War, Aggression and Self-Defence

Yoram Dinstein

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Contents

Intro	ductio	on to the Third Edition	page xi
From the introduction to the First Edition		xii	
Tabl	Table of cases		xiv
	e of tre		xvi
		ecurity Council resolutions	xxii
	•	eneral Assembly resolutions	xxiv
		•	
List	oj abb	reviations	XXV
Par	tI T	he legal nature of war	1
1.	Wha	t is war?	3
	A.	The definition of war	3
		(a) The numerous meanings of war	3
		(b) An analysis of Oppenheim's definition of war	4
		i. Inter-State and intra-State wars	5
		ii. War in the technical and in the material sense	9
		iii. Total wars, limited wars and incidents short of war	10
		iv. War as an asymmetrical phenomenon	13
		(c) A proposed definition of war	14
	В.		15
		(a) Peacetime status mixtus	16
		(b) Wartime status mixtus	17
	C.	The region of war	19
		(a) The territories of the parties to the conflict	19
		(b) The high seas and the exclusive economic zone	21
	_	(c) Outer space	23
	D.		23
		(a) The basic principles	23
		(b) Some concrete rules	24
		i. Passage of belligerent military units and war materials	24
		ii. Enrolment in belligerent armed forces	25
		iii. Military supplies to belligerents	26
2.	The	course of war	29
	A.	The beginning of war	29
		(a) War in the technical sense	29

V1	Contents

		(b) War in the material sense	32
	В.	The termination of war	33
		(a) Treaties of peace	33
		 The significance of a treaty of peace 	33
		ii. Peace preliminaries	36
		iii. The legal validity of a treaty of peace	37
		(b) Armistice agreements	39
		(c) Other modes of terminating war	44
		i. Implied mutual consent	44
		ii. Debellatio	45
		iii. Unilateral declaration	46
	C.	r	47
		(a) Different types of suspension of hostilities	47
		i. Local cease-fire agreement	48
		ii. General cease-fire agreement	49
		iii. Cease-fire ordered by the Security Council	49
		(b) The nature of cease-fire(c) Denunciation and breach of cease-fire	51 53
		(c) Definition and ofeach of cease-inc	99
Dow	. TT '	Γhe illegality of war	57
rarı			51
3.	A his	storical perspective of the legal status of war	59
	A.	The 'just war' doctrine in the past	59
		(a) The Roman origins	59
		(b) Christian theology	60
		(c) The 'fathers' of international law	61
	В.	Recent concepts of 'just war'	63
		(a) Kelsen's theory	63
		(b) 'Wars of national liberation'	64
	0	(c) 'Humanitarian intervention'	66
		The extra-legality of war	69
	D. Е.	The legality of war Exceptions to the general liberty to go to war	71 73
	Ľ.	(a) Special arrangements	73
		(b) The Hague Conventions	74
		(c) The Covenant of the League of Nations	75
4.	The	contemporary prohibition of the use of inter-State force	78
	A.		78
	B.	The Charter of the United Nations	80
		(a) The prohibition of the use of inter-State force	80
		(b) Attempts to limit the scope of the prohibition	83
	C.	Customary international law	86
		(a) The general prohibition of the use of inter-State force	86
		(b) The relationship between customary and conventional law	90
	D.	Treaties other than the Pact and the Charter	91
	E.	The prohibition of the use of inter-State force as <i>jus cogens</i>	93
		(a) The significance of <i>jus cogens</i>	93
		(b) How can jus cogens be modified?	96

	C	ontents	vi
	F.	State responsibility	98
		(a) Application of general rules of State responsibility	98
		(b) State responsibility for international crimes	102
5.	The	criminality of war of aggression	106
	A.	War of aggression as a crime against peace	106
	B.	The definition of aggression	114
	C.	Individual responsibility for crimes against peace	120
		(a) The scope of the crimes	120
		i. Ratione materiae	120
		ii. Ratione personae	121
		iii. Ratione temporis	123
		(b) Mens rea	124
		i. Mistake of fact	126
		ii. Mistake of law	126
		iii. Duress	127
		iv. Insanity	128
		(c) Inadmissible defence pleas	128
		Obedience to national law Dedience to superior orders	128
		Obedience to superior orders iii. Acts of State	129 132
		(d) The penal proceedings	132
		(a) The penal proceedings	133
6	Cont	roversial consequences of the change in the legal	
	statu	s of war	135
		War in the technical sense	136
		Inconclusive 'police action'	137
		Equal application of the jus in bello	140
		(a) Self-defence	140
		(b) Collective security	146
	D.	Impartial neutrality	147
	E.	Territorial changes	151
		Exceptions to the prohibition of the use of the force	157
11116	er-Sta	te force	157
7	The	concept of self-defence	159
	A.	The right of self-defence	159
		(a) The meaning of self-defence	159
		(b) Self-defence as a right	161
		(c) Self-defence as an 'inherent' right	163
	В.	Self-defence as a response to an armed attack	165
		(a) Armed attack and preventive war	165
		(b) The scope of an armed attack	169
		i. The beginning of an armed attack	169
		ii. A small-scale armed attack	173
		iii. The locale of an armed attack	176
		iv. The target of an armed attack	179
		v. Support of armed bands and terrorists	181

	_
V111	Contents

		Conditions precedent to the exercise of self-defence	183
	D.	The role of the Security Council	185
		(a) The two phases rule	185
		(b) The options before the Security Council	187
		(c) Failure to report to the Security Council	189
8	The 1	modality of individual self-defence	192
	A.	Self-defence in response to an armed attack by a State	192
		(a) Measures short of war	192
		i. On-the-spot reaction	192
		ii. Defensive armed reprisals	194
		iii. The protection of nationals abroad	203
		(b) War	207
		i. Necessity	207
		ii. Proportionality	208
	ъ	iii. Immediacy	212
	В.	Self-defence in response to an armed attack from a State (a) Extra-territorial law enforcement	213 213
		(b) The practice of States	213
		(c) Webster's formula	219
9.	Coll	ective self-defence	222
٠.	A.	The meaning of collective self-defence	222
	В.	Collective self-defence treaties	226
		(a) Mutual assistance treaties	227
		(b) Military alliances	230
		(c) Treaties of guarantee	233
	C.	The legal limitations of collective self-defence	236
		(a) The primacy of the UN Charter	236
		(b) The requirement of an armed attack	237
		(c) Other conditions for the exercise of collective self-defence	239
	D.	· · · · · · · · · · · · · · · · · · ·	240
	E.	The Gulf War and collective self-defence	242
10.	Coll	ective security	246
	A.	The meaning of collective security	246
	В.	The decision-making process	253
		(a) The duties incumbent on UN Member States	253
		(b) The responsibility of the Security Council	255
	C.	,	256
		(a) The 'Cold War' era	256
		(b) The Gulf War	258
	D.	(c) The years since the outbreak of the Gulf War	261 263
	D.	The mechanism of employing collective force (a) Article 42 and the absence of special agreements	263
		(b) Peacekeeping forces	266
		(c) Enforcement action beyond the purview of Article 42	268
	E.	Is there an alternative to the Security Council?	273
		(a) The General Assembly	273

Contents		ix
(b)	The International Court of Justice i. Concurrent or consecutive competence of the Council	276
	and the Court	276
	ii. Can the Court invalidate binding decisions adopted by the Council?	279
Conclusion		283
Index of persons		285
Index of subjects	3	292

Table of cases

Administrative Decision No. II, 100

Alabama Claims, 28

Armstrong Cork Company Case, 69

Barcelona Traction Case (Case Concerning the Barcelona Traction, Light and Power Company, Limited), 103, 224

Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter), 266, 275

Chorzów Factory Case (Case Concerning the Factory at Chorzów) (Claim for Indemnity) (Merits), 98

Christiansen, Re, 144

Corfu Channel Case (Merits), 193-4, 214-15

Dalmia Cement Ltd v. National Bank of Pakistan, 18, 31

Delalic Case (Prosecutor v. Delalic et al.), 8

Dette Publique Ottoman, Affaire de la, 152

East Timor Case, 155

Erdemovic Case (Prosecutor v. Erdemovic), 131

Farben, I. G., Case (USA v. Krauch et al.), 122

Fisheries Jurisdiction Case (Jurisdiction of the Court), 37

Genocide Case (Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide), 282

High Command Case (USA v. Von Leeb et al.), 122-3, 125, 128-9

Hostage Case (USA v. List et al.), 144

Justice Case (USA v. Altstoetter et al.), 143-4

Legality of the Threat or Use of Nuclear Weapons, 16, 81, 144–7, 159, 166, 179, 183, 202, 209–10

Lockerbie Case (Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie), 277, 279–81

Mergé Case, 44

Ministries Case (USA v. Von Weizsaecker et al.), 110, 162

Namibia Case (Legal Consequences for States of the Continued Pres-

Table of cases xv

ence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276), 254, 256

Naulilaa Case, 197–8

Nicaragua Case (Case Concerning Military and Paramilitary Activities in and against Nicaragua):

Jurisdiction, 186, 276, 278

Merits, 5–6, 65–8, 82–4, 87–91, 93–4, 99, 115–16, 120, 165–8, 174–8, 181–90, 193–5, 198, 202, 210, 224, 226, 237–41, 250, 276–7

