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VIII

Naval Blockade

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THE VARIETY AND QUANTITY of Professor Leslie Green's work on the law of armed conflict make it nearly impossible to choose a subject that has not already been covered by him. This also holds true for the law of naval warfare. Suffice it to mention that Professor Green was one of the most important members of the Round Table of Experts that drafted the San Remo Manual on International Law applicable to Armed Conflicts at Sea.[1] It was on that occasion that the author first met Professor Green and since then he has continuously profited from Professor Green's deep knowledge of the law and of the practical issues involved. The discussions with him, especially on controversial questions, have always been a delight. The present contribution on the law of naval blockade is therefore but a modest expression of the author's gratitude to a practitioner, teacher and academician who will certainly continue to influence strongly the progressive development of the law of armed conflict.

Introduction

According to a widely accepted definition, blockade is "a belligerent operation to prevent vessels and/or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation."[2] The purpose of

establishing a blockade is "to deny the enemy the use of enemy and neutral vessels or aircraft to transport personnel and goods to or from enemy territory."[3] If solely aimed against the enemy's economy, the legality of a blockade has to be judged in the light of the law of economic warfare and of the law of neutrality. However, in contrast to the practice of the 19th century and of the two World Wars, in modern State practice such economic blockades have been the exception. Today the establishment of a blockade is very often an integral part of a military operation that is not directed against the enemy's economy but against its armed forces. For example, a blockade may be declared and enforced in preparation of a landing operation. It may also help in surrounding enemy armed forces or in cutting off their lines of supply. But even if an economic blockade in the strict sense were established, there would always be a strategic element: cutting off the enemy's trade links and weakening its economy will also weaken its military power of resistance.[4] No matter which purpose is pursued by the establishment of a blockade, it always involves the use of military force directed against the enemy's coastline or ports. Accordingly, a blockade is a method of naval warfare to which the general principles and rules of the law of naval warfare—the maritime *jus in bello*—also apply.[5]

While naval blockades still have to be distinguished from other, although related, concepts (e.g., operations designed to interdict contraband, unilateral embargoes, defensive measure zones, and exclusion zones),[6] there is no longer any need to deal separately with so-called "pacific blockades."[7] Since the establishment of a "pacific blockade" involves the use of military force by one State against another State, there is an international armed conflict in the sense of common Article 2 of the 1949 Geneva Conventions. The (maritime) *jus in bello* applies to all belligerent measures taken in such conflicts. The existence of a state of war is not a precondition for the legality of certain methods and means of warfare anymore. If they are taken, they have to be in accordance with the applicable *jus in bello*. Hence, the same rules will apply in either case.

Whether and to what extent the *jus ad bellum* also serves as a legal yardstick for naval blockades is a highly disputed issue. Leslie Green has always taken the position that the *jus in bello* and the *jus ad bellum* are distinct from one another[8] and it has always been an ambitious task to take the opposing view. However, this is not the proper place to reenter that discussion and to repeat arguments put forward elsewhere.[9] An interesting issue that is also far from settled, but that does need to be addressed here is the question of whether and to what extent the rules governing naval blockades also apply to blockades established in accordance with Article 42 of the UN Charter.

Before entering into that question the present article will first offer an overview of the development of the law of naval blockade in State practice and in international treaties and drafts. An assessment of the current state of the law of blockade by special reference to the legal literature will follow.

Development of Blockade Law in State Practice and International Instruments

As blockades were originally restricted to coastal fortifications, they differed only slightly from sieges in land warfare.[10] With the increasing importance of sea trade at the end of the 16th century, it became necessary to also cut off the enemy's sea links without taking possession of the respective part of the coastline or port.[11] Presumably, the first naval blockade was declared by the Dutch in 1584. The Flemish ports that then were under Spanish control were declared barred in order to cut off the Spanish troops from supplies.[12] In fact, this blockade, as well as subsequent blockades, was declared for the sole purpose of enabling the Dutch to seize neutral merchant vessels even if they were not carrying enemy or contraband goods.[13] In the early 17th century, Hugo Grotius took the view that regardless of their contraband character all goods destined to a blockaded location were subject to capture and seizure provided their delivery jeopardized the success of the closure of the respective enemy port. That, according to Grotius, was the case if surrender or peace were imminent.[14] State practice at the close of the 16th and during the 17th centuries, however, fails to evidence general acceptance of such a restriction. Hence, one hundred years later, Cornelius van Bynkershoek could easily establish that Grotius' opinion was not in accordance with existing treaties and edicts or even reason.[15]

Although a blockade affected all ships and goods regardless of their enemy or contraband character,[16] in those days belligerents were not obliged to maintain and enforce a blockade by a sufficient number of warships. Regularly, they were "fictitious" or, to use the more popular expression, "paper blockades" (also called "blocus de Cabinet" or "blocus per notificationem")[17] that were not enforced by capture in case of breach. Rather, as laid down in the Dutch decree of June 26, 1630,[18] or in the Anglo-Dutch Treaty of Whitehall (1689),[19] ships could be captured at far distance from the blockaded area if it was established that they clearly intended to breach the blockade ("droit de prévention").[20] Thus, the basis was laid for the doctrine of "continuous voyage," according to which ships destined to a neutral port are subject to capture if their ultimate destination is a blockaded port. According to the "droit de suite," ships were

subject to capture not only during a breach of blockade and subsequent pursuit, but also until they reached their port of destination.

Despite Danish and Swedish resistance that was in part successful in the last decade of the 17th century, England and Holland did not give up their practice of "fictitious blockades."[21] Moreover, England, especially in the 18th century, maintained that the French and Spanish ports were blockaded by the mere geographical situation of the English islands.[22] That practice, as well as the stern application of the law of contraband, resulted in grave restrictions on neutral merchant shipping. Therefore, affected States reacted by means of the first armed neutrality.[23] In her famous declaration of February 28, 1780,[24] the Russian Czarina Katharine II claimed that blockades, in order to be legal, needed to be effective:

> Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui où il y a, par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.

While a considerable number of European States acknowledged the principle of effectiveness in their treaties,[25] England continued its practice of fictitious blockades.[26] After neutral merchant shipping had again been severely affected by Anglo-French hostilities, some European powers reacted by a second armed neutrality.[27] Russia, Denmark, Sweden and Prussia, in their treaties of December 14 and 16, 1800, confirmed the principles of the first armed neutrality, especially the requirement that a blockade needed to be effective.[28] This requires a blockade, in order to be binding, to be maintained by a force sufficient actually to prevent access to the coast of the enemy. The blockading power, according to those treaties, was obliged to inform neutral shipping of the blockade.

The principle of effectiveness was later expressly confirmed in Article III, paragraph 4, of the Anglo-Russian Treaty of June 17, 1801, to which Denmark (October 23, 1801) and Sweden (March 30, 1802) acceded.[29] Still, the blockade of England effected by the Decree of Berlin of November 21, 1806,[30] and by the Decree of Milan of December 17, 1807,[31] as well as the blockade of France and its allies by Orders-in-Council of January 7 and November 11, 1807,[32] were hardly in conformity with that principle, for neutral trade was interfered with by all means at hand. The time of the continental blockade has, therefore, correctly been characterized as a decisive step backwards in the development of international law governing the belligerent rights in naval warfare.[33]

Despite the aspirations of some south-American States,[34] it was not until the Crimean War (1854–1856) that the English and continental European

positions on the law of blockade could be reconciled. In view of the Anglo-French alliance against Russia, it had become imperative to adjust the rules for the respective naval forces. This explains why France, England, Austria, Prussia, Russia, Sardinia and Turkey were able to agree in the Paris Declaration of April 16, 1856,[35] upon the principle, among others, of effectiveness:

> Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

Thus, fictitious or paper blockades had become illegal. It must be stressed, however, that the Paris Declaration fell behind the rules agreed upon during the armed neutralities. In particular, it lacks a clear definition of what is to be understood by "effective." On the other hand, an obligation similar to that of the armed neutralities according to which the blockading warships must be "arrêtés et suffisamment proches," in view of the introduction of torpedo boats and the improvement of coastal artilleries, would not have been feasible anyway.[36] Altogether, the requirement of effectiveness was not interpreted restrictively. It was not necessary for the blockading warships to be stationed at visual range from the coast. There existed no clear rule on the number of warships necessary.[37] Rather, the effectiveness of a blockade was to be judged in the light of the circumstances of each single case.[38] Hence, even blockades whose effectiveness could only be ascertained after a lapse of time were generally accepted as binding.[39] The application of the doctrine of continuous voyage to blockades led to a further erosion of the principle of effectiveness.[40]

The Second Peace Conference at the Hague (1907) did not succeed in reaching agreement upon the international law governing naval blockades. At the beginning of the conference Great Britain had proposed the following article:

> L'emploi de mines sous-marines automatiques de contact pour établir ou maintenir un blocus de commerce est interdit.[41]

In the course of the conference, that proposal was not discussed further in the Third Commission.[42] In its report and draft convention, the Comité d'examen merely included the following paragraph 3 in Article 4:

> Il est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire dans le seul but d'intercepter la navigation de commerce.[43]

With regard to that rule the Comité d'examen held that

il s'agirait seulement de déterminer, en examinant les mines, comme moyen de nuire à l'ennemi, si l'on peut s'en servir dans le but de barrer la navigation commerciale de l'adversaire—question à laquelle, paraît-il, on devrait répondre négativement. Cela établi, on pourrait confier au Comité le soin de bien faire ressortir cette pensée commune, tout en laissant hors de discussion l'application, au sujet de l'emploi des mines, des principes de la Déclaration de Paris concernant l'effectivité du blocus.[44]

