

## XIII

### Means and Methods of Combat at Sea

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**I**t is strange indeed that an individual whose only military experience has been with land forces and who has only once been aboard a warship (and that was to be present at a ceremony where the ashes of a deceased naval officer were strewn at sea) should be asked to present a paper on the subject of "Means and Methods of Combat at Sea" to this Round Table. In view of the fact that there are a great number of naval experts present, I cannot even believe that it was intended to be a case of the blind leading the blind! If this had been scheduled to be the first paper delivered I would have assumed that the organizers of this Round Table were motivated by the desire to lay a groundwork in this area at the lowest possible technical level and then work up to the more esoteric problems. However, in view of the sequence of the programming, that explanation likewise seems to be ruled out. Fortunately I am in a position to state without fear of challenge that because of limitations of time and space, I will only be able to specify the modern methods or means of conducting warfare at sea with respect to which there appear to be legal problems, without attempting to offer any solutions to those problems.

It will be recalled that the Final Act of the 1907 Hague Peace Conference included the statement of a wish that its successor conference prepare regulations relative to the laws and customs of naval warfare.<sup>1</sup> Of course, because of the outbreak of World War I, that conference never took place and the series of Hague Peace Conferences was brought to an end. Subsequent efforts to fill the *lacunae* in the law of naval warfare through conventional means, such as the 1909 Declaration of London,<sup>2</sup> were, for one reason or another, unsuccessful, with the result that, apart from the much-disregarded 1936 London Procès-Verbal on submarine warfare,<sup>3</sup> the law of naval warfare consists basically of the 1856 Declaration of Paris,<sup>4</sup> the several conventions on the subject adopted in 1907, the 1949 Second Geneva Convention,<sup>5</sup> and customary international law.

#### The 1977 Protocol I

An important preliminary question concerns the extent, if any, to which Article 49 of the 1977 Protocol I<sup>6</sup> makes the provisions of that Protocol applicable to warfare at sea. It unquestionably applies to naval bombardments of

land targets, the subject of the 1907 Hague Convention IX Concerning Bombardment by Naval Forces in Time of War.<sup>7</sup> Does it also apply generally to other methods and means of conducting warfare at sea? One commentator, Dr. Elmar Rauch, asserts with considerable vigor that this protocol “regulates the conduct of hostilities and the pertinent treaty provisions apply to any land, air, or sea warfare.”<sup>8</sup> Another commentator, Professor Frits Kalshoven, is equally categorical in asserting that “[t]his goes to show once again that the Diplomatic Conference, carefully avoided taking up, in particular, the matter of naval warfare proper.”<sup>9</sup>

When Dr. Rauch presented his thesis to a Committee of the International Society for Military Law and the Law of War at Garmisch in September 1985, it generated considerable controversy. At the risk of oversimplification, I shall quote the two paragraphs of the article of the Protocol relied upon by Dr. Rauch and a very small part of the relevant activities at the Diplomatic Conference and then let you draw your own conclusions:

*Article 49-Definition of attacks and scope of application*

3. The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

4. The provisions of this Section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in Part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

When Article 49, then draft Article 44, was being discussed in the Working Group of Committee III of the Diplomatic Conference, the words “on land” at the end of what is now the first sentence of paragraph 3 were the subject of considerable debate. The following statement with respect thereto is contained in the report of the Working Group:

Discussions in the Working Group showed almost complete agreement that it would be both difficult and undesirable in the time available to try to review and revise the laws applicable to armed conflict at sea and in the air. Moreover, it was clear that we should be careful not to revise that body of law inadvertently through this article. The solution was found by combining the ICRC text with a sentence

which stated clearly that, except for attacks against objectives on land, the law applicable to armed conflict at sea or in the air is unaffected.

Several delegates wish it recorded that they remain dissatisfied with this draft. They object to the phrase 'on land' in the first sentence and to the second sentence as a whole. These delegates would prefer to have this section of the Protocol affect the law applicable to the conduct of warfare at sea or in the air to the extent that provisions of this Section would be more favorable to civilians than the existing law.<sup>10</sup>

The additional sentence referred to is, of course, the second sentence in Paragraph 3 (then paragraph 1). At the meeting of Committee III which took place immediately after the submission of that report, the following occurred:

The term 'on land' was adopted by 56 votes to one, with 7 abstentions. The part of the second sentence beginning with 'but do not' . . . and ending with . . . 'or in the air' was adopted by 56 votes to one, with nine abstentions.