Order, 99

Nissan Case (Attorney-General v. Nissan), 268

North Sea Continental Shelf Cases, 87

Nuremberg Trial (International Military Tribunal), 107–10, 112–13, 121–2, 125–6, 128–30, 132–3, 140, 143, 150, 155, 173, 185–6, 219

Pinochet Case (Regina v. Bartle et al., ex parte Pinochet), 133

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 68

RuSHA Case (USA v. Greifelt et al.), 152

Tadic Case (Prosecutor v. Tadic), 8, 183, 251

Tehran Case (Case Concerning United States Diplomatic and Consular Staff in Tehran), 177, 187, 214

Tokyo Trial (International Military Tribunal for the Far East) (*In re* Hirota and Others), 109, 122, 133, 164, 186

Ulysses Case (Navios Corporation v. The Ulysses II et al.), 31 Zuhlke, In re, 144

Table of treaties

1648 Peace of Westphalia, 33

1871	Great Britain–United States, Washington Treaty for the
	Amicable Settlement of All Causes of Difference between the
	Two Countries, 28
1878	Honduras-Nicaragua, Tegucigalpa Treaty of Friendship,
	Commerce and Extradition, 73
1888	Constantinople Convention Respecting the Free Navigation of
	the Suez Maritime Canal, 19
1899	Hague Convention (I) for the Pacific Settlement of
	International Disputes, 74
1899	Hague Convention (II) Respecting the Laws and Customs of
	War on Land (and Annexed Regulations), 10, 39, 43, 47–8,
	53–4
1901	Great Britain-United States, Treaty to Facilitate the
	Construction of a Ship Canal (Hay-Pauncefote Treaty), 20
1907	Hague Convention (I) for the Pacific Settlement of
	International Disputes, 74
1907	Hague Convention (II) Respecting the Limitation of the
	Employment of Force for the Recovery of Contract Debts
	(Porter Treaty), 74–5
1907	Hague Convention (III) Relative to the Opening of Hostilities,
	29–32, 46
1907	Hague Convention (IV) Respecting the Laws and Customs of
	War on Land (and Annexed Regulations), 10, 16, 39, 43, 47–8
	53–4, 99, 108
1907	Hague Convention (V) Respecting the Rights and Duties of
	Neutral Powers and Persons in Case of War on Land, 25–6
1907	Hague Convention (XIII) Concerning the Rights and Duties of
	Neutral Powers in Naval War, 25–6, 28
1913	Guatemala-United States, Washington Treaty for the
xvi	

Table of treaties xvii

	Table of freaties xvii
	Establishment of a Permanent Commission of Enquiry, 74
1918	Conditions of an Armistice with Germany, 40
1919	Covenant of the League of Nations, 33, 75–7, 107–8, 246–7,
	249
1919	Neuilly Treaty of Peace with Bulgaria, 100
1919	St Germain Treaty of Peace with Austria, 100
1919	Versailles Treaty of Peace with Germany, 33, 36, 99–101, 106,
1920	233 Trianon Treaty of Peace with Hungary, 100
	•
1921	Geneva Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands, 20
1924	Geneva Protocol on the Pacific Settlement of International
	Disputes (unratified), 77, 107–8
1925	France-Czechoslovakia, Locarno Treaty of Mutual Guarantee,
	232
1925	France-Poland, Locarno Treaty of Mutual Guarantee, 232
1925	Locarno Treaty of Mutual Guarantee, 73, 235
1926	Persia-Turkey, Teheran Treaty of Friendship and Security, 73
1928	General Treaty for Renunciation of War as an Instrument of
	National Policy (Kellogg–Briand Pact of Paris), 77–80, 90–1,
	93, 108–9, 135, 150–1, 163, 186, 226
1932	Finland-USSR, Helsinki Treaty of Non-Aggression and Pacific
	Settlement of Disputes, 93
1933	London Conventions for the Definition of Aggression, 116
1933	Rio de Janeiro Anti-War Treaty (Non-Aggression and
	Conciliation) (Saavedra Lamas Treaty), 92, 154
1939	Great Britain-Poland, London Agreement of Mutual
	Assistance, 228
1940	United Kingdom–United States, Exchange of Notes, 150
1940	Great Britain-USSR, Moscow Agreement Providing for Joint
	Action between the Two Countries in the War against
	Germany, 223
1942	Great Britain-USSR, London Treaty for an Alliance in the War
	against Hitlerite Germany and Her Associates in Europe, and
	Providing also for Collaboration and Mutual Assistance
	Thereafter, 223
1943	Conditions of an Armistice with Italy, 40–1
1944	Armistice Agreement with Rumania, 40–1
1945	Armistice Agreement with Hungary, 40–1
1945	Charter of the International Military Tribunal (Annexed to the

London Agreement for the Establishment of an International Military Tribunal), 107, 109, 112–14, 120–2, 124, 129–33

xviii Table of treaties

```
1945
        Charter of the United Nations, 37–8, 63, 65–8, 80–7, 90–5,
        97-8, 115-17, 119-20, 137-8, 141, 143, 147, 150, 161, 165,
        167-8, 175, 186, 189-90, 199, 201, 203, 206, 210, 219, 223,
        225-6, 229, 232, 236-7, 243-4, 247-51, 253-5, 264, 266,
        270-7, 279-82, 284
          Article 1(1), 82, 166
          Article 1(2), 152
          Article 2(3), 82
          Article 2(4), 80–9, 91–3, 98, 114, 116, 161, 165, 173–4,
             178, 207, 252
          Article 2(5), 148
          Article 2(6), 86
          Article 2(7), 253
          Article 10, 118
          Article 11, 118
          Article 23, 255
          Article 24, 247
          Article 25, 49, 254, 280, 282
          Article 27, 255-6
          Article 39, 83, 166, 247–8, 250–3, 255, 257–8, 269, 281,
            284
          Article 40, 41, 253, 257–8
          Article 41, 81, 247–9, 258–9, 281
          Article 42, 137–8, 247–8, 250, 259–60, 263–4, 268–9, 281, 284
          Article 43, 263–5, 268
          Article 44, 265
          Article 45, 265
          Article 46, 81, 265
          Article 47, 265
          Article 48, 49, 254–5
          Article 49, 254
          Article 50, 249
          Article 51, 83, 91–2, 159, 161, 163, 165–9, 172, 174–6, 183,
             186-95, 198-9, 201, 207, 216, 222-3, 225-6, 229,
            239-40, 243-4, 247, 250, 257, 259-60, 284
          Article 52, 226–7, 269
          Article 53, 83, 166, 269–72
          Article 54, 240, 269
          Article 55, 152
          Article 61, 255
          Article 94, 83
          Article 103, 236–7, 280, 282
```

Table of treaties xix

Article 106, 264–5
Article 107, 83
Article 108, 97
Chapter I, 92
Chapter IV, 274
Chapter VII, 49, 92, 115, 247, 252–6, 258–61, 263, 270,
275–6, 279–81
Chapter VIII, 269–70
Preamble, 82
Statute of the International Court of Justice (Annexed to the
Charter of the United Nations), 87
Paris Treaty of Peace with Bulgaria, 33
Paris Treaty of Peace with Finland, 33
Paris Treaty of Peace with Hungary, 33
Paris Treaty of Peace with Italy, 33, 40–1, 99
Paris Treaty of Peace with Roumania, 33
Rio de Janeiro Inter-American Treaty of Reciprocal Assistance,
92, 229–30, 232
Bogota Charter of the Organization of American States, 154
Convention on the Prevention and Punishment of the Crime of
Genocide, 67–8
Geneva Convention (I) for the Amelioration of the Condition
of the Wounded and Sick in Armed Forces in the Field, 5, 10,
16, 18, 48, 110, 143, 146, 195–6
Geneva Convention (II) for the Amelioration of the Condition
of Wounded, Sick and Shipwrecked Members of Armed Forces
at Sea, 5, 10, 16, 18, 110, 143, 146, 195–6
Geneva Convention (III) Relative to the Treatment of
Prisoners of War, 5, 10, 16, 18, 110, 143, 146, 195–6
Geneva Convention (IV) Relative to the Protection of Civilians
in Time of War, 5, 10, 16, 18, 110, 143, 146, 195–6
Israel–Egypt, General Armistice Agreement, 41–3
Israel–Jordan, General Armistice Agreement, 41–3
Israel–Lebanon, General Armistice Agreement, 41–3
Israel–Syria, General Armistice Agreement, 41–3
North Atlantic Treaty, 231–3, 237
San Francisco Treaty of Peace with Japan, 33
Panmunjom Agreement Concerning a Military Armistice in
Korea, 41, 43, 138
United States-Republic of Korea, Washington Treaty, 227
Greece-Turkey-Yugoslavia, Bled Treaty of Alliance, Political

