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Blockade

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A. Definition and Distinction from Other Concepts

1 A blockade is a belligerent operation to prevent vessels and/or aircraft of all nations, enemy and neutral (→ *Neutrality in Naval Warfare*), from entering or exiting specified ports, airports, or coastal areas belonging to, occupied by, or under the control of an enemy nation. 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 (→ *Transit of Goods over Foreign Territory*). In view of its impact on the commercial relations between the blockaded belligerent and neutrals, a blockade is regularly considered a method of → *economic warfare*, and thus dealt with in the context 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* 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 closing in on 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. 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 (Colombos 716-17). Accordingly, a blockade is a method of warfare to which the general principles and rules of the law of international armed conflicts/international humanitarian law apply.

2 A blockade must be distinguished from other belligerent measures, such as operations aiming at → *contraband* interdiction (→ *Prize Law*). The term contraband means goods ultimately destined for territory under enemy control, and which are susceptible for use in armed conflict. Accordingly, exports from enemy, or enemy controlled, territory do not qualify as contraband. A blockade is the only legal method of warfare by which a belligerent is entitled to prevent enemy exports.

3 Moreover, a blockade should not be confused with embargoes, measures of force protection, eg warning zones and 'defence bubbles', and exclusion or → *war zones*. With zones the focus lies on the three dimensional space within the declared limits. In contrast, the focal point of a blockade is the horizontal line, or rather, 'curtain', marking the outer limits of the blockade. The area within that line is of minor interest.

4 It needs to be emphasized that the term 'blockade' has sometimes been used for belligerent measures that may not be considered an exercise of the right of blockade. Therefore, Egypt's closure of the → *Suez Canal* did not qualify as a blockade *strictu sensu*. Findings to the contrary are not based upon the law of blockade but upon the prohibition, under Art. 1 Convention Respecting the Free Navigation of the Suez Maritime Canal ([signed 29 October 1888] [1909] 3 AJIL Supp 123; 'Constantinople Convention'), to 'subject the Canal to the exercise of the right of blockade'. Only if that distinction is observed is it correct to state that Egypt had 'subjected the Canal to a blockade against Israeli ships within the meaning of [...] Article 1 of the Constantinople Convention', because the 'normal meaning of blockade would, in any event, not make much sense in connection with that clause' (Gross 541).

5 Finally, today there is no longer any need to separately deal with so-called pacific blockades (for the contrary position see Rousseau 261-63). Either the establishment and maintenance of a pacific blockade is an 'act of war' (Whiteman 868) since it involves the use of military force by one State against another State, and will thus bring into existence an international armed conflict in the sense of Common Art. 2 → *Geneva Conventions I-IV*

(1949). Or it is a non-military, or military, enforcement measure authorized by the United Nations Security Council ('UNSC'). In the former case the international law of blockade will apply, in the latter the special legal basis of the UNSC resolution will at least modify that law.

B. Development of Blockade Law in State Practice and in International Instruments

1. Early Developments

6 At the end of the 16th and during the 17th century naval blockade had become a generally recognized method of → *naval warfare* (Grotius Chapter I para. V; Bynkershoek, *Quaestionum*, Book I Chapter XI 87–88; Verzijl Heere and Offerhaus 424–44). Still, it lasted until the → *Crimean War (1853–56)* that the English and continental European positions on the law of blockade could be reconciled. Para. 4 Declaration respecting Maritime Law between Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey (→ *Paris, Declaration of [1856]*) provides: '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'.

7 At the Second Hague Peace Conference of 1907 no rules reaffirming or developing the Paris Declaration of 1856 were adopted because the Third Commission had no mandate to that effect (→ *Hague Peace Conferences [1899–1907]*). The only provision agreed upon that could be considered to affect the law of blockade was Art. 2 Hague Convention on the Laying of Automatic Submarine Contact Mines ([signed 18 October 1907, entered into force 26 January 1910] [1907] 205 CTS 331) prohibiting the laying of automatic contact mines 'off the coast and ports of the enemy, with the sole object of intercepting commercial shipping'. However, it was, and still is, a matter of controversy whether that provision has an impact on the law of blockade at all. In any event, it will be difficult, if not impossible, to establish whether the sole purpose of a minefield is indeed to intercept commercial shipping.

2. London Naval Conference (1908–09)

8 It was left to the → *London Naval Conference (1908 and 1909)* to codify the law applicable to naval blockades. The 21 articles devoted to that subject in the Declaration concerning the Laws of Naval War of 26 February 1909 ('London Declaration of 1909') have since been the only authoritative statement on that method of naval warfare. They may be summarized as follows.

