

Naval Blockade

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Abstract

Naval blockade is an old form of warfare where the current restatement of customary international law on this issue – the 1994 San Remo Manual – leaves something to be desired. The article considers the history of the concept and its current regulation like the requirements for establishing a naval blockade and addresses also issues in relation to its enforcement.

Keywords: *Blockade; Mavi Marmara; Yemen; San Remo Manual*

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1. Introduction of the concept

A blockade might be defined legally as “an operation by a belligerent State to prevent vessels and/or aircraft of all States, 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 belligerent State”.¹

The purpose of a naval blockade is to help achieve the overall objective of the use of armed force – to get the enemy to agree to terms favorable to you – through undermining the enemy’s war effort by interdicting in- and outgoing maritime traffic. Moreover, although blockades in earlier times were largely aimed at the economy of the enemy, today they are often an integral part of military operations directed against the enemy’s military assets.² A blockade also “avoids the need to distinguish between the cargoes carried by neutral ships, and so overrides the law of contraband”,³ and it is the only measure of traditional naval warfare which makes it possible to interfere with enemy exports.⁴

The rules of naval warfare have always been a compromise between the interests of larger naval powers, as well as between these powers and states likely to remain

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neutral during a naval encounter. As such, blockade law reflects naval tactics and strategies and is largely a product of customary international law developed over time “[t]hrough silence and acquiescence”.⁵

Naval blockades must be differentiated from situations where a coastal state uses its powers under the law of the sea to enforce restrictions on the use of its territorial sea, in that zone itself and in its contiguous zone.⁶ An example of this would be using the authority granted by the United Nations Convention on the Law of the Sea (UNCLOS) Art. 25 (3) to suspend innocent passage through a state’s territorial sea during ongoing hostilities. Thus, Sri Lankan restrictions, enforced in its territorial sea, on shipments to the Tamil Tigers were inherently different from a blockade.⁷ Likewise, the government of Yemen could decide to prohibit the use of rebel held ports and suspend innocent passage through its territorial sea.⁸ By authorizing Saudi forces, the latter would be able to undertake enforcement in Yemeni maritime zones to the same extent that Yemen is itself entitled to do so.⁹

Moreover, a flag state interfering with a vessel flying its flag, even if it is a rebel vessel, is not a blockade.¹⁰ Occasionally, the term blockade is wrongly used in connection with embargos, which at least partially differ from blockades, e.g. because they include landside restrictions on what may pass a border.¹¹ Thus, criticism of the Israeli blockade of the Gaza Strip largely centers on landside restrictions enacted by Israel, rather than the consequences of the seaside blockade.¹²

A related concept is the nineteenth century custom of pacific blockade.¹³ A pacific blockade was used as a tool of reprisal in relation to breaches of international law undertaken by the party against whom the pacific blockade was established. The essential difference between this type of “blockade” and the regular one was the absence of an intention to establish a state of war between the involved states.¹⁴ One issue raised by this practice is whether a pacific blockade could be enforced against vessels of non-participating states.¹⁵ Another more fundamental issue is whether the use of force may ever be used for the purpose of reprisal.¹⁶ Hindering access to or from a foreign coast presumably constitutes a use of force, either through aggressive obstruction of the navigation of vessels, or through the use of boarding or similar to achieve compliance. The “quarantine” of Cuba in 1962 would seem to have a questionable legal foundation,¹⁷ especially as none of the well accepted exceptions to the prohibition on the use of force seems applicable.

2. Historical development

Historically, blockades resembled maritime sieges.¹⁸ An early example of a maritime siege is the Athenian blockade in 425 B.C. of the island Sphacteria, which forced a Spartan garrison to surrender.¹⁹ A blockade was “considered an extension of investment of a fortress on land, and it was therefore not legally available in relation to unfortified ports, let alone a whole coastline.”²⁰ The Dutch blockade of the Spanish Netherlands in 1584,²¹ and Grotius’ support for this, “translated the requirement

of siege into the more general one of effective denial of access to enemy territory or escape therefrom.”²² Thus, a blockade gave the right to capture all vessels seeking to break the blockade with corresponding entitlements to vessels and cargo.²³

As stated by Kraska, “[d]uring the eighteenth century, blockade became a routine practice in European conflict. But the difficulty of blockading long coastlines soon gave rise to the ‘paper blockade’, in which a nation might declare a blockade, but lack the naval force to effectively maintain it. The early Dutch blockades of England (1662) and France (1672–1673) and the Dutch–English blockade (1689) were regarded as paper blockades.”²⁴

Traditionally, five requirements had to be met before a naval blockade could exist under international law:²⁵ The blockade had to be established by one of the parties, be proclaimed by such a party, be effective, be applied impartially, and not hinder travel to and from any points of a neutral coastline. If these requirements were met, the blockading power was entitled – and obligated should the blockade be effective – to visit and search, capture, and in extreme situations destroy, vessels seeking to breach the blockade.

Differences of opinion were most prevalent in relation to what constituted effectiveness and the closely related issue of whether the blockading vessels could operate at a distance from the relevant coastline.²⁶ Views on what constituted an effective blockade were typically divided into two camps. Firstly, there were those who held that the vessels upholding the blockade had to be stationed a few miles outside the relevant port so as to hinder the blockaded traffic. This is the so called “close-in blockade”,²⁷ and France often supported this view.²⁸ Secondly, there were those who merely required that the patrol was sufficiently close by – perhaps patrolling up and down the coastline – in order to make entry into the blockaded port or coastline risky.²⁹ This view was held by the British.

The British and continental positions on effectiveness did not reconcile until the Crimean War from 1853 to 1856,³⁰ with this requirement being firmly established in the 1856 Paris Declaration.³¹ This declaration is one of the first codification endeavors of the law of blockade, largely seen as reflecting customary international law,³² and defines effectiveness as “maintained by a force sufficient really to prevent access to the coast of the enemy.” Although “there is little doubt that the principle was directed against the British doctrine that blockades could be established by cruiser squadrons”,³³ the statement is indefinite and provides little help in identifying what would be necessary to “really [...] prevent” the said access.³⁴ A more lax formulation, found in British prize law, is that “the force must be sufficient to render the capture of vessels attempting to go in or come out most probable”.³⁵ Here, “[t]he distance of the blockading vessels from the shore was determined by considerations of naval tactics rather than by some preordained or preconceived theory of law.”³⁶

Some traditional blockades were undertaken during WWI,³⁷ like those of Montenegro in 1914 and German East Africa in 1915.³⁸ Also, the British naval operations against Petrograd in 1919 – part of the British intervention in the Russian

revolution – is considered by some as a blockade.³⁹ Ongoing technical developments, like longer-ranged coastal defenses, torpedo vessels and minefields,⁴⁰ as well as submarines and military aircraft of diverse categories,⁴¹ increasingly made a close blockade feasible “only in the most exceptional of circumstances.”⁴²

This led to a *prima facie* floating of the said requirements during WWI by both the UK and Germany.⁴³ Similar practices were undertaken by the major parties during WWII,⁴⁴ where only the Russian blockade of Finland in 1940 would seem to have been a traditional blockade.⁴⁵ However, the divergent practice was justified as reprisals,⁴⁶ and merely a minority holds that the concept of blockade has fallen into *desuetude*.⁴⁷

3. The current concept of naval blockade

3.1 Newer uses and legal instruments

State practice after WWII has differed from the flexible notion of the world wars.⁴⁸ Although the Taiwanese closure of areas under the control of communist Chinese authorities in 1949 was not labelled blockade, and also took place within a civil war, the rules of relevance to the concept were nevertheless applied.⁴⁹ Moreover, during the Korean War in the 1950s, a blockade was announced on 4 July 1950 whereby all merchant ships were barred from North Korean ports, whereas all warships – save North Korean ones – were allowed to pass to such ports.⁵⁰ This allowance was presumably made to cater to the interests of the Soviet Union, but it stretched the concept of blockade greatly.⁵¹ In 1971, India blockaded the coast of then East-Pakistan, current Bangladesh, to block supplies to the Pakistani armed forces as well as stop their escape to sea.⁵² It would seem that “[s]everal merchant ships and small vessels were captured, and those ships which refused to obey the commands of the blockading power were sunk.”⁵³ Mention should also be made of the Egyptian blockade in May 1967 of Eilat and the Gulf of Aqaba,⁵⁴ and its 1973 blockade of Bab el-Mandeb.⁵⁵ Likewise, the US applied something resembling a blockade to North Vietnam in May 1972 through the use of mines, although the term blockade was not officially used.⁵⁶ Similarly, Iran’s blockade in 1980 of Shat-al-Arab, during the Iran-Iraq conflict, would seem to have been undertaken in conformity with the law of armed conflict.⁵⁷ Blockade was also considered in connection with NATO’s attack on Yugoslavia in 1999, but some member states held that “this method of naval warfare was not a lawful option and would be too controversial”.⁵⁸ The concept was however used by Israel in relation to the Gaza Strip from 3 January 2009 and covered a distance of 20 nautical miles from the coast.⁵⁹ On 31 May 2010, the blockading force intercepted 6 vessels. On the largest of them, Mavi Marmara, the boarding force encountered more resistance than expected, with 9 casualties amongst the passengers and 55 passengers (one of whom died in 2014 after a four-year coma) and 9 Israeli soldiers injured.⁶⁰

The Declaration of Paris from 1856 and the unratified London Declaration of 1909 are the only international legal instruments which seek to explicitly regulate this

field of law.⁶¹ The London Declaration is “a codification of the case law of 18th and 19th century national prize courts, particularly English decisions during the Napoleonic Wars and American decisions resulting from the Civil War activities of Union naval forces.”⁶² The regulation on blockade in this declaration was largely regarded as customary international law at the outbreak of WWI.⁶³ The term blockade is also mentioned in Article 42 of the 1945 UN Charter,⁶⁴ as well as in Article 3 (c) of the 1974 UN General Assembly resolution Definition of Aggression,⁶⁵ although neither document defines the term.⁶⁶ Naval aspects of the law of armed conflict are also indirectly recognized by UNCLOS Article 87 (1), 2nd sentence, which states that “[f]reedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law.”

Current understanding of blockade, including its requirements, entitlements and consequences, is largely based on the London Declaration,⁶⁷ and it is reflected in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea from 1994.⁶⁸ As will be shown, the current writer holds that the said Manual is in need of reassessment.

