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中國對台封鎖措施之法律分析

A Legal Analysis on Alternative Measures for a Chinese
Blockade of Taiwan

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本論文係 羅 翔 君（學號 R09A21113）在國立臺灣大學法律學系完成之碩士學位論文，於民國 113 年 07 月 30 日承下列考試委員審查通過及口試及格，特此證明。

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自歸國以來，一晃眼八年已過。回想大一時仍需帶字典寫憲法考試的自己，不敢說成長了多少，但至少對於法律和這片土地多了那麼些熟悉與認同感。過去的這些年，粗心的我做了不少蠢事，但冥冥之中總有人會在關鍵的時候拉我一把。對此，我由衷地感激生命中所有的貴人，如果沒有你們的幫助，這篇論文絕無問世之日。

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ABSTRACT

After Nancy Pelosi's visit to Taiwan in 2022, the PRC has launched a series of military exercises around Taiwan, causing the tension between both sides of the Taiwan Strait to rise once again. Since the end of the Third Taiwan Strait Crisis, the PRC has grown significantly in economic and military power, which placed Taiwan under a higher threat of coercion. However, instead of a full-out warfare, many believe that the PRC may be more inclined to impose a blockade to slowly strangle Taiwan into surrender due to Taiwan's reliance on maritime trade.

Nevertheless, a maritime blockade may still constitute a use of force; to alleviate itself from the compliance of *jus in bello* obligations, the PRC is more likely to use an alternative term or measure such as a quarantine or a maritime exclusion zone to achieve its military objective. Furthermore, in a conventional sense, a blockade is an act carried out against a belligerent party, if not an enemy state; considering the PRC's assertion of One-China Policy, avoiding the term "blockade" may be more consistent to its objectives.

This paper undertakes a comprehensive examination of potential measures that China might employ to blockade Taiwan, evaluating the legality of such measures within the framework of existing international legal instruments. By delving into the nuances of these alternative measures, the analysis aims to provide insights into the potential consequences of such actions on the international stage.

KEYWORDS: *Maritime Blockade, Maritime Interception, Cross-Strait Relations, International Law, Law of Armed Conflict*

中文摘要

為貫徹《臺灣關係法》中「美國對臺灣民主的承諾」，美國眾議院院長裴洛西於 2022 年的亞洲之行率團訪台。然此舉對中華人民共和國（下稱中國）而言顯然是對其統一大業之嚴重挑釁，故接連展開了一系列圍繞台灣的軍事演習，導致兩岸關係再度緊張。自第三次台灣海峽危機以來，中華人民共和國在經濟和軍事實力上顯著增長，使得台灣面臨更大的威脅。從中國的軍事規模來看，外界普遍認為中國對於台灣發起攻勢勢在必行，我國的軍事研究也多以中國發動全面戰爭作為基礎假設。然而，就中國的立場而言，相較於直接宣戰，中國或許會更傾向透過實施封鎖措施以達成其戰略目的。

不過，由於海上封鎖仍可能構成武力使用，為了降低國際社會的反彈並減輕其遵守國際人道法義務的壓力，本文認為中國更有可能透過防禦性隔離或建立海上水域等替代術語或措施以達成其目的。此外，封鎖在傳統意義上係屬交戰行為，原則上應適用國際武裝衝突之規範；考慮到中國對一中原則的一貫堅持，避免使用「封鎖」一詞可能更符合其目標。

就此，本文先就中國封鎖台灣可能採取的措施進行介紹，並透過現有國際法律框架評估這些措施的合法性及可行性，以期透過此等分析釐清中國對台封鎖措施的可能思路。

關鍵字：海上封鎖、海上攔截、兩岸關係、國際法、武裝衝突法

TABLE OF CONTENTS



口試委員會審定書	i
致謝詞	ii
Abstract	iv
中文摘要	v
Table of Contents	vi
Chapter I. Introduction	1
A. The Imminent and Inevitable Danger of a PLA Attack.....	1
B. Blockade as an Effective Strategy Against Taiwan.....	5
C. Challenges of the Application of the “Law of Blockade”	10
D. Research Method, Scope, and Structure	13
Chapter II. Blockades and Similar Actions	17
A. Blockades in the Traditional Sense.....	17
B. Similar Actions	21
1. Other Maritime Interception Measures	21
2. Distant Blockade	27
3. Maritime Zone	30
4. Enclosure of Ports	35
5. Defensive Quarantine	37
Chapter III. Rules of Law of Maritime Blockade.....	43
A. International Law Framework	43
1. London Declaration, 1909	43
2. The Oxford Manual, 1913	45
3. San Remo Manual, 1995	47
4. The HPCR Manual	52
5. The Newport Manual on the Law of Naval Warfare, 2023	58
6. International Humanitarian Law	63
7. Conclusion	69
B. State Practices	71
1. Law of Armed Conflict at the Operational and Tactical Levels	71
2. U.K. Manual	74
3. German Manual	77
4. U.S. Manuals	80
5. Conclusion	84
C. Case Studies.....	85
1. The Blockade of Yemen, since 2015	86

2. The Blockade of Gaza, since 2007	95
3. The Blockade of Ukrainian Ports in the Black Sea, since 2022	104
D. Conclusion.....	108
Chapter IV. Legality Discussion on Past Tactical Measures in the Vicinity of Taiwan	110
A. The Nationalists' Blockade of the PRC, 1949-58	110
1. Background	110
2. Legal Analysis	111
B. The Taiwan Strait Crises.....	113
1. Background	113
2. Legal Analysis	118
Chapter V. Comprehensive Analysis on Alternative Blockading Measures of China	123
A. Alternative Measure 1: Sanctions and Embargoes	123
B. Alternative Measure 2: Distant (Missile) Blockade.....	125
C. Alternative Measure 3: Exclusion Zone/War Zone	126
D. Alternative Measure 4: Enclosure of Ports.....	126
E. Alternative Measure 5: Quarantine	127
Chapter VI. Conclusion	129
References	131

CHAPTER I. INTRODUCTION

A. The Imminent and Inevitable Danger of a PLA Attack

The determination of the People's Republic of China (PRC, hereinafter China) to "reunify" Taiwan stands as a steadfast pillar in its foreign policy landscape,¹ casting a shadow of uncertainty over the delicate balance of power in the Asia-Pacific region. This unceasing stance has been proclaimed through the three White Papers,² solidifying China's resolve to reclaim what it perceives as a renegade province. The rhetoric within these documents underscores a commitment that has only grown more intense over the years, reflecting Beijing's strategic calculations and nationalistic fervor.

The already simmering tensions were exacerbated following Nancy Pelosi's visit to Taiwan in 2022, further aggravating the relationship between Beijing and Taipei.³ This high-profile visit, which Beijing viewed as a provocative act challenging its sovereignty claims, triggered a series of military actions. In response, China conducted joint naval and air force exercises, launched long-distance live-fire artillery, and test-fired conventionally headed missiles in the vicinity of Taiwan,⁴ which scholars later referred to this series of escalatory actions as the Fourth Taiwan Strait Crisis.⁵ This military posturing served as a stark reminder of the volatility of the situation and the potential for rapid escalation into open conflict.

Amidst the diplomatic rhetoric and sabre-rattling, China has made it abundantly clear that it is prepared to apply military force if Taiwan continues to resist

¹ Compare Li Keqiang, *Report on the Work of the Government: Delivered at the First Session of the 14th National People's Congress of the People's Republic of China*, STATE COUNCIL OF CHINA, at 39 (Mar. 5, 2023), with Li Qiang, *Report on the Work of the Government: Delivered at the Second Session of the 14th National People's Congress of the People's Republic of China*, STATE COUNCIL OF CHINA, at 38 (Mar. 5, 2024) (until 2023, the Chinese Government have been using the term "peaceful reunification" to describe their stance regarding Taiwan Issue, but the word "peaceful" is removed for the first time in the 2024 report).

² See *The Taiwan Question and Reunification of China*, CHINA, <http://www.china.org.cn/english/taiwan/7953.htm> (last visited Mar. 13, 2024) (this document is published in 1993); *The One-China Principle and the Taiwan Issue*, LAWINFOCHINA (Feb. 1, 2000), <http://www.lawinfochina.com/display.aspx?lib=dbref&id=21>; *The Taiwan Question and China's Reunification in the New Era*, LAWINFOCHINA (Aug. 1, 2022), <https://www.lawinfochina.com/display.aspx?id=346&lib=dbref&SearchKeyword=&SearchCKeyword=>.

³ See Christopher P. Twomey, *The Fourth Taiwan Strait Crisis is Just Starting*, WAR ON THE ROCKS (Aug. 22, 2022), <https://warontherocks.com/2022/08/the-fourth-taiwan-strait-crisis-is-just-starting/>.

⁴ Robert Plummer, *Taiwan Braces as China Drills Follow Pelosi Visit*, BBC NEWS (Aug. 4, 2022), <https://www.bbc.com/news/world-asia-62416363>.

⁵ *Id.*

its reunification efforts.⁶ The persistent threat of a People's Liberation Army (PLA) attack looms large, with military analysts and strategists around the world closely monitoring developments. The military buildup along China's southeastern coast, the modernization of its armed forces, and the increasing frequency of military drills near Taiwan all point to a readiness for potential conflict.⁷

The strategic importance of Taiwan, both in terms of its geographic location and its technological prowess, particularly in semiconductor manufacturing,⁸ amplifies the stakes involved. For China, the reunification of Taiwan is not just a matter of national pride but also a strategic imperative to ensure its dominance in the region.⁹ The international community remains deeply divided on how to address the Taiwan issue. While some nations, particularly the United States, have voiced strong support for Taiwan's self-determination and have supplied the island with defensive weaponry,¹⁰ others have adopted a more cautious approach, wary of antagonizing China.¹¹

China's strategy towards Taiwan also involves a multifaceted approach beyond military coercion. Beijing employs economic incentives and pressures, aiming to integrate Taiwan economically with the mainland,¹² thus creating dependencies that could influence political decisions.¹³ This economic strategy is coupled with

⁶ Jim Sciutto, *Military Exercises Suggest China is Getting 'Ready to Launch a War Against Taiwan,' Island's Foreign Minister Tells CNN*, CNN POLITICS (Apr. 11, 2023), <https://edition.cnn.com/2023/04/11/politics/taiwan-foreign-minister-interview/index.html>.

⁷ U.S. DEP. DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* 182-86 (2023).

⁸ Enrique Dans, *Taiwan, China, and the Geopolitics of the Semiconductor Industry*, MEDIUM (June 23, 2023), <https://medium.com/enrique-dans/taiwan-china-and-the-geopolitics-of-the-semiconductor-industry-6e1311546191>.

⁹ Dannielle Maguire, *Why Does China want Taiwan When It's Already So Big and Rich? The Answer Is About More Than Land and Money*, ADB.NET (Aug. 12, 2022), <https://www.abc.net.au/news/2022-08-12/why-does-china-want-taiwan-military-strategic-location/101321856>.

¹⁰ Joseph Yeh, *Military Aid Act 'Tangible Demonstration' of U.S. Support for Taiwan: Lawmakers*, FOCUS TAIWAN (Apr. 23, 2024), <https://focustaiwan.tw/politics/202404230025>.

¹¹ Kelly Ng, *Nauru Cuts Diplomatic Ties with Taiwan in Favour of China*, BBC (Jan. 15, 2024), <https://www.bbc.com/news/world-asia-67978185>.

¹² Teng Pei-Ju, *Beijing to Continue Pressure on Taiwan Until Mid-June: Scholars*, FOCUS TAIWAN (June 1, 2024), <https://focustaiwan.tw/cross-strait/202406010010>.

¹³ Erin Hale, *How Beijing Uses Economic Coercion to Try and Sway Taiwan's Elections*, ALJAZEERA (Jan. 9, 2024), <https://www.aljazeera.com/news/2024/1/9/how-beijing-uses-economic-coercion-to-try-and-sway-taiwans-elections>.

diplomatic efforts to isolate Taiwan internationally, reducing its formal recognition and participation in global institutions.¹⁴

The scenario of a PLA attack on Taiwan involves numerous potential triggers and outcomes.¹⁵ Analysts speculate on various scenarios, ranging from a full-scale amphibious invasion to a more limited, targeted strike aimed at key military and infrastructure targets.¹⁶ The PLA's modernization efforts, including advancements in missile technology, cyber warfare capabilities, and electronic warfare,¹⁷ suggest that any military operation would likely be swift and multifaceted, designed to overwhelm Taiwan's defences and achieve rapid control.

Furthermore, the domestic political implications for China cannot be ignored. The Chinese Communist Party (hereinafter CCP) has tied its legitimacy to the nationalist narrative of reunification.¹⁸ Failure to achieve this goal, or a costly military quagmire, could undermine the CCP's standing among the Chinese populace.¹⁹ Conversely, a successful reunification could bolster the regime's domestic support and solidify Xi Jinping's leadership.²⁰

The integration of Taiwan holds several strategic benefits for China. Economically, as mentioned, Taiwan is a powerhouse in the technology sector, particularly in the production of semiconductors, which are crucial components in various modern technologies.²¹ Control over Taiwan's semiconductor industry would not only bolster China's technological capabilities but also provide it with significant leverage over global supply chains, enhancing its economic influence worldwide.

¹⁴ Brian Hioe, *China Dials up Military, Economic Pressure Campaign Against Taiwan's New President*, THE DIPLOMAT (June 4, 2024), <https://thediplomat.com/2024/06/china-dials-up-military-economic-pressure-campaign-against-taiwans-new-president/>.

¹⁵ See generally *Toward a Fourth Taiwan Strait Crisis?*, CSIS (Aug. 4, 2022), <https://www.csis.org/analysis/toward-fourth-taiwan-strait-crisis>.

¹⁶ *Id.*

¹⁷ U.S. DEP. DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* 181-82 (2023).

¹⁸ Connor Warshauer, *The Key Factors Driving CCP Opposition to Taiwanese Independence*, 3288 INDEP. STUDY PROJECT COLLECTION 1, 18-19 (2020), https://digitalcollections.sit.edu/isp_collection/3288.

¹⁹ *Id.*

²⁰ *Id.* at 19.

²¹ See generally Chen-Yuan Tung et al., *Taiwan and the Global Semiconductor Supply Chain*, MONTHLY REP. TAIPEI REPRESENTATIVE OFF. SINGAPORE (Feb. 2024).

Geopolitically, Taiwan's location is of immense strategic value.²² Situated in the first island chain off the East Asian mainland, Taiwan serves as a critical point for military and trade routes.²³ Control over Taiwan would allow China to project its power more effectively into the Pacific, challenging the United States' naval dominance in the region.²⁴ This would also enable China to secure its maritime borders and enhance its strategic depth, making it more difficult for adversaries to conduct military operations near the Chinese mainland.²⁵

Taiwan's reunification is also a matter of historical and cultural significance for China. The CCP has consistently framed the reunification of Taiwan as a key aspect of China's national rejuvenation, a concept deeply embedded in Chinese political discourse.²⁶ These narrative appeals to nationalist sentiments within China, reinforcing the party's domestic legitimacy and unifying the populace around a common cause, and the symbolic importance of successfully reunifying Taiwan could represent the completion of China's territorial integrity and the rectification of what Beijing views as historical injustices inflicted upon China by foreign powers.²⁷

Despite the complexities involved, the signals from Beijing are clear: the reunification of Taiwan is a non-negotiable objective, and the use of force remains a viable option should peaceful means fail.²⁸ The relentless military drills, the strategic positioning of the PLA, and the explicit threats issued by Chinese officials all underscore the imminence and inevitability of a potential attack. The world must acknowledge that the question is not if, but when China will move to assert its claim over Taiwan through military means.

²² David Sacks, *Why Is Taiwan Important to the United States?*, COUNCIL ON FOREIGN REL. (June 20, 2023), <https://www.cfr.org/blog/why-taiwan-important-united-states>.

²³ *Id.*

²⁴ Michael Cunningham, *The American Case for Taiwan*, HERITAGE (Mar. 27, 2024), <https://www.heritage.org/asia/report/the-american-case-taiwan>.

²⁵ *Id.*

²⁶ Jude Blanchette, *What is Beijing's Timeline for "Reunification" with Taiwan?*, CSIS (May 26, 2023), <https://interpret.csis.org/what-is-beijings-timeline-for-reunification-with-taiwan/>.

²⁷ Connor Warshauer, *The Key Factors Driving CCP Opposition to Taiwanese Independence*, 3288 INDEP. STUDY PROJECT COLLECTION 1, 18-19 (2020), https://digitalcollections.sit.edu/isp_collection/3288.

²⁸ Ben Blanchard, *China's Xi Says 'Reunification' with Taiwan Is Inevitable*, REUTERS (Jan. 1, 2024), <https://www.reuters.com/world/asia-pacific/china-calls-taiwan-president-frontrunner-destroyer-peace-2023-12-31/>.

B. Blockade as an Effective Strategy Against Taiwan²⁹

However, China's approach toward Taiwan appears increasingly inclined toward implementing a blockade³⁰ rather than a direct invasion for several strategic reasons. A blockade presents numerous advantages over a direct military confrontation, aligning with China's broader strategic goals and minimizing potential costs and risks.³¹

Firstly, an outright invasion would confront Taiwan's fortified defences, which have been built up over decades of preparation.³² Taiwan is currently ranked 24th in the global military index and possesses a formidable array of military assets;³³ these include 89,000 Ground Force Personnel, 1,300 Artillery Pieces, and 300 Fighters.³⁴ Additionally, Taiwan boasts advanced weaponry, including the US-made Patriot air defence system, Tien-Kung surface-to-air missiles, and Hsiung-Feng anti-ship missile systems.³⁵ Through extensive military acquisitions, predominantly from the US, Taiwan has fortified its arsenal. Recent purchases amounting to US\$1.55 billion in 2023 alone cover a range of defence systems and technical support, enhancing its defensive capabilities.³⁶

The cost of a direct confrontation would be substantial for China. Estimates from the Center for Strategic and International Studies (CSIS) project military casualties exceeding 10,000 troops and significant losses in combat aircraft and major ships.³⁷ The economic toll would be staggering, with global estimates of a US\$10

²⁹ See generally Commander David G. Muller, *A Chinese Blockade of Taiwan*, 110(9) U.S. NAVAL INST. 979 (1984), <https://www.usni.org/magazines/proceedings/1984/september/chinese-blockade-taiwan>.

³⁰ Matthew Strong, *US Expert: China Might Prefer Coercion Over War to Take Taiwan*, TAIWAN NEWS (Oct. 18, 2023), <https://www.taiwannews.com.tw/en/news/5029056>.

³¹ See generally Commander David G. Muller, *A Chinese Blockade of Taiwan*, 110(9) U.S. NAVAL INST. 979 (1984), <https://www.usni.org/magazines/proceedings/1984/september/chinese-blockade-taiwan>.

³² Matthew Strong, *US Expert: China Might Prefer Coercion Over War to Take Taiwan*, TAIWAN NEWS (Oct. 18, 2023), <https://www.taiwannews.com.tw/en/news/5029056>.

³³ 2024 *Military Strength Ranking*, GLOB. FIRE POWER, <https://www.globalfirepower.com/countries-listing.php> (last visited Mar. 13, 2024).

³⁴ U.S. DEP. DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* 185 (2023).

³⁵ Erin Hale, *How Prepared is Taiwan for a War with China?*, ALJAZEERA (Oct. 10, 2023), <https://www.aljazeera.com/news/2023/10/10/how-prepared-is-taiwan-for-a-war-with-china>.

³⁶ *Id.*

³⁷ MARK F. CANCEAN, MATTHEW CANCEAN & ERIC HEGINBOTHAM, CTR. STRATEGIC & INT'L STUD., *THE FIRST BATTLE OF THE NEXT WAR: WARGAMING A CHINESE INVASION OF Taiwan* 85-101 (2023).

trillion loss,³⁸ and China's GDP expected to plummet by 16.7%.³⁹ Such a high cost, both in terms of human lives and economic impact, makes a direct invasion a highly unattractive option for China.

In contrast, a blockade strategy offers China a more controlled and less costly option.⁴⁰ As the People's Liberation Army Navy (hereinafter PLAN) rapidly expanded and modernized its fleet, including the addition of aircraft carriers, destroyers, and submarines,⁴¹ this naval buildup enhances China's ability to enforce a blockade and maintain control over the surrounding waters. The PLAN's growing power projection capabilities, combined with its strategic positioning in the South China Sea and the East China Sea, enable China to effectively encircle Taiwan and enforce a maritime blockade.⁴² With the world's largest naval fleet,⁴³ China could establish naval superiority and encircle Taiwan, limiting the scale of conflict and minimizing military casualties. Economically, the impact of a blockade would also be significantly reduced, with China's GDP loss estimated at only 3.3%.⁴⁴ This stark difference in potential economic outcomes highlights the blockade's attractiveness as a strategic option.

Taiwan's reliance on international trade⁴⁵ renders it particularly vulnerable to disruptions in sea-lanes, making a blockade a potent tool for coercion.⁴⁶ By exerting

³⁸ Jennifer Welch et al., *Xi, Biden and the \$10 Trillion Cost of War Over Taiwan*, BLOOMBERG, Jan. 9, 2024, <https://www.bloomberg.com/news/features/2024-01-09/if-china-invades-taiwan-it-would-cost-world-economy-10-trillion>; see also Keoni Everington, *Chinese Invasion of Taiwan would Cost World Economy NT\$311 Trillion*, TAIWAN NEWS, Jan. 10, 2024, <https://www.taiwannews.com.tw/en/news/5075352>.

³⁹ Jennifer Welch et al., *Xi, Biden and the \$10 Trillion Cost of War Over Taiwan*, BLOOMBERG, Jan. 9, 2024, <https://www.bloomberg.com/news/features/2024-01-09/if-china-invades-taiwan-it-would-cost-world-economy-10-trillion>

⁴⁰ Dan Blumenthal & Frederick W. Kagan, *China's Three Roads to Controlling Taiwan*, CRITICAL THREATS (Mar. 13, 2023), <https://www.criticalthreats.org/analysis/chinas-three-roads-to-controlling-taiwan>.

⁴¹ Alexander Palmer et al., *Unpacking China's Naval Buildup*, CSIS (June 5, 2024), <https://www.csis.org/analysis/unpacking-chinas-naval-buildup>.

⁴² *Id.*

⁴³ U.S. DEP. DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA* 185 (2023); see also Brad Lendon & Ivan Watson, *China Has the Power to Take Taiwan, But It Would Cost an Extremely Bloody Price*, CNN WORLD (June 1, 2022), <https://edition.cnn.com/2022/05/31/asia/china-taiwan-invasion-scenarios-analysis-intl-hnk-ml/index.html>.

⁴⁴ Jennifer Welch et al., *Xi, Biden and the \$10 Trillion Cost of War Over Taiwan*, BLOOMBERG, Jan. 9, 2024, <https://www.bloomberg.com/news/features/2024-01-09/if-china-invades-taiwan-it-would-cost-world-economy-10-trillion>

⁴⁵ MAREK JESTRAB, ATL. COUNCIL, *A MARITIME BLOCKADE OF TAIWAN BY THE PEOPLE'S REPUBLIC OF CHINA: A STRATEGY TO DEFEAT FEAR AND COERCION* 5, 9-12 (2023) (Taiwan is the world's twenty-first largest economy by GDP, yet requires the world's sixth greatest number of port calls by container ships to sustain this level of economic activity).

control over vital maritime trade routes, China could effectively influence and shape Taiwan's behavior, compelling it to align with China's interests.⁴⁷ Free access to these sea-lanes is imperative for Taiwan's modern economy, which is heavily dependent on exports and imports: a blockade would disrupt these critical supply chains, exerting immense economic pressure on Taiwan.⁴⁸ Furthermore, as an island nation, Taiwan is inherently dependent on maritime and aerial supply routes for its survival. By cutting off these supply routes, China can isolate Taiwan, making it difficult for the island to receive essential goods, including food, energy, and medical supplies.⁴⁹ This isolation would strain Taiwan's economy and society, creating internal pressures that could force the Taiwanese government to reconsider its stance on reunification.⁵⁰

Moreover, while coercive, a blockade remains below the threshold of open hostilities.⁵¹ This approach aligns with China's broader military strategy, which emphasizes the use of restraint warfare to achieve strategic objectives while minimizing the risk of full-scale conflict.⁵² Unlike an invasion, which carries significant strategic messaging flaws and may prompt strong international condemnation,⁵³ a blockade allows the PRC to apply coercive measures without crossing the threshold of overt aggression.⁵⁴ Therefore, a maritime blockade serves as a strategically viable option for the PRC to pursue its goal of reunification with Taiwan while minimizing the risk of broader conflict escalation.

⁴⁶ David Lague & Maryanne Murray, *T-Day: The Battle for Taiwan*, REUTERS (Nov. 5, 2021), <https://www.reuters.com/investigates/special-report/taiwan-china-wargames/>; see generally P. R. Shanker, *The Strait Too Wide and the Island Too Far*, 11(2) INST. NAT'L DEF. SEC. RSCH. 9 (2022), <https://indsr.org.tw/en/respublicationcon?uid=15&resid=1929&pid=3608&typeid=3>.

⁴⁷ MAREK JESTRAB, ATL. COUNCIL, A MARITIME BLOCKADE OF TAIWAN BY THE PEOPLE'S REPUBLIC OF CHINA: A STRATEGY TO DEFEAT FEAR AND COERCION 3 (2023)

⁴⁸ Commander David G. Muller, *A Chinese Blockade of Taiwan*, 110(9) U.S. NAVAL INST. 979 (1984), <https://www.usni.org/magazines/proceedings/1984/september/chinese-blockade-taiwan>; see also DAVID T. CUNNINGHAM, THE NAVAL BLOCKADE: A STUDY OF FACTORS NECESSARY FOR EFFECTIVE UTILIZATION 85, 114 (2012).

⁴⁹ Hal Brands, *How Would China Take Over Taiwan? One of These 5 Strategies*, AM. ENTER. INST. (Nov. 5, 2023), <https://www.aei.org/op-eds/how-would-china-take-over-taiwan-one-of-these-5-strategies/>.

⁵⁰ *Id.*

⁵¹ MAREK JESTRAB, ATL. COUNCIL, A MARITIME BLOCKADE OF TAIWAN BY THE PEOPLE'S REPUBLIC OF CHINA: A STRATEGY TO DEFEAT FEAR AND COERCION 5 (2023)

⁵² *Id.*

⁵³ *Id.* at 8-9.

⁵⁴ *Id.* at 5-9.

Additionally, a blockade could serve as a test of Taiwan's resilience and the international community's resolve.⁵⁵ It would place the burden on Taiwan and its allies to break the blockade, potentially leading to a protracted standoff.⁵⁶ Such a scenario could reveal weaknesses in the international response and further embolden China in its efforts to assert control over Taiwan.⁵⁷ The ambiguity and complexity of a blockade would make it challenging for the international community to mount a unified and effective response, thereby reducing the risk of direct confrontation between China and other major powers.⁵⁸

From a legal perspective, a blockade also provides China with a degree of plausible deniability.⁵⁹ China could argue that, for instance, it is merely conducting naval exercises or protecting its territorial waters, thereby avoiding explicit acts of war.⁶⁰ This ambiguity would complicate international efforts to condemn or counter the blockade, as it may fall into a gray area of international law.⁶¹ By avoiding a clear-cut act of aggression, China could mitigate the risk of triggering collective defence mechanisms,⁶² such as those outlined in the US-Taiwan Relations Act,⁶³ which mandates American support in the event of an armed attack on Taiwan.

Furthermore, the psychological impact of a blockade cannot be underestimated.⁶⁴ The prolonged pressure and uncertainty would wear down the

⁵⁵ INT'L CRISIS GROUP, PREVENTING WAR IN THE TAIWAN STRAIT 25-26 (2023), <https://www.crisisgroup.org/asia/north-east-asia/taiwan-strait-china/333-preventing-war-taiwan-strait>; see also Jaushieh Joseph Wu, *Defending Taiwan by Defending Ukraine: The Interconnected Fates of the World's Democracies*, FOREIGN AFF. (May 9, 2024), <https://www.foreignaffairs.com/china/defending-taiwan-ukraine-jaushieh-joseph-wu>.

⁵⁶ INT'L CRISIS GROUP, PREVENTING WAR IN THE TAIWAN STRAIT 26 (2023), <https://www.crisisgroup.org/asia/north-east-asia/taiwan-strait-china/333-preventing-war-taiwan-strait>.

⁵⁷ *Id.*

⁵⁸ John K. Culver & Sarah Kirchberger, *US-China lessons from Ukraine: Fueling more dangerous Taiwan Tensions*, ATLANTIC COUNCIL (June 15, 2023), at 3-4, <https://www.atlanticcouncil.org/in-depth-research-reports/report/us-china-lessons-from-ukraine/>.

⁵⁹ See generally Elbridge Colby, *A Strategy of Denial for the Western Pacific*, 149(3) PROCEEDINGS 1441 (2023), <https://www.usni.org/magazines/proceedings/2023/march/strategy-denial-western-pacific>.

⁶⁰ *Id.*

⁶¹ Jacob Heim et al., Denial is the Worst Except for All the Others: Getting the U.S. Theory of Victory Right for a War with China, WAR ON THE ROCKS (June 11, 2024), <https://warontherocks.com/2024/06/denial-is-the-worst-except-for-all-the-others-getting-the-u-s-theory-of-victory-right-for-a-war-with-china/>.

⁶² *Id.*

⁶³ Taiwan Relations Act of 1979, 22 U.S.C. 3301.

⁶⁴ DOHA INTERNATIONAL FAMILY INSTITUTION, THE IMPACT OF THE BLOCKADE ON FAMILIES IN QATAR 19-20 (2019).

resolve of the Taiwanese population and government.⁶⁵ Over time, the economic hardships and isolation could lead to a shift in public opinion, increasing calls for a negotiated settlement with China.⁶⁶ By gradually eroding Taiwan's resistance, a blockade could achieve China's strategic objectives without the need for a costly and risky invasion.

Moreover, a blockade aligns with China's historical approach to achieving its strategic goals. China has a long history of employing economic and diplomatic pressure to achieve its objectives without resorting to direct military conflict.⁶⁷ This strategy of incremental pressure and gradual escalation, often referred to as "salami slicing",⁶⁸ has been evident in China's actions in the South China Sea and its border disputes with India.⁶⁹ A blockade of Taiwan would fit within this broader pattern of behavior, allowing China to apply sustained pressure while avoiding the immediate risks of full-scale war.

In summary, a blockade presents China with a less costly and potentially more effective strategy for coercing Taiwan into submission while lowering the scale of conflict as well as international condemnation, compared to the risks and expenses associated with a direct invasion. By leveraging its naval superiority, economic influence, and strategic positioning, China can exert sustained pressure on Taiwan, exploiting its vulnerabilities and gradually eroding its resistance. The combination of military, economic, and psychological factors make a blockade a compelling option for China as it seeks to achieve its longstanding goal of reunification with Taiwan.

⁶⁵ Benjamin Jensen et al., *Shadow Risk: What Crisis Simulations Reveal about the Dangers of Deferring U.S. Responses to China's Gray Zone Campaign against Taiwan*, CSIS (Feb. 16, 2022), <https://www.csis.org/analysis/shadow-risk-what-crisis-simulations-reveal-about-dangers-deferring-us-responses-chinas>.

⁶⁶ *Id.*

⁶⁷ See Kerry Gershaneck, *To Win without Fighting: Defining China's Political Warfare*, MARINE CORPS U. PRESS (June 17, 2020), <https://www.usmcu.edu/Outreach/Marine-Corps-university-Press/Expeditions-with-MCUP-digital-journal/To-Win-without-Fighting/>; see also Timothy R. Heath, *China's Evolving Approach to Economic Diplomacy*, 22 ASIA POL'Y 157, 166-69 (2016).

⁶⁸ Tobias Burgers & Scott Romaniuk, *Is China Done With Salami Slicing?*, THE DIPLOMAT (May 1, 2021), <https://thediplomat.com/2021/04/is-china-done-with-salami-slicing/>.

⁶⁹ Joe Varner, *Salami Slicing in the Himalayas*, MODERN WAR INST. (Dec. 17, 2020), <https://mwi.westpoint.edu/salami-slicing-in-the-himalayas/>.

C. Challenges of the Application of the “Law of Blockade”

Nonetheless, the application of the “law of blockade” presents its own set of challenges and complexities. Firstly, the absence of a codified law governing blockades in its entirety poses a significant obstacle.⁷⁰ There exists no universally accepted model beyond basic guidelines, with rules scattered across treaties and customary laws.⁷¹ The principles governing blockades are fragmented and often derived from various historical precedents and interpretations of international law.⁷² This lack of a cohesive legal framework creates ambiguity and complicates the enforcement and legitimacy of blockades in contemporary conflicts.

Furthermore, the position of States regarding blockades may vary,⁷³ adding to the ambiguity surrounding their implementation. Different countries have historically applied their own interpretations of blockade rules, influenced by their strategic interests and geopolitical considerations.⁷⁴ This variation in state practice can lead to inconsistent applications of the law and disputes over the legality of specific blockade actions.⁷⁵ The lack of uniformity in how blockades are conducted and perceived under international law adds another layer of complexity for any state attempting to impose a blockade, including China.

Secondly, blockades traditionally imply a “... belligerent operation to prevent vessels and/or aircraft of all States, enemy and neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy State.”⁷⁶ However, this definition assumes a belligerent party⁷⁷

⁷⁰ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 2* (Paola Gaeta & Salvatore Zappala eds., 2017).

⁷¹ *Id.*; see also Wolff Heintschel von Heinegg, *Naval Blockade*, 75 INT’L L. STUD. 203, 213-18 (2000).

⁷² Wolff Heintschel von Heinegg, *Naval Blockade*, 75 INT’L L. STUD. 203, 213-14 (2000).

⁷³ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 7-8 (海上武裝衝突法之海上封鎖：過去發展與當代法律意義) [MARITIME BLOCKADE IN THE LAW OF ARMED CONFLICT: PAST DEVELOPMENTS AND CONTEMPORARY LEGAL SIGNIFICANCE] (2020).

⁷⁴ Jonathan N. Markowitz & Christopher J. Fariss, *Power, Proximity, and Democracy: Geopolitical Competition in the International System*, 55 J. PEACE RSCH. 78, 81, 89 (2018).

⁷⁵ For instance, major naval countries (e.g. the United Kingdom and the United States) have drafted their own manual of naval combat based on their historical and geopolitical considerations.

⁷⁶ U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, *THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS* [hereinafter *COMMANDER’S HANDBOOK*], at 7.7.1 (2022).

⁷⁷ *Belligerent*, GUIDE HUMANITARIAN L., <https://guide-humanitarian-law.org/content/article/3/belligerent/> (last visited Mar. 14, 2024) (normally suggests a State taking part in a war).

engaged in warfare. Given China's adherence to the One China Policy,⁷⁸ which denies Taiwan's statehood, there is a reluctance to engage in actions that might imply recognition of Taiwan's sovereignty.⁷⁹

Moreover, China is bound by Article 2(4) of the UN Charter,⁸⁰ which prohibits the use of force against the territorial integrity or political independence of any state. Therefore, any military action taken to resolve the Taiwan issue must navigate below the threshold of an international armed conflict. Engaging in an overt blockade could be perceived as an act of war, violating international norms and inviting significant international condemnation and potential military response from other nations, particularly those with aligned interests with Taiwan, such as the United States.⁸¹

Given these constraints, China may opt for alternative methods to achieve its military objectives.⁸² These tactics offer strategic alternatives for encircling and isolating Taiwan as well as potential avoidance of triggering perceptions of outright aggression or violating international law. By framing these actions as measures for maintaining regional stability or protecting national security, China may mitigate the legal and diplomatic fallout that a traditional blockade might entail.

For instance, a quarantine, similar to the US blockade during the Cuban Missile Crisis,⁸³ could be presented as a necessary measure to prevent the transfer of weapons or other military supplies to Taiwan, thus justifying the action under the

⁷⁸ See generally *The Taiwan Question and Reunification of China*, CHINA, <http://www.china.org.cn/english/taiwan/7953.htm> (last visited Mar. 13, 2024) (this document is published in 1993).

⁷⁹ Akira Mayama, *Chūgoku ni Yoru Tai Taiwan Kaijō Kōtsū Bōgai no Kokusai Hōteki Kentō - Chūgoku no Kokoromiru Zonal Measure [International Law Review of China's Obstruction of Maritime Traffic to Taiwan – China's Attempt at Zonal Measure]*, 986 KORYŪ 7, 7 (2023); see contra François Finck, *The State Between Fact and Law: The Role of Recognition and the Conditions under Which It Is Granted in the Creation of New States*, 36 POLISH YEARBOOK OF INTERNATIONAL LAW 51, 60-70 (2016).

⁸⁰ U.N. Charter art. 2, ¶ 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

⁸¹ However, despite President Joe Biden's repeated suggestion on the deployment of U.S. troops to defend the island, the United States has never formally confirmed its intervention in an invasion of Taiwan. See Phil Stewart & Idrees Ali, *How the US is Preparing for a Chinese Invasion of Taiwan*, REUTERS (Feb. 1, 2024), <https://www.reuters.com/world/china/logistics-war-how-washington-is-preparing-chinese-invasion-taiwan-2024-01-31/>.