Although the Third Commission did not intend to agree on rules applicable to blockades, some of the participants drew the conclusion that Article 4, paragraph 3, prohibited the establishment of a blockade by the laying of mines only.[45] Be that as it may, the vague formulation in Article 2 of Hague Convention VIII (which is identical with Article 4, paragraph 3, of the draft) gave—and still gives—rise to dispute. But even if the provision applied to an enforcement of a blockade by naval mines, it would be quite difficult to establish whether its sole purpose was, indeed, to intercept commercial navigation.[46]

Hence, it was left to the 1909 London Conference to codify the law applicable to naval blockades. The 21 articles devoted to that subject in the 1909 London Declaration can be summarized as follows:[47] A blockade, in order to be binding, must be effective, that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline (Article 2). Whether that precondition is met is, however, a question of fact (Article 3). The delegates to the 1909 Conference were unable to agree upon a more specific rule. They expected that the determination of effectiveness was in any case reserved to the competent (international or national) prize court.[48] According to Article 4, a blockade is not regarded as raised, and thus remains effective, if the blockading force is temporarily withdrawn on account of stress of weather. It must be applied impartially to the ships of all nations (Article 5), and warships (Article 6) and merchant vessels in distress (Article 7) may be allowed to enter and leave a blockaded port or place. The declaration and notification are constitutive for a blockade's legality (Articles 8, 10, and 11).[49] A declaration of blockade is made either by the blockading power or by the naval authorities acting in its name. It must specify (1) the date when the blockade begins, (2) the geographical limits of the coastline under blockade, and (3) the period within which neutral vessels may come out (Article 9). Additionally, it must be notified to both neutral powers and the local authorities (Article 11). The provisions on declaration and notification also apply to cases where the limits of a blockade are extended or where a blockade is re-established after having been raised (Article 12). Notice is similarly required upon the voluntary raising or any restriction in the limits of a blockade (Article 13). If no declaration of blockade has been notified to

the local authorities, or if no period of grace has been provided, neutral vessels must be allowed to leave the blockaded area (Article 16, paragraph 2). Vessels that in actual or presumptive knowledge of the blockade[50] attempt to leave or enter the closed port may be captured as long as they are being pursued by a warship of the blockading force and are subject to condemnation (Articles 14, 17, 20, and 21). The limitation of the right of capture to the area of operation of the warships detailed to render the blockade effective is the result of a compromise between the English and the continental European position. In any event, according to Articles 17, 19, and 20, neither the doctrine of continuous voyage nor the "droit de suite" that had been practiced excessively during the 18th century survived.[51] In case of a vessel approaching a blockaded port, without (actual or presumptive) knowledge of the blockade, notification must be made to the vessel itself (Article 16 paragraph 1). Finally, a blockade must be confined to ports and coasts belonging to or occupied by the enemy (Article 1) and may not bar access to neutral ports or coasts (Article 18).

Although the 1909 London Declaration never entered into force because of resistance by the House of Lords to ratification, its provisions on blockade were observed during the Balkan Wars and were included in a number of national prize regulations.[52] Apart from the applicability of the doctrine of continuous voyage, at the beginning of the First World War they were generally regarded as customary in character.[53] However, in view of the rapid development of weapons technologies (long distance artillery, submarines, military aircraft) and the necessary modification of naval strategies and tactics it soon became impossible to observe Articles 1 ff. of the London Declaration. The traditional blockade was replaced by the long-distance blockade that—by a simultaneous excessive application of the doctrine of continuous voyage—in fact led to the barring of neutral ports and coasts.[54] Neutral trade was subjected to far-reaching control measures, some even taken in their respective home ports. For instance, merchant vessels that did not possess a navicert were either diverted or captured, even if they had not approached blockaded coasts or ports. Moreover, the belligerents established huge minefields and exclusion zones ("Sperrgebiete") within which all vessels, regardless of the flag they were flying, were attacked without prior warning.[55] During the Second World War that practice was repeated and led to even further restrictions of neutral trade.[56] To give but one example of the excessive use of the right of blockade, it suffices to quote the British Order-in-Council of November 27, 1939:

> 1. Every merchant vessel which sailed from any enemy port, including any port in territory under enemy occupation or control, after the 4th day of December,

1939, may be required to discharge in a British or Allied port any goods on board laden in such enemy port.

2. Every merchant vessel which sailed from a port other than an enemy port after the 4th day of December, 1939, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or Allied port.

3. Goods discharged in a British port under either of the preceding Articles shall be placed in the custody of the Marshal of the Prize Court, and, unless the Court orders them to be requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Court. The proceeds of goods so sold shall be paid into the Court.

> On the conclusion of peace such proceeds and any goods detained but not sold shall be dealt with in such manner as the Court may in the circumstances deem just, provided that nothing herein shall prevent the payment out of Court of any such proceeds or the release of any goods at any time (a) if it be shown to the satisfaction of the Court that the goods had become neutral property before the date of this Order, or (b) with the consent of the proper officer of the Crown.

4. The law and practice in Prize shall, so far as applicable, be followed in all cases arising under this Order.

5. Nothing in this Order shall affect the liability of any vessel or goods to seizure or condemnation independently of this Order.

6. For the purposes of this Order the words "goods which are of enemy origin" shall include goods having their origin in any territory under enemy occupation or control, and the words "goods which [. . .] are enemy property" shall include goods belonging to any person in any such territory.

7. Proceeding under this Order may be taken in any Prize Court having jurisdiction to which the Prize Court Rules, 1939, apply.

8. For the purposes of this Order the words "British port" mean any port within the jurisdiction of any Prize Court to which the Prize Court Rules, 1939, apply.[57]

In view of that practice, Frits Kalshoven has concluded that

[. . .] developments in the techniques of naval and aerial warfare have turned the establishment and maintenance of a naval blockade in the traditional sense into

> a virtual impossibility. It would seem, therefore, that the rules in the Declaration on blockade in time of war are now mainly of historical interest. [58]

Some consider the British practice a contribution to the progressive development of the international law on blockades.[59] Still others stress the fact that the United Kingdom had justified its practice by reference to reprisals. Hence, they maintain, the London Declaration has not been substantively derogated by that practice. They merely concede that the requirement of effectiveness today has to be interpreted in the light of the development of weapons technologies, such that the blockading forces may be deployed at some distance from enemy coasts and ports.[60]

In fact, the limitations of the traditional blockade law have, to a considerable extent, been observed in the practice of States since 1945. Of course, the principle of effectiveness as well as the requirement of maintaining and enforcing a blockade by solely surface warships have been modified. Moreover, it seems that today aircraft may also be subjected to blockade measures. Still, the law as laid down in the 1909 London Declaration has not become obsolete.

The closure of the areas and ports under the control of communist China declared by the national Chinese government on June 26, 1949, although not justified as blockade, widely conformed with the traditional rules. Both the measures to be taken and the geographical limits were declared and notified in advance. The national Chinese armed forces were able to effectively enforce the closure/blockade because, by deploying reconnaissance aircraft, they were fully and constantly aware of all movements within the Chinese territorial sea.[61]

During the Korean War the U.S./UN naval armed forces, because of their superiority, were able to maintain and enforce the blockade declared on July 4, 1950, in nearly full accordance with the provisions of the London Declaration.[62] Warships—except of the North Korean navy—were excluded, as was the port of Rashin that served as a naval base of the former Soviet navy.[63]

During its 1971 conflict, the Indian navy closed the entire coast of Bangladesh. The superior Indian navy was supported by military aircraft deployed on the carrier *Vikrant*. Thus, all vessels were successfully prevented from entering or leaving the blockaded area. Altogether, six merchant ships and numerous small boats were captured. Those small boats that did not comply with the orders given by the warships' commanders were attacked and sunk.[64]

The blockade of Haiphong in May 1972 also widely corresponded with the requirements of a classical blockade, although, again, the notion "blockade" was not used. Prior to the closure becoming effective, it was publicly

announced and all States presumably affected were informed.[65] However, it was not maintained and enforced by surface units but by mines laid by aircraft. Those mines became automatically armed after a predetermined period of time had elapsed.[66]

The Egyptian blockades of Eilat and of the Gulf of Aqaba in 1967 and of the Bab el-Mandeb in 1973[67] were similar to the British blockades of World War II insofar as the forces entrusted with their enforcement were deployed at a considerable distance from the areas in question. Still, the Egyptian measures were effective because no vessel could enter or leave the areas without running the risk of being attacked.

At the beginning of the Iran-Iraq conflict (1980–1988), Iran, on September 22, 1980, declared the transport of all goods and cargoes to Iraq prohibited.[68] The Iranian naval forces were in a position to enforce that prohibition, as well as the closure of the Shat-al-Arab, which was declared on October 1, 1980,[69] during the course of the entire armed conflict. Altogether 71 neutral merchant ships were affected by the closure of the Shat-al-Arab. Iran offered to allow them to leave the area under the condition that they flew the UN flag. However, Iraq required those ships to fly the Iraqi flag as long as they were within the Shat-al-Arab.[70]

In most of these cases, neutral States, in view of the lack of protests, obviously accepted the blockades.[71] If at all, they merely doubted their legality under the *jus ad bellum* not the *jus in bello*. For example, the British government protested against the blockade of the Shat-al-Arab[72] because, in its view, the right of self-defense did not allow its establishment. However, the British government did not consider the Iranian measures illegal under the maritime *jus in bello*.