3.2 Some preliminary considerations

Is a state of war required before a blockade may be established?⁶⁹ The short answer is that an international armed conflict (IAC) will suffice, although some scale or duration are presumably required.⁷⁰

In relation to non-international armed conflicts (NIACs), the concept of blockade has surfaced recently in relation to the “blockade” of Yemen by the Saudi-Arabian led coalition acting upon the invitation of the government of Yemen, against the Houthi rebels who currently control 30 % of Yemen.⁷¹ Blockade is generally understood as inapplicable to NIACs, but may blockades be used in high intensity NIACs?⁷² At best it may be said that “states have sometimes acknowledged or acquiesced in blockades targeting non-state actors”.⁷³ The typically cited examples are the US Civil War and – perhaps – the Israel-Lebanon conflict in 2006,⁷⁴ whereas examples against such use are typically the Spanish Civil War and the Algerian War of Independence.⁷⁵ In relation to the Spanish Civil War, it would seem that the nationalist party sought to establish a blockade,⁷⁶ but that foreign states refused to have their vessels suffer such a measure,⁷⁷ and actually established a “blockade” of Spain themselves in order to prevent foreign involvement in the civil war.⁷⁸

Tucker holds that “[i]n the absence of a recognized condition of belligerency neither the parent government nor insurgents can exercise belligerent rights against the vessels of third states on the high seas.”⁷⁹ For the non-state party during a belligerency scenario, it may only interfere with neutral shipping if the relevant neutral state “has –either explicitly or implicitly – recognized it as a belligerent”.⁸⁰ As the Houthi rebels do not seem to have been recognized as belligerents by any state, it would then seem hard to argue for applying the concept of blockade to that conflict.⁸¹ Since some NIACs are considered international under Article 1 (4) of the 1977 Additional

Protocol 1 to the 1949 Geneva Conventions, a somewhat corresponding consideration to that of the belligerency scenario would limit the entitlement of the non-state party to interfere with neutral shipping.⁸²

Some hold that the Israeli blockade of the Lebanese coastline during its 2006 armed conflict with Hezbollah should be considered an implicit recognition of belligerency,⁸³ and this concept is similarly applied by some to the Gaza Strip from 2009 onwards.⁸⁴ However, Israel seemingly attributed the acts of Hezbollah to Lebanon in 2006⁸⁵ – thus making the conflict international – and Israel has been somewhat unclear as to whether it considers the armed conflict with Hamas as non-international or international.⁸⁶ Also, there is state practice arguing against the use of blockade in a NIAC, and presumably also against it being used to transform that conflict into an international one. An example here is the Turkish reaction to the Gaza flotilla incident in 2010. In the Turkish report on the incident, blockade is held to apply only to IACs.⁸⁷ Although it may be argued that the state of Palestine already existed at that point in time, something which would have turned the conflict into an international one as Hamas was the elected government,⁸⁸ much of the discussion in the literature has been undertaken on the understanding that this was not the case.

The Palmer Report took a slightly anomalous approach to this issue, arguing that the “specific circumstances of Gaza are unique and are not replicated anywhere in the world”, where Hamas as “the de facto political and administrative authority in Gaza”, fires or permits others to fire into Israel.⁸⁹ The Palmer Report then turns to the issue of the intensity of the hostilities, stating that the armed violence “has all the trappings of an international armed conflict.”⁹⁰ To a large extent, the Palmer Report would seem to concur with the views of Cassese,⁹¹ whereas it seems to misconstrue the San Remo Manual as applying blockade *de lege lata* also to NIACs.⁹² It is submitted that the concept of blockade is still – beyond situations of belligerency – limited to IACs.⁹³

Nevertheless, the right to establish a blockade is not limited to states, as the UN Security Council may authorize such through its powers under Article 42 of the UN Charter. Such a blockade would have to be established and upheld by national military assets since the UN does not have such assets itself. To the extent that the Security Council does not explicitly deviate from the legal restrictions on blockades through its UN Charter Chapter VII powers, the ordinary rules will apply, although the concept of neutrality will have to be adjusted.⁹⁴

Another preliminary question is whether the entitlements granted and obligations incurred by a blockade may be activated without actually naming a naval operation a blockade. The need for clarity in international uses of armed force argues against this, but during the negotiation of the San Remo Manual the majority view was nevertheless that “the rules stated in these paragraphs [regarding blockade] were applicable to blockading actions taken by States regardless of the name given to such actions.”⁹⁵

One issue raised *inter alia* by Neff and the Turkish report is whether the principles of necessity and proportionality limit the way blockades may be carried out under traditional law.⁹⁶ This presupposes that limitations found in current *jus ad bellum*,

especially the principles of necessity and proportionality, also restrict traditional concepts like blockade.⁹⁷ Churchill and Lowe here hold that “[t]he best view seems to be that at least the principles, if not the detailed rules *eo nomine*, of the Laws of War and the law of neutrality apply to international armed conflicts.”⁹⁸ This reflects the fact that neutral states tend to avoid criticizing a blockade in terms of *jus in bello*, but rather argue that it violates *jus ad bellum*.⁹⁹ In other words, the application of a blockade – being as such a threat or an actual use of force under UN Charter Article 2(4) – must find its legality *jus ad bellum* under one of the recognized exceptions to that prohibition: UN Security Council mandate, self-defense, or invitation by the territorial state.¹⁰⁰

Here, the UN Palmer Report found in relation to the 2010 flotilla incident that “stopping these violent acts was a necessary step for Israel to take in order to protect its people and to defend itself.”¹⁰¹ Moreover, “given the relatively small size of the blockade zone and the practical difficulties associated with other methods of monitoring vessels (such as search and visit), the Panel is not persuaded that the naval blockade was a disproportionate measure for Israel to have taken in response to the threat it faced.”¹⁰² However, the Palmer Report also stated that “[a] naval blockade may only be maintained so long as it remains proportionate and a situation of armed conflict persists.”¹⁰³ Thus, it has been claimed that Israel’s security needs did not require landside closure of the Gaza Strip *and* a seaside blockade of the same.¹⁰⁴ Also, the principle of proportionality has been alleged to imply that the blockade would have to be limited to certain kinds of merchandise, as well as limiting the blockading state’s power to divert the relevant vessels from the blockading area, as opposed to capturing and confiscating them.¹⁰⁵ It is highly unclear whether state practice and *opinion juris* have given the principles of necessity and proportionality such consequences in relation to blockade.

3.3 Requirements

3.3.1 Declaration and notification

Although earlier there may have been two types of blockade – one of a factual kind and the other also requiring notification¹⁰⁶ – current international law only acknowledges blockade where notification is included. Previously, declaration of a blockade could be made by the commander of the blockading force acting on his government’s behalf, but current communication technology will presumably lead to issuance of such a declaration always being made by the relevant ministry of the said state. No reference to such a commander is made in the 1994 San Remo Manual, but it is mentioned in the 2015 US Law of War Manual.¹⁰⁷ The declaration is also to be notified to neutral states, whereas the officer in charge of the blockading force will usually notify the local authorities of the blockaded territory.¹⁰⁸

The US Law of War Manual here notes that “[n]otification should include, as a minimum, the date the blockade is to begin, its geographic limits, and the grace period granted neutral vessels and aircraft to leave the area to be blockaded.”¹⁰⁹

Beyond pointing out that these issues *must* be included,¹¹⁰ a declaration would presumably activate a blockade at 0000hrs on the date set, unless a different time is given.

The customary granting of leave to neutral vessels was not mentioned in the Israeli blockade notification, but that is of little consequence as there were presumably no such vessels on the relevant coastline since it had no proper ports. Likewise, parts of the Arctic may see little traffic. Should there nevertheless be such vessels, the absence of this information will not invalidate the blockade as such,¹¹¹ but rather grant such vessels a more flexible right to leave the blockaded port(s).

The Turkish report holds that the Israeli declaration does not sufficiently indicate the “extent” of the blockade, as required by Rule 94 of the San Remo Manual.¹¹² The explanation provided in the San Remo Manual is unhelpful – stating merely that “[t]his paragraph is self-explanatory.” As a blockade covers all types of cargo, and not merely those considered contraband, there is no obligation on the blockading power to issue a list of cargo prohibited from reaching the blockaded area.¹¹³ Presumably, the term “extent” would apply to any aerial dimension of the blockade, as opposed to the geographical part of the ocean covered by the naval blockade – the latter being covered by the term “location”. This since a blockade “need not be restricted to ships, it may also be applied and enforced by, and against, aircraft.”¹¹⁴

Does international law require an indication up front of the duration of a naval blockade? Although it is not found in the London Declaration, this is required by *inter alia* the San Remo Manual¹¹⁵ and the Harvard Air and Missile Warfare Manual.¹¹⁶ It would seem that the Turkel Commission is correct in considering this to be merely an emerging rule of customary law.¹¹⁷ To a large extent the Israeli declaration of blockade will have to be understood as applying until further notice. As held by the Palmer Report, “[g]iven the uncertainties of a continuing conflict, nothing more was required.”¹¹⁸

No specific form is needed for the notification of a blockade. What is important, however, is the effectiveness of the notification,¹¹⁹ and here the best result is achieved when multiple channels are used simultaneously. Traditionally, notification often took the form of diplomatic notes, but the issuing of Notices to Airmen or Notices to Mariners will suffice today.¹²⁰ Direct notification of a state through diplomatic channels is now merely a measure for exceptional circumstances.¹²¹ The Palmer Report holds that the rationale of such notification is the need to “ensure that all potentially concerned parties are informed because a blockade must be enforced against all vessels, and its intentional breach has significant consequences”.¹²²

The 2015 US Law of War Manual notes that “[i]t is customary for the belligerent State establishing the blockade to notify all affected States of its imposition,”¹²³ whereas the 1955 US Law of Naval Warfare referred to “all States”.¹²⁴ It would seem that the newer formulation is narrower, although all states may be considered affected, so in practical terms there is little difference.

Some presumptions of knowledge have been established in state practice. Of these, mention may be had of the blockade being common knowledge, and where the vessel has left a port belonging to its flag state after the said state has been informed of the blockade.¹²⁵ The London Declaration holds in Article 11(2) that having been informed by the commander of the blockading force, “[t]he local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.”

In a similar manner, changes to the blockade must also be declared and notified to the same audience.¹²⁶ As regards the termination of the blockade, beyond situations where it is not effective anymore, this is done by giving notice of the termination to all states.¹²⁷ In relation to the original understanding of the term “armistice”, the 1913 Manual of the Laws of Naval War states in Article 92 that “[b]lockades established at the time of the armistice are not raised, unless by a special stipulation of the agreement.”

3.3.2 What may be blockaded?

Early on, blockade would seem to have been limited to enemy coastal fortifications,¹²⁸ but this soon expanded to one or a few enemy ports, followed by the whole of the enemy coastline, if the belligerent so wished.¹²⁹ Although some hold that a blockade must cover the whole coastline of the state being blockaded,¹³⁰ the better view is that a mere selection of port(s) or shorter stretches of the coastline will suffice.¹³¹ Likewise, any coastline under enemy *occupation* could also be covered. Thus, a blockade might include coastline belonging to the blockading state itself but occupied by the enemy.¹³² In civil wars where belligerency is recognized, coastline held by the rebels may similarly be blockaded.

