Chapter 5
UN Naval Interdiction Operations in the Territorial Sea

A naval pacific blockade though economic in its effect is not purely economic in its methods.¹

– J.F. Williams, 1936

Introduction

The practice of imposing economic sanctions in order to influence the actions of states and other parties – historically with varied levels of actual effectiveness – has a long and chequered history.² Given, however, that more than 90 per cent of the world’s trade is carried by sea, it is one particular form of the “so called economic weapon” – that of maritime sanctions enforcement – which tends to dominate the implementation of sanctions regimes.³ Yet despite the frequency with which naval

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³ Dalton, “The Influence of Law on Seapower in Desert Shield/Desert Storm”; p 30. O’Connell provides a thorough and nuanced analytical account of belligerent – as opposed to League of Nations or UN mandated - blockade operations conducted by navies since 1918 – See, O’Connell, The Influence of Law Upon Seapower; chapters 8-10. For a similar account of the belligerent conduct of blockades, extending back into the 1800s, see Thomas David Jones, “The International Law of Maritime Blockade – A Measure of Naval Economic Interdiction” (1983) 26 Howard Law Journal 759; See also Lois Fielding, Maritime Interception and UN Sanctions: Resolving Issues in the Persian Gulf War, the Conflict in the Former Yugoslavia, and the Haiti Crisis, Austin & Winfield, London, 1997; pp 19-31; Wolff Heintschel von Heinegg, “Naval Blockade” in Michael N. Schmitt (ed), International Law Across the Spectrum of Conflict, International Law Studies, Vol 75, Naval War College, Rhode Island, 2000; pp 203-230. As the focus of this chapter is upon interdiction operations in the context of UN naval peace operations, it will examine only UN mandated naval interdictions. This body of operational experience is distinct – both practically and in terms of authority – from the law and practice of ‘belligerent’ blockades, such as those of the Napoleonic Wars, World Wars I and II, the Vietnam War, the Iran-Iraq War, and the 2006 Israel-Lebanon conflict. The belligerent form of blockade, and the related but separate regime of belligerent visit and search, is properly understood as an aspect of LoNW and the Law of Neutrality – see, San Remo Manual; paras 93-104.

⁴ The aim of naval interdiction is, ultimately, to put pressure on the target state by engaging in varying levels of freedom of movement constriction in order to reduce the adversary’s ability to continue the conflict – see, for example, Royal Australian Navy, ABR
forces are used to implement maritime sanctions – or perhaps because of the long but erratic history of naval embargo – the regime as a whole remains haunted by some uncertainties as to its conceptual basis. As Martin observes, “some measures such as ‘pacific blockade’, have at times acquired a technical meaning”, and this has left them ill-equipped to deal with and adjust to new developments in maritime sanctions enforcement practice. Even prior to 1914, the notion of ‘blockade’ was a bivalent concept. On one hand, it was clearly a weapon of war. On the other, as Politakis notes, blockade was often “conceived not as an instrument of war but as an instrument of peaceful pressure” - a conception carried into the inter-war period by the League of Nations, which considered blockade to be an aspect of “diplomatic coercion” rather than a weapon of war. More recent UN mandated uses of naval interdiction, however, are arguably more at home under the aegis of use of force. In UNSC Resolution 217 (1965) on the Southern Rhodesia question, the UNSC instituted economic sanctions against Southern Rhodesia, “including an embargo on oil and petroleum products” on the grounds that the continuance in time of the Southern Rhodesian regime “constitutes a threat to international peace and security”. In Resolution 221 (1966), the UNSC went further still, both “determining” that the situation in Southern Rhodesia now constituted a “threat to the peace”, and calling upon the UK “to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia...” Thus while some interdiction schemes are designed to operate as a form of eco-


4 Quoted in Fielding, Maritime Interception and UN Sanctions; pp 9-10.

5 Politakis, “UN-Mandated Naval Operations”; pp 200-201. The migration of meaning in such dualist concepts is a slow process and periods in which both ‘meanings’ still hold significance will always exist. Thus despite the early twentieth century tendency to define it as a measure of peaceful diplomatic coercion, blockade has always maintained an independent conceptual ‘existence’ as a weapon of war – see, for example, the thread of belligerency linking the Paris Declaration Respecting Maritime Law 1856 (“Privateering is and remains, abolished; The neutral flag covers enemy’s goods, with the exception of contraband of war; Neutral goods, with the exception of contraband of war, are not liable to capture under enemy’s flag; Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy”), the London Declaration 1909 (further regulating the law and conduct of blockade), and the San Remo Manual 1995 (at paragraphs 93-104, which reflect updated blockade law and practice, in order to govern – for example – means other than “surface ships lying just off the coast”, such as use of submarines in blockade). See generally, Roach, “The Law of Naval Warfare at the Turn of Two Centuries”; pp 60-72. Reeve, “The Rise of Modern Naval Strategy c. 1580-1880”; p 14, records the long history of blockade as a weapon of war, particularly during the Napoleonic era – “Blockade, not fleet action, was the main strategic weapon of the eighteenth-century Royal Navy. As Brian Lavery has observed, for every hour in battle, weeks and months were spent on blockade. This was demanding work which wore down ships and men. But it undermined the morale and seamanship of the French while effectively denying them a naval strategy”.

6 UNSC Resolution 217 (1965) on The Question of Southern Rhodesia; paragraph 8.

7 UNSC Resolution 217 (1965) on The Question of Southern Rhodesia; paragraph 1.

8 UNSC Resolution 221 (1966) on The Question of Southern Rhodesia; paragraphs 1, 5.