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Books Recommended for Reference:

1.**Tandon M.P.** : Introduction to International Law

2. **Oppenheim** : International Law

3. **Stake. J.** :An Introduction to International Law

UNIT – V

TOPIC-1

BLOCKADE-AN OUTLINE

BLOCKADE

Blockade is a very particular form of naval warfare. In this section of my thesis I introduce blockade and discuss its development through the centuries. I pay particular attention to the attempts to codify blockade at the turn of the twentieth century and examine
the reasons for the failure of those initiatives. Acknowledging that the law of blockade is a
product of international customary law, I compare how it has been applied in the twentieth
and twenty first centuries, and if and how it has evolved over the century and a half since the
first attempts at codification were made.

Defining Blockade

Defined as "an act of war directed to the exercise of economic pressure on an adversary,"[6] blockade is "a belligerent operation to prevent vessels and/or aircraft of all
nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation." [7] The
objective of blockade[8] operations is to halt all maritime trade from entering or leaving a state. Although similar in many respects to siege[9] warfare, blockade differs from siege in three fundamental aspects. First, the focus of modern blockade is the economy of the blockaded nation. Thus whereas a siege is a limited tactical level operation with theobjective of causing a localized garrison to capitulate, blockade is a strategic operation whose goal it is to cause such extensive damage to a nation's economy that it can no longer sustain its war-fighting capability. Secondly, a siege will generally include the bombardment of the area, while ships conducting a blockade are usually stationed outside of the range of most coastal weapons and therefore do not launch weapons against the blockaded coast. Thirdly, a siege rarely encompasses an area larger than a city. As a result, its effects are limited to the immediate area of the siege. A blockade, however, has far reaching effects. Insofar as a blockading force must, in accordance with the law of blockade, stop all maritime trade from entering or exiting a blockaded state's ports, it can seriously affect not only the economy of the blockaded nation, but the economies of its trading partners as well. Insofar as the goal of a blockade is destruction of a state's economy, it is virtually

impossible to engage in this form of warfare without causing serious damage to the affected civilian population. As history has demonstrated, blockades can have extremely deleterious effects on adversely affected civilian populations.

The Law of Blockade

In order to assess the legality of blockade as a method of warfare in the post contemporary conflict paradigm, it is essential to understand the legal and historica levolution of the practice. It is equally important to understand the development of blockade as a form of economic warfare; the effects that it can have on neutral commerce; and, from a humanitarian perspective, the effects that it can have on the civilian population of a blockaded state. A product of customary international law,[11] naval blockade has been employed as a method of warfare against littoral states on numerous occasions over the past four and a half centuries. Beginning with the first modern blockade by the Dutch against Flanders in 1584[12], blockade has been used by naval powers to deny all sea trade between targeted littoral states and any other states, including neutrals. While there are some disagreements as to the exact meaning of the term "blockade" and the specific rights and duties that apply to a blockading power, most nations recognize blockade as a valid instrument of warfare. The theory behind blockade is that by stopping all maritime traffic from entering or leaving a blockaded nation's ports, and by extension ports in neighbouring countries from which goods can be trans-shipped, a belligerent can cause tremendous damage to the blockaded nation's economy

The Law of Neutrality

In order to properly examine the concept of blockade operations it is essential to review
the law of neutrality as it applies to maritime vessels in time of conflict. Long recognized in
international law, the law of neutrality constitutes recognition that under international law,
"all nations have the option to refrain from participation in an armed conflict by declaring or
otherwise assuming neutral status."[13] When a nation is recognized by the belligerents as
being neutral, there is an obligation on part of the belligerents to respect the status of the
neutral, to not engage in military activities on neutral territory or territorial waters, or to
interfere with the neutral state's affairs.[14] In return, the neutral state must refrain from engaging in activities that assist the war effort of any belligerent. It also has the duty To prevent the use of its territory as a place of sanctuary or a base of operations by belligerent
forces of any side.[15]

While the law of neutrality with respect to conflict on land was relatively well established by the middle of the nineteenth century, the same can not be said for that of maritime neutrality. While "the juridical principle of freedom of the sea is as ancient as the Holy Roman Empire,"[16] the absence of customary practice concerning the rights of maritime neutrals during nineteenth century naval warfare effectively rendered the principle meaningless. [17] The lack of respect for the law of neutrality during the wars of the eighteenth and nineteenth centuries, combined with the growing importance of international trade during the turn of the twentieth century, were recognized as issues that required international agreement. Thus, when the European powers convened at the Second Hague Peace Conference of 1907, one of the principal topics addressed was that of the rights of neutrals during armed conflict at Sea.[18] In keeping with the law of neutrality, in times of armed conflict all neutral vessels are legally entitled to exercise complete freedom of movement and operation on the high seas without hindrance from belligerent warships.