Also, a more vaguely defined area – “under the control of an enemy” – is found in the 1955 US Law of Naval Warfare Sec. 632 (a) and later restated in the 2015 US Manual on the Law of War Sec. 13–10.¹³³ The meaning of this formulation is unclear.

Whether a state may blockade territory it occupies *itself* – e.g. the discussion on whether Israeli control over Gaza may still constitute occupation – is even more unclear.¹³⁴

An Arctic issue that arises would be the availability of blockade to larger ice-shelves with base structures and similar located on them.

As regards international straits and archipelagic sea lanes, these may only be blockaded if “the blockading power provides for safe and free passage of international navigation and aviation not destined to the blockaded area”.¹³⁵

Although it is hard to say exactly how far from the blockaded territory a blockade cordon may be drawn, it would seem clear that the British and German “blockades” of large areas of the high seas during WWI and WWII were not in accordance with the limitations of blockade law as then and now understood. Today, a blockade will often cover parts of the Exclusive Economic Zone (EEZ), a zone which might extend as far as 200 nautical miles from the base lines. Few problems arise if the blockade

overlaps with the EEZ of either the blockading or the blockaded state, whereas due regard must be shown to the interests of a neutral state should the blockade overlap with its EEZ.¹³⁶ On the other hand, a blockade may not be enforced, nor proclaimed but enforced elsewhere, in relation to neutral territorial sea.

It is often held that a blockade, “in view of its purpose to prevent access or entry by all vessels or aircraft, [...] is by necessity located in sea areas beyond the territorial sea”.¹³⁷ Probably reflecting this understanding, the 1939 Harvard Draft Convention on the Rights and Duties of Neutral States in Naval and Aerial War introduced a new concept entitled “blockade zone”, i.e. an “area of water extending fifty miles from a blockaded coast, proclaimed by a belligerent to be such a zone.”¹³⁸ But if the blockading power is inclined to provide a close blockade within enemy territorial waters, it would seem strange if the option of blockade was unavailable.

Nevertheless, some geographical areas are held to be excluded from the use of blockade. The Constantinople Convention of 1888 thus seeks in Article 1 to revoke the possibility of blockade in relation to the Suez Maritime Canal.¹³⁹ Later events might be said to have made such a limitation on the use of blockade a casualty of war,¹⁴⁰ although the closure of one’s own territory is an embargo rather than a blockade. Also, the 1936 Montreux Convention applicable to the Bosphorus generally prohibits any of the signatory states from blockading these straits.¹⁴¹ As regards the Panama Canal, it was held in 1939, when the US was still in control of the Canal, that “[i]t is by no means clear that it would be illegal for a State at war with the United States to blockade the Panama Canal”.¹⁴² On the other hand, an obligation of permanent neutrality followed from the Hay-Pauncefote treaty between the USA and Great Britain,¹⁴³ and this presumably prohibited blockade.¹⁴⁴ A tendency may also be seen in case law to assimilate international canals of the kind mentioned above to the category of international straits.¹⁴⁵

Also, limitations on the use of blockade in relation to the Svalbard island group and Bear Island are due to the Spitsbergen Treaty’s neutralization of the area.¹⁴⁶ This limitation applies to state parties, but it is more uncertain whether the neutralization is part of international customary law. If the islands are used in violation of that neutrality by Norway or another state, there would presumably be a temporary lifting of this neutralization. If said activities constitute an armed attack on Svalbard, Norway is granted the right to respond in self-defense, e.g. by establishing a blockade of one or more of these islands. Also, a UNSC mandate would override the Spitsbergen Treaty.

In a somewhat similar vein, the area covered by the Antarctica Treaty is both neutralized *and* demilitarized,¹⁴⁷ which would have excluded the possibility of blockading the British or Argentinian areas, partially overlapping, on the Antarctic Peninsula during the 1982 Falklands War.

A different limitation on blockades follows from Principle 7 of the International Law Association’s 1998 Helsinki Principles on the Law of Maritime Neutrality: “If a port in one belligerent State is used for the purposes of transit to and from a neutral

landlocked State under any applicable international agreement or arrangement, the other belligerents shall not prevent ships carrying goods destined for, or exported by, the neutral landlocked State from leaving or entering the port. Nor shall the belligerent State through whose port such goods transit take measures to interfere with their passage other than in accordance with Article 125 of the UNCLOS.”¹⁴⁸ It is unclear how such an exception could be implemented without undermining the effectiveness of the blockade, although one possibility is to let a neutral party handle the said cargo through the blockaded territory.

3.3.3 *Where may enforcement take place?*

Another issue is *where* the blockade may be *enforced*. This issue is regulated by Article 17 of the London Declaration to the effect that “[n]eutral vessels may not be captured for breach of blockade except within the *area of operations* of the warships detailed to render the blockade effective.”¹⁴⁹ Parmelee finds that this, together with Articles 1 and 18 of the London Declaration, “definitely limit the area which may be covered by the operations of the blockading fleet”.¹⁵⁰ This area was enlarged by the right of hot pursuit of blockade runners.¹⁵¹

Naturally, the blockade may be enforced in the territorial sea of the blockading and the blockaded state. The first instance is especially relevant where the relevant states have a shared maritime border.

Here, Guilfoyle holds that a “blockade may be enforced on the high seas even at a distance from the area of naval operations and prior in breach of any cordon.”¹⁵² The issue of where a blockade may be enforced was considered in relation to the takeover of Mavi Marmara and other vessels bound for the Gaza Strip, but undertaken 70–100 nautical miles from the coast.¹⁵³ Interception at this distance was held to be legal in relation to the Gaza flotilla due to “(i) their location and announced destination; (ii) the public pronouncements by the flotilla organizers and participants regarding their intention to breach the blockade; and (iii) the refusal of the ships’ captains to accept the invitation to alter their course to Ashdod after they were warned by the IDF.”¹⁵⁴

This is different from the controversial concept of continuous voyage whereby a vessel carrying contraband, but *en route* for neutral territory, may be captured as long as the ultimate destination of the vessel, perhaps even the ultimate destination of the contraband cargo itself, is enemy territory.¹⁵⁵ In 1939, the commentary to the Harvard Draft Convention held that “[w]hile the practice of States today is thus rather uncertain as to continuous voyage by sea, it is not believed that the application of the doctrine of continuous voyage by *land* to *blockade* is permitted by the existing law. On the other hand, the application to *blockade* of the doctrine of continuous voyage by *sea*, even with *transshipment*, appears to have better support.”¹⁵⁶ It would nevertheless seem that state practice and legal writing – beyond those of Anglo-American states – are opposed to applying the doctrine of continuous voyage to blockades,¹⁵⁷ as this would stretch the concept of effectiveness beyond its breaking

point.¹⁵⁸ The Israeli interception of the merchant vessel *Klos-C* on the Red Sea in 2014, with missiles allegedly bound for Gaza, could perhaps be construed as state practice backing a wider understanding of blockades.¹⁵⁹ However, as the missiles were seemingly intended to be offloaded in Port Sudan and then smuggled through the Sinai Peninsula into Gaza,¹⁶⁰ this was hardly enforcement of the blockade of Gaza, but rather an issue of contraband.¹⁶¹

Moreover, the right to enforce a blockade against vessels breaching or attempting to breach the blockade would seem to cease when the pursuit is abandoned, thereby making it illegal to apply the concept of blockade as grounds for capturing a vessel should one come across it at a later point in time.¹⁶²

3.3.4 Effectiveness

Effectiveness must be assessed from a factual point of view.¹⁶³ The strength and position of the force undertaking the blockade will depend on factual and geographical circumstances, requiring a separate assessment of every individual case.¹⁶⁴ Obviously, a measurement of effectiveness cannot commence before a blockade has been declared, even if restrictions on maritime traffic were applied at an earlier point in time through other legal avenues.¹⁶⁵ Nor will a paper blockade suffice. In the words of the US Law of War Manual, “the blockade must be maintained by forces that are sufficient to render ingress or egress of the blockaded area *dangerous*”.¹⁶⁶ In the San Remo Manual, reference is made to a reasonable risk of effectively preventing ingress and egress of the blockaded coastline,¹⁶⁷ and the main issue is always whether there is a real risk of being captured, but not destroyed, if one seeks to break the blockade.¹⁶⁸ As a consequence, the occasional breach of a blockade does not prove that the blockade is ineffective, although it may be hard to identify when the number of breaches is sufficient to lift the blockade. Allied warships may help out in enforcing the blockade, “even though the Allied State is not a party to the declaration of the blockade”.¹⁶⁹ This might lead to operational challenges if the allies hold different views on e.g. the application of the doctrine of continuous voyage to blockades.

A blockade typically covers traffic on the sea and above it. Submerged traffic and traffic along the sea bed should be considered in an analogical manner.¹⁷⁰ More unclear, however, is traffic under the sea bed through tunnels, either natural or man-made, typically where the sea separating neutral and blockaded territory is narrow. Perhaps these latter instances should instead be covered by regulations regarding land closure. It would also seem that the prohibition on damaging submarine cables and pipelines, as long as these do not exclusively serve the other party,¹⁷¹ argues against a right and a duty to expand the blockade to such infrastructure.

As regards tools which may be used to enforce a blockade, these include: ships, submarines, naval mines, aircraft, helicopters, and presumably also drones and cyber tools. These platforms must be of a military, as opposed to civilian, nature.¹⁷² Normally, the upholding of a blockade would include both air and sea assets, and an assessment of effectiveness would then depend on their combined effect.¹⁷³ The

point here is that the enforcement platform must be able to effect a capture either on its own or together with other military assets at the state's disposal. The monitoring of the area may therefore be undertaken by unmanned aerial or seagoing units, as long as ordinary weapon platforms are available to immediately respond to attempted breaches of the blockade.¹⁷⁴ However, the San Remo Manual prohibits "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."¹⁷⁵ Von Heinegg thus holds that "[d]espite the obvious perils submarines and missiles pose to surface warships, in most cases the presence of at least one surface unit, for humanitarian reasons, remain an indispensable requirement for the legality of a naval blockade."¹⁷⁶

Moreover, current military technology has led to agreement on the sufficiency of patrolling enforcement, as opposed to deployments off the relevant ports.¹⁷⁷ Also, the same technological developments, including the extensive use of aircraft, have significantly increased the area where a single naval vessel can effectively uphold a blockade.¹⁷⁸

Jones finds that enforcement of a blockade may still be limited to surface ships,¹⁷⁹ although enforcement may also be undertaken against aircraft.¹⁸⁰ However, it could be argued that if the blockade is to have any genuine effectiveness, it must also include an aerial blockade. Admittedly, the Harvard Draft Convention of 1939 applied the rules regarding blockade only vaguely to aircraft,¹⁸¹ and the commentary to the San Remo Manual states that it was "considered whether the fact that aircraft could still land within the territory of the blockaded belligerent would affect the effectiveness of a sea blockade. This was found not to be the case, as, on the one hand, transport of cargo by air only constitutes a very small percentage of bulk traffic and, on the other hand, the fact is that transport over land could take place without affecting this criterion."¹⁸² True, aircraft do not transport cargo volumes comparable to larger cargo ships, but larger transport aircraft may nevertheless carry volumes of some significance.¹⁸³ Also, landside transport is not relevant for islands. Here, von Heinegg would seem to hold that a mere naval blockade may lose its effectiveness if more than "a considerable small number of aircraft continue to land within the blockaded area".¹⁸⁴ Be that as it may, it comes as no surprise that state practice and *opinion juris* requiring an aerial dimension to the enforcement of a blockade is hard to find.