9 A blockade, in order to be binding, must be effective, that is to say, it must be maintained by a force sufficient to prevent access to the enemy coastline (Art. 2 London Declaration of 1909). Whether that precondition is met is, however, a question of fact (Art. 3 London Declaration of 1909). The delegates to the London Naval Conference of 1909 were not able to agree upon a more specific rule. They expected the determination of → *effectiveness* to be reserved to the competent international or national prize court. According to Art. 4 London Declaration of 1909, 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 (Art. 5 London Declaration of 1909). Warships (Art. 6 London Declaration of 1909) and neutral merchant vessels in distress (Art. 7 London Declaration of 1909; → *Ships in Distress*) may be allowed to enter and leave a blockaded port or place. The declaration and notification are constitutive for a blockade's legality (Arts 8, 10, and 11 London Declaration of 1909). 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

(Art. 9 London Declaration of 1909). It must be notified to the neutral powers and to the local authorities (Art. 11 London Declaration of 1909). 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 it had been raised (Art. 12 London Declaration of 1909). The voluntary raising, as well as any restriction in the limits of a blockade, must be notified (Art. 13 London Declaration of 1909). If no declaration of blockade has been notified to the local authorities, or if no period of grace has been granted, neutral vessels must be allowed to leave the blockaded area (Art. 16 (2) London Declaration of 1909). Vessels that in actual, or presumptive knowledge of the blockade, attempt to leave or enter the closed port may be captured as long as they are pursued by a warship of the blockading force (Arts 14, 17, 20, and 21 London Declaration of 1909). According to Arts 17, 19, and 20 London Declaration of 1909, the doctrine of continuous voyage as well as the 'droit de suite' that had been practised excessively during the 18th century, are not part of blockade law anymore. In case of a vessel approaching a blockaded port that has no actual or presumptive knowledge of the blockade, the notification must be made to the vessel itself (Art. 16 (1) London Declaration of 1909). Finally, a blockade must be confined to ports and coasts belonging to or occupied by the enemy (Art. 1 London Declaration of 1909), and it may not bar access to neutral ports or coasts (Art. 18 London Declaration of 1909).

10 The 1909 London Declaration because of the resistance of the House of Lords to ratify it never entered into force (→ *Treaties, Conclusion and Entry into Force*). Still, its provisions on blockade were observed during the Balkan Wars, and they were included into national prize regulations. Apart from the applicability of the doctrine of continuous voyage, at the beginning of World War I, they were generally regarded as customary in character (Malkin 93; Tucker 285; → *Customary International Law*).

3. World Wars I and II

11 During World War I neutral trade was subjected to far reaching control measures. Merchant vessels not disposing of a navicert were either diverted or captured. Moreover, the belligerents established extensive minefields and → *war zones (Sperrgebiete)* within which all vessels were at risk of being sunk without prior warning (Tucker 296-97; Whiteman 872; → *Submarine Warfare*). In view of the development of weapons technology, eg long-range artillery, → *submarines*, and military aircraft, blockades conforming to the rules and principles of the London Declaration of 1909 (see the examples given by Colombos 732) were rather the exception than the rule (Garner 621-22).

12 Great Britain established long-range blockades of Germany that rested on two Orders in Council that were expressly justified as measures of retaliation (→ *Reprisals*). The British Order in Council Adopting Certain Measures to Prevent Commodities of Any Kind from Reaching or Leaving Germany ([11 March 1915] [1915] 109 BFSP 217) aimed at preventing goods of any kind from reaching or leaving Germany. No merchant vessel was permitted to proceed to, or from, Germany if it carried goods destined to, or laden in, the ports of the enemy. Intercepted vessels were deviated to British or allied ports, and required to discharge cargo of enemy origin or destination. The British Order in Council to Enforce Further Measures in Order to Prevent Commodities of Any Kind from Reaching or Leaving the Enemy Countries ([16 February 1917] [1917-1918] 111 BFSP 14) provided for the

capture and condemnation of any vessel carrying goods with an enemy destination or of enemy origin. Moreover, any vessel 'encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory without calling at a port in British or Allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination and, if necessary, for adjudication before the Prize Court' (ibid para. 1). Neutral States, especially the United States of America ('US'), doubted the legality of the British measures by, inter alia, claiming that they had led to the barring of neutrals' ports and coasts (for the Anglo-American correspondence see Colombos 733-34). However, Great Britain maintained that it had 'instituted a blockade, effectively controlling by cruiser 'cordon' all passages to and from Germany by sea' (Note Handed to Ambassador Page by Sir Edward Grey ([15 March 1915] in Colombos 732).