Co-operation and Mutual Assistance, 93, 231

XX	Table of treaties
1954	Hague Convention for the Protection of Cult

- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 195–6
- 1955 Warsaw Treaty of Friendship, Co-operation and Mutual Assistance, 232, 235
- 1956 USSR-Japan, Joint Declaration, 33-4
- 1958 Geneva Convention on the High Seas, 216
- 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, 178
- 1959 Washington Antarctic Treaty, 21–3
- 1960 Greece-Turkey-Cyprus, Nicosia Treaty of Alliance, 236
- 1960 Nicosia Treaty of Guarantee, 235–6
- 1966 India-Pakistan, Tashkent Declaration, 93
- 1966 International Covenant on Civil and Political Rights, 118, 152–3
- 1966 International Covenant on Economic, Social and Cultural Rights, 152–3
- 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 23
- 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 124
- 1969 Vienna Convention on the Law of Treaties, 37–9, 54–5, 86, 90, 93–5, 97, 196, 237
- Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 280
- 1973 Egypt–Israel, Cease-Fire Agreement, 53
- 1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, 124
- 1974 Syria-Israel, Agreement on Disengagement between Forces, 53
- 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 10, 16, 20, 26, 31, 45, 99, 143, 152, 196–7
- 1977 Protocol Additional to the Geneva Conventions of 12 August
 1949, and Relating to the Protection of Victims of
 Non-International Armed Conflicts (Protocol II), 5, 110
- 1977 United States–Panama, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (and Annexed Protocol), 20
- 1978 Egypt–Israel, Camp David Agreements (A Framework for Peace in the Middle East and Framework for the Conclusion of a Peace Treaty between Egypt and Israel), 37

Table of treaties xxi

1979	Agreement Governing the Activities of States on the Moon and
	Other Celestial Bodies, 23
1979	Egypt–Israel, Treaty of Peace, 34–7, 53, 93, 137, 268
1979	International Convention against the Taking of Hostages, 206
1981	Egypt-Israel, Protocol Establishing the Sinai Multinational
	Force and Observers, 268
1982	United Nations Convention on the Law of the Sea, 22–3, 92,
	178–9, 216
1983	Lebanon–Israel, Treaty of Peace (unratified), 35
1988	Agreement on the Interrelationships for the Settlement of the
	Situation Relating to Afghanistan, 234–5
1988	Afghanistan-Pakistan, Agreement on the Principles of Mutual
	Relations, in Particular on Non-Interference and
	Non-Intervention, 93, 234
1988	USA-USSR, Declaration on International Guarantees, 234
1988	Wellington Convention on the Regulation of Antarctic Mineral
	Resource Activities, 21
1990	Charter of Paris for a New Europe, 93
1990	Treaty on the Final Settlement with Respect to Germany, 33
1993	United Nations Convention on the Prohibition of the
	Development, Production, Stockpiling and Use of Chemical
	Weapons and on Their Destruction, 17
1994	Jordan-Israel, Treaty of Peace, 34-5, 53, 93
1994	Jordan-Israel, Washington Declaration, 35
1995	General Framework Agreement for Peace in Bosnia and
	Herzegovina, 233, 271
1998	Rome Statute of the International Criminal Court, 5, 111–12.

The Netherlands-United Kingdom, Agreement Concerning a

114, 124–8, 130, 132–4

Scottish Trial in The Netherlands, 281

1998

Table of Security Council resolutions

```
49 (1948), 48
                                   598 (1987), 50, 187, 211, 257
 50 (1948), 48, 51
                                   660 (1990), 149, 242, 248, 260
 53 (1948), 48
                                   661 (1990), 149, 242, 244, 259–60
 54 (1948), 48–9, 258
                                   662 (1990), 84
 56 (1948), 48
                                   665 (1990), 242, 259, 265
 59 (1948), 48
                                   669 (1990), 249
 61 (1948), 48
                                   670 (1990), 259
 62 (1948), 48
                                   674 (1990), 101
 82 (1950), 137, 257
                                   678 (1990), 30, 149, 211, 242, 245,
 83 (1950), 137, 257
                                     260
 84 (1950), 138, 257
                                   686 (1991), 242
                                   687 (1991), 50, 101, 212, 242, 260,
 95 (1951), 43
161 (1961), 258
                                     267
188 (1964), 201
                                   688 (1991), 7, 260
199 (1964), 269
                                   689 (1991), 101, 267
217 (1965), 269
                                   692 (1991), 101
232 (1966), 258
                                   713 (1991), 262
233 (1967), 50, 53
                                   731 (1992), 279–80
234 (1967), 50, 53
                                   733 (1992), 261–2
235 (1967), 51, 53
                                   748 (1992), 149, 249, 261–2,
241 (1967), 214
                                     279-80
270 (1969), 201
                                   757 (1992), 149, 261–2
338 (1973), 53
                                   781 (1992), 262
353 (1974), 258
                                   787 (1992), 262
386 (1976), 249
                                   788 (1992), 261–2, 273
418 (1977), 258
                                   794 (1992), 262
502 (1982), 257
                                   807 (1993), 261
505 (1982), 49
                                   808 (1993), 110
508 (1982), 187
                                   816 (1993), 263, 270
509 (1982), 187
                                   827 (1993), 110
514 (1982), 50
                                   836 (1993), 267, 270
546 (1984), 257
                                   837 (1993), 267
```

841 (1993), 252, 261–2	1125 (1997), 261
883 (1993), 280	1127 (1997), 253, 261–2
917 (1994), 149	1132 (1997), 261–2, 273
918 (1994), 261–2	1160 (1998), 262
929 (1994), 263	1192 (1998), 281
940 (1994), 252, 263	1199 (1998), 261, 271
942 (1994), 262	1203 (1998), 271
955 (1994), 110	1227 (1999), 252
1035 (1995), 271	1244 (1999), 272
1054 (1996), 261	1264 (1999), 261, 263
1070 (1996), 262	1267 (1999), 261–2
1088 (1996), 271	1270 (1999), 273
1101 (1997), 261	1289 (2000), 266
	1298 (2000), 252, 261–2

Table of General Assembly resolutions

```
95 (I) (1946), 112
177 (II) (1947), 112
377 (V) (1950), 274, 276
2625 (XXV) (1970), 42, 65, 113, 152, 154, 181, 202
2793 (XXVI) (1971), 51
3314 (XXIX) (1974), 65, 113–20, 125, 153, 166, 170–1, 174, 176, 180–2
42/22 (1987), 89
```

1

A. The definition of war

(a) The numerous meanings of war

The phrase 'war' lends itself to manifold uses. It is necessary, at the outset, to differentiate between 'war' as a figure of speech heightening the effect of an oral argument or a news story in the media, and 'war' as a legal term of art. In ordinary conversation, press reports or even literary publications, 'war' may appear to be a flexible expression suitable for an allusion to any serious strife, struggle or campaign. Thus, references are frequently made to 'war against the traffic in narcotic drugs', 'class war' or 'war of nerves'. This is a matter of poetic licence. But in legal parlance, the term 'war' is invested with a special meaning.

In pursuing that meaning, a distinction must be drawn between what war signifies in the domestic law of this or that State and what it denotes in international law. War, especially a lengthy one, is likely to have a tremendous impact on the internal legal systems of the belligerents. A decision as to whether war has commenced at all, is going on or has ended, produces far-ranging repercussions in many branches of private law, exemplified by frustration of contracts or liability for insurance coverage. Similarly, multiple relevant issues arise in public law, such as constitutional 'war powers' (i.e. identification of the branch of Government juridically competent to steer the nation to war); the authority to requisition enemy property; tax exemptions allowed to those engaged in military service in wartime; and criminal prosecutions for violations of wartime regulations. In consequence, domestic judicial decisions pertaining to war are legion. All the same, one must not rush to adduce them as precedents on the international plane. If a municipal tribunal merely

¹ See Lord McNair and A. D. Watts, *The Legal Effects of War* 156 ff, 259 ff (4th ed., 1966).

² See e.g. D. L. Westerfield, War Powers: The President, the Congress, and the Question of War, passim (1996).

³ See W. L. Roberts, 'Litigation Involving "Termination of War", 43 Ken.L.J. 195, 209 (1954–5).

4 The legal nature of war

construes the term 'war' in the context of the legal system within which it operates, the outcome may not be germane to international law. Even should a judgment rendered by a national court of last resort purport to set out the gist of war in international law, this need not be regarded as conclusive (except within the ambit of the domestic legal system concerned).

Occasionally, internal courts – dealing, for instance, with insurance litigation – address the question of whether war is in progress not from the perspective of the legal system (national or international) as a whole, but simply in order to ascertain what the parties to a specific transaction had in mind.⁴ When insurance policies exclude or reduce the liability of the insurer if death results from war, the parties are free to give the term 'war' whatever definition they desire.⁵ The definition may be arbitrary and incompatible with international law. Nevertheless, there is no reason why it ought not to govern the contractual relations between the parties.

At times, the parties mistakenly believe that a wrong definition actually comports with international law. If a domestic court applies that definition, one must be exceedingly careful in the interpretation of the court's judgment. The dilemma is whether the contours of war, as traced by the court, represent its considered (albeit misconceived) opinion of the substance of international law, or merely reflect the intent of the parties.

When we get to international law, we find that there is no binding definition of war stamped with the *imprimatur* of a multilateral convention in force. What we have is quite a few scholarly attempts to depict the practice of States and to articulate, in a few choice words, an immensely complex idea. Instead of seeking to compare multitudinous definitions, all abounding with variable pitfalls, it may be useful to take as a point of departure one prominent effort to encapsulate the essence of war. This is the often-quoted definition, which appears in L. Oppenheim's treatise on *International Law*:

War is a contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases.⁶

(b) An analysis of Oppenheim's definition of war

There are four major constituent elements in Oppenheim's view of war: (i) there has to be a contention between at least two States; (ii) the use of the armed forces of those States is required; (iii) the purpose must be

⁴ Cf. L. Breckenridge, 'War Risks', 16 H.I.L.J. 440, 455 (1975).