Paragraph 1 of Article 44 was adopted by 60 votes to none, with 7 abstentions.<sup>11</sup>

The Report of Committee III, Second Session, adopted the wording of the report of the Working Group almost verbatim<sup>12</sup> and the Plenary Meeting adopted the article without discussion.<sup>13</sup> I now ask you: did the Diplomatic Conference make the provisions of the 1977 Protocol I generally applicable to warfare at sea?<sup>14</sup>

### Blockade

For centuries a naval blockade for the purpose of cutting off supplies to the enemy, like a land siege, has been an accepted method of conducting naval warfare and the supplies so cut off have frequently included foodstuffs. This has been true whether foodstuffs have been considered to be absolute contraband, conditional contraband, or not contraband. The unratified 1909 Declaration of London<sup>15</sup> (which itself stated that it corresponded with generally recognized principles of international law) listed foodstuffs as conditional contraband. The imposition of the "long distance" blockade by the United Kingdom during World War I was intended to bring Germany to its knees by starving the civilian population and it is alleged to have caused the deaths by malnutrition of half a million German noncombatants.<sup>16</sup> When, during the last year of World War II, the United States instituted a blockade of Japan primarily by mining the waters around that country, it actually called the mining program "Operation Starvation."<sup>17</sup>

## 230   Levie on the Law of War

Article 3 of the Resolution of the General Assembly on the Question of Defining Aggression includes in its list of acts qualifying as acts of aggression, “regardless of a declaration of war”:<sup>18</sup> “(c) The blockade of the ports or coasts of a State by the armed forces of another State.”

One well-known commentator on the subject has stated:

The ‘blockade of the ports or coasts’ of another State was another listed indicator of aggression, but what precisely constituted a ‘blockade . . . was deliberately left vague.’<sup>19</sup>

Does this provision of the resolution purport to constitute an attempt to eliminate the blockade completely, as a method of conducting warfare at sea? Does this mean that even after there is no question but that hostilities have erupted between two or more nations and after the Security Council has been unable to obtain a cease fire, and the two sides are attacking each other wherever they are in contact and are bombing each other wherever targets are available, the imposition of a blockade by one of the participants in the dispute would be an act of aggression? Did the Committee which drafted the definition of aggression consider that, among other things, it was recommending a material change in the law of warfare at sea? Or was the banning of blockades a prohibition on the use of this type of force to bring pressure to bear on a nation during peacetime, such as that used by Germany, Great Britain, and Italy against Venezuela in 1902?<sup>20</sup>

Article 54(1) of the 1977 Protocol I states:<sup>21</sup> “Starvation of civilians as a method of warfare is prohibited.”<sup>22</sup> Does this mean that naval blockades may no longer prevent foodstuffs from reaching enemy ports? The 1975 Report of the Committee charged with this matter by the Diplomatic Conference stated:<sup>23</sup> “The fact that the paragraph [Article 54(1)] does not change the law of naval blockade is made clear by Article 44, paragraph 1 [Article 49(3)].”

The Australian delegation was even more specific in its explanation of its vote. It said:

The Australian delegation wishes to place on record its view that Article 48 [now Article 54] does not prevent military operations intended to control and regulate the production and distribution of foodstuffs to the civilian population, and that it does not affect existing legal rule concerning the right of military forces to requisition foodstuffs. Moreover, in the view of my delegation, nothing in Article 48 directly or indirectly affects existing rules concerning naval blockade.<sup>24</sup>

Dr. Rauch disagrees with the foregoing interpretations of Article 54(1) of the 1977 Protocol I, taking the position that under that provision of the Protocol

there is an absolute prohibition of a naval blockade of foodstuffs.<sup>25</sup> It remains to be seen how belligerents will interpret it.