13 Moreover, and contrary to Arts 17 and 19 London Declaration of 1909, belligerents again applied the doctrine of continuous voyage to blockades. The British Order in Council Removing Certain Doubts in regard to and Amending 'The Declaration of London Order in Council No. 2, 1914' provided that 'neither a vessel nor her cargo shall be immune from capture for breach of blockade upon the sole ground that she is at the moment on her voyage to a non-blockaded port' ([30 March 1916] [1916] 110 BFSP 173 para. 5). Similarly, it was held in the British Order in Council Withdrawing the Orders relative to the Declaration of London that 'the principle of continuous voyage or ultimate destination shall be applicable both in cases of contraband and of blockade' ([7 July 1916] [1916] 110 BFSP 236 para. b). France, by Report of the French Foreign Minister of 12 April 1916 took the position that no vessel shall be exempt from capture for violation of a blockade on the sole ground that she was, at the time of visit, sailing to a non-blockaded port (Ministère des Affaires Étrangères, Rapport au Président de la République Française [12 April 1916] [15 April 1916] 105 Journal Officiel de la République Française 5164).

14 During World War II the practice of long-distance blockades was repeated (Oppenheim and Lauterpacht 795-97; Tucker 312-15) and again justified by reference to the right of retaliation. For example, the British Order in Council Framing Reprisals for Restricting Further the Commerce of Germany ([27 November 1939] 1939 Statutory Rules and Orders vol II 1939/3806) provided that any vessel sailing from a German port, or a port in territory under enemy occupation, could be intercepted and required to discharge in a British or allied port that part of its cargo as was laden in an enemy port. According to the British Order in Council of 31 July 1940 (1940 Statutory Rules and Orders 1940/1436) seizure was justified when a vessel failed to carry a navicert. The refusal on the part of neutral shipowners to fully comply with these regulations entailed the deprivation of access to all British controlled facilities (Tucker 314). 'In design, therefore, as in actual effect, the Order in Council [...] imposed an almost complete control over neutral commerce' (Tucker 315).

4. Post World War II Practice

15 In contrast to the two World Wars, the limitations of the traditional law of blockade have, to a considerable extent, been observed in the practice of States since 1945. However, the principle of effectiveness and the requirement of maintaining and enforcing a blockade by surface warships only have been modified. Moreover, a blockade may be enforced by aircraft, and against aircraft (Schmitt). Still, the law as laid down in the London Declaration of 1909 has not become obsolete.

16 During the → *Korean War (1950–53)* the United States/United Nations naval forces, because of their superiority, were able to maintain and enforce the blockade declared on 4 July 1950, which was in nearly full compliance with the provisions of the London Declaration of 1909. Warships, except those of North-Korea, were excluded as well as the port of Rashin that served as a naval base of the former Soviet navy (Cagle and Manson 281).

17 During the 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. Vessels that did not comply with the orders by the warships' commanders were attacked and sunk (Ottmüller 274, 285–86).

18 The blockade of Haiphong in May 1972 also widely corresponded with the requirements of a traditional blockade, although, the term blockade was not used. Prior to the closure becoming effective it was publicly announced, and all States presumably affected were informed. However, the closure of Haiphong 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 (Swayze; Mallison and Mallison 51).

19 At the beginning of the → *Iran-Iraq War (1980–1988)* Iran, on 22 September 1980, declared the transport of all goods and cargoes to Iraq prohibited. The Iranian naval forces were in a position to enforce that prohibition as well as the closure of the → *Shatt al Arab*, which was declared on 1 October 1980. Altogether 71 neutral merchant ships were affected by the closure of the Shatt al Arab. Iran offered 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 Shatt al Arab.

20 During the 2006 Israel-Lebanon conflict → *Israel*, on 13 July 2006, imposed a full air, ground, and sea blockade on Lebanon with the aim of blocking the transfer of terrorists and weapons to the terrorist organizations operating in Lebanon. Although the Israeli warship 'Hanit' was hit by a missile launched from the Lebanese coast, the Israeli Defence Forces successfully maintained and enforced the blockade until it was lifted on 7 September 2006. It is worth mentioning that, on 20 July 2006, the Israeli government approved the establishment of a humanitarian corridor between Lebanon and Cyprus.

21 During the 2008 Georgian-Russian conflict Russian warships were deployed off Georgia's Black Sea coastline, and successfully prevented arms and military supplies from reaching Georgia by sea. There was, however, no absolute prohibition for all vessels and aircraft to enter or to leave the blockaded area. Therefore, the Russian measure—although widely characterized a blockade—was merely a limited exercise of the right of contraband control.

22 In most of the cases just referred to, neutral States, in view of the lack of → *protest[s]*, obviously accepted the legality of the blockades. If at all, they merely doubted their legality under the *ius ad bellum* not under the *ius in bello*. For example, the British government protested against the blockade of the Shatt-al-Arab because, in its view, the right of → *self-defence* did not allow its establishment (UK Policy on Belligerency in G Marston [ed] 'United Kingdom Materials on International Law 1988' [1988] 59 BYIL 421, 581). However,

the British government did not consider the Iranian measures illegal under the law of naval warfare.