⁵ See R. W. Young, 'Note', 42 Mich.L.R. 884, 890 (1953-4).

⁶ L. Oppenheim, International Law, II, 202 (H. Lauterpacht ed., 7th ed., 1952).

overpowering the enemy (as well as the imposition of peace on the victor's terms); and it may be implied, particularly from the words 'each other', that (iv) both parties are expected to have symmetrical, although diametrically opposed, goals.

It is proposed to examine in turn each of these characteristic features of war. However, it must be borne in mind that when references are made to the prerequisites of war, no attempt is made – as yet – to come to grips with the central issue of the *jus ad bellum*, namely, the legality of war. Questions of legality will be raised in subsequent chapters of this study. In the meantime, the only question asked is what conditions have to be fulfilled for a particular course of action to be properly designated 'war'.

i. Inter-State and intra-State wars Of the four ingredients in Oppenheim's definition of war, only the first can be accepted with no demur. 'One element seems common to all definitions of war. In all definitions it is clearly affirmed that war is a contest between states.'

Some qualifying words should nevertheless be appended. International law recognizes two disparate types of war: inter-State wars (waged between two or more States) and intra-State wars (civil wars conducted between two or more parties within a single State). Traditionally, civil wars have been regulated by international law only to a limited extent. More recently, in view of the frequent incidence and ferocity of internal armed conflicts, the volume of international legal norms apposite to them has been constantly expanding. Still, many of the rules applicable to and in an intra-State strife are fundamentally different from those relating to an inter-State war. Hence, Oppenheim was entirely right in excluding civil wars from his definition. In the present study, inter-State armed conflicts will constitute the sole object of our inquiry.

- ⁷ C. Eagleton, 'An Attempt to Define War', 291 Int. Con. 237, 281 (1933).
- See common Article 3 to the four Geneva Conventions of 1949 for the Protection of War Victims: Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N. T.S. 31, 32–4; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, ibid., 85, 86–8; Geneva Convention (III) Relative to the Treatment of Prisoners of War, ibid., 135, 136–8; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, ibid., 287, 288–90. The International Court of Justice held that this common article expresses general international law: Case Concerning Military and Paramilitary Activities in and against Nicaragua (Merits), [1986] I.C.J. Rep. 14, 114. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, [1977] U.N.J.Y. 135.
- ⁹ The growth of this body of law is highlighted in the 1998 Rome Statute of the International Criminal Court, which in Article 8 enumerates a long list of war crimes committed in internal armed conflicts: 37 *I.L.M.* 999, 1006–9 (1998).
- ¹⁰ See J. Pictet, Development and Principles of International Humanitarian Law 47-8 (1985).

6 The legal nature of war

It is immaterial whether each belligerent party recognizes the adversary's statehood. War may actually be the device through which one challenges the sovereignty of the other. As long as both satisfy objective criteria of statehood under international law,11 any war between them should be characterized as inter-State. Even so, the States involved in an inter-State war must be aligned on opposing sides. If a civil war is raging in Ruritania, and Atlantica assists the legitimate Government of Ruritania (legitimate, that is, in the eyes of the domestic constitutional law) in combating those who rise in revolt against the central authority, 12 the domestic upheaval does not turn into an inter-State war. In such a case, two States (Ruritania and Atlantica) are entangled in military operations, but since they stand together against rebels, the internal nature of the conflict is retained intact. By contrast, if Atlantica joins forces with the insurgents, supporting them against the incumbent Government of Ruritania, this is no longer just a civil war. Still, the changing nature of the war does not necessarily affect every single military encounter. The joint war may have separate international and internal strands, inasmuch as specific hostilities may be waged exclusively between two (or more) States, whereas other combat may take place solely between a single State and those who rebel against it.13 As the International Court of Justice enunciated in the Nicaragua case of 1986:

The conflict between the *contras*' forces and those of the Government of Nicaragua is an armed conflict which is 'not of an international character'. The acts of the *contras* towards the Nicaraguan Government are therefore governed by the law applicable to conflicts of that character; whereas the actions of the United States in and against Nicaragua fall under the legal rules relating to international conflicts.¹⁴

Moreover, a country may simultaneously be engaged in both a civil war and an inter-State war, without any built-in linkage between the external and internal foes, although it is only natural for the two disconnected armed conflicts to blend in time into a single war. Thus, at the opening stage of the Gulf War, there was no nexus between the international

¹¹ For these criteria, see J. Crawford, *The Creation of States in International Law* 36 ff (1979).

According to Article 2 of the 1975 Resolution of the Institut de Droit International on 'The Principle of Non-Intervention in Civil Wars', it is prohibited to extend foreign assistance to any party in a civil war: 56 A.I.D.I. 545, 547 (Wiesbaden, 1975). Under traditional international law, however, such aid is forbidden only if rendered to the rebels (as distinct from the legitimate Government). See J. W. Garner, 'Questions of International Law in the Spanish Civil War', 31 A.J.I.L. 66, 67–9 (1937). For an analysis of the modern practice of States, see L. Doswald-Beck, 'The Legal Validity of Military Intervention by Invitation of the Government', 56 B.Y.B.I.L. 189–252 (1985).

¹³ See C. Greenwood, 'The Development of International Humanitarian Law by the International Criminal Tribunal for the Former Yugoslavia', 2 M.P.Y.U.N.L. 97, 118–20 (1998).
¹⁴ Nicaragua case, supra note 8, at 114.

coalition that came to the aid of Kuwait and Kurdish or Shiite rebels against the Baghdad regime. Eventually, Iraqi repression of the civilian population drove the Security Council to determine the existence of a threat to international peace and security in the region. The outcome was that American and other troops entered the north of Iraq, creating a secure enclave for the Kurds. At a later stage, an air exclusion ('no-fly') zone was imposed over the south of the country, in order to protect the Shiite centres of population.

Admittedly, in practice, the dividing line between inter-State and intra-State wars cannot always be delineated with a few easy strokes. First, Ruritania may plunge into chaotic turmoil, with several claimants to constitutional legitimacy or none at all ('failed State' is a locution occasionally used). Should Atlantica contemplate intervention at the request of one of the feuding parties, it may be incapable of identifying any remnants of the legitimate Ruritanian Government and determining who has rebelled against whom.¹6 Moreover, if the internal strife in Ruritania culminates in the emergence of a new State of Numidia on a portion of the territory of Ruritania, and the central Government of Ruritania contests the secession, the conflict may be considered by Ruritania to be internal while Numidia (and perhaps the rest of the international community) would look upon it as an inter-State war. Objectively considered, there may be a transition from a civil war to an inter-State war which is hard to pinpoint in time.

Such a transition may be relatively easy to spot if and when foreign States join the fray. Thus, Israel's War of Independence started on 30 November 1947 as a civil war between the Arab and Jewish populations of the British Mandate in Palestine.¹⁷ But on 15 May 1948, upon the declaration of Israel's independence and its invasion by the armies of five sovereign Arab countries, the war became inter-State in character.¹⁸

The disintegration of Yugoslavia exposed to light a more complex situation in which a civil war between diverse ethnic, religious and linguistic groups inside the territory of a single country was converted into an inter-State war once a fragmentation into several sovereign States had been effected. The armed conflict in Bosnia may serve as an object lesson. As long as Bosnia constituted an integral part of Yugoslavia, any hostilities raging there among Serbs, Croats and Bosnians clearly amounted to a civil war. However, when Bosnia-Herzegovina emerged from the

¹⁵ Security Council Resolution 688 (1991), 47 R.D.S.C. 31, 32.

¹º See R. R. Baxter, 'Ius in Bello Interno: The Present and Future Law', Law and Civil War in the Modern World 518, 525 (J. N. Moore ed., 1974).

For the facts, see N. Lorch, The Edge of the Sword: Israel's War of Independence 1947–1949
 46 ff (2nd ed., 1968).
 For the facts, see ibid., 166 ff.

political ruins of Yugoslavia as an independent country, the conflict transmuted into an inter-State war by dint of the cross-border involvement of Serbian (former Yugoslav) armed forces in military operations conducted by Bosnian Serbs rebelling against the Bosnian Government (in an effort to wrest control over large tracts of Bosnian land and merge them into a Greater Serbia). This was the legal position despite the fact that, from the outlook of the participants in the actual combat, very little seemed to have changed. The juridical distinction is embedded in the realignment of sovereignties in the Balkans and the substitution of old administrative boundaries by new international frontiers.