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International Law Regarding Blockades

In a memorandum prepared for the London Naval Conference of 1908–09, the British government defined a blockade as "an act of war carried out by the warships of a belligerent, detailed to prevent access to or departure from a defined part of the enemy's coast." This differs from a so-called pacific blockade inasmuch as the latter is not strictly an operation of war and cannot rightly be enforced against neutrals. The former may be either military or commercial. A military blockade is undertaken to attain some specific military objective, such as the capture of a naval port. A commercial blockade has no immediate military objective but is designed to cause the enemy to surrender or come to terms by cutting off all commercial intercourse by sea. A belligerent may, if it can, blockade the whole of the enemy's seaboard, but the mere proclamation of a blockade of the whole or any part of the enemy's coast, without anything more, is of no legal effect. Such proclamations were formerly common and were known as "paper blockades." A belligerent may not blockade neutral territory unless it is in the actual control or occupation of the enemy, nor may it blockade enemy territory in such a way as to prevent access to neutral territory.English engraving celebrating the blockade of Louisbourg English engraving celebrating the blockade of Louisbourg An English engraving from 1775 celebrating the blockade of Louisbourg, Nova Scotia, during the French and Indian War.Library of Congress, Washington, D.C.The common law of blockade rests mainly upon principles laid down by Anglo-U.S. prize courts. The more important of these are

summarized in the judgments of British jurist Stephen Lushington and Privy Council in an 1854 decision regarding the Franciska, a Danish ship that was seized by the British during the Crimean War. In order, therefore, to render a blockade valid under the common law and to impose penalties upon neutral vessels for breach of it, the following facts must be proved:

A blockade must be duly established: that is, it must be instituted under the authority of the belligerent government. Usually the officer in command of a naval force institutes the blockade under express instructions, but if this is done without them—an unlikely occurrence—this action must be ratified by the government. In either case, although in the British view an official notification is not necessary, neutral powers are notified in practice through diplomatic channels and the blockade is officially proclaimed. The officer in command must also notify the local authorities and foreign consuls. The blockade must be effective. Paper blockades were declared illegal by the Declarations of the Armed Neutralities of 1780 and 1800, and it was to suppress their subsequent continuance that Article 4 of the Declaration of Paris (1856; a supplement to the Treaty of Paris) provided that "blockades, in order to be binding, must be effective." A blockade, therefore, must be maintained by a force sufficient to truly prevent access to the coasts of the enemy.

The blockade must be continuously maintained and impartially enforced against all vessels alike. If interrupted—except when temporarily interrupted by adverse weather—it must be duly reestablished. Certain classes of vessels are exempt from the latter part of this rule, such as neutral warships and neutral vessels carrying distressed seamen of their own nationality, as well as neutral vessels compelled by stress of weather or the need of provisions or repairs to put into the blockaded port. Under the Anglo-U.S. practice vessels which have received a special licence from the government of the blockading state or the commander of the blockading force are also exempt.

There must be some violation either by egress or ingress by the vessel. At the London Naval Conference of 1909 it was generally agreed that there must be some notice, either actual or presumptive. In respect of egress the fact of blockade is sufficient. In respect of ingress, if the blockade has been officially declared, notice will be presumed if there has been sufficient time for the vessel to receive it. If the blockade is de facto, express notice must be given to the vessel by the blockading force and endorsed on the ship's papers.

There must be actual or constructive knowledge of the blockade by those responsible for the conduct of the vessel.

A blockade terminates (1) if it is expressly raised by the blockading government or by the officer in command of the blockading force, (2) if it ceases to be effectively maintained, or (3) if the blockaded place is actually occupied by the blockading state. The penalty for breach of blockade was the loss of the ship in any event, and of the cargo if at the time of shipment the blockade was known or might have been known by the shipper.

At the London Naval Conference of 1908–09, an attempt was made to codify the law of maritime warfare. For the most part, the provisions in the Declaration of London (1909) relating to blockade are merely declaratory of the common law. Two important amendments, however, were made. By Article 17 neutral vessels may only

be captured for breach of blockade “within the area of the warships assigned to render the blockade effective.” Under the customary law they are liable to capture during any part of the outward or return voyage. By Article 19 the doctrine of continuous voyage was declared inapplicable to blockade. Although the declaration had not been ratified by any state, it was, subject to some additions and modifications, adopted by all the belligerents at the commencement of World War I. On February 4, 1915, Germany declared its submarine blockade against Great Britain, and on March 1 the British government announced that it was the intention of the Allied governments as a retaliatory measure “to seize all ships carrying goods of presumed enemy destination, ownership or origin.” Although in effect blockades, neither of these measures was legally a blockade, since they did not conform to the provisions of the law of blockade. By the withdrawal of the declaration and subsequent orders by the Maritime Rights Order in Council, July 17, 1916, and by reliance upon the law of contraband, the situation was regularized for the Allied governments.