The customary character of the principles of the 1909 London Declaration is also widely acknowledged in the military manuals of the U.S. Navy,[73] and of the Canadian[74] and German[75] armed forces. According to those manuals, blockades must be restricted to ports or coastal areas belonging to, occupied by, or under the control of the enemy. They must not bar access to or departure from neutral ports and coasts.[76] The declaration, either by the government or by the commander of the blockading force, must include the details laid down in Article 9 of the London Declaration and must be notified to affected neutral States and to the local authorities.[77] Because knowledge of the existence of a blockade is an essential element of the offenses of breach and attempted breach of blockade, neutral vessels are always entitled to notification.[78] Moreover, according to the three manuals, a blockade, in order to be valid, must be effective. That means that it must be maintained by a force or other mechanism[79] that is

sufficient to render ingress or egress of the blockaded area dangerous. The temporary absence of the blockading force is without prejudice to the blockade's effectiveness, if such absence is due to stress of weather or to some other reason connected with the blockade.[80] The blockade need not be restricted to vessels; it may also be applied and enforced against aircraft.[81] In any event, a blockade must be applied impartially to the vessels of all States, including merchant ships flying the flag of the blockading power.[82] However, although neutral warships and military aircraft enjoy no positive right of access to blockaded areas, the belligerent imposing the blockade may authorize their entry and exit.[83] Neutral vessels in distress should not be prevented from entering and subsequently leaving a blockaded area.[84] According to the U.S. and the German manuals, a further exception applies to neutral vessels (and aircraft) engaged in the carriage of qualifying relief supplies for the civilian population and the sick and wounded. Those vessels should be authorized to pass through the blockade cordon (safe passage).[85] The German manual and Canadian draft manual contain provisions according to which starvation of the civilian population as a method of warfare is prohibited.[86] Neutral vessels and aircraft that, in knowledge of a notified and effective blockade, breach or attempt to breach a blockade are subject to capture.[87] If they resist an attempt to establish identity, including visit and search, they may be attacked.[88]

The Contemporary Law of Blockade

As already mentioned, some authors consider traditional blockades to have become obsolete because, in their view, developments in weapons technologies have made it impossible for belligerents to comply with the strict requirements of blockade law.[89] The short overview of modern State practice has shown, however, that States will continue to make use of this method of naval warfare at least in cases in which they possess superior naval forces and aerial reconnaissance capabilities. Blockade remains an especially efficient method for subduing the enemy in limited armed conflicts.[90] Moreover, it is the only way by which a belligerent is entitled to prevent the enemy from not only the import but also the export of goods that would otherwise enable it to continue the armed conflict. Neutral commercial sea and air traffic can be subjected to far-reaching restrictions, even if they carry goods that do not qualify as contraband.[91] Hence, as in the beginning of the 20th century, identifying the legal restrictions that apply if a belligerent decides to establish and enforce a naval blockade is indispensable. It may be added that according to the position taken here, a special theoretical justification[92] is no longer necessary because the

maritime *jus in bello* is appropriately considered a legal order of necessity that prescribes the minimum standards that have to be observed by States, even if they are unwilling or unable to refrain from the use of armed force.[93]

Declaration, Notification, Impartiality and Effectiveness. In general, States are willing to accept the customary character of the principles laid down in the 1909 London Declaration. When it comes to the specification of the rights and duties, however, no general agreement exists. Of course, it is undisputed[94] that

- a blockade must be declared and that the declaration must contain the details laid down in Article 9 of the London Declaration;
- it must be notified to those affected; and
- impartial application is required.

According to the prevailing position in legal literature, neutral vessels are to be granted a period of grace to leave the blockaded port or roadstead.[95]

The reason for this wide agreement is that these requirements do not pose any considerable problems. The belligerent establishing a blockade will, of course, be interested in informing all those possibly affected, since it is the object and purpose of a blockade to close certain enemy areas and to cut them off. In addition, today such information will not take long to reach its addressees. Rather, it can be disseminated universally within a couple of hours.[96] Finally, any discrimination, in view of the practical problems of identification, would not be practicable.

Problems and disagreement exist, however, with regard to the principle of effectiveness. The authors only agree that when judging the effectiveness of a blockade the development of modern weapons systems have to be taken into consideration—a stipulation that was first raised prior to World War I and which obviously is generally recognized now.[97] Accordingly, it is no longer necessary for the blockading force to be deployed in close vicinity to the coast, it may also be stationed at some distance seaward as long as ingress or egress continues to be dangerous.[98] Whether that is the case cannot be determined *in abstracto* but, as in Article 3 of the London Declaration, remains a question of fact.[99] There exists, however, an ultimate legal limitation with regard to the area affected. A blockade must be restricted to coastal areas and ports belonging to, occupied by, or under the control of the enemy. It may not be established outside the general area of naval warfare.[100]

For the purpose of maintaining and enforcing a blockade, belligerents are not restricted to the use of surface warships. This means that they may choose a combination of legitimate methods and means of warfare provided this combination does not result in acts inconsistent with the other rules and principles of

the maritime *jus in bello*.[101] In view of the overall importance of aerial reconnaissance and of the legitimate incorporation of the airspace into the regime of blockades,[102] a blockade may be maintained by military aircraft, submarines or even by naval mines.[103] However, a blockade may not be maintained and enforced by naval mines alone. This prohibition does not follow from Article 2 of Hague Convention VIII of 1907, for it is nearly impossible to prove that the mines have been laid "for the sole purpose of intercepting commercial navigation."[104] Rather, it has to be observed in this context that certain categories of vessels and aircraft may not be denied ingress or egress. Hence, generally, it is necessary that manned units (or "at least one man-o-war")[105] are present in the vicinity of the blockaded area in order to make sure that such vehicles remain unharmed.[106] The mining of Haiphong is merely a single incident that fails to establish the contrary, even though only the former USSR raised protests against it.[107] Despite the obvious perils submarines and missiles pose to surface warships, in most cases the presence of at least one surface unit, for humanitarian reasons, remains an indispensable requirement for the legality of a naval blockade. And it makes no difference whether the blockade serves strictly military or economic purposes.[108] Only if controlled mines are laid may their sole use for maintaining and enforcing a blockade be legitimate. Of course, apart from naval mines, other obstacles, such as wrecks, can be used to close a port or a part of the enemy's coast.[109]

Consequences of Breach and Attempted Breach of Blockade. It is generally acknowledged that vessels (and aircraft) breaking or attempting to break blockade are liable to capture.[110] If, after prior warning, they clearly resist capture, they may be attacked.[111] However, it remains unclear which behavior may be characterized as attempted (inward[112]) breach of blockade. While the German Manual is silent on this issue, the U.S. Manual[113] defines attempted breach of blockade as follows:

> Attempted breach of blockade occurs from the time a vessel or aircraft leaves a port or airfield with the intention of evading the blockade, and for vessels exiting the blockaded area, continues until the voyage is completed. [. . .] It is immaterial that the vessel or aircraft is at the time of interception bound for neutral territory, if its ultimate destination is the blockaded area. There is a presumption of attempted breach of blockade where vessels or aircraft are bound for a neutral port or airfield serving as a point of transit to the blockaded area.

This implies that the doctrine of continuous voyage may be applied to the legal regime of naval blockades. As in the beginning of the 20th century, this

question is a matter of dispute in the legal literature.[114] There are good reasons to maintain that the doctrine of continuous voyage may not be applied to blockades. First, neutrals have only in rare cases been willing to tolerate interference with their merchant shipping in areas distant from blockaded coasts or ports.[115] Second, the doctrine has not played a significant role in the practice of States since 1945. It has only been recognized in the military manuals of some Anglo-American States. Most continental European authors have always rejected the doctrine's applicability to blockade.[116] The arguments put forward do not have to be repeated. If blockade law is perceived as part of an order of necessity that, by its nature, has to be interpreted restrictively and that merely modifies but does not abrogate the peacetime rules of international law applicable between belligerents and neutrals, an obligation of States not participating in an international armed conflict to tolerate belligerent measures can be justified only under strict conditions. In the context of blockade, one of these conditions is the principle of effectiveness. That principle would be rendered meaningless if belligerents were entitled to enforce a blockade at a far distance from the area in question. As long as neutral merchant vessels are situated outside the range of operations of the forces maintaining the blockade, and as long as they do not carry contraband or act in a way that makes them liable to attack, the freedoms of navigation and overflight supersede the belligerents' interest in a comprehensive prohibition of imports to their respective enemies. Of course, the practical consequences of this position are of a solely secondary nature. If a neutral merchant vessel is captured outside the range of operation of the blockade forces because it—in fact or presumably—was destined to a blockaded port, that violation of the law of neutrality results in a duty to return the vessel and its cargo and to compensate any damage.

