iraq in the nothern Gulf. Shipping was warned to stay out of the declared zones. In the event of non-compliance the right of free passage would be hampered and the security of ships endangered, something for which the Iranian naval command disclaimed all responsibility in advance.

The tanker war was started by Iraq in April 1984. Facing an inconclusive war on land against a numerically superior enemy, the Iraqis decided to intensify their campaign of economic warfare by enforcing their blockade of Kharg Island(269). This, it was hoped, would cut off Iran's oil exports. A dual strategy of causing actual damage to ships and of pushing up insurance premiums to uneconomic levels, in order to frighten off vessels calling at the main oil terminal, was adopted(270). Whereas before 1984 mostly cargo ships had sustained damage, oil tankers were now singled out for attack. During 1984 a total of 34 were hit.

The Iranians responded almost immediately. Nearly half of the tankers attacked during 1984 were hit by Iran[271], in retaliation for the Iraqi offensive against Kharg Island shipping[272]. In addition, the Iranians also warned that they were prepared to halt all maritime traffic in the Gulf by closing the Straits of Hormuz[273].

The first retaliatory attacks were launched against Saudi Arabian and Kuwaiti tankers: the Bahrah (Kuwait), Yanbu Pride (Saudi Arabia) and Chemical Venture (Liberia) were hit outside the declared zones and, in at least two instances, within Saudi Arabian territorial seas[274]. The third vessel was hit on the high seas. This provoked an immediate outcry from the Gulf states making up the Gulf Co-operation Council (GCC). They requested the UN Security Council to consider Iranian attacks on neutral commercial shipping. Resolution 552 (1984)[275] condemned, indirectly, the Iranian attacks and restated the principles of freedom of navigation on the high seas. The Iraqi attacks were apparently overlooked, probably because nearly all their attacks took place inside the maritime exclusion zones. Iran was condemned for causing damage to ships outside the zones and, in some instances, inside neutral territorial waters[276].

During 1984 Iraq's naval campaign was directed predominantly against tankers calling at Iran's oil terminals[277]. The Iranian counter-attacks, however, were directed against oil tankers and ships anywhere in the Gulf, in or outside the exclusion zones, irrespective of the ship's destination, its nationality or its distance from the scene of military operations. Iraq seized upon this to justify its attacks as self-defensive, directed only against those vessels calling at Iranian ports, in response to Iran's measures which had effectively stopped all Iraqi navigation in the Gulf[278].

Iran answered this assertion by alleging that it too had a case for self-defence[279]. These contradictory claims have not surprisingly become the ideal basis for an escala-

tion of the conflict. While Iraq has specialised in a 'veritable "guerre des petroliers" '[280], Iran has continued to retaliate[281].

At the end of 1985 the tanker war had become the most important feature of the Iran-Iraq war[282]. A total of 28 tankers were attacked, 20 of them by Iraq. The rest were attacked outside the declared war zones by Iranian forces. The total number of oil tankers hit showed a decrease on 1984's figures but the overall number of ships attacked, including cargo ships increased. In the period September 1984 to October 1985 a total of 327 ships were allegedly sunk or damaged[283].

The Iranian navy announced the imposition of a combination of Blockade/Contraband/Prize measures affecting ships passing through the entrance of the Gulf[284]. Neutral vessels were stopped and searched in the Straits of Hormuz and those suspected of carrying cargo destined for Iraq were arrested. Where these suspicions were confirmed the cargoes in question were confiscated[285]. Although Iran had been stopping ships throughout the conflict a blockade of the Straits was imposed[286]. Belligerent rights of visit and search were exercised. Earlier in the year the Kuwaiti cargoship, the Al Muharraq, was detained for 23 days in an Iranian port on the grounds that Iraqi bound munitions and arms were on board. Similar measures were taken against neutral vessels during September, October, November and December 1985 and January 1986[287]. Almost all of the ships stopped in this way were in transit to Kuwait. None were tankers. Iran appears to have opted for a relatively controlled response using some of the traditional belligerent measures against neutrals in a way that is designed to harm only the Kuwaiti (and hence Iraqi) economy. The export trade of the other Gulf States has not been affected[288].

The Gulf remained the principal theatre of operations during 1986[289]. The Iraqi blockade of Kharg Island was in-

tensified in an announcement made on 26 February 1986 extending the maritime exclusion zone up to Kuwaiti territorial waters(290). The Iraqi's continued to be the main offenders in the tanker war being responsible for 49 out of a total of 85 attacks. Iran launched 26 attacks, all of them outside the exclusion zone. This reinforced the general trend established during 1984. Statistics for the subsequent years (1984-1986) show that 58 of the 62 attacks outside the zones were Iranian.

Iran continued to hamper the free passage of ships entering the Gulf(291). A US freighter, the President Taylor, was stopped in international waters and searched for arms destined for Iraq. On 12 May 1986 Iran warned that in future Iranian naval forces would attack any American or French warships escorting or convoying cargoships carrying cargo for Iraq or which attempted to interfere in Iran's interception procedures(292). Once again the Gulf States were threatened with closure of the Straits of Hormuz if they continued to give financial support to Iraq.

The tanker war has continued into 1987. Figures for the first quarter show that the number of hits is still increasing(293). Most of these have been made by Iraq(294). Iran's shuttle service between the Kharg and Hormuz oil terminals has become the obvious target for Iraq and many of the tankers hit were Iranian. As has been the case in previous years, Iran is responsible for the attacks taking place outside the declared war zones(295). Iran has also increased its level of operations to the extent that it is mounting a virtual blockade of Kuwait, a GCC country which Iran regards as being one of Iraq's strongest allies. While the interception policy is in force in the south, direct attacks continue and are mounted mostly against Kuwaiti or Kuwaiti-bound tankers in the north(296). Since September 1986, 22 of the 27 ships Iran has hit were trading with Kuwait. Since Iran's campaign against ships having a Kuwaiti connection, the superpowers have been

forced to alter their previous policies of no direct intervention. The Soviet Union has leased three tankers to Kuwait and provided Soviet Naval escorts to defend them. The United States is considering plans to re-flag Kuwaiti tankers, transferring 21 of them to the American flag. US forces, which until recently have been prevented from assisting merchant shipping of third countries and have avoided the use of force and direct confrontation with Iranian naval craft, will then have a rationale for acting in self-defence(297).

Superpower involvement, even at the relatively low level of self-defence of flag ships, is likely to increase the Iranian response. Already moves are afoot to resist the superpower's plans which in effect assist the Iraqi cause and have encouraged Iraq to believe that its tanker war campaign is at last beginning to produce the desired results. Kuwaiti-bound tankers have been damaged in recent months: in May 1987 the Norwegian-owned tanker, Golar Robin was attacked in the northern Gulf. On the 16 May 1987 a Soviet-leased tanker, Marshal Chuykov, was damaged when it encountered a floating mine(298).

A new island base on Al-Farisiyah, in the north of the Gulf, has been established by the Iranian navy from which tankers calling at Kuwait have been attacked by small naval craft. Gunboats fired on a Japanese tanker, Ise Maru on the 5 May 1987. On the following day the Revolutionary Guards damaged a Soviet freighter(299). The Petrobulk Regent, a Panamanian tanker, was attacked in the south in a region where Iranian attacks continue to occur, either by helicopter (by day) or naval craft (at night)(300). Warnings against superpower involvement have been repeated as has the threat to close the Hormuz Straits(301). All this indicates that Iran intends to continue its retaliatory attacks, particularly against ships which call at ports belonging to countries which are considered to be supporting Iraq. Intervention to protest such attacks is likely to be regarded by Iran as a provocation justi-

fying more force, even against foreign naval forces[302].

Iraq, having failed until now to halt Iranian oil exports[303] but encouraged by the superpower's recent concern, is continuing the war against international shipping that it started in 1984. Attacks are concentrated on Shuttle tankers operating the shuttle service between the Iranian oil terminals. Attacks on other foreign shipping look set to continue as well[304]. For as long as the war on land remains deadlocked, the tanker war is a key strategy for both parties[305]. If Iran gains the advantage on land, the war at sea will intensify. If Iraq, on the other hand, starts to win the 'local' war, the Iranians will intensify <u>their</u> campaign and, in desperation, may be forced to close the Straits of Hormuz. Whilst the stalemate continues and while Iran continues to export its oil, the campaign against neutral shipping will carry on as before. Neutral shipping remains liable to attack anywhere in the Gulf, in or outside the exclusion zones and, in addition, may be subject to quasi-traditional measures of interception and arrest. The recent attack on a United States warship, <u>USS Stark</u>, reinforces this conclusion. Although the warship was attacked by mistake, and not apparently in a deliberate attempt to expand the war to include neutral naval forces, there is no doubt that all shipping in the Gulf is a potential target for random unannounced attacks by sophisticated and powerful modern weapons.

CHAPTER IV

THE IRAN - IRAQ WAR AND CONTEMPORARY DEVELOPMENTS IN THE LAW OF NAVAL ENGAGEMENTS

1. INTRODUCTION

Two exclusive zones are in operation in belligerent territorial waters and in large parts of the high seas. Neutral shipping is the subject of indiscriminate attack in every part of the Persian Gulf. Both belligerents purport to maintian a 'blockade' of enemy ports. Neutral merchant ships are visited and searched at the entrance to the Gulf. Iraq-bound cargo is removed. The UN Security Council has denounced all interference with neutral navigation and commerce. The attacks continue and tensions mount in the region as both superpowers bring in naval forces to escort merchant vessels. The West makes it clear that the well-established right of freedom of neutral navigation must be protected.

The expansion of belligerent naval operations deep into international waters and the uniform destruction of neutral merchant shipping is reminiscent of old-fashioned warfare. The single most important aspect of the Iran-Iraq war is belligerent interference with and attack on neutrals. Neutral rights have been seriously affected. Whereas recent State practice has assumed that contemporary naval engagements are fought subject to limitations and restraint, the parties to this conflict have ignored restrictions on the area of naval operations and the scope of the conflict. The Iran-Iraq war has been a long drawn-out affair marked by escalating levels of force and an uncontrolled response by both sides. The war at sea represents a deliberate attempt to expand the war at a time when the war on land had degenerated into statemate. Self-defence and traditional laws have been invoked to justify the respective belligerent campaigns. The UN Security Council, despite

seven non-binding Resolutions, has failed to take the initiative. No peace enforcement procedures have been considered.

The situation is clearly one not originally envisaged by the drafters of the UN Charter. The Security Council is unable to act to maintain international peace and security. The right of self-defence is invoked by both parties to the conflict. There is no objective binding decision on the identity of the aggressor and the measures required to restore the status ante quo.

What law governs the Iran-Iraq war? Does a state of war exist and if so that is the relevance of its recognition? Are the exclusion zones, the attacks on shipping, the visit and search of merchant vessels lawful? Are they lawful in terms of the traditional law of war (ius in bello), or are other criteria also applicable? What restraints are imposed by the principle of self-defence (ius ad bellum)?

The conduct of the Iran-Iraq war and the international response to it has a vital bearing on the rules of neutrality. In Chapter 11 it was said that the traditional rules are obsolete and that only those aspects of the classical rules which insulate and protect neutrals from belligerent interference and attack are still relevant. The conduct of economic warfare by blockade and contraband control are not justifiable in contemporary naval engagements. In this Chapter belligerent interference and attack in the form of exclusion zones, the tanker war on neutral shipping, and visit and search on the high seas are analysed in the light of the comments made earlier on the right of self-defence and the contemporary law of naval engagements.

11. THE EXCLUSION ZONES

No precise rules exist to ascertain the legality or otherwise of maritime exclusion zones and their imposition over areas extending far beyond territorial seas into large parts

of the high seas. One view is that exclusion zones are lawful since they help to restrict the geographical scope of naval engagements and warn of the danger posed to neutral shipping well in advance. The other view is that the very concept of an exclusion zone in international waters is contrary to the absolute freedom of the high seas contained in the 1958 Geneva Convention on the High Seas and ignores the additional restraints imposed by the ius ad bellum upon the ius in bello in the conduct of contemporary naval engagements. Naval operations must be restricted and neutrals must be insulated from the exercise of self-defence.

It is not clear if traditional law authorizes the creation of total exclusion zones or security zones. In a recent article it was concluded that there is no such right under the traditional law of war at sea(306). The law of economic warfare does not recognise a fourth belligerent right. There would thus appear to be no similar right in contemporary international law either; since the law of economic warfare is not applicable where war has not been declared, and since even if it was the traditional law does not recognise exclusion zones anyway, the concept of a security zone over the high seas is unlawful. In addition it is by no means certain that exclusion zones, insofar as they are anticipatory measures of self-defence, are lawful(307).

A different conclusion was reached in a discussion of the concept of exclusion zones as declared by the United Kingdom in the Falklands war (1982). The view has been expressed by several writers that it may be possible to justify the operation of such a zone as a means of self-protection provided it is notified to all interested parties and neutral shipping is not put unduly at risk:

> 'Generally-speaking it may be said that the greater the problem of positive identification, the greater the publicity given to the zone, the less the risk posed to neutrals, the easier it will be to justify the exclusion zone on the basis of self-defence' (308).

There does not seem to be a law restricting hostilities to territorial waters. If anything the area which States now regard as defensive 'territory' has grown(309). States face enormous problems in complying with the restraints placed on the use of force by the law of self-defence. Positive identification is particularly important yet difficult. It is hard to determine when a hostile intent becomes a hostile attack justifying an armed response. Paradoxically the need to restrict naval operations and to insulate neutrals has highlighted the need for exclusion zones in contemporary international law. In this way the interests of neutral and belligerent are balanced; the interest of the neutral in safe navigation of the high seas, the interest of the belligerent in safeguarding national security:

> 'In these circumstances if the right of self-defence is to have any value it must allow anticipatory action' (310).

Lowe has argued that the concept of an exclusion zone fulfilled an important need in the Falklands war. It was a 'prudent compromise' between the need to take defensive action and the requirement of the contemporary ius ad bellum that the use of force be a measured, controlled and limited response(311). Greenwood agrees that exclusion zones of this type may be lawful if adequate warning is given and the danger to neutral shipping is kept to a minimum, so long as the conflict is on a level at which maritime operations on this scale can reasonably be regarded as necessary(312). The law is thus open-ended(313). The key criteria are those of necessity and proportionality. Not only must there be clear warning and minimum danger to neutral vessels, the operation of the zone must itself be a reasonably necessary and proportional exercise of the right of self-defence in the context of the conflict as a whole.

The stricter view is that exclusion zones are by definition anticipatory acts of self-defence and hence, on the basis of the definition of self-defence adopted in Chapter 1, un-

lawful. The right of freedom of the seas contained in the 1958 Geneva Convention on the High Seas and the 1982 Law of the Sea Convention cannot easily be ignored. Self-defence which is not a reaction to an immediate threat is not a suitable ground for qualifying this right. The need to insulate third States from the operation of naval operations in limited naval conflicts, the restrictions imposed on the geographical scope of naval engagements and the retention of the traditional laws of war which protect neutrals from interference and attack all point to the fact that an extension of belligerent operations into the high seas by the declaration of security zones within which neutral ships are attacked on sight is not lawful. War zones directed against neutral shipping are illegal(314). *Only those war zones which approximate to the traditional close blockade are permissible. These zones have been used to localise limited wars in the post-1945 era to the territorial seas of the belligerents*(315). *They indicate to neutrals the area of belligerent operations and minimize the risk to them. These zones complement the principles of self-defence and they, rather than zones which cover large areas of the high seas, accord well with the general conclusions reached in Chapters 1 and 11.*

(1) <u>THE IRAQI EXCLUSION ZONE</u>

Iraq announced the establishment of four maritime exclusion zones (MEZ) in the northern part of the Persian Gulf on 12 August 1982. The zones extend beyond Iraqi territorial waters into the high seas. Iraq has warned that any ship found in the prohibited areas would be liable to attack without warning. A total blockade of Kharg Island was imposed on 15 August 1982. Foreign shipping was warned to stay clear of the Island because whatever their nationality any ship would be the target for attack by Iraqi forces(316).

The MEZ was extended on 26 February 1986 to include an area of the Gulf close to Kuwait. The 1982 warning was repeated: all navigation inside the declared zone is prohibited to international shipping(317).

The maintenance of the 1982 zone and the extended zone of 1986 are designed to cope with the difficulty of identifying the nationality of ships which might be hostile. In response to the adoption by the Security Council of Resolution 540 (1983) demanding respect for the principle of freedom of navigation, Iraq stated that it reserved the right to defend by all means possible its right of navigation in the Gulf and the Straits of Hormuz(318). The limited nature of the Iraqi measures was emphasised. The imposition of the MEZ has been justified on the ground of the existence of 'war'(319). Iraq insists that it has declared a 'strictly delimited zone' in the extreme north-eastern part of the Persian Gulf. Neutral vessels have been told that it is dangerous to enter this area:

> 'Shipowners and seamen realize in advance that failure to heed this warning will expose their vessels to the dangers of the war and for the consequences of whose promulgation the Iranian regime bears sole responsibility ..... Thus, the Iraqi course is to meet like with like and stems from the right of legitimate self-defence' (320).

On other occasions the Iraqi Government has referred to the legality of exclusion zones under international law. Invoking the traditional law of blockade, Iraq insisted that it is allowed to declare a blockade of enemy ports and conduct military operations without discrimination against all vessels trading with the enemy, especially in the light of Iran's indiscriminate attacks on foreign ships <u>en route</u> to and from the neutral Gulf States(321).

Iraq has relied on a mixture of self-defence and the traditional law of war at sea to justify the imposition of maritime exclusion zones in the Gulf. On the one hand,

these have been explained as the lawful exercise of self-defence under the Charter. On the other hand, they have been described as nothing more than the lawful application of the classical laws of war. Generally-speaking Iraqi justifications have relied on vague references to 'international law', and the reasonableness of the MEZ and the blockade of Kharg Island in the context of the Iranian attacks on Iraqi and neutral shipping in the international waters of the Gulf.

The majority opinion is that the operation of the Iraqi maritime exclusion zone in the northern Gulf and the blockade of Kharg Island is justified in contemporary international law:

> 'If States really feel their interests are threatened and that it is necessary to take defensive action they will not abstain from action on the high seas as the recent Falklands and Iran/Iraq conflicts have demonstrated' (322).

A number of writers rely on the assumption that the declaration of exclusion zones is legal in terms of the ius in bello and is supported by recent State practice. The operation of the MEZ and Total Exclusion Zone in the Falklands conflict is considered lawful because of the provision of adequate warning and the minimal danger posed to neutral navigation on the high seas. Iraq relies heavily on this explanation to justify why it has restricted freedom of navigation in the Gulf(323). Third States have not protested about the existence of the operational zones and the bulk of neutral dissatisfaction has been directed at the Iranian attacks on neutral shipping on the high seas outside the declared war zones. However the UN Security Council Resolutions and Council debates have implicitly criticised the MEZ by condemning the attacks on neutral shipping both in and outside the zone(324).

It is said that the legality of the Iraqi MEZ must be tested by the concept of reasonableness(325). The area of

the zone must bear some relevance to the actual area of naval operations. The balance of opinion is in favour of arguing that if the prohibited area is narrow and imposes limited restrictions on third States it can be authorised for limited naval operations under the UN Charter. It is not sufficient merely to justify the declaration of the zone however; its implementation and enforcement must also be reasonable. Only limited force may be used to control shipping in the prohibited area. Neutral vessels may be attacked and otherwise interfered with only if enough warning has been given. The Iraqi Government has issued many warnings. According to Kinley, ships of third countries enter the zones at their own risk(326). *Provided the extent of the exclusion zone is reasonable, neutrals may be attacked on sight. The Iraqi Government has thus acted within its rights and by the implementation of a lawful MEZ is able to justify the operation of a blockade of Kharg Island. Iraq has acted with greater circumspection than Iran and the majority of Iraqi attacks have been made inside the declared zones*(327).

The Counter-Arguments

UN Security Council Resolutions 540 (1983) and 552 (1984) both refer to the need to uphold the well-established right of freedom of navigation and commerce. The Iraqi MEZ is clearly an infringement of this right. The extreme view is that the creation of exclusion zones for operational purposes is difficult to envisage. They can only be permitted for the purpose of belligerent operations amongst the protagonists and not for the purpose of interfering with neutrals. The remarks made earlier in Chapters 1 and 11 on self-defence under Article 51 and on the laws of war and of neutrality support this conclusion. Neither the imposition of the MEZ nor the blockade of Kharg Island can be justified purely by reference or analogy to traditional institutions. The ius ad bellum has severely limited

the operation of the rules of the ius in bello. The imposition of an exclusion zone must also comply with the law of self-defence.