### Mine Warfare

The only conventional law with respect to the subject of mine warfare at sea is the 1907 Hague Convention No. VIII Relative to the Laying of Automatic Submarine Contact Mines.<sup>26</sup> Inasmuch as that Convention repeatedly refers to "automatic contact mines," there is a dispute on the question of its applicability to the modern "influence mines" (magnetic, pressure, acoustic, etc.), which do not require contact with the target in order to explode. Some commentators believe that the Convention is equally applicable to the various influence mines.<sup>27</sup> Others believe that the wording of the Convention is so restrictive that mines other than those specified are not subject to its provisions.<sup>28</sup> Professor O'Connell has taken the position that while influence mines are not specifically covered by the Convention, the practice of belligerents has been such as to bring them within its purview.<sup>29</sup> Influence mines are frequently bottom or ground mines, which lie on the seabed unmoored. If the Convention is applicable to them, the question which arises is whether, under Article 1(1) of the Convention, they must disarm themselves one hour after they have been planted—a requirement which would make them practically useless. In view of the validity of the dispute, this appears to be one area where new laws with respect to the conduct of warfare at sea might prove useful.

During the drafting of the 1907 Hague Convention No. VIII the Netherlands sought to have included therein a provision which would have prohibited the laying of mines barring passage through a strait connecting two open seas.<sup>30</sup> This proposal was rejected and all that was done in this regard was to include in the Commission report a statement that there was no intention to change the law relating to straits without stating what that law was.<sup>31</sup> During both World Wars straits were mined, and with such success that it is deemed unlikely that any restriction on this practice would be acceptable to most nations now or in the foreseeable future.

One comparatively recent development in naval weapons systems is the "torpedo mine." It is an anti-submarine weapons system consisting of a torpedo inserted into a mine casing.<sup>32</sup> It is deployed like an ordinary mine in deep water in the vicinity of routes traveled by enemy submarines. It has the ability to detect and classify submarine targets while surface ships will pass over it without triggering the torpedo. At the present time it is moored but suggestions have been made that it be used as a bottom or ground mine, buried in the seabed for concealment purposes, and not moored. Two legal problems would then arise with respect to this weapon: first, it might be argued that under the provisions of Article 1(1) of the 1907 Hague Convention No. VIII such a weapon should

disarm itself one hour after being deployed. On the other hand, it is actually unarmed and inactive while lying on the seabed; the torpedo only becomes activated, armed, and sent on its way when it receives the signal of the approach of a target—a submarine. The second problem is that under Article 1(3) of the Convention a torpedo which misses its mark must become harmless. When released, the encapsulated torpedo would be no different from any other torpedo. Presumably the fact that it would sink to the bottom of the sea at the end of an unsuccessful run would meet the Convention's requirement although it is probable that all torpedoes can be and are programmed to disarm themselves when they miss their target.

One final aspect of mine warfare is worthy of mention. In 1972 the Seabed Arms Control Treaty<sup>33</sup> came into effect. This Treaty prohibits emplacing or emplanting any nuclear weapons or any other types of weapons of mass destruction on the seabed beyond a twelve-mile coastal zone. The same restriction exists as to any facilities for storing, testing, or using such weapons. The coastal State, whether belligerent or neutral, may emplace or emplant any type of mine, conventional or nuclear, within its twelve-mile zone, subject, presumably, to notification, and, in appropriate cases, to the right of innocent passage. Other States are limited to the employing or emplanting of conventional mines beyond the twelve-mile zone. A belligerent may, of course, lay conventional mines within the territorial waters of its enemy provided that it is not the "sole object" of such mines to intercept commercial vessels. May it lay nuclear mines in those waters subject only to that same limitation?

### **The Natural Environment**

There is one aspect of the conduct of war at sea to which little attention has been paid and which could prove catastrophic for mankind—that is, the effect of such warfare on the natural environment. What will happen to the live natural resources of the sea if supertankers carrying hundreds of thousands of tons of crude oil are torpedoed and sunk? Or if off-shore pumping facilities are attacked and left discharging their product into the sea? What will happen to those natural resources and to mankind itself if nuclear submarines and other nuclear warships are destroyed by shells, missiles, mines, or torpedoes? Or if a warship, surface or submarine, carrying weapons with nuclear warheads is so destroyed? While there are "fail-safe" devices intended to protect against harm arising from these two latter eventualities, not only will there be instances where they cannot operate, but events have demonstrated the undependability of such devices. I have no solution for this problem nor, unfortunately, can I envision any rules in this regard which would be generally acceptable to states.<sup>34</sup> Even if the provisions of the 1977 Protocol I are deemed to be applicable to warfare at sea, it does not appear that its Articles 35 and 55 thereof will solve the problem. For example,

no torpedo mine is programmed in such a way as to limit its attacks to conventional submarines. And with the desperate need for oil of every belligerent during wartime, no nation can realistically be expected to provide in its rules of engagement a prohibition against attacks on tankers.<sup>35</sup>