5. Military Manuals

23 The customary character of the London Declaration of 1909 is recognized, inter alia, in the military manuals of the US Navy (*The Commander's Handbook on the Law of Naval Operations*; 'US Manual') and of the German (*Humanitarian Law in Armed Conflicts—Manual*; 'German Manual'), and British (*The Manual of the Law of Armed Conflict*; 'British Manual') 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. The declaration, either by the government or by the commander of the blockading force, must include the details laid down in Art. 9 London Declaration of 1909 and must be notified to affected neutral States and to the local authorities. Because knowledge of the existence of a blockade is an essential element of the offences of breach, and attempted breach of blockade, neutral vessels are always entitled to notification. Moreover, according to the three manuals, blockades, in order to be valid, must be effective. That means that a blockade must be maintained by a force or other mechanism 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. The blockade need not be restricted to ships, it may also be applied and enforced by, and against, aircraft. In any event, a blockade must be enforced impartially against the vessels and aircraft of all States, including merchant vessels flying the flag of the blockading power. 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. Neutral vessels in distress should not be prevented from entering and subsequently leaving a blockaded area. According to the US 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 (→ *Civilian Population in Armed Conflict*). Those vessels should be authorized to pass through the blockade cordon (safe passage; → *Safe-Conduct and Safe Passage*). The German and British manuals contain provisions according to which starvation of the civilian population as a method of warfare is prohibited. Neutral vessels and aircraft that, in knowledge of a notified and effective blockade, breach or attempt to breach a blockade are subject to capture. If they resist an attempt to establish identity, including visit and search, they may be attacked (see also → *Ships, Visit and Search*).

C. Contemporary Law of Blockade

24 Up to the present, the especially major military powers have been opposed to any proposal of codifying the law of naval warfare and → *air warfare*. Still, in view of modern State practice and of military manuals, it is possible to establish the customary rules and principles governing naval and aerial blockades. Moreover, the contemporary law of naval warfare has been summarized in the 1994 *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* ('San Remo Manual'), and the law of air and missile warfare will soon be reaffirmed by another private draft.

25 It is to be emphasized that blockade is a method of warfare recognized to apply in international armed conflicts only. This is without prejudice to the right of a government to take all measures necessary in order to prevent ingress to, and egress from, an area under the control of organized armed groups opposing it. Such measures may not be interpreted as an implicit recognition of belligerency. The government forces are under an obligation to confine enforcement measures to areas in which the respective State enjoys territorial sovereignty. Within the → *territorial sea*, third States' shipping may be interfered with only

after the right of → *innocent passage* has been suspended in accordance with the → *law of the sea*. In and over sea areas where the rights of transit and archipelagic sea lanes passage apply, third States' aviation and navigation may not be prevented from exercising these rights (→ *Transit Passage*). If non-State actors bar access to ports or coastlines held by government forces, or by enemy organized armed groups, such conduct is legally void vis-à-vis third States. This is without prejudice to the international responsibility of the State concerned which remains under an obligation to give appropriate publicity to any danger to navigation or → *overflight* within, or over, international straits or archipelagic sea lanes (→ *Straits, International*; → *Archipelagic Waters*).

1. Continuing Relevance

26 In view of the practice of States during the two World Wars one author maintains 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' (Kalshoven 274). Others consider the British practice to have contributed to the progressive development of the international law on blockades: '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' (Stone 508). Again others (Colombos 719; Tucker 285-86; Castrén 314-15) stress the fact that the United Kingdom had justified its practice by reference to reprisals. Hence, they maintain, the London Declaration of 1909, in substance, has not been 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 so that the blockading forces may be deployed at some distance from enemy coasts and ports.

27 As the overview over modern State practice has shown, States will continue to make use of that method of warfare at least in cases in which they dispose of superior naval and air forces, and aerial reconnaissance capabilities. Accordingly, blockade remains a most efficient method for subduing the enemy. Moreover, it is the only way by which a belligerent is entitled to prevent the enemy not only from the import, but also from the export, of goods that would otherwise enable him 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.

2. Declaration and Notification (Principle of Publicity)

28 A blockade, in order to be binding, must be declared and notified to all States. The declaration shall specify the commencement, duration, location, and extent of the blockade and the period in which neutral vessels and aircraft may leave the blockaded area.

29 The declaration is the act of the blockading State, or of the competent commander, stating that a blockade is, or is about to be, established. The notification is the means by which that fact is brought to the knowledge of neutral States and, if necessary, of the authorities in the blockaded area or of individual aircraft and vessels.

30 The declaration must be as specific as possible in order to enable international aviation and navigation to avoid the blockaded area, or to leave it before enforcement measures take effect. Moreover, all measures taken by the blockading force must conform to the particulars of the declaration. A lack of specificity may render the declaration void. In principle, the declaration must provide for a period of grace during which neutral aircraft and vessels are allowed to leave the blockaded area. There is no absolute rule as to the duration of such a period. However, in most cases 24 hours are to be considered reasonable

and sufficient. A period of grace must be granted only if, in fact, neutral aircraft or vessels are present in the blockaded area.