The warnings issued by Iraq in 1982 and 1986 are anticipatory measures of self-defence. They authorise indiscriminate attacks on any vessel in a pre-determined area normally reserved for free navigation and commerce. The very concept of an exclusion zone is unlawful. It's enforcement, moreover, is hard to explain. Armed force at the highest levels is used without warning to destroy merchant vessels irrespective of whether such vessels are trading with the enemy or not. Interference with neutrals has not been minimised; if anything belligerent interference and attack has been authorised. International trade has been hampered and neutral shipping in important trade routes deliberately inconvenienced and seriously endangered.

Although the Iraqi announcement of 12 August 1982 was modelled closely on the British declarations in the Falklands conflict, the Iran-Iraq conflict differs from the Falkland conflict in several respects(328). The latter conflict was far shorter. Force was consistently conducted at high levels involving the complete mobilisation of nearly the entire Royal Navy. The operational zones were designed to protect British military forces and to facilitate the attainment of a limited operation in self-defence, namely the recapture of the Falkland Islands. The Iraqi MEZ however serves a different purpose, namely economic warfare, rather than the protection of Iraqi naval forces or the Iraqi coastline. This observation applies in particular to the so-called blockade of the Kharg Island oil terminal. The Iraqi zone is used as a method of aggressive warfare. The objective of the MEZ is essentially offensive not defensive. The MEZ is not a 'security' zone, it is a danger zone. It's aim is to frighten international shipping away from Iranian ports, to cut off Iran's oil exports and to undermine the Iranian war effort.

It is doubtful if the Iraqi exclusion zone can be justified even by reference and analogy to a traditional blockade. Rousseau argues that Iraq's measures have nothing in common with blockade whose sole function is the capture and confiscation of vessels infringing blockade or contraband regulations and not their unconditional destruction(329).

Even if the creation of the Iraqi MEZ in the northern Gulf is justified in terms of the ius ad bellum the enforcement of the zone is not. The Iraqi Air Force has attacked oil tankers outside the zones. The whole notion of the Iraqi zone's success depends upon the fear generated by random and unannounced attacks. If the aim of the MEZ was to restrict the area of naval operations, then it has had totally the opposite effect. If anything the announcement of the Iraqi MEZ represented the internationalisation(330) of the conflict at a time when Iraqi forces were on the defensive;* it signalled the start of a new phase of military operations involving the highest level of response and the highest modes of weaponry against defenceless targets belonging to neutral non-participants who were exercising no more than their well-established right to navigate the high seas and who, by virtue of the restrictions imposed by the ius ad bellum upon the ius in bello, are protected from belligerent interference and attack.

(2) THE IRANIAN EXCLUSION ZONE

The formal announcement of the Iranian Total Exclusion Zone (TEZ) was preceded by several warnings that Iran intended to prohibit all navigation in the Persian Gulf if Iraq succeeded in halting Iran's oil exports. The first warning was issued on 26 July 1983 and repeated on 15 September 1983 in response to the French delivery of Super-Etendard aircraft to Iraq. The same threat was made on 18, 19, 22 and 30 September 1983(331). The Iranian TEZ was announced on 22 November 1985(332). All Iranian coastal waters are

declared war zones and all transportation of cargo to Iraq is prohibited. All foreign vessels are ordered to stay at least twelve miles South of Abu Musa and Sirri Island, South of Cable Bank and twelve miles South of Farsi Island. The Iranian announcement warned that non-compliance with these instructions would hamper free passage and endanger the security of vessels.

Iran, like Iraq, has also established exclusion zones on the ground of self-defence, and has 'reaffirmed' and 'guaranteed' the freedom of navigation in the Gulf(333). Iran however has stated that this right is only possible under conditions of security. The argument is also put forward that the security of the entire Gulf is threatened by the attacks on Iran and neutral shipping calling at Iranian ports: 'If the security of the Persian Gulf is violated, it is violated for all'(334). Iran insists that it has never committed any act of violence threatening the freedom of neutrality in the Persian Gulf. Pointing to 'numerous Iraqi acts of aggression', Iran believes that it has demonstrated a high degree of restraint vis-a-vis such Iraqi provocation. Given Iraq's expansion of the conflict to indiscriminate attacks on neutral merchant shipping on the high seas, Iran has reserved the right to retaliate:

> 'In view of the special circumstances in the region, the Islamic Republic of Iran reiterates that it would exercise its rights to fulfil its commitments regarding the security and protection of its national interests within the perimeters of its territorial waters' (335).

It would appear that the Iranian TEZ is restricted to the territorial waters of Iran. The announcement makes reference to 'coastal waters' and neutral shipping is warned to sail twelve miles south of Sirri and Farsi Island. The limited extent of the zone suggests that an attempt has been made to comply with the restrictions imposed by the law of self-defence on the conduct of contemporary naval

operations. The observations made by O'Connell on the restrictions imposed on the geographical scope of the conflict have been observed. To the extent that the TEZ is restricted to Iranian territorial waters and poses a minimal risk to neutral shipping in the Gulf, it is lawful. The right of innocent passage in the territorial seas has been curtailed but there is good ground for explaining this infringement of the 1958 Geneva Convention on the High Seas as a reasonable self-defence measure especially in the light of the Iraqi attacks on ships calling at Iranian ports, the high levels of force in use, the advanced state of the conflict and the warning issued on the 22 November 1985.

The Counter-Arguments

The principle of proportionality means that not only the creation of the zone must be reasonable. Its operation and enforcement must not involve the use of force beyond that strictly necessary for thepurpose of self-defence. The Iranian attacks on shipping inside the TEZ have seriously damaged and sometimes destroyed neutral vessels. There is a strong suspicion that the zone, like the Iraqi MEZ, is being used to wage economic warfare. The prohibition placed on all cargoes to Iraq reinforces this conclusion. Neutral shipping has been placed in the forefront of a campaign of retaliation against Iraq. The TEZ is a part of this campaign. It is not a security zone to protect Iran's coastal installations or Iranian naval units. The TEZ has not been established as an operational zone delimiting the area within which belligerent operations are being conducted, so serving as a warning to neutral vessels that this is an area where dangerous activities are taking place. If anything the zone fits into Iran's overall campaign against neutral shipping in the Gulf[336]*. Iran has not otherwise sought to limit its belligerent activities; the majority of Iranian attacks have occurred outside the zones, on the high seas.*

The limitation of the TEZ to Iranian territorial waters, the minimal interference the TEZ itself has caused to neutral navigation and the way it purports to restrict the geographical scope of the conflict all point to the creation of a lawful exclusion zone. The degree of force used in its enforcement and the overall purpose for its establishment tell another story. If the TEZ fitted into a comprehensive campaign on the part of Iran to limit all belligerent activities to territorial waters, and to prevent harm to neutrals, it would be justified. The comments made earlier about the Iraqi MEZ are equally valid. If the TEZ was a genuine security zone and if neutral ships inside it were stopped and questioned rather than being attacked on sight it would undoubtedly amount to a reasonable and necessary measure of self-defence. Unfortunately vessels inside and outside the TEZ and MEZ have been the subject of indiscriminate attack and uniform destruction. The TEZ has not limited the geographical scope of the conflict nor has it ultimately minimised the risk to neutral navigation and commerce in the Persian Gulf.

III. THE TANKER WAR

(1) THE ATTACKS BY IRAQ

The UN Security Council has passed two Resolutions specifically upholding the right of freedom of navigation. Resolutions 540 (1983) and 552 (1984) refer to attacks on commercial ships in the Persian Gulf and call upon States in accordance with international law to respect the right of free navigation in international waters and sea lanes for shipping en route to and from all ports and installations of the littoral States that are not parties to the hostilities[337]. The neutral Gulf States issued a similar appeal on the 9 November 1983.

The attacks by Iraq on international shipping have been directed mainly at tankers exporting oil out of Iranian oil terminals. The vast majority of these attacks have been limited to vessels in and around Kharg Island. Most foreign oil tankers have been hit south of Kharg Island and to the south of the Iraqi MEZ, but inside the Iranian TEZ, within a range of 80 miles from the Kharg terminal and within 10 to 65 nautical miles off the Iranian coast. Of the 172 attacks on oil tankers, Iraq is responsible for 105 and for the deaths of approximately 65 of the 100 seamen killed. Only 5 of these attacks are reported to have occurred outside the declared exclusion zones. Since the end of 1986, Iranian-operated tankers running the crude oil shuttle service to the southern Gulf islands of Sirri and Larak have been particularly exposed to Iraqi attacks; of the 105 tankers hit by Iraq, 59 were shuttle/storage tankers(338).

The tanker war is a key element in Iraq's strategy against Iran. The intention is to frighten merchant shipping away from Iranian ports. To some extent Iraq has successfully limited Iranian oil exports and has cost Iran millions of dollars in destroyed shuttle tankers and increased insurance premiums(339). *Iraq has explained this campaign by reference to the right of self-defence and the 'right' of States to attack neutral vessels in time of war. The Iraqi Government has reserved its right to strike at Iran wherever necessary in order to defend the 'sovereignty, security and vital interests of Iraq' for as long as Iran continues to deprive Iraq of its natrual right to enjoy freedom of navigation in the region of the Gulf and the Straits of Hormuz*(340). *Accusing the Iranian Government of indiscriminately attacking foreign vessels sailing to and from neutral Gulf States, Iraq insists that the position of the Iraqi and Iranian regimes is different. According to Iraq, Iran started the armed aggression and has since insisted on its continuation by attacking and threatening other Gulf States; neutral vessels have been attacked far from the theatre of operations irrespective of their destination for*

Iranian or neutral ports. Iraq, by constrast, has instituted 'reasonable measures' arising from the right of legitimate self-defence:

> 'For these reasons, Iraq has tightened its blockade of Iranian ports as a preventive and defensive measure'(341A).

Iraq stated in a Note in reply to a Common Démarche by Norway and Finland that it has never been Iraq's policy to attack foreign ships without discrimination. Only vessels en route to and from Iranian ports in the area of military operations, in application of the sea blockade against those ports in accordance with the international law of armed conflict at sea, have been attacked(342).

The majority of Iraq's attacks have occurred inside the declared exclusion zones. Insofar as the Iraqi MEZ is lawful, these attacks are probably lawful. However, the enforcement of the MEZ has involved indiscriminate attacks without the alternative of less violent measures. Oil tankers up to 80 miles from Kharg Island and up to 65 miles from the Iranian coastline have been attacked without warning with weapons at the very highest levels of the use of force. Neutral tankers with full cargoes of oil have been singled out for attack. More recently, Iranian tankers have been attacked in increasing numbers. Clearly most, if not all, of the 105 Iraqi attacks cannot be explained by reference to the right of self-defence (ius ad bellum). Iraq has been on the offensive, rather than the defensive. Iraq is waging aggressive economic warfare against Iran's oil trade.

The danger this campaign poses to neutral navigation in the Gulf is highlighted by the uniform criticism of the Iraqi attacks by the international community. UN Member States have strongly opposed interference with neutral navigation. The ten States of the European Economic Community appealed to both parties to renounce all activities endangering freedom of navigation in the Gulf(343).

Norway regretted the attacks on ships in international waters, in particular the attacks outside the declared war zone(344). The need to guarantee freedom of navigation in the Gulf has similarly been emphasised by Yemen and Kuwait(345). Panama denounced the attacks and called on both parties to respect and implement the principles of international law enshrining the principle of freedom of navigation in the Gulf and guaranteeing innocent passage for merchant vessels:

> 'Panama is not at war, nor is it party to any armed conflict' (346).

Other countries have also stressed the importance of the principle of free navigation on the high seas. Tunisia stated that all attacks on third parties are reprehensible under international law(347). The UK has called for an end to all attacks on the shipping of third States(348).

The United States has committed itself to upholding the right to navigate the high seas in the Gulf region(349). France too has expressed concern at threats to the freedom of movement of neutral ships. The US, France and the UK have also committed themselves to safeguarding their flag ships in the Gulf and have deployed naval forces for this purpose. The USSR too is escorting merchant shipping.

The International Association of Independent Tanker Owners (Intertanko) has strongly criticised both Iraq and Iran for interference with neutral shipping. Approaches were made to Iran and Iraq urging both countries to stop their attacks on tankers and to respect the right of free navigation. Nine international shipowners' organisations, including Intertanko, sent a message to the UN Secretary-General urging the UN to do its utmost to halt attacks on shipping. Concern has been expressed that the consistent breaches of international law over the past three and a half years may be leading to the establishment of a new rule of customary international law sanctioning interference with neutral shipping and commerce(350).

No third State has supported either Iran or Iraq's conduct of indiscriminate attacks on neutral shipping. Major Western Powers have not only formally registered their concern and opposition to the attacks, but have also taken active steps to defend their ships. The UN Security Council Resolutions, although non-binding and without real force, clearly restate the principle of freedom of navigation and do not recognise any exception based on the right of self-defence.

Most States have assumed that Iraq's measures ought to be analysed in the context of the traditional law of war at sea. It is in this context that the international community tends to evaluate the legality of the attacks. Thus Rousseau states that the question is one of interference with third States in time of war(351). Iraq has tried to justify the attacks as a lawful exercise of right recognised by the ius in bello. But, even assuming that it is sufficient to discuss the Iraqi attacks solely in terms of the ius in bello, it is not conceivable that Iraq has complied with the classical rules of naval warfare: the stopping and searching and capture of neutrals in accordance with the law of blockade contraband and prize is lawful but the uniform destruction of ships is not.

If the Iraqi offensive is unlawful in terms of the ius in bello, there is even less reason to suppose that it is lawful in terms of the ius ad bellum. In accordance with the O'Connell rules for limited naval conflicts and the conclusions reached in Chapters 1 and 11, Greenwood points out that the requirement that any use of force must be justified by reference to the principles of necessary and proportionate self-defence means that attacks on neutral shipping on the high seas are never justifiable(352). The infringement of a neutral State's rights and the dangers to which neutral crews are exposed, ensures that unannounced attacks of the kind conducted by Iraq can never amount to a reasonable measure of self-defence.

(2) THE ATTACKS BY IRAN

Iran has attacked many neutral merchant vessels. The number of Iranian attacks is much smaller than the number of Iraqi attacks, but most of them have taken place outside the declared war zones. Iran is responsible for 54 of the 64 attacks on neutral ships outside the zones. The latest Iranian attacks indicate that an Iranian naval unit is operating in an area 54 to 56 latitude East running parallel to the UAE coast, just outside the territorial waters(353). In addition Iran is concentrating attacks on tankers calling at Kuwaiti ports. These are usually intercepted by Iranian naval vessels demanding identification, questioning them about their cargo and destination and then attacking the tankers about two to three hours later(354).

Iran launched attacks on three tankers in May 1984. Kuwaiti and Saudi Arabian forces were hit inside Saudi Arabian territorial waters and on the high seas. The neutral Gulf States reacted immediately. The League of Arab States condemned the Iranian attacks and the Gulf Co-operation Council called on the UN Security Council to take action to end the attacks on ships sailing to and from GCC ports. Kuwait described the Iranian attacks as being in violation of existing international conventions, in particular the 1958 Geneva Convention on the High Seas and the 1982 UN Law of the Sea Convention:

> 'Aggression against States outside the Iran-Iraq war zone is the most dangerous phenomenon we have seen in the development of the present war. It is unilateral aggression against countries which are not at war'(355).

Protest has centred on the fact that ships being attacked were not military, were not participating in the war, were outside the combat zone and did not carry war material. They were commercial vessels with the right of innocent passage in neutral territorial waters. Attacks on these

vessels therefore amount to a violation of the laws of nuetrality under which peaceful civilian commercial targets who are not parties to the war are immune from attack. The GCC rejected Iranian assertions that it has the right to hit ships in a country that has relations with Iraq or to bomb vessels proceeding to and from the ports of countries which are members of the Council in retaliation for any attack by Iraq on Iranian targets. There has also been strong objection to the idea that ships could be attacked far from the area of naval operations:

> *' ... it is a dangerous principle for a country at war with another to arrogate to itself the right to attack a third party' (356).*

The Security Council passed Resolution 552 (1984) in response to Iran's attacks on the three tankers, condemning the attacks on commercial ships <u>en route</u> to and from the ports of Kuwait and Saudi Arabia and demanding that there should be no interference with ships <u>en route</u> to and from States that are not parties to the hostilities. Some ten days later Iran indicated its determination to reject Resolution 552 by hitting the Kuwaiti tanker, the <u>Kazimah</u> in the entrance to the Gulf. Kuwait pointed out that the Kuwaiti-bound vessel was far from the military-operations zone as defined by both Iran and Iraq(357).

Iran blames Iraq for starting the war and for escalating it into attacks on international shipping. Pointing to Iraq's attacks on 71 ships, Iran asked why it and not Iraq was being accused of jeopardizing the freedom of international shipping?(358) Iran reiterated that it reserves the right to defend itself from threats to its security arising from Iraq's internationalisation of the conflict. Iran has also hinted that neutral Gulf shipping is also a legitimate target because the Gulf States are supporting Iraq and financing the Iraqi war effort and are therefore, by implication, threatening commercial shipping in the Persian Gulf(359).

There is no doubt that the Iranian campaign on international shipping is little more than a crude campaign of economic warfare. The purpose of Iran's attacks, apart from being in retaliation for Iraqi attacks, is to stop ships trading with Iraq or Kuwait. In addition neutral ships calling at countries which side with Iraq are also considered lawful economic targets. Third States have complained and rejected Iran's justifications. In addition, the US has started to use naval forces to protect neutral shipping and to assert the right of freedom of navigation in the Gulf. The UK and France are also assisting in this re-assertion of the right of neutral shipping to navigate the high seas.

The majority of Iranian attacks have occurred outside the MEZ and TEZ and for this reason they are even less justifiable than those launched by Iraq[360]. It cannot be argued that Iran is trying to enforce a security zone. Quite clearly it is not. Iran is not attempting to restrict itself to a measured and controlled response in self-defence. Not only has the area of naval operations been expanded to include nearly the entire Persian Gulf but the scope of response has incorporated the instantaneous use of force at high levels and high modes of weaponry. None of the attacks were in response to immediate threats to Iranian security.

The same comments offered above in the context of Iraqi attacks are applicable. Even if the attacks are evaluated purely in terms of the ius in bello, they are unlawful. The traditional law of neutrality, whilst allowing for a much greater exercise of belligerent rights against neutral commerce in time of war, also sought to limit belligerent interference and to respect the undisputed right of neutrals to navigate the high seas. The traditional law did not sanction an indiscriminate belligerent offensive against shipping in international waters. It recognised that non-belligerent ships were subject only

to controlled interference under the rules of blockade, contraband and unneutral service. Iran has failed to comply with the classical rules in this regard. Moreover, Iran has not justified its attacks as a necessary and proportionate use of force in self-defence. In terms of the ius ad bellum, Iran's attacks, made without warning far from the designated area of naval operations and directed exclusively at non-belligerent shipping on the high seas and in neutral territorial waters, are never justifiable.

IV. THE VISIT AND SEARCH OF NEUTRAL SHIPPING

The visit and search of neutral merchant ships by Iran in the Gulf of Oman, other parts of the high seas and in the Straits of Hormuz is a secondary feature of the Iran-Iraq war. The Iranian measures against international shipping have supplemented the campaign against oil tankers in the Gulf. Cargoships have been stopped and searched, detained in Iranian ports and their cargoes confiscated.

Interference with neutral shipping on the high seas has met with a mixture of indifference and concern. The United States objected to the boarding of the US freighter, the President Taylor, but did not take the matter any further. The United Kingdom expressed concern at the stopping of British merchant ships in the Gulf of Oman. France prevented the interception of the French ship, the Ville d'Angers(361). The United States has repeatedly said that it will act to maintain freedom of navigation in the Persian Gulf. The British Secretary of State for Foreign Affairs, Sir Geoffrey Howe, warned that 'the interest we all have in the continued freedom of navigation in international waters makes it a matter of concern for all of us'(362). There has, however, been no concerted international or UN reaction to the imposition by Iran of

traditional belligerent rights against neutral shipping. The UN Security Council Resolutions refer to the need to uphold the right to navigate the high seas without interference or attack[363]. The failure of the Council to reach a binding decision and to implement peace enforcement measures however means there is a danger that international indifference may be leading to the establishment of a new rule of international law for limited naval engagements; one which acquiesces in the stopping, boarding, searching and seizure of neutral vessels on the high seas, their detention in belligerent ports and the confiscation of items considered to be contraband of war[364].