⁸² Bonny Lin et al., *How China Could Quarantine Taiwan: Mapping Out Two Possible Scenarios*, CSIS (June 5, 2024), <https://www.csis.org/analysis/how-china-could-quarantine-taiwan-mapping-out-two-possible-scenarios>.

⁸³ See *infra* Ch.II.B.5.

guise of non-aggression. This approach would allow China to exert pressure on Taiwan while avoiding the label of outright aggression.⁸⁴

Similarly, the establishment of Maritime Exclusion Zones (MEZs)⁸⁵ could also serve as a method to restrict access to and from Taiwan. During the Falklands War, the United Kingdom declared a MEZ around the conflict zone, warning that any unauthorized vessels entering the area would be subject to attack.⁸⁶ This approach, which allowed the UK to control maritime movements without engaging in a full-scale blockade, may provide China a viable option to establish designating areas around Taiwan as exclusion zones under the pretext of conducting military exercises or safeguarding national security.

Another challenge in applying the law of blockade is the need to balance military objectives with humanitarian considerations.⁸⁷ Blockades, by their nature, can lead to severe economic and humanitarian consequences for the civilian population of the targeted area.⁸⁸ International humanitarian law, including the Geneva Conventions,⁸⁹ imposes obligations on belligerents to ensure the protection of civilians and the provision of essential goods and services. A blockade that results in widespread suffering or deprivation could be deemed disproportionate and illegal under international law,⁹⁰ further complicating China's strategy.

In light of these challenges, China must carefully consider the legal, strategic, and humanitarian implications of imposing a blockade on Taiwan. The absence of a clear legal framework, the need to avoid actions that imply recognition of Taiwan's sovereignty, and the potential for significant international backlash all pose significant obstacles. However, the use of alternative strategies such as quarantines and Maritime Exclusion Zones provides a viable path for China to achieve its objectives while

⁸⁴ The Cuban Missile Crisis blockade was labeled a "quarantine" to circumvent the legal implications associated with a traditional blockade, providing a potential model for China to follow.

⁸⁵ See *infra* Ch.II.B.3.

⁸⁶ *Id.*

⁸⁷ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 91-110 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁸⁸ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 81-89 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁸⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

⁹⁰ See, e.g., SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA 179, art. 106 (1995).

navigating the complexities of international law and diplomacy. Ultimately, the ambiguity in the legal framework governing blockades requires careful consideration and adherence to international norms to prevent unlawful actions that could lead to widespread condemnation and escalation. The strategic use of a blockade, if not meticulously managed, could lead to severe repercussions, both legally and diplomatically, thereby necessitating a thorough understanding and cautious application of the relevant laws.

D. Research Method, Scope, and Structure

This research employs document analysis to investigate various aspects of maritime blockade, drawing upon a diverse range of sources, including legal instruments, official reports, historical documents, news reports, institutional research, journal articles, and related theses. Document analysis allows for a comprehensive understanding of the multifaceted nature of blockades, incorporating legal, historical, and contemporary perspectives. To achieve this, the study meticulously examines primary and secondary sources to elucidate the principles and practices governing maritime blockades.

To understand the evolution of the rules governing blockades, particular attention is given to key documents such as the London Declaration of 1909,⁹¹ the Oxford Manual of 1913,⁹² the San Remo Manual of 1995,⁹³ and the Newport Manual of 2023.⁹⁴ These documents are pivotal in tracing the chronological progression of customary international law regarding blockades. The London Declaration of 1909 laid foundational principles, while the Oxford Manual of 1913 provided further clarification on the rights and obligations of neutral and belligerent states. The San Remo Manual of 1995 modernized the legal framework, addressing the complexities of contemporary maritime conflicts, and the Newport Manual of 2023 introduced additional guidelines reflecting the latest advancements in international maritime law.

⁹¹ *Declaration concerning the Laws of Naval War, Feb. 26, 1909* [hereinafter London Declaration], 15 INT'L L. STUD. 97.

⁹² *Manual of the Laws of Naval War*, Oxford, Aug. 9, 1913, <https://ihl-databases.icrc.org/pt/ihl-treaties/oxford-manual-1913?activeTab=historical>.

⁹³ INT'L INST. HUMANITARIAN L., *SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA* (Louise Doswald-Beck ed., 1995).

⁹⁴ JAMES KRASKA ET AL., *THE NEWPORT MANUAL ON THE LAW OF NAVAL WARFARE* (2023).

In addition to these foundational documents, this study delves into related legal frameworks such as Maritime Neutrality Law and the Law of Contraband. Maritime Neutrality Law governs the rights and duties of neutral states during armed conflicts, particularly in relation to blockades, ensuring that neutral parties are not unduly affected by belligerent actions. The Law of Contraband outlines the conditions under which goods may be deemed contraband and subject to capture or destruction, providing a legal basis for the interception of certain cargoes during blockades. Recognizing the evolving nature of modern warfare, the examination extends to include guidance from the HPCR Manual⁹⁵ to address the complexities arising from advancements in technology, particularly regarding the interception of aircraft.

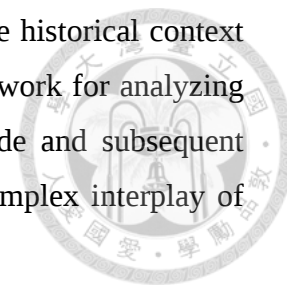
Furthermore, in respect of the modern trend of involving humanitarian requirements, humanitarian laws will be addressed in the application of blockades. This includes examining the obligations of belligerent states to minimize harm to civilian populations and ensure the provision of essential goods and services. Humanitarian considerations are increasingly integrated into the legal framework governing blockades, reflecting the international community's commitment to protecting human rights during armed conflicts.

Significant case laws following World War II, including the Cuban Missile Crisis of 1962 and the Falklands War of 1982, will be explicitly addressed. The Cuban Missile Crisis serves as a crucial example of a quarantine measure implemented under extreme geopolitical tensions, while the Falklands War illustrates the application of Maritime Exclusion Zones (MEZs) as an alternative to traditional blockades. These historical cases provide valuable insights into the strategic, legal, and diplomatic challenges associated with blockades. In the post-San Remo Manual era, the blockades of Yemen and Gaza will also be analyzed. These contemporary cases highlight the ongoing relevance and application of blockade principles in modern conflicts, offering lessons on the practical implementation and humanitarian impact of blockades.

Specific attention is given to incidents in the vicinity of Taiwan, such as the Nationalists' Blockade of the People's Republic of China from 1949 to 1958 and the

⁹⁵ PROGRAM HUMANITARIAN POL'Y & CONFLICT RSCH. HARV. U., MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE [hereinafter HCPR Manual] (2013).

Taiwan Strait Crises. These events are pivotal in understanding the historical context and geopolitical dynamics of the Taiwan Strait, providing a framework for analyzing potential future blockades in the region. The Nationalist blockade and subsequent crises demonstrate the strategic importance of Taiwan and the complex interplay of military, political, and legal factors influencing blockades.



In this research, Chapter 2 outlines the types of blockades, enumerating various measures employed to establish blockades and examining methods akin to traditional blockade strategies. This chapter provides a comprehensive overview of the different forms of blockade, from total blockades that completely isolate a territory to more targeted measures like naval quarantines and exclusion zones. By exploring the historical use and effectiveness of these methods, Chapter 2 lays the groundwork for understanding contemporary blockade strategies.

Building upon this historical analysis, Chapter 3 elucidates the contemporary rules of law governing maritime blockades. Drawing insights from legal documents and naval manuals, this chapter seeks to identify commonly accepted laws and practices surrounding blockades in modern contexts. It examines the legal criteria for establishing and maintaining a blockade, the rights and responsibilities of belligerent and neutral states, and the mechanisms for enforcing compliance with international law. Chapter 3 also addresses the role of international organizations, such as the United Nations, in regulating and adjudicating disputes related to blockades.

In Chapter 4, the synthesized information from preceding chapters is employed to analyze measures taken in the vicinity of Taiwan, specifically incidents such as the Nationalists' Blockade of the People's Republic of China from 1949 to 1958 and the Taiwan Strait Crises. This chapter provides a detailed examination of these historical blockades and crises, exploring the strategic objectives, methods employed, and outcomes. The analysis seeks to understand the implications of these measures on regional stability and the legal precedents they set for future blockades.

Chapter 5 summarizes the key findings and adopting them in strategic scenarios of a Chinese blockade of Taiwan. This chapter synthesizes the research findings, highlighting the critical legal, strategic, and humanitarian considerations that must be addressed in the context of a blockade. It evaluates potential measures for a

Chinese blockade of Taiwan, considering the legality, effectiveness, and alignment with China's objectives. This includes the imposition of a naval blockade, the establishment of Maritime Exclusion Zones, and the use of economic and political pressure to encircle Taiwan and exert economic pressure while reducing the risk of conflict escalation. Finally, Chapter 6 concludes this research.

By employing a rigorous document analysis methodology and examining a wide range of sources, this research aims to provide a comprehensive and nuanced understanding of the complexities and challenges associated with maritime blockades. Through a detailed exploration of historical precedents, contemporary legal frameworks, and strategic considerations, this study seeks to contribute to the ongoing discourse on the legality and effectiveness of blockades in modern warfare, with a particular focus on the potential implications for Taiwan and the broader Asia-Pacific region.

CHAPTER II. BLOCKADES AND SIMILAR ACTIONS

A. Blockades in the Traditional Sense

The concept of maritime blockade originated from a naval siege⁹⁶ and has evolved into a wide array of activities,⁹⁷ yet it lacks a universally accepted definition due to the absence of a commonly approved convention.⁹⁸ Throughout history, the notion of blockade has undergone significant transformation, with the emergence of the “Pacific Blockade” serving as a notable example. This concept was first demonstrated in 1827 during the Greek War of Independence, when a combined fleet of British, Russian, and French forces blockaded Greece.⁹⁹ The Pacific Blockade introduced a new trend among Maritime Powers, utilizing blockades as a means of exerting pressure on opposing nations for various legal, political, and retaliatory purposes.¹⁰⁰

The term “Pacific Blockade” refers to a form of blockade carried out without a formal declaration of war, typically aimed at coercing a state to comply with specific demands.¹⁰¹ The 1827 blockade of Greece was instrumental in showcasing how blockades could be used as a tool of diplomacy and coercion, rather than purely as an act of war.¹⁰² This method was subsequently employed in various other conflicts, including the blockade of Mexico by France in 1838¹⁰³ and the blockade of Japan by the United States in 1853.¹⁰⁴ These blockades were intended to pressure the target

⁹⁶ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 5-6.

⁹⁷ Bruce A. Elleman & S. C. M. Paine, *Introduction* to *NAVAL BLOCKADES AND SEAPOWER: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 3, 4 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁹⁸ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 4.

⁹⁹ ROSS WILLIAMSON, *A FRIENDLY DEMONSTRATION OF FORCE: PACIFIC BLOCKADE, INTERNATIONAL LAW AND STATE IDENTITY, 1827 TO 1921*, at 22 (2013) (The British, French, and Russian governments collaborated by dispatching a joint fleet to Greece with the aim of enforcing an armistice agreement between Greek insurgents and Egyptian allies of the Ottoman Empire. Codrington assumed leadership of the coalition, displaying enthusiasm for assisting the Greek cause).

¹⁰⁰ Albert H. Washburn, *The Legality of the Pacific Blockade I*, 21(1) *COLUM. L. REV.* 55, 60-61(1921) (The British Naval Reprisal of Brazil, 1862).

¹⁰¹ *Id.* at 63-64.

¹⁰² *Id.*

¹⁰³ William Spence Robertson, *French Intervention in Mexico in 1838*, 24(3) *HISPANIC AM. HISTORICAL REV.* 222, 222-252 (1944).

¹⁰⁴ Michael P. Onorato, *The Opening of Japan 1849-1854: America Finds the “Key”*, 6(3) *ASIAN STUD. J.* 286, 290 (1968).

nations into compliance with the blockading powers' demands without escalating into full-scale warfare.¹⁰⁵

However, despite its historical precedent, the coercive nature of a Pacific Blockade runs counter to the principles outlined in international law,¹⁰⁶ particularly Article 2(4) of the UN Charter.¹⁰⁷ This article prohibits the use of force against the territorial integrity or political independence of any state, effectively rendering the Pacific Blockade incompatible with contemporary legal standards. Consequently, any interference of this nature would be deemed a breach of international law.¹⁰⁸ Thus, in contemporary discourse, a blockade cannot be considered a pacific action and is therefore excluded from further consideration in this discussion.¹⁰⁹

In contrast, the traditional concept of a maritime blockade involves more direct and explicit military actions and is characterized by several specific attributes.¹¹⁰ These traditional blockades have been pivotal in numerous historical conflicts, where their strategic importance has been recognized and utilized to significant effect.¹¹¹

While excluding the Pacific Blockade paradigm, the general attributes of a traditional blockade may be delineated as follows:

(1) In bello Operations Executed by Naval Forces

Blockades entail military operations conducted by the naval forces of a belligerent state against the coastlines of its adversary.¹¹² This involves the strategic

¹⁰⁵ William Spence Robertson, *French Intervention in Mexico in 1838*, 24(3) HISPANIC AM. HISTORICAL REV. 222, 230 (1944); see also Michael P. Onorato, *The Opening of Japan 1849-1854: America Finds the "Key"*, 6(3) ASIAN STUD. J. 286, 290-91 (1968).

¹⁰⁶ See PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 4.

¹⁰⁷ U.N. Charter art. 2, ¶ 4.

¹⁰⁸ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 4, n.17, "[a]bsent a UNSC Resolution authorizing such action, any such use of force constitutes a violation of section 2(3) and (4) of the UN Charter."

¹⁰⁹ *Id.*

¹¹⁰ Magne Frostad, *Naval Blockade*, 9 ARCTIC REV. L. & POL. 195, 197-99 (2018).

¹¹¹ *Id.*

¹¹² James Kraska, *Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?*, 13 Y.B. INT'L HUMANITARIAN LAW 367, 388 (2010).

deployment of naval vessels to restrict access to specified ports, airfields, or coastal areas under the control or occupation of the enemy state.¹¹³



(2) Comprehensive Prohibition of Vessels and/or Aircraft

Blockades encompass the comprehensive prohibition of vessels and/or aircraft of all nations from ingress or egress within the designated areas controlled by the adversary.¹¹⁴ This prohibition is aimed at imposing economic pressure on the opponent and extends to neutral and enemy vessels, contraband, and non-contraband goods alike.¹¹⁵

(3) Exertion of Economic Pressure

Blockades intend to achieve the exertion of economic pressure on the adversary, inclusive of its armed forces,¹¹⁶ with the ultimate aim of interrupting all maritime trade.¹¹⁷ This includes trade of neutral and enemy vessels, contraband, and non-contraband goods, contributing to the erosion of the adversary's economic resilience.¹¹⁸

(4) Enforcement through Condemnation of Vessels and Cargoes

Blockades are upheld through the condemnation of vessels and their cargoes involved in trading with the besieged enemy.¹¹⁹ Such enforcement measures entail the confiscation of vessels and cargoes of any party attempting to engage in trade with the beleaguered state during the blockade. These stringent enforcement mechanisms serve as deterrents against any potential violators of the blockade regime.¹²⁰

¹¹³ *Blockade*, BRITANNICA, <https://www.britannica.com/topic/blockade-warfare> (last visited Mar. 14, 2024).

¹¹⁴ See U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS [hereinafter COMMANDER'S HANDBOOK].

¹¹⁵ *Id.*

¹¹⁶ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 4, n13.

¹¹⁷ See U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS [hereinafter COMMANDER'S HANDBOOK].

¹¹⁸ HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENG SUO ZHI DU JIAN LUN ZHONGGONG DUEITAI FENG SUO ZHI SHI YONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 3 (2001).

¹¹⁹ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 5.

¹²⁰ Michael G. Fraunces, *The International Law of Blockade: New Guiding Principles in Contemporary State Practices*, 101(4) YALE L.J. 893, 893 (1992).

Historically, blockades have been employed in various conflicts to achieve strategic objectives. One of the most famous examples is the Union blockade of Confederate ports during the American Civil War.¹²¹ This blockade, known as the Anaconda Plan, aimed to suffocate the Confederate economy by preventing the export of cotton and the import of war supplies.¹²²

Another notable example is the British blockade of Germany during World War I.¹²³ This blockade sought to cut off Germany's access to essential supplies, including food and raw materials, thereby weakening its military and industrial capabilities.¹²⁴ The British blockade, enforced by the Royal Navy, was highly effective in disrupting German trade and contributed to severe food shortages and economic hardship within Germany.¹²⁵ The blockade's success underscored the importance of naval power in exerting economic pressure and highlighted the humanitarian impact of such measures, as civilian populations often bore the brunt of the resulting shortages and deprivation.¹²⁶

Notably, a "Paper Blockade" refers to a blockade that is declared but not effectively enforced.¹²⁷ This type of blockade relies on the threat of enforcement rather than actual interdiction of vessels.¹²⁸ However, under international law, a blockade must be effective to be considered legitimate.¹²⁹ The Declaration of Paris (1856) established the principle that a blockade, to be legally binding, must be maintained by a force sufficient to prevent access to the enemy's coastline.¹³⁰ Thus, a paper blockade that fails to meet this criterion would be considered invalid under contemporary international law.

¹²¹ William N. Still Jr., *A Naval Sieve: The Union Blockade in the Civil War*, 36(3) NAVAL WAR COLL. REV. 38, 38-45 (1983).

¹²² *Anaconda Plan*, BRITANNICA, <https://www.britannica.com/event/Anaconda-plan> (last visited Jul. 11, 2024).

¹²³ Alan Kramer, *Naval Blockade (of Germany)*, 1914-1918-ONLINE.NET (Jan. 22, 2020), <https://encyclopedia.1914-1918-online.net/article/naval-blockade-of-germany/>; see also generally Greg Kennedy, *Intelligence and the Blockade, 1914-17: A Study in Administration, Friction and Command*, 22(3) INTEL. & NAT'L SEC. 699 (2007).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Greg Kennedy, *Intelligence and the Blockade, 1914-17: A Study in Administration, Friction and Command*, 22(3) INTEL. & NAT'L SEC. 699, 718-19 (2007).

¹²⁷ Adam Biggs et al., *Theories of Naval Blockades and Their Application in the Twenty-First Century*, 74(1) NAVAL WAR COLL. REV. 79, 91-93 (2021).

¹²⁸ *Id.* at 91.

¹²⁹ *Id.*

¹³⁰ Declaration Respecting Maritime Law, Apr. 16, 1856, <https://ihl-databases.icrc.org/en/ihl-treaties/paris-decl-1856/declaration?activeTab=undefined>.

B. Similar Actions

1. Other Maritime Interception Measures —

Reflecting upon the widely acknowledged principle of *Mare Liberum* on the High Seas,¹³¹ maritime neutrality law generally provides that by adhering to fundamental principles of neutrality and abstaining from actions prejudicial to any conflict party, peacetime regulations governing international relations and trade remain applicable to neutrals, ensuring their right of passage.¹³² The fundamental tenets of maritime neutrality law are delineated in the Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War.¹³³ These tenets include impartiality, abstention from any manner of aid to a belligerent that would contribute to its war efforts, restrictions on the use of neutral ports and territorial seas, and obligations to prevent the occurrence of the said duties in the neutral's territory.¹³⁴

Despite the generally assumed neutral status,¹³⁵ neutral ships may still encounter maritime interception by a belligerent party for strategic purposes.¹³⁶ Although acts of maritime interception may superficially resemble a blockade, the concepts of contraband and sanctions/embargoes are distinct from a blockade:

(1) Contraband

The Law of Contraband has its origins in maritime law and international customs regulations dating back centuries.¹³⁷ Its basic principles evolved around the regulation the trade of goods and materials deemed essential to a belligerent's war effort during armed conflict.¹³⁸

¹³¹ EFTHYMIOS PAPASTAVRIDIS, *THE INTERCEPTION OF VESSELS ON THE HIGH SEAS: CONTEMPORARY CHALLENGES TO THE LEGAL ORDER OF THE OCEANS* 18-40 (2013).

¹³² PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 11.

¹³³ *Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, 1907* [hereinafter *Hague XIII*], INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-xiii-1907> (last visited Mar 15, 2024).

¹³⁴ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 17.

¹³⁵ U.S. NAVY, U.S. MARINE CORPS & U.S. COAST GUARD, *THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS* [hereinafter *COMMANDER'S HANDBOOK*], at 7.1.

¹³⁶ HUANG CHI-MING (黃啟銘), *GUOJI FA SHANG FENG SUO ZHI DU JIAN LUN ZHONGGONG DUEITAI FENG SUO ZHI SHI YONG WENTI* (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 16-18.

¹³⁷ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 26.

¹³⁸ *Id.* at 25.

Historically, contraband referred to goods that were prohibited from being traded with an enemy during times of war. This concept emerged as nations sought to restrict the flow of resources that could strengthen their adversaries.¹³⁹ Initially, contraband items included materials directly related to military operations, such as weapons, ammunition, and military equipment.¹⁴⁰

Over time, the scope of contraband expanded to encompass not only military supplies but also goods with dual-use capabilities,¹⁴¹ meaning they could be used for both civilian and military purposes. This expansion reflected the increasing interconnectedness of global trade and the recognition that certain civilian goods could significantly contribute to a belligerent's war effort.

The law of contraband only applies during armed conflict,¹⁴² and the scope that a belligerent is granted to interdict maritime trade is outlined by the doctrine of continuous voyage, which holds that goods destined for an enemy port remain contraband even if they are unloaded at a neutral port and then transshipped to their final destination.¹⁴³ Additionally, the doctrine of ultimate destination stipulates that goods intended for military use, regardless of their initial destination, are considered contraband.¹⁴⁴

(2) Sanctions and Embargoes

The concept of sanctions and embargoes (hereinafter "S&E") shares historical roots with the Law of Contraband, originating in maritime law and international customs regulations.¹⁴⁵ Like contraband, S&E are measures employed to restrict the flow of maritime trade. However, while contraband law only applies to armed

¹³⁹ *Contraband (International Law)*, BRITANNICA, <https://www.britannica.com/topic/contraband> (last visited Mar. 15, 2024).

¹⁴⁰ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 26-27 ("... [a]ll contraband merchandise, such as ammunition, ships, weapons, sails, rope, gold, silver, copper, iron, lead, and the like... will be of good prize, with the ships and men who will carry them").

¹⁴¹ *Id.* at 27 (corn, grain, etc. were included as contraband the year after the signing of the Treaty of Southampton in 1625).

¹⁴² *Id.* at 6.

¹⁴³ INT'L INST. HUMANITARIAN L., *SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA* [hereinafter *SAN REMO MANUAL*] 215 (Louise Doswald-Beck ed., 1995) ("goods which are ultimately destined for territory under the control of the enemy and which may be susceptible for use in armed conflict").

¹⁴⁴ *Id.*

¹⁴⁵ EFTHYMIOS PAPASTAVRIDIS, *THE INTERCEPTION OF VESSELS ON THE HIGH SEAS: CONTEMPORARY CHALLENGES TO THE LEGAL ORDER OF THE OCEANS* 50.

conflicts, S&E are targeted actions that restrict commercial activities during peacetime.¹⁴⁶

S&E typically involve the prohibition or restriction of trade in goods and services with a specific country, government, or region.¹⁴⁷ Unlike contraband, which targets specific items, S&E are more comprehensive in scope, aiming to exert economic pressure or diplomatic influence on the target entity.¹⁴⁸ Embargoes can be imposed unilaterally by a single state or multilaterally by a coalition of states acting collectively.¹⁴⁹

For example, the United Nations has imposed comprehensive economic sanctions on countries like Iraq, North Korea, and Iran to pressure these regimes into compliance with international norms.¹⁵⁰ These sanctions have included restrictions on trade, financial transactions, and access to international markets, significantly impacting the targeted nations' economies and political stability.¹⁵¹

The basic principles governing S&E also stem from international law, particularly principles related to sovereignty, non-intervention, and collective security.¹⁵² Sovereignty dictates that states have the right to control their own borders and regulate trade within their territory,¹⁵³ and non-intervention prohibits states from interfering in the internal affairs of other states.¹⁵⁴ However, these principles are balanced against the collective interest in maintaining peace and security, which may justify the imposition of S&E to address threats to international peace and security.¹⁵⁵

¹⁴⁶ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 7.

¹⁴⁷ *Embargo*, GUIDE HUMANITARIAN L., <https://guide-humanitarian-law.org/content/article/3/embargo-1/> (last visited Mar. 15, 2024).

¹⁴⁸ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 7.

¹⁴⁹ *Sanctions against Russia and the Role of the United Nations*, GLOB. CHALLENGES (Nov. 2022), <https://globalchallenges.ch/issue/12/sanctions-against-russia-and-the-role-of-the-united-nations/>.

¹⁵⁰ SUBSIDIARY ORGANS OF THE U.N. SEC. COUNCIL, FACT SHEET 5, 10, 18 (2023), <https://www.un.org/securitycouncil/sanctions/information>.

¹⁵¹ *Id.* at 11, 31.

¹⁵² Joseph P. Chamberlain, *Embargo as a Sanction of International Law*, in *Proceedings of the American Society of International Law at Its Annual Meeting* 66, 71 (Apr. 27-29, 1933).

¹⁵³ Steve Chan & A. Cooper Drury, *Sanctions as Economic Statecraft: An Overview*, in *SANCTIONS AS ECONOMIC STATECRAFT: THEORY AND PRACTICE* 1, 5-7 (Steve Chan & A. Cooper Drury eds., 2000).

¹⁵⁴ *Id.*

¹⁵⁵ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 7.

Key principles governing S&E include the necessity of proportionality and non-discrimination,¹⁵⁶ where proportionality requires that the measures imposed be commensurate with the threat or situation they seek to address, ensuring that the response is appropriate and not excessively punitive, while non-discrimination prohibits arbitrary or unjustified discrimination in the application of S&E measures, ensuring that all parties are treated fairly and equitably.

Furthermore, the implementation and enforcement of S&E require robust international cooperation and legal frameworks.¹⁵⁷ Given the unique power to bind all members of the United Nations, the United Nations Security Council often plays a crucial role in authorizing and overseeing the implementation of sanctions to ensure they align with international law and collective security goals.¹⁵⁸ This multilateral approach enhances the legitimacy and effectiveness of sanctions by garnering broader international support and compliance.

In contemporary international relations, S&E have become vital tools for states and international organizations to address a wide range of issues, including human rights violations,¹⁵⁹ nuclear proliferation,¹⁶⁰ and territorial disputes.¹⁶¹ The use of targeted sanctions, such as asset freezes and travel bans on specific individuals or entities, has also emerged as a more precise and potentially less harmful alternative to comprehensive economic sanctions.¹⁶²

For example, the European Union has employed targeted sanctions against individuals and organizations involved in human rights abuses and territorial aggressions in countries like Russia and Belarus.¹⁶³ These measures aim to hold

¹⁵⁶ Joseph P. Chamberlain, *Embargo as a Sanction of International Law*, in Proceedings of the American Society of International Law at Its Annual Meeting 66, 67.

¹⁵⁷ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 8.

¹⁵⁸ See generally SUBSIDIARY ORGANS OF THE U.N. SEC. COUNCIL, FACT SHEET (2023), <https://www.un.org/securitycouncil/sanctions/information>.

¹⁵⁹ Armin Steinbach et al., *Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle*, 36 HARV. HUMAN RIGHTS J. 1, 1-3 (2023).

¹⁶⁰ See generally Sukeyuki Ichimasa, *Nuclear Non-Proliferation and Economic Sanctions: Can Non-Military Sanctions Stop Nuclear Proliferation?*, 19(2) NIDS SEC. STUD. 59 (2017).

¹⁶¹ Tuomas Forsberg, *Explaining Territorial Disputes: From Power Politics to Normative Reasons*, 33(4) J. PEACE RSCH. 433, 439 (1996).

¹⁶² Daniel W. Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13(1) INT'L STUD. REV. 96, 101-02 (2011).

¹⁶³ Alexandra Hofer, *The EU's "Massive and Targeted" Sanctions in Response to Russian Aggression, a Contradiction in Terms*, in CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES 1, 16-17, n.120 (2023).

perpetrators accountable while minimizing the impact on the broader population, reflecting an evolving approach to S&E in line with international humanitarian principles¹⁶⁴.

Despite their strategic importance, the effectiveness of S&E is often debated. While S&E can impose significant economic and political pressure on targeted entities, their success in achieving desired outcomes depends on various factors, including the resilience of the targeted state, the level of international support for the measures, and the ability to enforce compliance.¹⁶⁵ The potential for unintended consequences, such as humanitarian crises or increased regional instability, also underscores the need for careful consideration and balanced implementation of S&E.¹⁶⁶

While S&E may be performed by a single country through sufficient enabling legislation, such measures may only be enforced within its jurisdiction.¹⁶⁷ Unlike blockade and contraband, whose legal regimes lie within a nation's inherited jus ad bellum, if a nation wishes to enforce S&E beyond its jurisdiction, it must obtain authority for action through bilateral agreements such as the Proliferation Security Initiative (PSI) or multilateral agreements such as those authorized by the United Nations Security Council (UNSC).¹⁶⁸ This requirement ensures that such measures are implemented within the bounds of international law and enjoy broader legitimacy and support.

Overall, the concepts of contraband and S&E represent distinct but related forms of maritime interception measures. While contraband focuses on preventing the transfer of specific goods that could enhance a belligerent's war capabilities during armed conflict, S&E encompass broader peacetime measures to exert economic and diplomatic pressure on target entities. Both concepts have evolved alongside changes in international law, trade, and security dynamics, reflecting the ongoing interplay between sovereignty, non-intervention, and collective security in maritime contexts.

¹⁶⁴ *Id.* at 20-21.

¹⁶⁵ Özgür Özdamar & Evgeniia Shahin, *Consequences of Economic Sanctions: The State of the Art and Paths Forward*, 23 INT'L STUD. REV. 1646, 1650 (2021).

¹⁶⁶ *Id.* at 1656-57.

¹⁶⁷ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 8.

¹⁶⁸ *Id.*

	BLOCKADE	SANCTIONS/ EMBARGOES	LAW OF CONTRABAND
PURPOSE	1. To interdict any seaborne activity that may provide assistance to the military of the blockaded state. 2. To cause damage to the enemy's economy with the intent of compromising its war effort.	To use economic pressure to persuade a state to change its policies or conduct.	To stop items that are susceptible for military use from reaching an enemy.
LEGAL REGIME AND AUTHORITY FOR ACTION	Armed conflict: Blockades are belligerent actions aimed at interdicting all maritime traffic, irrespective of its cargo.	Peacetime: Each embargo is subject to enabling legislation, bilateral agreement, Security Council Resolutions, etc.	Armed conflict: The Law of Contraband is a justification for interdiction of prohibited goods carried on vessels that are destined for enemy ports during periods of armed conflict.
ENFORCED BY	Belligerent naval assets.	Government vessels/ officials of state(s) participating in the sanction's regime.	Belligerent naval assets.
ENFORCED AGAINST	All vessels and cargoes, whether contraband or not, destined to or departing from blockaded ports.	Vessels carrying embargoed goods to or from sanctioned ports as specified by enabling legislation, international agreement, or UNSC resolution, etc. In case of national/ regional sanctions, government vessels may only conduct visit and search against own state flagged vessels, or others according to	Neutral vessels carrying items of a military nature that are destined for the enemy of the belligerent.

		agreement with flag state.	
PENALTY FOR BREACH	Condemnation of vessel and cargo. Vessels and/ or cargo may be brought before a prize court in the seizing state.	Dependent upon enabling legislation, UNSC Resolution, etc. Generally, vessels are turned back.	Vessels and/ or cargo are seized and brought before a prize court in the seizing state.

TABLE 1: Comparison between the three types of maritime interdiction

2. Distant Blockade —

The traditional conception of a blockade typically invokes imagery of a formidable array of warships encircling a specific area, such as a port or coastline.¹⁶⁹ However, technological advancements have given rise to a novel concept known as the Distant Blockade.¹⁷⁰ An illustrative instance of this phenomenon occurred during World War I, when the British government declared a blockade on the waters between the United Kingdom and Germany.¹⁷¹ Under this strategy, any vessel traversing this expansive area risked being sunk in retaliation against Germany.¹⁷² Additionally, the British Navy positioned fleets in international channels to obstruct maritime trade to and from German ports.¹⁷³

This approach encountered significant criticism from neutral parties, notably the United States, for several reasons.¹⁷⁴ Firstly, the vast expanse designated for the blockade and the considerable distance of the enforcing fleet from the target area contradicted the traditional practice of conducting blockades in close proximity to the coastline. Secondly, the operation's failure to entirely halt German vessels, both

¹⁶⁹ *Blockade*, BRITANNICA, <https://www.britannica.com/topic/blockade-warfare> (last visited Mar. 14, 2024).

¹⁷⁰ Michael G. Fraunces, *The International Law of Blockade: New Guiding Principles in Contemporary State Practices*, 101(4) YALE L.J. 893, 905-906.

¹⁷¹ Alan Kramer, *Naval Blockade (of Germany)*, 1914-1918 ONLINE (Jan. 22, 2020), https://encyclopedia.1914-1918-online.net/article/naval_blockade_of_germany.

¹⁷² HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENGSHUO ZHIDU JIANLUN ZHONGGONG DUEITAI FENGSHUO ZHI SHIYONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 19.

¹⁷³ *Id.*; see also *What You Need to Know About the British Naval Blockade of the First World War*, IWM, <https://www.iwm.org.uk/history/what-you-need-to-know-about-the-british-naval-blockade-of-the-first-world-war> (last visited Mar. 15, 2024).

¹⁷⁴ 2 L. OPPENHEIM, OPPENHEIM'S INTERNATIONAL LAW 444 (8th ed. 1955).

commercial and military, undermined the principle of effectiveness while substantially impeding the right of passage for neutral vessels.¹⁷⁵

In defense of the distant blockade strategy, the British government argued that despite its departure from the conventional practice of a close blockade,¹⁷⁶ it still exerted sufficient force to intercept vessels attempting to breach the blockade zone. Moreover, concentrating military resources to guard strategic chokepoints leading to the blockaded area was deemed a more efficient utilization of assets than forming a linear blockade across the vast ocean expanse.¹⁷⁷ Additionally, the British authorities emphasized their efforts to minimize the interception of neutral vessels and mitigate any resulting harm.¹⁷⁸

During World War II, when the British implemented a distant blockade against Germany once more, they introduced Navicerts—commercial passports aimed at facilitating the passage of consignments through the blockade.¹⁷⁹ This measure aimed to mitigate the adverse impact of the blockade on neutral vessels.¹⁸⁰ Notably, countries such as Sweden, Norway, and Denmark cooperated with this system to protect their commercial interests.¹⁸¹

Notably, the distant blockade mentioned above still required a significant number of naval assets. However, in the third Taiwan Strait Crisis, the People's Liberation Army (PLA) imposed significant threats to Taiwan's maritime trade routes through the use of ballistic missiles.¹⁸² Despite the controversial nature of such actions, the question of whether the sole use of ballistic missiles is sufficient for a

¹⁷⁵ *Id.* at 445.

¹⁷⁶ *Id.*

¹⁷⁷ HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENGSHUO ZHIDU JIANLUN ZHONGGONG DUEITAI FENGSHUO ZHI SHIYONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 20-21.

¹⁷⁸ *Id.* at 21.

¹⁷⁹ Malcolm Moos, *The Navicert in World War II*, 38(1) AM. J. INT'L L. 115, 115-19 (1944).

¹⁸⁰ *Id.* at 115.

¹⁸¹ HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENGSHUO ZHIDU JIANLUN ZHONGGONG DUEITAI FENGSHUO ZHI SHIYONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 21.

¹⁸² Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 214-23 (Bruce Elleman & S. C. M. Paine eds. 2006).

legal blockade was brought to the forefront, as some scholars termed the crisis a “Missile Blockade”.¹⁸³

Naval warships were required to line up closely along the coastline in the traditional form of blockade,¹⁸⁴ and the sole use of mines was debated but ultimately not accepted as sufficient for forming a blockade.¹⁸⁵ Decades ago, it would have been hard to believe that a blockade could be effectively conducted from such a distance, as missiles were primarily used for destruction rather than surveillance or capture.¹⁸⁶ The low accuracy and high risk of false firing further complicated their use in practice.¹⁸⁷

Perhaps through the development of automated machines and other distant verification processes, a legal and effective blockade with only missiles or other automated weapon systems might be possible in future years. However, as of now, this paper contends that a blockade conducted solely with missiles is insufficient to create a blockade in conformity with international law. Missiles lack the capacity for the continuous and effective interdiction required to enforce a blockade, as they cannot provide the necessary surveillance or capture capabilities, which would raise significant risks of collateral damage and unintended escalation.