### Missiles

The development and use of missiles with conventional warheads, such as Exocet, should not create any major legal problems. As in land warfare, they are nothing more than modern artillery, even when they are used over the horizon. Of course, if missiles from the sea are used against land targets their use is subject to the provisions of the 1907 Hague Convention No. IX Concerning Bombardment by Naval Forces in Time of War<sup>36</sup> and the 1977 Protocol 1.<sup>37</sup> However, if they are used against targets at sea they are subject to no prohibitions or restrictions not imposed on the use of a warship's guns. One commentator, writing in 1972, questioned whether naval surface-to-surface missiles were "sufficiently discriminating to ensure that the distinction between military targets on the one hand, and civilian and neutral targets on the other, can be maintained."<sup>38</sup> However, while a missile, like any other projectile, may hit an innocent victim and thus create an international incident, this would not appear to affect the legal status of missiles as a means of conducting warfare at sea.

### Exclusion Zones

Naval warfare may take place anywhere that ships may sail except in the territorial seas or internal waters of neutral states. This, of course, includes the high seas. The right of neutral vessels and aircraft to use the high seas, even during wartime, cannot be denied—but, legally or illegally, certain limitations have frequently been placed on that right by belligerents. One such limitation which has had many names is probably now best known as an "exclusion zone." One commentator, Commander Fenrick, has defined this term as follows:

An exclusion zone, also referred to as a military area, barred area, war zone or operational zone, is an area of water and superadjacent air space in which a party to an armed conflict purports to exercise control and to which it denies access to ships and aircraft without permission.<sup>39</sup>

Exclusion zones, under various names, were notified in both World Wars, frequently under the guise of reprisals. After World War II the International Military Tribunal (IMT) at Nuremberg found German Admiral Doenitz guilty of a violation of the 1936 London Procès-Verbal (Protocol I)<sup>40</sup> holding:

The order of Doenitz to sink neutral ships without warning when within these [operational] zones was, therefore, in the opinion of the Tribunal, a violation of the protocol.<sup>41</sup>

It will be noted that the Tribunal referred only to the sinking without warning of *neutral ships* within these zones. The effect of such an order directed solely at enemy merchant vessels is left unstated.<sup>42</sup> During the 1982 Falklands/Malvinas War the establishment of exclusion zones proliferated with the British announcing four and the Argentines announcing three.<sup>43</sup> The most extensive such zone announced by the British was its Total Exclusion Zone (TEZ) of 28 April 1982, effective 30 April 1982. The core of that announcement was to the effect that:

Any ship and any aircraft, whether military or civilian, which is found within the zone without authority from the Ministry of Defence in London will be regarded as operating in support of the illegal occupation [of the Falkland Islands] and will therefore be regarded as hostile and will be liable to be attacked by British forces.<sup>44</sup>

So far as is known, the Soviet Union was the only neutral to protest this action—perhaps out of pique because a British spokesman had made reference to “Soviet spy ships trailing the British forces inside the Zone.”<sup>45</sup>

Exclusion zones of a sort have been announced by both Iran and Iraq in their long-running war.<sup>46</sup> That complicated situation, with both sides in violation of international law at least as frequently as they are in compliance with it, is better not used either as a precedent or as an indication of the practice of states.

In his study of exclusion zones Commander Fenrick makes the following proposal:

It is suggested that if belligerents use exclusion zones they should publicly declare the existence, location and duration of the zones, what is excluded from the zone, and the sanctions likely to be imposed on ships or aircraft entering the zone without permission, and also provide enough lead time before the zone comes into effect to allow ships to clear the area.<sup>47</sup>

Doesn't that sound very much like a blockade?

I pose the following questions: Are exclusion zones a legal method of conducting warfare at sea? If not, are there any possible limiting factors which could make them legal?