In 1997, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (the ICTY) held in the Tadic case that from the beginning of 1992 until May of the same year a state of international armed conflict existed in Bosnia between the forces of the Republic of Bosnia-Herzegovina, on the one hand, and those of the Federal Republic of Yugoslavia (Serbia-Montenegro), on the other. 19 Yet, the majority of the Chamber (Judges Stephen and Vohrah) arrived at the conclusion that, as a result of the withdrawal of Yugoslav troops announced in May 1992, the conflict reverted to being non-international in nature.²⁰ The Presiding Judge (McDonald) dissented on the ground that the withdrawal was a fiction and that Yugoslavia remained in effective control of the Serb forces in Bosnia.21 The majority opinion was reversed by the ICTY Appeals Chamber in 1999.²² The original Trial Chamber's majority opinion had elicited much criticism from scholars,23 and even before the delivery of the final judgment on appeal, another Trial Chamber of the ICTY took a divergent view in the Delalic case of 1998.24 But the essence of the disagreement must be viewed as factual in nature. Legally speaking, the fundamental character of an armed conflict as international or internal can indeed metamorphose - more than once - from one stretch of time to another. Whether at any given temporal framework the war is inter-State in character, or merely a civil war, depends on the level of involvement of a foreign State in hostilities waged against the central Government of the local State.

Prosecutor v. Tadic, Judgment, ICTY Case No. IT-94-1-T, Trial Chamber, 1997, 36
 I.L.M. 908, 922 (1997).
 Ibid., 933.
 Ibid., 972-3.

²² Prosecutor v. Tadic, Judgment, ICTY Case No. IT-94-1-A, Appeals Chamber, 1999, 38 I.L.M. 1518, 1549 (1999).

²³ See e.g. T. Meron, 'Classification of Armed Conflict in the Former Yugoslavia: Nicaragua's Fallout', 92 A.J.I.L. 236–42 (1998).

²⁴ Prosecutor v. Delalic et al., Judgment, ICTY Case No. IT-96-21-T, Trial Chamber, 1998, 38 I.L.M. 56, 58 (1999).

ii. War in the technical and in the material sense The second element in Oppenheim's definition is fraught with problems. According to Oppenheim, a clash of arms between the parties to the conflict is of the essence of war. He even underlined that war is a 'contention, i.e. a violent struggle through the application of armed force'. 25 But this is not uniformly in harmony with the practice of States. Experience demonstrates that, in reality, there are two different sorts of war: there is war in the material sense, but there is also war in the technical sense.

War in the technical sense commences with a declaration of war and is terminated with a peace treaty or some other formal step indicating that the war is over (see *infra*, ch. 2, A–B). The crux of the matter is the taking of formal measures purposed to signify that war is about to break out (or has broken out) and that it has ended. *De facto*, the armed forces of the parties may not engage in fighting even once in the interval. As an illustration, not a single shot was exchanged in anger between a number of Allied States (particularly in Latin America) and Germany in either World War. Nevertheless, *de jure*, by virtue of the issuance of declarations of war, those countries were in a state of war in the technical sense.²⁶

Until a formal step is taken to bring it to a close, a state of war may produce certain legal and practical effects as regards e.g. the internment of nationals of the enemy State and the sequestration of their property, irrespective of the total absence of hostilities.²⁷ It can scarcely be denied, either in theory or in practice, that '[a] state of war may exist without active hostilities' (just as 'active hostilities may exist without a state of war', a point that will be expounded *infra* (iii)).²⁸ Oppenheim's narrow definition must be broadened to accommodate a state of war that is not combined with actual fighting.

War in the material sense unfolds regardless of any formal steps. Its occurrence is contingent only on the eruption of hostilities between the parties, even in the absence of a declaration of war. This is where Oppenheim's reference to a violent struggle is completely apposite. The decisive factor here is deeds rather than declarations. What counts is not a *de jure* state of war, but *de facto* combat. Granted, even in the course of war in the material sense, hostilities do not have to go on incessantly and they may be interspersed by periods of cease-fire (see *infra*, ch. 2, C). But there is no war in the material sense without some acts of warfare.

Warfare means the use of armed force, namely, violence. Breaking off

²⁵ Oppenheim, *supra* note 6, at 202.

²⁶ See J. Stone, Legal Controls of International Conflict: A Treatise on the Dynamics of Disputes – and War – Law 306 (2nd ed., 1959).

²⁷ See L. Kotzsch, The Concept of War in Contemporary History and International Law 248–9 (1956).
²⁸ See Q. Wright, 'When Does War Exist?', 26 A.J.I.L. 362, 363 (1932).

diplomatic relations with a State, or withdrawing recognition from it, does not suffice. An economic boycott or psychological pressure is not enough. A 'Cold War', threats to use force, or even a declaration of war (unaccompanied by acts of violence), do not warrant the conclusion that war in the material sense exists. It is indispensable that actual armed force be employed.

The setting of an intervention in support of rebels in a civil war in another country raises some perplexing questions. What degree of intervention brings about a state of war in the material sense? It appears that the mere supply of arms to the rebels (epitomized by American support of Moslem insurgents against the Soviet-backed Government in Afghanistan in the 1980s) does not qualify as an actual use of armed force (see *infra*, ch. 7, B (b), (v)). But there comes a point – for instance, when the weapons are accompanied by instructors training the rebels – at which the foreign country is deemed to be waging warfare.²⁹

The laws of warfare (constituting the nucleus of the international *jus in bello*) are brought into operation as soon as war in the material sense is embarked upon, despite the absence of a technical state of war. This principle is pronounced in Article 2 common to the 1949 Geneva Conventions for the Protection of War Victims:

[T]he present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.³⁰

Of course, if a state of war exists in the technical sense only, without any actual fighting, the issue of the application of the laws of warfare rarely emerges in practice.³¹

iii. Total wars, limited wars and incidents short of war The third component in Oppenheim's definition is that the purpose of war must be the overpowering of the enemy and the imposition of peace terms. His

²⁹ It is noteworthy that a breach of neutrality occurs when military advisers are assigned to the armed forces of one of the belligerents in an on-going inter-State war (see *infra*, D (b), (ii)).

³⁰ Geneva Conventions, supra note 8, at 32 (Geneva Convention (I)), 86 (Geneva Convention (II)), 136 (Geneva Convention (III)), 288 (Geneva Convention (IV)).

³¹ In some extreme instances, even when the state of war exists only in a technical sense, a belligerent may still be in breach of the *jus in bello*. Thus, the mere issuance of a threat to an adversary that hostilities would be conducted on the basis of a 'no quarter' policy constitutes a violation of Article 40 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, [1977] *U.N.J.Y.* 95, 110. Cf. Article 23(d) of the Regulations Respecting the Laws and Customs of War on Land (Annexed to Hague Convention (II) of 1899 and (IV) of 1907), *Hague Conventions* 100, 107, 116.

intention, no doubt, was to distinguish between a large-scale use of force (tantamount to war) and a clash of lower intensity (constituting measures short of war). Indeed, when armed units of two countries are locked in combat, the preliminary question is whether the use of force is comprehensive enough for the fighting to qualify as war.

Incidents involving the use of force, without reaching the threshold of war, occur quite often in the relations between States. Border patrols of neighbouring countries may exchange fire; naval units may torpedo vessels flying another flag; interceptor planes may shoot down aircraft belonging to another State; and so forth. The reasons for such incidents vary. They may happen accidentally or be caused by trigger-happy junior officers acting on their own initiative; they may be engendered by simmering tensions between the two countries; they may be the fallout of an open dispute revolving around control over a strategically or economically important area (such as oil lands, a major road, a ridge of mountains or a waterway); and other motives may be at play.

In large measure, the classification of a military action as either war or a closed incident (short of war) depends on the way in which the two antagonists appraise the situation. As long as both parties choose to consider what has transpired as a mere incident, and provided that the incident is rapidly closed, it is hard to gainsay that view. Once, however, one of the parties elects to engage in war, the other side is incapable of preventing that development. The country opting for war may simply issue a declaration of war, thereby commencing war in the technical sense. Additionally, the State desirous of war may escalate the use of force, so that war in the material sense will take shape.

There is a marked difference between war and peace: whereas it requires two States to conclude and to preserve peace (see *infra*, ch. 2, B (a), (i)), it takes a single State to embroil itself as well as its selected enemy in war. When comprehensive force is used by Arcadia against Utopia, war in the material sense ensues and it is irrelevant that Utopia confines itself to responding with non-comprehensive force. Utopia, remaining completely passive, may offer no resistance; nevertheless, war in the material sense can result from the measures taken by the advancing Arcadian military contingents.³² If Arcadia proceeds to 'devastate the territory of another with fire and sword', the invasion would be categorized as war in the material sense, discounting what the Utopian armed forces do or fail to do.³³ Hence, the invasion by the Iraqi army and the rapid takeover of Kuwait within a few hours on 2 August 1990 brought about war in the

³² See P. Guggenheim, 'Les Principes de Droit International Public', 80 R.C.A.D.I. 1, 171 (1952).

³³ T. Baty, 'Abuse of Terms: "Recognition": "War", 30 A.J.I.L. 377, 381, 398 (1936).

material sense. It would be erroneous to assume that the Gulf War commenced only when extensive hostilities flared up in January 1991.