In conclusion, the distant blockade represents a significant evolution in the concept of blockades, driven by technological advancements and the changing nature of naval warfare. While it departs from traditional practices, it offers a viable strategy for exerting economic and military pressure over large areas with reduced resources. The British experience during the World Wars highlights both the potential benefits and the challenges of implementing distant blockades, providing valuable insights for contemporary naval operations and international law. As long as distant blockades adhere to the core principles of effectiveness and legality, they can be considered a legitimate and necessary tool in modern maritime strategy.

¹⁸³ *Id.*

¹⁸⁴ Roger W. Barnett, *Technology and Naval Blockade: Past Impact and Future Prospects*, 58(3) NAVAL WAR COLL. REV. 87, 87-88 (2005).

¹⁸⁵ See *infra* Ch.III.A.2 for discussion on the use of mines in blockade operations.

¹⁸⁶ William H. Boothby, *Weapons in Sea Warfare*, in WEAPONS AND THE LAW OF ARMED CONFLICT 280, 280-96 (2009).

¹⁸⁷ Even the most advanced missiles in the 1970s had low accuracies, with advanced land-based missiles having a Circular Error Probable (CEP) around 150 metres and submarine-based missiles around 400 metres, see Kosta Tsipis, *The Accuracy of Strategic Missiles*, 233(1) SCI. AM. 14-23 (1975).

3. Maritime Zone —

A maritime zone is a controlled established by belligerents to armed conflict to control access to broad ocean areas and to shape battlespace management.¹⁸⁸ Due to its complex yet ambiguous nature, a maritime zone may be termed exclusion zone, restricted area, operational zone, war zone, or more while sharing similar attributes.¹⁸⁹ In the theater of the Falklands War, maritime exclusion zones emerged as pivotal components of strategic maneuvering and legal assertion by both British and Argentine forces.¹⁹⁰ The following section undertakes a comprehensive examination of maritime exclusion zones in the context of the Falklands War, shedding light on the contrasting approaches adopted by British and Argentine forces.

(1) British Approach

The British approach to delineating maritime exclusion zones centered on defensive imperatives and the safeguarding of the Falkland Islands against Argentine encroachment.¹⁹¹ With tensions escalating in the South Atlantic, the British government took decisive measures to establish clear boundaries and rules of engagement to protect its interests in the region. This initiative culminated in the proclamation of a Maritime Exclusion Zone (MEZ) on April 12, 1982.¹⁹² The MEZ delineated an area extending 200 nautical miles from the Falklands' coasts, effectively marking out a zone within which any Argentine warships and Argentine naval auxiliaries were subject to attack by British naval forces.¹⁹³ Later, surrounding the

¹⁸⁸ Raul (Pete) Pedrozo, *Maritime Exclusion Zones in Armed Conflicts*, 99 INT'L L. STUD. 526, 526 (2022).

¹⁸⁹ *Id.*

¹⁹⁰ Christopher Michaelsen, *Maritime Exclusion Zones in Times of Armed Conflict at Sea: Legal Controversies still Unresolved*, 8(2) J. CONFLICT & SEC. L. 363, 363-390 (2003).

¹⁹¹ Sandesh Sivakumaran, *Exclusion Zones in the Law of Armed Conflict at Sea: Evolution in Law and Practice*, 92 INT'L L. STUD. 153, 177-81 (2016).

¹⁹² W. J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 24 CAN. Y.B. INT'L L. 91, 111-12 (1986); see also Permanent Representative of Argentina to the U.N., Letter Dated 9 April 1982 from the Permanent Representative of Argentina to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/14961 (Apr. 9, 1982):

From the time indicated, any Argentine warships and Argentine naval auxiliaries found within this zone will be treated as hostile and are liable to be attacked by British forces. This measure is without prejudice to the right of the United Kingdom to take whatever additional measures may be needed in exercise of its right of self-defence under Article 51 of the United Nations Charter.

¹⁹³ Sandesh Sivakumaran, *Exclusion Zones in the Law of Armed Conflict at Sea: Evolution in Law and Practice*, 92 INT'L L. STUD. 153, 177.

Task Force that was on its way to the Falkland Islands, a more restricted area known as the Defensive Bubble was designated.¹⁹⁴ As reported by the Permanent Representative of the UN:

[A]ny approach on the part of Argentine warships, including submarines, naval auxiliaries, or military aircraft which could amount to a threat to interfere with the mission of the British forces in the South Atlantic, will encounter the appropriate response. All Argentine aircraft including civil aircraft engaging in surveillance of these British forces will be regarded as hostile and are liable to be dealt with accordingly.¹⁹⁵

Subsequently, in response to the escalating hostilities and the need for more robust defensive measures, the British government announced the imposition of a Total Exclusion Zone (TEZ) on April 30, 1982.¹⁹⁶ This TEZ retained the prohibitive area established by the MEZ, yet categorically prohibited the entry of any Argentine vessels, irrespective of their nature — be they military or civilian craft, so long as they regarded as operating in support of the illegal occupation of Argentina.¹⁹⁷

(2) Argentine Approach

In response to the British establishment of exclusion zones, Argentina also implemented its own zones. On April 8, following the UK's notification of a maritime

¹⁹⁴ *Id.* at 178.

¹⁹⁵ Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the U.N., Letter Dated 24 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/14997 (Apr. 24, 1982).

¹⁹⁶ See Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the U.N., Letter Dated 28 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/15006 (Apr. 28, 1982):

From the time indicated, the exclusion zone will apply not only to Argentine warships and Argentine naval auxiliaries but also to any other ship, whether naval or merchant vessel, which is operating in support of the illegal occupation of the Falkland Islands by Argentine forces. The exclusion zone will also apply to any aircraft, whether military or civil, operating in support of the illegal occupation. Any ship and any aircraft, whether military or civil, which is found within this zone without due authority from the Ministry of Defence in London will be regarded as operating in support of the illegal occupation and will therefore be regarded as hostile and will be liable to be attacked by the British forces.

¹⁹⁷ *Id.*

exclusion zone, Argentina declared its own encompassing a 200-mile radius around the Falklands, South Georgia, and the Argentine coast.¹⁹⁸ This zone was designated as a theater of operations where military action could be taken for self-defence.¹⁹⁹

Subsequently, on April 30, in reaction to the British defensive bubble, Argentina proclaimed that all British ships within a 200-mile zone of the Argentine sea, including the Malvinas Islands, South Georgias, and South Sandwich Islands, would be considered hostile. Similarly, any British aircraft entering Argentine airspace, whether military or civilian, would be treated as hostile.²⁰⁰ Argentina emphasized that these measures were subject to additional actions in self-defence.²⁰¹ Later, on May 11, Argentina extended hostility to any vessel flying the UK flag approaching the South Atlantic area of operations or posing a perceived threat to national security.²⁰²

Both sets of Argentine measures distinguished between enemy and neutral vessels, exempting the latter from hostile treatment.²⁰³ However, despite this distinction, one neutral vessel, the *Hercules*, a Liberian tanker, was attacked while innocently traversing waters some five hundred miles off the Falkland Islands.²⁰⁴ This incident highlights the inherent risks associated with establishing exclusion zones.²⁰⁵

As Argentina's treatment of British vessels made no distinction between warships, auxiliaries, and merchant vessels, categorizing all British ships as hostile,²⁰⁶ there is speculation that any British merchant vessel or civilian aircraft nearing the Maritime Exclusion Zone after April 30 could have been perceived as supporting the

¹⁹⁸ Sandesh Sivakumaran, *Exclusion Zones in the Law of Armed Conflict at Sea: Evolution in Law and Practice*, 92 INT'L L. STUD. 153, 181.

¹⁹⁹ W. J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 24 CAN. Y.B. INT'L L. 91, 112.

²⁰⁰ Permanent Representative of Argentina to the U.N., Letter Dated 30 April 1982 from the Permanent Representative of Argentina to the United Nations Addressed to the President of the Security Council, U.N. Doc. S/15018 (Apr. 30, 1982).

²⁰¹ *Id.*

²⁰² Sandesh Sivakumaran, *Exclusion Zones in the Law of Armed Conflict at Sea: Evolution in Law and Practice*, 92 INT'L L. STUD. 153, 181-82.

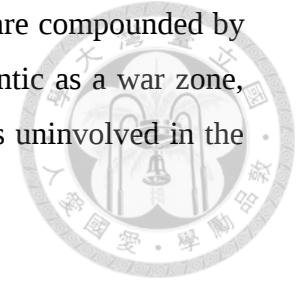
²⁰³ Christopher Michaelsen, *Maritime Exclusion Zones in Times of Armed Conflict at Sea: Legal Controversies still Unresolved*, 8(2) J. CONFLICT & SEC. L. 363, 373-74.

²⁰⁴ Sandesh Sivakumaran, *Exclusion Zones in the Law of Armed Conflict at Sea: Evolution in Law and Practice*, 92 INT'L L. STUD. 153, 182.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

British task force and thus targeted.²⁰⁷ Ultimately, these concerns are compounded by the May 11 proclamation, which designated the entire South Atlantic as a war zone, increasing the likelihood of unintended targeting of British vessels uninvolved in the conflict.²⁰⁸



(3) Comparison and Conclusion

In comparing the British and Argentine approaches to maritime exclusion zones during the Falklands War, notable distinctions emerge. While the characteristic of the Falklands War being a “limited war”,²⁰⁹ where limited measures are taken in the disputed territory instead of an all-front attack against the opposing nation, both participating parties declared their zonal measures through means of self-defence,²¹⁰ and deny the adoption of a blockade.²¹¹

The Falklands War presents a significant case study illuminating the intricate nature of Maritime Exclusion Zones. Upon careful examination of the measures enacted by both the United Kingdom and Argentina during this conflict, it becomes evident that neither party established a blockade in accordance with international law principles.²¹² Firstly, a blockade must apply equally to all vessels, whether military, commercial, or neutral.²¹³ However, the measures implemented during the Falklands War were not impartially directed to all vessels but rather targeted specific naval assets or operations.²¹⁴ Secondly, it is a fundamental tenet of blockade enforcement that its purpose is to obstruct all trade routes to the targeted area.²¹⁵ However, in the context of the Falklands War, the exclusion zones established by both parties were primarily intended to deter naval assets or disrupt naval operations rather than to

²⁰⁷ *Id.*

²⁰⁸ W. J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 24 CAN. Y.B. INT’L L. 91, 113.

²⁰⁹ Howard Levie, *The Falklands Crisis and the Laws of War*, 70 INT’L L. STUD. 203, 213 (1985).

²¹⁰ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSUO HÄISHÄNG FENGSUO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 36.

²¹¹ *Id.*

²¹² *Id.*; see also Howard Levie, *The Falklands Crisis and the Laws of War*, 70 INT’L L. STUD. 203, 213 (1985).

²¹³ Christopher Michaelsen, *Maritime Exclusion Zones in Times of Armed Conflict at Sea: Legal Controversies still Unresolved*, 8(2) J. CONFLICT & SEC. L. 363, 373.

²¹⁴ *Id.*

²¹⁵ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 4, n13.

comprehensively obstruct trade routes, with the exception of the declaration of the South Atlantic War Zone.²¹⁶

In terms of the standards of review applicable to Maritime Exclusion Zones, it is imperative that the enforcing party ensures the effectiveness of the established rules within the designated area while minimizing harm to non-combat personnel and neutrals,²¹⁷ which is similar to the criteria of a blockade. Furthermore, proper notification to all relevant parties, including neutrals, must be provided, allowing adequate time for dissemination of information.²¹⁸ Additionally, factors such as the duration, geographical scope, impact on neutral vessels, and the underlying purpose of the measures should be carefully assessed on a case-by-case basis to determine their reasonableness.²¹⁹

Refocusing on the specifics of the Falklands War, while there may be some questioning regarding the extent of the maritime exclusion zone delineated by the British,²²⁰ several factors mitigate concerns over its legality. Notably, the zone did not intersect with major waterways, had a limited duration, primarily targeted opposing naval forces, and did not result in damage to neutral vessels.²²¹ Consequently, the measures implemented by the British were generally deemed to be consistent with international law.²²²

Conversely, the legality of Argentina's declaration of the South Atlantic War Zone remains subject to considerable ambiguity and scrutiny. The lack of clarity surrounding the geographical scope and specific parameters of this zone raises questions regarding its conformity with international legal standards.²²³

²¹⁶ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 36.

²¹⁷ C. JOHN COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 465-66 (4th rev. ed., 1959).

²¹⁸ *Id.*

²¹⁹ Ross Leckow, *The Iran-Iraq Conflict in the Gulf: The Law of War Zones*, 37(3) INT'L & COMP. L.Q. 629, 634 (1988).

²²⁰ *Id.* at 632.

²²¹ See HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 36-39.

²²² Howard Levie, *The Falklands Crisis and the Laws of War*, 70 INT'L L. STUD. 203, 204-06 (1985).

²²³ W. J. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 24 CAN. Y.B. INT'L L. 91, 109.

4. Enclosure of Ports —

The act of enclosing ports, as the terminology implies, pertains to a sovereign state's prerogative to close off its ports, thereby regulating the ingress and egress of vessels.²²⁴ Such a measure is typically enacted during periods of significant upheaval in domestic political or economic spheres, such as during a civil conflict.²²⁵ Although the restriction on maritime travel inherent in port enclosure may bear semblance to a blockade, their legal implications diverge significantly.

In the event of a civil war outbreak, the characterization of the opposing faction, whether as a belligerent or an insurgent,²²⁶ carries substantial ramifications. This distinction is crucial as it determines whether the conflict assumes the status of an international armed conflict, subject to *jus in bello* regulations, or remains a domestic affair governed by peacetime laws.²²⁷

Should the enclosure of ports be found to impinge upon the right to innocent passage, Article 25, paragraph 3 of the United Nations Convention on the Law of the Sea (hereinafter UNCLOS)²²⁸ provides for recourse. This provision permits a state to temporarily suspend, "... without discrimination in form or in fact among foreign ships, suspend temporarily, in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises." Nonetheless, the extension of such suspension beyond territorial waters remains subject to considerable scrutiny and debate within legal circles.

It is worth noting that unlike a blockade, which constitutes an act within the realm of international armed conflict, the enclosure of ports primarily represents the

²²⁴ HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENG SUO ZHI DU JIAN LUN ZHONGGONG DUEITAI FENG SUO ZHI SHIYONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 34.

²²⁵ *Id.*

²²⁶ See generally Robert R. Wilson, *Recognition of Insurgency and Belligerency*, in Proceedings of the American Society of International Law at Its Annual Meeting (1921-1969), at 136-144 (1937).

²²⁷ HUANG CHI-MING (黃啟銘), GUOJI FA SHANG FENG SUO ZHI DU JIAN LUN ZHONGGONG DUEITAI FENG SUO ZHI SHIYONG WENTI (國際法上封鎖制度兼論中共對台封鎖之適用問題) [BLOCKADE IN INTERNATIONAL LAW AND THE QUESTION OF APPLICABILITY ON CHINESE COMMUNIST BLOCKADE OF TAIWAN] 34-35.

²²⁸ Convention on the Law of the Sea [hereinafter UNCLOS 1982], Dec. 10, 1982, 1833 U.N.T.S. 397.

exercise of fundamental rights of a sovereign state.²²⁹ However, should the ports under consideration be under the control of insurgents, their closure by the opposing government cannot be unilaterally affected through mere decree.²³⁰

A significant legal precedent illustrating this complexity is the Oriental Navigation Company case of October 3, 1928, adjudicated by the Claims Commission between the United States and Mexico.²³¹ This case underscored the intricate question regarding the authority of a de jure government to seal ports under the de facto control of insurgents. For instance, the Oriental Navigation Company, a U.S.-based entity, dispatched the steamship Gaston from New Orleans to Frontera, Tabasco, Mexico, a port controlled by insurgents, despite the Mexican government's edict prohibiting international trade through such ports.²³²

The legal discourse surrounding the closure of ports under insurgent control has witnessed diverse viewpoints. Mexico advocated for the application of domestic law to affect such closures, a stance endorsed by several Latin American nations.²³³ Conversely, an alternative perspective posited that insurgency alone should not justify closure unless the government possesses sufficient naval capabilities to enforce an effective blockade.²³⁴ The United States articulated a nuanced stance, contending that while insurgency may suspend the usual authority of de jure entities to close ports through legal means, closure via effective blockade remains permissible.²³⁵

This diversity of legal opinions has spurred various attempts to reconcile the issue. Proposed solutions have ranged from distinguishing between insurgency and recognized belligerency, thereby allowing closure akin to blockade methods, to emphasizing the necessity of effective blockade without necessarily acknowledging belligerency.²³⁶

²²⁹ *Id.* at 35; see also Saša Mijalković & Dušan Blagojević, *The Basis of National Security in International Law*, 19(1) MEĐUNARONOPRAVNI OSNOVI NACIONALNE BEZBEDNOSTI 49, 49 (2014).

²³⁰ Edwin D. Dickinson, *The Closure of Ports in Control of Insurgents*, 24(1) AM. J. INT'L L. 69, 69-78 (1930).

²³¹ *Id.*

²³² *Id.* at 69.

²³³ *Id.* at 69-70.

²³⁴ *Id.* at 70-77.

²³⁵ *Id.* at 70-71.

²³⁶ *Id.* at 70-77.

The Oriental Navigation Company decision represents a novel approach to this intricate matter. It suggests that the closure of insurgent-controlled ports should be governed by international law, recognizing their de facto status while imposing certain obligations on foreign traders.²³⁷ Foreign vessels approaching such ports after being duly warned and without proper clearance may face interception and denial of entry, mirroring the risks associated with breaching a blockade.²³⁸

Consequently, in cases where the opposing government seeks to enclose ports under the de facto control of insurgents, such actions must adhere to the dictates of international law.

5. *Defensive Quarantine* —

During the Cuban Missile Crisis, the administration led by President Kennedy implemented what is commonly known as a “quarantine” or “defensive quarantine.”²³⁹ This measure was specifically aimed at halting the shipment of Soviet warheads to Cuba.²⁴⁰ While it bears similarities to a blockade in some respects, it is crucial to note that the intention behind the quarantine was markedly distinct from that of a traditional blockade. Unlike a blockade, which typically serves to initiate or escalate armed conflict, the United States explicitly sought to avoid such escalation and instead employed the quarantine as a defensive measure.²⁴¹ The Cuban Missile Crisis stands as a unique historical instance wherein a defensive quarantine was employed, underscoring the need for a nuanced examination of this concept. Therefore, this paper aims to conduct a thorough analysis of this case to enhance our understanding of the defensive quarantine strategy.

(1) Background

²³⁷ *Id.* at 77.

²³⁸ *Id.* at 77-78.

²³⁹ See Leonard C. Meeker, *Defensive Quarantine and the Law*, 57(3) AM. J. INT’L L. 515, 515-24 (1963).

²⁴⁰ Jeffrey G. Barlow, *The Cuban Missile Crisis*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 157-59 (Bruce Elleman & S. C. M. Paine eds. 2006).

²⁴¹ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 24.

The 1962 Cuban Missile Crisis began with the placement of Soviet ballistic missiles in Cuba by the Soviet Union²⁴² and unfolded against the backdrop of heightened geopolitical rivalry between the United States and the Soviet Union, both of which possessed significant nuclear arsenals. The deployment of Soviet missiles in Cuba posed an immediate threat to U.S. national security interests, leading to intense diplomatic negotiations and military posturing.²⁴³

The United States demanded the removal of the missiles and imposed a naval blockade, asserting its right to self-defence under international law.²⁴⁴ This blockade, while stopping short of direct military action, served as a clear demonstration of resolve and a means of pressuring the Soviet Union to withdraw its missiles from Cuba.²⁴⁵

Simultaneously, both superpowers engaged in diplomatic efforts to defuse the crisis, with backchannel communications between Kennedy and Soviet Premier Nikita Khrushchev. Tensions escalated further as the world braced for the possibility of nuclear conflict, with both sides contemplating military escalation.²⁴⁶

Ultimately, the crisis was defused through a combination of diplomatic negotiations and concessions.²⁴⁷ The Soviet Union agreed to withdraw its missiles from Cuba in exchange for a commitment from the United States not to invade Cuba and to remove U.S. missiles from Turkey.²⁴⁸

(2) The Implementation of Quarantine

Prior to the formal announcement of the quarantine operation, the United States actively sought support from international bodies, including the Organization of American States (hereinafter OAS) and the United Nations,²⁴⁹ with the intent of

²⁴² Jeffrey G. Barlow, *The Cuban Missile Crisis*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 157.

²⁴³ *Id.*

²⁴⁴ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 25.

²⁴⁵ *Id.*

²⁴⁶ *Cuban Missile Crisis*, BRITANNICA, <https://www.britannica.com/event/Cuban-missile-crisis> (last visited Mar. 15, 2024).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 24-25.

legitimizing its actions under the Inter-American Treaty of Reciprocal Assistance²⁵⁰ and the right of self-defence as outlined in Article 51 of the UN Charter.²⁵¹

Although the United States's proposal for the dismantling and removal of missiles and other offensive weapons in Cuba was rebuffed by the UN Security Council, a similar proposition found approval within the OAS Council.²⁵² Grounded on this resolution, the OAS recommended member states to undertake measures, including the potential use of force, to prevent Cuba from acquiring military supplies posing a threat to the peace of the American Nations,²⁵³ as articulated in Articles 6²⁵⁴ and 8²⁵⁵ of the Inter-American Treaty of Reciprocal Assistance.

Buoyed by the backing of the OAS Resolution, President Kennedy promulgated the infamous Proclamation 3504: Interdiction of the Delivery of Offensive Weapons to Cuba.²⁵⁶ The salient points of this proclamation are summarized as follows:

²⁵⁰ Inter-American Treaty of Reciprocal Assistance and Final Act of the Inter-American Conference of the Maintenance of Continental Peace and Security [hereinafter Inter-American Treaty of Reciprocal Assistance], Sept. 2, 1947, 21 U.N.T.S. 93.

²⁵¹ U.N. Charter art. 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

²⁵² See United States of America: Draft Resolution, U.N. Doc. S/5182 (Oct. 22, 1962); *see also* Letter dated 23 October 1962 from the Secretary-General of the Organization of American States addressed to the Acting Secretary-General of the United Nations, U.N. Doc. S/5193 (Oct. 25, 1962).

²⁵³ Letter dated 23 October 1962 from the Secretary-General of the Organization of American States addressed to the Acting Secretary-General of the United Nations, U.N. Doc. S/5193 (Oct. 25, 1962).

²⁵⁴ Inter-American Treaty of Reciprocal Assistance art. 6:

If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defence and for the maintenance of the peace and security of the Continent

²⁵⁵ *Id.* art. 8:

For the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force.

²⁵⁶ *Proclamation 3504—Interdiction of the Delivery of Offensive Weapons to Cuba*, UC SANTA BARBARA (Oct. 23, 1962), <https://www.presidency.ucsb.edu/documents/proclamation-3504-interdiction-the-delivery-offensive-weapons-cuba>.

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- i. Forces under command are directed to interdict the delivery of offensive weapons and associated materiel to Cuba, commencing at 2:00 p.m. Greenwich time on October 24, 1962.²⁵⁷
- ii. Prohibited materiel encompasses surface-to-surface missiles, bomber aircraft, bombs, air-to-surface rockets and guided missiles, warheads for said weapons, mechanical or electronic equipment supporting or operating these items, and any other classes of materiel designated by the Secretary of Defence for this purpose.²⁵⁸
- iii. The Secretary of Defence is empowered to mobilize land, sea, and air forces of the United States, in conjunction with forces from other American States, to prevent the delivery of prohibited materiel to Cuba.²⁵⁹
- iv. The Secretary of Defence is authorized to formulate regulations and issue directives to ensure the effectiveness of the order, including the delineation of prohibited or restricted zones and prescribed routes near Cuba.²⁶⁰
- v. Any vessel enroute to Cuba may be intercepted, directed to provide identification of itself, its cargo, equipment, and ports of call, and subjected to inspection, search, or redirection. Failure to comply may result in the vessel being apprehended and escorted to a port in the United States for appropriate action.²⁶¹
- vi. The use of force shall be limited to situations where vessels fail to adhere to directives or regulations, following reasonable efforts to communicate them, or in cases of self-defence, and shall be exercised judiciously and proportionally.²⁶²

²⁵⁷ *Id.* para. 4.

²⁵⁸ *Id.* paras. 4-5.

²⁵⁹ *Id.* para. 6.

²⁶⁰ *Id.* para. 7.

²⁶¹ *Id.* para. 8.

²⁶² *Id.* para. 9.

Furthermore, during the operation, to mitigate the risk of potential attacks by Cuban missiles, the 12 destroyers deployed for the mission maintained a distance of over 500 miles from the east coast of Cuba.²⁶³



(3) Legal Analysis of Defensive Quarantine

From the perspective of the United States, a quarantine represents neither a blockade nor a pacific blockade but rather a manifestation of the right to self-defence.²⁶⁴ However, the legal validity of such a measure remains subject to dispute. Proponents argue that the implementation of a defensive quarantine as a self-defence measure derives legitimacy from both the UN Charter and customary international law, and is consistent with the principle of proportionality.²⁶⁵ Conversely, dissenting views posit that the deployment of missiles in Cuba does not pose a credible threat to the United States, thereby precluding justification for the imposition of a defensive quarantine, and thus categorizing such action as an illegal use of force.²⁶⁶

Nevertheless, a comprehensive analysis reveals several distinctions between a quarantine and a blockade.²⁶⁷ Firstly, a defensive quarantine targets specific categories of goods for restriction, as opposed to imposing a blanket limitation on maritime activities.²⁶⁸ Secondly, the enforcement of a quarantine is carried out through inspection, visitation, or redirection, with resort to the use of force only in instances where vessels fail to comply with directives or regulations despite reasonable efforts to communicate.²⁶⁹ Thirdly, a quarantine is explicitly designed to mitigate the risk of conflict escalation into full-fledged warfare.²⁷⁰

The application of a defensive quarantine holds significant implications for international law, representing the inaugural endeavor of a state to enforce self-defence measures through a blockade-like operation while tempering the intensity of

²⁶³ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HǎISHàng FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 26.

²⁶⁴ *Id.* at 28.

²⁶⁵ Carl Q. Christol & Charles E. Davis, *Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Matériel to Cuba*, 1962, 57(3) AM. J. INT'L L. 525, 533-43 (1963).

²⁶⁶ Quincy Wright, *The Cuban Quarantine*, 57(3) AM. J. INT'L L. 546, 548-63 (1963).

²⁶⁷ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HǎISHàng FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 29-30.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 30.

²⁷⁰ *Id.*

interception in accordance with the principle of proportionality. This approach could be construed as occupying a middle ground between a blockade and sanctions. Despite the absence of unanimous consent from the international community regarding this innovative approach, it remains imperative that such measures remain circumscribed by international legal norms to safeguard the rights of neutrals and preserve the integrity of the international order.

CHAPTER III. RULES OF LAW OF MARITIME BLOCKADE

A. International Law Framework

1. London Declaration, 1909 —

The 1909 London Declaration on Naval Warfare²⁷¹ emerged from discussions during the London Naval Conference, which followed the proposals of the 1907 Second Hague Peace Conference.²⁷² Aimed at supporting the establishment of an International Prize Court, maritime powers convened to codify rules for naval warfare.²⁷³ Signed on February 26, 1909, by major naval nations,²⁷⁴ the Declaration drew upon historical precedents such as the 1856 Paris Declaration and judgments of national prize courts.²⁷⁵ Despite lacking formal ratification,²⁷⁶ the provisions provided by the London Declaration regarding naval blockades gained recognition as customary international law by the outbreak of World War I.²⁷⁷ The basic principles regarding blockade are as follows:

(1) Proper Establishment

A blockade may only be conducted towards an enemy, and “... may not extend beyond the ports and coasts belonging to or occupied by the enemy.”²⁷⁸ Also, “[t]he blockading forces must not bar access to neutral ports or coasts.”²⁷⁹

(2) Declaration and Notification

²⁷¹ *Declaration concerning the Laws of Naval War, Feb. 26, 1909* [hereinafter London Declaration], 15 INT’L L. STUD. 97.

²⁷² James Brown Scott, *The Declaration of London of February 26, 1909*, 8(2) AM. J. INT’L L. 274, 274-81 (1914).

²⁷³ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGUSO HÄISHÄNG FENGUSO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 18.

²⁷⁴ Namely Austria-Hungary, France, Germany, Britain, the United States, Japan, Italy, the Netherlands, Russia, and Spain. See James Brown Scott, *The Declaration of London of February 26, 1909*, 8(2) AM. J. INT’L L. 274, 274-75.

²⁷⁵ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGUSO HÄISHÄNG FENGUSO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 19.

²⁷⁶ *Id.*

²⁷⁷ Wolff Heintschel von Heinegg, *Naval Blockade and International Law*, in NAVAL BLOCKADES AND SEAPOWER: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 10, 14 (Bruce Elleman & S. C. M. Paine eds. 2006).

²⁷⁸ *Declaration concerning the Laws of Naval War, Feb. 26, 1909* [hereinafter London Declaration], 15 INT’L L. STUD. 97.

²⁷⁹ *Id.* art. 18.

In order for a blockade to be binding, it must be declared with the following details specified: 1) the date when the blockade begins; 2) the geographical limits of the coast blockaded; and 3) the delay to be allowed to neutral vessels for departure.²⁸⁰ Also, notification must be completed in accordance with articles 11 and 16.²⁸¹

The declaration of blockade must be notified to the neutral powers and local authorities.²⁸² If a vessel which approaches a blockaded port does not know or can not be presumed to know of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. And this notification must be entered in the vessel's logbook, with entry of the day and hour, as also of the geographical position of the vessel at the time.²⁸³

If the declaration was not duly notified, neutral vessels which leave a blockaded port must be allowed to pass free.²⁸⁴

(3) Effectiveness

A blockade must be effective to be binding. In other words, it must be maintained by a force sufficient to prevent access to the enemy coastline.²⁸⁵ However, the determination of effectiveness of a blockade may only be observed through factual analysis of the case itself.²⁸⁶

(4) Impartiality

A blockade must be applied impartially to ships of nations, regardless of the nature of travel.²⁸⁷

(5) Right of Neutrals

Seizure of neutral vessels for breaching blockade is permissible only within the operational range of designated warships enforcing the blockade.²⁸⁸ The

²⁸⁰ *Id.* art. 9

²⁸¹ *Id.* art. 8.

²⁸² *Id.* art. 11.

²⁸³ *Id.* art. 16 (1).

²⁸⁴ *Id.* art. 16 (2).

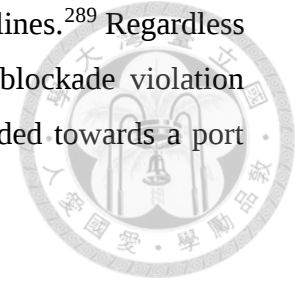
²⁸⁵ *Id.* art. 3.

²⁸⁶ *Id.* art. 2.

²⁸⁷ *Id.* art. 5.

²⁸⁸ *Id.* art. 17.

blockading fleets must not obstruct access to neutral ports or coastlines.²⁸⁹ Regardless of the vessel's intended final destination or cargo, evidence of blockade violation alone isn't enough to justify seizure if the vessel is currently headed towards a port not under blockade.²⁹⁰



2. *The Oxford Manual, 1913* —

The Institute of International Law,²⁹¹ drawing from the principles established by the London Declaration, adopted a more comprehensive compilation of naval warfare laws.²⁹² This compilation, entitled “The Law of Naval War Governing the Relations between Belligerents” and commonly known as the Oxford Manual of Naval War²⁹³ (hereinafter Oxford Manual), was adopted during the Oxford session in 1913. Its primary aim was to codify the laws and customs of naval warfare, establishing guidelines to ensure the humane conduct of hostilities at sea.

The Oxford Manual articulates fundamental principles of naval warfare, emphasizing the importance of distinguishing between combatants and non-combatants and mandating the avoidance of unnecessary suffering.²⁹⁴ It establishes clear rules for the treatment of both groups, aiming to safeguard human rights and dignity during naval operations.

The manual also delineates the rights and duties of neutral states, safeguarding neutral commerce from undue interference.²⁹⁵ It requires belligerent states to respect neutral ports and territorial waters, thereby maintaining the neutrality of states not involved in the conflict and preserving international trade routes.²⁹⁶

²⁸⁹ *Id.* art. 18.

²⁹⁰ *Id.* art. 19.

²⁹¹ The Institute of International Law is a pivotal institution in the advancement and implementation of international legal standards, operating independently of governmental influence to maintain impartiality. Through its biennial sessions and the work of its Scientific Commissions, the Institute produces influential normative Resolutions that shape international legal practice. See *About the Institute*, INSTITUT DE DROIT INT'L, <https://www.idi-iil.org/en/a-propos/> (last visited July 12, 2024).

²⁹² J. Ashley Roach, *The Law of Naval Warfare at the Turn of Two Centuries*, 94(1) AM. J. INT'L L. 64, 66 (2000).

²⁹³ Manual of the Laws of Naval War, Aug. 9, 1913 [hereinafter Oxford Manual], <https://ihl-databases.icrc.org/es/ihl-treaties/oxford-manual-1913?activeTab=historical>.

²⁹⁴ See Sec. V of the Oxford Manual: On the Rights and Duties of the Belligerent with Regard to Individuals.

²⁹⁵ See, e.g., Oxford Manual arts. 32, 38, 49, 51.

²⁹⁶ See, e.g., Oxford Manual arts. 51, 52.

Concerning blockades, the Oxford Manual refrains from delving into specific legal criteria, simply stating that “. . . [p]orts and coasts belonging to the enemy or occupied by him may be subjected to blockade according to the rules of international law.”²⁹⁷ By analyzing the historical context of the Oxford Manual, it reveals that the Oxford Manual generally adheres to the principles established by the London Declaration.

Other regulations regarding a blockade are dispersed throughout various chapters different chapters of the document. For instance, a belligerent may not lay mines along the coast and harbours of his adversary except for naval and military ends, and is forbidden to lay them there in order to establish or to maintain a commercial blockade;²⁹⁸ transfers of enemy vessels to neutral flags before hostilities are valid unless intended to evade wartime consequences, with certain presumptions of invalidity, especially if occurring during a blockade;²⁹⁹ postal correspondence on enemy ships is protected unless linked to a blockaded port, with mail-boats subject to maritime war laws but only searched when necessary;³⁰⁰ submarine cables can be seized or destroyed by belligerents if connecting their territories or under blockade conditions, requiring absolute necessity and compensation upon peace;³⁰¹ an armistice suspends military actions but maintains blockades unless otherwise agreed, continuing the right of visit but halting captures of neutral vessels.³⁰²

During the discussion phase of the London Declaration, the British asserted that the use of automatic mines in a blockade was not considered legal.³⁰³ The Lord Chancellor³⁰⁴ highlighted that military actions, such as the deployment of automatic mines, were often governed by practical military necessity rather than strictly adhering to international legal stipulations.³⁰⁵

²⁹⁷ Oxford Manual art. 30.

²⁹⁸ Oxford Manual art. 22.

²⁹⁹ Oxford Manual art. 52.

³⁰⁰ Oxford Manual art. 53.

³⁰¹ Oxford Manual art. 54.

³⁰² Oxford Manual art. 92.

³⁰³ *The Declaration of London Volume 7: debated on Thursday 9 March 1911*, PARLIAMENT.UK [hereinafter *Debate of the Declaration of London*], ¶ 397, <https://hansard.parliament.uk/lords/1911-03-09/debates/c3538219-e7b1-45fc-9e6f-773f54ddc937/TheDeclarationOfLondon> (last visited July 12, 2024).

³⁰⁴ The Lord Chancellor then was Robert Threshie Reid, 1st Earl Loreburn.

³⁰⁵ *Debate of the Declaration of London*, ¶ 398.

However, other participants, led by Germany, disagreed with this position. Baron Marshall von Bieberstein notably stated, “. . . les actes militaires ne sont pas régis uniquement par les stipulations du droit international”³⁰⁶ (military acts were not solely regulated by international law). Consequently, the British proposal was rejected.

Nonetheless, with the publishment of the Oxford Manual, despite not entirely prohibiting the use of automatic mines, their deployment is limited to military purposes and is forbidden in establishing a commercial blockade.³⁰⁷ This reflects the international community’s effort to gradually balance the importance of international trade and the rights of neutral vessels with military objectives.

3. *San Remo Manual, 1995* —

The San Remo Manual of 1995 is a comprehensive document that outlines the international legal principles governing naval warfare.³⁰⁸ It was prepared by legal experts during a multinational conference held in San Remo, Italy, in 1994–1995.³⁰⁹ The manual provides guidance on various aspects of naval warfare, including the conduct of hostilities, rules governing naval blockade, and protection of civilians during armed conflict.³¹⁰

Significantly, the San Remo Manual elaborated on the pre-existing law of blockade, clarifying the conditions under which blockades are lawful and the rights and obligations of parties involved.³¹¹ It emphasizes the importance of humanitarian considerations, ensuring that measures taken during blockades do not cause unnecessary suffering to civilians or prevent access to essential goods, such as food and medical supplies.³¹²

The provisions related to blockade in the San Remo Manual are as follows:

³⁰⁶ Debate of the Declaration of London, ¶ 401.