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Breaching Sanctions: The Consequences

The extensive utilisation of sanctions as a foreign policy tool is a comparatively recent development in the European Union. As such, there are limited examples of enforcement actions taken against those who breach sanctions, whether deliberately or accidentally.

This is in contrast to the United States, where there is a history of enforcement actions going back many years, with significant fines being imposed on violators responsible for multiple breaches. These have included fines against European banking groups in 2010 of $176m, and in 2009 of $536m and $217m. Such fines are often accompanied by a requirement for enhanced compliance to be carried out by the offending company.

However, evidence suggests that the UK Government is now taking enforcement more seriously. In March 2012 it was announced by HM Revenue and Customs that 84 British companies had been found to have breached the Iranian sanctions regime during the financial year, in comparison with just 40 cases in 2008/9, and 64 and 65 cases in the following two years.

Governments are often reliant on companies self-reporting breaches that have occurred. In the United States, banks are expected to monitor the transactions they

carry out and report any potential infringements to the Treasury Department's Office of Foreign Assets Control **(OFAC)**. With a vast amount of international trade being priced in US dollars, and those dollars having to be cleared through US banks, requiring banks to self-police is an effective method of tracking compliance without having to deploy significant resources.

Under the most recent EU Regulation imposing further sanctions on Iran (Council Regulation (EU) 267/2012), companies must report permitted transactions involving the import, purchase or transport of oil and petroleum products originating from Iran, and any financing or financial assistance in respect of the same, including the provision of (re)insurance. The notification must be made 20 working days in advance of the execution of the contract. Requiring such notifications to be made allows governments to monitor activity, again without deploying significant resources

USA

Penalties for violating US sanctions vary widely and are dependent upon a number of factors. Penalties range from issuance of a "cautionary letter" to transaction-based civil penalties, and, if the violation is wilful, to referral to the US Department of Justice for criminal prosecution with the prospect of a $1 million fine and up to 20 years imprisonment.

OFAC makes use of a "penalty matrix" in assessing the penalty to impose, which places emphasis on whether the violation was "egregious" (a finding of which would increase the penalty) or voluntarily self-disclosed (a finding of which would reduce the penalty). Other factors OFAC considers are whether or not the conduct at issue was reckless, whether management was involved, whether or not the violator is a large and sophisticated enterprise, whether the violator cooperated with OFAC's investigation, and whether the violator has in place an appropriate compliance programme.

UK

In the United Kingdom, a statutory instrument will be passed to enact criminal sanctions contained in EU legislation, as individual Member States are responsible for imposing criminal penalties. The severity of the penalty will of course depend on the offence committed, but by way of example, the maximum penalty for breaching the prohibition on providing financing or financial assistance for the import, purchase or transport of crude oil or petroleum products originating from Iran is imprisonment for two years, or a fine, or both.

One of the most high-profile cases in recent months where a sanctions breach has been alleged is that of Christopher Tappin, a freight forwarder who has been accused of conspiring to export batteries for Hawk surface to air missiles from the US to Iran, an offence for which, should he be found guilty, is punishable with a sentence of up to 35 years in jail. Tappin denies the offences and is currently on bail awaiting trial.

How can businesses try to prevent inadvertent breaches of sanctions legislation?

- **Due diligence:** adequate due diligence should be carried out in all transactions where there is a potential sanctions touchpoint, bearing in mind that there is no "one size fits all" approach to such enquiries. Education of employees in assessing the level of risk involved in entering into transactions is vital
- **Licences**: restricted goods can often be exported under licence. Ensure that the licence obtained fully covers the goods to be exported
- **Be aware of notification and Authorisation requirements**: there are reporting requirements for certain transactions with specific jurisdictions. For example, transfers of more than €10,000 to Iranian entities and individuals require notification to the relevant competent authority; and transfers over €40,000 require Authorisation in advance If another party to the transaction has taken responsibility for making notifications or obtaining Authorisations, ensure that you are satisfied that the procedure has been followed correctly
- **Review old transactions to ensure that there is no potential for activity which could result in a breach**
- **Records**: keep adequate records of all transactions.