Since war in the material sense is derived from deeds rather than words, third parties sometimes feel compelled to investigate the legal position on their own. This may come to pass either because the adversaries keep silent, while their field units are in constant battle, or what they say does not match what they do. 'There is . . . room for the view that the opinions entertained by the belligerents need not be given conclusive effect. War may be too important a matter to be left either to the generals or to the contending parties.'³⁴

A legal analysis of the true state of affairs, carried out objectively, hinges on a perception of the use of force as comprehensive. Force is comprehensive if it is employed (i) spatially, across sizeable tracts of land or far-flung corners of the ocean; (ii) temporally, over a prolonged period of time; (iii) quantitatively, entailing massive military operations or a high level of firepower; (iv) qualitatively, inflicting extensive destruction. Reliance on any one of the four criteria may prove adequate in certain instances, but generally only a combination of all four will paint a clear picture of the nature of the hostilities.

The use of force need not be unlimited for it to be comprehensive. Oppenheim's definition postulates what is termed nowadays a 'total' war. Many a war is unquestionably 'total' in that it is conducted with total victory in mind. Total victory consists of the capitulation of the enemy, following the overall defeat of its armed forces and/or the conquest of its territory, and if this is accomplished the victor is capable of dictating peace terms to the vanquished. When carried to extremity, a total victory may bring about the complete disintegration of the enemy State (see *infra*, ch. 2, B (c), (ii)). Thus, in unleashing the Gulf War, the Iraqi aim was to extinguish the political life of Kuwait as a sovereign State.

Yet, not every war is aimed at total victory. Oppenheim completely overlooked the feasibility of limited wars. Such wars are, in fact, of considerable frequency and import. In a limited war, the goal may be confined to the defeat of some segments of the opposing military apparatus, the conquest of certain portions of the opponent's territory, the coercion of the enemy Government to alter a given policy, etc., without striving for total victory. Now and then, it is not easy to tell a limited war (in the material sense) apart from a grave incident short of war. The difference between the two is relative: more force, employed over a longer period of time, within a larger theatre of operations, is required in a war setting as compared to a situation short of war.

³⁴ R. R. Baxter, 'The Definition of War', 16 R.E.D.I. 1, 4 (1960).

A war may be deemed 'total' not only when its goal is the complete subjugation of the enemy. A war is total also when the means, used to attain a limited objective, are total. That is to say, war may be catalogued as total when the totality of the resources (human and material) of a belligerent State is mobilized, so as to secure victory at any cost. Victory at any cost should not be confused with total victory. Surely, more often than not, a State will mobilize its full resources only when the end for which it exerts itself is total victory. But a State may conduct war \grave{a} outrance for a limited reward, like a border rectification, if the issue carries an emotional load of great weight. One must distinguish between the military war aims and the ulterior motives of war. The latter can be strategic, political, economic and even religious, ideological or cultural. War may have a hidden agenda that transcends the tangible or ostensible gains contemplated.

The counterpart of a limited war fought with unlimited means is a total war waged with less than the totality of the means available. Occasionally, a belligerent – while fighting a war that is total in terms of its objective – refrains from resorting to some destructive (conventional or unconventional) weapon systems, although they are at its disposal and their use is legally permissible. There is a broad array of causes for such self-restraint: lofty moral impulses; a concession to public opinion at home or abroad; a desire to avoid colossal losses; fear of retaliation; or purely military considerations. Either way, hostilities do not lose their legal classification as war only because some weapons remain on the shelf.

For these reasons, it is better to attenuate the rigidity of Oppenheim's definition. War need not be total to be war. At the same time, not every episodic case of use of force by States amounts to war. Only a comprehensive use of force does so. The key to the definition of war should lie in the adjective 'comprehensive'.

iv. War as an asymmetrical phenomenon The last factor in Oppenheim's definition is the implicit symmetry in the positions of the contending parties, as if both necessarily have corresponding objectives. However, the genuine war aims of one adversary are not always a mirror image of the other's. Sometimes, only the attacking State aims at total victory, whereas the other side has a more limited objective (such as driving the enemy off its territory). This is what happened in the Gulf War. Although Iraq attempted to annihilate Kuwait, the American-led coalition which came to the aid of the latter spurned exhortations to march all the way to Baghdad. Hostilities were therefore suspended (and a large international expeditionary force was dispersed) upon the liberation of Kuwait. The opposite scenario is equally conceivable. An attack-

14 The legal nature of war

ing State may desire solely to gain control over a piece of territory of a neighbouring country, but the victim can respond fiercely in an effort to crush its adversary once and for all.

This brings us to another core issue. Ordinarily, hostilities are launched with a specific intention to wage war; an *animus belligerendi*. There are those who look upon such an intention as an essential component in the definition of war.³⁵ Even if that were the case, it is clear that the intention to embark upon war 'must be openly manifested' and that it has to be 'recognizable' by all the parties concerned (i.e. not only by whoever is harbouring the intention).³⁶ When a declaration of war is issued, the intention is obvious. In the absence of such a declaration, the position may be less self-evident. When all is said and done, the intention is deduced from the fact of war, and not vice versa.

The thesis that an *animus belligerendi* is intrinsic to the definition of war is enticing but insupportable. Just as war can be imposed by Arcadia (the attacking State) on Utopia against its will, war can also develop contrary to the original Arcadian intentions. When it mounts a military incursion into Utopian territory, Arcadia may have in sight a brief armed encounter short of war. However, inasmuch as it is incapable of controlling the Utopian response, Arcadia may stumble into war. Arcadia acts 'at its peril', since the measures of force to which it resorts can be treated by Utopia as the initiation of war.³⁷ Thus, the decision whether a seminal use of force will culminate in a state of war may be taken by the target State.³⁸ Moreover, 'if acts of force are sufficiently serious and long continued', war exists 'even if both sides disclaim any animus belligerendi and refuse to admit that a state of war has arisen between them'. 39 Differently phrased, an objective inquiry (conducted, for example, by Patagonia) may prompt the conclusion that Arcadia and Utopia are in the midst of war although, from the subjective standpoint of its intentions (animus belligerendi), neither country desires war.

(c) A proposed definition of war

As the foregoing discussion should indicate, the term 'war' gives rise to more than a handful of definitional problems. No wonder that the asser-

³⁵ For a synopsis of these views, see M. S. McDougal and F. P. Feliciano, Law and Minimum World Public Order 97–9, 104–5 (1961).

³⁶ W. J. Ronan, 'English and American Courts and the Definition of War', 31 A.J.I.L. 642, 656 (1937).

³⁷ See A. D. McNair, 'The Legal Meaning of War, and the Relation of War to Reprisals', 11 *T.G.S.* 29, 38 (1925).

³⁸ See E. M. Borchard, "War" and "Peace", 27 A.J.I.L. 114, 114–15 (1933).

³⁹ See J. L. Brierly, 'International Law and Resort to Armed Force', 4 *Cam.L.J.* 308, 313 (1930–2).

tion is made that no definition, serviceable for all purposes, can be provided.⁴⁰ Still, in the context of the present study, 'war' will have the following meaning:

War is a hostile interaction between two or more States, either in a technical or in a material sense. War in the technical sense is a formal status produced by a declaration of war. War in the material sense is generated by actual use of armed force, which must be comprehensive on the part of at least one party to the conflict.

B. Status mixtus

In the past, the dominant opinion, as expressed by Grotius,⁴¹ following Cicero,⁴² was that no intermediate state exists between war and peace (inter bellum et pacem nihil est medium). But in the last century, a number of scholars have strongly advocated a reconsideration of the traditional dichotomy in light of the modern practice of States. In particular, G. Schwarzenberger called for recognition of a 'status mixtus',⁴³ and P. C. Jessup urged acceptance of a state of 'intermediacy' between war and peace.⁴⁴ Other commentators deny that the notion of an intermediate status between war and peace is consonant with contemporary international law.⁴⁵

To the degree that proponents of the *status mixtus* school of thought recognize an independent third rubric, lying outside the bounds of war and peace, and subject to the application of a different set of rules, ⁴⁶ there is nothing in the current practice of States to provide support for that view. Nor is it justified to speak loosely of a *status mixtus* in the sense of a twilight zone between war and peace. Legally speaking, there are only two states of affairs in the relations between States – war and peace – with no undistributed middle ground.

Whenever States disagree about the application or interpretation of international law, it is necessary and possible to establish first whether a state of war or of peace is in progress. But this is not to say that the concept of a *status mixtus* is without merit in international law. One must acknowledge, as an observable phenomenon, the applicability of some laws of peace in specific war situations and of some laws of war in certain

⁴⁰ See F. Grob, *The Relativity of War and Peace* 189 (1949).

⁴¹ H. Grotius, *De Jure Belli ac Pacis*, Book III, § XXI, I (1 Classics of International Law ed. (text) 592 (1913)).

⁴² Cicero, *Philippics*, § VIII, I, 4 (Loeb Classical ed. 366 (1926)).

⁴³ G. Schwarzenberger, 'Jus Pacis ac Belli?', 37 A.J.I.L. 460, 470 (1943).

P. C. Jessup, 'Intermediacy', 23 A.S.J.G. 16, 17 (1953); P. C. Jessup, 'Should International Law Recognize an Intermediate Status between Peace and War?', 48 A.J.I.L. 98, 100 (1954).
 See G. I. Tunkin, Theory of International Law 265–70 (1974).