³⁰⁷ Oxford Manual art. 30.

³⁰⁸ INT’L INST. HUMANITARIAN L., *Preface* to SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA [hereinafter SAN REMO MANUAL] 34 (Louise Doswald-Beck ed., 1995).

³⁰⁹ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSUO Hǎishàng FENGsuò: GUOQU FAZHAN YU DANGDAI FALU YIYI 49-50.

³¹⁰ *Id.*

³¹¹ *Preface* to SAN REMO MANUAL 34.

³¹² *Id.*

(1) Blockade

During the conference, the inclusion of maritime blockade was questioned as many believe that such regime is obsolete to modern warfare. However, by assessing contemporary practices, the experts have concluded that operations that resemble a blockade still follow some or all of the regulations governing a blockade.³¹³ The regulations related to blockade enumerated by the San Remo Manual may be organized into six categories:

i. Notification

A blockade must be officially declared and communicated to all belligerents and neutral States.³¹⁴ This declaration should outline the start, duration, location, and scope of the blockade, including the timeframe within which vessels of neutral States are permitted to depart from the blockaded coastline.³¹⁵

ii. Effectiveness

A blockade must effectively hinder maritime traffic, its effectiveness assessed factually.³¹⁶ This principle aligns with Article 3 of the London Declaration. The force maintaining the blockade may be stationed at a distance determined by military necessity, considering concerns about coastal defences and opposing belligerent capabilities.³¹⁷

iii. Limitations on Methods

Enforcing a blockade involves using legitimate methods of warfare, ensuring they align with the principles outlined in this document.³¹⁸ While surface ships aren't mandated, the sole use of weapon systems like mines is prohibited if they endanger lawful maritime commerce.³¹⁹ The blockading power must allow vessels entry and

³¹³ *Id.* at 176.

³¹⁴ *Id.* at 177, art. 93.

³¹⁵ *Id.* at 177, art. 94.

³¹⁶ *Id.* at 177, art. 95.

³¹⁷ *Id.* at 177, art. 96.

³¹⁸ *Id.* at 178, art. 97.

³¹⁹ *Id.*

exit under certain circumstances, such as distress situations or with prior authorization.³²⁰

Suspected blockade-breaching vessels may be captured, and those resisting capture after warning may be attacked.³²¹

A blockade is unlawful if its primary aim is to starve civilians or if civilian harm outweighs military advantage, consistent with Additional Protocol I.³²²

When civilians lack essential supplies, the blockading power must allow their passage under specific conditions and oversight by impartial organizations like the International Committee of the Red Cross. These provisions simplify relief passage obligations, reflecting modern humanitarian practices.³²³

iv. Right of Neutrals

Blockades must not impede access to the ports and coasts of neutral States. This provision updates Article 18 of the 1909 London Declaration, ensuring its relevance to contemporary maritime law.³²⁴

v. Impartiality

Blockades must treat vessels of all States impartially,³²⁵ as per the principle in Article 5 of the 1909 London Declaration. This applies to all vessels, including those flying the flag of the blockading power. While neutral warships and military aircraft lack a guaranteed right of access to blockaded areas, the blockading belligerent may authorize their entry and exit.³²⁶

vi. Prohibition on Certain Measures Targeting Civilians

The establishment of a blockade is deemed unlawful if its sole intent is to starve the civilian population or if the anticipated harm to civilians outweighs the

³²⁰ *Id.*

³²¹ *Id.* at 178, art. 98.

³²² *Id.* at 179, art. 102.

³²³ *Id.* at 180, art. 103.

³²⁴ *Id.* at 178, art. 99.

³²⁵ *Id.* at 178, art. 100.

³²⁶ *Id.* at 178, art. 100.1.

military advantage gained.³²⁷ This prohibition mirrors the stance articulated in Additional Protocol I, which unequivocally prohibits the use of civilian starvation as a method of warfare, as mentioned above.



(2) Zones

Throughout twentieth-century naval conflicts, parties often created zones in water and airspace, aiming to restrict normal passage rights by denying access to non-parties without permission. These zones, known by various names like exclusion zones or military areas, posed risks for unauthorized ships or aircraft, including potential attacks or encounters with minefields.³²⁸ Despite the lack of legal clarification in relevant naval warfare treaties, debates persist regarding the legality of these zones. While some argue they are inherently unlawful and should be disregarded, the majority recognize their existence and advocate for the development of guidelines to govern them.³²⁹ The guidelines are as follows:

i. Duties under International Humanitarian Law

The establishment of zones by belligerents cannot exempt them from their obligations under international humanitarian law, even if these zones potentially impact the legitimate uses of defined sea areas.³³⁰ This issue was extensively discussed during the Round Table, focusing on whether belligerents creating zones could be absolved from their duties under international humanitarian law or gain additional rights.³³¹

While some participants argued in favor of this based on historical precedents, including World Wars and the Iran-Iraq conflict, a consensus emerged that zones do not grant absolution from duties or create new rights to attack ships or aircraft.³³² However, considering the circumstances of zone creation, parties might be inclined to take certain actions within a zone, particularly if it serves defensive purposes. For instance, establishing a zone meeting the criteria outlined in paragraph 106 might lead

³²⁷ *Id.* at 179, art. 102.

³²⁸ *Id.* at 181.

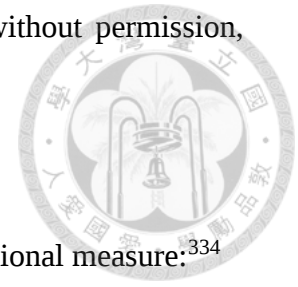
³²⁹ *Id.*

³³⁰ *Id.* art. 105.

³³¹ *Id.*

³³² *Id.* art. 105.1.

a party to presume hostile intent from ships or aircraft present without permission, compared to situations where no zone exists.³³³



ii. Criteria to the Establishment of Zones

In the event of a belligerent establishing a zone as an exceptional measure.³³⁴

(a) The same body of law applies both inside and outside the zone.

(b) The zone's extent, location, and duration, along with imposed measures, should strictly align with military necessity and proportionality.

(c) Respect for the rights of neutral States to legitimate uses of the seas.

(d) Safe passage must be ensured for neutral vessels and aircraft, especially when access to neutral ports or normal navigation routes is hindered.

(e) Public declaration and appropriate notification of the zone's commencement, duration, location, and restrictions are necessary.

The Round Table discussions highlighted the need for criteria governing such zones, ensuring they cannot grant additional rights or exempt belligerents from their duties. The extent, location, and duration of the zone must be reasonable and proportional to self-defence requirements.³³⁵ Publication of restrictive measures informs vessels of their obligations, while diplomatic channels and international organizations should be involved in notification to ensure broad awareness of the zone's establishment.³³⁶

iii. Protection of Neutral Rights

In naval conflicts, compliance with measures in a zone by one belligerent shouldn't be seen as harmful to the opposing side.³³⁷

A challenge for neutrals is that adherence to one belligerent's measures, like navicert procedures, can be misinterpreted as aggressive. However, if a belligerent

³³³ *Id.*

³³⁴ *Id.* at 181-83, art. 106.

³³⁵ *Id.* at 182.

³³⁶ *Id.* at 182-83.

³³⁷ *Id.* at 183, art. 107.

mandates non-threatening measures in a zone, such as designated sea lanes or certificates, they shouldn't be viewed as hostile.³³⁸

It's crucial to narrowly interpret "measures taken by one belligerent in the zone" as only those necessary for passage. For example, if a belligerent requires convoying with an escorting warship, ships in the convoy might be seen as resisting visit and search, making them vulnerable to attack.³³⁹

iv. Right to Control Neutral Vessels

The customary belligerent right to regulate neutral vessels and aircraft within close proximity to naval operations is to be preserved.³⁴⁰

Within the immediate vicinity of naval operations, a belligerent may impose specific constraints on the activities of neutral vessels and aircraft, including outright prohibition of entry.³⁴¹ For instance, a belligerent warship may exert authority over the communications of neutral merchant vessels or civilian aircraft if their presence poses a threat to naval operations. Failure to adhere to communication directives may result in interception or capture. The immediate vicinity of naval operations refers to the area where hostilities are ongoing or belligerent forces are actively engaged.³⁴²

4. *The HPCR Manual* —

Although previous sections of this paper primarily focused on maritime blockades, it is essential to consider aerial blockades due to the integrated nature of modern naval warfare, which often involves joint forces and relies heavily on aerial support.³⁴³ In contemporary military conflicts, achieving air superiority is a primary objective, underscoring the importance of analyzing the rules governing aerial blockades.

Similar to maritime blockades, there is no comprehensive international convention or regulation specifically addressing aerial blockades. However, relevant

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.* at 183, art. 108.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ Colonel Phillip S. Meilinger, *Whoever Controls the Air Generally Controls the Surface*, in TEN PROPOSITIONS REGARDING AIRPOWER 1, 3-5 (1995).

rules have been compiled based on State position and legal theories in the HPCR Manual on International Law Applicable to Air and Missile Warfare (hereinafter HPCR Manual).

The HPCR Manual, produced by the Program on Humanitarian Policy and Conflict Research at Harvard University, aims to restate existing international law concerning air and missile operations in armed conflicts.³⁴⁴ Initiated in 2004, this project addresses the legal challenges posed by modern air and missile warfare, particularly with the development of advanced technologies such as Unmanned Aerial Vehicles (UAVs) and drones.³⁴⁵

(1) Aerial Blockade

Section V of the HPCR Manual sets forth the legal framework governing the use of aerial blockades in armed conflict. An aerial blockade is a strategic military operation designed to prevent aircraft, including UAVs, from entering or leaving designated airspaces.³⁴⁶ The detailed rules and principles governing aerial blockades are as follows:

a) Notification³⁴⁷

When a belligerent party declares an aerial blockade, it must notify all states and include specific details such as the start date, duration, location, and extent of the blockade.³⁴⁸ Additionally, the declaration must specify the period during which neutral aircraft are permitted to exit the blockaded area.³⁴⁹ Whenever practicable, the blockading party should also issue a Notice to Airmen (NOTAM) to disseminate information about the blockade to ensure comprehensive communication and compliance.³⁵⁰

³⁴⁴ PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH AT HARVARD UNIVERSITY, *Foreword* to MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE iii-iv [hereinafter HPCR Manual] (2009).

³⁴⁵ *Id.*

³⁴⁶ HPCR Manual art. 147.

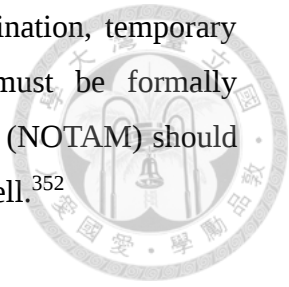
³⁴⁷ HPCR Manual arts. 148, 149.

³⁴⁸ HPCR Manual art. 148 (a), (b).

³⁴⁹ HPCR Manual art. 148 (b).

³⁵⁰ HPCR Manual art. 148 (c).

Any modifications to an aerial blockade, such as its termination, temporary suspension, re-establishment, extension, or other alterations, must be formally declared and notified to all states.³⁵¹ Similarly, a Notice to Airmen (NOTAM) should be issued whenever practicable to communicate these changes as well.³⁵²



b) Effectiveness

Like maritime blockade, an aerial blockade must be effective to be legally recognized.³⁵³ The effectiveness of a blockade is determined by factual circumstances, requiring the blockading party to maintain sufficient control and enforcement capabilities to achieve the blockade's intended purpose.³⁵⁴ Moreover, the military forces enforcing the aerial blockade may be deployed at distances dictated by military requirements.³⁵⁵ Aside from preventing ingress and egress of aircrafts, the blockading party must also maintain a sufficient degree of air superiority to be effective.³⁵⁶

c) Purpose and Limitations on Methods

The enforcement of an aerial blockade may involve a combination of lawful methods of warfare, provided these methods comply with the law of international armed conflict.³⁵⁷ However, the establishment or maintenance of an aerial blockade is prohibited if its primary purpose is to starve the civilian population or deny them essential survival items.³⁵⁸ Additionally, blockades that cause or are expected to cause excessive suffering to civilians, disproportionate to the anticipated military advantage, are forbidden.³⁵⁹

d) Right of Neutrals

The enforcement of an aerial blockade must not impede access to the airspace of neutral states.³⁶⁰ The blockading party must respect the sovereignty and rights of

³⁵¹ HPCR Manual art. 149 (a).

³⁵² HPCR Manual art. 149 (b).

³⁵³ HPCR Manual art. 151.

³⁵⁴ *Id.*

³⁵⁵ HPCR Manual art. 152.

³⁵⁶ HPCR Manual art. 154.

³⁵⁷ HPCR Manual art. 153 (a).

³⁵⁸ HPCR Manual art. 157.

³⁵⁹ *Id.*

³⁶⁰ HPCR Manual art. 150.

neutral states, ensuring that their airspace remains accessible and that neutral parties are not adversely affected by the blockade.

e) Impartiality

An aerial blockade must be enforced impartially, applying the blockade rules consistently and fairly to the aircraft of all states, thereby upholding the principles of international law.³⁶¹

Under such premise, civilian aircraft reasonably suspected of breaching or attempting to breach the blockade must be intercepted and compelled to land for inspection, capture, or diversion.³⁶² If civilian aircraft resist interception and landing orders, they risk being attacked after prior warning.³⁶³

f) Humanitarian Requirement

If the civilian population within the blockaded area is inadequately supplied with essential items, the blockading party must allow the free passage of such supplies through a humanitarian air corridor.³⁶⁴ This passage is subject to technical arrangements, including inspection, and distribution must be supervised by a protecting power or an impartial humanitarian organization such as the International Committee of the Red Cross, ensuring humanitarian needs are met.³⁶⁵

Also, the blockading party is obligated to permit the passage of medical supplies for the civilian population and for wounded or sick members of the armed forces.³⁶⁶ This passage must adhere to technical arrangements, including inspection, ensuring that essential medical aid reaches those in need without compromising the security and objectives of the blockade.³⁶⁷

(2) Zones

³⁶¹ HPCR Manual art. 155.

³⁶² HPCR Manual art. 156.

³⁶³ *Id.*

³⁶⁴ HPCR Manual art. 158.

³⁶⁵ *Id.*

³⁶⁶ HPCR Manual arts. 153 (b), 159.

³⁶⁷ HPCR Manual art. 159.

Similar to the concept of an aerial blockade, the establishment of specific zones is crucial for achieving air superiority in military conflicts. In this regard, the terms Air Exclusion Zone (hereinafter AEZ) and No-Fly Zone (hereinafter NFZ) are pertinent. Despite the common interchangeable use of these terms by scholars and military officials, the HPCR Manual provides a clear distinction between AEZ and NFZ based on their respective locations. An AEZ is established within international airspace, while an NFZ is delineated within the airspace of the belligerent party. The relevant rules are as follows:

a) General Rules

A belligerent party's obligations under the law of international armed conflict remain intact even with the establishment of both Exclusion Zones and No-Fly Zones,³⁶⁸ and the belligerent party establishing the zones are not relieved from its responsibilities under international law.³⁶⁹ Moreover, it is strictly prohibited to designate zones for unrestricted air or missile attacks to prevent indiscriminate violence and ensure compliance with international regulations.³⁷⁰

The right of a belligerent party to control civil aviation near hostilities is not deprived by any regulation in Section P of the HPCR Manual.³⁷¹ Also, the party's right to implement necessary force protection measures, such as establishing warning zones, is affirmed to safeguard its operations and personnel.³⁷² These measures are essential for maintaining operational security and managing civilian air traffic in conflict areas.³⁷³

b) Air Exclusion Zones (AEZ)

Like a maritime exclusion zone, when a belligerent party establishes an AEZ in international airspace, the same laws of international armed conflict apply both within and outside the zone.³⁷⁴ The size, location, and duration of the AEZ, along with any measures imposed, must be justified by military necessity and must not exceed

³⁶⁸ HPCR Manual art. 105.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ HPCR Manual art. 106.

³⁷² HPCR Manual art. 106 (b).

³⁷³ HPCR Manual art. 106 (a).

³⁷⁴ HPCR Manual art. 107 (a).

what is reasonably required.³⁷⁵ Notifications regarding the commencement, duration, location, and extent of the AEZ, as well as any restrictions, must be communicated to all relevant parties.³⁷⁶ The establishment of such a zone must not completely restrict access to neutral airspace.³⁷⁷ Furthermore, the lawful activities of neutral states in their Exclusive Economic Zones and continental shelves, including the use of artificial islands and installations, must be respected.³⁷⁸

c) No-Fly Zones (NFZ)

A belligerent party possesses the authority to establish and enforce NFZs within its own or enemy national airspace.³⁷⁹ Also, the belligerent party must duly notify all concerned parties about the establishment of NFZs, providing details regarding their commencement, duration, location, and extent.³⁸⁰ Lastly, aircraft entering an NFZ without specific permission are liable to be engaged under the rules outlined in Sections D and G of the HPCR Manual.³⁸¹

(3) General Comparison

As aerial blockades are fundamentally an extension of the concept of maritime blockade, the guiding principles are generally consistent when comparing the San Remo Manual and the HPCR Manual.³⁸² However, notable differences exist between the two. Firstly, unlike the San Remo Manual, the HPCR Manual explicitly states that the rules of aerial blockades are applicable solely in international armed conflicts. Secondly, concerning civilian protection, the San Remo Manual prohibits a maritime blockade if its sole purpose is to starve the civilian population, whereas the HPCR Manual broadens this scope by prohibiting an aerial blockade if its sole or primary purpose is to starve the civilian population.

³⁷⁵ HPCR Manual art. 107 (b).

³⁷⁶ HPCR Manual art. 107 (c).

³⁷⁷ HPCR Manual art. 107 (d).

³⁷⁸ HPCR Manual art. 107 (e).

³⁷⁹ HPCR Manual art. 108.

³⁸⁰ HPCR Manual art. 109.

³⁸¹ Namely, Attacks and Precaution of Attacks in HPCR Manual art. 110.

³⁸² HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 127 (海上武装冲突法之海上封锁：过去发展与当代法律意义) [MARITIME BLOCKADE IN THE LAW OF ARMED CONFLICT: PAST DEVELOPMENTS AND CONTEMPORARY LEGAL SIGNIFICANCE] (2020).

Regarding the establishment of zones, a Maritime Exclusion Zone (MEZ) and an Air Exclusion Zone (AEZ) are nearly identical in purpose and principles.³⁸³ Despite overlapping rules, the primary distinction between an MEZ and an AEZ lies in the differentiation of an AEZ and a No-Fly Zone (NFZ) based on their designated locations. While an AEZ is established in international airspace, a belligerent party may establish an NFZ within its own airspace. This establishment allows the use of NFZs in non-international armed conflicts as well, thereby enabling a broader application of military strategies. The belligerent party must ensure that the establishment of such zones complies with international legal standards, including the provision of appropriate notifications to all relevant parties and adherence to rules governing the protection of civilians and neutral parties.

5. The Newport Manual on the Law of Naval Warfare, 2023 —

The Newport Manual on the Law of Naval Warfare (hereinafter Newport Manual) encapsulates contemporary frameworks and state practices pertaining to the regulation of naval combat. While it does not purport to establish universally binding norms, it provides an exhaustive understanding of the regulations governing naval operations. Consequently, it serves as an invaluable resource for interpreting the legal principles concerning blockades in light of modern values and technologies. Building upon previous legal frameworks, the Newport Manual marks a significant milestone as the first comprehensive effort to restate the legal principles governing naval warfare since 1955.³⁸⁴ In the Newport Manual, both blockade and the establishment of zones are categorized under Chapter 7, Methods of Naval Warfare, stating the belligerent nature of these operations. The rules related to these operations are as follows:

(1) Blockade

a) Definition

The Newport Manual defines a blockade as a “belligerent operation intended to prevent vessel traffic from all States from entering or leaving specified coastal

³⁸³ *Id.* at 127-28.

³⁸⁴ *The Newport Manual on the Law of Naval Warfare*, US NAVAL WAR COLLEGE, <https://digital-commons.usnwc.edu/ils/vol101/iss1/1/> (last visited Mar. 16, 2024).

areas that are under the sovereignty, occupation, or control of an enemy.”³⁸⁵ This definition explicitly excludes operations enforcing embargoes, domestic security measures, or prize measures. A blockade can be maritime, aerial, or both, but it must adhere to international law.³⁸⁶ This delineation ensures clarity in the operational scope and legal boundaries of what constitutes a blockade, setting it apart from other forms of restrictive measures that may be employed during armed conflicts.

b) Notification

The belligerent party establishing a blockade must officially declare its commencement, scope, and the measures being implemented through formal announcements to mariners or airmen.³⁸⁷ This notification process is essential to ensure that all relevant parties, including neutral states and commercial entities, are adequately informed of the blockade’s parameters. Such transparency is crucial for minimizing the risk of unintended violations and ensuring that the international community is aware of the restrictive measures in place. This procedural step underscores the importance of communication and the adherence to international norms in the conduct of military operations.

c) Effectiveness

A blockade must be maintained with sufficient force to present a real threat of capture or interdiction to breaching vessels or aircraft.³⁸⁸ Effectiveness is measured by the probability of capture rather than the distance from the coast.³⁸⁹ This means that the operational capacity of the blockading force, rather than its geographical positioning, is the critical factor in determining the blockade’s validity. Any force capable of interception, including cyber means,³⁹⁰ can enforce a blockade. This

³⁸⁵ JAMES KRASKA ET AL., THE NEWPORT MANUAL ON THE LAW OF NAVAL WARFARE [hereinafter NEWPORT MANUAL] 119, Ch.7.4.1 (2023).

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 120, Ch.7.4.2.

³⁸⁸ *Id.* at 121, Ch.7.4.3.

³⁸⁹ *Id.*

³⁹⁰ *See id.* n.480, citing directly from r.67 of the Tallinn Manual. The Tallinn Manual on the International Law Applicable to Cyber Warfare is a seminal document that elucidates the application of existing international law to cyber operations. Developed by a group of international legal experts under the aegis of the NATO Cooperative Cyber Defence Centre of Excellence, it serves as an authoritative guide for understanding the legal frameworks governing state conduct in cyberspace. *See also* MICHAEL N. SCHMITT, TALLINN MANUAL ON THE INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE 200 (2013).

inclusion of modern technological capabilities reflects the evolving nature of warfare and the need for contemporary legal frameworks to address new forms of military engagement.



d) Impartiality

Blockades must be applied impartially to all vessels and aircraft, regardless of their flag or status.³⁹¹ This principle ensures that the rules governing blockades are enforced uniformly and without bias, maintaining the legitimacy and fairness of the blockade. Exceptions may be made for neutral warships, vessels in distress, or military aircraft.³⁹² Such exceptions recognize the unique status and rights of these entities under international law, providing for humanitarian considerations and the protection of neutral states' interests.

e) Humanitarian Requirements

Blockades established with the sole intent to starve or deprive civilians are prohibited.³⁹³ This provision underscores the importance of protecting civilian populations and upholding humanitarian principles during armed conflicts. While disproportionate civilian harm does not render a blockade illegal per se, it is imperative that the blockading State takes measures to mitigate such harm.³⁹⁴ Humanitarian vessels are not exempt from blockade enforcement; however, the blockading State can arrange for the delivery of humanitarian aid. This balancing act between military necessity and humanitarian considerations is a cornerstone of modern international humanitarian law.

f) Access to Neutral Coast

Blockades must not obstruct access to neutral ports, straits used for international navigation, or archipelagic sea lanes located in neutral waters.³⁹⁵ The right of passage for neutral states must be respected, ensuring that the blockade does not unduly infringe upon the rights and freedoms of states not involved in the

³⁹¹ NEWPORT MANUAL, *supra* note xx, at 122, Ch.7.4.4.

³⁹² *Id.*

³⁹³ *Id.* at Ch.7.4.5.

³⁹⁴ *Id.*

³⁹⁵ *Id.* at 123, Ch.7.4.6.

conflict.³⁹⁶ This provision helps to maintain the balance between effective military operations and the preservation of international legal norms governing freedom of navigation and commerce.



g) Breach and Attempted Breach

Breaching or attempting to breach a blockade occurs when vessels or aircraft cross the blockade line or fail to pass the blockading force.³⁹⁷ Breaching vessels or aircraft are subject to capture or diversion. Knowledge of the blockade's existence is presumed after proper notification has been given; this presumption places the onus on mariners and aviators to be aware of and comply with declared blockades.³⁹⁸

(2) Zones

The concept of zones in the Newport Manual is prescribed as maritime operational zone.³⁹⁹ While not a legal term of art, maritime operational zone is a method of warfare aimed at achieving tactical, operational, or strategic objectives through the management and deconfliction of water space. A belligerent party establishing a maritime operational zone may impose various requirements on vessels entering the area, such as obtaining prior approval, identifying themselves upon entry, or prohibiting entry altogether.⁴⁰⁰

Notably, maritime operational zones must be distinct from restrictions on the immediate vicinity of naval operations, which are restrictions imposed by on-scene commanders on all vessels and aircraft activities, including controlling communications and the use of electronic equipment that could endanger naval operations, in the immediate vicinity of naval operations, and noncompliance with legitimate belligerent orders allows a belligerent to capture and condemn a vessel or aircraft as a prize.⁴⁰¹ The extent of these restrictions, as well as their content and duration, are determined by operational needs, but this right is limited based on the necessity to conduct operations and ensure the security of forces.

³⁹⁶ *Id.*

³⁹⁷ *Id.* at Ch.7.4.7.

³⁹⁸ *Id.*

³⁹⁹ *Id.* at 113, Ch.7.2.1.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

a) Purpose

The nature and name of these zones varies based on their intended purpose, such as reducing the presence of merchant shipping in a particular area, denying operating space to enemy warships or military aircraft, or protecting high-value friendly assets.⁴⁰² For instance, a defensive zone might target only enemy military units, as exemplified by the British Maritime Exclusion Zone (MEZ) around the Falkland/Malvinas Islands in 1982.⁴⁰³ Alternatively, a zone might exclude all merchant vessels and aircraft to protect civilians and facilitate target identification in an area subject to naval bombardment or an amphibious landing.⁴⁰⁴

b) Notification

The establishment of a zone must be declared and notified through official channels, such as a Notice to Mariners or a Notice to Airmen (if the zone affects aircraft), or other formal declarations by the belligerent State.⁴⁰⁵

c) Enforcement

The laws governing targeting apply both inside and outside the zone, making “free fire” zones of unrestricted warfare at sea unlawful.⁴⁰⁶ However, the presence of a vessel in a declared zone may be considered as a factor to make such vessel a military objective.⁴⁰⁷ For zones affecting neutral merchant shipping, enforcement might involve ordering the diversion of ships.⁴⁰⁸ Breaching a maritime operational zone can justify capturing and condemning a vessel or aircraft as a prize; additionally, resistance to enforcement measures may also render a vessel targetable or subject to capture.⁴⁰⁹

d) Effect on Neutral Rights

⁴⁰² *Id.* at 113-14, Ch.7.2.1.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 114.

⁴⁰⁵ *Id.* at Ch.7.2.1.1.

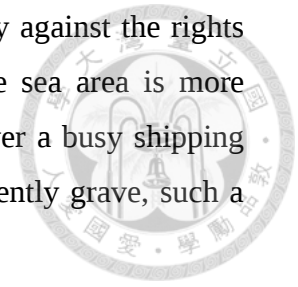
⁴⁰⁶ *Id.* at 115, Ch.7.2.1.2.

⁴⁰⁷ Nevertheless, this determination is fact-specific and context-dependent; *see id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

Maritime operational zones must balance military necessity against the rights of neutral navigation.⁴¹⁰ An exclusion zone declared in a remote sea area is more likely to be permissible with respect to neutral rights than one over a busy shipping lane. Nevertheless, if the military necessity for the zone is sufficiently grave, such a zone could still be lawful.⁴¹¹



6. *International Humanitarian Law* —

(1) Development of International Humanitarian Law

The development of International Humanitarian Law (hereinafter IHL) can be traced back to the earliest societies, where rudimentary rules of warfare existed.⁴¹² These rules were embedded in the customs, religious teachings, and practices of various ancient civilizations.⁴¹³ For instance, the Sumerians and Babylonians had established laws of war, as evident from the Code of Hammurabi, which provided protections for the weak and provisions for the release of hostages by ransom.⁴¹⁴ The ancient Indian texts, such as the Laws of Manu, forbade the killing of surrendered adversaries and the use of certain weapons like poisoned arrows.⁴¹⁵ Even the ancient Greeks and Romans had their own customs and principles regarding the conduct of war, which influenced the later development of humanitarian norms.⁴¹⁶

The modern codification of IHL began with the adoption of the Lieber Code during the American Civil War in 1863.⁴¹⁷ This code, issued by President Lincoln and drafted by Francis Lieber, was one of the first comprehensive sets of rules governing the conduct of hostilities and the protection of civilians and property during armed conflict.⁴¹⁸ The Lieber Code significantly influenced subsequent international treaties

⁴¹⁰ See *id.* at Ch.7.2.1.3.

⁴¹¹ *Id.*

⁴¹² Mohammad Saidul Islam, *The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age*, 9 BEIJING L. REV. 294, 294-95 (2018).

⁴¹³ *Id.* at 295.

⁴¹⁴ *Id.* at 296.

⁴¹⁵ *Id.* at 296-96.

⁴¹⁶ Cordula Droegge & Eirini Giorgou, *How International Humanitarian Law Develops*, 104 INT'L REV. RED CROSS 1798, 1800 (2022); see also Stanislaw E. Nahlik, *A Brief Outline of International Humanitarian Law*, 24 INT'L REV. RED CROSS 187, 189 (1984).

⁴¹⁷ Amanda Alexander, *A Short History of International Humanitarian Law*, 26(1) EUR. J. INT'L L. 109, 112 (2015); see also Cordula Droegge & Eirini Giorgou, *How International Humanitarian Law Develops*, 104 INT'L REV. RED CROSS 1798, 1801 (2022).

⁴¹⁸ Amanda Alexander, *A Short History of International Humanitarian Law*, 26(1) EUR. J. INT'L L. 109, 112 (2015).

and conventions, leading to the formal adoption of the first Geneva Convention in 1864, which aimed to ameliorate the condition of wounded and sick soldiers in the field.⁴¹⁹ The Geneva Convention of 1864 marked the beginning of a series of international treaties designed to protect victims of armed conflicts.⁴²⁰

The Hague Conventions of 1899 and 1907 further developed IHL by addressing the means and methods of warfare and the protection of civilians and combatants.⁴²¹ These conventions established comprehensive rules regarding the conduct of hostilities, treatment of prisoners of war, and the protection of civilian populations and property.⁴²² The convergence of the Geneva and Hague traditions laid the foundation for the contemporary understanding of IHL, which encompasses both humanitarian protections and regulations on the conduct of warfare.⁴²³ The principles established in these conventions have continued to influence modern IHL, providing a framework for the laws of armed conflict.⁴²⁴

The aftermath of World War II saw a significant expansion and consolidation of IHL with the adoption of the four Geneva Conventions of 1949.⁴²⁵ These conventions broadened the scope of protection during armed conflict, covering wounded and sick soldiers on land, shipwrecked military personnel, prisoners of war, and civilians.⁴²⁶ The 1977 Additional Protocols to the Geneva Conventions further enhanced these protections, addressing issues related to international and non-international armed conflicts and introducing principles such as proportionality and precaution to minimize harm to civilians.⁴²⁷ The Additional Protocols marked a

⁴¹⁹ *Id.* at 113; see also Mohammad Saidul Islam, *The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age*, 9 BEIJING L. REV. 294, 297 (2018).

⁴²⁰ Giovanni Mantilla, *From Treaty to Custom: Shifting Paths in the Recent Development of International Humanitarian Law*, 37 LEIDEN J. INT'L L. 1, 2-3 (2024).

⁴²¹ Stanislaw E. Nahlik, *A Brief Outline of International Humanitarian Law*, 24 INT'L REV. RED CROSS 187, 197 (1984).

⁴²² *Id.*; see also Cordula Droege & Eirini Giorgou, *How International Humanitarian Law Develops*, 104 INT'L REV. RED CROSS 1798, 1805 (2022).

⁴²³ Amanda Alexander, *A Short History of International Humanitarian Law*, 26(1) EUR. J. INT'L L. 109, 114 (2015).

⁴²⁴ *Id.*

⁴²⁵ Mohammad Saidul Islam, *The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age*, 9 BEIJING L. REV. 294, 300 (2018).

⁴²⁶ Each included by the First to Fifth Geneva Convention, respectively. See Mohammad Saidul Islam, *The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age*, 9 BEIJING L. REV. 294, 300 (2018).

⁴²⁷ Stanislaw E. Nahlik, *A Brief Outline of International Humanitarian Law*, 24 INT'L REV. RED CROSS 187, 197 (1984).

significant milestone in the development of IHL by adapting the conventions to contemporary conflicts and expanding protections for those affected by warfare.⁴²⁸

In recent decades, the development of IHL has been characterized by the interplay of treaty law, customary law, and soft law.⁴²⁹ Customary IHL evolves through the practices and *opinio juris* of states, often codified in treaties, while soft law instruments like political declarations and guidelines contribute to clarifying and implementing existing norms.⁴³⁰ The dynamic nature of IHL ensures its continuous adaptation to address the changing realities of warfare and the protection needs of those affected by armed conflicts.⁴³¹ As new forms of conflict emerge, IHL continues to evolve, guided by the fundamental principles established in its early codifications and reinforced through ongoing international efforts.⁴³²

(2) Basic Principles

Based on the IHLs, four fundamental principles have been developed in regard of armed conflicts:

a) Principle of Distinction

The principle of distinction is foundational in IHL and mandates that parties to a conflict distinguish between civilians and combatants, directing operations solely against military objectives. This principle is enshrined in Article 48 of Additional Protocol I to the Geneva Conventions, emphasizing the protection of civilians and civilian objects from the effects of military operations⁴³³ by requiring that combatants, who are lawful targets, be clearly separated from civilians, who are protected against direct attacks unless and for such time as they take a direct part in hostilities.⁴³⁴ In the

⁴²⁸ Giovanni Mantilla, *From Treaty to Custom: Shifting Paths in the Recent Development of International Humanitarian Law*, 37 LEIDEN J. INT'L L. 1, 4 (2024).

⁴²⁹ Cordula Droege & Eirini Giorgou, *How International Humanitarian Law Develops*, 104 INT'L REV. RED CROSS 1798, 1800 (2022).

⁴³⁰ Mohammad Saidul Islam, *The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age*, 9 BEIJING L. REV. 294, 301 (2018).

⁴³¹ *Id.*

⁴³² Stanislaw E. Nahlik, *A Brief Outline of International Humanitarian Law*, 24 INT'L REV. RED CROSS 187, 198 (1984).

⁴³³ Jean Pictet, *The Principles of International Humanitarian Law*, 6 INT'L REV. RED CROSS 455, 456 (1966); see also PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 92-93 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁴³⁴ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 95-96 (Paola Gaeta & Salvatore Zappala eds., 2017).

context of blockades, this principle ensures that blockading forces must not target civilian vessels or goods intended for civilian use, thereby minimizing harm to civilian populations.⁴³⁵



b) Military Necessity

The principle of military necessity permits measures not forbidden by international law and essential to achieving legitimate military objectives. This principle, however, must be balanced against the principle of humanity, ensuring that the use of force is not excessive and is directed toward achieving a definite military advantage.⁴³⁶ In blockades, military necessity justifies the interdiction of vessels and goods that contribute directly to the enemy's war effort but prohibits unnecessary destruction and suffering.⁴³⁷

c) Principle of Humanity

The principle of humanity underpins the necessity of limiting the suffering caused by armed conflict, ensuring humane treatment for all persons who are not actively participating in hostilities. This principle is embodied in the Geneva Conventions and their Additional Protocols and serves as a moral and legal constraint on the conduct of hostilities.⁴³⁸ In blockades, the principle of humanity mandates that the blockading force must ensure that the civilian population has access to essential supplies and humanitarian aid, preventing excessive suffering.⁴³⁹

d) Principle of Proportionality

The principle of proportionality ensures that military actions remain within ethical boundaries by prohibiting attacks expected to cause incidental loss of civilian life or damage to civilian objects if such harm would be excessive relative to the

⁴³⁵ Vincent Chetail, *Humanitarian Values for the 21st Century*, 21(3) REFUGEE SURVEY Q. 199, 201 (2002).

⁴³⁶ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 92 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁴³⁷ Jean Pictet, *The Principles of International Humanitarian Law*, 6 INT'L REV. RED CROSS 455, 457 (1966); Vincent Chetail, *Humanitarian Values for the 21st Century*, 21(3) REFUGEE SURVEY Q. 199, 202 (2002).

⁴³⁸ Jean Pictet, *The Principles of International Humanitarian Law*, 6 INT'L REV. RED CROSS 455, 460 (1966); Vincent Chetail, *Humanitarian Values for the 21st Century*, 21(3) REFUGEE SURVEY Q. 199, 203-04 (2002).