It has been argued that Iran is doing nothing more than rely upon its traditional right of visitation on the high seas. The traditional law of war at sea, in particular the law of economic warfare, affords belligerents very extensive rights against neutrals, including the right to visit and search ships on the high seas, to seize and condemn in prize contraband, to operate blockades and to use force against neutrals. Since Iran is at war with Iraq and Kuwait, it is commonly assumed that Iran has the legal right to stop and search ships trading with Kuwait or flying the Kuwaiti flag[365].

The reality of international relations is that conflicts occur despite the ban on the use of force under the Charter. They require legal regulation. The law of war at sea is still applicable in <u>de facto</u> war. The traditional rules are dependant on the fact of armed conflict rather than the formal declaration of a conventional state of war. The Iran-Iraq war is a situation justifying the application of the law of war and of neutrality at sea. Iran is therefore allowed to rely on certain of the old institutions[366].

Some writers maintain that Iran's visit and search measures are a controlled response directed only against merchant ships in transit to Kuwait. No tankers have been

intercepted. Iran is not trying to interfere with the trade of Gulf States. Iran is not trying to threaten freedom of navigation in the Gulf(367). *Only arms and other war material en route to Iraq have been confiscated. These are considered by Iran to be contraband of war. The stopping of neutral shipping has therefore been selective, designed only to harm the Iraqi war effort:*

> *'(T)his Iranian action is an apparently controlled response to Iraqi provocation; aimed at all countries that use the Gulf, informing them of the obvious; Iran controls the entrance to the Gulf. At the same time the limited nature of the Iranian action shows an unexpected sensitivity of approach ...' (368).*

There is no doubt that the visit and search of neutral ships on the high seas is lawful in terms of the law of war at sea. It is by no means clear if the Iran-Iraq conflict is 'war' and, if so, whether the imposition of traditional belligerent rights is lawful. Many writers have assumed that there must be grounds for Iranian interference with neutral shipping and have justified it solely in terms of the traditional law of war (the ius in bello). Whilst it may be correct to say that Iran has complied with the ius in bello, this begs the question whether the conventional rules of warfare are applicable in contemporary naval conflicts under the UN Charter and to what extent they are still relevant to the conduct of force in self-defence.

Post-Second World War engagements have been conducted as limited conflicts subject to a variety of restraints on the use of force. These have imposed new limitations on the area and scope of naval operations. State practice has assumed that the international community ought to be insulated as much as possible from the conduct of force in self-defence. The conclusion was reached in Chapter 11 that the law of neutrality at sea insofar as it permits the conduct of economic warfare against neutral commerce on the high seas is obsolete. Only those rules

which insulate neutrals from the conduct of armed force are still applicable. There is an even greater need in limited warfare to protect neutral States from belligerent interference and attack. The rule limiting the geographical scope of naval engagements in favour of the principle of freedom of the seas emphasises the growing immunity of neutrals from interference and attack and severely restricts the scope for successful belligerent interference with neutral commerce.

States no longer enjoy the right to wage war subject only to the limitations of the law of war. Additional limitations have been imposed by the ius ad bellum on the ius in bello making it difficult to justify interference with international shipping on the high seas. Iran's visitation of foreign shipping cannot be justified purely in terms of the ius in bello; it must also be lawful in terms of the ius ad bellum. The principles of necessity and proportionality have imposed restrictions much more comprehensive than those contained in the ius in bello particularly as regards the amount of force which may be used against neutrals. It is not enough for observers to say that Iran has complied 'with international law' simply because it has acted in accordance with the traditional law of neutrality and of economic warfare: ' ... scrupulous adherence to the law of war will not turn an unlawful use of force into a lawful exercise of the right of self-defence'(369).

Iranian naval forces have greatly inconvenienced neutral shipping and endangered the lives of neutral crews in direct contravention of the principle of freedom of navigation of the high seas laid out in Article 2(2) and 22 of the 1958 Geneva Convention on the High Seas. Neutral vessels have been detained for long periods in Iranian ports. The Al Muharrag was forced to proceed to Bandar Abbas and detained there for three weeks during which the entire cargo was removed. Non-military cargoes have been seized, including motor car spares, electrical appliances,

oil drilling parts, food and toys. The salvage vessel, the Amsterdam[370], was attacked on 8 November and forced to sail to Bandar Abbas. A supply vessel, the Western Moon, was detained in November 1985 and latest reports indicate that it is still being held by Iran. Ships bound for neutral Gulf countries other than Kuwait have been stopped. The Ville d'Angers was proceeding to Bahrain when an Iranian frigate attempted to intercept it. The Ville d'Aurore was boarded on its way to Dubai. Iran removed 78 tons of explosives from the Horneland on the grounds that it was in transit to Iraq. The shipowners claimed that the explosives were destined for road construction work in Saudi Arabia[371].

Iran has failed to restrict belligerent operations to Iranian or Iraqi territorial waters[372]. Their area and scope has deliberately been expanded. Neutral merchant ships have been stopped on the high seas by force and ordered to submit to inspection. Third States have protested[373]. Permission has at no time been granted to permit inspection on the high seas[374]. Iran is conducting a campaign similar to that operated by India in the Indo-Pakistan war (1971). A long drawn-out conflict is being escalated by the extension of belligerent measures against neutral shipping into the high seas. Western navies are convoying neutral cargoships in the face of the increasing danger they face in the Persian Gulf. The Iranian Government meanwhile has warned that any foreign ships attempting to interfere in Iranian interception procedures will be attacked.

It is unlikely that this kind of interference in international trade is lawful today. Third States complained to France about French interference with foreign shipping on the high seas during the Algerian War of Independence[375]. The right of free navigation and commerce contained in the 1958 Geneva Convention on the High Seas is a well-established principle of international law and has been confirmed

by Resolution 540 of the UN Security Council[376]. Article 22 states that a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting that the ship is engaged in piracy or the slave trade, is without nationality, or, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship[377]. It is by no means certain if there exists a right to intervene with neutral shipping on the high seas on the ground of national self-defence. Preference was expressed in Chapter 1 for the concept of self-defence as defined in The Caroline: there must be a 'necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment of deliberation' and the action taken must not be 'unreasonable or excessive' and 'limited by that necessity and kept clearly within it'[378]. According to O'Connell it is therefore difficult to justify visit and search unconnected with immediate threats and which is intended to operate as an exclusion zone or a cordon sanitaire:

> ' ... (T)he question remains to what extent Article 51 authorizes more than immediate self-defence against an armed attack' (379).

The International Law Commission, commenting on Article 22 of the Geneva Convention on the High Seas, advised against including an additional provision qualifying the freedom of navigation by recognising the right to board a vessel on the high seas in the event of the ship being suspected of committing acts hostile to the State at a time of 'imminent danger' to the security of that State. The Commission felt that terms like 'imminent danger' and 'hostile acts' are too vague and open to abuse[380]. The comments made above concerning restrictions placed by the concept of self-defence upon the area of naval operations and the increased relevance of those old-fashioned rules of neutrality at sea insulating neutrals from belligerents conduct reinforce this conclusion. Traditional visit and search is not compatible with the principle of self-defence.

Iran has not set out any basis in law for the imposition of visit and search measures. An announcement on 8 September 1985 stated that any ship suspected of carrying Iraqi-bound material would be arrested and the cargo seized[381]. On the 12 May 1986 Iran warned that any US or French warships escorting merchant ships thought to be transporting items to Iraq would be attacked and contraband interception procedures enforced[382]. Both warnings are couched in very wide terms and offer no explanation for self-defence. They simply assume that the stopping and searching of neutral shipping is lawful in terms of the traditional ius in bello. Very little emphasis has been placed on compliance with the requirements of the ius ad bellum[383].

Iran has acted indiscriminately and inconsistently. The Iranian response has been far from controlled. Belligerent rights have been exercised in international waters. Self-defence or national security is not a good foundation for seeking to qualify the freedom of the seas[384], and it is submitted that in this instance the Iranian 'blockade' cannot be authorised in terms of the principles of necessity and proportionality.

There is another view, supported to some extent by State practice, that a policy of visit and search may be authorized independently of immediate threats in the interests of national security. According to an article in The Times 'the Iranians may be within their rights to challenge and inspect neutral shipping, even outside their territorial waters'[385]. Self-defence and compliance with the proportionality principle has been relied upon to justify Iranian intervention. Thus the visitation of Kuwaiti-bound vessels entering Iranian territorial waters (or the Iranian MEZ) and the confiscation of arms and other military material only might be construed as a lawful exercise of the right of self-defence, despite the lack of immediate threats, on the basis that neutrals are abusing the right of innocent passage(and the terms

of the Exclusion Zone)by transporting war material to Iraq[386]. Iran would go a long way towards complying with the principles of self-defence if a warning was publicised identifying forbidden material in advance and explaining the visit and search of foreign ships as the careful and measured response required by the great danger posed to the national security of Iran by the reinforcement of Iraqi forces[387]. Visit and search on the high seas might be explained as the use of force in individual cases in immediate self-defence. The temporary extention of visit and search rights into areas of the high seas might similarly be explained as an appropriate response to a specific threat posed to Iranian security, for example by virtue of an internationally co-ordinated 'conspiracy' to supply Iraq with armaments.

The exercise of traditional belligerents rights might also become lawful if the degree of force escalated rapidly to higher levels approximating total war. The theory of graduated force provides for a proportionate increase in response to the use of force. As the level of response increases to total war levels, the principles of self-defence logically exert less and less control over the use of force. At this stage traditional rights of visit and search could become reasonable and proportionate measures of self-defence. As the Iran-Iraq war deteriorates further into unregulated warfare the Iranian visitation of foreign shipping in international waters becomes easier to justify. As it is, it is incorrect to argue that the conflict between the two countries is 'war', a fact which justifies the imposition of classical methods of warfare. Any characterisation of the conflict as war does not affect the general remarks made above: since States cannot avoid their obligations by the expedient method of declaring war, the principle of self-defence continues to govern the use of force in any conflict whatever its status. The legality of interference with international shipping cannot be explained by reference to the ius in bello alone; it must be lawful in terms of the ius ad bellum

as well. In this instance the legality of Iran's procedures must be denied because of the incompatibility of such measures with the principles of necessity and proportionality. Iran has not established a case for the exercise of the right of self-defence under Article 51 of the Charter and has not complied with contemporary State practice in this regard.

CHAPTER V

C O N C L U S I O N S

The Iran-Iraq conflict is usually supposed to be a conventional state of war. The law of war (ius in bello) is therefore regarded as applicable in any evaluation of the legality of the use of force by either side. The Iranian visit and search of neutral shipping on the high seas is often described as being a lawful exercise of belligerent rights in wartime. The attacks on neutral oil tankers, on the other hand, are generally thought to be illegal because they are anunjustified infringement of the principle of freedom of navigation in the Gulf. The humanitarian laws of war are also regarded as being relevant, in particular the Geneva Conventions concerning prisoners of war and gas warfare. Some commentators find it difficult to assess the Iran-Iraq conflict on any other basis than the superficial level of 'war' and the law of war. Given the inability of the United Nations to invoke collective security action and to identify the aggressor from the victim of an unauthorised use of force in violation of the UN Charter, it is not surprising that the international community has tended to disregard the law of self-defence (ius ad bellum). The UN, in the face of the failure to enforce compliance with the ius ad bellum, has itself not hesitated to rely on aspects of the ius in bello.

Every armed conflict is fought under the law of self-defence. Not only the initial recourse to force but every subsequent use of force must be proportionate to the achievement of a legitimate, hence limited, objective in self-defence. The ius ad bellum has imposed restraints upon the conduct, as opposed to the initiation, of hostilities. It is wrong to assume that the entire traditional law of war at sea is applicable in any conflict whatever its legality as self-defence or 'war'. Substantial limitations now exist as to the area of military operations,

the scope of the conflict and the level of response and modes of weaponry. It is no longer sufficient for a State to argue that it is using force for a legitimate objective and that it is complying with the ius in bello. The conduct of the subsequent conflict must not involve force in excess of what is reasonably necessary and proportionate. The recognition of a state of war does not alter this conclusion. The existence of a state of war has a factual rather than legal significance. It may indicate a high level of hostilities approximating to total war and justifying the application of certain of the traditional rules of warfare.

The principle of self-defence in Article 51 of the UN Charter severely restricts the amount of force States may use. Although the conclusion was reached in Chapters 1 and 11 that the ius ad bellum has not superseded the ius in bello but that they are applicable concurrently, it was also concluded that exercise of belligerent rights at sea is not compatible with the principle of self-defence. In the context of interference with international shipping the ius ad bellum does interfere with the operation of the ius in bello. The law of economic warfare insofar as it authorises visit and search at sea in the enforcement of the law of blockade, contraband and unneutral service is obsolete. The observations made by O'Connell on the conduct of modern naval engagements reinforces the view that third States ought to be isolated from the conduct of belligerent operations at sea. Only those rules of neutrality which protect third States from belligerent interference and attack are still relevant.

Theories about the contemporary international law of naval engagements do not always correlate neatly with the actual conduct of international conflict. Hence the temptation to dismiss theories of self-defence and to concentrate on traditional belligerent rights without

reference to the modern ius ad bellum. Greenwood's treatment of this chaotic aspect of international law helps to clarify the assessment of the legality of the behaviour of States during hostilities. The usefulness of the classical rules is acknowledged for pragmatic and humanitarian reasons. At the same time the principle of self-defence is recognised and not conveniently ignored. Since this lacks precision and is vague and general in nature, it is not always suitable for the detailed regulation of armed conflict. The principles of necessity and proportionality, therefore, are retained separately but in conjunction with the detailed provisions of the ius in bello.

The Iran-Iraq conflict emphasises the need for precise and detailed rules governing the conduct of naval operations, particularly the relationship between belligerents and non-belligerents. Third States have failed to co-ordinate their opposition to the attacks on international shipping either by reference to the ius ad bellum or the traditional ius in bello. Debate on the lawfulness of belligerent interference and attack on the high seas lacks a framework for the proper evaluation of naval operations under the UN Charter. There is a danger that a vague and ultimately passive international response may lead to the establishment of a new rule limiting the freedom of international shipping during armed conflict. Although third States have reacted to the attacks on their shipping, Western navies are escorting merchant vessels in the Gulf and the US has reiterated its determination to uphold the right of free movement on the high seas, the United Nations has not been able to co-ordinate international reaction except in the form of non-binding Resolutions. It has been left up to individual States to take individual action to protect their own ships. Respect for neutral rights depends on the ability of the neutral State concerned to enforce observation of the rules of neutrality which immunise third States from interference and attack. The US has recently warned off

Iranian naval units attempting to intercept US-registered vessels. France also prevented an Iranian attempt to stop a French cargoship, the Ville d'Angers. When no naval forces have been on hand to protect neutral vessels, however, Iran has not hesitated to stop, search and (in some instances) attack foreign cargoships and oil tankers.

Faced with the lack of special rules for contemporary naval engagements and by the reality of a long, drawn-out conflict approximating in some respects to 'total war', the usefulness of the traditional law of war must be acknowledged. It is preferable to have some rules to regulate armed conflict, even if these are more appropriate to the conduct of old-fashioned war. They are also useful as an upper limit on the use of force. It should always be borne in mind however that a State wishing to justify its conduct of international armed conflict must comply with both the ius ad bellum and the ius in bello. Observation of the ius in bello alone is not sufficient. It must also be shown that the force used is necessary and proportionate. Attacks on neutral shipping on the high seas must not be evaluated solely by reference to the ius in bello but also in terms of the principles of self-defence. The conclusion is inescapable that belligerent attacks on the high seas are never justifiable. They are not reasonably proportionate acts of force, nor do they comply with the conventional rules of the ius in bello. Visit and search on the high seas is also never justifiable, except perhaps in a clear case of immediate threat to the security of a State engaged in international conflict.

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1. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', p x.

2. See Tavernier, 'La Guerre du Golfe, quelques aspects de l'application du droit des conflits armés et du droit humanitaire', pp45, 64. See also Greenwood, 'Self Defence and the Conduct of International Armed Conflict', p x.

3. Reference is made to the following articles and books by the late Professor D P O'Connell: O'Connell, 'Limited War at Sea Since 1945' in Howard, Restraints on War, Studies in the Limitation of Armed Conflict (1979) pp123-134 (O'Connell (1979)); 'Naval Policy and International Law and International Relations', Britain and the Sea. The Collected Papers and Records of the Conference held at the Royal Naval College, Greenwich, 12-14 September 1973, pp24-34 ('O'Connell (1973)'); 'International Law and Contemporary Naval Operations', British Yearbook of International Law, xxxxiv (1970), 19-85 ('O'Connell (1970)'); The Influence of Law on Sea Power (1975), ('O'Connell (1975)'); The International Law of the Sea (1984), ('O'Connell - Shearer (1984)').

4. See Brownlie, International Law and the Use of Force by States ('The Use of Force') pp251-261.

5. See Falk, Law, Neutrality and War, pp13-15; Kelsen, The Law of the UN, p792; Kotzsch, The Concept of War, pp278-279; Lauterpacht, Oppenheim's International Law, 11, pp155-156; Roling, 'The Ban on the Use of Force and the UN Charter', p5. Article 51 permits both individual and collective self-defence: in addition to the right to take appropriate measures to protect its own territory, a State is permitted to go to the assistance of any other State or States who are the subject of an illegal armed attack and where safety and independence is deemed vital to the safety and independence of the State resisting aggression.

6. Brownlie, The Use of Force, pp265-268 (n4). See generally Orford, Some Aspects of the Contemporary International Law of Naval Engagements : The Sinking of the General Belgrano, The Falklands War, 1982, pp10-12. The use of force is also permitted as an exception to the prohibition in Article 2(4) under Articles 106 and 107 (upon the resumption of World War Two) ibid, p12 n15.

7. See Orford, Some Aspects of the Contemporary International Law of Naval Engagements, p11.

8. See : Kunz, 'Individual and Collective Self-Defence in Article 51 of the Charter of the United Nations', pp.877-878; Nawaz, 'Limits of Self-Defence : Legitimacy of the Use of Force Against Economic Strangulation', pp.25-26; Stone, Legal Controls of International Conflict, p243.

9. Kunz, 'Individual and Collective Self-Defence', pp 877-879; Kelsen, The Law of the UN, p269; Krylov, Report of the 48th Conference of the International Law Association, pp512-513; Orford, Some Aspects of the Contemporary International Law of Naval Engagements, p13.

10. Kelsen, The Law of the UN, p799; Stone, Legal Controls of International Conflict, p244.

11. See : Brownlie, The Use of Force, pp279, 373 (n4); Orford, Some Aspects of the Contemporary International Law of Naval Engagements, pp10 (n13), 13 ; Falk, Law, Neutrality and War, pp13-15; Röling, 'The Ban on the Use of Force', p3; 'Aspects of the Ban on Force', p250.

12. See : Kelsen, 'Collective Security Under International Law', p88; The Law of the UN, p799 ; Orford, Some Aspects of the Contemporary Law of Naval Engagements, p14 ; Stone, Legal Controls of International Conflict, p244.

13. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px. See : Jessup, A Modern Law of Nations, pp163-164 (reprinted in Whiteman, Digest of International Law, iv, pp972-973); McDougal, 'The Soviet-Cuban Quarantine and Self-Defence', pp597-598.

14. Brownlie, The Use of Force, pp251-261(n4).

15. 30 B.F.S.P. p193; Brownlie, The Use of Force, pp 42-43,261,299-300 (n4)Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px; 'The Relationship between the ius ad bellum and the ius in bello', p223.

16. See : Carlisle, 'The Interrelationship of International Law and the United States Naval Operations in Southeast Asia', pp10-11; Orford, Some Aspects of the Contemporary International Law of Naval Engagements, pp15-16; O'Connell (1975), p54, 64-65.

17. Greenwood, 'The Relationship between the ius ad bellum and the ius in bello, p223; 'Self-Defence and the Conduct of International Armed Conflict', px; O'Connell (1979), p124; (1975) pp54, 64-65. But see : Kunz,'Individual and Collective Self-Defence', p877.