Relief for the Civilian Population and the Wounded and Sick. A blockade preventing all ingress to or egress from the blockaded area by vessels and aircraft, in general, negatively affects the civilian population's supply of food and other objects essential for survival. For that reason it was—at least to a certain extent—justified to characterize the British long-distance blockades as "hunger blockades."[117] Still, that notion should not be used too easily. In World War II, the United Kingdom maintained that naval blockades did not differ from sieges in land warfare in which the responsible commander was under no duty to allow food and other goods to pass into the town.[118]

Today, according to Article 54, paragraph 1, Additional Protocol I, "starvation of civilians as a method of warfare is prohibited." Contrary to an assertion by the Australian delegation to the Geneva Diplomatic Conference,[119] as well

as some authors,[120] the position of that provision in Part IV of the Additional Protocol I does not prevent its application to naval blockades. Blockade is, in the sense of Article 49, paragraph 3, Additional Protocol I, a method of "sea warfare which may affect the civilian population [. . .] on land." Therefore, States parties to Additional Protocol I may not establish and maintain a blockade that serves the specific purpose of denying them essential foodstuffs, "whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."[121] As part of customary international law, the prohibition of starving the civilian population by the establishment of a naval blockade is also binding on States not party to Additional Protocol I, since it follows from the generally accepted principles of humanity and proportionality.[122] Methods and means of naval warfare are illegal "if the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated."[123] In that context, it makes no difference whether the blockade serves genuine military or economic purposes. Moreover, even States not bound by Additional Protocol I recognize that belligerents are under an obligation not to prohibit relief consignments in case of a naval blockade.[124] That obligation, which is also recognized in the literature,[125] would be meaningless absent prohibition of a so-called "hunger blockade." The military and strategic interests involved are met by the fact that relief consignments must be granted free passage subject to

- the right to prescribe the technical arrangements, including search, under which such passage is permitted; and
- the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.[126]

Blockades under Chapter VII of the UN Charter

The final question that remains is whether the rules just described also apply if a blockade is ordered by the Security Council pursuant to Article 42 of the UN Charter.[127] In an annotation to paragraph 7.7.2.1, NWP1-14M, the authors hold that "it is not possible to say whether, or to what extent, a UN blockade would be governed by the traditional rules."[128] This statement is certainly correct insofar as the Security Council, when taking action under Chapter VII, has a wide range of discretion and that it—as an organ of the UN—is not directly bound by rules of international law that are primarily designed to regulate the conduct of States in situations of armed conflict. On the other hand, a

blockade ordered by the Security Council will, of course, have to be declared. The respective resolution will at least contain all the elements that are prescribed for a belligerent blockade (geographical limits, duration). The practice of the Security Council also demonstrates that, for humanitarian reasons, certain goods essential for the survival of the civilian population may be transported to a blockaded area.[129] If feasible and if not counterproductive to the aim pursued (restoration of international peace and security), the Security Council will also ensure that access to ports and coasts of third States is not barred. However, an important exception applies. Despite allegations to the contrary,[130] in the case of enforcement measures under Chapter VII, there is no room for neutrality. Therefore, third States may well be affected by a blockade ordered pursuant to Article 42. Affected States, according to Article 50, have the right to "consult the Security Council with regard to a solution of those (= economic) problems." A second exception concerns the applicability of the doctrine of continuous voyage. Situations are conceivable in which the Security Council is forced to order the capture of vessels (and aircraft) at great distance from the blockade area if international peace and security cannot otherwise be restored. Finally, in view of the binding force of the decisions taken under Chapter VII and of the ultimate goal of maintaining international peace and security, a blockade pursuant to Article 42 will not have to fully comply with the principle of effectiveness.[131]

It must, however, be realized that, in view of the lack of UN armed forces proper, a blockade ordered by the Security Council will always be maintained and enforced by the members of the United Nations and their (national) armed forces. Those forces are bound by the rules and principles of the maritime *jus in bello* that, according to the position taken here, has to be considered an "order of necessity." That legal order has to be conceived of as primarily formulating duties which, as a minimum, have to be observed if States resort to the use of armed force.[132] In other words, the restrictions contained in the rules of war are, in principle, the most that international law is ready to accept when States are unwilling or unable to refrain from the use of armed force. This means that, when ordered to maintain and enforce a blockade pursuant to Article 42, they may only deviate from the rules of blockade law described above if there is an express decision by the Security Council to that effect. Whether and to what extent the Security Council is entitled to exempt member States from the restrictions of the maritime *jus in bello* will depend on the circumstances of each case. In that regard, the Security Councils discretion is wide but—especially with regard to the elementary considerations of humanity—not unlimited.

Notes

1. L. Doswald-Beck (ed.), SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA, Cambridge 1995.

2. DEPARTMENT OF THE NAVY (Office of the Chief of Naval Operations), THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, NWP 1-14M, para. 7.7.1.

3. *Ibid.*

4. For a discussion of the differences and similarities between economic (commercial) and strategic blockades, see C.J. COLOMBOS, INTERNATIONAL LAW OF THE SEA, 6th rev. ed., London 1967, § 818; L. OPPENHEIM, INTERNATIONAL LAW (ed. by H. Lauterpacht), Vol. II, 7th ed., London 1963, p. 769 f.

5. In textbooks, the law of blockade is dealt with in the context of the law of neutrality because a blockade always implies interference with neutral trade. The authors acknowledge, however, that blockade is a "means of warfare against the enemy" (e.g., Oppenheim, *supra* note 4, p. 768). Blockades are not directly aimed against neutral shipping. If neutral shipping is affected by a blockade, this is an indirect consequence resulting from the very nature of this concept. Accordingly, the law of blockade is not an integral part of the law of neutrality. It is being dealt with in that context for practical reasons only. For a characterization of blockades as acts of war, see the references in M.M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 10, Washington D.C. 1968, p. 868 ff.

6. For a distinction, see M.N. SCHMITT, BLOCKADE LAW: RESEARCH DESIGN and SOURCES, Legal Research Guides, Vol. 12, Buffalo 1991, p. 3 ff.

7. "Pacific blockades" were established quite often. Still, in view of the lack of a (formal) state of war, their legality was disputed. See W. SCHUMANN, DIE FRIEDENSBLOCKADE, Hamburg 1974, *passim*; A.H. Washburn, *The Legality of the Pacific Blockade*, COLUMBIA LAW REVIEW 1921, pp. 55–69, 227–241, 442–459; Institut de Droit International, *Droit de blocus en temps de paix*, AIDI 9 (1887-88), pp. 275–301. See also the references in M.M. WHITEMAN, DIGEST 10, *supra* note 5, p. 870 f. For early State practice, see the references in H.J.W. VERZIJL/W.P. HEERE/J.P.S. OFFERHAUS, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE, Part IX-C, Dordrecht 1992, p. 419 ff.

8. In his commentary on a report presented during the Round Table in Bergen (Norway), Leslie Green stated:

> It should be pointed out at the very beginning that my own view is based on the premise that the Charter is an instrument concerned with peace and only becomes involved in questions relating to armed conflict when the Security Council decides in accordance with Chapter VII to take action directed to the prevention or termination of hostilities. It is essentially an instrument concerned with the preservation of peace and there is no article therein to suggest that its provisions operate once a conflict has commenced, other than as indicated above. L.C. Green, Comment No. 5 on Mr. Greenwood's Report, in: W. Heintschel v. Heinegg (ed.), VISIT, SEARCH, DIVERSION AND CAPTURE/THE EFFECT OF THE UNITED NATIONS CHARTER ON THE LAW OF NAVAL WARFARE, Bochum 1995, p. 191.

9. See, *inter alia*, Ch. Greenwood, *The Effects of the United Nations Charter on the Law of Naval Warfare*, *ibid.*, p. 133 ff.; and the commentaries on that report, *ibid.*, p. 177 ff. (by A.W. Dahl); p. 181 ff. (by L. Doswald-Beck); p. 185 f. (by W.J. Fenrick/K.S. Carter); p. 187 ff. (by D. Fleck); p. 201 ff. (by J.A. Roach); p. 205 f. (by H.B. Robertson, Jr.).

10. See H. Wehberg, *Das Seekriegsrecht*, in: F. Stier-Somlo (ed.), HANDBUCH DES VÖLKERRECHTS V, Berlin 1915, p. 26; R.W. TUCKER, THE LAW OF WAR AND NEUTRALITY AT SEA, Washington D.C. 1957, p. 283. According to PH.C. JESSUP/F. DEÁK, NEUTRALITY. ITS HISTORY, ECONOMICS AND LAW, Vol. I: THE ORIGINS, New York 1935, pp. 105, 112 f., 114 ff., naval blockade was distinguished from siege with the Anglo-Swedish Treaty of 1656. For further references see H.J.W. VERZIJL, *supra* note 7, p. 415 ff.

11. See also R. KLEEN, LA NEUTRALITÉ D'APRÈS LE DROIT INTERNATIONAL CONVENTIONNEL ET COUTUMIER DES ÉTATS CIVILISÉS, Tome I: PRINCIPES FONDAMENTAUX - DEVOIRS DES NEUTRES, Paris 1898, p. 542 ff., who explains the emergence of naval blockade with the increase of naval forces.

12. Edict of July 27, 1584. *Cp.* C. VAN BYNKERSHOEK, QUAESTIONUM JURIS PUBLICI, Liber I, Cap. XI, p. 89; C.J. COLOMBOS, *supra* note 4, § 814.

13. In addition to the proclamations of 1586, 1622 and 1694, the Decree of the General States of June 26, 1630, is especially worth mentioning. See C. VAN BYNKERSHOEK, QUAESTIONUM JURIS PUBLICI, *supra* note 12, p. 89; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 26 f. For the practice of other States/entities, see PH.C. JESSUP/F. DEÁK, NEUTRALITY, *supra* note 10, p. 111 ff.

14. HUGO GROTIUS, DE JURE BELLI AC PACIS, Liber III, Cap. I, Para. V.

15. C. VAN BYNKERSHOEK, QUAESTIONUM, *supra* note 12, p. 87 ff., with references to the Dutch practice. For the 17th century practice of other States/entities, see PH.C. JESSUP/F. DEÁK, NEUTRALITY, *supra* note 10, p. 107 ff.; H.J.W. VERZIJL, *supra* note 7, p. 424 ff. See also E. DE VATTEL, LE DROIT DES GENS OU PRINCIPES DE LA LOI NATURELLE, Book III, § 117, who maintains that in case of blockade and siege the respective belligerent is entitled to prevent anybody from entering the respective area and to consider that person an enemy if he endeavors to enter the area or to transport something into that area.

