

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

WAR AND THE LAW OF NATIONS

This book is a history of war, from the standpoint of international law, from the beginning of history to the present day. Its primary focus is on legal conceptions of war as such, rather than on the substantive or technical aspects of the law of war. It tells the story, in narrative form, of the interplay through the centuries between, on the one hand, legal ideas about war and, on the other hand, state practice in warfare. Neff covers the emergence, in various ancient societies, of an association between justice and warfare, which matured into the just-war doctrine of the Middle Ages. He then traces the decline of this conception of war in favour of a view of war as an instrument of statecraft, culminating in the evolution of what became known as the legal institution of war in the nineteenth century. There is also coverage of the much-neglected topic of measures short of war, most notably of reprisals, but also including the evolution of self-defence doctrines and practices over the years. International legal aspects of civil wars are also considered, notably the development of recognition of belligerency and of insurgency in the nineteenth century. The attempt by the League of Nations to restrict war is analysed, with an explanation of the deeper reasons for its failure and the way in which this paved the way for the substantial discarding, after the Second World War, of war as a legal institution, in favour of the alternate conception of aggression-and-self-defence. Treatment of new approaches to civil wars after 1945 and of the advent of war against terrorism brings the story to the present day.

STEPHEN C. NEFF is a Reader in Public International Law at the University of Edinburgh. He is the author of two previous books on international legal history: *Friends But No Allies: Economic Liberalism and the Law of Nations* (1990) and *The Rights and Duties of Neutrals: A General History* (2000).

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

WAR AND THE LAW OF NATIONS

A General History

by
STEPHEN C. NEFF



Cambridge University Press
 0521662052 - War and the Law of Nations: A General History
 Stephen C. Neff
 Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS
 Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

CAMBRIDGE UNIVERSITY PRESS
 The Edinburgh Building, Cambridge, CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
 Information on this title: www.cambridge.org/9780521662055

© Stephen C. Neff 2005

This book is in copyright. Subject to statutory exception
 and to the provisions of relevant collective licensing agreements,
 no reproduction of any part may take place without
 the written permission of Cambridge University Press.

First published 2005

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication data

Neff, Stephen C.
 War and the law of nations: a general history / by Stephen C. Neff.
 p. cm.

Includes bibliographical references and index.

ISBN 0-521-66205-2 (hardback)

1. War (International law) – History. I. Title.

KZ6385.N44 2005
 341.6–dc22 2004061769

ISBN-13 978-0-521-66205-5 hardback

ISBN-10 0-521-66205-2 hardback

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

To my nephews and nieces:

Eric	Delaney
John	Cameron
Alexander	Katherine Clark
Jocelyn	Thomas

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

War holds a great place in history, and it is not to be supposed that men will soon give it up – in spite of the protests which it arouses and the horror which it inspires – because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests.

– Institute of International Law,
Preface to the Manual on the Laws of War on Land (1880)

CONTENTS

	<i>Preface</i>	<i>page</i> x
	<i>List of abbreviations</i>	xi
	Introduction	1
PART I	War as law enforcement (to 1600)	7
1	Ares and Athena	13
	Hallmarks of war	14
	War as an instrument of justice	29
2	Loving enemies and hating sin	39
	Islamic perspectives	40
	Christian soldiers	45
	The contours of the just-war outlook	54
	Outside the cloister	68
PART II	New forces stirring (1600–1815)	83
3	War in due form	95
	Breaking new ground	96
	Perfect war	102
	Imperfect war	119

4	Dissension in the ranks	131
	Challenges to orthodoxy	132
	Grappling with issues	140
PART III	War as state policy (1815–1919)	159
5	Collisions of naked interest	167
	The positivist synthesis	169
	War as an institution of law	177
	Dark shadows remaining	196
6	Tame and half-hearted war: intervention, reprisal and necessity	215
	The art of intervention	217
	Reprisals	225
	Emergency action	239
7	Civil strife	250
	From rebellion to belligerency	251
	Recognising belligerency	258
	Recognising insurgency	268
PART IV	Just wars reborn (1919–)	277
8	Regulating war	285
	Making a new world	286
	The art of avoiding war	296
9	Farewell to war?	314
	A neo-just-war order	316