⁴³⁹ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 102-06 (Paola Gaeta & Salvatore Zappala eds., 2017).

anticipated military gain. This principle is articulated in Article 51 of Additional Protocol I to the Geneva Conventions.⁴⁴⁰ By aiming to limit the destructive impact of warfare, the principle of proportionality ensures that military operations do not inflict undue harm on civilian populations. It requires commanders to carefully assess the potential collateral damage of their actions and to refrain from attacks if the expected harm to civilians outweighs the military benefits, thus embedding a vital check on the conduct of hostilities within international humanitarian law.⁴⁴¹

(3) Concerns Regarding the Application of IHL in Blockades

Historically, blockades have precipitated severe humanitarian crises, as illustrated by the ongoing blockade of Gaza. The blockade of Gaza has exacerbated poverty, hindered access to healthcare, and resulted in substantial human suffering;⁴⁴² also, it has led to critical shortages of essential goods and services, including food, medicine, and other necessities, thereby severely impacting civilian populations.⁴⁴³

However, the applicability of IHL principles to blockades remains a subject of considerable debate, particularly regarding blockades that do not involve direct kinetic force.⁴⁴⁴ The principle of distinction, a fundamental tenet of IHL that mandates the differentiation between combatants and civilians, is particularly contentious in the context of blockades. Typically, blockades do not involve direct acts of violence; however, their long-term humanitarian impact can be profound.⁴⁴⁵ The resulting starvation, deprivation, and overall hardship inflicted on civilian populations suggest that blockades should indeed be scrutinized under the framework of IHL.⁴⁴⁶ The adverse effects of blockades on civilians, who are ostensibly not the intended targets, underscore the necessity of applying IHL principles to ensure that such measures are conducted in a manner that minimizes humanitarian harm.

⁴⁴⁰ Jean Pictet, *The Principles of International Humanitarian Law*, 6 INT'L REV. RED CROSS 455, 457 (1966); PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 107 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁴⁴¹ Vincent Chetail, *Humanitarian Values for the 21st Century*, 21(3) REFUGEE SURVEY Q. 199, 201 (2002).

⁴⁴² *The Gaza Strip: The humanitarian impact of 15 years of blockade - June 2022*, UNICEF, <https://www.unicef.org/mena/documents/gaza-strip-humanitarian-impact-15-years-blockade-june-2022> (last visited July 13, 2024).

⁴⁴³ *Id.*

⁴⁴⁴ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 99 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁴⁴⁵ *Id.* at 95-96.

⁴⁴⁶ *Id.*

The principle of proportionality, which seeks to balance military objectives with humanitarian considerations, is particularly relevant in this context. It mandates that the anticipated military advantage of a blockade must not be outweighed by the excessive harm inflicted on civilians.⁴⁴⁷ Therefore, the long-term humanitarian implications of blockades necessitate a thorough examination and application of IHL to mitigate the suffering of affected civilian populations.⁴⁴⁸

In order to evaluate the legality of blockades, understanding the meaning of “attack” within IHL is critical.⁴⁴⁹ In Article 49 of Additional Protocol I, ‘attacks’ are defined as acts of violence against the adversary, including operations that may affect civilians. Traditionally, this definition was understood to encompass only physical acts of violence. However, contemporary scholars⁴⁵⁰ argue for a broader interpretation that includes non-kinetic operations causing significant harm, such as cyber attacks or economic blockades.⁴⁵¹ This broader interpretation is critical in the modern context of warfare, where the means of inflicting harm are not limited to conventional military force.⁴⁵² By adopting a wider definition of “attack”, IHL can more effectively address the complexities of modern warfare and ensure the protection of civilian populations from various forms of harm.

Despite these challenges, broader implications for international law, especially in the case of blockades, are necessary for the protection of human rights. The evolving nature of warfare, characterized by the increasing use of non-kinetic means such as cyber operations and economic sanctions, necessitates a re-evaluation of traditional legal definitions and frameworks. By recognizing the significant humanitarian impact of blockades and other non-kinetic operations, international law can better address the challenges posed by modern conflicts.

⁴⁴⁷ *Id.* at 107.

⁴⁴⁸ *Id.* at 107-08.

⁴⁴⁹ *Id.* at 96-98.

⁴⁵⁰ See generally Michael N. Schmitt, *International Humanitarian Law and the Targeting of Non-State Intelligence Personnel and Objects*, 30 DUKE J. COMPAR. & INT’L L. 309 (2020); see also Christof Heyns et al., *The Definition of an “Attack” Under the Law of Armed Conflict*, WEST POINT (Nov. 3, 2020), <https://lieber.westpoint.edu/definition-attack-law-of-armed-conflict-protection/>.

⁴⁵¹ Michael N. Schmitt, *Rewired Warfare: Rethinking the Law of Cyber Attack*, 96 INT’L REV. RED CROSS 189, 190-92 (2014).

⁴⁵² *Id.*

7. Conclusion —

The law of blockade has undergone significant development over the past century, shaped by various international agreements and customary practices. The 1909 London Declaration on Naval Warfare marked a crucial step in codifying rules for naval blockades, drawing on historical precedents and judgments from national prize courts. Although the declaration was not formally ratified, its provisions regarding the establishment, declaration, notification, and effectiveness of blockades gained recognition as customary international law by the outbreak of World War I. The 1913 Oxford Manual further consolidated these principles, emphasizing the importance of distinguishing between combatants and non-combatants and avoiding unnecessary suffering during naval operations.

Subsequent developments, such as the San Remo Manual of 1995 and the Newport Manual of 2023, have built upon these early frameworks. The San Remo Manual provided comprehensive guidelines for naval blockades, emphasizing the need for humanitarian considerations and ensuring that blockades do not cause undue suffering to civilians. The Newport Manual modernized these principles, incorporating the latest technological advancements and addressing new forms of military engagement, such as cyber operations and economic sanctions. These documents reflect the evolving nature of naval warfare and the need for contemporary legal frameworks to address the complexities of modern conflicts.

Additionally, the HPCR Manual on International Law Applicable to Air and Missile Warfare has extended the principles of naval blockades to aerial blockades. It sets forth rules governing the use of aerial blockades in armed conflict, emphasizing notification, effectiveness, and humanitarian requirements. The manual highlights the importance of respecting neutral airspace and ensuring that aerial blockades do not cause excessive harm to civilians. The guidelines for aerial blockades align with the principles established in the San Remo and Newport Manuals, ensuring a comprehensive legal framework for modern military operations.

Despite these developments, the basic principles of blockade have remained relatively consistent over the years. The requirements for the proper establishment, declaration, notification, effectiveness, and impartiality of blockades, as outlined in

the London Declaration and the Oxford Manual, continue to form the foundation of modern blockade law. What has changed significantly is the scope of weapons and methods that may be used in a blockade due to technological advancements. The inclusion of cyber operations and other non-kinetic means in modern legal frameworks highlights the expanded capabilities available to states in enforcing blockades.

Given the severe impact of blockades on civilian populations, humanitarian considerations have become increasingly important in determining the legality of a blockade. Article 54 of Additional Protocol I to the Geneva Conventions explicitly prohibits the starvation of civilians as a method of warfare and the destruction of objects indispensable to civilian survival. While these protections are clear in principle, their application to blockades remains contentious. Historical interpretations and state practices reveal a reluctance to fully extend these protections to blockades, often citing military necessity. However, the adverse effects of blockades on civilians underscore the necessity of scrutinizing such measures under the framework of international humanitarian law (IHL). The principles of distinction and proportionality are particularly relevant, requiring that blockades do not cause excessive harm to civilians relative to the anticipated military advantage.

It is important to reiterate that blockade law does not have a set of universally binding regulations. Instead, it is governed by a combination of treaty law, customary international law, and state practice. The evolving nature of warfare and the increasing use of non-kinetic operations necessitate a re-evaluation of traditional legal definitions and frameworks. Understanding the legality of blockades requires not only an analysis of international agreements and legal principles but also an examination of state practices and historical precedents. These practices provide valuable insights into how states interpret and apply blockade law in different contexts, contributing to a comprehensive understanding of the rules governing blockades.

B. State Practices

1. Law of Armed Conflict at the Operational and Tactical Levels⁴⁵³

In the study of state practices concerning blockades and the establishment of zones, Canada emerges as a pivotal example, offering profound insights into their implementation and legal implications within the framework of the Law of Armed Conflict at the Operational and Tactical Levels (hereinafter Canadian Manual). Despite its more moderate military capabilities,⁴⁵⁴ Canada is distinguished by its steadfast commitment to international legal norms and human rights standards,⁴⁵⁵ making it a compelling case study in how states navigate the intricate intersection of security imperatives and international law.

(1) Blockade

In the Canadian Manual's Law of Armed Conflict at the Operational and Tactical Levels (hereinafter Canadian Manual), a blockade is defined as the act of encircling or obstructing a location, such as a port, to impede the entry and exit of supplies.⁴⁵⁶ To be considered legally valid, a blockade must be formally declared, and the declaring party must inform all belligerent and neutral states. This notification should specify the blockade's commencement, duration, location, and extent, along with the period within which neutral state vessels may vacate the blockaded area. The blockade force may position itself at a distance dictated by military necessity.⁴⁵⁷

As stipulated in the Canadian Manual, a legal blockade must be maintained effectively by surface, air, subsurface forces, or other mechanisms capable of making entry into or exit from the blockaded area perilous.⁴⁵⁸ To fulfill the requirement of impartiality, merchant vessels reasonably suspected of breaching a blockade may be captured, and if they resist capture after a prior warning, they may be attacked.⁴⁵⁹ Furthermore, a blockade must adhere to specific restrictions: it must not obstruct

⁴⁵³ NAT'L DEF., LAW OF ARMED CONFLICT AT THE OPERATIONAL AND TACTICAL LEVELS [hereinafter CANADIAN MANUAL] (2024).

⁴⁵⁴ The Royal Canadian Navy is currently ranked the 23rd in the world. See *Global Naval Powers Ranking* (2024), WDMMW, <https://www.wdmmw.org/ranking.php> (last visited July 13, 2024).

⁴⁵⁵ *Canada's Human Rights Commitments*, CAN. GOV'T (Sept. 14, 2022), https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/commitments-engagements.aspx?lang=eng.

⁴⁵⁶ CANADIAN MANUAL ¶ 844.

⁴⁵⁷ CANADIAN MANUAL ¶ 845.

⁴⁵⁸ CANADIAN MANUAL ¶ 846.

⁴⁵⁹ CANADIAN MANUAL ¶ 847.

access to the ports and coasts of neutral states and must be applied impartially to the vessels of all states.⁴⁶⁰ Any changes to a blockade, including its cessation, temporary lifting, re-establishment, or extension, must be formally declared, with all belligerent and neutral states duly notified.⁴⁶¹

In adherence to humanitarian requirements, the Canadian Manual prohibits the establishment of a blockade with the sole purpose of starving the civilian population or denying them essential survival items.⁴⁶² Furthermore, a blockade is deemed unlawful if the anticipated harm to the civilian population is disproportionate to the direct and concrete military advantage expected.⁴⁶³ Should the civilian population within the blockaded area be inadequately supplied with essential goods, the blockading party is obligated to allow the free passage of these supplies.⁴⁶⁴ This permission is subject to the blockading party's right to impose technical arrangements, including searches.⁴⁶⁵ The distribution of such supplies must be supervised by a Protecting Power or an impartial humanitarian organization, such as the International Committee of the Red Cross.⁴⁶⁶ Similarly, the blockading party must permit the passage of medical supplies for the civilian population and for wounded and sick members of the armed forces, again subject to technical arrangements, including searches.⁴⁶⁷

The principles of blockade as outlined in the Canadian Manual are closely aligned with those in the San Remo Manual. Both instruments mandate that a blockade must be declared and notified,⁴⁶⁸ ensuring transparency and adherence to international standards. They also require the blockade to be effective,⁴⁶⁹ while permitting the capture or attack of merchant vessels that breach the blockade,⁴⁷⁰ maintaining the blockade's integrity.

⁴⁶⁰ CANADIAN MANUAL ¶ 848.

⁴⁶¹ CANADIAN MANUAL ¶ 849.

⁴⁶² CANADIAN MANUAL ¶ 850 (a).

⁴⁶³ CANADIAN MANUAL ¶ 850 (b).

⁴⁶⁴ CANADIAN MANUAL ¶ 851.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ SAN REMO MANUAL arts. 93, 94.

⁴⁶⁹ *Id.* art. 95.

⁴⁷⁰ *Id.* art. 98.

Both the Canadian and San Remo Manuals emphasize that blockades must not impede access to neutral ports and must be applied impartially,⁴⁷¹ ensuring fairness and adherence to international law. They also share the requirement for notifying any changes to the blockade, maintaining clarity and communication among all parties.⁴⁷² Furthermore, both instruments prohibit blockades intended to starve civilians or cause disproportionate harm to the civilian population, underscoring their commitment to humanitarian considerations.⁴⁷³ This alignment extends to ensuring the passage of essential supplies to civilian populations, highlighting a shared emphasis on humanitarian principles.⁴⁷⁴

(2) Zones

The Canadian Manual notes that belligerents in naval conflicts often establish various zones in and over water areas to deny or restrict access to vessels and aircraft of neutral states.⁴⁷⁵ These zones, commonly known as exclusion zones, military areas, barred areas, war zones, and operational zones, inherently carry a risk of attack upon entry.⁴⁷⁶ Despite their designation, these zones do not relieve belligerents of their obligations under International Law, and they are not regarded as “free fire zones,” thus ensuring that legal standards are upheld.⁴⁷⁷

When a belligerent establishes a zone, the same legal rules apply both within and outside of it.⁴⁷⁸ The primary effect of such a zone is to alert shipping to the ongoing hostilities and the increased risk within the designated area.⁴⁷⁹ The extent, location, and duration of the zone, along with any imposed measures, must be strictly limited to what is required by military necessity and must adhere to the principle of proportionality.⁴⁸⁰

The rights of neutral states to legitimate uses of the seas must be respected,⁴⁸¹ ensuring necessary safe passage through the zone for neutral vessels and aircraft.⁴⁸²

⁴⁷¹ *Id.* art. 100.

⁴⁷² *Id.* art. 101.

⁴⁷³ *Id.* art. 102.

⁴⁷⁴ *Id.* arts. 103, 104.

⁴⁷⁵ CANADIAN MANUAL ¶ 852.

⁴⁷⁶ CANADIAN MANUAL ¶ 852(1).

⁴⁷⁷ CANADIAN MANUAL ¶ 852(2).

⁴⁷⁸ CANADIAN MANUAL ¶ 853(1)(a).

⁴⁷⁹ *Id.*

⁴⁸⁰ CANADIAN MANUAL ¶ 853(1)(b).

⁴⁸¹ CANADIAN MANUAL ¶ 853(1)(c).

⁴⁸² CANADIAN MANUAL ¶ 853(1)(d)(1).

This is particularly crucial where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral state or affects normal navigation routes,⁴⁸³ except where military requirements preclude such provisions.⁴⁸⁴ Furthermore, the commencement, duration, location, and extent of the zone, as well as any imposed restrictions, must be publicly declared and appropriately notified to all concerned parties.⁴⁸⁵

Compliance with the measures implemented by one belligerent within the zone shall not be deemed harmful to the opposing belligerent.⁴⁸⁶ Consequently, if a neutral vessel chooses to avoid entering or exits the zone, it is not acting inappropriately towards the other belligerent.⁴⁸⁷ Additionally, the existence of a zone does not preclude the conduct of military operations outside of it.⁴⁸⁸

2. U.K. Manual —

The study of blockades through the lens of the United Kingdom's naval practices offers a crucial perspective on international maritime law and strategic doctrine. With a longstanding naval tradition and significant operational experience,⁴⁸⁹ the UK provides a robust case study for examining the legal, operational, and humanitarian aspects of blockades.

(1) Blockades

Under the U.K. Joint Service Manual of Law of Armed Conflict (hereinafter U.K. Manual), a blockade must be formally declared and duly notified to all belligerent and neutral states,⁴⁹⁰ specifying the commencement date, duration, geographic location, and extent of the blockade, as well as the period allowed for neutral vessels to exit the blockaded coastline.⁴⁹¹ The effectiveness of the blockade is a factual determination essential for distinguishing between legitimate blockading

⁴⁸³ *Id.*

⁴⁸⁴ CANADIAN MANUAL ¶ 853(1)(d)(2).

⁴⁸⁵ CANADIAN MANUAL ¶ 853(1)(e).

⁴⁸⁶ CANADIAN MANUAL ¶ 854.

⁴⁸⁷ *Id.*

⁴⁸⁸ CANADIAN MANUAL ¶ 855.

⁴⁸⁹ *Royal Navy History*, ROYAL NAVY, <https://www.royalnavy.mod.uk/news-and-latest-activity/features/history-timeline> (last visited July 13, 2024); see also *The Royal Navy's Size Throughout History*, HISTORIC UK, <https://www.historic-uk.com/Blog/British-Navy-Size-Over-Time/> (last visited July 13, 2024).

⁴⁹⁰ JOINT DOCTRINE AND CONCEPTS CENTRE, JOINT SERVICE MANUAL OF THE LAW OF ARMED CONFLICT [hereinafter UK MANUAL], Ch.13.65 (2004).

⁴⁹¹ UK MANUAL Ch.13.66.

actions and other illegitimate activities, such as visit and search operations conducted under the pretense of a blockade.⁴⁹²

The force maintaining the blockade may be stationed at a distance determined by military requirements,⁴⁹³ and its enforcement and maintenance may involve a combination of legitimate methods and means of warfare.⁴⁹⁴ Merchant vessels reasonably believed to be breaching the blockade may be captured, and if, after receiving prior warning, these vessels clearly resist capture, they may be attacked if deemed military objectives.⁴⁹⁵

Further, a blockade must not obstruct access to the ports and coasts of neutral states⁴⁹⁶ and must be applied impartially to the vessels of all states.⁴⁹⁷ Any changes to the blockade, including cessation, temporary lifting, re-establishment, extension, or other alterations, must be declared and notified in the same manner as the original declaration.⁴⁹⁸ Additionally, the establishment or declaration of a blockade is prohibited if its purpose is to starve the civilian population, deny them objects essential for survival, or if the anticipated harm to the civilian population is expected to be excessive in relation to the concrete and direct military advantage anticipated.⁴⁹⁹

If the civilian population within the blockaded territory lacks adequate food and other essential supplies, the blockading party must allow free passage of such items.⁵⁰⁰ This passage is subject to technical arrangements, including search, and the condition that distribution be supervised by a protecting power or a humanitarian organization offering guarantees of impartiality, such as the International Committee of the Red Cross.⁵⁰¹ Ultimately, the blockading belligerent must permit the passage of medical supplies for the civilian population or for the wounded and sick members of the armed forces, subject to similar technical arrangements.⁵⁰²

(2) Zones

⁴⁹² UK MANUAL Ch.13.67.

⁴⁹³ UK MANUAL Ch.13.68.

⁴⁹⁴ UK MANUAL Ch.13.69.

⁴⁹⁵ UK MANUAL Ch.13.70.

⁴⁹⁶ UK MANUAL Ch.13.71.

⁴⁹⁷ UK MANUAL Ch.13.72.

⁴⁹⁸ UK MANUAL Ch.13.73.

⁴⁹⁹ UK MANUAL Ch.13.74.

⁵⁰⁰ UK MANUAL Ch.13.75.

⁵⁰¹ *Id.*

⁵⁰² UK MANUAL Ch.13.76.

According to the U.K. Manual, belligerents may establish security zones as a defensive measure or to limit the geographical extent of the conflict area.⁵⁰³ Maritime exclusion zones and total exclusion zones are legitimate for exercising self-defence and other rights under international law, yet the establishment of such zones does not relieve a belligerent of its obligations under the law of armed conflict, particularly if these zones adversely affect legitimate uses of defined sea areas.⁵⁰⁴ The precise extent, location, duration, and associated risks of these zones must be clearly specified and publicly declared.⁵⁰⁵

When a belligerent establishes such a zone as an exceptional measure, the same laws apply both within and outside the zone.⁵⁰⁶ The extent, location, and duration of the zone, as well as the measures imposed, must be strictly limited to what is necessary for military purposes and in accordance with the principle of proportionality.⁵⁰⁷ The rights of neutral states to legitimate uses of the seas must be considered, and safe passage for neutral vessels and aircraft through the zone should be ensured. This is particularly crucial when the zone significantly hinders free and safe access to the ports and coasts of a neutral state or affects normal navigation routes, except where military requirements prevent this.⁵⁰⁸

Compliance with measures taken by one belligerent within the zone should not be interpreted as an act harmful to the opposing belligerent.⁵⁰⁹ Additionally, nothing in the said provisions should derogate from the customary right of a belligerent to control neutral vessels and aircraft in the immediate vicinity of naval operations.⁵¹⁰

Overall, the U.K. Manual closely aligns with the San Remo Manual regarding the rules governing blockades and zones, with nearly every rule directly cited from the San Remo Manual.⁵¹¹ This consistency in practices further reinforces the existing guiding principles of blockades and zones within the field of international law.

⁵⁰³ UK MANUAL Ch.13.77.

⁵⁰⁴ *Id.*

⁵⁰⁵ UK MANUAL Ch.13.77.1.

⁵⁰⁶ UK MANUAL Ch.13.78(a).

⁵⁰⁷ UK MANUAL Ch.13.78(b).

⁵⁰⁸ UK MANUAL Ch.13.78(c).

⁵⁰⁹ UK MANUAL Ch.13.79.

⁵¹⁰ UK MANUAL Ch.13.80.

⁵¹¹ SAN REMO Manual, at 363-65, nn.79-94

3. German Manual —

Germany's naval capabilities, though not on par with those of superpowers,⁵¹² provide a distinctive historical and operational lens through which to examine blockades within international maritime law. Shaped significantly by its pivotal roles in the World Wars,⁵¹³ Germany offers compelling case studies that delve into the legal, operational, and historical facets of blockades.

(1) Blockades

As defined in article 1060 of the Law of Armed Conflict of the Joint Service Regulation (hereinafter German Manual),⁵¹⁴ a blockade is a means of preventing vessels and aircraft from entering or departing from coasts or ports belonging to, occupied by, or controlled by the adversary, aiming to cut off the adversary's coast from supplies without the intention of directly conquering the coast.⁵¹⁵ The starvation of the civilian population as a method of warfare is prohibited, as is impeding shipments intended for the civilian population.⁵¹⁶

A blockade must be declared and notified by the government of the party to the conflict or an authorized commander, with neutral powers also notified;⁵¹⁷ such declaration must specify the date when the blockade begins, the geographical limits of the coastline under blockade, and a period within which neutral vessels may leave the blockaded coastline.⁵¹⁸ Additionally, this requirement extends to any changes to the blockade's limits and its lifting.⁵¹⁹

For a blockade to be binding, it must be effective, and such effective must be maintained by armed forces sufficient to bar access to the blockaded coast.⁵²⁰ Long-

⁵¹² The German Navy is currently ranked 18th on the global ranking, *Global Naval Powers Ranking (2024)*, WDMMW, <https://www.wdmmw.org/ranking.php> (last visited July 13, 2024).

⁵¹³ *The Naval Race Between Britain and Germany Before the First World War*, IWM, <https://www.iwm.org.uk/history/the-naval-race-between-britain-and-germany-before-the-first-world-war> (last visited July 13, 2024); see also Michael Epkenhans, *German Naval Strategy in the World War I and World War II*, in *SHARING EXPERIENCES IN THE 20TH CENTURY: JOINT RESEARCH ON MILITARY HISTORY* 25-56 (Tomoyuki Ishizu & Frank Reichherzer eds., 2022).

⁵¹⁴ BUNDESMINISTERIUM DER VERTEIDIGUNG [FEDERAL MINISTRY OF DEFENSE], JOINT SERVICE REGULATION (ZDV) 15/2, LAW OF ARMED CONFLICT – MANUAL [hereinafter GERMAN MANUAL] (2013).

⁵¹⁵ GERMAN MANUAL § 1060.

⁵¹⁶ *Id.*

⁵¹⁷ GERMAN MANUAL §1061.

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ GERMAN MANUAL §1062.

distance blockades, where armed forces control an adversary's coast from a greater distance due to military requirements, are permissible.⁵²¹ For instance, a blockade is considered effective if it cuts off ship-to-shore logistics. To maintain its effectiveness, the blockading forces may use military force against potential blockade runners.⁵²² Also, aerial blockade and maritime blockade are analyzed separately; air transports do not need to be stopped in a maritime blockade.⁵²³ Additionally, a barricade achieved by means other than warships, such as scuttled ships, does not constitute a blockade, and neither does the mining of coasts and ports, even if movements are temporarily halted by mines.⁵²⁴

A blockade remains effective despite temporary withdrawal due to bad weather or the pursuit of a blockade runner. However, a blockade that ceases to be effective is no longer legally binding. The blockade ends with the expulsion or destruction of the blockading forces by the adversary, necessitating a new declaration and notification if new forces are assigned to the task.⁵²⁵

The German Manual largely conforms to the fundamental principles of blockade, emphasizing particularly that blockades may exclusively be implemented by warships. It diverges, however, by asserting that constructions like scuttled vessels do not establish a blockade, and similarly contends that the mining of coasts and ports, even when temporarily impeding maritime movement, does not constitute blockade.

(2) Exclusion Zones

In the German Manual, an exclusion zone is a designated area of water, along with the airspace above it, where a party to a conflict asserts extensive control rights, thereby prohibiting or restricting access to ships and aircraft.⁵²⁶ While these zones infringe upon the freedom of the high seas, they can only be established and maintained under exceptional circumstances.⁵²⁷ Furthermore, the use of weapons within these zones must be confined to military objectives, with strict adherence to

⁵²¹ *Id.*

⁵²² GERMAN MANUAL §1063.

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ GERMAN MANUAL §1055.

⁵²⁷ *Id.*

protocols for stopping, searching, and destroying prizes.⁵²⁸ Ultimately, the primary aim of exclusion zones is to facilitate the identification of military targets and protect against hostile actions, rather than to disrupt the enemy's war economy.⁵²⁹

Exclusion zones can be either static or movable.⁵³⁰ A static exclusion zone is defined by specific coordinates, creating a distinct three-dimensional space encompassing both the water and the airspace above it.⁵³¹ In contrast, a movable exclusion zone surrounds naval units and shifts position as these units move.⁵³² The establishment of static exclusion zones under international law is permissible only if the same rules and principles of international law applicable in international armed conflicts are observed both inside and outside the exclusion zone, ensuring that naval forces still identify valid military objectives.⁵³³

Furthermore, the extent, duration, and rights claimed within exclusion zones must not exceed legitimate national security and defence requirements, and vessels within the zone must be granted appropriate time to leave.⁵³⁴ The boundaries, restrictions on sea and air traffic, and control measures within exclusion zones must comply with the principles of military necessity and proportionality.⁵³⁵ Where military considerations permit, certain passages should remain open for neutral vessels, subject only to the right to stop, visit, and search.⁵³⁶ The extent, precise boundaries, and duration of an exclusion zone must be publicly declared, with detailed definitions if the zone is divided into subzones.⁵³⁷

In contrast, movable exclusion zones are permissible only if publicly declared in advance, including the rights claimed.⁵³⁸ The territorial extent, restrictions on sea and air traffic, and control measures for movable exclusion zones must adhere to the principles of military necessity and proportionality.⁵³⁹

⁵²⁸ *Id.*

⁵²⁹ GERMAN MANUAL §1056.

⁵³⁰ GERMAN MANUAL §1057.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ GERMAN MANUAL §1058.

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ GERMAN MANUAL §1059.

⁵³⁹ *Id.*

In addition to the general principles on zones outlined by the San Remo Manual, the German Manual emphasizes that the purpose of exclusion zones is not to damage the adversary's war economy but to facilitate the identification of military objectives and to defend against hostile acts. Also, the German Manual differs from the San Remo Manual as it delineates between static and movable exclusion zones to ensure operational flexibility and seeks to justify such operations through proper notification procedures.

4. U.S. Manuals —

Analyzing the United States' naval practices is crucial for understanding the complexities surrounding the rules of law governing blockades. As a dominant military power, the United States wields substantial influence over global maritime operations, including its innovative approaches such as the development of defensive quarantines,⁵⁴⁰ famously utilized during the Cuban Missile Crisis. Despite not being a member of the United Nations Convention on the Law of the Sea (UNCLOS), which presents challenges in terms of international legal alignment,⁵⁴¹ the U.S.'s robust naval capabilities and extensive operational experience provide invaluable insights. In the subsequent section, this paper seeks to examine the foundational principles guiding U.S. naval operations as articulated in the Department of Defence Law of War Manual (hereinafter referred to as the War Manual)⁵⁴² and The Commander's Handbook on the Law of Naval Operations (hereinafter referred to as the Commander's Handbook),⁵⁴³ and aims to elucidate the U.S.'s approach in naval operations and its efforts to reconcile security imperatives with international legal obligations.

(1) Blockade

According to both the Commander's Handbook and the War Manual, Blockade is a belligerent operation to prevent vessels and/or aircraft of all States,

⁵⁴⁰ See generally Leonard C. Meeker, *Defensive Quarantine and the Law*, 57(3) AM. J. INT'L L. 515 (1963).

⁵⁴¹ Will Schrepferman, *Hypocri-sea: The United States' Failure to Join the UN Convention on the Law of the Sea*, HARV. INT'L REV. (Oct. 31, 2019), <https://hir.harvard.edu/hypocri-sea-the-united-states-failure-to-join-the-un-convention-on-the-law-of-the-sea-2/>.

⁵⁴² OFF. OF GENERAL COUNSEL DEP. OF DEF., DEPARTMENT OF DEFENSE LAW OF WAR MANUAL [hereinafter WAR MANUAL] (2015).

⁵⁴³ DEP. OF THE NAVY ET AL., THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS [hereinafter COMMANDER'S HANDBOOK] (2022).

enemy and neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy State.⁵⁴⁴ The establishment of a blockade requires a formal declaration by the belligerent state or its commanding authority, ensuring clarity on the blockade's geographic scope, commencement date, and a grace period for neutral vessels and aircraft to safely depart the affected area.⁵⁴⁵ Notification to all affected states is customary and crucial, establishing the presumption of knowledge essential for determining violations of the blockade. This requirement underscores the importance of effective communication in upholding legal standards and minimizing disputes.⁵⁴⁶

Central to the legality of a blockade is its effectiveness in practice. This criterion demands that the blockading forces maintain a presence sufficient to render entry into or exit from the blockaded area hazardous.⁵⁴⁷ Temporary absences due to operational reasons are permissible but must not compromise the overall effectiveness of the blockade.⁵⁴⁸ Moreover, impartiality in application is paramount; any form of discrimination in favor of or against specific states' vessels and aircraft undermines the blockade's legitimacy under international law.⁵⁴⁹

Blockades must respect the rights of neutral states, ensuring that access to neutral ports and coasts remains unimpeded.⁵⁵⁰ They should not inflict disproportionate harm on civilian populations compared to the military advantage gained, adhering to humanitarian principles.⁵⁵¹ Special provisions allow for the entry and exit of neutral vessels and aircraft under specified conditions, particularly for humanitarian missions and vessels in distress.⁵⁵² This framework seeks to balance military necessity with humanitarian obligations, safeguarding neutral interests amidst belligerent operations.

Breach or attempted breach of a blockade constitutes a serious breach of international law, subjecting violating vessels and aircraft to interception and

⁵⁴⁴ COMMANDER'S HANDBOOK Ch.7.7.1; WAR MANUAL Ch.13.10.

⁵⁴⁵ COMMANDER'S HANDBOOK Ch.7.7.2.1; WAR MANUAL Ch.13.10.2.1.

⁵⁴⁶ *Id.*

⁵⁴⁷ COMMANDER'S HANDBOOK Ch.7.7.2.3; WAR MANUAL Ch.13.10.2.3.

⁵⁴⁸ *Id.*

⁵⁴⁹ COMMANDER'S HANDBOOK Ch.7.7.2.4; WAR MANUAL Ch.13.10.2.4.

⁵⁵⁰ COMMANDER'S HANDBOOK Ch.7.7.2.5; WAR MANUAL Ch.13.10.2.5.

⁵⁵¹ *Id.*

⁵⁵² COMMANDER'S HANDBOOK Ch.7.7.3; WAR MANUAL Ch.13.10.3.

capture.⁵⁵³ The legality of enforcement actions hinges on the presumption of knowledge once a blockade is properly declared and notified.⁵⁵⁴ This presumption ensures accountability and compliance with legal standards governing maritime operations, reinforcing the blockade's role as a lawful instrument of naval warfare.

In sum, the Commander's Handbook and the War Manual outline a robust legal framework governing the establishment, enforcement, and limitations of blockades in armed conflicts. These guidelines underscore the delicate balance between military necessity and humanitarian considerations, aiming to mitigate the impact on neutral parties while effectively achieving strategic objectives. Understanding and adhering to these principles is crucial for ensuring the lawful conduct of blockading operations under international law.

(2) Zones

In the Commander's Handbook and the War Manual, Exclusion zones and war zones represent distinct legal constructs under international law, delineating areas where belligerent states assert control over maritime or airspace operations during armed conflicts.⁵⁵⁵ Exclusion zones and war zones serve multiple purposes, primarily aimed at controlling or excluding neutral shipping or aircraft from specific areas of military operations.⁵⁵⁶ Historically rooted in the right of belligerents to protect their forces and territory, these zones are justified as measures to safeguard military operations, reduce risks to neutral parties, and manage logistical challenges in conflict zones.⁵⁵⁷ However, based on the purpose of zones, neutrals and non-belligerent states could establish zones as well.⁵⁵⁸

The establishment of exclusion zones or war zones requires clear legal authority, often grounded in a state's sovereignty over its territorial waters or airspace, or through international authorization, such as United Nations Security Council

⁵⁵³ COMMANDER'S HANDBOOK Ch.7.7.4; WAR MANUAL Ch.13.10.4.

⁵⁵⁴ WAR MANUAL Ch.13.10.4.2.

⁵⁵⁵ COMMANDER'S HANDBOOK Ch.7.9; WAR MANUAL Ch.13.9.

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.*

⁵⁵⁸ War Manual 13.9, at 911, n.128; another notable example would be the Nyon Conference of 1937, which was convened in response to pirate submarine attacks during the Spanish Civil War, primarily targeting merchant shipping in the Mediterranean. This conference resulted in the establishment of fixed maritime routes patrolled by international naval forces to protect neutral shipping and deter further attacks. See Peter Gretton, *The Nyon Conference - The Naval Aspect*, 90 ENG. HISTORICAL REV. 103, 103-12 (1975).

resolutions.⁵⁵⁹ Proper notification to affected parties, including neutral states and civilian authorities, is customary to ensure awareness and compliance, mitigating the potential for accidental violations and enhancing operational transparency.⁵⁶⁰

Unlike blockades, exclusion zones and war zones impose restrictions primarily on neutral shipping and aircraft, aiming to limit their access to areas deemed critical for military operations. However, these zones must not unduly interfere with neutral commerce or humanitarian operations, respecting the principle of proportionality between military necessity and civilian harm. Belligerents are obligated to facilitate safe passage through these zones for neutral vessels and aircraft where feasible, reinforcing adherence to international humanitarian law.

Furthermore, the War Manual made clear distinguishment between the types of zones. War, Operational, Warning, and Safety Zones are established by belligerent states during armed conflicts to warn vessels and aircraft to avoid designated areas of naval operations, aiming to mitigate the risk of inadvertent attacks on neutral entities.⁵⁶¹ These zones serve various purposes, including identifying hazardous operational areas and safeguarding critical naval positions within what is often termed a “defensive bubble.”⁵⁶² Despite their establishment, these zones do not absolve the declaring state from its obligations under international law, specifically the duty to refrain from targeting vessels or aircraft that do not pose a military threat, irrespective of their presence within the designated zone.⁵⁶³ However, unauthorized entry into these zones may be considered when assessing whether such vessels or aircraft are legitimate military objectives.⁵⁶⁴

On the other hand, Exclusion zones represent a more stringent measure, prohibiting entry without explicit authorization from the belligerent state.⁵⁶⁵ While these zones may suspend innocent passage through non-neutral waters, their scope and duration must be justified by military necessity and should not unduly burden neutral commerce or navigation.⁵⁶⁶ Belligerents are obliged to ensure safe passage for neutral vessels and aircraft where the zone restricts access to neutral ports or affects

⁵⁵⁹ COMMANDER’S HANDBOOK Ch.7.9; WAR MANUAL Ch.13.9.1.

⁵⁶⁰ *Id.*

⁵⁶¹ WAR MANUAL Ch.13.9.2.

⁵⁶² *Id.*; at 912, n.135.

⁵⁶³ WAR MANUAL Ch.13.9.2.

⁵⁶⁴ *Id.*

⁵⁶⁵ WAR MANUAL Ch.13.9.4.