16. It should be noted that according to Chapter 276 of the *Consolato del Mare* only enemy goods on board neutral merchant vessels were subject to capture. If, however, the captain refused to transport those goods to an ordered destination, the commander (the "Admiral") of the privateer was entitled to use armed force. According to the consolato del mare, as well as according to the "*Breve curiae maris*" of Pisa (1298) and the Statutes of Genoa (1316), neutral goods, in principle, were exempt from capture. See F. JORDÁ, DAS "CONSULAT DES MEERES" ALS URSPRUNG UND GRUNDLAGE DES NEUTRALITÄTSRECHTS IM SEEKRIEGE BIS ZUM JAHRE 1856, Hamburg 1932, p. 25 f.

17. See H.J.W. VERZIJL, *supra* note 7, p. 421 f.

18. According to the second clause of that decree, all ships and goods were to be confiscated even if encountered at a certain distance from the blockaded area if the ship's documents gave sufficient proof that they were destined to a Flemish port. An exception was provided for the case in which the vessel in question, prior to visit or pursuit, deliberately changed course. See C. VAN BYNKERSHOEK, QUAESTIONUM, *supra* note 12, p. 87 f.

19. C.J. COLOMBOS, *supra* note 4, § 816.

20. H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 26 f., with further references.

21. PH.C. JESSUP/F. DEÁK, NEUTRALITY, *supra* note 10, p. 117 ff., with further references.

22. H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 30.

23. P. FAUCHILLE, LA DIPLOMATIE FRANÇAISE ET LA LIGUE DES NEUTRES DE 1780, Paris 1893, pp. 20, 68 ff.; R. KLEEN, NEUTRALITÉ I, *supra* note 11, p. 576 ff.; U. Scheuner, *Neutralität, bewaffnete*, in: Strupp/Schlochauer (eds.), WÖRTERBUCH DES VÖLKERRECHTS, Vol. II, pp. 596–597.

24. That declaration can be found in: TH. NIEMEYER, URKUNDENBUCH ZUM SEEKRIEGSRECHT, Berlin 1913, p. 1 f.

25. See the references in H. WEHBERG, SEEKRIEGSRECHT, *supra* note 10, p. 33; TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 6 ff.

26. H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 34 ff.

27. R. KLEEN, NEUTRALITÉ I, *supra* note 11, p. 28 ff.; M.C. DE BOECK, LA PROPRIÉTÉ PRIVÉE ENNEMIE SOUS PAVILLION ENNEMI, Paris 1882, p. 70 ff.

28. Those treaties are printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 13 ff.

29. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 17 ff.

30. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 47 f.

31. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 48 f.

32. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 39 ff.

33. H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 40. Still, there are some examples of blockades in the traditional sense; see H.J.W. VERZIJL, *supra* note 7, p. 421 f.

34. See the references in: H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 41 f

35. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 53 ff.; J. HINZ/E. RAUCH, KRIEGSVÖLKERRECHT, 3rd ed., Cologne 1984, no. 1525

36. CH. DUPUIS, LE DROIT DE LA GUERRE MARITIME D'APRÈS LES DOCTRINES ANGLAISES CONTEMPORAINES, Paris 1899, p. 201:

> Les manoeuvres navales de l'Angleterre, en 1888, paraissent avoir démontré la nécessité, pour l'escadre de blocus, de modifier fréquement la position de ses navires, de les éloigner de temps à autre, pour donner aux équipages un repos indispensable. [...] Les attaques de nuit sont les plus périlleuses; il faut, pour les prévenir ou les déjouer, changer souvent de place, tromper par la mobilité du but les calculs de l'aggresseur projeter parfois en un point inattendu la lumière qui permettra de le surprendre, au besoin disparaître et le laisser s'épuiser à son tour des recherches vaines.

See also R. KLEEN, NEUTRALITÉ I, *supra* note 11, p. 572; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 42 ff.

37. Already in the case of the *Nancy* [(1809) Roscoe II, 106 and 108], Lushington had held that "if a blockade was effective, the Court must not appreciate the number and the disposition of the ships of the blockading force," and that "even a single warship might maintain it."

38. During the Crimean War it was sufficient for the effective blockade of Riga to station one warship at a distance of 120 NM because it was indeed able to really prevent access via the only approach. See CH. DUPUIS, LE DROIT DE LA GUERRE MARITIME, *supra* note 36, p. 203.

39. S.V. Mallison/W.T. Mallison Jr., *A Survey of the International Law of Naval Blockade*, U.S. Naval Institute PROCEEDINGS 102 (Feb. 1976), pp. 43–53, 46.

40. See the judgements of the U.S. Supreme Court in the cases of The *Bermuda* [3 Wall. 514 (1865)], The *Springboek* [5 Wall. 1 (1866)] and The *Peterhoff* [5 Wall. 1 (1866)]. See also H.W. Malkin, *Blockade in Modern Conditions*, BRITISH YEARBOOK OF INTERNATIONAL LAW III (1922–23), pp. 87–98, 92 ff.; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 158 ff.; G. SCHRAMM, DAS PRISENRECHT IN SEINER NEUESTEN GESTALT, Berlin 1913, p. 172 ff.

41. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 736.

42. In its report, the Comité d'examen stated that

> on dut se demander, si la discussion de la proposition britannique n'outrepassait pas les limites de la compétence de la Troisième Commission. On fit observer que la question de

savoir quand et comment un blocus peut être établi, est du ressort de la Quartième Commission, qui aurait à s'occuper de la matière du blocus de guerre; c'est notamment à la Quatrième Commission qu'il devrait appartenir de se prononcer sur toute question concernant l'effectivité du blocus.

printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 772.

43. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 772.

44. Printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 773.

45. For example, Rear Admiral Siegel during the fifth session on September 17, 1907.

46. Hence, Rear Admiral Siegel was right when he stated: "C'est là une clause qui laisse au belligérant une échappatoire bien dangereuse"; printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 805.

47. For a more detailed discussion, see N. BENTWICH, THE DECLARATION OF LONDON, London 1911, p. 44 ff.; F. Kalshoven, *Commentary on the 1909 London Declaration*, in: N. Ronzitti (ed.), THE LAW OF NAVAL WARFARE, Dordrecht et al. 1988, pp. 257–275; NAVAL WAR COLLEGE, THE DECLARATION OF LONDON OF FEBRUARY 26, 1909, Washington, D.C. 1910, p. 25 ff.

48. See the Rapport général présenté à la Conférence Navale au nom du Comité de Rédaction; printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 1604 ff., 1608.

49. While, according to the French position, the notification was regarded as constitutive, by the Anglo-American position knowledge of the establishment of a blockade was considered sufficient. See C.J. COLOMBOS, *supra* note 4, §§ 826 ff.; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 164 f.; G. SCHRAMM, PRISENRECHT, *supra* note 40, p. 202 f. See also the different proposals submitted to the 1907 Hague and to the 1909 London Conferences and the Rapport général; printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, pp. 1247 ff. and 1610.

50. According to Article 15, knowledge is presumed, failing proof to the contrary, "if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time."

51. W.E. HALL, INTERNATIONAL LAW, Oxford 1880, p. 846 ff.; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 170. In the Rapport général (printed in: TH. NIEMEYER, URKUNDENBUCH, *supra* note 24, p. 1616) it is made clear that:

> Le rayon d'action d'une force navale bloquante pourra s'étendre assez loin, mais, comme il dépend du nombre des bâtiments concourant à l'effectivité du blocus, et comme il reste toujours limité par la condition d'effectivité, il n'atteindra jamais des mers éloignées sur lesquelles naviguent des navires de commerce, peut-être destinés aux ports bloqués, mais dont la destination est subordonnée aux modifications que les circonstances sont susceptibles d'apporter au blocus au cours du voyage. En résumé, l'idée de rayon d'action liée à celle d'effectivité telle que nous avons essayé de la définir c'est-à-dire, comprenant la zone d'opérations des forces bloquantes, permet au belligérant d'exercer d'une matière efficace le droit de blocus qui lui est reconnu, et, d'un autre côté, elle évite aux neutres d'être exposés à grande distance aux inconvénients du blocus, tout en leur laissant courir les dangers auxquels ils s'exposent, sciemment en s'approchant des points dont l'accès est interdit par le belligérant.

52. See the references in G. SCHRAMM, PRISENRECHT, *supra* note 40, p. 203. Many of those national prize regulations can be found in: H. HECKER/E. TOMSON, VÖLKERRECHT UND PRISENRECHT, Frankfurt a.M./Berlin 1965, p. 29 ff.

53. H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 166; H.W. Malkin, *supra* note 40, BYIL III (1922-23), p. 93; R.W. TUCKER, *supra* note 10, p. 285.

54. The British long-distance blockade, even though the notion "blockade" was not used, was proclaimed by Order-in-Council of March 11, 1915 (printed in: REICHS-MARINE-AMT, SEEKRIEGSRECHT IM WELTKRIEGE, SAMMLUNG DIPLOMATISCHER NOTEN UND ANDERER URKUNDEN, Berlin 1916, No. 150). In its note to the American Ambassador (*ibid.*, No. 155), the British government expressly stated that the blockade had been established "to prevent vessels from carrying goods for or coming from Germany." For the practice of blockade during the First World War, see J.W. GARNER, PRIZE LAW DURING THE WORLD WAR, New York 1927, p. 621 ff.; L. GUICHARD, THE NAVAL BLOCKADE, 1914–1918, New York 1930, *passim*; OPPENHEIM, *supra* note 4, p. 791 ff.; R.W. TUCKER, *supra* note 10, p. 305 ff.; CH. ROUSSEAU, LE DROIT DES CONFLITS ARMÉS, Paris 1983, p. 272 ff.; 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, Berlin 1984, p. 83 ff.