### **Submarine Warfare**

Part IV of the 1930 London Naval Treaty<sup>48</sup> contains two rules with respect to the method of conducting submarine warfare: first, they must conform to the

rules applicable to surface vessels: and, second, except in certain limited and specified cases, they are prohibited from sinking a merchant vessel without first having placed passengers, crew, and ship's papers in a place of safety—which does not include the ship's boats unless in proximity to land or another vessel. There were eleven parties to these provisions, including France, Italy, Japan, the United Kingdom, and the United States. The provisions were repeated in the 1936 Procès-Verbal<sup>49</sup> to which thirty-seven additional States, including Germany and the Soviet Union, had acceded prior to the outbreak of World War II.

As we have already seen, the International Military Tribunal (IMT) found that, while in command of the German submarine force during World War II, Admiral Doenitz had issued orders which violated the provisions of the 1936 Procès-Verbal. However, the Tribunal did not assess punishment for this offense because of evidence that both the British and the United States navies had followed substantially similar procedures. In other words, three of the major naval Powers of the time had completely disregarded the provisions of the law of naval warfare restricting the methods of conducting submarine warfare. The Tribunal apparently considered that, despite this, the 1936 Procès-Verbal continued to be binding international law of naval warfare. Can it really be believed that in any future conflict involving naval powers, submarine warfare will be conducted in a manner other than it was in World War II? Can it be believed that the reiteration of the provisions on the conduct of submarine warfare in a new treaty, or the drafting of new restrictive provisions on this method of conducting naval warfare, would be other than a useless gesture?

### Conclusions

The methods and means of conducting warfare at sea that have been developed since the end of World War II are unquestionably numerous. For some, no new conventional law is necessary. For a few, it would probably be helpful to have new conventional law to replace the customary law which has evolved or the complete lack of law governing their use. For still others, the likelihood of agreement on a viable solution appears to be completely unattainable. It is believed that more harm than good could result from the drafting by the large majority of non-maritime powers, and the attempted imposition on the maritime powers, of prohibitions and restrictions on methods and means of conducting warfare at sea which the latter powers would refuse to accept.

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### Notes

1. 1 J.B. SCOTT. THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES: THE CONFERENCE OF 1907, at 679, 689 (1920).

## 236 Levie on the Law of War

2. Declaration Concerning the Laws of Naval Warfare, signed at London, 26 February 1909; D. SCHINDLER & J. TOMAN, *THE LAW OF ARMED CONFLICT* 755 (2d rev. ed. 1981) [hereinafter SCHINDLER & TOMAN].

3. Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of the London Naval Treaty of 1930, signed at London, 6 November 1936 [hereinafter Procès-Verbal], in SCHINDLER & TOMAN, *supra* note 2, at 795.

4. Declaration Respecting Maritime Warfare, signed at Paris, 16 April 1856, in SCHINDLER & TOMAN, *supra* note 2, at 699.

5. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, signed at Geneva, 12 August 1949, in SCHINDLER & TOMAN, *supra* note 2, at 333.

6. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), signed at Geneva, 10 June 1977, 16 I.L.M. 1391 (1977) [hereinafter 1977 Protocol I]; SCHINDLER & TOMAN, *supra* note 2, at 551.

7. SCHINDLER & TOMAN, *supra* note 2, at 723.

8. RAUCH, *THE PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS . . . AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: REPERCUSSIONS ON THE LAW OF NAVAL WARFARE* 17, 57-66 (1984). Dr. Rauch goes on to say that this is why no major military power has ratified the Protocol. The validity of that statement is questionable.

9. F. KALSHOVEN, *CONSTRAINTS ON THE WAGING OF WAR* 87-88 (1987).

10. XV OFFICIAL RECORDS OF THE DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS, GENEVA, 1974-1977, 327 (17 vols., 1978) [hereinafter OFFICIAL RECORDS]; 3 LEVIE, *PROTECTION OF WAR VICTIMS: PROTOCOL I TO THE 1949 GENEVA CONVENTIONS* 93 (4 vols., 1979-1981) [hereinafter LEVIE].