⁵⁶⁶ *Id.*

normal navigation routes, thereby maintaining a balance between military imperatives and compliance with international legal norms.⁵⁶⁷

Additionally, zones may be employed to assist in the belligerent's strategy to disrupt enemy logistics, such as by interdicting contraband.⁵⁶⁸ For instance, they may warn neutral vessels and aircraft that they will be subject to visit and search if they attempt unauthorized entry.⁵⁶⁹ However, these zones must not be used to starve civilian populations or impose unreasonable burdens on neutral commerce in free goods, ensuring adherence to humanitarian principles and international legal standards.⁵⁷⁰

Lastly, belligerent states establishing exclusion zones or war zones must adhere to stringent legal constraints, ensuring that these measures do not amount to indiscriminate attacks on neutral parties or unlawful interference with international navigation rights.⁵⁷¹ Compliance with these legal standards is crucial to avoid violations of international law, which could result in diplomatic consequences or legal accountability for belligerent states.⁵⁷²

5. Conclusion —

In conclusion, the positions of various states on blockades, as articulated in their respective manuals, generally align with the fundamental principles established by international frameworks. However, there are minor variations in the interpretation of effectiveness and the permissible scope of weapons used to enforce a blockade. Notably, the concept of humanitarian considerations is widely accepted among nations.

Regarding zones, while most rules remain consistent with the San Remo Manual, the German Manual introduces a distinction between static and movable zones. Meanwhile, the U.S. War Manual differentiates between zones established for various purposes, reflecting the need for operational flexibility in naval operations. This review of the naval guidelines of major maritime powers exemplifies how

⁵⁶⁷ *Id.*

⁵⁶⁸ WAR MANUAL Ch.13.9.3.

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.*

⁵⁷¹ WAR MANUAL Ch.13.9.2, 13.9.4.

⁵⁷² COMMANDER'S HANDBOOK Ch.7.9.

international standards can be slightly modified to meet the specific needs of individual nations. This underscores the importance of a comprehensive analysis to fully understand the legal rules governing blockades and zones.



C. Case Studies

After the publication of the San Remo Manual, only few instances of blockade have occurred, namely, the Blockade of Yemen and the Blockade of Gaza. These instances of blockade are not only a critical case study for the analysis of the rules of law of blockade, but also a significant humanitarian and political issue.⁵⁷³ These blockades have drawn extensive international attention and condemnation, primarily due to its severe impact on the human rights of civilians, leading to widespread famine, disease, and displacement.

From a legal perspective, these blockades raise crucial questions about the applicability of blockade rules in the context of a civil war.⁵⁷⁴ Traditionally, the laws of naval blockade have been applied in the context of international armed conflicts between states. However, the situation in Gaza and Yemen, characterized by non-international armed conflicts with significant external intervention, challenges this traditional framework. In the case of Yemeni Blockade, the coalition's enforcement of the blockade against the Houthi rebels, who are non-state actors,⁵⁷⁵ necessitates a re-examination of whether and how the established rules of blockade apply in such scenarios.

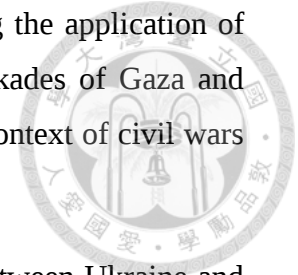
Moreover, these blockades highlight the inherent tension between military objectives and humanitarian considerations. Although the parties enforcing the blockades often justify their actions on the grounds of military necessity, the ensuing humanitarian crisis has prompted calls for a reassessment of the balance between

⁵⁷³ Martin D. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 65(2) NETH. INT'L L. REV. 291, 291-307 (2017); see also Ilana Feldman et al., *Governing Gaza After the War: The International Perspectives*, CARNEGIE ENDOWMENT (Feb. 26, 2024), <https://carnegieendowment.org/posts/2024/02/governing-gaza-after-the-war-the-international-perspectives?lang=en>.

⁵⁷⁴ See *infra* discussion on the application of the law of blockade in civil war.

⁵⁷⁵ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

these competing interests.⁵⁷⁶ This paper will proceed by analyzing the application of blockade regulations through an in-depth case study of the blockades of Gaza and Yemen, in hope of clarifying the application of these rules in the context of civil wars and to emphasize the humanitarian impact of blockades.



Furthermore, this paper will examine the recent conflict between Ukraine and Russia by conducting a succinct review of the blockading measures implemented in the Black Sea and the Black Sea Grain Initiative. This analysis seeks to elucidate the potential international legal responses to blockading measures that have significant global implications.

1. The Blockade of Yemen, since 2015 —

(1) Historical Conflict of Yemen and Military Actions

The blockade of Yemen, enforced by a Saudi-led coalition, is deeply rooted in the geopolitical dynamics and internal conflicts of the region. From the 1990s, Yemen faced political instability and conflict, which intensified with the Arab Spring in 2011, leading to the ousting of President Ali Abdullah Saleh.⁵⁷⁷ By September 2014, the Houthis had taken control of the Yemeni capital, Sana'a, and in early 2015, they advanced further south, prompting President Hadi to flee to Saudi Arabia.⁵⁷⁸ The Yemeni government, facing the Houthi insurgency, requested military assistance to restore its authority, prompting the coalition's intervention.⁵⁷⁹ The Saudi-led coalition launched its military intervention in March 2015, initiating the blockade to prevent the Houthis from receiving arms.⁵⁸⁰ In April 2015, the Yemeni government declared its territorial waters closed to commercial and humanitarian shipping, allowing entry only with prior government authorization.⁵⁸¹ Consequently, the blockade quickly led

⁵⁷⁶ See generally Taylor B. Seybolt, *Controversies about Humanitarian Military Intervention*, in HUMANITARIAN MILITARY INTERVENTION: THE CONDITIONS FOR SUCCESS AND FAILURE 1 (2008).

⁵⁷⁷ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

⁵⁷⁸ *Id.*

⁵⁷⁹ Martin D. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 65(2) NETH. INT'L L. REV. 291, 292 (2017).

⁵⁸⁰ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

⁵⁸¹ Martin D. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 65(2) NETH. INT'L L. REV. 291, 292-93 (2017).

to significant delays and uncertainties regarding the entry of essential goods, worsening the humanitarian situation.⁵⁸²

From the outset, these naval operations were designed to prevent the influx of weapons intended for the Houthis, seen as a direct threat to the Yemeni government and its allies.⁵⁸³ Publicly, these measures were termed a ‘naval blockade’ to cut off arms and other contraband items, including fuel, that could strengthen the Houthi forces.⁵⁸⁴ However, this blockade has exacerbated the humanitarian crisis in Yemen, severely impacting the civilian population.⁵⁸⁵ In regard of this issue, the United Nations Verification and Inspection Mechanism for Yemen (UNVIM) was established in May 2016, which aimed to facilitate the unimpeded flow of commercial goods while ensuring compliance with the arms embargo.⁵⁸⁶ UNVIM provided a framework for fast and impartial clearance services for vessels bound for Yemeni ports, theoretically balancing the need for security with humanitarian considerations.⁵⁸⁷

By 2017, the humanitarian crisis had reached catastrophic levels, with widespread famine, disease outbreaks, and massive displacement of civilians.⁵⁸⁸ The blockade’s impact on humanitarian aid is particularly severe. According to Vadapalli, the coalition has repeatedly obstructed humanitarian aid to Yemen, exacerbating the crisis.⁵⁸⁹ The blockade has prevented aid agencies from delivering crucial food and medical aid, significantly worsening the humanitarian situation.⁵⁹⁰ This obstruction of aid, combined with frequent airstrikes targeting civilians and infrastructure, underscores the coalition’s disregard for international humanitarian law.⁵⁹¹

Starvation has become one of the most pressing issues caused by the blockade. The Saudi-led coalition’s blockade has starved Yemen of food and medicine, putting

⁵⁸² *Id.*

⁵⁸³ *Id.* at 292.

⁵⁸⁴ *Id.*; however, though, this operation was called an “Armes Embargo” by the UNSC, giving it a different nature under international law, see S.C. Res. 2216 (Apr. 14, 2015).

⁵⁸⁵ Martin D. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, 65(2) NETH. INT’L L. REV. 291, 292 (2017).

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

⁵⁸⁹ Amulya Vadapalli, *Justice Without Power: Yemen and the Global Legal System*, 121(5) U. MICH. L. SCH. 811, 812-821 (2023).

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.*

the country on the brink of famine. According to the United Nations, Yemen imports more than 85 percent of its food and medicine, but the blockade has drastically reduced these imports,⁵⁹² and such reduction in commercial shipments has led to widespread food shortages and malnutrition, with seven million people relying entirely on aid for food.⁵⁹³

In addition to the immediate impact of starvation, the blockade has led to long-term health consequences. Malnutrition has become rampant, particularly among children, with half a million children under the age of five being severely malnourished.⁵⁹⁴ The cholera outbreak, which has infected over 771,000 people, has also been exacerbated by the blockade's restriction on medical supplies and clean water.⁵⁹⁵

In 2018, efforts to bring the conflict to a resolution saw some progress, particularly with the Stockholm Agreement in December, which aimed to cease hostilities in key areas like Hodeida and Taiz and facilitate the delivery of humanitarian aid.⁵⁹⁶ However, the agreement's implementation faced significant challenges, with continued fighting and blockades undermining efforts to stabilize the region and provide relief to the suffering population. In 2019, the conflict showed no signs of abating, and the blockade remained firmly in place, contributing to the ongoing humanitarian catastrophe.

The situation persisted into 2020 and beyond, with the COVID-19 pandemic adding another layer of complexity to the crisis. The pandemic strained Yemen's already fragile healthcare system, which was further debilitated by the blockade and the ongoing conflict. Efforts to address the pandemic were severely hampered by the lack of medical supplies and the continued obstruction of humanitarian aid.⁵⁹⁷

⁵⁹² Selam Gebrekidan & Jonathan Saul, *In Blocking Arms to Yemen, Saudi Arabia Squeezes a Starving Population*, REUTERS (Oct. 11, 2017), <https://www.reuters.com/investigates/special-report/yemen-saudi-blockade/>.

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.*

⁵⁹⁶ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

⁵⁹⁷ *Id.*

In 2021, the conflict intensified in Marib, the last northern stronghold of the Yemeni government, resulting in significant casualties and displacement.⁵⁹⁸ As of 2022 and 2023, the blockade remains in effect, with no immediate resolution in sight. The ongoing conflict has led to one of the world's worst humanitarian crises, with millions of people in dire need of assistance. Despite some diplomatic efforts and peace initiatives, the blockade and the conflict's intensity have prevented significant progress toward a sustainable resolution. To date, the situation remains grim. The blockade continues to exacerbate the humanitarian crisis, with the Yemeni population facing unprecedented levels of hunger and disease. Recent reports indicate that the blockade has prevented not only food and medical supplies but also fuel and other essential goods from reaching the population, further straining the already overburdened humanitarian aid system.⁵⁹⁹

(2) Application of Law – IAC or NIAC

The nature of the conflict in Yemen is inherently complex, as it contains both Non-International Armed Conflict (hereinafter NIAC) and International Armed Conflict (hereinafter IAC) elements.⁶⁰⁰ Traditionally, the determination of whether a conflict is an NIAC or IAC significantly impacts the applicable laws, particularly in the realms of International Humanitarian Law (IHL) and the Law of Naval Warfare.⁶⁰¹ However, the legal framework governing armed conflicts now allows for the core provisions of humanitarian protection to be extended to both types of conflicts, as Article 2 of the First Geneva Convention and Common Article 3 of the Geneva Conventions emphasize the broad applicability of fundamental humanitarian principles to ensure humanitarian protection regardless of the conflict's classification.⁶⁰²

The San Remo Manual, recognized as an authoritative guide on the rules of blockade, does not take a definitive stance on whether these rules apply exclusively to

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ Phillip J. Drew, *Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports*, ANU COLL. L. RSCH. PAPER No. 18.18, at 4 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266213.

⁶⁰¹ *Id.* at 4-5.

⁶⁰² PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 111-12 (Paola Gaeta & Salvatore Zappala eds., 2017).

international conflicts.⁶⁰³ Nonetheless, the prevailing opinion among scholars is that the rules of blockade traditionally apply only to International Armed Conflicts.⁶⁰⁴ Nevertheless, historical precedents, such as the American Civil War and the Spanish Civil War, illustrate the doctrine of recognition of belligerency.⁶⁰⁵ This doctrine suggests that even without clear statehood, a party to a conflict can attain belligerent status through recognition, thereby making the rules of international conflict applicable.⁶⁰⁶

In modern practice, scholars have advanced the argument that recognition of belligerency is not merely a political discretion but an obligation imposed by the situation's factual circumstances, as asserted by Lauterpacht, "the essence of [recognition of belligerence] is that recognition is not in the nature of a grant of a favour or a manner of unfettered political discretion, but a duty imposed by the facts of the situation."⁶⁰⁷ This shift in perspective underscores the importance of having rules to govern blockades, and emphasizes on the importance of balancing the freedom of navigation with *jus ad bellum* principles. Therefore, the critical issue in such scenarios is whether the blockading country can justify interception measures that impact maritime traffic.⁶⁰⁸

Based upon the previous findings, the application of blockade law should not depend solely on the conflict's international component, but rather on its extent of effect on maritime traffic.⁶⁰⁹ As suggested by Guilfoyle: "[o]n the basis of relevant state practice one can at most hazard a suggestion that irrespective of the precise classification of a conflict, states are likely to tolerate the assertion of a blockade only in cases of higher-intensity conflicts on a par with the traditional understanding of

⁶⁰³ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO: GUOQU FAZHAN YU DANGDAI FALU YIYI 129 (海上武装衝突法之海上封锁：過去發展與當代法律意義) [MARITIME BLOCKADE IN THE LAW OF ARMED CONFLICT: PAST DEVELOPMENTS AND CONTEMPORARY LEGAL SIGNIFICANCE] (2020).

⁶⁰⁴ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 115 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁶⁰⁵ Quincy Wright, *International Law and the American Civil War*, 61 PROCEEDINGS AM. SOC'Y INT'L L. ANN. MEETING 50, 52-53 (1967); see also generally Vernon A. O'Rourke, *Recognition of Belligerency and the Spanish War*, 31(3) AM. J. INT'L L. 398 (1937).

⁶⁰⁶ *Id.*

⁶⁰⁷ SIR HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 175 (1948).

⁶⁰⁸ PHILLIP DREW, THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE 116 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁶⁰⁹ *Id.* at 116-17.

war.”⁶¹⁰ Thus, even in NIACs, if the conflict scale surpasses the threshold of IAC, the rules of blockade could be appropriately applied. This approach ensures that the fundamental reasons for implementing blockade regulations—namely balancing military necessity with humanitarian considerations—are upheld regardless of the conflict’s classification.

In conclusion, while the traditional view limits the application of blockade rules to international conflicts, evolving interpretations and practical necessities suggest a broader applicability. Through the doctrine of recognition of belligerency and considering the impact of maritime interception measures, it is both feasible and necessary to apply the rules of blockade to NIACs, provided the conflict significantly affects maritime navigation. This approach aligns with contemporary humanitarian principles and ensures the effective regulation of blockades in complex conflict scenarios.

(3) Alignment with the Principles of Blockade

Traditionally, blockades must meet criteria such as proper establishment, effectiveness, declaration, notification, respect for neutral rights, and impartiality. Evaluating the Yemeni blockade against these principles reveals significant deviations, suggesting it may not align with traditional blockade norms.⁶¹¹

Firstly, a blockade must be declared and established by a recognized authority, usually a belligerent state, or through the United Nations Security Council (UNSC) acting under Article 42 of the UN Charter. The declaration should specify the blockade’s start date, geographical limits, and the period for neutral vessels to exit the area. Although on April 10, 2015, Yemen’s Foreign Minister, Riyadh Yassin, declared a maritime interdiction, but did not label it a blockade or provide the necessary declarative details such as exit periods for neutral vessels, thus failing the criteria for a lawful blockade declaration.⁶¹²

⁶¹⁰ Douglas Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 81(1) BRIT. Y.B. INT’L L. 171, 194 (2011).

⁶¹¹ Phillip J. Drew, *Blockade? A Legal Assessment of the Maritime Interdiction of Yemen’s Ports*, ANU COLL. L. RSCH. PAPER No. 18.18, at 9 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266213.

⁶¹² *Id.* at 10.

Effective enforcement is crucial for a blockade's legality, requiring a force capable of preventing ingress and egress to the blockaded area. The Saudi-led coalition has enforced port closures and maritime inspections, but these measures have been inconsistent. Commercial vessels have occasionally been permitted to enter Yemeni ports, undermining the impartial application required for a blockade.⁶¹³ These actions indicate that the interdiction lacks the uniform enforcement necessary for a lawful blockade.

Proper notification involves informing neutral states and publishing notices to mariners, including radio broadcasts and internet notices. The coalition's inconsistent communication and lack of systematic notifications further weaken the blockade's legality under international norms.⁶¹⁴ Moreover, traditional blockades must respect neutral rights by allowing neutral vessels free passage, provided they do not breach the blockade. The coalition's indiscriminate restrictions on all maritime traffic, regardless of their destination, fail to respect neutral rights, further invalidating the blockade's legal standing.⁶¹⁵

Additionally, UNSC Resolution 2216, adopted on April 14, 2015, imposed an arms embargo on Yemen but did not authorize broader interdictions impacting humanitarian aid.⁶¹⁶ The coalition's actions have significantly hindered humanitarian access, exacerbating Yemen's humanitarian crisis. The deliberate prevention of essential goods, including food and medicine, violates international humanitarian law principles prohibiting starvation as a method of warfare and mandates unimpeded humanitarian access.⁶¹⁷

In conclusion, the Saudi-led coalition's maritime interdiction in Yemen fails to meet the established legal criteria for a blockade. The absence of a proper declaration, inconsistent enforcement, failure to respect neutral rights, and significant

⁶¹³ *Id.* at 11.

⁶¹⁴ *Id.* at 10.

⁶¹⁵ *Id.* at 11.

⁶¹⁶ S.C. Res. 2216 ¶¶ 14-19 (Apr. 14, 2015).

⁶¹⁷ Phillip J. Drew, *Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports*, ANU COLL. L. RSCH. PAPER No. 18.18, at 14 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266213.

humanitarian impact underscore the operation's divergence from the principles of blockade.⁶¹⁸



(4) International Response

The United Nations Security Council (UNSC) has been actively engaged in addressing the conflict in Yemen through a series of resolutions. Resolution 2201 underscored the need for a political solution, deploring the actions of the Houthis and emphasizing the importance of humanitarian assistance. The resolution called for comprehensive, independent, and impartial investigations into alleged human rights violations to ensure accountability.⁶¹⁹ Subsequently, Resolution 2216 imposed an arms embargo on the Houthis and their supporters, demanding their withdrawal from government institutions and the cessation of hostilities. This resolution highlighted the necessity of safeguarding civilians and facilitating the delivery of humanitarian aid, reiterating the commitment to Yemen's sovereignty and territorial integrity.⁶²⁰

Despite these resolutions, the situation on the ground has continued to deteriorate.⁶²¹ The blockade, intended to prevent the smuggling of arms, has instead significantly hampered the entry of food, fuel, and medical supplies, contributing to widespread famine and disease.⁶²² The UNSC's resolutions have emphasized compliance with international humanitarian law, yet the implementation and enforcement mechanisms remain inadequate.⁶²³

Moreover, the European Parliament has been vocal in its opposition to the blockade. In its resolution of July 2015, the Parliament condemned the actions of both the Houthis and the Saudi-led coalition, explicitly criticizing the naval blockade for its drastic humanitarian consequences.⁶²⁴ The resolution called for an immediate

⁶¹⁸ *Id.* at 16.

⁶¹⁹ S.C. Res. 2201 at 2 (Feb. 15, 2015).

⁶²⁰ *Id.* at 1-3.

⁶²¹ Marcus Montgomery, *A Timeline of the Yemen Crisis, from the 1990s to the Present*, ARAB CEN. WASH. D.C. (Feb. 19, 2021), <https://arabcenterdc.org/resource/a-timeline-of-the-yemen-crisis-from-the-1990s-to-the-present/>.

⁶²² *Id.*

⁶²³ Phillip J. Drew, *Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports*, ANU COLL. L. RSCH. PAPER No. 18.18, at 10 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266213.

⁶²⁴ 2015 O.J. (C265) 93, ¶ 3.

cessation of hostilities and stressed the importance of dialogue and consultation among Yemeni parties to resolve their differences.⁶²⁵

Countries like the United States and the United Kingdom have played complex roles.⁶²⁶ While supporting the coalition's objectives, these countries have faced criticism for their continued arms sales to Saudi Arabia, which arguably contribute to the perpetuation of the conflict and blockade. This dual approach has been seen as contradictory, as these nations simultaneously call for humanitarian access while supplying arms that enable the blockade.⁶²⁷

On the other hand, countries such as Pakistan have opted for a position of neutrality.⁶²⁸ Pakistan's Parliament declared that it would maintain neutrality in the Yemen conflict to facilitate a proactive diplomatic role in ending the crisis.⁶²⁹ Although the declaration may have triggered the recognition of belligerency in viewed of scholars,⁶³⁰ this stance reflects a cautious approach aimed at balancing regional relations and international diplomatic efforts.⁶³¹

Overall, the international community's response to the blockade of Yemen has been marked by strong rhetoric but limited effective action. While the United Nations and the European Parliament have issued numerous resolutions and statements condemning the blockade and calling for humanitarian assistance, the enforcement of these measures has been weak. The continued support for the coalition by key Western countries through arms sales further complicates the situation and undermines efforts to alleviate the humanitarian crisis. Despite the legal and moral obligations to protect civilians and ensure humanitarian access, the international community has not done enough to address the suffering in Yemen or to hold those responsible for the blockade accountable.

⁶²⁵ *Id.* ¶ 4.

⁶²⁶ Amulya Vadapalli, *Justice Without Power: Yemen and the Global Legal System*, 121(5) U. MICH. L. SCH. 811, 815 (2023).

⁶²⁷ *Id.*

⁶²⁸ Phillip J. Drew, *Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports*, ANU COLL. L. RSCH. PAPER No. 18.18, at 6 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266213.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*

2. The Blockade of Gaza, since 2007 —

(1) Background

The aggression in Gaza is deeply rooted in the historical and geopolitical landscape of the Israeli-Palestinian conflict, marked by a series of critical events and military actions that have shaped the region over several decades.

The timeline begins with the 1948 Arab-Israeli War, which resulted in Gaza coming under Egyptian administration. This situation persisted until the Six-Day War in 1967, when Israel occupied Gaza along with the West Bank and East Jerusalem.⁶³² The occupation of Gaza by Israel was internationally recognized, with various UN resolutions and international bodies acknowledging the territory as occupied under international law.⁶³³

A significant development occurred in 2005 when Israel implemented a unilateral disengagement plan, withdrawing its military forces and dismantling all Israeli settlements in Gaza. Despite this withdrawal, Israel maintained control over Gaza's airspace, maritime access, and most of its border crossings, effectively retaining significant influence over the territory.⁶³⁴ This move was seen as a way to reduce friction, but it did not end the occupation status under international law.⁶³⁵

The situation escalated dramatically in 2006 with the Palestinian legislative elections, which resulted in a victory for Hamas, an Islamist militant organization. This victory led to increased tensions between Hamas and Fatah, the latter controlling the Palestinian Authority.⁶³⁶ The power struggle culminated in June 2007 when Hamas forcibly took control of Gaza, effectively splitting Palestinian governance between Hamas in Gaza and the Fatah-led Palestinian Authority in the West Bank.⁶³⁷

⁶³² Noura Erakat, *It's Not Wrong, It's Illegal: Situating the Gaza Blockade between International Law and the UN Response*, 11 UCLA J. ISLAMIC & NEAR E. L. 37, 44 (2012).

⁶³³ *Id.* at 44.

⁶³⁴ *Id.* at 45.

⁶³⁵ *Id.* at 49.

⁶³⁶ *Id.* at 46.

⁶³⁷ *Id.*

Following the Hamas takeover, Israel declared Gaza a “hostile territory”⁶³⁸ and imposed a comprehensive blockade, citing security concerns and the need to prevent weapons smuggling and attacks against Israeli civilians.⁶³⁹ The blockade included severe restrictions on land, sea, and air access to Gaza, drastically limiting the movement of goods and people and leading to significant humanitarian challenges for the civilian population.⁶⁴⁰

The enforcement of the naval blockade led to another significant military incident in May 2010, known as the Gaza flotilla raid. A humanitarian flotilla, organized to break the blockade and deliver aid to Gaza, was intercepted by the Israeli Navy in international waters.⁶⁴¹ The raid resulted in the deaths of nine activists and drew widespread international condemnation, straining Israel’s diplomatic relations, particularly with Turkey, which had a prominent role in the flotilla.⁶⁴²

The legal status of Gaza is a pivotal element in understanding the blockade. Despite Israel’s unilateral disengagement in 2005, scholars argue that Gaza remains occupied territory under international law due to the extensive control Israel continues to exert over its borders, airspace, and maritime access.⁶⁴³ The definition of occupation under international law, particularly the Fourth Geneva Convention, hinges on the degree of control exercised by an external power, and in Gaza’s case, this control has been deemed sufficient to constitute occupation.⁶⁴⁴

Israel’s designation of Gaza as a “hostile territory” has further complicated its legal status. This designation has been used to justify the blockade under the principles of self-defence and the laws of naval warfare. According to Israel, the blockade is a necessary measure to prevent the flow of arms and materials that could

⁶³⁸ The term used is not a legal term in International Law; James Kraska, *Rule Selection in the Case of Israel’s Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?*, in Y.B. INT’L HUMANITARIAN LAW 367, 376 (2010).

⁶³⁹ *Id.*

⁶⁴⁰ Noura Erakat, *It’s Not Wrong, It’s Illegal: Situating the Gaza Blockade between International Law and the UN Response*, 11 UCLA J. ISLAMIC & NEAR E. L. 37, 47 (2012).

⁶⁴¹ See Human Rights Council, 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 Ships Carrying Humanitarian Assistance, U.N. Doc. A/HRC/15/21 (Oct. 6, 2010).

⁶⁴² Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT’L L. 615, 617 (2011).

⁶⁴³ Noura Erakat, *It’s Not Wrong, It’s Illegal: Situating the Gaza Blockade between International Law and the UN Response*, 11 UCLA J. ISLAMIC & NEAR E. L. 37, 49 (2012).

⁶⁴⁴ *Id.*

be used for military purposes by Hamas.⁶⁴⁵ The San Remo Manual on International Law Applicable to Armed Conflicts at Sea and other international legal instruments recognize the imposition of blockades under specific conditions during armed conflicts.⁶⁴⁶

However, the blockade has faced extensive criticism and legal challenges. Critics argue that the blockade constitutes collective punishment, which is prohibited under international humanitarian law, including the Fourth Geneva Convention.⁶⁴⁷ The blockade has had a profound humanitarian impact on Gaza's civilian population, leading to shortages of essential goods, medical supplies, and critical infrastructure.⁶⁴⁸ International bodies and human rights organizations have documented these impacts, highlighting the blockade's contribution to a humanitarian crisis in Gaza.⁶⁴⁹

Regionally, the blockade has contributed to the isolation of Gaza from the broader geopolitical developments in the Middle East. Egypt, sharing a border with Gaza, has intermittently supported the blockade, particularly during periods of heightened tension with Hamas. This cooperation between Israel and Egypt on the blockade has reinforced Gaza's isolation, limiting its economic and social interactions with the outside world.⁶⁵⁰

(2) Legality of the Blockade

The blockade of Gaza, enforced by the Israeli Sea Corps, was officially declared and maintained for security reasons. The naval blockade was initiated on January 3, 2009, and publicly announced on January 6, 2009, specifying that the Gaza maritime area is closed to all maritime traffic.⁶⁵¹ This blockade encompasses a defined zone extending 20 nautical miles from the coast of Gaza, where any unauthorized vessel is subject to interception and inspection by the Israeli Navy.⁶⁵²

⁶⁴⁵ James Kraska, *Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?*, in Y.B. INT'L HUMANITARIAN LAW 367, 376 (2010).

⁶⁴⁶ *Id.* at 79-82.

⁶⁴⁷ Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT'L L. 615, 647 (2011).

⁶⁴⁸ Noura Erakat, *It's Not Wrong, It's Illegal: Situating the Gaza Blockade between International Law and the UN Response*, 11 UCLA J. ISLAMIC & NEAR E. L. 37, 47 (2012).

⁶⁴⁹ *Id.*

⁶⁵⁰ Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT'L L. 615, 647 (2011).

⁶⁵¹ *No. 1/2009 Blockade of Gaza Strip*, ISRAELI NAVY, <https://www.gov.il/en/pages/mariners-1-2009> (last visited July 14, 2024).

⁶⁵² *Id.*

ISRAEL-PALESTINE CONFLICT

Gaza Strip - nowhere to go

Israel's land, air and sea blockade has trapped more than two million people inside the Gaza Strip since 2007. Israeli Prime Minister Benjamin Netanyahu has threatened to turn Gaza into a "deserted island" and warned its residents to "leave now".

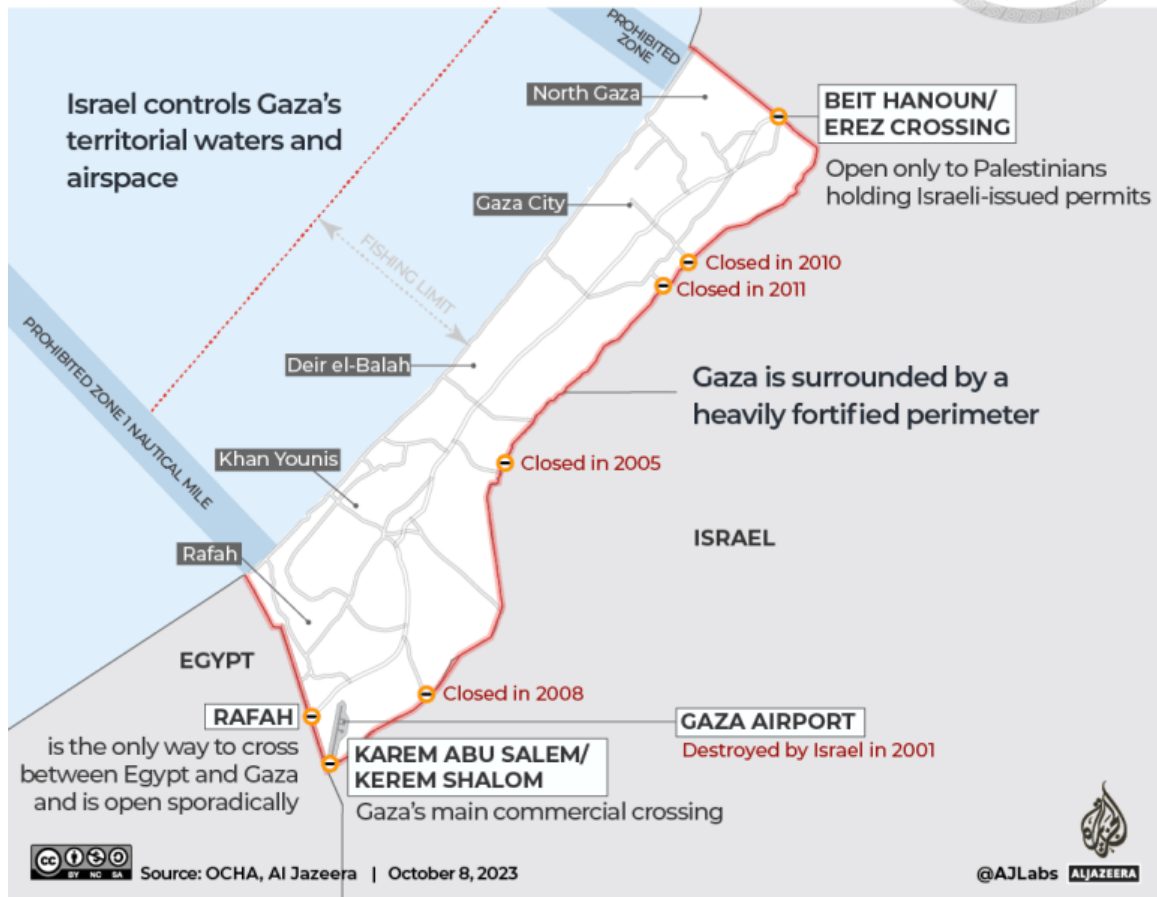


IMAGE 1: Geographical Location of the Blockade of Gaza⁶⁵³

The intricate conflict between the Israeli government and Hamas, the de facto governing authority of the Gaza Strip, has given rise to numerous legal disputes, particularly following the notorious Flotilla Raid incident. In addressing these issues, various entities, including Israel, Turkey, and the United Nations, have undertaken independent investigations, yet each investigation yielded distinct conclusions, thereby further complicating the legal landscape surrounding the conflict.

a) Israel's Position

⁶⁵³ *Gaza Strip: A Beginner's Guide to an Enclave Under Blockade*, ALJAZEERA (Mar. 14, 2021), <https://www.aljazeera.com/news/2021/3/14/a-guide-to-the-gaza-strip>.

Israel justifies the blockade by emphasizing its right to self-defence and the necessity of preventing weapons smuggling into Gaza, which it claims is controlled by Hamas. The report written by the Turkel Commission⁶⁵⁴ presents several reasons to deem the blockade of Gaza legal under international law. Firstly, the report argues that the naval blockade imposed by Israel was legal and consistent with international law, citing the San Remo Manual, especially regarding the traditional criteria such as proper establishment, declaration and notification, effectiveness, and impartiality,⁶⁵⁵ through the Commission's finding that all organs of the State of Israel made significant efforts to comply with the technical legal rules governing the imposition of a naval blockade, including consultations with military and civilian legal experts to ensure that the blockade adhered to international law.⁶⁵⁶

Secondly, the blockade was imposed for military-security reasons, specifically to prevent the smuggling of weapons, ammunition, and other military supplies to Hamas in Gaza, which is believed to effectively restrict the military capabilities of Hamas and to prevent threats to Israel's security.⁶⁵⁷ Based on the assertion, the Commission further rejects the claim that the blockade constitutes collective punishment of the civilian population in Gaza. It refers to the ICRC's Customary International Humanitarian Law Study, which states that the prohibition of starvation as a method of warfare does not automatically prohibit a naval blockade if its purpose is to achieve a military objective rather than to starve the civilian population.⁶⁵⁸

Thirdly, the report underscores the right of States to self-defence under international law, including the use of force in self-defence. It notes that the Rules of Engagement (ROE) issued for the operation primarily permitted the use of force in self-defence, aligning with international norms.⁶⁵⁹ Finally, the report addresses the practical necessity of the blockade by highlighting the threat posed by maritime smuggling of weapons and the need for Israel to take preventive measures to protect

⁶⁵⁴ THE TURKEL COMMISSION, THE PUBLIC COMMISSION TO EXAMINE THE MARITIME INCIDENT OF 31 MAY 2010 (2010).

⁶⁵⁵ *Id.* at 30.

⁶⁵⁶ *Id.* at 37.

⁶⁵⁷ *Id.* at 31.

⁶⁵⁸ *Id.* at 35.

⁶⁵⁹ *Id.* at 36.

its security, as well as drawing parallels with other historical instances where naval blockades were imposed for similar security reasons.⁶⁶⁰

b) Turkey's Position

Turkey's stance, articulated in the Turkish Report,⁶⁶¹ vehemently opposes the blockade, deeming it illegal under international law. Firstly, the report argues that the blockade does not comply with the principles of international humanitarian law provided by the San Remo Manual, specifically that blockades must not cause disproportionate damage to the civilian population compared to the anticipated military advantage.⁶⁶² According to Turkey's investigation, the blockade has inflicted severe humanitarian consequences on the civilian population in Gaza, including widespread poverty, food insecurity, and lack of essential services, which the report argues is disproportionate to any military advantage claimed by Israel.⁶⁶³ Furthermore, the San Remo Manual also noted that vessels carrying humanitarian aid are protected under international law and should not be attacked or seized. Considering the Israeli forces' actions against the Mavi Marmara and other vessels in the humanitarian convoy, the report finds that the Israeli Navy has clearly violated this principle.⁶⁶⁴

Secondly, the report asserts that the blockade was not properly declared in accordance with international law, lacking clear commencement, duration, location, and extent as required by the San Remo Manual. Despite the Israeli Navy's effort in specifying the exact location of the blockade, the open-ended nature of the blockade's declaration does not meet the legal standards.⁶⁶⁵ Thirdly, Israel's continued control over Gaza's borders, airspace, and territorial waters, as well as its ability to influence the flow of goods and people, positions it as an occupying power, thus cannot impose a blockade on the occupied territory under international law.⁶⁶⁶

⁶⁶⁰ *Id.* at 38.

⁶⁶¹ TURKISH NATIONAL COMMISSION OF INQUIRY, REPORT ON THE ISRAELI ATTACK ON THE HUMANITARIAN AID CONVOY TO GAZA ON 31 MAY 2010 [hereinafter TURKISH REPORT] (2011).

⁶⁶² *Id.* at 64.

⁶⁶³ *Id.* at 65.

⁶⁶⁴ *Id.* at 66.