Likewise, according to the Tallinn Manual, "the majority of the International Group of Experts concluded that it is reasonable to apply the law of blockade to operations designed to block cyber communications into and out of territory under enemy control."¹⁸⁵ Such cyber measures may also be used to enforce a naval and/or aerial blockade,¹⁸⁶ but cannot be understood as *required* in order to satisfy the requirement of effectiveness.

Both actual breaches of the blockade cordon and attempted breaches must be responded to. A breach may be defined as "the passage of a vessel or aircraft through a blockade".¹⁸⁷ An attempted breach would typically be vessels or aircraft departing

from a blockaded coastline, or on a course toward such ports or airports.¹⁸⁸ Essential aspects in relation to both a breach and an attempted breach are knowledge of the blockade by the vessel/aircraft and an intention to evade it,¹⁸⁹ e.g. not merely crossing the cordon due to duress. The Anglo-American doctrine also holds that vessels anchored or hovering outside of the cordon in such a way that they may easily access the coastline, are to be considered as attempting to break the blockade.¹⁹⁰ However, this must be differentiated from merely “[a] temporary anchorage in waters occupied by the blockading vessels” where an attempted breach must be based on additional grounds.¹⁹¹

3.3.5 *Temporary withdrawal*

As held in the 2015 US Law of War Manual, “[t]he requirement of effectiveness does not preclude temporary absence of the blockading force, if such absence is due to stress of weather or to some other reason connected with the blockade (e.g., pursuit of a blockade runner).”¹⁹² Arctic winter storms are a prime example of this. However, this group of reasons must not be liberally construed, since this would make the line between existence and lifting of the blockade difficult to discern.¹⁹³ It is questionable if a withdrawal due to the outbreak of contagious diseases or refueling would suffice. Also, the blockading entity must return within a reasonable time.¹⁹⁴

For a long time, there has been agreement that blockades are lifted when the blockading force is driven away by enemy forces.¹⁹⁵ Jones furthermore holds that “[t]he failure to enforce the blockade against vessels escorted by warships of either the blockaded state or non-participating states renders the blockade ineffective.”¹⁹⁶ This goes to show that the blockading force should have sufficient military capabilities to undertake warfare should enemy warships arrive at the scene, and that it cannot merely consist of *de jure* warships which are *de facto* mere auxiliary vessels, capable only of undertaking non-resisted boarding. A blockade is also terminated if the blockading power states so, or more generally when it is no longer enforced in an efficient manner.

As a practical matter, it might be unclear to a neutral master whether a blockading force has left its cruising station due to inclement weather etc., or due to enemy military operations – the reason nevertheless having consequences for whether the blockade has been lifted or not.¹⁹⁷

3.3.6 *Special privileges*

The San Remo Manual and the US Law of War Manual also recognize that other “exceptions” may be made to the requirement of effectiveness, namely in relation to so-called special privileges.¹⁹⁸

Here, the essential point is that neutral warships, military aircraft or vessels in evident distress have *no right* to enter such a port,¹⁹⁹ but that consent to such entry does not make the blockade ineffective.²⁰⁰ Such licensing of particular vessels must

be made without distinction to the flag,²⁰¹ although enemy ships are not covered by this privilege.

This privilege also covers neutral vessels and aircraft carrying relief supplies – an understanding which has been recognized since at least the Napoleonic wars.²⁰² If such consent risks undermining the effectiveness of the blockade, the blockading power would have little motivation to uphold its obligation under the law of armed conflict in relation to enemy civilians, as reflected in Rules 103 and 104 of the San Remo Manual. Presumably, an analogy would apply to a population in need of evacuation due to natural catastrophes like hurricanes or volcanic eruptions.

3.3.7 Period of grace

Neutral ships in blockaded harbors were usually granted 15 days of grace.²⁰³ As this period is “too long under modern conditions”,²⁰⁴ it is often reduced to 24 hours.²⁰⁵ Here, “[t]he grace period is not uniform, but depends upon an assessment by the blockading belligerent as to what is reasonable under the circumstances.”²⁰⁶ If there are no such vessels or aircraft in the blockaded ports or airfields, no period of grace is required.²⁰⁷ This would presumably often be the case in Arctic ports and airfields.

3.3.8 Neutral ports and coasts

The blockade must “not bar access or departure from neutral ports or coasts.”²⁰⁸ This is typically an issue when a neutral coastline lies beyond enemy held entrance to a bay. Likewise, in a case where an enemy has blockaded Greenland and Iceland, the blockading power would still have to let neutral vessels bound for neutral Canada pass through the Denmark Strait. To bar access or departure is, however, different from regulating such access or departure due to military necessity, e.g. by establishing corridors or convoys. If no such corridor has been established, it would seem proper to let neutral warships convoy neutral merchant vessels to a neutral port. Green nevertheless exempts from this neutrals involved in un-neutral conduct.²⁰⁹

3.3.9 Impartiality

The San Remo Manual and the US Law of War Manual require blockades to be applied in an impartial manner to vessels and aircraft of all states.²¹⁰ This includes vessels and aircraft flying the flag of the blockading state.²¹¹ The issue is linked to that of effectiveness since the enemy could otherwise more easily avoid the consequences of the blockade,²¹² whereas partiality would favor some states, e.g. the blockading state’s own merchant marine,²¹³ at the cost of others.²¹⁴ The consequence of breaching this obligation is a lifting of the blockade.²¹⁵

3.3.10 Objects essential for survival and the evaluation of excessiveness

Additional requirements for establishing a blockade are mentioned in Rule 102 of the San Remo Manual,²¹⁶ prohibiting a blockade which has as its *sole* purpose to

deny the civilian population objects essential for survival (*litra a*), or would contravene the *excessiveness* evaluation of collateral damage (*litra b*).²¹⁷ *Litra a* thus considers an issue of intention, whereas a point of debate is whether *litra b* only covers the consequences of the naval blockade, or whether the *excessiveness* evaluation must also include the hardships following a landside closure like that of the Gaza Strip. Views differ strongly on the latter issue.²¹⁸

In the past, blockades have been used to starve the enemy, e.g. the Confederacy during the American Civil War and the Germans during World War I and II.²¹⁹ The law of armed conflict now prohibits starvation of civilians as a method of war,²²⁰ and where a blockade has the unintended effect of causing starvation of the civilian population, a somewhat circumscribed obligation exists to let relief shipments pass.²²¹

The *excessiveness* issue was held to undermine the right of Israel to establish a naval blockade off Gaza by the UN Hudson-Phillis Mission in 2010.²²² Not surprisingly, this assessment of the facts differed strongly from that of the Turkel Commission.²²³ In all fairness, it is difficult to sufficiently establish that Israel had as its sole purpose to starve the population of the Gaza Strip,²²⁴ and it is also difficult to establish that disproportionate civilian damage or suffering followed from the blockade *on its own*, compared to the military advantage of blockading the said coastline.²²⁵ However, to the extent that the assessment would be on the one hand the smuggling of weapons and hostile persons, and on the other the totality of the land and seaside closure of the Gaza Strip, the proportionality test might receive a different outcome.²²⁶

In the Arctic, fuel etc. for heating purposes may often be considered objects essential for the survival of the civilian population, and thus covered by *litra a*.

Moreover, should a situation actually obligate the blockading power to let humanitarian aid pass, such transport through the blockade cordon would be subject to technical arrangements and conditions.²²⁷ More generally, the Palmer Report holds that “[t]he imposition of a blockade must have a lawful military objective”.²²⁸ Thus, “[a] blockade would consequently be illegal if imposed with the intention to collectively punish the civilian population.”²²⁹ As regards medical supplies for the civilian population, this is regulated by Rule 104 of the San Remo Manual.²³⁰

3.3.11 *Visitation and the use of force*

An integral part of the right to establish a blockade is the right to search and visit vessels reasonably suspected of attempting to breach the blockade.²³¹ Without it, the blockading power would be unable to effectively control and enforce the blockade.²³² Von Heinegg finds that “[i]t is doubtful whether [liability to capture] 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.”²³³ It would seem that here he is applying the proportionality principle of *jus ad bellum*.

During the Indian blockade of East-Pakistan in 1971, Indian forces attacked and sunk vessels not complying with the orders of the Indian forces.²³⁴ Likewise, Posner holds that “[s]hips that run blockades may be attacked and sunk under international

law”.²³⁵ On the other hand, Guilfoyle states that “[s]tartlingly, the laws of naval warfare provide no positive guidance on the use of force in capturing neutral merchant vessels. One must suggest that the appropriate analogy then is the law-enforcement paradigm as it applies in other [*jus in bello*] situations such as maintaining order during an occupation.”²³⁶

As regards neutral vessels, the use of force must be “indispensable to enforce the right of control, in particular to prevent a merchant ship from evading such control. The destruction of the neutral merchant ship is permissible only in exceptional circumstances, because a warship will generally have other means at its disposal to enforce its right of control.”²³⁷ Use of force is also regulated by the International Law Association in Principle 5.1.2 (3) of the 1998 Helsinki Principles on the Law of Maritime Neutrality: “Merchant ships flying the flag of a neutral State may be attacked if they are believed on reasonable grounds to be [...] breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search, capture or diversion.”²³⁸ An almost identical phrasing is used in Rules 67 (a) and 98 of the San Remo Manual.²³⁹

In order to be *clearly refusing and clearly resisting* visitation, the vessel must act in a way which “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.”²⁴⁰ Following such resistance, the vessel becomes a military objective through its purpose or use, where destruction provides a definitive military advantage as it preserves the effectiveness of the blockade.²⁴¹

Due to the need to take precautions, as mentioned in Rule 46 of the San Remo Manual, any attack must follow a prior warning.²⁴² Explicit radio warnings stating that force will be used unless the vessel stops and allows boarding might help to clarify and deescalate the situation.²⁴³ The Palmer Report holds it advisable that “warnings should be given in a variety of ways, and they should be repeated, so there is no possibility of misunderstanding. If force is going to be used and the use of that force is imminent, that fact must be plainly communicated and indicated to those against whom it is proposed to act. [...] Force once used must be kept to the minimum necessary, proportional and carefully weighed against the risk of collateral casualties.”²⁴⁴