⁴⁶ See e.g. A. N. Salpeter and J. C. Waller, 'Armed Reprisals during Intermediacy: A New Framework for Analysis in International Law', 17 Vill. L. R. 270, 271–2 (1972).

peace settings. A *status mixtus* is characterized by the simultaneous operation of the laws of war (for some purposes) and the laws of peace (for others).⁴⁷

(a) Peacetime status mixtus

In peacetime, a *status mixtus* exists when States resort to a limited use of force short of war. Because a state of peace continues to prevail, (i) most of the relations between the parties are still governed by the laws of peace, and (ii) the laws of neutrality are not activated between the antagonists and third parties. Nevertheless, the actual fighting will be regulated by the basic rules of warfare (*jus in bello*).

It is generally conceded nowadays that international humanitarian law must be implemented in the course of international armed conflicts of whatever type, and not only when a state of war is in effect. This is reflected in the very title of Protocol I of 1977, Additional to the four Geneva Conventions, which relates to the Protection of Victims of International Armed Conflicts,⁴⁸ i.e. not only wars. Common Article 2 of the 1949 Geneva Conventions for the Protection of War Victims (quoted *supra*, A (b), (ii)) prescribes that these instruments (wherein the term 'war' figures prominently) shall apply to all cases of armed conflict between contracting States, 'even if the state of war is not recognized by one of them'. It may be inferred from the last words that, if both adversaries jointly refuse to recognize the existence of a state of war, the Conventions are not operational.⁴⁹ But the correct legal position appears to be that whenever force is employed in international relations, States are obligated to carry out the norms of international humanitarian law.⁵⁰

The appellation 'international humanitarian law' for the part of the *jus in bello* that must be respected at any time inter-State force is resorted to – once deemed coterminous with the Geneva Conventions – is nowadays construed as covering also other instruments, such as Hague Convention (IV) of 1907 Respecting the Laws and Customs of War on Land (and the Regulations annexed thereto),⁵¹ as well as customary international law.⁵²

 ⁴⁷ See G. Schwarzenberger and E. D. Brown, A Manual of International Law 151 (6th ed., 1976).
 ⁴⁸ Protocol I, supra note 31, at 95.

⁴⁹ See A. P. Rubin, 'The Status of Rebels under the Geneva Conventions of 1949', 21 *I.C.L.Q.* 472, 477 (1972).

⁵⁰ See Commentary, I Geneva Convention 32 (J. S. Pictet ed., 1952).

⁵¹ Hague Convention (IV), supra note 31, at 100, 107.

The amalgamation of the two branches of law applicable in armed conflict (the 'Hague Law' and the 'Geneva Law') into 'one single complex system, known today as international humanitarian law' was noted by the International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, [1996] I.C.J. Rep. 226, 256.

Contemporary instruments – dealing, for instance, with prohibited weapons – tend to make it transparently clear that they cover all situations of armed conflicts (not even necessarily inter-State). Thus, under the 1993 United Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, contracting parties undertake 'never under any circumstances' to use chemical weapons. ⁵³ The scope of this injunction is so extensive that it transcends any armed conflict. It is true that the Convention expressly permits contracting parties to keep certain chemicals (such as tear gas) for law enforcement, including domestic riot control. ⁵⁴ However, it is interdicted to employ these chemicals for military purposes as a method of warfare. ⁵⁵ The ban covers any international armed conflict (whether characterized as war or short of war), and even internal conflicts rising above the level of riots. ⁵⁶

(b) Wartime status mixtus

In some circumstances, widespread hostilities (inflicting a large number of casualties and incalculable damage) are raging between States over a long period of time, yet the parties behave as if nothing out of the ordinary has happened.⁵⁷ They continue to maintain full diplomatic relations,⁵⁸ go on trading with each other,⁵⁹ and otherwise assume a 'business as usual' posture. As pointed out (see *supra*, A (b), (iii)), third countries may be driven to probe the nature of the hostilities independently. An impartial examination may lead to the conclusion that in reality war is going on, official protests to the contrary notwithstanding.

This pattern of hostilities is liable to be highly confusing. It seems to be the other side of the coin of a state of war without warfare: here, ostensibly, warfare occurs without a state of war. In actuality, that is not so. If

United Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1993, 32 *I.L.M.* 800, 804 (1993) (Article I(1)).
 Ibid., 805–7 (Articles II(7)–(9), III(1)(e)).

⁵⁵ *Ibid.*, 806 (Article II(9)(c)).

⁵⁶ See W. Krutzsch and R. Trapp, A Commentary on the Chemical Weapons Convention 18 (1994).

⁵⁷ The Soviet–Japanese armed conflict of 1939 may serve as a good example. See I. Brownlie, *International Law and the Use of Force by States* 389 (1963).

^{58 &#}x27;Diplomatic relations normally come to an end upon outbreak of war'; yet, '[i]n recent years, there have been many instances where diplomatic relations had been maintained notwithstanding the outbreak of hostilities': B. Sen, A Diplomat's Handbook of International Law and Practice 236 (3rd ed., 1988).

⁵⁹ While there is no prohibition of trading with the enemy pursuant to international law, most belligerent States enact domestic legislation to that effect. See McNair and Watts, *supra* note 1, at 343–4.

States use comprehensive force against one another, war in the material sense exists.

Once war is going on, the laws of warfare are supposed to be brought into operation in their amplitude. Can the parties to the conflict, acting in concert, suspend the application of the jus in bello (in whole or in part)? To answer the question, a distinction must be drawn between the duties that the jus in bello imposes and the rights that it bestows. Belligerents are obligated to discharge in full the duties devolving on them under the laws of warfare. These duties cannot be evaded even if the parties to the conflict grant a dispensation to one another. But States engaged in war are not compelled by international law to make use of the full gamut of the rights accorded to them. If it so desires, each of the opposing sides is generally empowered not to insist on its rights. Subject to exceptions spelt out by international humanitarian law,60 a belligerent is entitled to renounce its rights or to leave them in abeyance. Surely, international law does not impede warring States from continuing reciprocal trade, or retaining diplomatic relations, even when their armies are pitted in combat.

In a 1976 International Chamber of Commerce Arbitration, in the *Dalmia Gement* case, P. Lalive pronounced that war must entail 'a *complete rupture* of international relations' between the belligerents, and 'the continued existence of treaties as well as of diplomatic relations between the parties cannot be reconciled with a "state of war". ⁶¹ As for treaties, this statement is not consonant with the modern trend denying their *ipso facto* termination – and, according to the Institut de Droit International, even suspension – upon the commencement of war. ⁶² While breaking off diplomatic relations at the opening of hostilities is still the rule, it can no longer be viewed as an essential aspect of war. ⁶³

What a wartime *status mixtus* requires is some finesse in estimating the conduct of the belligerents. On the one hand, it ought to be remembered that a state of war exists. Consequently, all wartime obligations must be complied with scrupulously. On the other hand, if the parties wish to

⁶⁰ The four Geneva Conventions expressly rule out the conclusion of special agreements between belligerents, which affect adversely or restrict the rights of protected persons: *supra* note 8, at 34 (Geneva Convention (I), Article 6), 88 (Geneva Convention (II), Article 6), 142 (Geneva Convention (III), Article 6), 292 (Geneva Convention (IV), Article 7).

⁶¹ Dalmia Cement Ltd v. National Bank of Pakistan (1976), 67 I.L.R. 611, 624.

⁶² Institut de Droit International, Resolution, 'The Effects of Armed Conflicts on Treaties', 61(II) A.I.D.I. 278, 280 (Helsinki, 1985) (Article 2). Cf. comments by the present writer drawing attention to the contrast with the Lalive arbitral award and other sources, ibid., 215.

⁶³ The Arbitrator himself conceded that the position was not free of doubt. See *Dalmia Cement* case, supra note 61, at 623.

preserve a modicum of peace in the middle of war, they are entitled to do so. The only condition is that their behaviour must not run counter to the overriding obligations of the *jus in bello*.

C. The region of war

War can be waged over large portions of the planet and beyond. The space subject to the potential spread of hostilities is known as the region of war. Actual hostilities may be restricted by the belligerents to a fairly narrow theatre of operations, but the potential is always there. The combat zone on land is likely to be quite limited in geographic scope, yet naval and air units may attack targets in distant areas.

The region of war consists of the following.

(a) The territories of the parties to the conflict

In principle, all the territories of the belligerent States, anywhere under their sovereign sway, are inside the region of war. As a corollary, the region of war does not overstep the boundaries of neutral States, and no hostilities are permitted within their respective domains.

Since the region of war comprises the territories subject to the sover-eignty of the belligerent States, it includes (i) land areas; (ii) internal waters; (iii) archipelagic waters; ⁶⁴ (iv) territorial sea; (v) subsoil and submarine areas underneath these expanses of land and water, as well as the continental shelf; and (vi) the superjacent airspace above them. However, the extension of the region of war to the entire territories of the belligerent States is not immutable. An international (multilateral or bilateral) treaty may exclude from the region of any present or future war a waterway, an island or any other well-defined zone located within the territory of an actual or prospective belligerent. Such a treaty gives rise to the 'neutralization' of the specific zone. ⁶⁵ Neutralization assimilates the status of an area controlled by a belligerent to that of a neutral territory.