⁶⁶⁵ *Id.* at 67.

⁶⁶⁶ *Id.* at 68; see also *infra* Ch.III.C.2.d for discussion on Belligerent Occupation.

Thirdly, the measures taken under the blockade are described as excessive and unreasonable, failing to balance military necessity with humanitarian considerations. The restriction of goods, including basic consumer items, has led to unnecessary suffering among the civilian population.⁶⁶⁷ Lastly, Israel's failure to recognize its conflict with Hamas as international in character prevents it from lawfully establishing a naval blockade. Any actions taken under the pretense of this unlawful blockade are deemed illegal by extension.⁶⁶⁸

c) United Nations' Position

The Palmer Report,⁶⁶⁹ commissioned by the UN, outlines the legal principles under international law that govern naval blockades, including the conditions under which such blockades can be lawfully established and enforced. The principles are mostly identical to the rules from the San Remo Manual, including notification, effectiveness, humanitarian consideration, and impartiality.⁶⁷⁰ Furthermore, the report noted the importance of the principle of proportionality, expressing that a blockade should not cause excessive damage to the civilian population in relation to the concrete and direct military advantage anticipated.⁶⁷¹ Also, subject to certain conditions, the blockading party must provide for the free passage of humanitarian aid, including foodstuffs and medical supplies, if the civilian population is inadequately supplied.⁶⁷²

Moreover, the report examines the specific context of the Gaza blockade, considering the security threats posed by Hamas and the military necessity claimed by Israel to acknowledge Israel's right to self-defence and to take measures to prevent weapons from reaching Gaza by sea.⁶⁷³ Additionally, the report assesses whether Israel's actions in enforcing the blockade, particularly the interception of the Mavi Marmara, were in line with international law. It considers whether the use of force

⁶⁶⁷ TURKISH REPORT at 70.

⁶⁶⁸ *Id.* at 71.

⁶⁶⁹ SIR GEOFFREY PALMER ET AL., REPORT OF THE SECRETARY-GENERAL'S PANEL OF INQUIRY ON THE 31 MAY 2010 FLOTILLA INCIDENT (2011).

⁶⁷⁰ *Id.* at 105.

⁶⁷¹ *Id.* at 106.

⁶⁷² *Id.*

⁶⁷³ *Id.* at 107.

was necessary and proportional, given the violent resistance encountered by Israeli forces during the boarding of the vessel.⁶⁷⁴

Ultimately, the Palmer Report concludes that the naval blockade imposed by Israel was legal and complied with the requirements of international law, as it was deemed a legitimate security measure to prevent weapons from entering Gaza by sea, and the blockade's implementation was in accordance with the rules governing naval blockades.⁶⁷⁵

d) Scholarly Debate

Reflecting upon the divergent views provided by the three reports, the legality of the Gaza blockade is highly debated among scholars. Some scholars support Israel's justification for the blockade by emphasizing the state's right to self-defence against continuous rocket attacks from Gaza.⁶⁷⁶ These scholars argue that the blockade is a lawful security measure under the laws of naval warfare, particularly given the context of an ongoing armed conflict with Hamas. They assert that the blockade complies with the principles of necessity and proportionality, aiming to prevent the smuggling of weapons that could be used against Israeli civilians. Supporters highlight that the blockade has been effective in reducing the flow of arms to Hamas, thereby protecting Israeli lives and maintaining national security.⁶⁷⁷

Conversely, other legal scholars and international bodies criticize the blockade as unlawful, arguing that it constitutes collective punishment and disproportionately impacts Gaza's civilian population.⁶⁷⁸ Critics highlight that the blockade's severe humanitarian impact violates international humanitarian law principles, particularly the prohibition against collective punishment and the requirement to distinguish between combatants and civilians.⁶⁷⁹ They argue that the blockade does not adequately balance military necessity with humanitarian considerations, causing excessive harm to civilians in Gaza. This perspective is supported by reports from

⁶⁷⁴ *Id.* at 108.

⁶⁷⁵ *Id.* at 109.

⁶⁷⁶ Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT'L L. 615, 619 (2011).

⁶⁷⁷ *Id.* at 620.

⁶⁷⁸ Russell Buchan, *The Palmer Report and the Legality of Israel's Naval Blockade of Gaza*, 61(1) INT'L & COMPAR. L. Q. 264, 269 (2012).

⁶⁷⁹ *Id.*

various human rights organizations that document the dire humanitarian conditions in Gaza, including shortages of food, medical supplies, and other essential goods.⁶⁸⁰

Another core aspect of the debate is whether Israel is still considered an occupying power in Gaza. The supporters of Israel argue that Israel's withdrawal from Gaza in 2005 ended its occupation, thus justifying the blockade under the law of armed conflict.⁶⁸¹ However, other scholars maintain that Israel's control over Gaza's borders, airspace, and maritime access constitutes continued occupation, rendering the blockade illegal.⁶⁸² They argue that the continued control over these aspects means that Israel still holds significant influence over Gaza, thereby meeting the criteria for occupation under international law. This ongoing control, according to critics, imposes responsibilities on Israel under the Fourth Geneva Convention to ensure the welfare of Gaza's civilian population.⁶⁸³

From various perspectives, the blockade of Gaza can generally be considered to meet the traditional criteria of a blockade. The primary legal contention surrounding the Gaza blockade, however, centers on its classification as either a NIAC or an IAC, the principles of necessity and proportionality, and the significant humanitarian concerns it raises. As illustrated in the context of the Yemeni blockade, Israel would likely not encounter substantial obstacles in applying the rules of IAC, particularly through the recognition of belligerency. Israel's actions in establishing and maintaining the blockade appear to align closely with the technical procedures required under international law, indicating its intent to address the Hamas authority under the framework of IAC.

Nevertheless, Israel must consider that once Hamas is granted belligerent status, it may be recognized as an armed force under international law. Consequently, Hamas fighters, if captured, would have to be treated as prisoners of war and afforded the corresponding rights. Lastly, regarding the interplay between necessity, proportionality, and humanitarian considerations, the majority of legal opinions do not deny Israel's right to self-defence. However, they strongly emphasize the need for

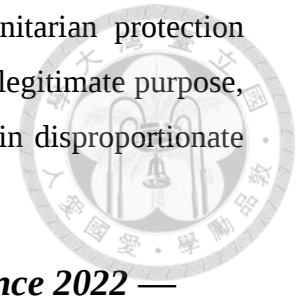
⁶⁸⁰ Russell Buchan, *The Palmer Report and the Legality of Israel's Naval Blockade of Gaza*, 61(1) INT'L & COMPAR. L. Q. 264, 270-72 (2012).

⁶⁸¹ Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT'L L. 615, 657 (2011).

⁶⁸² TURKISH REPORT at 81.

⁶⁸³ *Id.*; see also Daniel Benoliel, *Israel, Turkey, and the Gaza Blockade*, 33(2) U. PA. J. INT'L L. 615, 657 (2011).

humanitarian protection for civilians. This reinforces the humanitarian protection clauses of the San Remo Manual, which stipulate that even with a legitimate purpose, the establishment and maintenance of a blockade must not result in disproportionate harm to civilians relative to the military objective.



3. *The Blockade of Ukrainian Ports in the Black Sea, since 2022* —

(1) Background

The escalation of the Russia-Ukraine conflict in February 2022, marked by a full-scale invasion by Russian forces, has precipitated severe humanitarian and economic crises both regionally and globally.⁶⁸⁴ The invasion resulted in widespread military operations, devastating urban warfare, and the significant displacement of civilians, drawing international condemnation and concern.⁶⁸⁵ Amid this invasion, the Russian Navy instituted a blockade of key Ukrainian ports along the Black Sea, significantly hampering Ukraine's ability to engage in international trade.⁶⁸⁶

The blockade had a profound impact on the global food supply chain, given Ukraine's status as one of the world's largest exporters of grain, including wheat, corn, and barley.⁶⁸⁷ The disruption of these exports led to a sharp increase in global food prices and heightened food insecurity, particularly in regions heavily reliant on Ukrainian grain imports, such as parts of Africa, the Middle East, and Asia.⁶⁸⁸

In response to the escalating global food crisis, the United Nations and Turkey brokered the Black Sea Grain Initiative in July 2022.⁶⁸⁹ This agreement was designed to ensure the safe export of Ukrainian agricultural products via designated maritime

⁶⁸⁴ *Russia: Two Years After the Full-Scale Invasion and War of Aggression against Ukraine, EU Adopts 13th Package of Individual and Economic Sanctions*, EUR. COUNCIL (Feb. 23, 2024), <https://www.consilium.europa.eu/en/press/press-releases/2024/02/23/russia-two-years-after-the-full-scale-invasion-and-war-of-aggression-against-ukraine-eu-adopts-13th-package-of-individual-and-economic-sanctions/>.

⁶⁸⁵ *Id.*

⁶⁸⁶ Sam LaGrone, *Russia Lays Mines in Black Sea to Block Ukrainian Ports, NSC Says*, U.S. NAVAL INST. NEWS (July 19, 2023), <https://news.usni.org/2023/07/19/russia-says-all-ships-in-the-black-sea-heading-to-ukraine-are-potential-carriers-of-military-cargo>; see also Communication from the Government of the Russian Federation, May 30, 2022, IMO Circular Letter No. 4577.

⁶⁸⁷ *Ukraine Agricultural Production and Trade*, U.S. DEP. AGR. (Apr. 2022), <https://fas.usda.gov/sites/default/files/2022-04/Ukraine-Factsheet-April2022.pdf>.

⁶⁸⁸ *Black Sea Grain Initiative Offers Hope, Shows Power of Trade*, UNCTAD (Oct. 20, 2022), <https://unctad.org/news/black-sea-grain-initiative-offers-hope-shows-power-trade>.

⁶⁸⁹ *One Year of the Black Sea Initiative: Key Facts and Figures*, U.N. (July 10, 2023), <https://news.un.org/en/story/2023/07/1138532>.

corridors.⁶⁹⁰ As part of the initiative, a Joint Coordination Centre was established in Istanbul, featuring representatives from Ukraine, Russia, Turkey, and the United Nations.⁶⁹¹ This centre is responsible for inspecting and ensuring the secure passage of ships, preventing the smuggling of unauthorized goods while facilitating the transport of grain and other foodstuffs. Furthermore, a separate agreement was signed between Russia and the U.N.,⁶⁹² which provided assurances to Russia that its exports of food and fertilizers would not be obstructed, acknowledging Russia's pivotal role as a major exporter of these commodities.⁶⁹³

The initiative initially saw success, with around 33 million metric tonnes of grain being exported from Ukraine's ports in the first year.⁶⁹⁴ However, its effectiveness declined as Russia began to slow down inspections. In October 2022, ten ship inspections were completed daily, facilitating the export of 4.2 million metric tonnes of grain that month.⁶⁹⁵ By November, the number of daily inspections dropped to seven, and by May, it had further reduced to just two inspections per day, resulting in the export of only 1.3 million metric tonnes of grain, despite the UN's capacity to inspect up to 40 ships daily.⁶⁹⁶

Despite multiple extensions to the agreement, Russia withdrew from the initiative on July 17, 2023.⁶⁹⁷ Russia claimed that Western sanctions on its banking system imposed damaging "hidden" restrictions on its food and fertilizer exports, which were supposed to be exempt.⁶⁹⁸ Additionally, Russia repeatedly linked the renewal of the Black Sea Grain Initiative to the reopening of the Tolyatti pipeline,

⁶⁹⁰ *Id.*

⁶⁹¹ Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports, Rus.-Turk.-Ukr.-U.N., July 22, 2022, https://www.un.org/sites/un2.un.org/files/black_sea_grain_initiative_full_text.pdf.

⁶⁹² Memorandum of Understanding between the Russian Federation and the Secretariat of the United Nations on Promoting Russian food Products and Fertilizers to the World Markets, Rus.-U.N., July 22, 2022, https://news.un.org/pages/wp-content/uploads/2022/09/MOU_21_July_UN-Secretariat86.pdf.

⁶⁹³ *Id.*

⁶⁹⁴ Patrick Wintour, *What was the Black Sea Grain Deal and Why Did it Collapse?*, THE GUARDIAN (July 20, 2023), <https://www.theguardian.com/world/2023/jul/20/what-was-the-black-sea-grain-deal-and-why-did-it-collapse>.

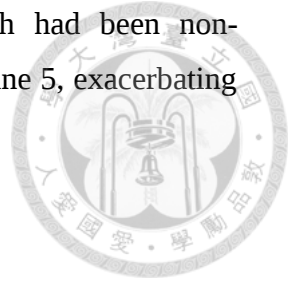
⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.*

⁶⁹⁷ *Russia's Suspension of Participation in the Black Sea Grain Initiative*, U.S. DEP. OF STATE (July 17, 2023), <https://www.state.gov/russias-suspension-of-participation-in-the-black-sea-grain-initiative/>.

⁶⁹⁸ Maytaal Angel, *Explainer: Have Western Sanctions on Russia Impacted its Fertiliser Exports?*, REUTERS (May 11, 2023), <https://www.reuters.com/world/europe/have-western-sanctions-russia-impacted-its-fertiliser-exports-2023-05-11/>.

essential for Russian ammonia exports.⁶⁹⁹ This pipeline, which had been non-operational since the start of the war, suffered further damage on June 5, exacerbating Russia's objections to the agreement.⁷⁰⁰



(2) Nature of the Blockading Measure

Applying the general principles of blockade to this case, it becomes evident that the naval operations conducted by the Russian navy did not constitute a traditional blockade.⁷⁰¹ Under international law, a blockade must be formally declared and notified to all relevant parties. In this instance, Russia neither declared nor appeared to intend to declare a formal blockade on Ukrainian ports.⁷⁰² Instead, Russia issued warnings stating that “all vessels sailing in the waters of the Black Sea to Ukrainian ports will be regarded as potential carriers of military cargo.”⁷⁰³ This approach aligns more closely with the establishment of a maritime exclusion zone rather than a conventional blockade.⁷⁰⁴

Despite the absence of a formal declaration, the effects of Russia's actions in the Black Sea cannot be overlooked. The warnings and subsequent naval activities effectively discouraged maritime traffic to and from Ukrainian ports, achieving similar outcomes to those of a blockade.⁷⁰⁵ By significantly reducing the flow of commercial vessels, Russia managed to impede Ukraine's maritime trade, thereby exerting economic pressure and contributing to the broader strategic objectives of the conflict.⁷⁰⁶

⁶⁹⁹ Joseph Glauber et al, *Russia terminates the Black Sea Grain Initiative: What's Next for Ukraine and the World?*, INT'L FOOD POL'Y RSCH. INST. (July 20, 2023), <https://www.ifpri.org/blog/russia-terminates-black-sea-grain-initiative-whats-next-ukraine-and-world/>.

⁷⁰⁰ *Id.*

⁷⁰¹ Charles P. (Chuck) Ridgway, Jr., *A Russian Lake: Has the West Ceded the Black Sea to Russia?*, CTR. FOR INT'L MARITIME SEC. (Mar. 6, 2024), <https://cimsec.org/a-russian-lake-has-the-west-ceded-the-black-sea-to-russia/>.

⁷⁰² *Id.*

⁷⁰³ *Russia Warns That Ships Heading to Ukraine are Now a Military Target*, LLOYD'S LIST (July 20, 2023), <https://www.lloydlist.com/LL1145965/Russia-warns-that-ships-heading-to-Ukraine-are-now-a-military-target>.

⁷⁰⁴ Communication from the Government of the Russian Federation, May 30, 2022, IMO Circular Letter No. 4577.

⁷⁰⁵ Charles P. (Chuck) Ridgway, Jr., *A Russian Lake: Has the West Ceded the Black Sea to Russia?*, CTR. FOR INT'L MARITIME SEC. (Mar. 6, 2024), <https://cimsec.org/a-russian-lake-has-the-west-ceded-the-black-sea-to-russia/>.

⁷⁰⁶ *NATO-Ukraine Council Addresses Serious Security Situation in the Black Sea*, NATO (July 26, 2023), https://www.nato.int/cps/en/natohq/news_217835.htm.

The de facto nature of this blockade raises complex legal questions. While the measure may not strictly adhere to the requirements for a lawful blockade under international law, its practical impact mirrors that of an actual blockade. The substantial reduction in maritime traffic and the consequent disruption of Ukraine's ability to export goods, particularly grain, indicate that Russia has effectively established a blockade in all but name.

(3) Significance of the Black Sea Deals

Applying The Black Sea Grain Initiative holds substantial significance, primarily facilitated by the United Nations' pivotal role in brokering the deal and making concessions to Russia through a separate agreement as an incentive.⁷⁰⁷ Given Ukraine's substantial production of critical crops,⁷⁰⁸ maintaining the export of these commodities played a crucial role in stabilizing global food prices.⁷⁰⁹ The initiative demonstrates the potential for international cooperation to address critical humanitarian and economic needs even amidst conflict.

Existing frameworks governing blockade regulations already provide for certain exceptions of impartiality, permitting humanitarian supplies to enter blockaded areas under specific conditions. However, the Black Sea Grain Initiative extends the importance of these exceptions. It emphasizes not only the humanitarian needs within the blockaded area but also considers the livelihoods of people worldwide, particularly in developing countries.⁷¹⁰ The initiative highlights that even in times of war, nations can collaborate to uphold order and mitigate the war's impact on a global scale.

Despite the United Nations' significant influence in mediating the agreement between Ukraine and Russia, the crux of the negotiation remained rooted in political considerations.⁷¹¹ The UN provided a platform for dialogue but lacked the authority to

⁷⁰⁷ MARIAMI KAKABADZE, THE BLACK SEA GRAIN INITIATIVE: ANALYSING THE EMERGING, IMPLEMENTATION AND CHALLENGES 11 (2023).

⁷⁰⁸ *Ukraine Agricultural Production and Trade*, U.S. DEP. AGR. (Apr. 2022), <https://fas.usda.gov/sites/default/files/2022-04/Ukraine-Factsheet-April2022.pdf>.

⁷⁰⁹ *Russia-Ukraine Black Sea grain deal: All You Need to Know*, ALJAZEERA (July 17, 2023), <https://www.aljazeera.com/news/2023/7/17/russia-ukraine-black-sea-grain-deal-all-you-need-to-know>.

⁷¹⁰ *One Year of the Black Sea Initiative: Key Facts and Figures*, U.N. (July 10, 2023), <https://news.un.org/en/story/2023/07/1138532>.

⁷¹¹ MARIAMI KAKABADZE, THE BLACK SEA GRAIN INITIATIVE: ANALYSING THE EMERGING, IMPLEMENTATION AND CHALLENGES 10 (2023).

compel Russia to accept the terms. Russia's agreement was likely influenced by the substantial pressure from global sanctions;⁷¹² without such sanctions, the deal might not have materialized.

Nevertheless, the Black Sea Grain Initiative exemplifies a viable approach to addressing global challenges amid conflict and underscores the role of international organizations in mediating between warring parties. The initiative illustrates that humanitarian and economic considerations can lead to a relaxation of the strict requirements for impartial enforcement in blockades, despite the Black Sea blockade being essentially a maritime zone.

D. Conclusion

In conclusion, this chapter has reviewed the general principles of blockade by analyzing relevant frameworks, naval manuals from various states, and critical recent case studies. By examining these frameworks in chronological order, this research has traced the gradual development of the rules governing blockades. Initially, the traditional criteria emphasized effectiveness, impartiality, due notification, and the protection of neutral rights. However, modern rules have expanded to incorporate humanitarian considerations, reflecting a more nuanced approach to blockades in contemporary conflict.

Technological advancements have significantly influenced the rules of blockade. The importance of the distance from shore in maintaining an effective blockade has diminished, as new weapons and methods have emerged to enforce blockades. This evolution underscores the adaptability of blockade regulations to the changing nature of warfare, ensuring their relevance in modern military contexts.

The case studies examined in this chapter reveal that the distinction between international armed conflicts (IAC) and non-international armed conflicts (NIAC) has become less critical in the context of blockades. Despite the evolution of blockade rules, the primary objective remains balancing the rights of belligerent parties with the risks neutral states are willing to bear to protect their economic interests. In light of

⁷¹² S&P Global Market Intelligence & S&P Global Commodity Insights, Sanctions Against Russia – A Timeline, S&P GLOB. (July 5, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/sanctions-against-russia-8211-a-timeline-69602559>.

advancements in military technology, even domestic conflicts can have global repercussions, making it imperative for the international community to expect blockading parties to adhere to established blockade rules to mitigate the impact of war.

The Black Sea Grain Initiative represents a significant step towards maintaining viable trade routes during conflict, ensuring the delivery of critical products to developing countries. This initiative broadens the scope of humanitarian considerations to a global scale, extending beyond the blockaded population. It demonstrates a novel approach to conflict resolution through mediation and highlights the potential role of international organizations in managing international conflicts. The initiative underscores the importance of balancing humanitarian needs with military objectives, showcasing a pathway to mitigating the adverse effects of war through international cooperation and diplomacy.

CHAPTER IV. LEGALITY DISCUSSION ON PAST TACTICAL MEASURES IN THE VICINITY OF TAIWAN

A. *The Nationalists' Blockade of the PRC, 1949-58*

1. Background —

In 1949, during the retreat of the Nationalist government of the Republic of China (ROC) from mainland China to Taiwan, a strategic naval blockade of the People's Republic of China (PRC) was implemented.⁷¹³ Despite the ROC's substantial naval assets primarily allocated for coastal defense of Taiwan, the blockade was executed with the assistance of guerrilla factions situated on nearby offshore islands.⁷¹⁴ Additionally, support from the United States Navy, particularly in the provision of aircraft, bolstered the blockade efforts.⁷¹⁵

Commencing with the unsuccessful Communist assault on Jinmen Island (Quemoy) in October 1949, subsequent Communist victories in capturing Nationalist bases on Hainan Island, the Zhoushan Archipelago, and Tatan Island between February and July 1950 posed challenges to the ROC's blockade efforts.⁷¹⁶ Despite territorial setbacks, the ROC maintained a strategic presence, utilizing remaining offshore bases to sustain the blockade around key ports such as Shantou, Xiamen, Fuzhou, and Wenzhou.⁷¹⁷

Notably, between 1950 and 1952, the Nationalists intercepted and inspected over 90 vessels enroute to Communist ports, with a significant portion — two-thirds — bearing British flags and registered in Hong Kong.⁷¹⁸ During the period of 1954 to 1955, Nationalist bombers targeted and either damaged or sank approximately 54 blockade runners, many of which were flying British flags.⁷¹⁹ These actions

⁷¹³ Bruce A. Elleman, *The Nationalist' Blockade of the PRC*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 131, 131-43 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷¹⁴ *Id.* at 133-34.

⁷¹⁵ *Id.* at 138.

⁷¹⁶ *Id.* at 136-38.

⁷¹⁷ See Bruce A. Elleman, *The Taiwan Strait Crises (1954-55 and 1958)*, in *THE MAKING OF THE MODERN CHINESE NAVY* 51, 51-56 (2019).

⁷¹⁸ Bruce A. Elleman, *The Nationalist' Blockade of the PRC*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 131, 142 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷¹⁹ *Id.* at 140-42.

underscored the rigorous enforcement efforts employed by the Nationalists to maintain the blockade.⁷²⁰

The economic ramifications of the blockade were profound, initially disrupting a substantial portion of China's international trade.⁷²¹ However, as the years progressed, the scope of the blockade diminished, focusing primarily on Southeast China, where it served as a deterrent against Communist aggression towards Taiwan.⁷²² Despite its initial efficacy, the Nationalist blockade encountered challenges over time. Beijing's investments in its naval capabilities gradually eroded the Nationalist navy's ability to sustain the blockade effectively.⁷²³ Additionally, Communist successes in reclaiming pivotal offshore islands and intermittent bombardments of Jinmen, the Nationalists' primary remaining blockade base, further undermined the viability of the blockade.⁷²⁴

By the mid-1950s, Taiwan came to recognize the diminishing utility of the blockade, confronted with the realities of Communist advancements and constraints on its naval capabilities. Ultimately, these developments led to a reassessment of the blockade strategy, culminating in its eventual abandonment.⁷²⁵

2. Legal Analysis —

Despite being colloquially referred to as a blockade in various sources, the operation conducted by the Nationalist government was formally declared an Enclosure of Ports.⁷²⁶ This designation stemmed from two primary considerations: firstly, the term “blockade” implies a state of belligerency toward the PRC;⁷²⁷ secondly, such a classification would invoke neutrality obligations among third-party nations, thereby impeding the Nationalists' ability to solicit external assistance,⁷²⁸ particularly from the United States upon which they heavily rely.

⁷²⁰ *Id.*

⁷²¹ *Id.* at 142.

⁷²² *Id.*

⁷²³ *Id.* at 141-42.

⁷²⁴ *Id.* at 142.

⁷²⁵ *Id.*

⁷²⁶ See generally LIN HUNG I (林宏一), FENG SUO DALU YANHAI — ZHONGHUA MINGUO ZHENGFU DE “GUANBI ZHENGCE”, 1949-1960 (封鎖大陸沿海——中華民國政府的「關閉政策」, 1949-1960) [BLOCKADING THE CHINA COAST: THE “PORT-CLOSURE POLICY” OF ROC GOVERNMENT, 1949-1960] (2009).

⁷²⁷ *Id.* at 14-15.

⁷²⁸ *Id.*

Nevertheless, an examination conducted in Chapter II reveals that the Enclosure of Ports fundamentally constitutes the exercise of inherent sovereign rights, albeit constrained by the parameters delineated in UNCLOS Articles 25 and 27, which confine such rights to the territorial sea.⁷²⁹ Assuming the unity of the “Two Chinas”, the Nationalist measures ought to have remained confined to the territorial sea along the coasts of the PRC and Taiwan. However, numerous instances occurred where ships were apprehended well beyond the territorial sea boundaries of the “Two Chinas”.⁷³⁰ Moreover, in accordance with the precedent set forth in the case of *Oriental Navigation Company*,⁷³¹ a state government may not declare an enclosure of ports in areas controlled by insurgents unless an effective blockade is established.⁷³²

Despite possessing a superior naval fleet, the Nationalists failed to completely interdict shipments from major ports of the PRC,⁷³³ rendering their operations inconsistent with the principles governing the enclosure of ports. Furthermore, the Nationalists’ capture, attack, and sinking of several vessels without adequate notification further contravened the norms associated with sanctions or blockade measures.⁷³⁴

This case bears significance as a potential course of action that the PRC might undertake, given the precedent established by the Nationalists. Moreover, in light of the One China Policy, many of the assertions made by the Nationalists could be invoked by the PRC. However, as per the foregoing analysis, if the PRC were to execute an Enclosure of Ports akin to the Nationalists’ approach, it would undoubtedly run afoul of international legal standards. Nonetheless, the PRC could potentially pursue a lawful alternative by establishing an effective naval barrier within the territorial sea of the “Two Chinas”, providing proper notification to local authorities

⁷²⁹ See *supra* Chapter II.B.4.

⁷³⁰ LIN HUNG I (林宏一), FENG SUO DALU YANHAI — ZHONGHUA MINGUO ZHENGFU DE “GUANBI ZHENGCE”, 1949-1960 (封鎖大陸沿海——中華民國政府的「關閉政策」, 1949-1960) [BLOCKADING THE CHINA COAST: THE “PORT-CLOSURE POLICY” OF ROC GOVERNMENT, 1949-1960], at 50 (2009).

⁷³¹ Edwin D. Dickinson, *The Closure of Ports in Control of Insurgents*, 24(1) AM. J. INT’L L. 69, 69-78 (1930).

⁷³² *Id.*

⁷³³ Bruce A. Elleman, *The Nationalist’ Blockade of the PRC*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 131, 131-34.

⁷³⁴ LIN HUNG I (林宏一), FENG SUO DALU YANHAI — ZHONGHUA MINGUO ZHENGFU DE “GUANBI ZHENGCE”, 1949-1960 (封鎖大陸沿海——中華民國政府的「關閉政策」, 1949-1960) [BLOCKADING THE CHINA COAST: THE “PORT-CLOSURE POLICY” OF ROC GOVERNMENT, 1949-1960] at 50 (2009).

and neutrals, and duly publicizing the suspension of innocent passage while safeguarding the rights of neutral parties.



B. The Taiwan Strait Crises

1. Background —

(1) The Third Taiwan Strait Crisis, 1995-1996⁷³⁵

The Third Taiwan Strait Crisis, spanning from 1995 to 1996, unfolded through a series of escalating events between the PRC and the ROC. In response to President Lee Teng-hui's visit to the United States, the PRC initiated a series of missile tests, allegedly aimed at sending a strong signal to the ROC government.⁷³⁶ These tests, conducted in July 1995, included the firing of short-range ballistic missiles into waters close to the island, signaling Beijing's displeasure with President Lee's diplomatic overtures.⁷³⁷

As tensions continued to rise, the PRC intensified its military activities with naval exercises and amphibious assault drills near Taiwan's shores from August to November 1995.⁷³⁸ These maneuvers coincided with heightened political tensions between the two sides, as Beijing sought to exert pressure on the ROC government and deter any moves toward independence.

The situation escalated further in February and March 1996, leading up to Taiwan's presidential election scheduled for March 23, 1996.⁷³⁹ The PRC conducted additional missile tests, targeting areas near Taiwan's ports of Keelung and

⁷³⁵ Kristen Gunness & Phillip C. Saunders, *Averting Escalation and Avoiding War: Lessons from the 1995–1996 Taiwan Strait Crisis*, 17 CHINA STRATEGIC PERSPECTIVES 1, 8-35 (2022); see also Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 214-23 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷³⁶ Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 214 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷³⁷ *Id.* at 215

⁷³⁸ *Id.*; see also Jing-Wen Tsou & Ming-Tong Chen (鄒景雯, 陳明通), *Guojia Anchuan Weiji Chuli Jizhi: Yi 1996 Nian Taihai Weiji Gean Weili* (國家安全危機處理機制：以1996年臺海危機個案為例) [National Security Crisis Management Mechanism: Take the 1996 Taiwan Strait Crisis as an Example], 33(4) SOOCHOW J. POLI. SCI. 133, 158-66 (2015).

⁷³⁹ Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005, at 215-16 (Bruce Elleman & S. C. M. Paine eds. 2006).

Kaohsiung.⁷⁴⁰ These provocative actions disrupted commercial shipping routes and raised concerns about the safety of air and sea traffic in the region, further exacerbating the crisis.⁷⁴¹

Between March 8 and 15, 1996, the PRC announced military exercises, including missile launches and amphibious landing drills, in waters near Taiwan.⁷⁴² Reports surfaced suggesting plans for a potential Chinese invasion of Taiwan's outlying islands, sparking fears of a direct military confrontation. In response, the United States deployed naval assets, including aircraft carrier battle groups, to the waters surrounding Taiwan as a show of support for the ROC government and to deter further aggression from the PRC.⁷⁴³

The crisis reached a critical point between March 18 and 25, 1996, when the PRC staged a simulated amphibious assault exercise near Taiwan's offshore islands.⁷⁴⁴ This provocative maneuver further escalated tensions in the region, with the ROC government remaining on high alert and implementing defensive measures to safeguard its territory and deter potential aggression from the PRC.⁷⁴⁵

Despite the heightened military tensions, Taiwan successfully conducted its presidential election on March 23, 1996, with President Lee Teng-hui securing re-election.⁷⁴⁶ The election outcome was seen as a rebuke to China's attempts to influence Taiwanese politics through military intimidation, marking a significant moment in the history of cross-strait relations.⁷⁴⁷

(2) The Fourth Taiwan Strait Crisis, 2022⁷⁴⁸

The visit of Nancy Pelosi, the Speaker of the U.S. House of Representatives, to Taiwan in August 2022 marked a significant diplomatic engagement, triggering a

⁷⁴⁰ *Id.* at 216.

⁷⁴¹ *Id.*

⁷⁴² *Id.* at 219.

⁷⁴³ *Id.* at 219-21.

⁷⁴⁴ Chang I-Ching (張怡菁), *Taihai Weiji Zhong Zhongguo Dui Tai Jun Jing Fengsuo zhi Guoji Fali Yanjiu* (臺海危機中中共對臺軍經封鎖之國際法理研究) [*The PRC's Naval Blockade Against during the Taiwan Straits Crises: A Theoretical Analysis of International Law*], 5(2) ZHANWANG YU TANSUO 40, 50-51 (展望與探索) [OUTLOOK & EXPLORATION] (2007).

⁷⁴⁵ *Id.* at 51.

⁷⁴⁶ James Baron, *The Glorious Contradictions of Lee Teng-hui*, THE DIPLOMAT (Aug. 18, 2020), <https://thediplomat.com/2020/08/the-glorious-contradictions-of-lee-teng-hui/>.

⁷⁴⁷ *Id.*

⁷⁴⁸ *Nancy Pelosi Has Left Taiwan. The Real Crisis May Be Just Beginning*, THE ECONOMIST (Aug. 3, 2022), <https://www.economist.com/asia/2022/08/03/nancy-pelosi-has-left-taiwan-the-real-crisis-may-be-just-beginning>.

notable sequence of events known as the Fourth Taiwan Strait Crisis.⁷⁴⁹ The visit, purportedly aimed at reaffirming the United States' commitment to Taiwan's democracy, was met with vehement condemnation from the PRC.⁷⁵⁰ Characterizing the visit as a provocative affront to its sovereignty, the PRC issued stern warnings to the United States, urging adherence to the One China Principle and cautioning against destabilizing actions.⁷⁵¹ Despite these warnings, Pelosi proceeded with her visit to Taiwan, further exacerbating tensions in the region.⁷⁵²

Subsequent to Pelosi's arrival in Taipei, the PRC swiftly enacted a series of military maneuvers and exercises, strategically positioned around Taiwan's vicinity.⁷⁵³ On the night of August 2, 2022, the PLA Eastern Theater Command initiated joint naval and air force exercises in multiple designated zones encompassing the north, southwest, and southeast peripheries of Taiwan.⁷⁵⁴ These exercises were accompanied by live-fire artillery shooting in the Taiwan Strait and test firings of conventional-headed missiles in the waters east of Taiwan.⁷⁵⁵ Such militaristic displays, coupled with the ingress of PLA aircraft into Taiwan's Air Defense Identification Zone (ADIZ), underscored the PRC's uncompromising stance against perceived external interference in Taiwan-related affairs.⁷⁵⁶

Thereafter, the PRC's military escalation was further underscored by the commencement of additional military drills encircling Taiwan, spanning from August 4 to August 7, 2022.⁷⁵⁷ During these exercises, Taiwan reported multiple instances of

⁷⁴⁹ *Toward a Fourth Taiwan Strait Crisis?*, CSIS (Aug. 4, 2022), <https://www.csis.org/analysis/toward-fourth-taiwan-strait-crisis>.

⁷⁵⁰ *Id.*

⁷⁵¹ Tsong-Hsin Yang (楊宗新), *Gongjun Dui Tai Junyan Zhanxian zhi Fengsuo Yitu Yanxi* (共軍對臺軍演展現之封鎖意圖研析) [An Analysis of the Blockade Intent Demonstrated by the PLA against Taiwan in Military Exercises], 692 *AIR FORCE BIMONTHLY JOURNAL* 55, 55-56 (2023).

⁷⁵² Jeff Mason & Michael Martina, *White House: U.S. Will Not Be Intimidated By China; Pelosi Has Right to Visit Taiwan*, REUTERS (Aug. 2, 2022), <https://www.reuters.com/world/asia-pacific/white-house-says-pelosi-has-right-visit-taiwan-2022-08-01/>.

⁷⁵³ Christopher P. Twomey, *The Fourth Taiwan Strait Crisis is Just Starting*, WAR ON THE ROCKS (Aug. 22, 2022), <https://warontherocks.com/2022/08/the-fourth-taiwan-strait-crisis-is-just-starting/>.

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ Adrian Kennedy, *Pelosi Tells Tsai Visit Shows US Won't Abandon Taiwan*, BLOOMBERG (Aug. 3, 2022), <https://www.bloomberg.com/news/live-blog/2022-08-02/china-briefs-as-pelosi-likely-to-visit-taiwan>.