Thus, the resistance to boarding mounted by persons onboard the *Mavi Marmara* – according to the Turkel Commission’s conclusions – rendered the vessel a military objective, although the Israeli authorities decided not to attack the vessel.²⁴⁵ As regards how persons onboard such a vessel should be considered; they typically fall into two categories: civilians directly participating in hostilities (often the crew) and ordinary civilians (most or all of the passengers). In relation to the latter group, the prohibition on excessive collateral damage must be respected.²⁴⁶ However, making an assessment of whether or not persons onboard the vessel are directly participating in hostilities is difficult, specifically in relation to the belligerent nexus requirement of the ICRC.²⁴⁷ The use of force must then differentiate between combat operations against those participating directly in hostilities (with the rest considered civilians

at risk of suffering collateral damage), and the use of police powers against the rest. In some extreme situations, this might require the boarding party to withdraw and reassess the situation, should excessive collateral civilian damage seem plausible, or the “rioting” civilians require a more robust police power approach than initially expected.²⁴⁸

As regards the use of force against neutral warships breaching a blockade – should they be denied leave to pass by the blockading forces – this is presumably limited to situations of self-defense. It would seem like the ordinary reaction to such breaches of a blockade is to file an official protest with the said neutral state.²⁴⁹

4. Developing the law

Against the background of the alleged use of blockade in Yemen and the possibilities of a new blockade of North Korea, it might be proper to use this momentum to seek a clarification of the law through a new instrument. Alas, the development of the legal restrictions on naval warfare, and for that matter aerial warfare, have differed from that of the law applicable to land warfare in one particular manner: It has largely been a matter of customary international law. Although the need for a new binding instrument in this area has been raised since at least the early 1980s, Roach’s caution in 2000 is just as sound today.²⁵⁰ Should such an exercise become more than a paper product of relevance merely to states with little interest in naval warfare, it would have to include the major naval powers and the end result would have to be acceptable to the majority of these.²⁵¹ Thus, it would seem easier to succeed with instruments of a more narrow focus, like contraband or blockade, but interlinkages between issues of naval warfare might mitigate against even such a compartmentalized endeavor.

The origin of naval blockade lies far back in time, and the concept has been further developed to include new modes of crossing the cordon.²⁵² It is only to be expected that blockades will continue to adapt to new technical and tactical developments, but such changes will only muddy the water more if no proper reassessment of the customary international law of blockade is undertaken. There is at the very least a need for an updated chapter on naval blockade in the San Remo Manual,²⁵³ with far more elaborate comments than are provided today.

NOTES

1. US Department of Defense, *Law of War Manual* (Washington D.C.: 2015) 886. As will be shown below, an even better definition would replace “or” between “entering” and “exiting” with an “and”, as well as inserting the term “own” together with “enemy as well as neutral”. See also Julian G. Verplaetse, “The ius in bello and Military Operations in Korea 1950–1953”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 23 (1963): 679–738, 701, Daniel Patrick O’Connell (edited by I. A. Shearer), *The International Law of the Sea, Vol. II* (Oxford: Clarendon Press 1984) 1150, Louise Doswald-Beck (ed.), *San Remo*

- Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge: Cambridge University Press, 1995) 176, and Wolff Heintschel von Heinegg, “Blockade”, *Max Planck Encyclopedia of Public International Law*, para. 1, at <http://opil.ouplaw.com> (last updated October 2015).
2. Wolff Heintschel von Heinegg, “Naval Blockade”, *International Law Studies Series* 75 (2000) (New Port: US Naval War College), 203–230, 204.
 3. O’Connell, *The International Law of the Sea*, 1150.
 4. Wolff Heintschel von Heinegg, “The Current State of The Law of Naval Warfare: A Fresh Look at the San Remo Manual”, *International Law Studies* 82 (2006): 269–296, 276.
 5. Thomas David Jones, “The International Law of Maritime Blockade – A Measure of Naval Economic Interdiction”, *Howard Law Journal* 26 (1983): 759–779, 761 (referring to Mallison and Mallison).
 6. See e.g. Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2nd ed. (Cambridge: Cambridge University Press, 2017) 507.
 7. Douglas Guilfoyle, “The Mavi Marmara Incident and Blockade in Armed Conflict”, *British Yearbook of international Law* 81 (2011): 171–223, 216, and Wolff Heintschel von Heinegg, “Methods and Means of Naval Warfare in Non-International Armed Conflicts”, *International Law Studies* 88 (2012): 211–236, 215–216.
 8. Fink nevertheless points out that there has been no formal suspension of innocent passage by Yemen; Martin D. Fink, “Naval Blockade and the Humanitarian Crisis in Yemen”, *Netherlands International Law Review* 64 (2017): 291–307, 301.
 9. The Saudi vessels may also be seen, through the consent of the Yemeni government, to seek the enforcement in Yemeni waters of the arms embargo of the rebels established in UNSC Resolution 2216 (2015) and renewed in UNSC Resolution 2342 (2017). For a similar view, see Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 300–303.
 10. In this direction, see von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 227.
 11. See e.g. von Heinegg, *Blockade*, paras. 2–5 and 55–56, and Steven Haines, “War at sea: Nineteenth-century laws for twenty-first century wars?”, *International Review of the Red Cross* 98 (2017): 419–447, 424.
 12. See e.g. the Goldstone Commission, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict, Human Rights in Palestine and Other Occupied Arab Territories*, 25 September 2009, UN Doc. A/HRC/12/48, 82–85.
 13. See e.g. League of Nations, *Legal Position arising from the Enforcement in Time of Peace of the Measures of Economic Pressure indicated in Article 16 of the Covenant, particularly by a Maritime Blockade*, Doc. No. C.241.1927.V., 17 May 1927.
 14. See Robert W. Tucker, *The Law of War and Neutrality at Sea*, Vol. XLX *International Law Studies* (Washington: Government Printing Office, 1955)287, n. 7.
 15. Jones, *The International Law of Maritime Blockade*, 770.
 16. As regards the prohibition of using force as understood in UN Charter Article 2(4) in relation to reprisals, or rather counter-measures, see the International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2001, annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4, Article 50, para 1. This document is seen as largely reflecting customary international law.
 17. For a general reference to the quarantine, see Jones, *The International Law of Maritime Blockade*, 770–772. For the view that the Cuban Quarantine was lawful, see Turkish National Commission of Inquiry, *Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza on 31 May 2010*, Ankara February 2011, 95.
 18. The Public Commission to Examine the Maritime Incident of 31 May 2010 (The Turkel Commission), *Report: Part one*, January 2011, 38.

19. Richard Zeigler, “Ubi Sumus? Quo Vadimus? Chartering the Course of Maritime Interception”, *Naval Law Review* 43 (1996): 1–55, 9 (referring to Pemsel).
20. O’Connell, *The International Law of the Sea*, 1150. The term blockade meant originally “siege by investment”; C. John Colombos, *The International Law of the Sea*, 6th ed. (London: Longmans, Green and Co., 1967) 714.
21. von Heinegg, *Naval Blockade*, 205.
22. O’Connell, *The International Law of the Sea*, 1150.
23. von Heinegg, *Naval Blockade*, 205.
24. James Kraska, “Rule Selection in the Case of Israel’s naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea”, *Yearbook of International Humanitarian Law* 13 (2010): 367–395, 380.
25. And all – beyond notification – seem to have largely been ignored during the British-French Napoleonic wars, probably though reprisals; H. Bargrave Deane, *The Law of Blockade: Its History, present Condition, and probable Future* (London: Longmans, Green, Reader and Dyer, 1870) 20–22.
26. The Turkel Commission, 42.
27. Jones, *The International Law of Maritime Blockade*, 765.
28. Alexander Holtzoff, “Some Phases of the Law of Blockade”, *American Journal of International Law* 10 (1916): 53–64, 54.
29. *Ibid.*, 54–55.
30. von Heinegg, *Blockade*, para. 6.
31. von Heinegg, *Naval Blockade*, 205–207.
32. Jones, *The International Law of Maritime Blockade*, 761, n. 13.
33. Hizakasu Fujita, “Commentary: 1856 Paris Declaration”, in *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, ed. Natalino Ronzitti (Dordrecht: Martinus Nijhoff Publishers, 1988), 66–73, 69.
34. Holtzoff, *Some Phases of the Law of Blockade*, 53.
35. Colombos, *The International Law of the Sea*, 718 (referring to The Franciska case).
36. Jones, *The International Law of Maritime Blockade*, 765.
37. Colombos, *The International Law of the Sea*, 732.
38. James W. Garner, “Some Questions of International Law in the European War”, *American Journal of International Law* 9 (1915): 818–857, 820.
39. Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 374 (referring to Cable).
40. Holtzoff, *Some Phases of the Law of Blockade*, 57, and O’Connell, *The International Law of the Sea*, 1154.
41. von Heinegg, *Naval Blockade*, 209.
42. Tucker, *The Law of War and Neutrality at Sea*, 285–286. Malkin here states that the traditional blockade law “will, save in circumstances such as where one belligerent is an island state of comparatively small dimensions, be an entirely ineffective weapon in future wars”; H. W. Malkin, “Blockade in Modern Conditions”, *British Yearbook of International Law* 3 (1922–1923), 88.
43. See e.g. Paine, *The Sea & Civilization*, 565–566.
44. von Heinegg, *Naval Blockade*, 209.
45. Tucker, *The Law of War and Neutrality at Sea*, 285, n. 5.
46. See Colombos, *The International Law of the Sea*, 738, and O’Connell, *The International Law of the Sea*, 1153. Some hold this state practice nevertheless to have importance for the development of blockade as such, see sources mentioned in Fujita, *Commentary: 1856 Paris Declaration*, 73.
47. See Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, September 2011, 81.