18. Mendelson, 'Interim Measures of Protection and the Use of Force by States', pp348-349; Stone, Legal Controls, p244 (n8); Ronzitti, Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity, pp1-2.

19. Orford, Some Aspects of the Contemporary International Law of Naval Engagements, p16. See: Mallison and Mallison, Armed conflict in Lebanon, 1982, pp22-29.

20. Collective self-defence is not a means to realize collective security : it is an autonomous use of force legalized by the Charter only under the conditions and within the limits of Article 51 : Kunz, 'Individual and Collective Self-Defence in Article 51 of the Charter of the United Nations', pp875, 876-877; Röling, 'The Ban on the Use of Force', p3; 'Aspects of the Ban on Force', p248. See: Bowett, Self-Defence in International Law, p195.

21. Orford, Some Aspects of the International Law of Naval Engagements, p18.

22. Bowett, Self-Defence in International Law, pp185-186, 188-189, 191-192. Brownlie, The Use of Force, pp265-270 (n4). Greenwood, 'International Rules of Engagement and Air Warfare', p11; Ronzitti, Rescuing Nationals Abroad, pp1-3; Stone, Aggression and World Order, pp95-98; Waldock, 'The Regulations of the Use of Force by Individual States in International Law', pp 455, 495-499.

23. '..(It) would now be counter to the progressive development of international law to read into the Charter authorisation to employ force in situations which the Charter itself has not equivocally excepted from the principle enunciated in Article 2(4)'. The Article 2(4) prohibition is 'all embracing and general' : Skukiszewski in Sørensen, Manual of International Law, pp745 746, 765-767. See: Bowett, Self-Defence in International Law, pp184-185; Brownlie, The Use of Force, pp258-261, 270-271, 272-274, 275, 279-280 (n4). Falk, Law, Neutrality and War, p15; Jessup, A Modern Law of Nations, pp165-166, Kunz,'Individual and Collective Self-Defence', pp872, 878; O'Connell (1975), pp54, 64-65; Röling, 'The Ban on the Use of Force', pp3-7; 'Aspects of the Ban on Force', pp248-250, 256-259; Ronzitti, Rescuing Nationals Abroad, p4. See generally for a discussion of some 'general points of disagreement' on the scope of Article 2(4) and anticipatory self-defence: Orford, Some Aspects of the Contemporary International Law of Naval Engagements, pp19-27.

24. See: Orford, Some Aspects of the Contemporary International Law of Naval Engagements, pp27-29.

25. O'Connell-Shearer (1984), p1094(n3). See:Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, pp 1/10 - 1/11.

26. See: Fenwick, International Law, pp650, 694-709; Jessup, A Modern Law of Nations, p192 (Harvard Draft Convention).

27. See: Jessup, A Modern Law of Nations, p188ff; Lauterpacht, Sir H, 'The Limits of the Operation of Law of War', p206.

28. Article 2 common to all four Geneva Conventions states that they apply in all cases of declared war or any other conflict : see Schindler, 'State of War, Belligerency, Armed Conflict', p4: Baxter, 'The Definition of War', pp9-10. See further: Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', pp228-229; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, p1/10.

29. Schindler,'State of War, Belligerency, Armed Conflict', pp4-5; Lauterpacht, Sir H, 'The Limits of the Operation of the Law of War', p211; Wright, 'The New Law of War and Neutrality', p422.

30. Modern State practice in this regard is discussed in detail below in Chapter 11.

31. See: Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', p227.

32. Wright, 'The Outlawry of War and the Law of War', pp37 -37 and 'The New Law of War and Neutrality', pp412-424.

33. Lauterpacht, Sir H, 'The Limits of the Operation of the Law of War', pp206-243. See also: Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, p1/4.

34. See: Baxter, 'The Definition of War', p9 (n38); Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', p226, 228-229; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, pp1/4, 1/5.

35. 'It may be better /to serve the purposes of international law/ by the maintenance of order through just rules lending themselves to ready application than by a conscious effort to dispense justice or promote values in the individual instance' : Baxter, 'The Definition of War', p14. See: Baxter, ibid, pp8-11; 'The Legal Consequences of the Use of Force under the Charter', pp68-75; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, p1/15, n30; Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', pp228-229; Jessup, A Modern Law of Nations, pp188, 190-191-193, 216, 221; Kotzsch, The Concept of

35. War in Contemporary History and International Law ('The Concept of War'), pp274-275, 292-293; Kunz, 'The Chaotic Status of the Laws of War', pp42-44, 53-61; 'The Laws of War', pp313, 321-325, 335, 336; Lauterpacht, 'The Limits of the Operation of the Laws of War', pp214, 240; Schindler, 'State of War, Belligerency, Armed Conflict', pp4-5; Taubenfeld, 'International Armed Forces and the Rules of War', pp673, 674, 676-679; Wright, 'The Law of War and Neutrality', p422; 'The Outlawry of War and the Law of War', p376.

36. Baxter, 'The Legal Consequences of the Use of Force under the Charter', pp68-69, 71-75; Norton, 'Between the Ideology and the Reality', pp250-253, 276-277, 306-311; Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', p227.

37. Greenwood, 'The Relationship of the ius ad bellum and ius in bello', pp221-222, 'International Law, Rules of Engagement and Air Warfare', px-xx; ibid, 'Self-Defence and the Conduct of International Armed Conflict', px-xx.

38. Ibid, pp221-223.

39. Ibid, p231; Kotzsch, The Concept of War, pp274-275; Lowe, 'Some Legal Problems Arising from the Use of the Sea for Military Purposes', p183; Tavernier, 'La Guerre du Golfe', p45. See: Meyrowitz, 'The Law of War in the Vietnamese Conflict', p516; Roberts and Guelff, Documents on the Laws of War, pp1-2; Meyrowitz makes the point that the ius ad bellum and the ius in bello are separate branches of international law. However, he suggests that the status of belligerents with regard to the ius ad bellum is without effect on their situation with regard to the ius in bello . Roberts and Guelff refer to the 'cardinal principle' that the jus in bello applies in cases of armed conflict whether the conflict is lawful or unlawful in its inception under jus ad bellum . It must be noted that Greenwood maintains that the law of self-defence (ius ad bellum) is applicable throughout the duration of the conflict and therefore exerts control over the invocation and implementation of the classical rules of warfare (ius in bello).

40. O'Connell (1975), pp1-15; O'Connell (1979), pp123-124; O'Connell (1970), pp23-39, 82-85(n3).

41. O'Connell (1979), p134. See: O'Connell (1970), p85; O'Connell - Shearer (1984), pp1094-1101(n3).

42. O'Connell (1979), p125; O'Connell (1970), p85; O'Connell -Shearer (1984), pp1096-1101(n3).

43. O'Connell (1975), p54; O'Connell-Shearer (1984), pp 1094-1101(n3).

44. O'Connell (1970), pp26-39; O'Connell (1970), p82; O'Connell-Shearer (1984), pp1096-1100; O'Connell (1979), p125(n3)Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

45. O'Connell (1979), p128 (n3).

46. O'Connell (19709, pp36-39; O'Connell (1975), pp115-130(n3).

47. O'Connell (1973), p30; O'Connell (1975), pp130-131; O'Connell (1979),pp126-130(n3).Fenwick, Developments in the Law of Naval Warfare Since World War 11, p160.

48. Greenwood, 'Self-Defence and the Conduct of International Annual conflict', px.

49. Ibid.

50. O'Connell (1970), p82. See ibid, pp40-69; O'Connell (1975), pp85-96, O'Connell-Shearer (1984), pp1130-1140; O'Connell (1979),p130(n3).Greenwood deals with two categories of restrictions as to: i) weapons and ii) targets: see Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

51. O'Connell (1975), pp53-69; O'Connell (1979), p130(n3).

52. O'Connell (1975), pp57, 64-69; O'Connell (1979), pp130-131 (n3).

53. O'Connell (1975), p55 (n3).

54. Ibid, pp55, 57; O'Connell (1979), pp130-134 (n3).

55. See generally: Orford, Some Aspects of the Contemporary International Law of Naval Engagements, pp39-43.

56. See: O'Connell (1970), p81; O'Connell-Shearer (1984), pp1094-1095 (n3).

57. O'Connell-Shearer (1984), p1094(n3).

58. Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', pp221-234; 'Self-Defence and the Conduct of International Armed Conflict',ppx-xx.

59. Ibid, px.

60. See Tucker, The Law of War and Neutrality at Sea, p165; Wright, 'The New Law of War and Neutrality', pp414-415.

61. Falk, Legal Order in a Violent World, p59.

62. Ibid.

63. For a general treatment of the traditional law of neutrality with references to the contemporary law of armed conflict, see: Colombos, The International Law of the Sea,

63. pp627-673 ('Colombos'); Lauterpacht, Oppenheim's International Law, ii, pp633-759 ('Lauterpacht's Oppenheim'); Stone, Legal Controls of International Conflict, pp381-401 ('Legal Controls'); Schwarzenberger, A Manual of International Law, pp217-236; Tucker, The Law of War and Neutrality at Sea, pp165-205; Westlake, International Law, Part 11 - War, pp161-169 ('International Law, Part 11'); Wright, 'The New Law of War and Neutrality', p415.

64. Lauterpacht's Oppenheim, ii, p653(n63) See: Colombos, pp 630-631; Roberts and Guelff, Documents on the Laws of War, p61; Lalive, 'International Organisation and Neutrality', p 72; Stone, Legal Controls, p383(n63); Taubenfeld, 'International Actions and Neutrality', p377; Tucker, The New Law of War and Neutrality at Sea, p196; Westlake, International Law, Part 2, p161(n63).

65. Nielsen, 'The Future of Belligerent Rights on the Sea', p28; Stone, Legal Controls, p383(n63). Tucker, The Law of War and Neutrality, pp199-200.

66. Westlake, International Law, Part 2, p163(n63).

67. Ibid, pp163-164; Stone, Legal Controls, p383(n63); Tucker, The Law of War and Neutrality', p196.

68. Colombos, pp630-631; Lauterpacht's Oppenheim, ii, pp 656,659,675-676 (n63) Westlake, International Law, Part 2, p164(n63) Tucker, The Law of War and Neutrality, pp202-252.

69. Colombos, pp631-632(n63); Lauterpacht's Oppenheim, ii, pp 652-659, 673-677, 684-685; Tucker, The Law of War and Neutrality, pp196-197, 202-206.

70. Lauterpacht's Oppenheim, ii, pp654, 675; Tucker, The Law of War and Neutrality, pp218-219.

71. Tucker, The Law of War and Neutrality, pp218-252 ('Neutral Duties of Prevention'). See: Lauterpacht's Oppenheim, ii, p654 (A belligerent cannot allow himself to suffer vital damage from the violation of a rule which, whilst it directly favours neutrals, indirectly operates in his favour as well).

72. Colombos, pp631-632(n63); Lauterpacht's Oppenheim, ii, pp 675-676, 684-751; Stone, Legal Controls, pp383-384(n63); Westlake, International Law, Part 2, pp164-165(n63). See: Hague Peace Conference Conventions No's V and XIII.

73. Lauterpacht's Oppenheim, ii, pp675-676.

74. Colombos, p631(n63); Lauterpacht's Oppenheim, ii, p655; Tucker, The Law of War and Neutrality, p206.

75. Westlake, International Law, Part 2, p163 (n63).

76. Lauterpacht's Oppenheim, ii, p655.

77. Alford, Modern Economic Warfare (Law and the Naval Participant), p325; Lauterpacht's Oppenheim, ii, p659.

78. Tucker, The Law of War and Neutrality, p196. Since international law is the law between States these are primarily the rights and duties of neutral and belligerent States: Lauterpacht's Oppenheim, ii, p656.

79. See: Colombos,pp629-630,672 (n63);Lauterpacht's Oppenheim, ii, pp458-465; Schwarzenberger, A Manual of International Law, p204; Stone, Legal Controls, p384(n63); Westlake, International Law, Part 2, pp165-166(n63).

80. Colombos, p629(n63).

81. Lauterpacht's Oppenheim, ii, p673.

82. Ibid, pp673-674; Tucker, The Law of War and Neutrality, pp202-258.

83. Ibid.

84. Lauterpacht's Oppenheim, ii, pp684-685. However, neutral States are not prevented from resorting to hostilities against belligerents for the purpose of resisting a violation of their neutrality by either of the belligerents.

85. Tucker, The Law of War and Neutrality, pp206-218. See: Article 6, 1907 Hague Peace Conference Convention No. Xlll. Neutrals are not obliged to prohibit their subjects from joining belligerent armed forces 'as long as individuals cross the border singly and not in a body. The subjects themselves do not thereby commit any offence in terms of International Law': Lauterpacht's Oppenheim, ii, p687.

86. Ibid, pp705-705.

87. Article 6, 1907 Hague Peace Conference Convention No. Xlll.

88. Lauterpacht's Oppenheim, ii, pp739, 741-742. Article 7, 1907 Hague Peace Conference Convention No's V and Xlll enact a customary rule of international law: 'a neutral Power is not bound to prevent the export or transit, for one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or fleet'. Proposals have been advocated imposing a duty on neutrals not to supply these items. Oppenheim argues that these changes would injure an 'innocent' belligerent. The provision of arms does not necessarily prolong wars. There may be cases where a neutral is obliged to prohibit the export of arms and munitions, for example,

88. to belligerents who as UN Members have resorted to force contrary to UN Charter provisions: ibid,p742. See: Tucker, The Law of War and Neutrality, p206.

89. Lauterpacht's Oppenheim, ii, p743; Tucker, The Law of War and Neutrality, pp206-218.

90. Ibid, pp744-745.

91. Stone, Legal Controls, pp385-397(n63).

92. The law of neutrality at sea is discussed in detail by Columbos, pp627-673. See also: Lauterpacht's Oppenheim, ii, pp460-465, 624-759, 768-879 (The Law of Economic Warfare); Schwarzenberger, A Manual of International Law, pp204-208, 223-225, 227-236.

92A. Ibid.

93. Colombos,p628(n63)Stockton, Outlines of International Law, p90; Westlake, International Law, Part 2, p165(n63).

94. Rohwer, 'Naval Warfare Since 1945', p66.

95. Schwarzenberger, International Law, p363; A Manual of International Law, p204.

96. Lauterpacht's Oppenheim, ii, p458. See generally: Colombos,pp628,629-630(n63); Lauterpacht's Oppenheim, ii, pp457-458; Schwarzenberger, International Law, p363; A Manual of International Law, p204.

97. See: Colombos,p632(n63);Lauterpacht's Oppenheim, ii, pp675-676, 684-751; Schwarzenberger, A Manual of International Law, pp223-225; Tucker, The Law of War and Neutrality, pp206-218.

98. Lauterpacht's Oppenheim, ii, pp704-705.

99. See generally: Colombos,pp638-665(n63); Lauterpacht's Oppenheim, ii, pp704-705; Schwarzenberger, A Manual of International Law, pp223-225; Tucker, The Law of War and Neutrality, pp208-218.

100. Ibid, pp218-252.

101. See: Lauterpacht's Oppenheim, ii, pp676-680; Schwarzenberger, A Manual of International Law, p224.

102. See: Colombos, pp647-648(n63); Lauterpacht's Oppenheim, ii, pp739-742; Schwarzenberger, A Manual of International Law, p228.

103. Alford, Law and the Naval Participant, p325.

104. Colombos, pp647-648 (n63); Stone, Legal Controls, p383; Schwarzenberger, A Manual of International Law, pp 228-229; Westlake, International Law, Part 2, pp 166-167; Tucker, The Law of War and Neutrality, pp 252-258.

105. See generally: Colombos, pp647-648 (n63); Lauterpacht's Oppenheim, ii, pp458, 460-465, 656-659; Tucker, The Law of War and Neutrality, pp252-258, 263-358.

106. Lauterpacht's Oppenheim, ii, p659; Alford, Law and the Naval Participant, p325.

107. See: Colombos, p628(n63)Dehn,'The Effect of the United Nations Charter', p39; Nielsen, 'The Future of Belligerent Rights on the Sea', p28; Tucker, The Law of War and Neutrality, pp3, 9, 165.

108. See: Kunz, 'The Law of War', pp326-327.

109. Nielsen, 'The Future of Belligerent Rights', pp28-30; Roberts and Guelff, Documents on the Laws of War, p61; Tucker, The Law of War and Neutrality, p166.

110. See: Dehn, 'The Effect of the United Nations Charter', p40.

111. See generally: Colombos, pp635-636(n63) Dehn,'The Effect of the United Nations Charter', p40; Greenspan, The Modern Law of Land Warfare, pp517-519; Oppenheim's Lauterpacht, pp196-197, 635-637, 642-645; Stone, Legal Controls, pp381-382(n63) Tucker, The Law of War and Neutrality, pp166-171.

112. Article 1:
The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonising the actions of nations in the attainment of these common ends.

113. *Article 2:*

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of peace and security.

7. Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.

114. *Article 24:*

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

115. Article 25:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

116. See: Dehn, 'The Effect of the United Nations Charter', pp40-41; Komarnicki, 'The Place of Neutrality', pp 471-472; Lalive, 'International Organisation and Neutrality', pp77-78; McDougal and Feliciano, Law and Minimum World Public Order, pp68-69; Röling, 'The Ban on the Use of Force and the UN Charter', p3.

117. Article 42:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace or security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

118. Article 41:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

119. Tucker, The Law of War and Neutrality, pp171-172.

120. Dehn, 'The Effect of the United Nations Charter', p42; Lalive, 'International Organisation and Neutrality', pp77-78.

121. Article 43:

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces.....

122. Hyde, International Law, p793; Lalive, 'International Organisation and Neutrality', pp77-81; Lauterpacht's Oppenheim, ii, p647.

123. Wright, 'The New Law of War and Neutrality', pp416-417.

124. Dehn, 'The Effect of the United Nations Charter', p42.

125. Lauterpacht, "The Limits of the Operation of the Law of War', p206; McDougal and Feliciano, Law and Minimum World Public Order, pp68-69; Wright, 'The New Law of War and Neutrality', p417.

126. Greenwood, 'Self-Defence and the Conduct of International Conflict', px.

127. Hyde, International Law, pp793-794; O'Connell-Shearer (1984),pp1141(n3);Wright, 'The New Law of War and Neutrality', pp420, 421; 'The Outlawry of War and the Law of War', pp370-371. See also; Lauterpacht; 'The Limits of the Operation of the Law of War', p211.

128. Greenwood, 'Self-Defence and the Conduct of International Conflict', px.

129. Dehn, 'The Effect of the United Nations Charter', pp39-47, 54-55, 55-56; Galina, 'Neutrality in Contemporary International Law', pp200, 225, 227 (reprinted in Whiteman, Digest of International Law, xl, pl51); Grieve, 'The Present Position of 'Neutral' States', pp99, 112-113 (reprinted in Whiteman, ibid,pl47); Henkin, 'Force, Intervention and Neutrality', pp160-161; Korovin, 'The Second World War and International Law', pp742, 754 (reprinted in Whiteman, ibid, pl48); Wright, 'The New Law of War and Neutrality', pp412-424. See: O'Connell (1975), Chapter Xll (n3).

130. Norton, 'Between the Ideology and the Reality', p251; Roberts and Guelff, Documents on the Laws of War, p62.

131. Article 2(5) together with Articles 1(1), 24, 25. See: Roberts and Guelff, Documents on the Laws of War, p62; Taubenfeld, 'International Actions and Neutrality', p384.

132. Dehn, 'The Effect of the United Nations Charter', p43.

133. Lauterpacht, 'The Limits of the Operation of the Law of War', p238.

134. Henkin, 'Force, Intervention and Neutrality', pp160-161; Dehn, 'The Effect of the United Nations Charter', pp43-44; Jessup, A Modern Law of Nations, p205; Lauterpacht, 'The Limits of the Operations of the Law of War', p238; Tucker, 'The Law of War and Neutrality', pl79.

135. Fenwick, International Law, pp621, 729, 733; Wright, 'The New Law of War and Neutrality', pp416-417, 422.

136. Ibid, p422.

137. Korovin, 'The Second World War and International Law', pp742, 754.

138. See: Galina, 'Neutrality in Contemporary International Law', pp200, 225, 227; Taubenfeld, 'International Actions and Neutrality', p384.