31 The notification must be communicated to all States and not merely to those in the region where the blockade is established. The reason is that a blockade must be enforced against all vessels and aircraft regardless of their nationality or origin. While Art. 11 London Declaration of 1909 provides that the notification to neutral States must be made 'by means of a communication addressed to the Governments direct, or to their representatives accredited to it', today there is no longer a need for such a formal way of making the establishment of a blockade known to the international community. Regularly, the blockading power will fulfil its obligation by making use of the usual channels established for international aviation or navigation. Therefore, a 'Notice to Airmen' ('NOTAM'), or 'Notice to Mariners' ('NOTMAR') as a most effective and timely means of conveying the information necessary will, in most cases, be sufficient. Hence, a notification through diplomatic channels will be necessary in exceptional circumstances only. If, by use of the usual channels, the local authorities in the blockaded area cannot be informed appropriately, the blockading power or the competent commander will have to inform them separately by whatever means of communication the commander considers adequate. The same holds true with regard to an individual aircraft or vessel approaching the blockaded area and which is unaware of the establishment of the blockade.

32 The obligations of declaration and notification also apply to the cessation, temporary lifting, re-establishment, extension, or other alteration of a blockade. This obligation does not apply in cases where, due to stress of weather, the blockading force has been temporarily withdrawn. If the blockading force is withdrawn for any other reason and the blockade is to be re-established, the same formalities must be observed as though it were established for the first time.

3. Effectiveness

33 Under both treaty and customary international law, 'blockades, in order to be binding, must be effective' (Paris Declaration of 1856 at para. 4; Art. 2 London Declaration of 1909; San Remo Manual para. 95). The object and purpose of this requirement is to rule out so called paper blockades, ie blockades which have merely been declared and which are, if at all, enforced randomly. However, no absolute rule can be laid down as to the strength or position of the blockading force. All depends on matters of fact and geographical circumstances. Hence, effectiveness is to be judged on the merits of each case, ultimately by the competent judicial authority. It should be recalled, however, that according to the Paris Declaration of 1856 and Art. 2 London Declaration of 1909 a blockade is effective only if it is 'maintained by a force sufficient really to prevent access to the coast of the enemy'. This does not mean that all aircraft and vessels must in fact be prevented from either entering or leaving the blockaded area. Rather, it is sufficient if the maintaining force is of a strength or nature that there is a high probability that ingress to and egress from the blockaded area will be detected, and prevented by the blockading power. In other words: a blockade is to be considered effective if any attempt to leave or enter the blockaded area proves to be a dangerous undertaking.

34 Accordingly, for a blockade to be effective, it is not necessary that warships or military aircraft, on a permanent basis, are deployed in the immediate vicinity of the blockaded area. Rather, the area may be monitored by electronic means of surveillance, or by the use of unmanned aerial or unmanned seagoing vehicles. If, thus, the blockading force is in a

position to immediately respond to an attempted breach of blockade the blockade remains effective.

35 Moreover, the force maintaining a naval or aerial blockade may be deployed at a distance required by military necessity (San Remo Manual para. 96). There has always been general agreement that, when judging the effectiveness of a blockade, the technological development is to be taken into account. In view of the development of modern weapons, surveillance, and communications technologies it is not any longer necessary for the blockading force to be deployed in close vicinity of the blockaded area. The traditional concept of close blockade has been replaced by the concept of long-distance blockade. Therefore, the blockading force may be deployed at a distance beyond the range of the enemy's coastal or other defence systems.

36 In case a blockade is maintained and enforced by military aircraft only, it is a controversial issue whether the effectiveness presupposes that the military aircraft 'do[es] in fact dominate the air' (Castrén 409). Indeed, such aircraft would be exposed to a considerable risk of attack unless the blockading power in fact controls the respective → *airspace*. Otherwise interception operations would become unlikely, and the blockade would, thus, lose its effectiveness. Therefore, an aerial blockade, in order to be effective, must be accompanied by a sufficient degree of air superiority. That will be the case if the military aircraft tasked with the maintenance and enforcement of an aerial blockade are in a position to operate in the area concerned without considerable interference by the enemy. Then, there will be a high probability that aircraft breaching, or attempting to breach, the blockade, will be detected and intercepted. It needs to be stressed that the blockading power must not have gained air supremacy in the operational sense. This is made clear by the formulation sufficient degree of air superiority. The adjective 'sufficient' relates to the purpose of blockades, ie preventing access to, and egress from, the blockaded area. Neither must the degree of air superiority remain on the same level for the entire duration of the blockade. The determination of the necessary degree of air superiority, as in the case of effectiveness as such, is dependent on the circumstances of each case. Hence, a lesser degree will suffice if the blockade is maintained and enforced by a combination of methods and means of warfare. The temporal element of air superiority is to be determined in the light of the density of international air and sea traffic in the region concerned.