55. Such exclusion zones have to be distinguished from blockades. See W.J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, CANADIAN YEARBOOK OF INTERNATIONAL LAW XXIV (1986), p. 91 ff. See also the references in M.M. WHITEMAN, DIGEST 10, *supra* note 5, p. 872 ff.; L.F.E. Goldie, *Maritime War Zones & Exclusion Zones*, in: H.B. Robertson, Jr. (ed.), THE LAW OF NAVAL OPERATIONS, Newport 1991, p. 156 ff.; J. SCHMITT, DIE ZULÄSSIGKEIT VON SPERRGEBIETEN IM SEEKRIEG, Hamburg 1966, *passim*.

56. OPPENHEIM, *supra* note 4, p. 795 ff.; R.W. TUCKER, *supra* note 10, p. 312 ff.; S.W.D. Rowson, *Prize Law During the Second World War*, BRITISH YEARBOOK OF INTERNATIONAL LAW XXIV (1947), pp. 160–215, 193 ff.; E. RAUCH, PROTOCOL ADDITIONAL, *supra* note 54, p. 87 ff. For reflections within the German Navy during World War II, see the references in: W. Heintschel v. Heinegg, *Exclusion Zones, Mines, Abuse of Neutral Flags and Insignia, Booty in Naval Warfare*, in: D. Fleck (ed.), THE GLADISCH COMMITTEE ON THE LAW OF NAVAL WARFARE, Bochum 1990, p. 39 ff.

57. Stat. Rules and Orders 1939, No. 1709; printed in: OBERKOMMANDO DER KRIEGSMARINE, URKUNDEN ZUM SEEKRIEGSRECHT, Berlin 1941, No. 398.

58. F. KALSHOVEN, COMMENTARY, *supra* note 47, p. 274.

59. Especially J. STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT. A TREATISE ON THE DYNAMICS OF DISPUTES – AND WAR – LAW, New York 1959, p. 508: "The realities of the present century require the British long distance blockade to be viewed as a long term transformation of the traditional law of blockade, rather than as mere reprisals, or mere breach of the traditional law." See also H.W. Malkin, *supra* note 40, BYIL III (1922–23), p. 87 f.; OPPENHEIM, *supra* note 4, p. 796 f.; C.J. COLOMBOS, *supra* note 4, §§ 839 ff.

60. That view is taken by R.W. TUCKER, *supra* note 10, p. 285 f.; and E. CASTRÉN, THE PRESENT LAW OF WAR AND NEUTRALITY, Helsinki 1954, p. 314 ff.

61. L.H. Woolsey, *Closure of Ports by the Chinese Nationalist Government*, AM. J. INT'L L. 44 (1950), pp. 350–356; R. OTTMÜLLER, DIE ANWENDUNG VON SEEKRIEGSRECHT IN MILITÄRISCHEN KONFLIKTEN SEIT 1945, Hamburg 1978, p. 74 f.; E. BECKERT/G. BREUER, ÖFFENTLICHES SEERECHT, Berlin/New York 1991, no. 1126 ff.

62. S.V. Mallison/W.T. Mallison Jr., *supra* note 39, U.S. Naval Institute PROCEEDINGS 102 (Feb. 1976), p. 49; R. OTTMÜLLER, ANWENDUNG VON SEEKRIEGSRECHT, *supra* note 61, p. 106 f.; J.G. Verplaetse, *The Ius in Bello and Military Operations in Korea 1950–1953*, ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 23 (1963), pp. 679–738, 698 ff.

63. M.W. CAGLE/F.A. MANSON, THE SEA WAR IN KOREA, Annapolis 1957, p. 281 ff. See also M.M. WHITEMAN, DIGEST 10, *supra* note 5, p. 866 f.

64. J. ROHWER, *Naval Warfare Since 1945*, U.S. Naval Institute PROCEEDINGS 104 (May 1978), p. 66 ff.; J. Rohwer, MARINE-RUNDSCHAU 71 (1974), pp. 7–26, 19; R. OTTMÜLLER, ANWENDUNG VON SEEKRIEGSRECHT, *supra* note 61, pp. 274, 285 f.; D.K. PALIT, THE LIGHTNING CAMPAIGN, Salisbury 1972, p. 145.

65. The speech by President Nixon ("Denying Hanoi the Means to Continue Aggression,") was delivered on May 8, 1972, U.S. DEPT. OF STATE BULL., Vol. 66 (May 29, 1972), pp. 747–751. See also D.P. O'CONNELL, THE INFLUENCE OF LAW ON SEAPOWER, Manchester 1975, pp. 64 f., 93 ff.; F.B. Swayze, *Traditional Principles of Blockade in Modern Practice: United States Mining of Internal and Territorial Waters of North Vietnam*, JAG JOURNAL XXIX (1977), pp. 143–173.

66. S.V. Mallison/W.T. Mallison Jr., *supra* note 39, U.S. Naval Institute PROCEEDINGS 102 (Feb. 1976), p. 51; R. OTTMÜLLER, ANWENDUNG VON SEEKRIEGSRECHT, *supra* note 61, p. 231 ff.

67. D.P. O'CONNELL, INFLUENCE, *supra* note 65, p. 101 ff.; S.V. Mallison/W.T. Mallison Jr., *supra* note 39, p. 51; R. OTTMÜLLER, ANWENDUNG VON SEEKRIEGSRECHT, *supra* note 61, pp. 293 f., 301; R.R. Baxter, *The Law of War in the Arab-Israeli Conflict: On Water and on Land*, TOWSON STATE JOURNAL OF INTERNATIONAL AFFAIRS 5 (1971), pp. 1–17, 8.

68. Notice to Mariners No. 17/59.

69. Notice to Mariners No. 18/59.

70. See the references in: A. Gioia/N. Ronzitti, *The Law of Neutrality: Third States' Commercial Rights and Duties*, in: I.F. Dekker/H.H.G. Post (eds.), THE GULF WAR OF 1980–1988, Dordrecht *et al.* 1992, p. 234

71. For the reactions of neutral States in the aforementioned conflicts, see the references in: R. OTTMÜLLER, ANWENDUNG VON SEEKRIEGSRECHT, *supra* note 61, pp. 71 f., 96 f., 235 f., 282, 298.

72. Printed in: BYIL LIX (1988), 581.

73. THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, NWP 1–14M/MCWP 5–2.1/COMDTPUB P5800.1 (hereinafter NWP 1–14M).

74. While NWP 1-14M applies to the Canadian armed forces, there also exists a draft manual that is not yet completed. Since there are some differences, that draft will be cited in the following notes.

75. HUMANITARIAN LAW IN ARMED CONFLICTS Manual, edited by the Federal Ministry of Defence of the Federal Republic of Germany, Bonn, August 1992 (hereinafter GERMAN MANUAL).

76. NWP 1-14M, paras. 7.7.1 and 7.7.2.5; GERMAN MANUAL, para. 1051; Canadian Draft, para. 722 (1)(5).

77. NWP 1-14M, paras. 7.7.2.1 and 7.7.2.2; GERMAN MANUAL, para. 1052; Canadian Draft, para. 722.

78. NWP 1-14M, para. 7.7.2.2; GERMAN MANUAL, para. 1052; Canadian Draft, para. 722 (3).

79. As to the question whether and to what extent a blockade may be maintained only by naval mines, see the section on Declaration, Notification, Impartiality and Effectiveness *infra*.

80. NWP 1-14M, para. 7.7.2.3; GERMAN MANUAL, para. 1053; Canadian Draft, para. 722 (4).

81. NWP 1-14M, para. 7.7.1; GERMAN MANUAL, para. 1051 (1); Canadian Draft, para. 722 (1).

82. NWP 1-14M, para. 7.7.2.4; Canadian Draft, para. 722 (6).

83. NWP 1-14M, para. 7.7.3; Canadian Draft, para. 722 (10).

84. NWP 1-14M, para. 7.7.3; Canadian Draft, para. 722 (11).

85. NWP 1-14M, para. 7.7.3; GERMAN MANUAL, para. 1051 (2).

86. GERMAN MANUAL, para. 1051. However, in an annotation to paragraph 722 (1) of the Canadian Draft, a more cautious approach is taken:

> In so far as the purpose of a blockade is to deprive the enemy population of foodstuffs, so as to starve them in the hope that they would apply pressure to their government to seek peace, it would now appear to be illegal in accordance with AP I Art. 54 (1), which prohibits starvation of civilians as a method of warfare and which, as part of Section II concerning the general protection of the civilian population against the effects of hostilities, applies to all attacks from the sea against objectives on land Art. 49 (3) [...].

87. NWP 1-14M, para. 7.10; Canadian Draft, para. 722 (9).

88. NWP 1-14M, para. 7.5.2, according to which in those cases they acquire the character of an enemy merchant vessel or civil aircraft and may be treated in accordance with paragraph 8.2.2.

89. F. KALSHOVEN, COMMENTARY, *supra* note 47, p. 272; G.J.F. van Hegelsom, *Introductory Report*, in: W. Heintschel v. Heinegg (ed.), METHODS AND MEANS OF COMBAT IN NAVAL WARFARE, Bochum 1992, pp. 1 ff., 46; R.W. TUCKER, *supra* note 10, p. 285; CH. ROUSSEAU, *supra* note 54, p. 272.