139. Grieve, 'The Present Position of 'Neutral' States', pp99, 112-113. See: Jessup, A Modern Law of Nations, pp203, 204: '... it cannot be assumed that a return to ... traditional law would recommend itself to the peoples of the world ...'.

140. Fenwick, International Law, p659 (This view later modified in 1951 American Journal of International Law, p71f). See: Lauterpacht, 'The Limits of the Operation of the Law of War', p206.

141. Henkin, 'Force, Intervention and Neutrality', pp 160-161. See: Taubenfeld, 'International Actions and Neutrality', pp389-390.

142. Baxter, 'The Legal Consequences of the Unlawful Use of Force under the Charter', pp68-75; Brownlie, The Use of Force, pp301-316, 384-404(n4); Bowett, Self Defence in International Law, pp175-179; Castren, The Present Law of War and Neutrality, p430; Jessup, A Modern Law of Nations, pp203-205; Komarnicki, 'The Place of Neutrality' in the Modern System of International Law' ('The Place of Neutrality'), pp472-476, 483-502; Lalive, 'International Organisation and Neutrality', pp72-89; Kunz, 'The Laws of War', pp326-327; Lauterpacht, 'The Limits of the Operation of the Law of War', pp206-243; McDougal and Feliciano, Minimum World Public Order, pp68-71; Roberts and Guelff, Documents on the Laws of War, pp61-62. See generally: Whiteman, Digest of International Law, vol.11, pp144-160.

143. Baxter, 'The Definition of War', p10.

144. Brownlie, The Use of Force, p404(n4)Schwarzenberger, International Law and Order, p178; International Law, pp665-666.

145. Ibid, pp665-666; Brownlie, The Use of Force, p404(n4).

146. Komarnicki, 'The Place of Neutrality', pp472-476, 483-502; Lauterpacht, 'The Limits of the Operation of the Law of War', pp206, 214; Lauterpacht's Oppenheim,ii, pp649-650; Section 232 US Law of Naval Warfare (reprinted in Whiteman, Digest of International law, xl, pp144-145) and Section 513 US Law of Land Warfare (reprinted in Whiteman, ibid, p145); Tucker, The Law of War and Neutrality, pp171-173.

147. Brownlie, The Use of Force, pp402-404(n4); Lalive, 'International Organisation and Neutrality', pp79-80; Lauterpacht's Oppenheim, ii, pp650-652.

148. Bowett , Self-Defence in International Law, pp175-178.

149. Komarnicki, 'The Place of Neutrality', pp477-480; Tucker, The Law of War and Neutrality, pp172-173.

150. Lauterpacht's Oppenheim, ii, p650.

151. Ibid, pp648-649; Section 232 US Law of Naval Warfare (reprinted in Whiteman, Digest of International Law, vol.11, pp144-145).

152. Bowett, Self-Defence in International Law, pp174-178; Brownlie, The Use of Force, pp402-404(n4), Dehn 'The Effects of the United Nations Charter', p48; Lalive 'International Organisation and Neutrality', pp80-81; Lauterpacht, 'The Limits of the Operation of the Law of War', pp211, 214; McDougal and Feliciano, Minimum World Public Order, pp69-70; Roberts and Guelff, Documents in the Laws of War, p62; Schwarzenberger, International Law, pp664-666 and International Law and Order, p178; Stone, Legal Controls, p407(n63); Tucker, The Ban of War and Neutrality, p176. See: Norton, 'Between the Ideology and the Reality', pp 251-252.

153. Lalive, 'International Organisation and Neutrality', pp86-87; Lauterpacht's Oppenheim, ii, pp651-652.

154. Tucker, The Law of War and Neutrality, p177.

155. Ibid, pp177-178. See also: Brownlie, The Use of Force, pp402-404 (n4); Komarnicki, 'The Place of Neutrality', pp470-471, 473-477, 483-502 and 'The Problem of Neutrality under the UN Charter', pp77, 85; Lauterpacht's Oppenheim, ii, pp650-651; Lauterpacht's 'The Limits of the Operation of the Law of War', p238.

156. Lauterpacht's Oppenheim, ii, pp651-652; Lauterpacht, 'The Limits of the Operation of the Law of War', p238.

157. Third States may simply deny the ordinary benefits of neutrality or take active measures of discrimination against the enemy (for example economic sactions): Lauterpacht's Oppenheim, ii, p651. See: Tucker, The Law of War and Neutrality, p178; Section 233 US Law of Naval Warfare (reprinted in Whiteman, Digest of International Law, xl, p159).

158. Lauterpacht, 'The Limits of the Operation of the Law of War', pp206-207; Tucker, The Law of War and Neutrality, pp178-179 (n28).

159. See: ibid, p178 (n27).

160. Section 232, US Law of Naval Warfare. Section 233 states:

> 'Under these /regional and self-defence/ arrangements the possibility of maintaining a status of neutrality and of observing an attitude of impartiality depend

160. upon the extent to which the Contracting Parties are obliged to give assistance to the regional action or ... to the victim of an armed attack'.

(Reprinted in Whiteman, Digest of International Law, xl, p159). See also: Lalive, 'International Organisation and Neutrality', pp81-82; Lauterpacht, 'The Limits of the Operation of the Law of War', p238.

161. Komarnicki, 'The Place of Neutrality', pp477-480; Lalive, 'International Organisations and Neutrality', p83; Lauterpacht's Oppenheim, ii, p650; Tucker, The Law of War and Neutrality, pp172-173; Taubenfeld, 'International Actions and Neutrality', p390. According to Lauterpacht and Tucker an unlawful use of force and a Security Council determinations do not necessarily place other UN Members under a duty to resort to enforcement action. This only happens when the Council has authorised the necessary measures. Actual involvement in the conflict only occurs when the Member State has complied with the obligations imposed upon it by the Security Council; Lauterpacht's Oppenheim, ii, p650; Tucker, The Law of War and Neutrality, p172 (n15).

162. Komarnicki, 'The Place of Neutrality', pp479-480. See also: Lalive, 'International Organisation and Neutrality', p83.

163. Komarnicki, 'The Place of Neutrality', p499. See: ibid, p477; Lalive, 'International Organisation and Neutrality', p80; Lauterpacht's Oppenheim, ii, pp 648-649; Tucker, The Law of War and Neutrality, pp174-175.

There is uncertainty whether new Members are obliged to comply with and apply the UN Security Council's determination and international peace enforcement measures. Despite Article 2(6) it is argued that UN Members cannot impose the Charter's obligations upon non-Members; See Grieve, 'The Present Position of 'Neutral' States', pp99, 115; Komarnicki, 'The Place of Neutrality', p468; Lalive,'International Organisation and Neutrality', pp84-86; Lauterpacht's Oppenheim, ii, p652; Roberts and Guelff, Documents on the Laws of War, p62; Taubenfeld, 'International Actions and Neutrality', pp385-389; Tucker, The Law of War and Neutrality, pp175-177.

Old-fashioned neutrality is also thought relevant in respect of the operation of Articles 53, 106 and 107, and in relation to the legal status of Permanent State Neutrality (Austria), and insofar as frequent reference is made to the term of neutrality in

163. *modern international treaties, especially the 1949 Geneva Conventions: See:Lalive,'International Organisation and Neutrality', pp80-81, 87-89; Roberts and Guelff, Documents on the Laws of War, p62.*

164. *Norton, 'Between the Ideology and the Reality', p254.*

165. *See: Lucchini, 'Un Aspect des Mesures de Surveillance Maritime Au Cours Des Opérations d'Algérie', pp920-928; Norton, 'Between the Ideology and the Reality', pp272-275; O'Connell (1973), p30; (1975), pp123-124 (n3); Rousseau, 'Jurisprudence Francaise en Matierè de Droit International Public', pp1056-1064; Schindler, 'State of War, Belligerency, Armed Conflict', p10.*

166. *Norton, 'Between the Ideology', p262; Schindler, 'State of War, belligerency, Armed Conflict', p10.*

167. *Norton, 'Between the Ideology', p262.*

168. *Ceylon refused to allow the passage of war material to the belligerents, especially Indonesian supplies for Pakistan: ibid, pp262-263.*

169. *Mallison, 'International Law and Naval History', pp60-61 ; 'A Survey of the International Law of Naval Blockade', p49.*

170. *Norton, 'Between the Ideology', p262.*

171. *See: O'Connell-Shearer (1984), p1099; O'Connell (1975), pp129-130 and ibid (1973), pp30-31 (n3).*

172. *The Spanish claim was refused: ibid.*

173. *Mallison, 'A Survey of Naval Blockade', p51.*

174. *Norton, 'Between the Ideology', p261.*

175. *Schindler, 'State of War, Belligerency, Armed Conflict', pp8-9.*

176. *See: Norton, 'Between the Ideology', pp263-267.*

177. *Mallison, 'International Law and Naval History', p60.*

178. *Schindler, 'State of War, belligerency, Armed Conflict', p9; Norton, 'Between the Ideology', pp263-267.*

179. *Ibid, p265.*

180. *Ibid, p266.*

181. Carlisle, 'The Interrelationship of International Law and United States Naval Operations in Southeast Asia', pp12-14; Mallison, 'International Law and Naval History', pp64-65 ; 'A Survey of Naval Blockades', pp50-51; O'Connell-Shearer (1984), pp1098-1099; O'Connell (1973), p29(n3).

182. Kunz, 'The Laws of War', p326.

183. Norton, 'Between the Ideology', p307.

184. Ibid, p276.

185. Ibid, p277.

186. Ibid, pp261, 276.

187. Ibid, pp277-278; 307; Baxter, 'The Legal Consequences of the Unlawful Use of Force under the Charter', p72.

188. Ibid, pp306-311.

189. Schindler, 'State of War, Belligerency, Armed Conflict', pp12, 19.

190. Norton, 'Between the Ideology and the Reality', p310; Kunz, 'The Law of War', p327.

191. Ibid, p252(n10).

192. Ibid, pp251-252.

193. See: Bowett, Self-Defence in International Law, p 174; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, pp1/3, 1/4, 1/8-1/10; Kunz, 'The Laws of War', p326; Mallison, 'A Survey of Naval Blockade', pp44-53; Norton, 'Between the Ideology and the Reality', pp305, 307; O'Connell-Shearer (1984), p1142(n3); Stone, Legal Controls, pp 340, 407(n63).

194. Norton, 'Between the Ideology', p305.

195. O'Connell (1975), Chapter XII (n3).

196. Lauterpacht, 'The Limits of the Operation of the Law of War', pp237-238.

197. See: Baxter, 'The Legal Consequences of the Unlawful Use of Force Under the Charter', p68.

198. O'Connell (1975), p124(n3).

199. Ibid, pp1-15, 53-69, 122-131.

200. Ibid.

201. Ibid, pp54, 64-65, 114-115, 122-125, 130-131, 160-162; O'Connell (1970), p24 (n3).

202. O'Connell (1975) p126(n3).

203. Ibid, pp114-115, 126, 130-131; O'Connell-Shearer (1984), pp797, 801 (n3).

204. See: Brownlie, The Use of Force, p404(n4), Fenwick, Developments in the Law of Naval Warfare Since World War 11, p13.

205. Stone, Legal Controls, p407(n63).

206. Baxter, 'The Legal Consequences of the Unlawful Use of Force under the Charter', p68.

207. See: Norton, 'Between the Ideology and the Reality', p.305.

208. Fenrick, Developments in the Law of Naval Warfare Since World War 11, p14.

209. See: ibid, pp9-10; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, pp1/10, 1/15 n30; Fenrick, Developments in the Law of Naval Warfare Since World War 11, pp12-14.

210. Fenrick, Developments in the Law of Naval Warfare Since World War 11, p160.

211. Ibid, p142.

212. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px; O'Connell-Shearer (1984), pp1155-1156; O'Connell (1979), p130; (1975), pp114-115, 126, 130-131(n3). See n175 above.

213. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

214. Norton, 'Between the Ideology and the Reality', p253.

215. Ibid, p252.

216. Ibid, pp252-253.

217. See ppx-xx, above.

218. Kunz, 'The Laws of War', p327; Taubenfeld, 'International Actions and Neutrality', p390.

219. O'Connell-Shearer (1984), p1099; O'Connell (1979), p130; O'Connell (1975), pp15, 126; 160-162; O'Connell (1973), p31(n3).

220. Kunz, 'The Laws of War', p326.

221. See: O'Connell (1975), pp2-3, 160-162 (n3).

222. O'Connell (1975), pp160-161 (n3).

223. Naval operations were restricted to territorial seas during the Vietnam War: see O'Connell (1975), pp124-126 (n3).

224. '(T)he right of self-defence ... in principle fortifies the law of neutrality by depriving all but those attached or imminently liable to attack of the plausible excuse of intervention or of the relaxation of the duties of impartiality': O'Connell-Shearer (1984), pp1141-1142 (n3).

See: O'Connell (1975), pp24, 64-65, 160-162; O'Connell (1979), p130 (n3).

225. Baxter, 'The Legal Consequences of the Unlawful Use of Force under the Charter', p75; ibid, 'The Definition of War', p4; Greenwood, 'The Relationship between the ius ad bellum and the ius in bello', p 230; Lauterpacht, 'The Legal Irrelevance of a "State of War"', pp59-60; O'Connell (1973), p31; O'Connell (1979), p130 (n3).

226. O'Connell-Shearer (1984), p1142 (n3), Fenrick, Developments in the Law of Naval Warfare Since World War II, pp160-161.

227. The law of neutrality will only be applicable when hostilities have reached a degree of permanence and a scope which necessitate regulation of the relations of belligerent and third States : Brownlie, The Use of Force, p400. See: Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px; O'Connell-Shearer (1984), p1142; O'Connell (1975), pp53-69 (n3).

228. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

229. Ibid; Baxter, 'The Definition of War', pp9-10; Department of the Air Force (United States), International Law - The Conduct of Armed Conflict and Air Operations, p1/10; Lowe, 'Some Legal Problems Arising from the Use of the Seas for Military Purposes', p183.

230. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

231. Ibid.

232. Liner, 'Iran and Iraq : An Overview', pp14, 100-101; 'The War the World Forgot'. The Times, 23 September 1983.

233. The Gulf States produce approximately one quarter of the Western world's oil requirements. They hold approximately 56% of the world's proven oil reserves. Gulf oil is the cheapest source of oil. Despite a falling world demand for oil and the reduction in Opec oil exports, the region retains great importance as an oil-producer and is the source to which consumers will turn to when world demand increases.

In addition, the Gulf is politically and economically important because of its strategic geographical situation, delicately poised between vital Soviet and US interests: see Amin,'The Regime of International Straits : Legal Implications for the Strait of Hormus', pp392-393; Chubin, 'The Iran-Iraq War and Persian Gulf Security', p707; Intertanko, 'The Tanker War - No End?', p6; Liner, 'Iran and Iraq, An Overview', pp97-102; Rousseau, 'Chronique des Faits Internationaux '(Chronique) p168; Steiner, 'The Iran - Iraq War', pp129-143; 'Shaking off the oil Straitjacket', The Sunday Times, 20 May 1984; Tavernier, 'La Guerre du Golfe : Queques Aspects de l´Application du Droit des Conflits Armés et du Droit Humanitaire' ('La Guerre du Golfe'), p44: 'A tale of two Gulfs', The Times, 21 May 1984.

234. There have been fundamental political and religious differences between Iran and Iraq. The main source of the conflict is the 500 year-old border dispute over land and offshore boundaries: although there are deep ideological differences between the two countries, the source of deepest discontent is the controversy over (a) the Shatt-al-Arab waterway; (b) the Iranian coastline of the Gulf and, (c) Iraq's claims to Khuzestan province and most of the coastline north of the Gulf. All this is complicated by a 'complex pattern of major power regional rivalry' and 'significant strategic and political issues'. The reasons for the conflict are usually narrowed down to a combination of territorial, ideological and political disputes. See generally: Amin, 'The Iran-Iraq Conflict : Legal Implications', pp167-188 and 'The Regime of International Straits', pp395-397; Chubin, 'The Iran-Iraq War and Persian Gulf Security', pp705, 708; Intertanko, 'The Tanker War - No End?', p6, EIU Annual Regional Review (1983/4), p21; Liner, 'Iran and Iraq : An Overview', pp97-102; Parsons, 'The Middle East and World Peace', pp515-527; Rousseau, 'Chronique' (1981), pp168-179(n233), Tavernier, 'La Guerre du Golfe', p44 (n233).

235. The international frontier was finalised using the 'Thalweg' principle. Iraq waived the claim to the Shatt-al-Arab, accepting Iran's sovereignty over half of the river. Both sides agreed to a formal

235. regulation of conditions in the joint border area and a diplomatic modus rivendi precluding open hostility; Dekker and Post, 'The Gulf War from the Point of View of International Law', pp76-83. See Amin, 'The Iran-Iraq Conflict : Legal Implications', pp167-188; EIU Annual Regional Review (1983/4), p21; UN Monthly Chronicle, No.10 (1980), p6.

236. See Dekker and Post, ibid; UN Monthly Chronicle, ibid, pp5-7.

237. Iraq has cited numerous cases of Iranian intervention in Iraq's internal affairs: UN Docs., S/14020 (20 June 1980); S/14191 (22 September 1980); S/14192 (24 September 1980) and S/14272 (26 September 1980).
See also: Amin, 'The Iran-Iraq Conflict : Legal Implications', pp167-168; Dekker and Post, 'The Gulf War from the Point of View of International Law', pp83-85; EIU Annual Regional Review (1983/4), p21; Parsons, 'The Middle East and World Peace', pp515-527; Rousseau, 'Chronique' (1981), p168(n233),Schiller, 'The Gulf War and Shipping : Recent Developments', p111; UN Monthly Chronicle, No.10 (October 1980), pp5-7, 8.

238. UN Docs., S/14020 (20 June 1980); 'Letter dated 21 September 1980 from the Minister of Foreign Affairs of Iraq to the Secretary-General', S/14191 (22 September 1980); S/14192 (24 September 1980) and S/14272 (26 November 1980).
See: Dekker and Post, ibid, pp83-89; Rousseau, 'Chronique' (1981), pp168-179(n233); UN Monthly Chronicle, ibid, pp6-7, 8.

239. Iraq's war aims were: (1) Iran's recognition of exclusive Iraqi navigational rights on the Shatt-al-Arab; (2) return of the Abu Masa and Tunb Islands, (3) Self-rule for the Arabs in Khuzestan. A slightly longer-term objective was stated to be to end Iranian 'intervention': EIU Annual Regional Revue (1983/4), pp21-22; Schiller, 'The Gulf War and Shipping', pp 110-111; Rousseau, 'Chronique' (1981), pp168-179(n233). Dekker and Post argue that Iraq's main aim was territorial acquisition: ibid, pp76, 84, 90, 91-93, 99, 100-101, 103, 104-105. Iraq, however, denies having territorial ambitions: UN Docs., S/14191 (22 September 1980); S/14191 (24 September 1980); S/14272 (26 November 1980). Also: UN Monthly Chronicle, No.9 (September 1980), pp5, 6-7, 8; ibid, No.10 (October 1980), pp8, 10.

240. Dekker and Post, ibid, pp84, 90. See also: Amin, 'The Regime of International Straits', p395; EIU Annual Regional Review (1983/4), p21 and (1985), p22; Rousseau, ibid, p171.

241. Steiner, 'The Iran-Iraq War', pp130, 130-132. Generally : Chubin, 'The Iran-Iraq War and Persian Gulf Security', pp708-709; EIU Annual Regional Review (1983/4), pp21-23 and (1985), pp22-24; 'Can anyone win this war?', Newsweek, 22 December 1986, pp24-25; Rousseau, 'Chronique' (1981), pp405-406(n233), Schiller, 'The Gulf War and Shipping', p112.

242. Steiner, ibid, p130.

243. 'Cloak and Dagger', Newsweek, 17 November 1986, p13.

244. 'Trying the logic of force', Newsweek, 11 February 1985, p33; 'Doubts over Iran's aim and abilities', The Times, 16 July 1982; 'The War the World Forgot', The Times, 23 September 1983.

245. Tavernier, 'La Guerre du Golfe', p43(n233). The first phase is sub-divisable into three:
(i) 'une phase de guerre éclair'(Blitzkreg)
(ii) 'une phase de guerre de position'
(iii) 'une phase au les forces'.