48. For the view that “[i]n effect formal blockade seems to have become an obsolete method of warfare”, see Natalino Ronzitti, “The Crisis of the Traditional Law Regulating International Armed Conflicts at Sea and the Need for its Revision”, in *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, ed. Natalino Ronzitti (Dordrecht: Martinus Nijhoff Publishers, 1988), 1–58, 9.
49. L. H. Woolsey, “Closure of ports by the Chinese Nationalist Government”, *American Journal of International Law* 44 (1950): 350–356, 353. See here also the sources mentioned in Russell Buchan, “The International Law of Naval Blockade and Israel’s Interception of the Mavi Marmara”, *Netherlands International Law Review* LVIII (2011): 209–241, 219.
50. Jones, *The International Law of Maritime Blockade*, 769. The port of Rashin was excluded from the blockade as it served as a naval base for the Soviet Union; von Heinegg, *Naval Blockade*, 211.
51. On the blockade, see Verplaetse, *The ius in bello and Military Operations in Korea 1950–1953*, 698–701. Verplaetse holds that “[f]or the first time in history aerial blockade came close to reality on the Korean theater of war”; id., 712 (under reference to Futrell).
52. Jones, *The International Law of Maritime Blockade*, 769. On the legal weaknesses of that blockade, see O’Connell, *The International Law of the Sea*, 1154–1155.
53. Jones, *The International Law of Maritime Blockade*, 769.
54. Ibid.
55. von Heinegg, *Naval Blockade*, 212.
56. Jones, *The International Law of Maritime Blockade*, 772. The undertaking was nevertheless called a blockade by the Soviet Union; Frank B. Swayze, “Traditional Principles of Blockade in Modern Practice: United States Mining of Internal and Territorial Waters of North Vietnam”, *JAG Journal* 29 (1977): 143–173, 150. Swayze moreover holds that “[t]he entire operation was therefore conducted in a manner perfectly compatible with traditional requirements of blockade and was completely permissible when judged by those criteria”; id., p. 163.
57. von Heinegg, *Naval Blockade*, 212.
58. Haines, *War at sea*, 428.
59. The Turkel Commission, 34.
60. Ibid., p. 16, Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 59–60, and “Mavi Marmara veteran passes away after four-year coma”, 23 May 2014, <https://www.ihh.org.tr/en/news/mavi-marmara-veteran-passes-away-after-four-year-coma-2339>.
61. Jones, *The International Law of Maritime Blockade*, 775. The London Declaration would seem to have been considered a restatement of existing legal obligations and entitlement through the phrases used in its preliminary provision (“The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of international law”) and Article 70 (“general recognition of the rules which they have adopted”). It was nevertheless the stringent regulation of blockade which led to the British non-ratification of the Declaration; O’Connell, *The International Law of the Sea*, 1151. Von Heinegg holds that it is controversial whether Art. 2 (prohibiting to some extent the laying of contact mines) of the 1907 Hague Convention on the Laying of Automatic Submarine Contact Mines has an impact on the law of blockade at all: von Heinegg, *Blockade*, para. 7.
62. Schmitt, *Blockade Law*, 20.
63. Ibid., 21, von Heinegg, *Naval Blockade*, 209, and Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 381. However, the text was held to be more progressive than expected by the British government and thus contained both established and new rules; Frits Kalshoven, “Commentary: 1909 London Declaration”, in *The Law of Naval Warfare: A*

- Collection of Agreements and Documents with Commentaries*, ed. Natalino Ronzitti (Dordrecht: Martinus Nijhoff Publishers, 1988), 257–275, 259 and 270. Kalshoven also find in id., 274 “that the rules in the Declaration on blockade in time of war are now mainly of historical interest”.
64. Charter of the United Nations, 26 June 1945, 1 UNTS xvi.
 65. UN General Assembly resolution 3314 (XXIX), 14 December 1974, UN Doc. GA/RES/3314 (1974).
 66. Levie refers to Ferencz who states that «what precisely constituted a ‘blockade...was deliberately left vague» in the negotiations leading up to the Definition of Aggression resolution; Howard S. Levie, “Means and Methods of Combat at Sea”, *Syracuse Journal of International Law & Commerce* 14 (1987): 727–740, 731. Mary O’Connell finds it questionable whether blockade would have been mentioned in the Definition if this list was revised today, as “until a blockade is challenged militarily it is similar to the category of wrongs described above that violate the non-intervention principle”; Mary Ellen O’Connell, “The prohibition of the use of force”, in *Research Handbook on International Conflict and Security Law*, eds. Nigel D. White and Christian Henderson (Cheltenham: Edward Elgar, 2013) 89–119, 111.
 67. The Turkel Commission, 41–42. This Declaration is considered by Parmelee as “unquestionably the best and most authoritative statement of international law concerning blockade up to the present time”; Maurice Parmelee, *Blockade and Sea Power* (New York: Thomas Y. Crowell Company, 1924) 35.
 68. The San Remo Manual holds in its Explanation that the intention of the project was “to draft a restatement of the contemporary law applicable to armed conflicts at sea together with some proposals for progressive development”; Doswald-Beck, *San Remo Manual*, 61. The regulation on blockade found there overlaps with the regulation on this topic in the Helsinki Principles of the International Law Association. See here Committee on Maritime Neutrality, Final Report, *International Law Associations Conference Report* 68 (1998) 496–521. However, not all of the San Remo Manual would reflect customary international law. See here Haines, *War at sea*, 435 and 445. See also The Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ship carrying humanitarian assistance, UN Doc. No. A/HRC/15/21, 27 September 2010, 12, para. 50 i.f., The Turkel Commission, 43 and 219, and Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 71 and 81.
 69. von Heinegg, *Blockade*, para. 25.
 70. Doswald-Beck, *San Remo Manual*, 74.
 71. Susanne Koelbl, «Jemen: Raketen auf Mekka», *Der Spiegel* 13/2017, 82. The «blockade» was allegedly imposed already on 10 November 2009, see Salah Nasrawi, “Saudi Arabia imposes naval blockade on coast of northern Yemen”, *The Washington Post*, 11 November 2009, at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/10/AR2009111018351.html>.
 72. Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 179.
 73. *Ibid.*, 193.
 74. The latter should perhaps rather be understood as an international armed conflict.
 75. Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 191–194. For a somewhat different assessment of the Algeria conflict, see von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 215 and 226.
 76. Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 391.
 77. von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 214. See also id., 224–225.
 78. Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 374.

79. Tucker, *The Law of War and Neutrality at Sea*, 287, n. 7. See also Marko Milanovic in the discussion section of Kevin Jon Heller, “The Civil war and the Blockade of Gaza (a Response to Posner)”, 4 June 2010, opiniojuris.org, at <http://opiniojuris.org/2010/06/04/eric-posners-incomplete-editorial-on-the-blockade-of-gaza/>. Kraska counters that “it is just as murky why foreign-flagged, purportedly neutral merchant ships, should be immune from visit and search in international waters while fomenting insurrection as part of a NIAC”; Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 388.
80. von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 213. See also Stephen C. Neff, “Towards a Law of Unarmed Conflict: A Proposal for a New International Law of Hostility”, *Cornell International Law Journal* 28 (1995): 1–28, 5, n. 11.
81. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 296–7.
82. von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 213.
83. For a different view, see Kraska, *Rule Selection in the Case of Israel’s naval Blockade of Gaza*, 391–392, and The Turkel Commission, 49, n. 147.
84. Marko Milanovic and Vidan Hadzi-Vidanovic, “A taxonomy of armed conflict”, in *Research Handbook on International Conflict and Security Law*, eds. Nigel D. White and Christian Henderson (Cheltenham: Edward Elgar, 2013) 256–314, 299–300. For the view that belligerency was not as such invoked by Israel against Hamas, but that the conflict nevertheless should be seen as of an international nature, see The Turkel Commission, 46–47. The Turkel Commission would also seem to hold that the laws on naval blockade may apply to non-international armed conflict without the need to turn such a conflict into an international one; *id.*, 48–49.
85. See sources mentioned in Buchan, *The International Law of Naval Blockade and Israel’s Interception of the Mavi Marmara*, 219–220.
86. Turkish National Commission of Inquiry, 62–63.
87. *Ibid.*, 7 and 61–62.
88. For a different view, see Buchan, *The International Law of Naval Blockade and Israel’s Interception of the Mavi Marmara*, 223.
89. Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 41.
90. *Ibid.*
91. *Ibid.*, 83.
92. Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 84–85. See von Heinegg, *The Current State of The Law of Naval Warfare*, 270.
93. For a different view, see Kraska, *Rule Selection in the Case of Israel’s Naval Blockade of Gaza*, 392. Perhaps also in this direction; von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts* 231.
94. von Heinegg, *Naval Blockade*, 218. On the Korean War and neutrality, see Verplaetse, *The ius in bello and Military Operations in Korea 1950–1953*, 712–720.
95. Doswald-Beck, *San Remo Manual*, 177.
96. Neff, *Towards a Law of Unarmed Conflict*, 19 (but he does on 3 hold that this is *de lege ferenda*), Zeigler, *Ubi Sumus? Quo Vadimus?*, 9, n. 28 (referring to McHugh), and Turkish National Commission of Inquiry, 66–7.
97. See Robin R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester: Manchester University Press, 1999) 422–423. See also Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 177–178.
98. *Ibid.*, 423. For a different view, see von Heinegg, *The Current State of The Law of Naval Warfare*, 284–287.
99. See e.g. von Heinegg, *Blockade*, para. 22.
100. Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 72. See also Doswald-Beck, *San Remo Manual*, 156.

101. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 40.
102. *Ibid.*, 41.
103. *Ibid.*, 68.
104. Turkish National Commission of Inquiry, 66.
105. *Ibid.*, 97–98.
106. James Parker Deane, *The Law of Blockade as contained in the Report of Eight Cases argued and determined in The High Court of Admiralty in the Blockade of the Coast of Courland, 1854* (London: Butterworths, 1855) 107–109, and Archer Polson, *Principles of the Law of Nations with Practical Notes and Supplementary Essays in the Law of Blockade and on Contraband of War* (Philadelphia: T. & J. W. Johnson & Co., 1860) 53–54.
107. US DoD, *Law of War Manual*, 887.
108. Harvard University, “Rights and Duties of Neutral States in Naval and Aerial War”, *American Journal of International Law Supplement* 33 (1939), 167–961, 729–732, and US DoD, *Law of War Manual*, 887.
109. US DoD, *Law of War Manual*, 887.
110. Article 10 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909 held that a declaration would be void unless the date of when the blockade commences and its geographical limits were covered.
111. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 725 and 727 (although the wording of draft article 78 seems to be more restrictive than that).
112. Turkish National Commission of Inquiry, 65–66. The same reference to extent is found in Schmitt, *Tallinn Manual 2.0*, 504.
113. See e.g. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 86. Also seemingly mixing the concepts, see Parmelee, *Blockade and Sea Power*, 23–24 and 30, and Kraska, *Rule Selection in the Case of Israel's Naval Blockade of Gaza*, 382–383.
114. von Heinegg, *Blockade*, para. 23. See also Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 98.
115. Art. 94.
116. Rule 148(b). On more manuals including this, see The Turkel Commission, 63. The requirement is also upheld in Schmitt, *Tallinn Manual 2.0*, 504.
117. The Turkel Commission, 62–64. For a different view, see Turkish National Commission of Inquiry, 63–65.
118. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 42.
119. US DoD, *Law of War Manual*, 888.
120. von Heinegg, *Blockade*, para. 31. See Doswald-Beck, *San Remo Manual*, 172 and 177. Compare with Program on Humanitarian Policy and Conflict Research at Harvard University (HPCR), *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare* (Cambridge US: Harvard University, 2010) 289. It might seem that HYDROLANT and HYDROPAC have replaced Notice to Mariners; US Department of Defense, *Law of War Manual* (Washington D.C., 2015) 886.
121. von Heinegg, *Blockade*, para. 31.
122. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 85 (referring to von Heinegg).
123. US DoD, *Law of War Manual*, 887.
124. Department of the Navy, NWIP 10–2, *The Law of Naval Warfare* (U), 1955, para. 632, *littera c*.
125. Jones, *The International Law of Maritime Blockade*, 762–3. See also Article 15 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909.
126. Doswald-Beck, *San Remo Manual*, 178.
127. Jones, *The International Law of Maritime Blockade*, 763.