90. A similar position is taken in NWP 1-14M, para. 7.7.5: "Notwithstanding this trend in belligerent practices (during general war) away from the establishment of blockades that conform to the traditional rules, blockade continues to be a useful means to regulate the competing interests of belligerents and neutrals in more limited armed conflict."

91. According to the well-established principles of prize law, capture and seizure of neutral goods are allowed only if they qualify as contraband, i.e., if they are destined to the enemy armed forces. Goods being exported from enemy ports may therefore not be considered contraband. The same position is taken by the ILA. According to the Helsinki Principles (5.2.3), "contraband are goods ultimately destined to the enemy of a belligerent which are designed for the use of war fighting and other goods useful for the war effort of the enemy." In the commentary it is made clear that, since the goods in question must be destined to the enemy, "the doctrine of contraband is not applicable to exports from enemy territory."

92. For the different theoretical approaches to blockade, see H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 138 ff.; G. SCHRAMM, PRISENRECHT, *supra* note 40, p. 163 ff.

93. Hence, the applicability of the legal limitations merely depends on the establishment of a blockade. According to Oppenheim (*supra* note 4, p. 774), a special justification is not necessary for the following reasons:

> The fact is that the detrimental consequences of blockade to neutrals stand in the same category as the many other detrimental consequences of war to neutrals. [. . .] A blockade interferes indeed with the recognised principle of the freedom of the sea, and, further, with the recognised freedom of neutral commerce. But all three have developed together, and when the freedom of the sea in time of peace and war, and, further, the freedom of neutral commerce, became generally recognised, the exceptional restrictions of blockade became at the same time recognised as legitimate.

94. R.W. TUCKER, *supra* note 10, pp. 287 f., 291; CH. ROUSSEAU, *supra* note 54, p. 267 f.; OPPENHEIM, *supra* note 4, p. 775 f.; C.J. COLOMBOS, *supra* note 4, §§ 822, 824, 826; E. CASTRÉN, *supra* note 60, p. 296 ff.; Y. Dinstein, *The Laws of War at Sea*, ISR. YBHR 10 (1980), pp. 38 ff., 50 ff., and *Sea Warfare*, in: R. Bernhardt (ed.), ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, Installment 4, North Holland 1981 ff., pp. 201–212, 205 f.; F. BERBER, LEHRBUCH DES VÖLKERRECHTS, Vol. II, 2nd ed., Munich 1969, p. 189. See also the SAN REMO MANUAL, paras. 93 ff., 99; and Articles 74, 77–79 of the 1939 Harvard Draft. According to the ILA Helsinki Principles (5.2.10), "in order to be valid, the blockade must be declared, notified to belligerent and neutral States, effective and applied impartially to ships of all States."

95. E. CASTRÉN, *supra* note 60, p. 297; C.J. COLOMBOS, *supra* note 4, § 825; OPPENHEIM, *supra* note 4, p. 777; R.W. TUCKER, *supra* note 10, p. 287; Article 78 para. 1 lit. (c) of the 1939 Harvard Draft.

96. For example, the Iranian declaration of October 1, 1980, was made known to international shipping within a few hours.

97. OPPENHEIM, *supra* note 4, p. 778 ff.; C.J. COLOMBOS, *supra* note 4, §§ 819 f.; 840 f.; J. STONE, *supra* note 59, p. 493; CH. ROUSSEAU, *supra* note 54, p. 263 ff.; R.W. TUCKER, *supra* note 10, p. 288 f.; E. CASTRÉN, *supra* note 60, p. 299 ff.; L. Weber, *Blockade*, in: EPIL 3, *supra* note 94, p. 48 ff.; E. RAUCH, PROTOCOL ADDITIONAL, *supra* note 54, p. 81; D.P. O'CONNELL, THE INTERNATIONAL LAW OF THE SEA (ed. by I.A. Shearer), Vol. II, Oxford 1984, p. 1151 ff.; Y. Dinstein, *supra* note 94, ISR. YBHR 10 (1980), p. 49 f.; P.A. MARTINI, BLOCKADE IM WELTKRIEG, Berlin/Bonn 1932, p. 84 ff. According to the commentary on Principle 5.2.10 of the Helsinki Principles "the force maintaining the blockade may be stationed at a distance determined by military requirements." For a position according to which a close cordon remains necessary, see F. BERBER, *supra* note 94, p. 190.

98. In that context, R.W. Tucker (*supra* note 10, p. 289) explains: "The element of danger associated with an effective blockade is therefore to be understood in terms of liability to seizure and eventual condemnation, though not in terms of a liability to destruction upon entrance into the forbidden area." See also the foregoing references and para. 96 of the SAN REMO MANUAL ("The force maintaining the blockade may be stationed at a distance determined by military requirements.).

99. In addition to the foregoing references, see para. 95 of the SAN REMO MANUAL; Article 72 of the 1939 Harvard Draft.

100. For the general area of naval warfare ("regions of operations"), see paras. 10 ff., 14 ff. of the SAN REMO MANUAL. For the legal status of international straits in naval warfare, see W. Heintschel v. Heinegg, *Straits and the Law of Naval Warfare*, in: L.C. Green/M.N. Schmitt (eds.), THE LAW OF ARMED CONFLICT: INTO THE NEXT MILLENIUM, U.S. Naval War College, International Law Studies Vol. 71, Newport, 1998, p. 263 ff.

101. The same position is taken in the commentary on Helsinki Principle 5.2.10 and, *inter alia*, in NWP 1-14M, para. 7.7.2.3.

102. For an in-depth analysis of the legality of aerial blockades, see M.N. Schmitt, *Aerial Blockades in Historical, Legal, and Practical Perspective*, USAFA JOURNAL OF LEGAL STUDIES, Vol. 2 (1991), pp. 21–86. See also OPPENHEIM, *supra* note 4, p. 781; E. CASTRÉN, *supra* note 60, p. 301. R.W. TUCKER, *supra* note 10, p. 283, footnote 1, maintains: "The extension of blockades to include the air space over the high seas remains a development for the future. It is next to impossible to declare with any degree of assurance what procedures may govern blockade by air. Certainly, there are grave difficulties in assuming that the practices of naval blockade can be applied readily, by analogy, to aerial blockade." Still, he does not doubt the principal legality of the incorporation of the airspace. Of course, in view of the dangers involved, belligerents are

obliged to observe certain rules of conduct, as, for example, proposed by the ICAO in its Safety Recommendations, ICAO Doc. C-WP/8803, AM. J. INT'L L.83 (1989), p. 335.

103. OPPENHEIM, *supra* note 4, p. 780 f.; C.J. COLOMBOS, *supra* note 4, § 842; E. CASTRÉN, *supra* note 60, p. 300 f.; R.D. Powers Jr., *International Law and Open-Ocean Mining*, JAG JOURNAL XV (1961), pp. 55–58, 71; M.S. MCDOUGAL/F.P. FELICIANO, MINIMUM WORLD PUBLIC ORDER, New Haven 1961, p. 495; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 152; Art. 73 of the 1939 Harvard Draft. See also SAN REMO MANUAL, para. 97: "A blockade may be enforced and maintained by a combination of legitimate methods and means of warfare provided this combination does not result in acts inconsistent with the rules set out in this document."

104. See *infra* notes 45 f.

105. J. STONE, *supra* note 59, p. 496.

106. Obviously, the same position is taken by H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 152; E. CASTRÉN, *supra* note 60, p. 300 f.; OPPENHEIM, *supra* note 4, p. 781; Article 73 of the 1939 Harvard Draft ("For the purpose of establishment and maintenance of a blockade, a belligerent must use surface or submarine vessels or aircraft, and may also used fixed obstacles and anchored automatic contact mines which become harmless on becoming unanchored."). The commentary to paragraph 97 of the San Remo Manual makes clear that "this paragraph . . . does, however, prohibit the enforcement solely by weapon systems, such as mines, unless they are employed in such a manner as not to endanger legitimate sea-going commerce." In an annotation to paragraph 7.7.2.3, NWP 1–14M, the authors maintain that "the presence of at least one surface warship is no longer an absolute requirement to make a blockade legally effective, as long as other sufficient means are employed."

107. The former USSR opposed the mining of Haiphong by referring to the freedom of navigation. It did not claim a violation of the maritime *jus in bello*.

108. The position taken by O'Connell, according to which the mining of Haiphong was a "strategic blockade" and could, thus, be maintained and enforced solely by mines, is untenable. The maritime *jus in bello* does not distinguish between "strategic" and "economic" blockades. D.P. O'CONNELL, LAW OF THE SEA II, *supra* note 97, p. 1139.

109. J. STONE, *supra* note 59, p. 496; E. CASTRÉN, *supra* note 60, p. 301; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 152; Article 73 of the 1939 Harvard Draft.

110. NWP 1-14M, para. 7.10; Principle 5.2.10 of the Helsinki Principles ("Neutral vessels believed on reasonable and probable grounds to be breaching a blockade may be stopped and captured"); SAN REMO MANUAL, para. 98; R.W. TUCKER, *supra* note 10, p. 292 ff.; C.J. COLOMBOS, *supra* note 4, § 832; E. CASTRÉN, *supra* note 60, p. 304 ff.; D.P. O'CONNELL, LAW OF THE SEA II, *supra* note 97, p. 1156 f.; OPPENHEIM, *supra* note 4, p. 782 ff.; Articles 81 f. of the 1939 Harvard Draft.