37 A naval blockade need not be maintained and enforced by warships only, an aerial blockade need not be maintained and enforced by military aircraft only. Rather, a blockade may be enforced and maintained by a combination of lawful methods and means of warfare (San Remo Manual para. 97; British Manual para. 13.69). The blockading power is entitled to make use of any method or means of warfare not prohibited under the law of international armed conflict. Therefore, a blockade may be maintained and enforced by warships, military aircraft, mines, or by a combination thereof, provided this combination does not result in acts inconsistent with international humanitarian law. While none of these means are prohibited it needs to be observed that the blockading force, under certain circumstances, may be obliged to allow entry into and egress from the blockaded area. Under Art. 7 London Declaration of 1909, in 'circumstances of distress, acknowledged by an authority of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.' According to Art. 6 London Declaration of 1909 the 'commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.' Hence, maintaining and enforcing a blockade by aerial delivered mines alone which cannot be remotely controlled could result in a violation of the law of international armed conflict if, thus, a vessel in distress became unable to reach a place of safety. The same holds true if the passage of relief consignments for the civilian population of the blockaded

area becomes impossible in view of the methods and means employed for maintaining and enforcing the blockade.

4. Neutral Sea Areas and Neutral Airspace

38 According to Art. 18 London Declaration of 1909 a 'blockade must not bar access to neutral ports or coasts'. In view of the inviolability of neutral territory and neutral airspace, this rule is declaratory for customary international law. Since blockade is a method of warfare directed against the enemy State it may not have the effect of preventing access to, and egress from, neutral territory and neutral airspace. A neutral State continues to enjoy its right of using its territory and national airspace for the purpose of gaining access to the → *high seas* and to international airspace. Hence, the blockading power is under an obligation to provide free passage to and from neutral territory and airspace, if the blockade is established and maintained in the vicinity of neutral neighbouring States.

5. International Straits and Archipelagic Sea Lanes

39 The traditional law of blockade has been considerably affected by the development of the modern law of the sea. Accordingly, the blockading power is under an obligation not to hamper transit passage or archipelagic sea lanes passage of third States' vessels and aircraft (San Remo Manual paras 27–30). Therefore, a blockade may not be established and maintained in, and over, international straits or archipelagic sea lanes unless the blockading power provides for safe and free passage of international navigation and aviation not destined to the blockaded area.

6. Impartiality

40 According to Art. 5 London Declaration of 1909 and customary international law a blockade must be applied impartially to the vessels and aircraft of all States. The requirement of impartiality is a necessary corollary to the principle of effectiveness, and to the very object and purpose of a naval, or of an aerial, blockade. If a blockade is to effectively prevent access to, and egress from, the blockaded area by vessels or aircraft that purpose would not be achieved if the blockading power discriminated between vessels and aircraft of different nationalities. The enemy could make use of aircraft not covered by the declaration and would thus be in a position to evade the consequences of blockade altogether. Accordingly, a blockade must be applied to all vessels and aircraft, including merchant vessels and civilian aircraft flying the flag, or bearing the marks, of the blockading power. This means that, in principle, neutral warships and military aircraft must be prevented from entering or leaving the blockaded area as well. Neutral warships and military or other State aircraft despite their sovereign immunity enjoy no positive right of access to blockaded areas. However, the blockading power may authorize their entry and exit in accordance with Art. 6 London Declaration of 1909, and the corresponding rule of customary international law.

7. Breach of Blockade

41 It is generally acknowledged that vessels and aircraft breaching or attempting to breach a blockade are liable to capture (Art. 20 London Declaration of 1909; San Remo Manual paras 146 f, 153 f). Under the traditional law (Art. 21 London Declaration of 1909) a vessel found guilty of breach of blockade may be condemned, ie, subject to the decision of a prize court, and property of the vessel or aircraft may be transferred to the capturing State. It is doubtful whether that rule continues to be valid today. In any event, the capturing State

is entitled to repress the aircraft or vessel for the duration of the international armed conflict.

42 A breach of blockade occurs at the moment a merchant vessel or civilian aircraft crosses the outer limit of the blockaded area without special entry or exit authorization by the blockading power. Since neutral merchant vessels and civilian aircraft are obliged to respect a blockade that conforms to the legal requirements of publicity and effectiveness they become liable to interception and capture if they act in violation of the legitimate right of the blockading power to prevent egress from, or ingress to, the blockaded area.

43 An attempt of breach of blockade occurs if a vessel departs from a blockaded port, or if an aircraft takes off from an airport in the blockaded area, and if they are on a course set into the direction of the blockade line (or 'curtain'). The same holds true if vessels or aircraft are on a course destined to such ports or airports, or if a vessel is anchoring outside the blockaded area or hanging about ('hovering') so that it could easily 'slip in' (Colombos 727).