246. Ibid, p43.

247. Ibid, p43.

248. Literally 'war of position'.

249. Tavernier, 'La Guerre du Golfe', pp44-45(n233). Rousseau covers the course of the war in detail : 'Chronique des Faits Internationaux', 1981-1986 Revue Generale de Droit International Public, pp99-201; 347-420; 529-600; 842-922 (1981); 117-173; 325-406; 543-621; 718-828 (1982); 145-224; 359-456; 626-703; 817-911 (1983); 204-293; 413-506; 653-745; 890-970 (1984); 112-182; 383-483; 741-809; 977-1057 (1985); 171.247; 407-469; 625-699; 945-1022 (1986). Generally: EIU Annual Regional Review (1983/4), pp 21-23;(1985), pp22-24; Parsons, 'The Middle East and World Peace', pp524-525.

250. Liner, 'Iran and Iraq : An Overview', p101. Some observers point out that Iran is slowly winning the land war: Chubin, 'The Iran-Iraq War and Persian Gulf Security', pp709, 711.712; EIU Annual Regional Review (1983/4), p22 and (1985), p24.

251. Intertanko, 'The Tanker War - No End?', p5. See: 'The Exocet that could blow up in Saddam's face', The Guardian, 19 May 1985.

252. Intertanko, ibid, p6.

253. Rousseau, 'Chronique' (1981), pp168-179; Tavernier, 'La Guerre du Golfe', p46 (n233).

254. Schiller, 'The Gulf War and Shipping', p112.

255. See Appendix 1.

256. See Appendix 11.

257. Ibid.

258. Ibid.

259. Schiller, 'The Gulf War and Shipping', p113; EIU Annual Regional Review (1985), p22.

260. Cf. UN Docs, S/14214 (12 October 1980).

261. Another ship, a Kuwaiti survey ship, the Western Sea, was intercepted on 31 April 1981 by an Iranian naval vessel whilst operating well inside Kuwaiti territorial waters : 'Kuwait asks Iran to free survey ship', The Times, 4 May 1981.

262. Tavernier, p46(n233). For example Antigone (Greece), 21 November 1983, near Bouchir (Cargoship), Iapelos (Greece), 8 December 1983, near Bandar Khomeiny (Cargoship) (Subsequently destroyed, 29 March 1984: See Appendix 1).

263. See: Rousseau, 'Chronique' (1983), pp817-911 (n233).

264. S/RES/540 (1983).

265. UN Docs, S/16213 (11 December 1983) and S/16222 (16 December 1983).

266. UN Docs, S/16213 (11 December 1983). Cf. UN Docs, S/14214 (12 October 1980); S/16222 (16 December 1983).

267. See Appendix 1. Cf. UN Docs, S/14214 (Message dated 12 October 1980 from the President of Iran addressed to the Secretary-General) : 'I also wish to assure you that we have absolutely no intentions to interfere with peaceful shipping and lawful international commerce in the conflict area'.

268. See Appendix 11.

269. 'A war that can go on and on', The Economist, 30 March 1985, pp59-60.

270. Cook, 'Iraq-Iran - The Air War', p1605; Schiller, p113; 'The Tourniquet', The Times, 17 May 1984; 'Iraq attacks vessels in attempt to embroil West in the Gulf War', 21 May 1984.

271. Iran made 15 (out of 34) hits : see Appendix 1.

272. 'He who pays the piper gets hit', The Economist, 19 May 1984, p52.

273. 'Iran says it can survive closure of vital strait', The Times, 3 March 1984; 'Iran threatens to close Hormuz after Iraqi raid', 5 March 1984.

274. UN Docs, S/PV 2541 (25 May 1984) (Mr Al-Sabah (Kuwait) and Mr Shihabi (Saudi Arabia)).'Gulf tension rises sharply after Saudi tanker attack', The Times, 17 May 1984; 'Iran turns on its enemy's paymasters in tit-for-tat', 21 May 1984. See Appendix 1.

275. S/RES/552 (1984).

276. Rousseau, 'Chronique' (1984), p955(n233) UN Docs, S/P2541-2546 (25 May 1984 - 1 June 1984), A/39/PV9 (27 September 1984) - A/39/PV19 (5 October 1984) and S/16586 (25 May 1984); S/16590 (27 May 1984); S/16595 (30 May 1984); S/16618 (11 June 1984).

277. 'An attack of nerves', The Economist, 19 May 1984, pp 78-81; 'Iraq vows to make Gulf a Ship's graveyard', The Times, 19 December 1984. The Iraqi's did hit several vessels outside their MEZ however. 'Iran turns on the enemy's paymasters in tit-for-tat', 21 May 1984.

278. UN Docs, S/16590 (27 May 1984). Cf. UN Docs, S/16120 (1 November 1983).

279. UN Docs, S/16585 (25 May 1984). ('We are prepared to defend our integrity with determination'); S/16608 (7 June 1984). See: 'He who pays the piper gets hit', The Economist, 19 May 1984, p52; 'Iranian's threaten reprisals', The Times, 21 May 1984.

280. See Rousseau, 'Chronique' (1985), pp383-483 (n233).

281. Rousseau, 'Chronique' (1985), p454(n233) by December 1984.
(i) $575 million paid out in insurance payments;
(ii) 67 ships damaged (24 near Kharg Island) (January 1984 - December 1984);
(iii) 40 persons killed;
(iv) total 127 ships overall damaged or destroyed (May 1981 - December 1984).
See: 'Oil on Troubled Waters', The Economist, 28 July 1984, pp54-57; 'Iraq claims attacks on two more ships', The Times, 19 May 1984.

282. Rousseau, ibid, p232. See: 'What went wrong?', The Economist, 14 September 1985, pp57-59.

283. Rousseau, 'Chronique' (1986), p232(n233).

284. See: 'Bullseye', The Economist, 28 September 1985, pp46-51.

285. Rousseau, 'Chronique' (1985), p233 et seq(n233). See: 'Iran ready to risk marshland campaign', The Times, 27 December 1985.

286. Compare; the Elsa Cat incident (n27).

287. See: 'Iranians stop and search UK ships', The Times, 14 January 1986.

288. 'The Exocet that could blow up in Saddam's face', The Guardian, 19 May 1987; Schiller, 'The Gulf War and Shipping', ppl14-118; Rousseau, 'Chronique' (1985), p233 (n233).

289. 'If your enemy can squash you, strangle him first', The Economist, 23 August 1986, pp41-42; 'To the last drop', 18 October 1986, pp54-55.

290. See Appendix 11.

291. For example : 'Iran boards US ship in arms search', The Times, 13 January 1986.

292. 'Iran threatens Gulf States with closure of Hormuz', The Times, 30 August 1986.

293. In 1986, 85 tankers sustained hits. In the first quarter of 1987, 26 tankers have been attacked, a 21% increase on the 1986 quarterly average of 21.5 hits. See Intertanko, 'The Tanker War - No End?', pp3 and 31.

294. In 1987, 18 of a total of 26 hits on tankers were Iraqi (69%). During the period 1984 - March 1987, 172 tankers have been attacked. Iraqi is responsible for 106 of these hits (67%): Intertanko, ibid, p31. See: Appendix 1.

295. In 1987, 8 of a total of 9 hits outside the declared war zones were Iranian. This compares with 66 hits out of the 71 hits made outside the zones during the entire tanker war (1984 - March 1987) (93%): Intertanko, ibid. See Appendix 1.

296. 'The Exocet that could blow up in Saddam's face', The Guardian, 19 May 1987; ''Hand of God' at work in Gulf War's game of chance', 12 May 1987 ; Intertanko, 'The Tanker War - No End?', p.3.

297. 'Kuwaiti ships to sail under US flag in the Gulf', ibid, 12 May 1987, ''Hand of God' at work in Gulf War's game of chance', 19 May 1987, 'Attack in Gulf ups stakes for US', 19 May 1987.

298. 'Norwegian tanker set alight', The Guardian, 19 May 1987.

299. 'Iran opens Gulf base', The Guardian, 6 May 1987; 'Kuwaiti ships to sail under US flag in the Gulf'; 12 May 1987.

300. Intertanko, 'The Tanker War - No End?', p3. Compare: 'Fears grow of Iranian gunboat blockade of Strait of Hormuz', The Times, 27 November 1986.

301. The stationing of Silkworm Missiles at the entrance to the Gulf, with the ability to attack vessels passing through the Straits, is indicative of Iran's intention to carry out its threats. See generally: 'Attack in Gulf ups stakes for US', The Guardian, 19 May 1987; 'Fears grown of Iranian gunboat blockade of Strait of Hormuz', The Times, 27 November 1986.

302. Tavernier, 'La Guerre du Golfe', pp47-48(n233). The attack on the USS Stark (18 May 1987) appeared on the face of it to be an Iranian rather than an Iraqi attack. It was exactly the kind of attack which Iran has threatened to mount against 'foreign interference' in the Gulf war.

303. 'Iran stays buoyant in teeth of Gulf oil losses', The Times, 4 September 1986.

304. Iraqi planes attacked the Cypriot tanker, the Zeus, in May 1987, south of Kharg Island: 'Norwegian tanker set alight', The Guardian, 19 May 1987.

305. See: 'Oil on troubled waters', The Economist, 28 July 1984, pp54-57; 'To the last drop', 18 October 1986, pp54-55.

306. Orford, 'Exclusion Zones at Sea : Some Observations on the Conduct of the Falklands War (1982)', pp91-99.

307. Ibid, pp103-115.

308. Ibid, p107.

309. Baxter and Birnie, 'The Falkland Islands/Islas Malvinas Conflict', p24.

310. Lowe, 'Some Legal Problems Arising from the Use of the Seas for Military Purposes', p184.

311. Ibid, pp183-184; Baxter and Birnie, 'The Falkland Islands/Islas Malvinas Conflict', p20.

312. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

313. Baxter and Birnie, 'The Falkland Islands/Islas Malvinas Conflict', p24. See: Thorpe, 'Mine Warfare at Sea - Some Legal Aspects of the Future', pp272-273.

314. Power, 'International Law and Open-Ocean Mining', pp55, 71.

315. See: Barston and Birnie, 'The Falkland Islands/Islas Malvinas Conflict', p24. See: O'Connell (1975), Chapter XII.

316. ' ... quelle que soit leur nationalité, ils seraient la cible de l'armée irakienne': Rousseau, 'Chronique' (1982), pp812-813; Tavernier, 'La Guerre du Golfe', p46.

317. ' ... toute navigation est interdite aux navires étrangers sous peine d'attaque et de destruction': Rousseau, 'Chronique' (1986), p90 et seq.

318. See: Tavernier, 'La Guerre du Golfe', p46 (n15)(n233).

319. 'en raison de l'état de guerre', ibid, p48. An 'actual state of war does exist' according to the Iraqi Ambassador to the UK. See: Greenwood, 'The Concept of War in Modern International Law', pp293-294.

320. Letter Dated 27 May 1983 from the Representative of Iraq to the Secretary-General: UN Docs, S/16590.

321. Ibid, see also: Letter Dated 20 October 1983 from the Representative of Iraq to the Secretary-General: UN Docs, A/38/523 - S/16061 and Letter Dated 1 November 1983 from the Representative of Iraq to the Secretary-General: UN Docs, A/38/560 - S/16120.

322. Thorpe, 'Mine Warfare at Sea - Some Legal Aspects of the Future', p269.

323. Letter Dated 27 May 1983 from the Representative of Iraq to the Secretary-General: UN Docs, S/16590.

324. S/RES/540(1983); S/RES/552(1984).

325. Kinley, Hostilities in the Persian Gulf : The Implications for the Law of the Sea and the Law of Naval Warfare (Lecture Delivered to the British Institute of International and Comparative Law, London, 4 February 1985). See also: Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px; O'Connell (1975), pp164-168; Powers, 'International Law and Open-Ocean Mining', pp55, 71.

326. Kinley, Hostilities in the Persian Gulf : The Implications for the Law of the Sea and the Law of Naval Warfare (see n325,supra).

327. Ibid.

328. Ibid.

329. Rousseau, 'Chronique' (1986), p813. See: Kinley, Hostilities in the Persian Gulf : The Implication for the Law of the Sea and the Law of Naval Warfare, (see n325, supra).

330. Letter Dated 25 May 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General; UN Docs. S/16585.

331. Rousseau, 'Chronique' (1983), pp817-818 (n233).

332. Intertanko, 'The Tanker War - No End?', p8.

333. Letter Dated 11 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General; UN Docs. S/16213.

334. Letter Dated 25 May 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General; UN Docs. S/16585.

335. Letter Dated 29 February 1984 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16381.

336. See: Powers, 'International Law and Open-Ocean Mining', pp55,71.

337. S/RES/540 (1983); S/RES/552 (1984).

338. Intertanko, 'The Tanker War - No End?', pp8, 13.

339. Ibid, p5.

340. See: Letter Dated 1 November 1983 from the Representative of Iraq to the Secretary-General: UN Docs. A/38/560-S/16120; Letter Dated 20 October 1983 from the Representative of Iraq to the Secretary-General : UN Docs. A/38/523 - S/16061; Letter Dated 27 May 1984 from the Representative of Iraq to the Secretary-General: UN Docs. S/16590; Iraqi Note in Reply to the Demarche of 27 September 1986 presented by the Ambassador of Finland and the Ambassador of Norway to the Senior Under-Secretary of the Ministry of Foreign Affairs of the Islamic Republic of Iran, Dated 31 October 1986.

341. Letter Dated 27 May 1984 from the Representative of Iraq to the Secretary-General: UN Docs. S/16590.

341A. Ibid.

342. See n340, supra.

343. Letter Dated 2 March 1984 from the Representative of France to the Secretary-General: UN Docs. A/39/123-S/16389.

344. Letter Dated 25 May 1984 from the Representative of Norway to the President of the Security Council : UN Docs. S/16586.

345. UN Docs. S/PV2541 (25 May 1984).

346. UN Docs. S/PV2541 (25 May 1984).

347. See: UN Docs. S/PV 2543 (29 May 1984); ibid. S/PV 2545 (30 May 1984); ibid. S/PV 2546 (1 June 1986).

348. Ibid. See: Marston, 'UK Materials on International Law' (1983), pp498, 545; (1984). p552.

349. See: Rousseau, 'Chronique' (1986), pp168-179; (1983), pp626-703; (1983), pp817-911 (n233).

350. Intertanko, 'The Tanker War - No End?', pp3, 22.

351. Rousseau, 'Chronique' (1984), p722 (n233).

352. Greenwood, 'Self-Defence and the Conduct of International Armed Conflict', px.

353. Intertanko, 'The Tanker War - No End?', p14. Iran, Saudi Arabia and Oman claim 12 miles territorial seas; Bahrain, Quatar and UAE claim 3 miles: ibid, p15.

354. Ibid, pp14-15.

355. UN Docs. S/PV 2541 (25 May 1984).

356. Ibid. See generally: UN Docs. S/PV 2541 (25 May 1984); ibid S/PV 2543 (29 May 1984); ibid S/PV 2545 (30 May 1984); ibid S/PV 2546 (1 June 1984).

357. Letter Dated 11 June 1984 from the Representative of Kuwait to the President of the Security Council: UN Docs. S/16618.

358. Intertanko, 'The Tanker War - No End?', p14; Letter Dated 16 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General : UN Docs. S/16222; Letter Dated 25 May 1984 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16585. See generally: The Imposed War, Defence vs Aggression (Pamphlet published by the Islamic Republic of Iran).

359. Ibid.

360. 'Cette différence de traitement tient vraisemblablement au fait que les attacques irakiennes out lieu dans les espaces déclarés "Zones de guerre" - ce qui n'est d'allieurs pas toujours les cas - alors que les attacques iraniennes se déroulent dans les eaux intérieures et territoriales des Etats tiers et sans avertissement': Rousseau, 'Chronique' (1984), p955 (n233).

361. See: Rousseau, 'Chronique' (1985), p233(n233). Lowe, Some Legal Problems Arising from the Use of the Seas for Legal Purposes', p183; Schiller, 'The Gulf War and Shipping', pp117-118; 'Iranians stop and search UK Ships', The Times, 13 January 1986.

362. 'Iranians Stop and Search UK Ships', The Times, 13 January 1986. See: Marston, 'UK Materials on International Law' (1982), p469; (1984), p553.

363. S/RES/540 (1983); S/RES/552 (1984).

364. Intertanko, 'The Tanker War - No End?', p3.

365. See: Draper, Letter to The Times, 23 January 1986; Lowe, 'Some Legal Problems Arising from the Use of the Seas for Legal Purposes', pp182-183; Rousseau, 'Chronique' (1985), pp232-233 (n233); Schiller, 'The Gulf War and Shipping', pp115, 121-122.

366. See: Draper, Letter to The Times, 23 January 1986; Fenrick, Developments in the Law of Naval Warfare Since World War II, pp14, 54, 160-162; Kinley, Hostilities in the Persian Gulf : The Implications for the Law of the Sea and the Law of Naval Warfare, px,; Lowe,'Some Legal Problems Arising from the Use of the Seas for Legal Purposes', pp182-183; 'Iranians Stop and Search UK Ships', The Times, 13 January 1986.

367. Schiller, 'The Gulf War and Shipping', p118. See also: Letter Dated 11 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General : UN Docs. S/16213; Letter Dated 16 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General : UN Docs. S/16222; Rousseau, 'Chronique' (1985), p233 (n233).

368. Schiller, 'The Gulf War and Shipping', p118; Rousseau, 'Chronique' (1985), pp232-233 (n233).

369. Lowe, 'Some Legal Problems Arising from the Use of the Seas for Military Purposes', p183; 'Iranians Stop and Search UK Ships', The Times, 13 January 1986.

370. 'Tehran accuses Dutch tug of spying', The Times, 20 November 1985.

371. Iran stopped UAE-bound Ships on 8 October 1985 and seized electronic equipment : Rousseau, 'Chronique' (1985), p233 (n233).

372. Recent reports state that Iran is stopping vessels, asking for their destination and if it is Kuwait attacking the same ship some two to three hours later: if so, this is further proof of the misuse to which Iran has put visit and search procedures. Iran has 'adopted' traditional institutions for the purpose of offensive economic warfare : see Intertanko, 'The Tanker War - No End?', p15.

373. 'Iranians Stop and Search UK Ships', The Times, 14 January 1986; 'Iran boards US ships in arms search', The Times, 13 January 1986; Marston, 'UK Materials on International Law' (1982), p469 (Article 51 and self-defence does not allow interception of a vessel on the high seas); (1984), p553.

374. Ibid. See: Article 11, 1958 Geneva Convention on the High Seas and Article 97, 1982 UN Law of the Sea Convention; Wallace, International Law, p133.

375. See: O'Connell-Shearer (1984), pp805-806 (n3).

376. S/RES/540(1983). See also: Letter Dated 11 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16213; Letter Dated 16 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16222. The UN Secretary-General asked for the principle of free passage in the Straits of Hormuz to be respected (10 October 1980): Rousseau, 'Chronique' (1980), pp168-171.

377. O'Connell-Shearer (1984), p801 (n3).

378. Ibid, p804; The Caroline, Moore, Digest, Vol.7, p919.

379. O'Connell-Shearer (1984), p804 (n3).

380. ILC Yearbook, 1956, Vol.2, p284 (cited by O'Connell-Shearer (1984), p804).

381. Rousseau, 'Chronique' (1985), p233 (n233).

382. Ibid (1986), p90 et seq.

383. Or for that matter the ius in bello: no lists of contraband have been drawn up. Two general announcements were made: the first on 12 September 1985, the second on 8 May 1986: see 381 and 382, supra. Note the assumption that a state of war justifies Iranian intervention: 'Iranians Stop and Search British Ships', The Times, 13 January 1986.

384. O'Connell-Shearer (1984), p797 (n3).

385. 'Iranians Stop and Search UK Ships', The Times, 14 January 1986.

386. On the right of innocent passage, see: Articles 5, 14, 16, 1958 Geneva Convention on the High Seas; Articles 7, 19 and 24 1982 UN Convention on the High Seas. A coastal State's sovereignty over its territorial sea is subject to the obligation to allow a right of innocent passage to all foreign

386. ships. Coastal States are under a duty not to hamper innocent passage. ibid. See generally: Wallace, International Law, pp126-135.

387. See: Letter Dated 11 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16213 and Letter Dated 16 December 1983 from the Representative of the Islamic Republic of Iran to the Secretary-General: UN Docs. S/16222.