111. Besides the foregoing references, see NWP 1-14M, paras. 7.5.2 and 8.2.2.

112. For the differentiation between inward and outward breach of blockade, see C.J. COLOMBOS, *supra* note 4, §§ 829, 831.

113. NWP 1-14M, para. 7.7.4. See also Canadian Draft, para. 722 (8).

114. In favor: C.J. COLOMBOS, *supra* note 4, § 835; J. STONE, *supra* note 59, p. 498; E. CASTRÉN, *supra* note 60, p. 306 f.

Against: R.W. TUCKER, *supra* note 10, pp. 310, 316, footnote 80; H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 161; P.A. MARTINI, BLOCKADE, *supra* note 97, p. 72 ff.; CH. ROUSSEAU, *supra* note 54, p. 271. See also TH. NIEMEYER, DAS SEEKRIEGSRECHT NACH DER LONDONER DEKLARATION, Berlin 1910, p. 21.

115. See the protests by neutral States printed in: OBERKOMMANDO DER KRIEGSMARINE, *supra* note 57, p. 18 ff., 329 ff.

116. See the references in H. Wehberg, *Seekriegsrecht*, *supra* note 10, p. 156 ff.; F. BERBER, *supra* note 94, p. 190 f.; F.D. v.Hansemann, *Die Lehre von der einheitlichen Reise im Rechte der Blockade und Kriegskonterbande*, ZEITSCHRIFT FÜR VÖLKERRECHT UND BUNDESSTAATSRECHT, Beiheft zum IV. Bande, Breslau 1910, p. 6 ff.

117. That expression was used in a German bulletin of September 13, 1939, printed in: OBERKOMMANDO DER KRIEGSMARINE, *supra* note 57, No. 40. See also P.A. MARTINI, BLOCKADE, *supra* note 97, p. 94 ff.; A.C. BELL, DIE ENGLISCHE HUNGERBLOCKADE IM WELTKRIEG 1914–15, Essen 1943, *passim*.

118. In his statement of September 26, 1939, the British Prime Minister said:

> There have been many proposals founded in the highest motives that food should be allowed to pass the blockade for the relief of these populations. I regret that we must refuse these requests. Many of these valuable foods are essential to the manufacture of vital war materials. Fats are used to make explosives. Potatoes make the alcohol for motor spirit. The plastic materials now so largely used in the construction of aircraft are made of milk. If the Germans use these commodities to help them to bomb our women and children rather than to feed the populations who produce them, we may be sure imported foods would go the same way, directly or indirectly, or be employed to relieve the enemy of the responsibilities he has so wantonly assumed;

Parl. Deb. House of Commons Bd. 351, 1237, cited in: W.N. MEDLICOTT, THE ECONOMIC BLOCKADE, Vol. I, London 1952, p. 666. See also P.A. MARTINI, BLOCKADE, *supra* note 97, p. 115.

119. The Australian delegate stated that "Article 48 [= Art. 54] does not prevent military operations intended to control and regulate the production and distribution of foodstuffs to the civilian population, and that it does not affect existing legal rules concerning the right of military forces to requisition foodstuffs. Moreover, in the view of my delegation, nothing in Article 48 directly or indirectly affects existing rules concerning naval blockade." CDDH Off. Rec. VI, 220. The same position was taken by the Third Committee in its 1975 Report, CDDH Off. Rec. XV, 279.

120. H. Meyrowitz, *Le protocole additionel I aux conventions de Genève de 1949 et le droit de la guerre maritime*, REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 89 (1985), pp. 243–298, 270 ff., 276 ff.; G.J.F. van Hegelsom, *Introductory Report*, *supra* note 89, p. 46. It is unclear whether Levie shares that view. H.S. Levie, *Means and Methods of Combat at Sea*, SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE 14 (1988), pp. 727 ff., 732. See also C. Pilloud/J. Pictet, in: ICRC, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, GENEVA 1987, no. 2092. These authors, while rejecting the applicability of Article 54 to naval blockades, apply Article 70 on relief actions. There is, however, some contradiction, if these authors also hold (*ibid.*, no. 2095) that "it should be emphasized that the object of a blockade is to deprive the adversary of supplies needed to conduct hostilities, and not to starve civilians." Obviously, they were eager to avoid any contradiction to the Report of the Third Committee.

121. M. Bothe, *Commentary on the 1977 Geneva Protocol I*, in: N. Ronzitti, *supra* note 47, p. 764; E. RAUCH, PROTOCOL ADDITIONAL, *supra* note 54, p. 93 f. A more cautious approach is taken by W.A. Solf, in: M. BOTHE/K.J. PARTSCH/W.A. SOLF, NEW RULES FOR VICTIMS OF ARMED CONFLICTS, The Hague *et al.*, 1982, p. 338: "The Committee III report disclaims any intention to change the law of naval blockade, citing the provisions of Art. 49(3), although,

indirectly, it may have had some effect on that law through the provisions dealing with relief actions."

122. W.A. SOLF, *supra* note 121, p. 336. See also SAN REMO MANUAL, para. 102: "The declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or to deny it other objects essential for its survival [. . .]." Article 54 Additional Protocol I is to be considered a "new rule" that, as such, is not yet part of customary international law. In an annotation to NWP 1–14M, para. 8.1.2, the authors state that "Article 54(1) of Additional Protocol I would create a new prohibition on the starvation of civilians as a method of warfare [. . .] which the United States believes should be observed and in due course recognized as customary law [. . .]. Starvation of civilians as a method of warfare has potential implications on the law of blockade [. . .]."

123. SAN REMO MANUAL, para. 102 lit. (b). This is also accepted by those authors who reject an application of Article 54 of Additional Protocol I to naval blockades. See G.J.F. van Hegelsom, *Introductory Report*, *supra* note 89, p. 46: "[. . .] if the sole purpose of the blockade is to starve the civilian population, the blockade should be deemed illegal on the grounds that it is not directed at a military objective [. . .]. Termination of the blockade might be prompted if the collateral damage would be excessive in the light of the military advantage anticipated."

124. According to Article 23, paragraph 1, of the Fourth Geneva Convention (1949), "each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is the adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases." Relief consignments for the civilian population are regulated in Article 70, Additional Protocol I. The customary character of that provision is, *inter alia*, recognized in NWP 1–14M, paragraph 7.7.3: "Similarly, neutral vessels and aircraft engaged in the carriage of qualifying relief supplies for the civilian population and the sick and wounded should be authorized to pass through the blockade cordon."

125. M. Bothe, *Commentary*, *supra* note 121, p. 763 f.; G.J.F. van Hegelsom, *Introductory Report*, *supra* note 89, p. 46 f.; Y. Dinstein, *supra* note 94, 47 ff.; Y. Sandoz, in: ICRC, COMMENTARY, *supra* note 120, no. 2805; SAN REMO MANUAL, paras. 103 and 104. According to Principle 5.3 of the Helsinki Principles, "a blockade may not be used to prevent the passage of relief consignments which has to be free according to the applicable rules of international humanitarian law, in particular those contained in Articles 23, 59 and 61 of the Fourth Geneva Convention or Articles 69 and 70 of Protocol I Additional to the Geneva Conventions." See also the commentary thereon: "The provisions of the Geneva Conventions and the Additional Protocol referred to in this principle constitute an exception to the general rules of blockade. It is also submitted that these rules are part of customary law. Thus, they also bind those States which have not ratified the treaties mentioned in this principle."

126. SAN REMO MANUAL, para. 103. See also Article 23, para. 2, of the Fourth Geneva Convention and Principle 5.3 of the Helsinki Principles. In the commentary to the latter provision, the ILA states: "This obligation is, however, subject to the right to prescribe the technical arrangements, including search, under which such passage is permitted, and the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organisation which offers guarantees of impartiality."

127. Also covered are embargoes ordered by the Security Council pursuant to Article 41 if the member States are entitled to enforce the respective embargo "by all necessary means", i.e., the use of armed force. For example, by UN Security Council Resolution 217 of November 20, 1965, the United Kingdom was entitled to enforce the oil embargo against Rhodesia. The

economic sanctions imposed on Iraq by UNSC Resolution 661 of August 6, 1990, were, according to UNSC Resolution 665 of August 25, 1990, enforced by the States cooperating with Kuwait. In both cases, the Security Council did not decide according to Article 42, but according to Article 41 UN Charter.

128. ANNOTATED SUPPLEMENT TO THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, Newport 1997, para. 7.7.2.1, footnote 131.

129. For example, in UNSC Resolution 661 of August 6, 1990.

130. During the second Gulf War Iran, in particular, tried to assume a neutral status. This position, however, was rejected by the vast majority of States and international lawyers.

131. In its commentary on Principle 5.2.10 on blockade of the Helsinki Principles on the Law of Maritime Neutrality, the ILA maintains that "the Security Council, when acting by virtue of Chapter VII of the Charter, may adopt decisions deviating from this Principle (see Principle 1.2)." Principle 1.2 in part reads as follows:

> Nothing in the present Principles shall be construed as implying any limitation upon the powers of the Security Council under Chapters VII and VIII of the United Nations Charter. In particular, no State may rely upon the Principles stated herein in order to evade obligations laid upon it in pursuance of a binding decision of the Security Council.

In the commentary it is made clear that "the provision serves as a reminder that the principles do not preclude a modification of the rules of neutrality due to the law of the United Nations Charter ...."

132. W. Heintschel v. Heinegg, *The Current State of International Prize Law*, in: H.H.G. Post (ed.), INTERNATIONAL ECONOMIC LAW AND ARMED CONFLICT, Dordrecht *et al.* 1994, pp. 5 ff., 27.