128. von Heinegg, *Naval Blockade*, 205. See also the sources mentioned in n. 20.
129. See Rikard Kleen, *Kodificerad handbok i krigens lagar till lands och till sjös* (Stockholm: P. A. Norstedt & Söner 1909) 838, and A. Berriedale Keith, *Wheaton's International Law, Vol. II*, 7th ed. (London: Stevens & Sons 1944) 529.
130. Parmelee, *Blockade and Sea Power*, 23 and 38.
131. See e.g. Malkin, *Blockade in Modern Conditions*, 95–96, and Verplaetse, *The ius in bello and Military Operations in Korea 1950–1953*, 701. For the similar view during the 1800s, see Deane, *The Law of Blockade*, 27. Some even argued that a blockade must be limited to particular ports; Holtzoff, *Some Phases of the Law of Blockade*, 53 (referring to Monroe and Clayton and disagreeing with both).
132. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 691, and Colombos, *The International Law of the Sea*, 729.
133. Perhaps this follows from the view held by the International Law Association in 1920 when it stated that “[a] blockade may [...] close to commerce [...] also the ports and coasts of contiguous neutral States in so far as these are capable of use by the enemy for commercial purposes” (as mentioned in Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 689).
134. See *ibid.*, 692. For the view that a state may not imposition a blockade over territory which it occupies, see Turkish National Commission of Inquiry, 82. Marko Milanovic would seem to hold that an occupying power may blockade occupied territory, see the discussion section of Kevin Jon Heller, “The Civil war and the Blockade of Gaza (a Response to Posner)”, 4 June 2010, opiniojuris.org, at <http://opiniojuris.org/2010/06/04/eric-posners-incomplete-editorial-on-the-blockade-of-gaza/>.
135. von Heinegg, *Blockade*, para. 39. There was more uncertainty to this rule in 1939, see Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 693–4.
136. Wolff Heintschel von Heinegg, “The Law of Armed Conflict at Sea”, in *The Handbook of International Humanitarian Law* 3rd ed., ed. Dieter Fleck (Oxford: Oxford University Press, 2013) 463–547, 474. He holds *id.* that military necessity might limit the due regard principle.
137. von Heinegg, *Blockade*, para. 57. For a different view, see Swayze, *Traditional Principles of Blockade in Modern Practice*, 162, n. 108.
138. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 212, 627 and 692.
139. In fine.
140. Paine, *The Sea & Civilization*, 526.
141. Colombos, *The International Law of the Sea*, 730–731.
142. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 694.
143. L. Oppenheim, *International Law: A Treatise, Vol. II War and Neutrality* (London: Longmans, Green, and Co., 1906) 83.
144. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 694
145. *Ibid.*, 694. Reference is here made to the Wimbledon Case of the Permanent Court of International Justice, where the Court in para. 42 held that “[t]he precedents therefore afforded by the Suez and Panama Canals invalidate in advance the argument that Germany’s neutrality would have necessarily been imperilled if her authorities had allowed the passage of the “Wimbledon” through the Kiel Canal, because that vessel was carrying contraband of war consigned to a state then engaged in an armed conflict. Moreover they are merely illustrations of the general opinion according to which when an artificial waterway connecting two open seas has been permanently dedicated to the use of the whole world, such waterway is assimilated to natural straits in the sense that even the passage of a belligerent man-of-war does not compromise the neutrality of the sovereign State under whose jurisdiction the waters in question lie.”: Case of the S.S. “Wimbledon”, Britain *et al.* v. Germany, (1923) PCIJ Series A01.

146. League of Nations Treaty Series, Vol. 2 (1920), pp. 8–19, Article 9. See Ove Bring and Anna Körlof-Askholt, *Folkrätt i krig, kris och fredsoptioner*, 4th ed. (Norstedt Juridik, Stockholm 2010) 27, Magne Frostad, “Military activities north of the 60°N latitude”, in *Juss i nord: Hav, fisk og urfolk. En hyllest til Det juridiske fakultet ved Universitetet i Tromsøs 25-årsjubileum*, eds. Tore Henriksen and Øivind Ravna (Oslo, Gyldendal Juridisk, 2012), 251–271, 257–260, and Jann K. Kleffner, «Scope of application of international humanitarian law», in *The Handbook of International Law*, 3rd ed., ed. Dieter Fleck (Oxford, Oxford University Press 2013), 43–78, 58.
147. 402 UNTS 71, Article I. See Bring and Körlof-Askholt, *Folkrätt i krig, kris och fredsoptioner*, 27.
148. See Committee on Maritime Neutrality, *Final Report*, 516.
149. Italics by author. The 1939 Harvard draft upheld the old Anglo-American rule, but stated that it, as a consequence of reducing their rights in relation to some visits, searches and contraband, allowed “them considerable latitude in the establishment and enforcement of blockades”; Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 735.
150. Parmelee, *Blockade and Sea Power*, 30.
151. Verplaetse, *The ius in bello and Military Operations in Korea 1950–1953*, 707.
152. Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 197. For a different view, see Turkish National Commission of Inquiry, 87.
153. The Turkel Commission, 220.
154. *Ibid.*, 221 (footnotes omitted). See also Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 52.
155. von Heinegg, *Blockade*, para. 44. Compare here the British cases of *The Stert*, *The Jonge Pieter*, and *The Peterhoff*, as discussed in Holtzoff, *Some Phases of the Law of Blockade*, 62–64. See nevertheless Colombos, *The International Law of the Sea*, 726–727 and 731, Leslie C. Green, *The contemporary law of armed conflict*, 3rd ed. (Manchester: Manchester University Press, 2008) 205, US Navy, Marine Corps, Coast Guard, *The Commander’s Handbook on the Law of Naval Operations*, 2007, page 7–10, and US DoD, *Law of War Manual*, 891.
156. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 626 (italics by author). For the view that transport by land from a neutral port to blockaded territory was covered by the concept of blockade, since otherwise a blockade would be made illusory, see Garner, *Some Questions of International Law in the European War*, 848–856.
157. von Heinegg, *Naval Blockade*, 216. Article 19 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909 holds that “[w]hatever may be the ulterior destination of a vessel or her cargo, she cannot be captured for breach of blockade, if, at the moment, she is on her way to a non-blockaded port.”
158. von Heinegg, *Naval Blockade*, 216.
159. Eugene Kontorovich, although he does not refer to the issue of long range blockade enforcement, does refer to the incident as recognition of the legality of Israel’s blockade of Gaza; Eugene Kontorovich, “The world discovers the legality of the Gaza blockade”, *The Washington Post/The Volokh Conspiracy*, 6 March 2014, at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/06/the-world-discovers-the-legality-of-the-gaza-blockade/?utm_term=.190ed693e462.
160. The case is reported by Itamar Sharon and Toi Staff, “IDF intercepts major Iranian missile shipment to Gaza, *The Times of Israel*”, 5 March 2014, at <http://www.timesofisrael.com/idf-intercepts-major-iranian-weapons-shipment-to-gaza/>. Other interceptions by Israel of weapon shipments allegedly intended for Gaza are mentioned in the article.
161. Compare with O’Connell, *The International Law of the Sea*, 1157.
162. von Heinegg, *Blockade*, para. 46. See nevertheless US DoD, *Law of War Manual*, 891.

163. von Heinegg, *Naval Blockade*, 214. See already Article 3 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909.
164. As held in relation to aerial blockades by HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 291.
165. For a different view, see Turkish National Commission of Inquiry, 74–78.
166. US DoD, *Law of War Manual*, 888 (italics by author). See also Deane, *The Law of Blockade as contained in the Report of Eight Cases argued and determined in The High Court of Admiralty in the Blockade of the Coast of Courland, 1854*, 90 and 102.
167. Doswald-Beck, *San Remo Manual*, 177.
168. von Heinegg, *Naval Blockade*, 214. See also Tucker, *The Law of War and Neutrality at Sea*, 289 and 298. This was already the case in the mid-1800s, see Deane, *The Law of Blockade as contained in the Report of Eight Cases argued and determined in The High Court of Admiralty in the Blockade of the Coast of Courland, 1854*, 90.
169. Colombos, *The International Law of the Sea*, 718.
170. An example from peace time is the smuggling of narcotics to the USA through the use of submersible vehicles.
171. Rule 37 of the San Remo Manual.
172. Compare with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 292.
173. In comparison, to the extent that an aerial blockade is only undertaken by aerial assets, this would seem to require “a sufficient degree of air superiority” for the blockade to be effective”: HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 293–294.
174. HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 290, and von Heinegg, *Blockade*, para. 34.
175. Doswald-Beck, *San Remo Manual*, 178. The 1913 Manual of the Laws of Naval War adopted by the Institute of International Law holds in Article 22 that “[a] belligerent may not lay mines along the coast and harbours of his adversary except for naval and military ends. He is forbidden to lay them there in order to establish or to maintain a commercial blockade.” For a different view, see Swayze, *Traditional Principles of Blockade in Modern Practice: United States Mining of Internal and Territorial Waters of Northern Vietnam*, 158–160.
176. von Heinegg, *Naval Blockade*, 215. He here refers to the US mining of Haiphong in North Vietnam as insufficient state practice to establish a new rule.
177. Compare with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 292.
178. Doswald-Beck, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 178.
179. Jones, *The International Law of Maritime Blockade*, 763.
180. von Heinegg, *The Current State of The Law of Naval Warfare: A Fresh Look at the San Remo Manual*, 276.
181. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 504 (compare the treatment of “certified and convoyed aircraft” with that of “uncertified aircraft”) and 711.
182. Doswald-Beck, *San Remo Manual*, 177. See also Tucker, *The Law of War and Neutrality at Sea*, 289, n. 13.
183. The classical example would here be the Allied air bridge into West-Berlin during the Soviet blockade of the city in 1948–1949.
184. von Heinegg, *The Current State of The Law of Naval Warfare: A Fresh Look at the San Remo Manual*, 278.
185. Schmitt, *Tallinn Manual 2.0*, 505.