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A P P E N D I X 1

P A R T A

LIST OF TANKERS HIT DURING THE IRAN - IRAQ CONFLICT 1984 - 1987

LIST OF ALL MERCHANT VESSELS HIT BY IRAQ SINCE APRIL 1984, WHEN "THE TANKER WAR" STARTED

(As the list contains many details taken from different sources, we cannot guarantee complete accuracy)

1984 IRAQI ATTACKS

NO	DATE	VESSEL NAME	FLAG	1000 DWT	LOCATION	GMT	REMARKS
1	Mar 27	FILIKON L	Greece	83	80nm S Kharg		L Kuwait crude, minor damage, 100 t cargo leaked
2	Apr 18	ROVER STAR	Panama	50	Just near Kharg		B Pm MOTC T/C, C
3	" 25	SAFINA AL-ARAB	Saudi A	357	27 30 N, 50 20 E	1900	L 1 Killed, 1000 t cargo burnt/ explosion, C
4	May 7	AL-AHOOD	Saudi A	118	27 57 N, 51 06 E		L 1 Killed, serious damage pump/ engine room + acc, C
5	May 14	TABRIZ	Iran	69	Just S of Kharg		L Kharg crude, minor damage
6	" 14	ESPEERANZA 11	Panama	62	Just S of Kharg		B on NITC charter, C
7	June 3	BUYUK HAN	Turkey	125	28 28 N, 50 42E	0630	B bound Kharg, 3 miled, 2 inj.,C
8	" 26	ALEXANDER THE GREAT	Liberia	325	Kharg/Sea Is.Term.		L Kharg crude, minor damage, cargo transferred, C
9	" 27	TIBURON	Panama	260	28 27 N, 50 45E	1015	L Kharg crude, 8 Killed/3 inj., cargo transfer, C
10	Aug 7	FRIENDSHIP L	Liberia	263	28 43 N, 50 27E	0230	L Kharg crude, hit by one missil fire
11	" 24	AMETHYST	Cyprus	53	28 20 N, 50 30E	0630	L Kharg Crude, abandoned, towed to Kharg, C
12	Sept 11	ST TOBIAS	Liberia	254	28 25 N, 50 25E	1800	L Kharg Crude, C
13	" 13	SEATRANS 21	W-Germ.		S Kharg Island	1900	6 Killed, Sunk, C
14	Oct 8	WORLD KNIGHT	Liberia	258	28 30 N, 50 25E	0715	B bound Mharg, 10 Killed, 6 injured, C
15	" 12	SIVAND	Iran	218	60nm S Kharg Term.		L Kharg crude, damage engine room and accommodation
16	Dec 3	MINOTAUR	Cyprus	386	28 35 N, 50 17E	0835	B bound Kharg, 3 killed, engine room/acc. burnt, C

L = LOADED B = BALLAST C = CONSIDERED TOTAL CONSTRUCTIVE LOSS

SH = SHUTTLE TANKER nm = NAUTICAL MILES S = SOUTH N = NORTH E = EAST

17	Dec	9	B T INVESTOR	Bahamas	323	28 15 N, 50 46E	0735	B bound Kharg, repaired Bahrain
18	Dec	16	NINEMA	Greece	240	27 46 N, 50 54E	0930	B bound Kharg, 2 killed, fire, abandoned, C
19	"	18	AEGIS COSMIC	Greece	21	27 36 N, 50 35E	1142	
20	"	21	MANGOLIA	Liberia	112	30 nm S of Kharg	1330	L Kharg crude, 2 killed, engine room badly damaged
21	"	21	TORSHAVET	Norway	231	28 06 N, 50 51E	0932	L Kharg crude, fire and leakage cargo transfer, C

TOTALS FOR 1984:

- NUMBER OF MERCHANT VESSELS HIT BY IRAQ: 21 (3,808 mill dwt)
- NUMBER OF TANKERS HIT 19
- NUMBER OF VESSELS CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C) 14 (2,600 mill dwt)
- NUMBER OF PERSONS KILLED 36

1985 IRAQI ATTACKS

NO	DATE		VESSEL NAME	FLAG	DWT	LOCATION	GMT	REMARKS
22	Jan	07	TOPAZ EXPRESS	Liberia	21	27 56 N, 51 08E	1342	
23	"	08	HANLIM MARINER	S.Korea	15	SE Kharg Island	0920	
24	"	11	IRAN EMDAD	Iran	18	90nm S Kharg	1044	On its way to Bandar Abbas
25	"	18	BERTRAM	W.German	0.4	50nm W Kharg	1300	
26	"	23	RIBUT	Netherl.	0.3	27 15 N, 50 57E	2100	
27	"	28	SERIFOS	Liberia	97	27 20 N, 50 30E	1500	
28	Feb	4	FAIRSHIP L	Greece	269	60nm S of Kharg 28 24 N, 50 25	0800	B bound Kharg, engine damaged, C Taiwan

L = LOADED B = BALLAST C = CONSIDERED TOTAL CONSTRUCTIVE LOSS SH = SHUTTLE TANKER

nm = NAUTICAL MILES S= SOUTH N = NORTH E = EAST

NO	DATE		VESSEL NAME	FLAG	DWT	LOCATION	GMT	REMARKS
29	Feb	12	FELLOWSHIP L	Greece	264	50nm S of Kharg	0730	L Kharg crude
30	"	14	NEPTUNIA	Liberia	61	28 45 N, 50 45E	1120	L SH, 2kill/3inj, fire/explosion engine room, sank, C
31	"	10	ATLANTICOS	Liberia	225	30nm S of Kharg	0200	L SH, Kharg crude, fire deck pumproom, rep. Dubai
32	"	14	LADY T	Panama	53	65nm S of Kharg	0305	L SH, Kharg crude, abandoned, C Pakistan
33	"	17	AKARITA	Liberia	230	28 27 N, 50 42E	0530	B bound Kharg, rep. Dubai
34	"	24	EASTERN STAR	Malta	50	28 00 N, 51 00E	0930	B bound Kharg, extensive damage engineroom, C Taiwan
35	"	24	VOLERE	Italian	254	28 43 N, 50 40E	0647	L Kharg crude, hit Exocet, fire/ oil spill, rep.Dubai
36	Mar	26	CAPRE GWARDA	Panama	24	27 20 N, 50 30E	2225	hit by missile
37	Apr	17	KYPROS	Cyprus	277	28 06 N, 50 52E	1805	B SH, Fire engineroom, 1 injured C Taiwan
38	May	1	MUBARAK M	Turkey	134	28 12 N, 50 55E	0130	L Kharg crude, hit by unexploded Exocet, slight dam.
39	July	9	M VATAN	Turkey	392	27 32 N, 51 20E	0345	L SH, serious crude oil leak, C Taiwan
40	"	12	M CEYHAN	Turkey	226	27 40 N, 51 21E	0230	SH C Taiwan
41	Aug	15	TORILL	Malta	289	T-Jetty/Kharg	1100	L SH
42	Sep	13	SMIT MATSAS	Greece	1	27 32 N, 50 28E	1200	
43	"	19	SONG BONG	N Korea	224	Sea Isl.Term.Kharg	0940	L 2 Killed, destroyed by fire, sank, C
44	Oct	8	JOLLY INDACO	W German	20	27 22 N, 50 34E		
45	"	10	MEDUSA	Liberia	343	28 46 N, 50 32E	2135	SH, holes stb side
46	"	18	ORIENTAL CHAMP.	Panama	17	27 22 N, 50 28E	0735	
47	Nov	5	CANARIA	Greece	300	28 10 N, 51 00E	1242	L SH, fire/extensive engine room damage, towed to Sirri

48	Nov	16	KONCAR	Malta	62	28 22 N, 50 57E	0725	L SH, hit forepeak, fire
49	"	18	CASTOR	Liberia	268	Kharg en route Sirri	0300	L SH, holed sea-level, repaired Sirri
50	Dec	7	POLYS	Cyprus	239	56nm S of Kharg	1845	L SH, continued voyage
51	"	13	VULCAN	Cyprus	316	70nm SE of Kharg	2050	L SH, small fire, repaired Dubai

TOTALS FOR:	1985	1984/85
- NUMBER OF MERCHANT VESSELS HIT BY IRAQ	30 (4,690 m dwt)	51 (8.494 m dwt)
- NUMBER OF TANKERS HIT	20	39
- NUMBER OF SHIPS HIT CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C)/SUNK	8 (1,552 m dwt)	22 (4,152 m dwt)
- NUMBER OF PERSONS KILLED	4	40

1986 IRAQI ATTACKS

NO	DATE		VESSEL NAME	FLAG	1000 DWT	LOCATION	GMT	REMARKS
52	Jan	1	SUPERIOR	Cyprus	273	Kharg Island		SH Missile failed to explode, minor damage
53	"	5	KONCAR	Malta	62	20nm S of Kharg	1000	SH, coastal tanker, C Pakistan
54	"	19	SMIT MAASLUIS	Netherl.	1	28 07 N, 51 05E		
55	Feb	2	TORILL	Malta	285	40nm S of Kharg	1700	B SH
56	"	23	POLIKON	Cyprus	239	Off Kharg		SH, repaired Dubai
57	"	26	MEDUSA	Liberia	343	Off Kharg		B SH
58	Apr	27	CASTOR	Liberia	268	40nm S Kharg		SH, 2 killed/3injur, 2nd hit, C Taiwan
59	"	28	ENERGY COURAGE	Liberia	231	60nm S Kharg	1430	SH, crippled/oil leak, repaired Ulsan
60	Mar	17	ACHIEVEMENT	Cyprus	262	80nm S of Kharg	0140	B SH, attacked whilst at anchor, C Taiwan
61	"	20	ATLANTICOS	Liberia	259	Anchored off Kharg	0610	B SH, C Taiwan

62	Mar	20	SUPERIOR	Cyprus	273	28 20 N, 50 50E	0800	L SH, Exocet failed to explode
63	"	29	HAWAII	Liberia	372	60nm S Kharg	2300	L Kharg, C
64	Apr	4	SHIRVAN	Iran	69	Off Bushire		Minor damage, 2 injured
65	"	8	PAMIT	Panama	84	Central Gulf/west Bushire		Missile failed to explode
66	"	27	MINAB	Iran	25	28 23 N, 51 05E 39nm S of Bushire	0615	SH. fire
67	"	30	MAGNUS 111	W German		Off Bushire		Crane Barge
68	May	6	SUPERIOR	Cyprus	273	40-50nm S of Kharg		SH, C
69	"	6	ENERGY MOBILITY	Liberia	223	Close to Kharg Term.		L Mina Al Ahmadi, repaired Dubai
70	"	8	HARMONY 1	Malta	85	20nm off Bushire	0838	L Iranian Coastal, sank, C
71	"	24	W.ENTERPRISE	Cyprus	351	28 42 N, 50 42E	2015	L SH, 35nm S of Kharg 11nm off Iranian coast
72	"	31	HELLESPONT ENTERPRISE	Liberia	319	50nm SE of Kharg	0610	B SH, engine room hit, burnt 4 days, C
73	June	8	ENERGY MOBILITY	Liberia	223	28 41 N, 50 42E	1600	B SH, engine room flooded, towed to Sirri
74	"	9	" "	Liberia	223	South of Kharg		SH, hit 2nd time, C
75	"	10	MEDUSA	Liberia	343	28 25 N, 50 42E	0900	L SH, towed to Sirri, Hit 3rd time, C
76	July	11	LADY ROSE	Malta	80	South of Kharg	0432	B Kharg, several injuries, ex Mega Pilot, C Taiwan
77	"	13	ACHILLES	Cyprus	269	28 07 N, 51 04E	0600	L SH, 100 nm S Kharg, Repaired Dubai
78	"	28	POLYCON	Cyprus	239	South of Kharg	0330	B SH, repaired Bahrain
79	"	7	MAGNUM	Panama	300	Close to Kharg	0800	L SH, C Taiwan
80	"	7	MISTRA	Liberia	259	" " "	0800	L SH, Towed to Larak Island, C
81	"	12	AZARPAD	Iran	233	Iraq Sirri Island	0730	L SH, 16 killed, C
82	"	12	KLELIA	Cyprus	392	Sirri Island	0730	ST, 3 killed, repaired Dubai
83	"	12	VENTURE	Liberia	75	Sirri Island	0730	B minor damage

84	July	16	PAMIT	Panama	84	Ras Bahregan		SH, Hit 2nd time when disch. 4 killed, rep UAE
85	"	19	ABU ABIL	Panama?		28 12 N, 50 52E		
86	"	20	MISTRA	Liberia	259	28 30 N, 50 40E		L SH, hit 2nd time, whilst being towed
87	Sept	5	MOKRAN	Iran	25	Lavan Island Oil T		L Iranian coastal, 2 killed, C
88	"	12	SALVATOR	S'pore	1	28 30 N, 50 47E		Sunk, C
89	"	17	SEA TRANS 22	Panama		Ras Bahregan		
90	"	29	DENA	Iran	372	80 NM S Kharg		SH, minor damage
91	Oct	01	ANGEL	Cyprus	227	28 32 N, 50 52E		B SH, " " Night
92	"	03	FREE ENTERPRISE	Malta	253	28 11 N, 51 02E	1030	L SH, Fitted W defence system, rep. Dubai
93	"	06	FAROSHIP L	Greece	268	Kharg		
94	"	12	FREEDOMSHIP L	Greece	278	28 53 N, 50 33E	2200	L Kharg, Midnight, rep. Piraeus
95	"	28	DENA	Iran	372	At Kharg Island	1600	SH, hit 2nd time, engine room damage
96	Nov	09	ANGEL	Cyprus	227	28 12 N, 51 03E	0940	SH, hit 2nd time, rudder damage towed to Dubai, C
97	"	09	KHARK	Iran	231	45nm S Kharg	1135	SH, towed to Larak Island
98	"	25	SHINING STAR	Cyprus	129	Off Larak Island	1000	ST, rep. UAE, hit by 4 bombs
99	"	25	ANTARCTICA	Cyprus	218	Off " "	1000	ST, C China
100	"	25	TABRIZ	Iran	69	" " "	1000	Prod.tanker, Iranian Coastal trading
101	"	25	TENACITY	Malta		Hormuz Terminal	1300 L	While trading " " trading
102	"	26	ACTIAS EX LUNA	Malta	164	27 20 N, 51 47E	L	SH, en route to Larak
103	Dec	1	SEATRANS 7	Panama	9	Kharg Island		Machine Gun Fire
104	"	7	FREE ENTERPRISE	Malta	253	60nm S Kharg	L	SH 2nd hit, defence system, rep Dubai
105	"	20	ACHILLES	Cyprus	269	60nm S Kharg	1200 L	SH 2nd hit, defence system, small fire
106	"	24	KHARG 5	Iran	284	23nm S Kharg	L	SH, Ex Chase Venture, engine room flooded

TOTALS FOR:	1986	1984/85/86
- NUMBER OF MERCHANT VESSELS HIT BY IRAQ	55 (10,925 m dwt)	106 (19.419 m dwt)
- NUMBER OF TANKERS HIT	49	88
- NUMBER OF VESSELS HIT CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C)	17 (3,360 m dwt)	39 (7,512 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	27	67

1987 IRAQI ATTACKS

107	Jan	3	GALLERIE	Bahamas	139	40 nm S Kharg		L	SH enroute Kharg/Larak, badly damaged, rep. Dubai
108	"	4	MATTERHORN	Liberia	131	28 25N 50 58E	0715		SH Damaged superstr, C - sold "as is" to Taiwan
109	"	12	TABRIZ	Iran	69	At Kharg			1 killed
110	"	28	TACTIC	Greece	237	27 38 N, 51 18E	0832	L	Hit inert gas-roo, fire engine room/accommod. C
111	"	28	DENA	Iran	372	Laraq Island	1130	L	ST 5 nm off where TACTIC hit, near Ras al Mutag
112	"	30	LADY A	Cyprus	233	60nm S Kharg		B	SH, Enroute Kharg-Larak
113	Feb	1	ALAMOOT	Iran	317	Off Bushire	1015		SH Run aground
114	"	1	KHARK 3	Iran	280	20nm S Kharg	0815		SH, ex Berge Bragd
115	"	1	TAFTAN		289	Off Iranian Coast			SH
116	"	7	KHARK 4	Iran	284	28 10 N, 51 05E			SH, ex Mississippi, minor damage
117	"	13	KHARK 2	Iran	284	Near Kharg	0600	L	SH bound Larak, ex Berge King, minor damage
118	"	20	TAFTAN	Iran	289	20nm S Kharg	1730	L	SH severe damage to engine room, 2nd hit
119	"	27	KHARK	Iran	231	10-15nm S Kharg		L	SH fire
120	"	27	KHARK 3	Iran	280	50nm S Bushire			SH ex Berge Bragd

121	Mar	2	KHARK 5	Iran	284	S Kharg		SH badly damaged, engineroom flooded
122	"	21	AVAJ	Iran	316	Off Kharg	1315 L	SH, 1 killed (salvage crew), fire, 1715 local time
123	"	23	DENA	Iran	372	S of Kharg		
124	"	24	SALVERITAS	S'pore	0.5	S of Kharg		2 killed
125	Apr	05	POLIKON	Cyprus	239	28 22 N, 50 56E	0643 L	SH, fire, towed to Larak
126	"	08	SLIEDRECHT			26 00 N, 52 00E	1635	Mud Barge
127	"	09	XYLOS	Greece	60	25 34 N, 55 10E	0900	Sunk
128	"	12	LADY SKY	Panama	140	27 54 N, 51 13E	0730 L	SH, fire, casualties
129	"	24	FUJI ORIENT	Panama	281	20nm S Kharg	0512 L	SH, hit engine room
130	"	29	PAMIT	Panama	84	tow towards Larak		Also hit 8 April and 16 Aug 1986
131	May	13	STILIKON	Panama	203	28 22 N, 50 56E		
132	"	14	RODOSEA	Panama	29	80-100nm S Kharg	2000	
133	"	17	ZEUS	Cyprus	154	28 22 N, 50 56E	0508 L	SH, fire
134	"	17	AQUA MARINER	Liberia		27 02 N, 51 22E	0404 L	Proceeded under own power
135	June	20	TENACITY	Malta	73	Enroute Kharg	0130	Also hit 25 Nov.1986
136	"	24	HIRA 111	Turkey	30	28 21 N, 50 56E	0345	Fire engine room, 7 casualties
137	"	26	MIA MARGRETHE	Norway	225	27 53 N, 49 43E	2115 L	Hit by 3 missiles fired from gun boat, 4 injuries, engine room/ accommodation/no steering
138	July	1	DENA	Iran	372	28 29 N, 50 54E	0708 B	Also hit 29/9, 28/10/86, 28/1, 23/3/87, SH, hit p
139	"	6	NIKOS KAZANTZAKIS	Cyprus	87	Enroute to Larak	1700	
140	"	7	SALSERVE	S'pore	1		1800	Two bridge windows cracked by shrapnel
141	Aug	29	ALVAND	Iran	237	Sirri Island	0900 L	T/Loading oil at Sirri
142	"	30	SANANDAJ	Iran	254	Hit at Kharg		T/Extensive damage to engineroom
143	"	30	SHOUSH	Iran	226	Storage s.tanker	0445	T/Hit when Iraqi jets hit Larak

144	Aug	31	RODOSEA	Panama	30	28 50 N 50 11E 0643	T/Iraqi jet attack
145	Sep	1	STAR RAY	Cyprus	216	Between Kharg/Larak 0930	L T/Missile attack (US tonnage)
146	"	1	BIGORANGE XlV	Panama		Off Kharg	Supply v 197 tons 2 dead/sunk

TOTALS FOR: (last revision 08.09.87)	1987	1984/85/86/87
- NUMBER OF MERCHANT VESSELS HIT BY IRAN	40 (35.174 m dwt)	146 (54.593 m dwt)
- NUMBER OF TANKERS HIT	33	121
- NUMBER OF VESSELS HIT CONSIDERED CONSTRUCTIVE LOSSES OR SUNK (C)	3 (0.368 m dwt)	42 (7.880 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	13	80