CONTENTS

ix

	The art of abolishing war	335
	Unanswered questions	347
10	New fields of battle	357
	From civil war to national liberation	358
	Striking terror	376
	Conclusion	395
	<i>Bibliography</i>	399
	<i>Table of cases</i>	422
	<i>Table of treaties</i>	424
	<i>Index</i>	428

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

PREFACE

My great thanks go to my home institution, the University of Edinburgh School of Law, for sabbatical periods that were essential to the completion of this project – and also for intellectual stimulation in countless ways. The hospitality of two fine institutions was invaluable to me: the Max Planck Institute for Comparative Public and International Law, in Heidelberg, Germany (in 2000); and the George Washington University School of Law in Washington, DC (in 2003–4). For research and editorial assistance, I am grateful for the invaluable services of Dimitra Nassimpian, Ashley Theunissen, Kyle Sammin, Paul Margolis and Ozan Jaquette (and friends). In dealing with the perils of the New Technology, I have had the invaluable assistance of Roger Marlowe and of my brother Tom Neff. The following people (in prosaic alphabetical order) have assisted or inspired in manifold ways that were sometimes indirect but always much appreciated: Adnan Amkhan, Alan Boyle, Michael Byers, James Crawford, Yoram Dinstein, Thomas Giegerich, William Gilmore, Christine Gray, Susan Karamanian, Frederick Shiels, Ralph Steinhardt, Simonetta Stirling and Colin Warbrick. Only inspiration, and not errors, may be put to their charge. Finally, a most special thanks to the long-suffering staff at Cambridge University Press – to Leigh Mueller for heroic editing labours, and most specially to Finola O’Sullivan for her unique (and all too rare) combination of patience and vision.

LIST OF ABBREVIATIONS

AC	Appeal Cases (UK)
AFDI	<i>Annuaire Française de Droit International</i>
AJIL	<i>American Journal of International Law</i>
<i>Annuaire</i>	<i>Annuaire de l'Institut de Droit International</i>
BFSP	<i>British and Foreign State Papers</i> (UK)
Brit YB	<i>British Year Book of International Law</i>
C Rob	Admiralty Reports of Christopher Robinson (UK)
Columbia J Tr L	<i>Columbia Journal of Transnational Law</i>
CTS	<i>Consolidated Treaty Series</i>
Dods	John Dodson, Reports of Admiralty Cases (UK)
Dumont	Jean Dumont (ed.), <i>Corps universel diplomatique du droit des gens</i>
EHRR	European Human Rights Reports
F	Federal Reporter (USA)
Fed Cas	Federal Cases (USA)
FRUS	<i>Foreign Relations of the United States</i>
GAOR	General Assembly Official Records (UN)
GP	<i>Gazette du Palais</i> (France)
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
ILM	<i>International Legal Materials</i>
ILR	International Law Reports
Inter-Am CHR	Inter-American Court of Human Rights
JDI	<i>Journal de Droit International</i>
Lieber Code	General Orders No. 100, 'Instructions for the Government of Armies of the United States in the Field' (1863), found in Hartigan, <i>Lieber's Code</i> , at 45–71
LNOJ	<i>League of Nations Official Journal</i>
LNTS	<i>League of Nations Treaty Series</i>
Moo NS	Edmund F. Moore, Reports of Cases of the Judicial Committee and the Lords of Privy Council, New Series (UK)
Op A-G	Opinions of the Attorneys-General (USA)
Parl Papers	Parliamentary Papers (UK)

Cambridge University Press
0521662052 - War and the Law of Nations: A General History
Stephen C. Neff
Frontmatter
[More information](#)

xii

LIST OF ABBREVIATIONS

PCIJ	Permanent Court of International Justice
RAI	<i>Recueil des arbitrages internationaux</i>
RDILC	<i>Revue de Droit International et de Législation Comparée</i>
Res and Dec	Resolutions and Decisions (UN)
RGDIP	<i>Revue Général de Droit International Public</i>
RIAA	Reports of International Arbitral Awards
SCOR	Security Council Official Records (UN)
Stat	Statutes at Large (USA)
UNTS	<i>United Nations Treaty Series</i>
US	United States Supreme Court Reports (USA)