⁷⁵⁷ Li-wen Dong (董立文), *Disitsi Taihai Weiji Chubu Fenxi: Taiwan Meiyo Tuirang Kongjian, Guoji Shehui de Fanying Rang Zhongguo Shiliao Weiji* (第四次台海危機初步分析：台灣沒有退讓空間，國際社會的反應讓中國始料未及) [Preliminary Analysis of the Fourth Taiwan Strait Crisis: Taiwan Has No Room For Concessions, and the International Community's Response Caught China By Surprise], THE NEWS LENS (Aug. 14, 2022), <https://www.thenewslens.com/article/171577>.

ballistic missile launches by the PRC, with projectiles traversing into neighboring territories, including Japanese waters.⁷⁵⁸ The unprecedented nature of these ballistic missile launches, particularly their proximity to Japan's Exclusive Economic Zone, elicited swift condemnation from the international community and heightened regional security concerns.⁷⁵⁹ Additionally, the PRC's military actions prompted disruptions to civilian aviation and commercial shipping activities, amplifying anxieties regarding the stability of the Taiwan Strait.⁷⁶⁰

(3) Joint-Sword 2024A, 2024

The Joint-Force 2024A is a large-scale military exercise conducted by China around Taiwan, symbolizing a significant escalation in China's military posture in the region.⁷⁶¹ Initiated on May 23, 2024, these exercises were a direct response to the inauguration of Taiwan's President William Lai, reflecting Beijing's increasing readiness to utilize military power to address what it perceives as provocations from Taiwan and interference by external forces, notably the United States.⁷⁶²

This operation marks the third major military exercise conducted by China around Taiwan in recent years. Previous notable exercises include those in August 2022, following the visit of then-U.S. House Speaker Nancy Pelosi to Taiwan, and in April 2023, when former Taiwan President Tsai Ing-wen met with U.S. House Speaker Kevin McCarthy.⁷⁶³ The pattern of these drills indicates a strategic move by China to regularize large-scale military maneuvers as a method of signaling its displeasure and exerting pressure on both Taiwan and the United States.⁷⁶⁴

Joint-Force 2024A involved not only the People's Liberation Army (PLA) but also comprehensive law enforcement operations, demonstrating China's integrated

⁷⁵⁸ *Id.*

⁷⁵⁹ *Id.*

⁷⁶⁰ Tsong-Hsin Yang (楊宗新), *Gongjun Dui Tai Junyan Zhanxian zhi Fengsuo Yitu Yanxi* (共軍對臺軍演展現之封鎖意圖研析) [An Analysis of the Blockade Intent Demonstrated by the PLA against Taiwan in Military Exercises], 692 *AIR FORCE BIMONTHLY JOURNAL* 55, 56 (2023).

⁷⁶¹ Yu-Chen Chung & Frances Huang, *China's Large Military Drills Around Taiwan Could Become Regular: Experts*, *FOCUS TAIWAN* (May 25, 2024), <https://focustaiwan.tw/politics/202405250006>.

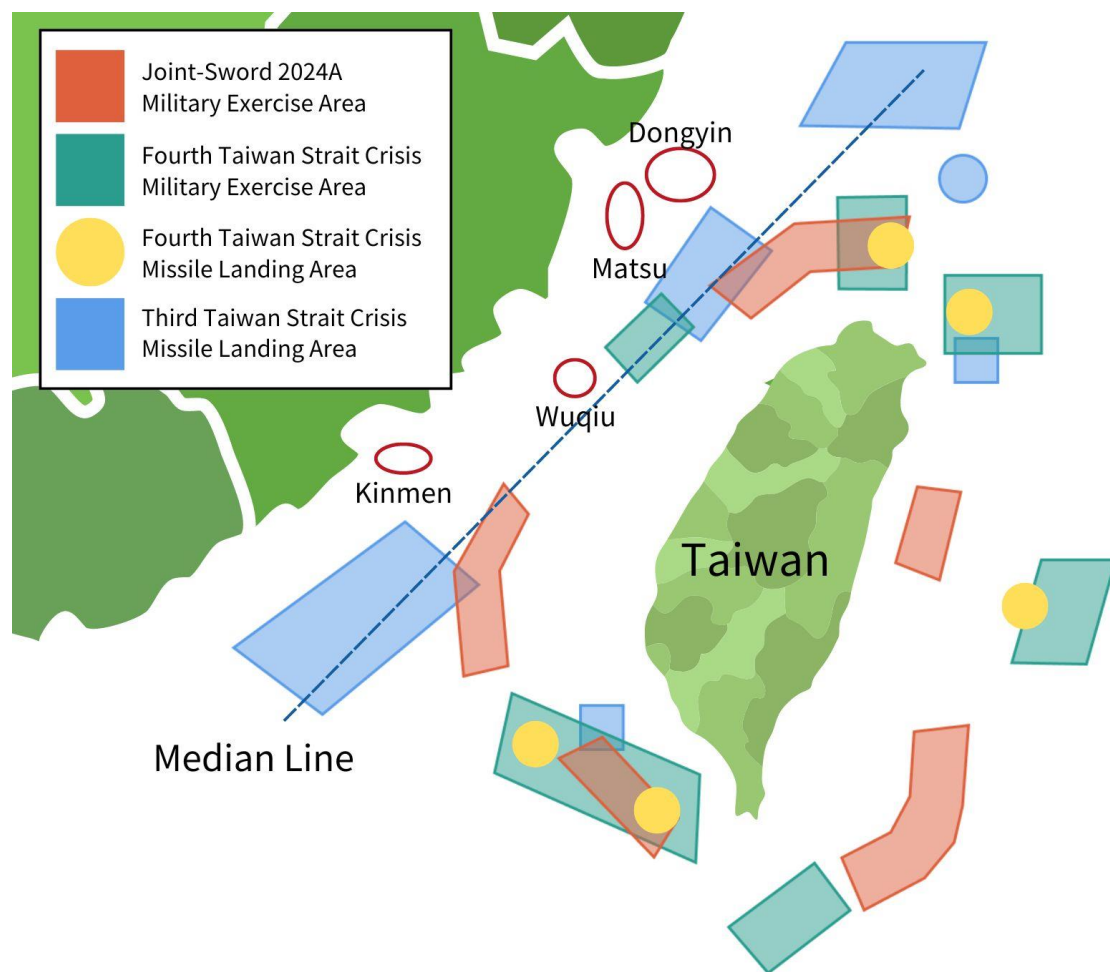
⁷⁶² Bonny Lin & Brian Hart, *How Is China Responding to the Inauguration of Taiwan's President William Lai?*, *CHINA POWER* (May 24, 2024), <https://chinapower.csis.org/china-respond-inauguration-taiwan-william-lai-joint-sword-2024a-military-exercise/>.

⁷⁶³ Yu-Chen Chung & Frances Huang, *China's Large Military Drills Around Taiwan Could Become Regular: Experts*, *FOCUS TAIWAN* (May 25, 2024), <https://focustaiwan.tw/politics/202405250006>.

⁷⁶⁴ *Id.*

military-police coordination.⁷⁶⁵ This dual approach underscores China's capability and intent to implement a blockade or quarantine around Taiwan, leveraging both military and quasi-military means to achieve its strategic objectives.⁷⁶⁶

The operational scope of Joint-Force 2024A included maneuvers around Taiwan's main island and offshore territories, indicating a comprehensive strategy to exert control over the region's maritime activities. These drills are seen as a direct response to statements and actions by Taiwanese leaders that Beijing interprets as steps toward Taiwan's independence.⁷⁶⁷



⁷⁶⁵ Bonny Lin & Brian Hart, *How Is China Responding to the Inauguration of Taiwan's President William Lai?*, CHINA POWER (May 24, 2024), <https://chinapower.csis.org/china-respond-inauguration-taiwan-william-lai-joint-sword-2024a-military-exercise/>.

⁷⁶⁶ Christopher B. Johnstone & Bonny Lin, *Responding to a More Coercive Chinese Coast Guard and a Potential PRC Quarantine of Taiwan*, CSIS (June 7, 2024), <https://www.csis.org/analysis/responding-more-coercive-chinese-coast-guard-and-potential-prc-quarantine-taiwan>.

⁷⁶⁷ Bonny Lin & Brian Hart, *How Is China Responding to the Inauguration of Taiwan's President William Lai?*, CHINA POWER (May 24, 2024), <https://chinapower.csis.org/china-respond-inauguration-taiwan-william-lai-joint-sword-2024a-military-exercise/>.



2. Legal Analysis —

In examining the three instances of the Taiwan Strait Crises, a consistent pattern emerges in the People's Republic of China's strategic actions, primarily characterized by ballistic missile tests and large-scale military exercises. These actions have invariably impacted container shipping within the Taiwan Strait. Despite these common elements, the nature and scale of China's military operations have varied across the crises.

During the Third Taiwan Strait Crisis, China executed joint ground, naval, and air exercises, including live-firing of SRBMs.⁷⁶⁹ However, this conflict was relatively controlled compared to subsequent escalations. Notably, the action zones for these military exercises did not breach the Median Line of the Taiwan Strait.

Contrastingly, the Fourth Taiwan Strait Crisis in 2022 represented a significant escalation in conflict scale, involving 176 aircraft and 41 vessels.⁷⁷⁰ As depicted in Image 2, three of the announced operational areas encroached upon Taiwan's territorial sea. Unlike the Third Crisis, all six operational areas of the People's Liberation Army Navy (PLAN) crossed the Median Line,⁷⁷¹ thereby challenging the long-standing status quo maintained by both sides of the Strait.⁷⁷² Additionally, 11 DF series ballistic missiles were fired towards areas near Taiwan's northern, southern, and

⁷⁶⁸ Chi-rei Li (李奇叡) et al., *Gongjun Lianhe Lijian Junyan Fuzhi Danbian Tiaoxin* (共軍聯合利劍軍演 府指單邊挑釁) [The Chinese's Joint-Sword Exercise, President Office: Unilateral Provocation], *China Times* (中時新聞網) (May 24, 2024), <https://www.chinatimes.com/newspapers/20240524000489-260118?chdtv>; see also Silva Shih (史書華) et al., *Zueixin Tujie: Zhongguo 72 Xiaoshi "Feng Tai" Junyan* (最新圖解: 中國 72 小時「封台」軍演) [Latest Illustrated: China's 72-Hour "Blockade of Taiwan" Military Exercise], *COMMONWEALTH MAGAZINE* (天下雜誌) (Aug. 8, 2022), <https://www.cw.com.tw/graphics/pelosi-visits-taiwan/>.

⁷⁶⁹ Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 241, 215 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷⁷⁰ Silva Shih (史書華) et al., *Zueixin Tujie: Zhongguo 72 Xiaoshi "Feng Tai" Junyan* (最新圖解: 中國 72 小時「封台」軍演) [Latest Illustrated: China's 72-Hour "Blockade of Taiwan" Military Exercise], *COMMONWEALTH MAGAZINE* (天下雜誌) (Aug. 8, 2022), <https://www.cw.com.tw/graphics/pelosi-visits-taiwan/>.

⁷⁷¹ Mario Ritter Jr., *What is the Median Line Between China and Taiwan?*, *VOICE OF AM.* (Oct. 28, 2020), <https://learningenglish.voanews.com/a/what-is-the-median-line-between-china-and-taiwan/5637905.html>.

⁷⁷² Gary Sergeant, *Slicing Away at the Status Quo: Beijing's Cross-Strait Strategy*, No. GPP06 COUNCIL ON GEOSTRATEGY (Dec. 2023), at 2-5.

eastern coasts, with five missiles landing within Japan's Exclusive Economic Zone,⁷⁷³ eliciting strong condemnation from the international community, particularly Japan and the United States.⁷⁷⁴

The recent Joint-Sword 2024A operation similarly involved the mobilization of joint forces for military exercises, with action areas approaching closer to mainland Taiwan,⁷⁷⁵ particularly along the eastern coast. However, these exercises did not involve the use of live ammunition, including ballistic missiles.⁷⁷⁶

Analyzing the PLA's actions in these instances reveals a pattern of routine coercion attempts aimed at compelling Taiwan towards reunification through military exercises and ballistic missile firings around Taiwan. While the provocative nature of these actions is acknowledged, this discourse remains focused on the factual and legal aspects, particularly in determining whether these actions constitute a blockade and their legality.

(1) Constitution of a Blockade?

The Third Taiwan Strait Crisis, although described by some scholars as a "Missile Blockade",⁷⁷⁷ did not fulfill the criteria of a blockade under International Law. Despite issuing clear announcements regarding the timing and location of missile tests,⁷⁷⁸ China did not declare the establishment of a blockade, failing to meet the requirement of proper notification. Furthermore, as discussed in Ch.II.B.2, a

⁷⁷³ Silva Shih (史書華) et al., *Zueixin Tujie: Zhongguo 72 Xiaoshi "Feng Tai" Junyan (最新圖解: 中國 72 小時「封台」軍演)* [Latest Illustrated: China's 72-Hour "Blockade of Taiwan" Military Exercise], COMMONWEALTH MAGAZINE (天下雜誌) (Aug. 8, 2022), <https://www.cw.com.tw/graphics/pelosi-visits-taiwan/>.

⁷⁷⁴ See *Chinese-Fired Ballistic Missiles Fall into Japan's EEZ: Gov't*, KYODO NEWS (Aug. 5, 2022), <https://english.kyodonews.net/news/2022/08/a901e23a7695-urgent-chinese-fired-ballistic-missiles-fall-into-japans-eez-govt.html>; see also Sam LaGrone, *11 Chinese Ballistic Missiles Fired Near Taiwan, U.S. Embarks USS America From Japan*, U.S. NAVAL INST. NEWS (Aug. 4, 2022), <https://news.usni.org/2022/08/04/11-chinese-ballistic-missiles-fired-near-taiwan-u-s-embarks-uss-america-from-japan>.

⁷⁷⁵ Silva Shih (史書華) et al., *Zueixin Tujie: Zhongguo 72 Xiaoshi "Feng Tai" Junyan (最新圖解: 中國 72 小時「封台」軍演)* [Latest Illustrated: China's 72-Hour "Blockade of Taiwan" Military Exercise], COMMONWEALTH MAGAZINE (天下雜誌) (Aug. 8, 2022), <https://www.cw.com.tw/graphics/pelosi-visits-taiwan/>.

⁷⁷⁶ Min-Jen Lin (林閔榛) et al., *Gongjun Weitai Zuijin 24 Li, Junjijian Junwei Fashe Shidan (共軍圍台最近 24 哩，軍機艦均未發射實彈)* [The Chinese Military has encircled Taiwan as Close as 24 Nautical Miles, With Neither Aircraft Nor Warships Firing Live Ammunition], TVBS (May 24, 2024), <https://news.tvbs.com.tw/politics/2496161>.

⁷⁷⁷ Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 214 (Bruce Elleman & S. C. M. Paine eds. 2006).

⁷⁷⁸ Richard D. Fisher, Jr., *China's Missiles Over the Taiwan Strait: A Political and Military Assessment*, in *CRISIS IN THE TAIWAN STRAIT* 167, 170 (James R. Lilley & Chuck Downs eds., 1997).

blockade, regardless of its proximity to the blockaded coastline, can only be considered lawful if it meets all necessary legal criteria. The sole measure taken by the PLA during the Third Taiwan Strait Crisis—the firing of missiles—did not entirely impede maritime traffic nor impose a sufficient threat to impartially intercept vessels,⁷⁷⁹ thereby failing to satisfy the requirements of effectiveness and impartiality.

The Fourth Taiwan Strait Crisis more closely resembled a blockade as the PLA deployed warships around Taiwan. However, similar to the Third Taiwan Strait Crisis, despite publicly announcing the timing and location of the exercise area,⁷⁸⁰ Chinese authorities did not declare a blockade. Although maritime traffic decreased during the exercises, it was not completely halted,⁷⁸¹ and the PLA was not reported to warn, capture, or attack any vessels entering or leaving Taiwan.⁷⁸² Consequently, these actions did not meet the requirement of effectiveness for a lawful blockade.

Joint-Sword 2024A shared many similarities with the previous crises, particularly in its failure to comply with the rules governing blockades. Unlike the previous crises, the announcement of Joint-Sword 2024A was even more ambiguous, as Chinese authorities did not specify the exact time and geographical coordinates of the operational zone,⁷⁸³ providing only a vague depiction of the areas intended for the exercises. This further deviated from the requirement of proper notification. In conclusion, the examination of the PLA's actions during these crises reveals that none of these actions constituted a blockade consistent with International Law.

(2) Legality of the Actions Taken in the Taiwan Strait Crises

⁷⁷⁹ Bo-Jun Ho (何柏均) et al., (1996 年台海危機擴大版：共軍軍演範圍包圍台灣、侵入領海，認知作戰同步展開) [Expanded version of the Taiwan Strait Crisis in 1996: The Communist military exercises surrounded Taiwan and invaded territorial waters, and cognitive operations were launched simultaneously], THE REPORTER (Aug. 3, 2022), <https://www.twreporter.org/a/us-house-speaker-nancy-pelosi-asia-tour-china-military-exercises>.

⁷⁸⁰ Xinhua She Shochuan Gonggao (新华社受权公告) [Xinhua News Agency Authorized Announcement], XINHUA NET (新华网) (Aug. 2, 2022), http://www.news.cn/politics/2022-08/02/c_1128885591.htm.

⁷⁸¹ Bo-Jun Ho (何柏均) et al., (1996 年台海危機擴大版：共軍軍演範圍包圍台灣、侵入領海，認知作戰同步展開) [Expanded version of the Taiwan Strait Crisis in 1996: The Communist military exercises surrounded Taiwan and invaded territorial waters, and cognitive operations were launched simultaneously], THE REPORTER (Aug. 3, 2022), <https://www.twreporter.org/a/us-house-speaker-nancy-pelosi-asia-tour-china-military-exercises>.

⁷⁸² If such actions occur, they are highly likely to provoke international condemnation and receive widespread media coverage, yet no relative information was found.

⁷⁸³ Dongbu Zhanqu Fabu “Lianhe Lijian – 2024A” Yanxi Quyu Shiyitu (东部战区发布“联合利剑—2024A”演习区域示意图) [The Eastern Theater Command released an illustrative map of the ‘Joint Sword-2024A’ exercise area], TAIWAN AFFAIRS OFF. OF THE STATE COUNCIL (国务院台办) (May 23, 2024), http://www.gwytb.gov.cn/bmst/202405/t20240523_12622327.htm

Determining the legality of warships and military activities under the United Nations Convention on the Law of the Sea (UNCLOS) presents several challenges, primarily due to the inherent ambiguities within the convention.⁷⁸⁴ While UNCLOS primarily focuses on peacetime activities and lacks a dedicated section comprehensively regulating warships, relevant regulations dispersed throughout the convention provide essential guidelines for our analysis.⁷⁸⁵

Depending on the location of the PLA military exercises, the areas of operation may be categorized into four types: internal waters of Taiwan, territorial sea of Taiwan, contiguous zone of Taiwan, and the exclusive economic zone (EEZ) of Taiwan. Firstly, internal waters are generally considered a territory where the state exercises complete sovereignty,⁷⁸⁶ regulated by domestic law. In other words, foreign vessels do not possess the right of innocent passage within a coastal state's internal waters.⁷⁸⁷ Consequently, it is reasonable to conclude that foreign warships do not have the right to conduct military exercises in another state's internal waters without permission.

Secondly, according to Article 2(2) of UNCLOS, the sovereignty of a coastal state extends to the air space over the territorial sea as well as to its bed and subsoil.⁷⁸⁸ However, ships of all states enjoy the right of innocent passage through the territorial sea.⁷⁸⁹ This provision gives rise to significant debate among scholars regarding the right of innocent passage for warships.⁷⁹⁰ If the passage of a warship through territorial seas is contentious, then, *a fortiori*, the right for a warship to conduct military exercises in another state's territorial sea is highly questionable. Given that the coastal state generally enjoys full sovereignty in its territorial sea, except for the innocent passage of foreign states or unless other rules of international law dictate otherwise, it appears that warships do not possess the right to conduct military exercises in another state's territorial sea.

⁷⁸⁴ Chen-Ju Chen, *Lun Haishang Junshi Huodong zhi Guoji Fa Gueifan* (論海上軍事活動之國際法規範) [International Legal Norms Governing Naval Military Activities], 160 NCCU L. REV. 83, 91-92 (2019).

⁷⁸⁵ *Id.*

⁷⁸⁶ *Id.* at 95-96.

⁷⁸⁷ *Id.* at 96.

⁷⁸⁸ UNCLOS 1982, art. 2(2).

⁷⁸⁹ *Id.* art. 17.

⁷⁹⁰ Chen-Ju Chen, *Lun Haishang Junshi Huodong zhi Guoji Fa Gueifan* (論海上軍事活動之國際法規範) [International Legal Norms Governing Naval Military Activities], 160 NCCU L. REV. 83, 97-104 (2019).

Thirdly, within the contiguous zone, the coastal state may only exercise control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea.⁷⁹¹ Therefore, it does not seem that the coastal state has the authority to regulate military exercises of foreign warships in its contiguous zone. Similarly, the coastal state's influence is even more limited in the EEZ, where it may exercise its sovereign rights rather than sovereignty.⁷⁹²

Nevertheless, Article 58(3) of UNCLOS stipulates that states shall have due regard to the rights and duties of the coastal state when exercising their rights and performing their duties under this convention in the EEZ.⁷⁹³ Therefore, even if UNCLOS does not explicitly prohibit military exercises in another state's EEZ, such actions should be conducted with due regard to the rights and duties of the coastal state.

Furthermore, Article 2(4) of the UN Charter prohibits not only the use of force but also the threat of force. According to Oscar Schachter's interpretation, "[a] blatant and direct threat of force, used to compel another state to yield territory or make substantial political concessions"⁷⁹⁴ is also disallowed. This implies that even without the deployment of force, the declared readiness to use force may be considered illegal.⁷⁹⁵

Focusing on the Taiwan Strait Crises, although the PLA did not actually attack Taiwan, the military exercises were accompanied by official announcements displaying a clear coercive nature towards Taiwan. Based on the aforementioned analysis, this constitutes a threat under Article 2(4) of the UN Charter. This provision is further emphasized in Article 301 of UNCLOS, which states that States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any state. Consequently, the actions taken by the PLA in the Taiwan Strait Crises, specifically the military exercises and firing of ballistic missiles, regardless of their location, should be considered illegal under international law.

⁷⁹¹ UNCLOS 1982, art. 33(1)(a).

⁷⁹² *Id.* art. 56(1).

⁷⁹³ *Id.* art. 58(3).

⁷⁹⁴ Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1625 (1984).

⁷⁹⁵ *Legality of the Threat or Use of Nuclear Weapons - Advisory Opinion*, 1996 I.C.J. 226 (July 8).

CHAPTER V. COMPREHENSIVE ANALYSIS ON ALTERNATIVE BLOCKADING MEASURES OF CHINA

In light of our previous discussion, this paper posits that, should China pursue a blockade strategy to compel Taiwan's surrender, its principal objectives would be twofold: to exert economic pressure on Taiwan and to avoid conferring belligerency status upon it. The subsequent sections of this paper will scrutinize the legality of various alternative measures that China might employ to encircle Taiwan and evaluate their congruence with these presumed strategic goals.

A. Alternative Measure 1: Sanctions and Embargoes

The examination of maritime interception measures in the context of contraband and sanctions and embargoes (S&E) raises pertinent considerations regarding their potential efficacy in exerting pressure on the economy of Taiwan. However, the practicality and alignment of such measures with China's diplomatic objectives in the event of a blockade scenario warrant careful analysis.

(1) Contraband Operations:

The evolution of contraband regulations to include goods with dual-use capabilities⁷⁹⁶ signifies a potent tool for restricting Taiwan's military prowess and economic activities. Yet, the applicability of contraband laws exclusively during armed conflict presents a fundamental hurdle.⁷⁹⁷ Implementation of contraband operations would necessitate a declaration of belligerency against Taiwan, undermining efforts to avoid the recognition of belligerent status and adherence to *jus in bello* obligations.

(2) Sanctions and Embargoes:

In contrast, S&E measures, designed for peacetime scenarios,⁷⁹⁸ offer a viable alternative without the entanglements associated with contraband operations. With their broad scope encompassing various commodities subjected to trade restrictions, S&E activities hold promise in curbing Taiwan's military and economic capabilities. However, the enforcement of S&E measures requires explicit legal authorization,

⁷⁹⁶ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 6 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁷⁹⁷ *Id.* at 7.

⁷⁹⁸ *Id.*

particularly in international waters.⁷⁹⁹ Typically, such authorization emanates from resolutions of the United Nations Security Council (UNSC), binding all UN members.⁸⁰⁰

Alternatively, bilateral or multilateral agreements such as the Proliferation Security Initiative may provide a legal framework for enforcement, albeit limited to participating states.⁸⁰¹ Absent such authorizations, states may only enforce sanction regimes against their flagged vessels or nationals, underscoring the necessity for robust legal mechanisms to support effective implementation.⁸⁰²

Acquiring a resolution from the United Nations Security Council (UNSC) stands as the most potent means to cripple Taiwan's economy through sanctions. However, a comprehensive review of past instances⁸⁰³ reveals that the UNSC has predominantly authorized sanctions in response to threats to international peace and security, violations of international law, support for terrorism, non-proliferation of weapons of mass destruction, threats to regional stability, and failure to comply with council resolutions⁸⁰⁴—causes that are not easily attributable to Taiwan.

In the absence of UNSC authorization, China's enforcement of sanctions against Taiwan necessitates recourse to bilateral or multilateral agreements or unilateral action against its own vessels or nationals. While this approach may appear comparatively weaker than the widespread enforcement facilitated by a UNSC resolution, China's status as Taiwan's primary trade partner⁸⁰⁵ imbues even unilateral sanctions with considerable economic impact. Although not necessarily sufficient to destabilize Taiwan's economy entirely, China's imposition of sanctions alone could exert significant pressure on Taiwan's economic landscape.⁸⁰⁶

⁷⁹⁹ *Id.* at 8.

⁸⁰⁰ *Id.*; see also *International Sanctions*, MINISTERIO DE ASUNTOS EXTERIORES, <https://www.exteriores.gob.es/en/PoliticaExterior/Paginas/SancionesInternacionales.aspx> (last visited May 5, 2024).

⁸⁰¹ PHILLIP DREW, *THE LAW OF MARITIME BLOCKADE: PAST, PRESENT, AND FUTURE* 8 (Paola Gaeta & Salvatore Zappala eds., 2017).

⁸⁰² *Id.*

⁸⁰³ See generally *2023 Fact Sheet*, U.N. SEC. COUNCIL (Sept. 7, 2023), <https://www.un.org/securitycouncil/content/committees-working-groups-and-ad-hoc-bodies>.

⁸⁰⁴ *Id.*

⁸⁰⁵ Billy Stampfl, *Diversifying Trade: Where Taiwan Stands Today, and Where It Should Go Tomorrow*, 9(3) *GLOB. TAIWAN BRIEF* (Feb. 7, 2024), <https://globaltaiwan.org/2024/02/diversifying-trade-where-taiwan-stands-today-and-where-it-should-go-tomorrow/>.

⁸⁰⁶ Chang I-Ching (張怡菁), *Taihai Weiji Zhong Zhongguo Dui Tai Jun Jing Fengsuo zhi Guoji Fali Yanjiu* (臺海危機中中共對臺軍經封鎖之國際法理研究) [*The PRC's Naval Blockade Against during*

In summary, sanctions and embargoes offer a strategic avenue for China to undermine Taiwan's economy while circumventing *jus in bello* obligations and the acknowledgment of belligerency. However, the efficacy of such measures may be tempered by the formidable challenge of securing UNSC authorization, highlighting the complexities inherent in leveraging international mechanisms to achieve diplomatic and economic objectives.

B. Alternative Measure 2: Distant (Missile) Blockade

As discussed in Chapter II.B.2, the strict rules regarding the specific distance a blockading party must maintain during a blockade have evolved due to advancements in technology. Modern distant blockades can be considered a legitimate tool in maritime strategy, provided it adheres to the core principles of effectiveness and legality. However, even if a distant blockade demonstrates sufficient effectiveness and can properly enforce a blockade, the inherently belligerent nature of blockades renders a distant blockade inconsistent with China's presumed objectives.

Furthermore, establishing a blockade solely through the use of missiles presents significant challenges.⁸⁰⁷ Due to their relatively low accuracy and inability to conduct other necessary interception measures, such as surveillance and capture, missiles alone are inadequate for establishing a legal blockade. From a practical standpoint, while China briefly interrupted maritime traffic around Taiwan using only missiles, thereby exerting economic pressure on the Taiwanese population,⁸⁰⁸ this approach has its limitations. Regardless of whether China fires missiles, if the purpose of using such force is to undermine Taiwan's territorial integrity or political independence, even the threat of using such force constitutes a violation of Article 2(4) of the UN Charter and is therefore prohibited. Consequently, employing a missile blockade as an alternative measure is not a viable strategy for China to achieve its objectives.

the Taiwan Straits Crises: A Theoretical Analysis of International Law], 5(2) ZHANWANG YU TANSUO 40, 40-41 (展望與探索) [OUTLOOK & EXPLORATION] (2007).

⁸⁰⁷ See *supra* Ch.IV.B.2(2).

⁸⁰⁸ Chris Rahman, *Ballistic Missiles in China's Anti-Taiwan Blockade Strategy*, in *NAVAL BLOCKADES AND SEAPOWERS: STRATEGIES AND COUNTER-STRATEGIES 1805-2005*, at 215 (Bruce Elleman & S. C. M. Paine eds. 2006).

C. Alternative Measure 3: Exclusion Zone/War Zone

Drawing from the comprehensive analysis expounded in Chapter II.B.3, it is discerned that the adjudication of standards pertaining to Maritime Exclusion Zones necessitates meticulous consideration of various factors. Primarily, the enforcing entity must ensure the efficacy of the prescribed regulations within the demarcated zone, concurrently mitigating adverse impacts on non-combatant personnel and neutral entities, akin to the criteria delineated for a blockade.⁸⁰⁹ Moreover, imperative to this process is the provision of timely and comprehensive notification to all pertinent stakeholders, including neutrals, thereby facilitating the dissemination of pertinent information.⁸¹⁰

Furthermore, a nuanced evaluation of factors encompassing the duration, geographical extent, repercussions on neutral maritime activities, and the underlying objectives of the measures is imperative on a case-by-case basis to ascertain their reasonableness and adherence to international legal standards.⁸¹¹

Learning from the experience of the Falklands War, it becomes evident that the concept of war zones was conceptualized to delineate areas of conflict in limited warfare scenarios, characterized by controlled escalation and minimized adverse impacts on neutral trade routes.⁸¹² As offensive measures are primarily directed towards the belligerent party, with lesser repercussions on neutral trade, such measures may garner comparatively greater acceptance within the international community as opposed to a conventional blockade.

However, it is imperative to acknowledge that the designation of war zones or exclusion zones typically entails the formal declaration of hostilities, a facet that could potentially compel China to acknowledge Taiwan's belligerent status if such measures were to be implemented against it.

D. Alternative Measure 4: Enclosure of Ports

The enclosure of ports is likely the most practical alternative measure China could employ to exert economic pressure on Taiwan while avoiding the recognition of

⁸⁰⁹ See C. JOHN COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 465-66.

⁸¹⁰ *Id.*

⁸¹¹ Ross Leckow, *The Iran-Iraq Conflict in the Gulf: The Law of War Zones*, 37(3) INT'L & COMP. L.Q. 629, 634.

⁸¹² Howard Levie, *The Falklands Crisis and the Laws of War*, 70 INT'L L. STUD. 203, 213 (1985).

Taiwan's belligerency status. Firstly, the precedent set by the Nationalist blockade of China provides a basis for China to take similar actions, placing Taiwan in a difficult position.⁸¹³ Additionally, under the One-China policy, China may claim the right to close its own ports and temporarily suspend the right of innocent passage within its territorial sea. Since a state's sovereignty extends to its territorial sea, China could position its warships within Taiwan's territorial sea in a manner that would effectively cut Taiwan off from maritime traffic, exerting significant economic pressure.⁸¹⁴

However, from a practical standpoint, if China intends to use the legal enclosure of ports to blockade Taiwan, the movement of its warships would be highly constrained by the boundaries of the territorial sea. Given Taiwan's substantial stockpile of missiles,⁸¹⁵ positioning Chinese warships within Taiwan's territorial sea would be strategically unsound, rendering the area a target-rich environment⁸¹⁶ and putting China's warships at significant risk.

In conclusion, despite its theoretical legality and alignment with China's presumed objectives, the enclosure of ports is not an ideal alternative measure for China to blockade Taiwan.

E. Alternative Measure 5: Quarantine

As of present, the United States stands singular in its utilization of the defensive quarantine tactic. Although defensive quarantines are specifically crafted to avert the escalation of armed conflict,⁸¹⁷ potentially offering China a means to isolate Taiwan without formal declaration of war, our scrutiny in Chapter II.B.5 suggests that this strategy may prove insufficient in fulfilling China's military and political objectives.

Primarily, the establishment of a defensive quarantine rests upon the premise of the right to self-defence.⁸¹⁸ In essence, China must first perceive certain actions

⁸¹³ See supra Ch.IV.A on the Nationalists' Blockade of China.

⁸¹⁴ UNCLOS 1982, art. 2(2).

⁸¹⁵ Matthew Fulco, *Taiwan Missile Delivery Seen Hitting New High of More Than 1,000 In '24*, AVIATION WEEK (June 28, 2023), <https://aviationweek.com/defense-space/missile-defense-weapons/taiwan-missile-delivery-seen-hitting-new-high-more-1000-24>.

⁸¹⁶ Holly Yeager, *Target-Rich Environment*, COLUM. J. REV. (Feb. 2, 2010), https://www.cjr.org/the_audit/targetrich_environment.php.

⁸¹⁷ Leonard C. Meeker, *Defensive Quarantine and the Law*, 57(3) AM. J. INT'L L. 515, 592 (1963).

⁸¹⁸ *Id.*

emanating from Taiwan as posing a threat to its national or regional security, thereby warranting the invocation of its inherent right to self-defence.

Furthermore, a defensive quarantine solely proscribes the transport of offensive weaponry.⁸¹⁹ Should China's strategic aim encompass the erosion of Taiwan's economic stability with the intent to compel surrender, the adoption of a defensive quarantine as an alternative blockade measure may not yield substantive advancements toward realizing China's overarching objectives.

⁸¹⁹ HUANG-CHIH CHIANG (姜皇池) ET AL., HAISHANG WUZHUANG CHONGTU FA ZHI HAISHANG FENGSHUO HÄISHÄNG FENGSHUO: GUOQU FAZHAN YU DANGDAI FÄLU YIYI 28.

CHAPTER VI. CONCLUSION

In synthesizing the multifaceted analysis of potential Chinese blockade measures against Taiwan, this paper underscores the intricate interplay between legal principles, historical precedents, and contemporary strategic imperatives. The exploration of alternative blockade measures—ranging from sanctions and embargoes to the establishment of maritime exclusion zones—reveals the complexities and potential ramifications of such actions under international law.

The examination of traditional blockades, as defined by historical legal frameworks such as the London Declaration of 1909 and the San Remo Manual of 1995, highlights the stringent requirements for their lawful implementation. These include proper declaration, notification, and enforcement, all of which must be adhered to with impartiality and respect for neutral rights. The analysis reveals that none of China's actions during the Taiwan Strait Crises met these stringent criteria, thereby failing to constitute a lawful blockade under international law.

Alternative measures such as the enclosure of ports and the establishment of maritime exclusion zones present less conventional but potentially viable strategies for China. However, these measures are fraught with legal and practical challenges. The enclosure of ports, while theoretically permissible under the One-China policy, poses significant strategic risks due to Taiwan's robust missile capabilities. Similarly, the use of exclusion zones, while providing a means to exert economic pressure without formal declarations of hostility, risks escalating tensions and potentially acknowledging Taiwan's belligerent status.

The concept of a defensive quarantine, as exemplified by the U.S. actions during the Cuban Missile Crisis, offers another alternative. However, this measure requires a credible and immediate threat to national security, a condition that may not be sufficiently met in the context of cross-Strait relations. Moreover, the defensive quarantine's focus on specific categories of goods rather than a comprehensive restriction of maritime activities limits its effectiveness in achieving broader strategic objectives.

Ultimately, this paper concludes that while China possesses several potential measures to exert pressure on Taiwan, each option carries significant legal, strategic,

and humanitarian implications. The evolving nature of international law, particularly in the context of non-international armed conflicts, suggests a need for continuous reassessment of these measures. The principles of proportionality and distinction remain paramount, ensuring that any action taken minimizes harm to civilian populations and adheres to established international norms.

The potential application of blockade principles to the Taiwan Strait scenario underscores the necessity for a nuanced and comprehensive legal analysis. This research contributes to the broader discourse on the legality and effectiveness of blockades in modern warfare, emphasizing the importance of aligning military strategies with international legal standards and humanitarian considerations. As geopolitical dynamics continue to evolve, the international community must remain vigilant in upholding the rule of law and protecting human rights in the face of emerging security challenges.

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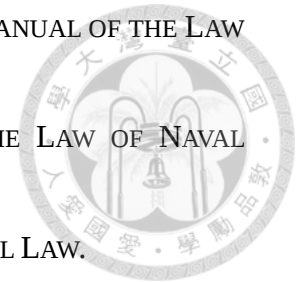
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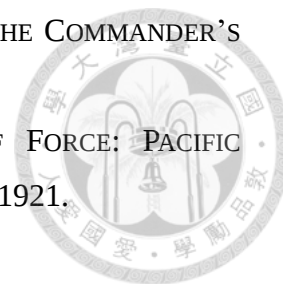
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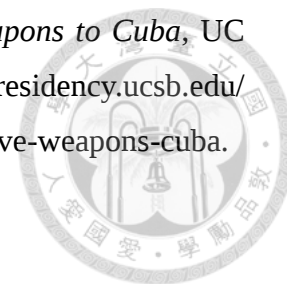
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