186. Ibid., 508–509.
187. US DoD, *Law of War Manual*, 890.
188. von Heinegg, *Blockade*, para. 43.
189. See US DoD, *Law of War Manual*, 890–892.
190. Deane, *The Law of Blockade: Its History, present Condition, and probable Future*, 26, 38 and 39, and Colombos, *The International Law of the Sea*, 726–727.
191. US DoD, *Law of War Manual*, 891.
192. Ibid., 888–889 (italics in original). See also Polson, *Principles of the Law of Nations with Practical Notes and Supplementary Essays in the Law of Blockade and on Contraband of War*, 58, and Colombos, *The International Law of the Sea*, 724. However, Tucker doesn't consider weather conditions of any relevance anymore; Tucker, *The Law of War and Neutrality at Sea*, 292, n. 23.
193. That bad weather would be the only allowed for exception here is held in Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 719–720. O'Connell also mentions “escape of blockade-runners in fog or because of jamming of a blockading ship's radar” as situations which will not undermine the effectiveness of the blockade; O'Connell, *The International Law of the Sea*, 1151.
194. Colombos, *The International Law of the Sea*, 724.
195. Deane, *The Law of Blockade*, 29, and Tucker, *The Law of War and Neutrality at Sea*, 292.
196. Jones, *The International Law of Maritime Blockade*, 763.
197. See already Deane, *The Law of Blockade*, 51.
198. Doswald-Beck, *San Remo Manual*, 178, and US DoD, *Law of War Manual*, 890. See already Deane, *The Law of Blockade*, 37 and 38–40 (where the author might be seen as granting a right to enter “where stress of weather and want of provisions compel the vessel to put into port, and the only accessible ports are those under Blockade” (id., p. 39), or at the very least excuse an attempt to enter the blockaded port in such circumstances). Compare now with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 292–293.
199. See already Articles 6 and 7 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909 which presumably only refer to neutral warships although merely the term “warship” is used. See also von Heinegg, *Blockade*, para. 40. It might be argued that an entitlement to access might nevertheless be developing for vessels in evident distress which are not at the same time military objectives.
200. See also Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 717.
201. O'Connell, *The International Law of the Sea*, 1151.
202. Polson, *Principles of the Law of Nations with Practical Notes and Supplementary Essays in the Law of Blockade and on Contraband of War*, 56–57, and Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 721–723. This is probably why there is a reference to the definition of blockade as “the interdiction of all *or certain* maritime traffic coming from or going to a port or coast” (italics by author) in Principle 5.1.10 of the International Law Association's 1998 Helsinki Principles on the Law of Maritime Neutrality.
203. Jones, *The International Law of Maritime Blockade*, 763. In a case where the commander of the blockading force through negligence has not notified the local authorities of the blockade, or if the blockade as notified included nothing on the period when neutral vessels may leave the blockaded territory, “a neutral vessel coming out of the blockaded port must be allowed to pass free”; Article 16, para 2, of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909.
204. Colombos, *The International Law of the Sea*, 722, n. 4. See id., 722–723.
205. von Heinegg, *Blockade*, para. 30. For indication that the period would typically be between 2 to 30 days, see Kraska, *Rule Selection in the Case of Israel's naval Blockade of Gaza*, 382. O'Connell holds that in the “blockade” of Haiphong in 1972 “only three hours was allowed

- between notification of the minefield and its activation”; O’Connell, *The International Law of the Sea*, 1156–1157. However, this is presumably a typo, as it is elsewhere claimed that the period lasted three days. See here Swayze, *Traditional Principles of Blockade in Modern Practice*, 148–149.
206. Swayze, *Traditional Principles of Blockade in Modern Practice*, 155, n. 69.
 207. von Heinegg, *Blockade*, para. 30.
 208. Department of the Navy, NWIP 10–2, *The Law of Naval Warfare* (U), 1955, para. 632, *litra e*. See also Article 18 of the Declaration concerning the Laws of Naval War adopted in London on 26 February 1909. Compare with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 290–291.
 209. Green, *The contemporary law of armed conflict*, 205.
 210. Rule 100 of the San Remo Manual, and US DoD, *Law of War Manual*, 889. For the view that this requirement “[i]n the extreme of global conflict [...] will probably be ignored”, see Michael G. Fraunces, “The International Law of Blockade: New Guiding Principles in Contemporary State Practice”, *Yale Law Journal* 111 (1992): 893–918, 914, n. 111.
 211. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 719–719, Doswald-Beck, *San Remo Manual*, 178, and HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 294.
 212. von Heinegg, *Blockade*, para. 40.
 213. Swayze, *Traditional Principles of Blockade in Modern Practice*, 155, and Fraunces, *The International Law of Blockade*, 897.
 214. Tucker, *The Law of War and Neutrality at Sea*, 291, and Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 87.
 215. Harvard University, *Rights and Duties of Neutral States in Naval and Aerial War*, 717.
 216. Doswald-Beck, *San Remo Manual*, 179. As to the application of a starvation blockade on Art. 54 of the 1977 Additional protocol to the 1949 Geneva Conventions, see Ronzitti, *The Crisis of the Traditional Law Regulating International Armed Conflicts at Sea and the Need for its Revision*, 35, and Michael Bothe, “Commentary: 1977 Geneva Protocol I”, in *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, ed. Natalino Ronzitti (Dordrecht: Martinus Nijhoff Publishers 1988), 760–767, 763–764.
 217. Compare with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 296–299. For the view that «even in the face of a humanitarian crisis in the blockaded area, the blockade is not unlawful per se (and would be subject to proportionality analysis)”, and “a humanitarian crisis could limit the blockading force’s options and prevent it from denying the introduction of humanitarian supplies into the area in question, but it does not totally negate its ability to impose a naval blockade, to inspect the cargo and to regulate the method of supply”, see Shany, *Know Your rights!* (italics in original are removed).
 218. See e.g. Buchan, *The International Law of Naval Blockade and Israel’s Interception of the Mavi Marmara*, 232–33.
 219. Jones, *The International Law of Maritime Blockade*, 776.
 220. See e.g. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, Article 44. On this, see von Heinegg, *Naval Blockade*, 216–2107.
 221. Doswald-Beck, *San Remo Manual*, 179.
 222. Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ship carrying humanitarian assistance, UN Doc. No. A/HRC/15/21, 13, paras 53–54.
 223. The Turkel Commission, 64–102.

224. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 42–43 and 88. Buchan nevertheless holds that the blockade violates Rule 102 (a) due to a presumed Israeli intention of inflicting collective punishment on the Gaza Strip as a consequence of its people electing Hamas; Buchan, *The International Law of Naval Blockade and Israel's Interception of the Mavi Marmara*, 233–235.
225. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 43, Shany, *Know Your rights!*, and von Heinegg, *Methods and Means of Naval Warfare in Non-International Armed Conflicts*, 230. For a different evaluation, see Buchan, *The International Law of Naval Blockade and Israel's Interception of the Mavi Marmara*, 235–236.
226. Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 203 and 217.
227. Principle 103 of the San Remo Manual.
228. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 87.
229. *Ibid.*, 90.
230. Doswald-Beck, *San Remo Manual*, 180. Compare with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 299–300.
231. Rule 118 of the San Remo Manual.
232. Doswald-Beck, *San Remo Manual*, 178 and 196.
233. von Heinegg, *Blockade*, para. 41. Diversion to an alternative destination was used instead of capture during the Cuban Missile Crisis (which was strictly speaking not a blockade) and the 1990–1991 Gulf War (where the question is more open): Horace B. Robertson Jr, “The Status of Civil Aircraft in Armed Conflict”, *Israel Yearbook on Human Rights* 28 (1998): 113–150, 144.
234. von Heinegg, *Blockade*, para. 17.
235. Eric Posner, “The Gaza Blockade and International Law”, *The Wall Street Journal*, 4 June 2010, as mentioned in Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 208, n. 216.
236. Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 210. See also *id.*, 211.
237. Michael Bothe, “The Rights and Duties of Neutral States”, *The Handbook of International Humanitarian Law*, 2nd ed., in ed. Dieter Fleck (Oxford: Oxford University Press, 2008), 571–604, 596. See also Doswald-Beck, *San Remo Manual*, 157 on Rule 139.
238. See also Principle 5.2.10.
239. Compare also with HPCR, *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare*, 295–296.
240. von Heinegg, *Blockade*, para. 47.
241. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 92 (referring to von Heinegg).
242. *Ibid.*, 52–53.
243. Referred to by Turkish National Commission of Inquiry, 92 and 94.
244. Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, 72–73. But note the use of the terms “should” and “must” in *id.*, 73–74. See also, *id.*, 92–93 and 102.
245. The Turkel Commission, 222–223. Stating that “[a]fter prior warning, the Israeli forces could have considered using disabling fire against that ship”, as well that “fast-roping naval commandoes onto the Mavi Marmara represented an internationally recognized means by which to minimize the potential for civilian casualties or damage to civilian objects that could have occurred if armed force has been used against the ship itself”; *id.*, 227. For the view that the “the Gaza blockade operation was tactically compliant with the *jus in bello*”, see Haines, *War at sea*, 429. For a very different assessment of the facts, see Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla

- of ship carrying humanitarian assistance, UN Doc. No. A/HRC/15/21, 16, and 23–30. The Turkish Commission held incorrectly that “vessels transporting humanitarian aid cannot be attacked under international law” (Turkish National Commission of Inquiry, 83–84) as these may be attacked just like any other vessel should such vessel not abide by the conditions of exemption in Rules 48 and 52 of the San Remo Manual.
246. See e.g. Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident, 59–60.
247. See International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, 2009, 58, at <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>, and The Office of the Prosecutor of the International Criminal Court, *Situation on Registered Vessel of Comoros, Greece and Cambodia: Article 53(1) Report*, 6 November 2014, 27–32 (finding there to be reasonable grounds for believing that the war crime of willful killing took place on the Mavi Marmara, but explicitly abstaining from voicing its view on whether the soldiers acted in self defense against violent passengers), at [https://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53\(1\)-Report-06Nov2014Eng.pdf](https://www.icc-cpi.int/iccdocs/otp/OTP-COM-Article_53(1)-Report-06Nov2014Eng.pdf). Be that as it may, the UN Security Council would seem to have rushed into a condemnation of the Israeli operation based on insufficient evaluation of the legal foundation; Statement by the President of the Security Council, UN Doc S/PRST/2010/9, 1 June 2010. For a similarly restrictive view on the use of force in response to such breaches of blockades, see Buchan, *The International Law of Naval Blockade and Israel’s Interception of the Mavi Marmara*, 237–240.
248. As held by the Turkish Commission to be the case with Mavi Marmara; Turkish National Commission of Inquiry, 87–90.
249. von Heinegg, *Blockade*, para. 48.
250. J. Ashley Roach, “The Law of Naval Warfare at the turn of two Centuries”, *American Journal of International Law* 94 (2000): 64–77, 76–77. See also von Heinegg, *Blockade*, para. 24.
251. See also Levie, *Means and Methods of Combat at Sea*, 739.
252. Jones, *The International Law of Maritime Blockade*, 762.
253. For a similar view, see Haines, *War at sea*, 447.