A typical neutralization arrangement is embodied in Article 4 of the 1888 Constantinople Convention on the Suez Canal, where the contracting parties agreed that 'no right of war' or 'act of hostility' would be allowed in the Canal and its ports of access, or within a radius of 3 nautical miles from those ports.⁶⁶ A parallel provision, explicitly referring

On the status of archipelagic waters, see E. Rauch, The Protocol Additional to the Geneva Conventions for the Protection of Victims of International Armed Conflicts and the United Nations Convention on the Law of the Sea: Repercussions on the Law of Naval Warfare 32 (1984).
 See Oppenheim, supra note 6, at 244.

⁶⁶ Constantinople Convention Respecting the Free Navigation of the Suez Maritime Canal, 1888, 3 A.J.I.L., Supp., 123, 124 (1909).

to neutralization, appeared in Article 3 of the 1901 Anglo-American Hay–Pauncefote Treaty (in anticipation of the construction of a canal connecting the Atlantic and Pacific Oceans).⁶⁷

In 1977, the United States and the Republic of Panama concluded a Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. ⁶⁸ In general, the phrase 'permanent neutrality' is to be differentiated from the term 'neutralization'. ⁶⁹ The concept of permanent neutrality applies to the whole territory of a country, with Switzerland as the model. A country placed under a permanent neutrality regime undertakes to remain neutral in all future wars (unless attacked), to conclude no military alliances, and to allow no foreign military bases on its soil. ⁷⁰ No such obligation is imposed on the Republic of Panama in the 1977 Treaty. The permanent neutrality declared therein relates only to the Panama Canal. ⁷¹ Respect for the permanent neutrality of the Canal is also a theme of a special Protocol, annexed to the Treaty and open to accession by all the States of the world. ⁷² In correct legal terminology, the 1977 Treaty and Protocol ensure not the permanent neutrality, but the neutralization, of the Panama Canal.

Neutralization is not restricted to international waterways. Article 6 of the 1921 Geneva Convention on the Non-Fortification and Neutralisation of the Åland Islands lays down that, in time of war, these islands are to be considered a neutral zone and they are not to be used for any purpose connected with military operations.⁷³

Protocol I Additional to the Geneva Conventions incorporates, in Article 60, a detailed stipulation relating to 'demilitarized zones'. Parties to a conflict are forbidden to extend their military operations to zones on which they have conferred by agreement (concluded either in writing or verbally, either in peacetime or after the outbreak of hostilities) the status of a demilitarized zone. Although Article 60 refers to 'demilitarized zones', the exclusion of wartime military operations signifies that the zones have been neutralized.

The two institutions of neutralization and demilitarization 'must be sharply distinguished'.⁷⁵ Demilitarization means that a State accepts limitations on (or waives altogether) its right to maintain armed forces

⁶⁷ Great Britain–United States, Treaty to Facilitate the Construction of a Ship Canal (Hay–Pauncefote Treaty), 1901, 3 A.J.I.L., Supp., 127, 128 (1909).

⁶⁸ United States-Panama, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, 1977, 72 A.J.I.L. 238 (1978).

⁶⁹ See S. Verosta, 'Neutralization', 4 E.P.I.L. 31, id. (1982).

⁷⁰ See J. L. Kunz, 'Austria's Permanent Neutrality', 50 A.J.I.L. 418, 418–19 (1956).

Geneva Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands, 1921, 9 L.N.T.S. 211, 219.
 Protocol I, supra note 31, at 118–19.

⁷⁵ J. H. W. Verzijl, International Law in Historical Perspective, III, 500 (1970).

and weapon systems, as well as to construct fortifications and military installations, in a certain region.⁷⁶ Demilitarization can be a component of neutralization. Conversely, demilitarization may exist without neutralization, just as neutralization may exist without demilitarization. In both instances, a well-defined zone is involved (whereas a permanent neutrality regime affects an entire State). But demilitarization is designed for periods of peace or at least cease-fire, while neutralization acquires a practical significance only in time of actual warfare. Demilitarization, particularly of a border buffer zone, places the emphasis on the prevention of incidents liable to trigger hostilities. Neutralization is premised on the assumption that hostilities do begin or have begun: the goal is to prevent the neutralized zone from being engulfed in the fighting. In demilitarization, the demilitarized zone serves only as a means to the end of the maintenance of peace, or the observance of a cease-fire, everywhere. In neutralization, the neutralized zone itself is the end: the objective is safeguarding the zone from the spread of warfare raging elsewhere.

The 1959 Antarctic Treaty promulgates, in Article I(1), that 'Antarctica shall be used for peaceful purposes only'. There is no lucid definition of the term 'peaceful purposes'. However, a plain reading of the text would suggest that it eliminates the possibility of warlike activities ('warlike' being the antonym of 'peaceful'). Article 8(4)(b) of the 1988 Convention on the Regulation of Antarctic Mineral Resource Activities – when dealing with non-liability for damage in case of unforeseen disasters – refers to the possibility of an 'armed conflict, should it occur notwith-standing the Antarctic Treaty'. Since an armed conflict can occur only 'notwithstanding' the Antarctic Treaty, ti is clear that a regime of neutralization has been imposed on the entire continent. Article I of the Antarctic Treaty also provides for the demilitarization of Antarctica.

(b) The high seas and the exclusive economic zone

There has never been any doubt that the high seas 'fall within the region of war'. 82 Surprisingly, Article 88 of the 1982 United Nations Convention

⁷⁶ See J. Delbrück, 'Demilitarization', 3 E.P.I.L. 150, id. (1982).

⁷⁷ Washington Antarctic Treaty, 1959, 402 *U.N.T.S.* 71, 72.

⁷⁸ See J. Hanessian, 'The Antarctic Treaty 1959', 9 *I.C.L.Q.* 436, 468 (1960).

⁷⁹ Wellington Convention on the Regulation of Antarctic Mineral Resource Activities, 1988, 27 I.L.M. 859, 873 (1988).

⁸⁰ Apart from the possibility of a material breach of the Antarctic Convention, an armed conflict may be initiated by a non-contracting party. See A. Watts, *International Law and the Antarctic Treaty System* 207 (1992).

⁸¹ Washington Antarctic Treaty, supra note 77, at 72.

⁸² Oppenheim, supra note 6, at 239.

on the Law of the Sea, echoing the language of the Antarctic Treaty, proclaims:

The high seas shall be reserved for peaceful purposes.83

Under Article 58(2), this clause applies also to the exclusive economic zone.⁸⁴ A literal construction of the words used in the Convention would connote that the waging of war as such is banned throughout the high seas and the exclusive economic zone.⁸⁵

If taken seriously, the laconic stipulation of Article 88 would bring about a veritable revolution in maritime warfare. 'This is the shortest Article in the Convention, but in spirit it is the most far-reaching: ostensibly it challenges the historic role of the oceans as battlegrounds.'86 It is hard to believe that 'a one-sentence reference to peaceful purposes', in an inordinately verbose and complex instrument, was intended to produce the momentous results that seem to flow from the text.87 The provision 'is widely regarded as prohibiting only acts of aggression on the high seas'.88 Such an interpretation, which allows naval military operations on the high seas only 'if undertaken as an exercise of the right of self-defense',89 renders Article 88 redundant in light of Article 301 of the Convention90 (quoted infra, ch. 4, D). No wonder that some commentators suggest that Article 88 should not be overemphasized. 91 The authoritative San Remo Manual on International Law Applicable to Armed Conflicts at Sea expressly rejects an interpretation of Article 88 which would 'prohibit naval warfare on the high seas'.92 There is no doubt that the practice of States in maritime hostilities, conducted since the formulation of the Convention,

- 83 United Nations Convention on the Law of the Sea, 1982, 21 I.L.M. 1261, 1287 (1982).
- 84 Ibid., 1280.
- 85 See F. Francioni, 'Use of Force, Military Activities, and the New Law of the Sea', The Current Legal Regulation of the Use of Force 361, 375-6 (A. Cassese ed., 1986).
- 86 K. Booth, Law, Force and Diplomacy at Sea 82 (1985).
- ⁸⁷ B. H. Oxman, 'The Regime of Warships under the United Nations Convention on the Law of the Sea', 24 V.J.I.L. 809, 831 (1983–4).
- 88 R. R. Churchill and A. V. Lowe, The Law of the Sea 176 n. 1 (2nd ed., 1988).
- 89 R. J. Zedalis, "Peaceful Purposes" and Other Relevant Provisions of the Revised Composite Negotiating Text: A Comparative Analysis of the Existing and the Proposed Military Regime for the High Seas', 7 S. J.I.L.C. 1, 18 n. 72 (1979–80).
- ⁹⁰ United Nations Convention on the Law of the Sea, *supra* note 83, at 1326.
- ⁹¹ See R. Wolfrum, 'Restricting the Use of the Sea to Peaceful Purposes: Demilitarization in Being?', 24 G.Y.I.L. 200, 213 (1981). Interestingly enough, although Wolfrum is of the opinion that military activities on the high seas ought to be restricted on general grounds of freedom of navigation, he does not believe that Article 88 imposes any obligations on States exceeding those of Article 301: R. Wolfrum, 'Military Activities on the High Seas: What Are the Impacts of the U.N. Convention on the Law of the Sea?', The Law of Armed Conflict: Into the Next Millennium 502, 505 (71 International Law Studies, M. N. Schmitt and L. C. Green eds., 1998).
- ⁹² San Remo Manual on International Law Applicable to Armed Conflicts at Sea 82 (L. Doswald-Beck ed., 1995).