L = LOADED B = BALLAST C = CONSIDERED TOTAL CONSTRUCTIVE LOSS SH = SHUTTLE TANKER

nm = NAUTICAL MILES S= SOUTH N= NORTH E = EAST

APPENDIX 1

PART B

LIST OF TANKERS HIT DURING THE IRAN - IRAQ CONFLICT 1984 - 1987

LIST OF ALL MERCHANT VESSELS HIT BY IRAN SINCE APRIL 1984, WHEN "THE TANKER WAR" STARTED

1984 IRANIAN ATTACKS

NO	DATE		VESSEL NAME	FLAG	1000 DWT	LOCATION	GMT		REMARKS
1	Apr	13	UMM CASBAH	Kuwait	80	85nm SE Bahrain 27 42 N, 50 11E	0600	L	Kuwait crude, slight damage
2	"	14	*BAHRAH	Kuwait	30	27 41 N, 50 07E	1245	B	Bound Kuwait, minor damage, two injured, rep. Dubai
3	"	15	*YANBU PRIDE	Saudi A	215	27 18 N, 50 07E	0630	L	part cargo Kuwait cruide, minor damage
4	"	24	*CHEMICAL VENTURE	Liberia	29	27 31 N, 50 20E	1400	B	Bound Kuwait, fire accom/bridge rep. Japan
5	"	10	*KAZIMAH	Kuwait	290	26 16 N, 52 44E	1055	B	Bound Kuwait, fire no.4/5 tanks minor damage
6	July	5	PRIMROSE	Liberia	272	26 11 N, 53 06E	0930	L	Saudi crude, hit by two missiles repaired
7	"	10	BRITISH RENOWN	British	265	26 30 N, 52 04E	1200	B	On way to lighten TIBURON, hit by two missiles
8	Aug	18	ENDEAVOUR	Panama	96	26 20 N, 52 30E	1430	L	Kuwait crude, repaired Dubai
9	"	28	CLEO 1	Panama	35	Sha Allum Shoal	0700	B	To Ras Tanura, fire
10	Sep	16	ROYAL COLOMBO	S Korea	126	26 10 N, 53 10E	0656	L	Saudi crude, 4 killed, cargo
11	"	16	MED HERON	Liberia	123	26 24 N, 52 19E	0600	B	Bound Ras Tanura, 3 killed, bridge/accom.destroyed
12	Oct	11	JAG PARI	India	26	26 21 N, 52 28E	1400	B	Bound Kuwait, 1 injured
13	"	12	GAS FOUNTAIN	Panama	2	26 14 N, 52 33E	0800		3 killed, off-shore support vessel
14	"	19	PACIFIC PROTECTOR	Panama	2	26 14 N, 52 33E	0800		3 killed, off-shore support vsl
15	Dec	8	TARIQ	Kuwait	120	26 31 N, 51 51E	0600		hit by 3 missiles, 1 killed
16	"	25	KANCHENJUNGA	India	276	70nm E of Quatar	0847	L	Ras Tanura crude, bridge destroyed, one injured, repaired Dubai
17	"	26	ARAGON	Spain	232	26 24 N, 52 29E	1135	B	Bound Ras Tanura, hit by two missiles

TOTALS FOR 1984:

- *NUMBER OF MERCHANT VESSELS HIT BY IRAN* — *17 (2,246 mill dwt)*
- *NUMBER OF TANKERS HIT* — *15*
- *NUMBER OF VESSELS CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C)* — *0*
- *NUMBER OF PERSONS KILLED* — *11*

1985 IRANIAN ATTACKS

NO	DATE	TANKER NAME	FLAG	1000 DWT	LOCATION	GMT		REMARKS
18	Jan 27	*SERIFOS	Greece	97	27 20 N, 50 30E	1400	B	Bound Kuwait, Rep.Dubai
19	Feb 18	AL MANAKH	Kuwait	36	25 38 N, 53 04E	1435		Hit by 4 missiles, 1 killed
20	" 18	MOHAMMED AL BAKRY	Saudi A	21	NE of Quatar	1503		
21	" 19	ROYAL COLOMBO	S Korea	127	26 10 N, 52 20E	1300	L	Saudi crude, repaired Dubai
22	" 27	CAPT J G P LIVAN	Greece	259	26 15 N, 52 45E	1010	B	Bound Kharg, slightly damaged
23	March 1	ATHENIAN XENOPHAN	Cyrpus	29	26 22 N, 52 23E	1300	B	Bound Kuwait, hit by 4 missile. 1 injured
24	" 17	CARIBBEAN BREEZE	Liberia	236	25 26 N, 52 22E	0620	L	Kuwait crude, bridge engine room damaged, 11 injured
25	May 2	NORDIC TRADER	Liberia	37	26 34 N, 51 40E	0510	B	Bound Kuwait, 1 killed, 3 inj. hit by 3 missiles
26	" 29	NORASIA REBECCA	W German	18	25 53 N, 52 50E	0530		Hit by 2 missiles
27	June 1	ORIENTAL IMPORTER	Panama	14	28 10 N, 49 35E	0500		
28	Aug 18	NAESS LEOPARD	Belgium	45	26 00 N, 52 20E	0706	B	Bound Bahrain
29	Dec 25	KAZIMAH	Kuwait	204	7nm off Halul Isl.	1230	L	ex Mena Al Ahmadi, lifeboat hit by helicopter mis.

TOTALS FOR:	1985	1984/85
- NUMBER OF MERCHANT VESSELS HIT BY IRAN	12 (1,123 m dwt)	29 (3,369 m dwt)
- NUMBER OF TANKERS HIT	8	23
- NUMBER OF VESSELS HIT CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C) SUNK:	0	0
- NUMBER OF PERSONS KILLED	2	13

1986 IRANIAN ATTACKS

NO	DATE								
30	Jan	30	*TOMOE 3	Japan	7	45nm off Dubai 25 45 N, 52 37E			
31	Feb	3	*NOGA	Liberia	134	25 54 N, 53 02E	0918	L	Ras Tanura, minor damage
32	"	5	*AVOCET	Cyprus	34	East of Quatar 26 00 N, 52 30E	0500	B	Kuwait, 4 killed, C Pakistan
33	Mar	2	*ATLAS 1	Turkey	142	26 15 N, 52 45E	0800	B	Ras Tanura, 1 killed/1 injured repaired Dubai
34	"	3	*BOW FIGHTER	Norway	35	25 42 N, 53 50E	1230	L	Jubail, helicopter attack, minor damage
35	"	4	*CHAUMONT	France	269	25 57 N, 52 43E	1406	B	Ras Tanura, minor damage, repaired Dubai
36	"	6	*WISE	Cyprus	30	25 45 N, 53 10E	0500	L	Bahrain, 4 killed, 6 injured, towed to Dubai, 0750 LT
37	"	13	*GOGO REGENT	Liberia	32	25 39 N, 53 02E	0730	L	Bahrain, 1 injured, minor damage
38	"	21	*ROYAL COLOMBO	S Korea	126	30nm E Ras Tanura	1100	L	Saudi crude, machine-gun fire from Iranian plane
39	"	29	*BERGE KING	Norway	284	25 50 N, 52 52E	1100	B	Ras Tanura, missile failed to explode
40	"	30	*STELIOS	Panama	206	25 46 N, 52 53E	1405	B	Ras Tanura, repaired Dubai
41	"	31	*ZOR	Quatar	5	25 35 N, 53 01E	1300	L	Close to Sha Allum Shoal
42	Apr	5	*PETROSTAR XVI	Saudi A	13	5nm NE of Halul Isl.		L	Bahrain, 1 killed, 7 injuries, C Taiwan
43	"	17	*LEEGAS	Panama	3000m^3	25 38 N, 52 52E	0612	B	1 killed, 2 injured, hit by 2 missiles, C

44	Apr	20	*ATLAS 1	Turkey	142	25 25 N, 52 11E 35nm E of Quatar	0830	L Ras Tanura, 1 killed, 3 inj, hit 2nd time, C Taiwan
45	May	1	*AL SAFANIYA	Saudi A	48	25 10 N, 53 33E	2300	B Ras Tanura, 3 killed, towed to Dubai-S'pore
46	"	7	*AL NISR AL ARABI	Saudi A	284	25 40 N, 55 00E		L
47	"	9	ARISTOTLES S	Liberia	273	25 30 N, 54 00E	1350	B Ras Tanura, 3 killed, hit by 6 missiles, rep. Dubai
48	June	23	KORIANA	Greece	63	25 39 N, 55 27E	0715	B Bharai, 2 missiles failed to explode
49	"	23	DIEGO SILANG	Phillipp.	96	25 47 N, 55 32E	0700	L Ras Tanura, 1 killed, rep.Dubai
50	"	28	KORIANA	Greece	63	11,5nm off Dubai 25 39 N, 55 27E	0715	B Anchored hit 2nd time, minor damage
51	"	28	SUPERIOR	Cyprus	273	9,5nm off Dubai	0730	B Anchored, minor damage
52	Aug	1	ETHNIC	Greece	274	25 37 N, 52 59E	0830	B Ras Tanura, repaired Dubai
53	"	3	MERCEDES	Liberia	76	25 54 N, 55 30E	1225	L Mina Al Ahmadi, rep. S'pore
54	"	4	KONKAR DINOS	Greece	234	25 28 N, 54 51E		B Quatar, rep. Bahrain
55	"	10	GOLAR ROBIN	Liberia	219	25 35 N, 54 52E	0800	L Fateh, repaired Philippines
56	"	11	OLYMPIAN SPIRIT	Greece	357	25 50 N, 55 30E	1020	L Ras Tanura, missile failed to explode
57	"	15	KYOKUHO LILY	Japan	6	25 26 N, 55 12E	1200	B Jubail, missile did not explode, hit 2nd time
58	"	17	WEELEK NO.3	Panama	16	25 28 N, 55 05E	1230	B Jubail, 2 killed, rep.Dubai
59	"	18	AKARITA	Liberia	227	25 30 N, 54 32E	0815	L Quatar, towed to Dubai
60	Sept	14	BRISSAC	France	239	25 12 N, 54 23E	0300	B Mina Al Ahmadi, 55nm S Abu Musa, rep.Dubai
61	"	17	AL-FUNTAS	Kuwaiti	290	28 37 N, 49 20E	1930	L Kuwait, hit by 3 missiles from frigate, minor damage
62	"	23	PAWNEE	UK	122	25 54 N, 55 31E	0415	B Ras Tanura, 25nm off Abu Musa, rep. Dubai
63	Oct	5	AUGUST STAR	Cyprus	27	25 16 N, 55 00E	1300	C (sold 22/4/87)
64	"	17	FIVE BROOKS	Panama	20	26 15 N, 56 08E 3nm off Oman	2330	L Mina Al Ahmadi, 10 killed, C Pakistan Attacked by frigate

65	Oct	22	AL FAIHA	Kuwait	272	25 25 N, 55 02E	2346	B	Mina Al Ahmadi, anchored 11nm off Dubai
66	Nov	15	SHAAM	UAE	37	25 38 N, 55 25E	0430		Probably attacked by frigate 35nm SE Quatar
67	"	18	CROWN HOPE	Liberia	35	25 38 N, 55 24E	2118	B	Kuwait-Karachi shuttle, towed to Japan

TOTALS FOR:

	1986	1984/85/86
- NUMBER OF MERCHANT VESSELS HIT BY IRAN	38 (5.010 m dwt)	67 (8.379 m dwt)
- NUMBER OF TANKERS HIT	36	59
- NUMBER OF VESSELS HIT CONSIDERED TOTAL CONSTRUCTIVE LOSSES (C)	6 (0.236 m dwt)	6 (0.236 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	42	55

1987 IRANIAN ATTACKS

68	Jan	6	COSMO JUPITER	Japan	238	25 46 N, 55 29E	0230	L	Hit by frigate, 0530 LT Kuwaiti Chartered
69	"	7	WORLD DAWN	Liberia	88	25 59 N, 55 55E	2220	L	Hit by frigate, 0730 LT Kuwaiti Chartered
70	"	12	ATLANTIC DIGNITY	Liberia	89	26 30 N, 56 21E	2325	L	Hit by frigate, 0225 LT Kuwaiti Chartered
71	"	13	SAUDIAH	Kuwait	29	26 13 N, 55 59E	2145	L	Hit by frigate, 2345 LT Kuwaiti Chartered
72	Feb	4	AMBIA FORTUNA	Bahamas	75	26 03 N, 55 58N	2000	L	Enroute from Kuwait, intercepted by naval vessel
73	"	28	SEA EMPRESS	Cyprus	90	25 16 N, 54 18E	0800	B	Enroute Kuwait, attacked by helicopter lifting from frigate
74	"	26	WU YIAND	Taiwan	15	35nm SE Quatar	1000		Frigate attack
75	Mar	11	ARABIAN SEA	SI	311				No damage
76	"	16	PIVOT	Cyprus	232	25 40 N, 55 08E 12nm S Abu Musa	1810	L	Saudi crude, hit ps slop tank/ fire/oil spillage ex Gallant, ex Amoco Europa, 2210 local time
77	"	28	SEDRI 1	S'pore	2	25 40 N, 55 30E Off Um Al Quwain	0014		8 killed, hit by frigate, had completed charter to Kuwait, bunker barge
78	Apr	11	COLOSSUS	Panama		25 39 N, 55 19E	1000		Fire, frigate attack, 12nm off Sharjah, 1530lt

79	Apr	15	CORRIEDALE EXPR	Phillip	18	26 33 N, 52 23E	0845		Attacked by speedboat
80	"	25	MEGA POINT	Liberia	141	8nm off Mina saqr	2015	B	Kuwait, bridge damaged by Frigates 0015 LT
81	May	04	PETROBULK AGENT	Panama	31	25 43 N, 55 29E	1905	L	Kuwait, struck by 7 missiles, speed-boat attack
82	"	05	SHUHO MARU	Japan	258	27 34 N, 49 39E	1905	B	Kuwait, hit by speed boat
83	"	06	IVAN KOROTEYEV	Soviet	6	26 26 N, 52 31E			
84	"	11	B.R.AMBEDKAR	India	89	11.5nm N Sharjah	0124	B	Bearing 180deg., hit 5 times, ship side+pt t., 0515L
85	"	17	MARCHAL CHUYKOV	Soviet	67	35nm off Kuwait			Hit by mine which tore a large hole in bottom
86	"	18	GOLAR ROBIN	Bermuda	219	28 10 N, 49 20E			Att. by speedboat, hit by 21 projectiles, 1212 LT
87	"	26	PRIMROSE	Liberia	272	20nm S Kuwait			Kuwait crude, hit by mine
88	"	22	RASHIDAH	Quatar			0100		Hit by 10 rp, s
89	June	09	*ETHNIC	Greece	274	28 58 N, 48 41E	1730		Kuwaiti crude, hit by mine
90	"	19	*STENA EXPLORER	Liberia	269	54km from Kuwait	1500	L	Hit by a mine, minor damage, continued on her own enroute from Mina Al-Ahmadi
91	"	26	STENA CONCORDIA	Liberia	289	27 58 N, 49 29E		B	Damage engineroom and steering gear, 2 injuries
92	July	3	SANTA MARIA	Spanish	313	Near Hormuz			Attacked by 5 fast Zodiac-type inflatable boats Iranian crude from Hormuz, enroute UAE
93	"	8	PECONIC	Liberia	273	Northern Gulf	0700		
94	"	12	VILLE D'ANVERS	France	24	Off Marjan Island	2245		Hit by gunboats, discharged in Abu Dhabi/Damman/Ku
95	"	24	BRIDGETON	USA	401	27 59 N, 49 50E	0330	B	On the way to Kuwait, hit by min
96	Aug	10	TEXACO CARIBBEAN	USA	274	N25 16 E56 30	1530	L	Heading out of Gulf, hit mine
97	"	15	ANITA	Local	245	N25 17E 56 28	0900		Supply vessel - hit mine, sunk, 6 dead
98	"	18	OSCO SIERRA	Liberia	34	N25 55E 56 42	0500		Chemical tanker, missile attack by 2 speedboats, 1st missile attack in G.of Oman

99	Aug	19	BRIBIR	Yogosl.	6	40nm N of Dubai	1230	Container v.attacked, boarded and searched 1
100	"	31	JEBEL ALI	Kuwait	1	Near port of Umm al Qaiwain	0530	Container v. hit by rocket grenades from patrol vessel
101	Sep	1	MUNGUIA	Spanish	300	27 07.2N 50 48.6E	1520	L Tanker - engine room on fire
102	"	1	ASTRO PEGASUS	S.Korea	81	40 miles off Dubai	1845	L Tanker hit by rocket from Iran. Anchored for inspection
103	"	2	DIAMOND MARINE	Liberian	224	26 21 N 56 07E	2100	B Tanker -Rocket-p grenade hit/ 2 speedboats
104	"	2	LEONIDAS GLORY	Cyprus	4	10m N of Sharjah	0200	Cargoship - hit by gunboat
105	"	2	DAFNI	Greek	97	27 49 N 49 48E	0635	Tanker -hit by 3 Iran speedboats
106	"	2	JOLLY RUBINO	Italian	1	Off Farsi Island	2330	Containers/hit by gunboats, 3 crew injured m ro/r
107	"	2	NISHIN MARU	Japanese	180	50nm SW Hormuz	2245	L Tanker hit by speedboat

L = LOADED B = BALLAST C = CONSIDERED TOTAL CONSTRUCTIVE LOSS SH = SHUTTLE TANKER

nm = NAUTICAL MILES S = SOUTH N = NORTH E = EAST

TOTALS FOR: (Last revision 08.09.87)	1987	1984/85/86/87
- NUMBER OF MERCHANT VESSELS HIT BY IRAN	40 (5.576 m dwt)	106 (13.949 m dwt)
- NUMBER OF TANKERS HIT BY IRAN	28	87
- NUMBER OF VESSELS HIT CONSIDERED CONSTRUCTIVE LOSS OR SUNK (C)	1 (.245 m dwt)	7 (0.481 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	14	69

TOTALS FOR: (Last revision 08.09.87)	1987	1984/85/86/87
- NUMBER OF MERCHANT VESSELS HIT BY IRAQ	40 (35.174 m dwt)	146 (54.593 m dwt)
- NUMBER OF TANKERS HIT	33	121
- NUMBER OF VESSELS HIT CONSIDERED CONSTRUCTIVE LOSS OR SUNK (C)	3 (0.368 m dwt)	42 (7.880 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	13	80

- TOTAL NUMBER OF MERCHANT VESSELS HIT AS OF 8/9/87:	80 (40.750 m dwt)	252 (68.542 m dwt)
- TOTAL NUMBER OF TANKERS HIT	61	208
- NUMBER OF VESSELS HIT CONSIDERED CONSTRUCTIVE LOSSES OR SUNK (C)	4 (0.613 m dwt)	49 (8.361 m dwt)
- NUMBER OF TANKERS HIT CONSIDERED CONSTRUCTIVE LOSSES OR SUNK (C)	2 (0.368)	45 (8.656 m dwt)
- NUMBER OF PERSONS KILLED DURING THESE ATTACKS	27	149

A P P E N D I X 11

THE GULF EXCLUSION ZONES

1) IRAQI ANNOUNCEMENTS

In November 1982, Iraq announced the following Maritime Exclusion Zone:

N 29.30 E 48.30
N 29.25 E 49.09
N 28.23 E 49.47
N 28.23 E 51.00

The area north of 29 degrees 10' has also been declared a war zone by Iraq and vessels entering waters at the head of the Gulf risk hitting mines or being attacked by the Iraqi navy. Iraq has also announced that tankers berthing at Jaziret-ye Khark (Kharg Island) Oil Port, regardless of nationality, may be attacked by the Iraqi air force.

2) IRANIAN ANNOUNCEMENTS

The following announcements were made by the Iranian Government restricting shipping in the following areas:

All Iranian coastal waters are war zones and all transportation of cargo to Iraqi ports is prohibited. "After passing through the Strait of Hormuz vessels should stay at least :

12 nautical miles south	25°53'N 55°02'E (Abu Musa Island)
12 nautical miles south	55'N 54°02'E (Sirri Island)
south of	26°47'N 52°32'N (Cable Bank)
12 nautical miles south of	27°59'N 50°11'E (Farsi Island)
west of a line joining positions	27°55'N 49°53'E and 29°10'N,49°12'E
South of Lat.	29°10'N as far as Long.48°40'E

Non compliance with the above instructions may hamper free passage and endanger the security of vessels for which the Iranian Authorities shall bear no responsibility".

(Intertanko, 'The Tanker War - No End?', p.8)

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