44 According to the US Manual, 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' (at para. 7.7.4.). This implies that the doctrine of continuous voyage may be applied to the legal regime of blockade. As in the beginning of the 20th century, this question is a matter of dispute in the legal literature (in favour: Colombos 781; opposed: Rousseau 271). There are good reasons to maintain that the doctrine of continuous voyage may not be applied to blockades. Firstly, neutrals have only in rare cases been willing to tolerate interference with their merchant shipping in areas distant from blockaded coasts or ports. Secondly, Art. 19 London Declaration of 1909 provides: 'Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.' Thirdly, in the practice of States since 1945 that doctrine has not played a significant role. Still, in view of the division of opinion it is not possible to maintain that the doctrine is inapplicable.

45 Liability to capture presupposes knowledge of the existence of the blockade. That knowledge may, according to Art. 14 London Declaration of 1909 be actual or presumptive. According to Art. 15 London Declaration of 1909, 'failing proof to the contrary, knowledge of the blockade is presumed 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'. In view of modern communications technology, and the fact that the notification need not any longer be formal, that rule has become obsolete. Rather, today, the blockading power may rely on the assumption that neutral navigation and aviation have been informed adequately and timely by the respective NOTAM or NOTMAR. However, Art. 16 (1) London Declaration of 1909 continues to apply in the rare and exceptional case that a vessel or aircraft approaches the blockaded area in ignorance of the blockade. Then, the vessel or aircraft must be informed separately by an officer of the blockading power. Still, this is of minor practical relevance, because in most cases the blockading force will establish radio or other contacts with merchant vessels and civilian aircraft travelling in the vicinity of the blockaded area.

46 A merchant vessel or civilian aircraft having breached, or attempted to breach, a blockade may be intercepted and pursued for the purpose of exercising capture. As long as the pursuit is not abandoned, the vessel or aircraft remains liable to capture. Pursuit must be abandoned as soon as the vessel or aircraft enters into neutral waters or airspace. Since capture is but a means to effectively enforce a blockade, punitive aims may not be pursued.

Hence, a vessel or aircraft which has successfully escaped capture may not be captured for the sole reason of having breached, or attempted to breach, a blockade in the past.

47 Vessels and aircraft clearly resisting interception and capture are liable to be attacked. 'Clear resistance' presupposes that they act in a manner that has, or may have, an impeding or similar effect on the intercepting forces. Therefore, a mere change of course in order to escape is not sufficient. An act of clear resistance against interception or capture is to be considered an effective contribution to enemy military action by purpose or use. Hence, such vessels and aircraft lose their civilian status and become legitimate military objectives whose destruction offers a definite military advantage because, thus, the effectiveness of the blockade is preserved. However, in view of the obligations under the precautionary principle the attack may only be conducted after prior warning.

48 It is important to note that a neutral warship or military aircraft breaching, or attempting to breach, a blockade in case their entry has not been authorized by the blockading force commits a violation of the applicable international law. Still, the blockading force may not attack such warship or aircraft unless in the exercise of the right of self-defence. The usual reaction will be an official protest of the blockading power addressed to the government of the respective neutral State.

49 Active resistance by crews or passengers against capture, eg by acts of violence against a boarding team, may be overcome by the use of proportionate force. It is contested whether such resistance qualifies as a direct participation in hostilities. If the respective criteria identified in the ICRC Interpretive Guidance are applied—threshold of harm, causation, belligerent nexus—one may hold that active resistance by crews or passengers is aimed at depriving the blockade of its effectiveness and that, thus, the crews or passengers lose their protection as civilians.

8. Principle of Humanity

50 A blockade will always have negative impacts on the supply of the civilian population with food, drinking water, medical items, and other objects essential for its survival. The practice of the two World Wars gives evidence that the blockading powers did not consider themselves to be obliged to provide for the free passage of relief consignments to the blockaded area, even if the civilian population was threatened by starvation. For example, the British Prime Minister, in his statement of 20 August 1940, 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 (*Hansard* HC Deb vol 364 cols 1159, 1161–62 [20 August 1940]).

51 Today, according to Art. 54 (1) → *Geneva Conventions Additional Protocol I (1977)*, 'starvation of civilians as a method of warfare is prohibited'. Under customary international law, the 'declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade' (San Remo Manual para. 102). If the civilian population of the blockaded territory

is inadequately provided with food and other objects essential for its survival 'the blockading party must provide for free passage of such foodstuffs and other essential supplies' (San Remo Manual para. 103; see also US Manual para. 7.7.3). However, the obligation to provide for free passage of relief consignments is not absolute in character because relief consignments could be abused for military or other harmful purposes. Therefore, the obligation to authorize passage of such items is subject to (San Remo Manual para. 103):

52 a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and b) 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.

53 Subject to the same limitations, the obligation to allow exceptions for humanitarian purposes also covers medical supplies (San Remo Manual para. 104). The fact that medical supplies are dealt with separately is owed to the fact that, other than relief consignments that are destined for the civilian population only, medical supplies are to be provided to the civilian population and to the wounded and sick members of the enemy armed forces, or to → *prisoners of war* who may be held in custody in the blockaded area.

D. Current Developments

1. Interference with Enemy Trade by Means Other than Blockade

54 During the → *Iran-Iraq War* the belligerents established war zones in order to deprive the enemy of the revenues of oil exports. There is general agreement that the so-called 'tanker war' was illegal under the law of international armed conflict. The tankers sunk did not qualify as → *military objectives*, nor were they engaged in a breach of blockade, or rendered active resistance to capture. While certain zones are to be considered in accordance with the law of international armed conflict, a zone is illegal if it serves the sole purpose of targeting in a non-discriminatory manner all objects encountered within the zone. The majority of States agree that exports from enemy territory transported by neutral vessels or aircraft may legitimately be interfered with only by means of a blockade established and maintained in accordance with the aforementioned rules and principles. Still, the US has maintained the position that enemy vessels and civilian aircraft are legitimate military objectives if they are integrated into the enemy's 'war-sustaining effort' (US Manual para. 8.6.2). Neutral 'vessels and aircraft acquiring enemy character may be treated by an opposing belligerent as if they are in fact enemy vessels and aircraft' (ibid 7.5). Hence, according to that position, all aircraft and vessels engaged in the export of goods are considered legitimate military objectives if capture is not feasible. However, the US position on targeting the enemy's war-sustaining effort has not found approval by other States, and it is therefore contrary to international treaty and customary law.

2. Military Enforcement Measures under Chapter VII UN Charter

55 UNSC Resolutions 661 (1990) of 6 August 1990 (SCOR 45th Year 19) and 670 (1990) of 25 September 1990 (SCOR 45th Year 24) are sometimes considered to have established a pacific blockade on Iraq. While this may have been correct prior to 1945, today those declarations are to be considered non-military enforcement measures decided upon by the UNSC in accordance with Art. 41 UN Charter. Moreover, those resolutions did not authorize the deployment of naval and air forces off the Iraqi coast, or at the borders of

Iraq. Rather, they obliged the UN Member States to take all necessary measures to prevent their nationals from trading with Iraq.

56 However, under Art. 42 UN Charter, the UN Security Council may, inter alia, decide upon the establishment and maintenance of a blockade. If that occurs, the question arises whether, or to what extent, such a UN blockade would be governed by the traditional rules. On the one hand, the UN Security Council has a wide range of discretion and, as an organ of the UN, it is not directly bound by rules of international law that are primarily designed to regulate the conduct of States in situations of armed conflict. It needs to be stressed, however, that the UN Security Council does not dispose of armed forces. Therefore, military enforcement measures will for the foreseeable future be taken by Member States which will base their action on the authorization provided by the respective resolution. On the other hand, a blockade ordered or authorized by the UN Security Council will, of course, have to be declared. At least the respective resolution will contain all the elements that are proscribed for a belligerent blockade, eg geographical limits, and duration. The practice of the UN Security Council also gives sufficient proof that, for humanitarian reasons, certain goods that are essential for the survival of the civilian population may further be transported to a blockaded area (eg UNSC Resolution 661). If feasible and not counterproductive to the aim pursued—restoration of international peace and security—the UN Security Council will also observe that access to ports and coasts of third States is not barred. However, here a first important exception applies. In case of enforcement measures under Chapter VII UN Charter there is no room for neutrality. Therefore, third States may well be affected by a blockade ordered pursuant to Art. 42 UN Charter, or authorized by the UN Security Council. In that case the affected States, according to Art. 50 UN Charter, 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. There are situations conceivable in which the UN Security Council is forced to order the capture of vessels, and aircraft, destined to a third State’s port or airfield if otherwise international peace and security cannot be restored. Finally, in view of the binding force of the decisions taken under Chapter VII UN Charter, and of the ultimate goal of maintaining international peace and security, a blockade pursuant to Art. 42 UN Charter will not have to fully comply with the principle of effectiveness.

3. Blockades and Non-International Armed Conflicts

57 In view of its purpose to prevent access or entry by all vessels or aircraft, a blockade is by necessity located in sea areas beyond the territorial sea. Accordingly, this method of naval or aerial warfare is unavailable to the parties of a non-international armed conflict. The 2015 blockade established by Saudi Arabia off the coast of Yemen would, therefore, lack a legal basis because that armed conflict is generally characterized as non-international. This is less clear with regard to the blockade established by Israel off Gaza in 2009. Some hold that the situation between Israel and Hamas constitutes a non-international armed conflict and that for that very reason the Gaza blockade was illegal (Turkish Report 61 et seq; Guilfoyle 178 et seq). However, according to the ‘Palmer Report’, Israel was entitled to establish and enforce the blockade because that conflict had ‘all the trappings of an international armed conflict’ (para. 73).

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