11. XIV OFFICIAL RECORDS, *supra* note 10, at 217; 3 LEVIE, *supra* note 10, at 94.

12. XV OFFICIAL RECORDS, *supra* note 10, at 267; 3 LEVIE, *supra* note 10, at 95, 96.

13. VI OFFICIAL RECORDS, *supra* note 10, at 205; 3 LEVIE, *supra* note 10, at 107.

14. It should perhaps be noted at this point that Article 49 para. 4, which was originally para. 3, was adopted by Committee III at its meeting on 21 March 1974 (XIV OFFICIAL RECORDS, *supra* note 10, at 85, 88; 3 LEVIE, *supra* note 10, at 85, 88), while the second sentence of paragraph 3, then paragraph 1, was not even drafted by the Working Group until almost a year later in February 1975 (XV OFFICIAL RECORDS, *supra* note 10, at 327; 3 LEVIE, *supra* note 10, at 93) and was not adopted by Committee III until 25 February 1975 (XIV OFFICIAL RECORDS, *supra* note 10, at 217, 218; 3 LEVIE, *supra* note 10, at 94). If either can be said to modify the other, then the second sentence of the present paragraph 3, being the later in date, modifies the present paragraph 4. Frankly, the present commentator sees no relationship between paragraph 4 and the problem under discussion but it has been brought into the dispute by others.

15. SCHINDLER & TOMAN, *supra* note 2.

16. RAUCH, *supra* note 8, at 86-87.

17. Meacham, *Four Mining Campaigns*, *NAVAL WAR C. REV.*, June 1967, at 96-97.

18. *Resolution 3314 (XXIX) of the General Assembly of the United Nations, 14 December 1974*, G.A. Res. 3314 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631.

19. Ferencz, *The United Nations Consensus Definition of Aggression: Sieve or Substance*, 10 J. INT'L & ECON. 701, 712 (August/December 1976).

20. After hostilities had broken out in the Falklands/Malvinas Islands in April 1982 and Argentina had refused to comply with the Security Council Resolution 502, which called for a cease fire and the withdrawal of Argentine troops from the Falklands, the United Kingdom, on 7 April 1982, established a maritime exclusion zone (MEZ) around the Islands. Argentina contended that this MEZ was a blockade and that it violated the resolution on aggression. (Of course, a basic question beyond the scope of this paper is the legal effect of a resolution of the General Assembly.)

21. See 1977 Protocol I, *supra* note 6.

22. While the United States does not at the present time intend to become a party to the 1977 Protocol I, at a meeting of the American Society of International Law held in Boston in April 1987, a representative of the Office of the Legal Adviser of the Department of State stated that the provision quoted in the text was one of those "that we believe should be observed and in due course recognized as customary law even if they have not already achieved that status." See U.S. Senate, Treaty Doc. 100-2, 29 January 1987.

23. XV OFFICIAL RECORDS, *supra* note 10, at 279; 3 LEVIE, *supra* note 10, at 245.

24. VI OFFICIAL RECORDS, *supra* note 10, at 220; 3 LEVIE, *supra* note 10, at 257.

25. RAUCH, *supra* note 8, at 94. He is incorrect in referring to the quotation from the Report as a "statement of the rapporteur." It was a statement made in the Committee's Report drafted by the Rapporteur, but reviewed

with meticulous care by the Committee before it was approved. XIV OFFICIAL RECORDS, *supra*, note 10, at 424-42. However, it could be argued with some justification that a naval blockade, with the consequent reduction in the food supplies available to the civilian population resulting in malnutrition and starvation, violates Article 49(3) of the 1977 Protocol I because it unquestionably does "affect the civilian population, individual civilians or civilian objects on land."

26. SCHINDLER & TOMAN, *supra* note 2, at 715 (English); 205 Parry's T.S. 331 (1980)(French). Article 1 of the *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices* (Protocol II to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*), 19 I.L.M. 1524, 1529, specifies that it "does not apply to the use of anti-ship mines at sea or in inland waterways."

27. RAUCH, *supra* note 8, at 116. *See also* J.S. COWIE, MINES, MINELAYERS AND MINELAYING 171-172 (1949); Tucker, *The Law of Naval Warfare*, in 50 INTERNATIONAL LAW STUDIES 304 n.49 (1957).

28. F. KALSHOVEN, BELLIGERENT REPRISALS 133-134 (1971); F. KALSHOVEN, CONSTRAINTS ON THE WAGING OF WAR 32 (1987); *see also* J. STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 584-585 (2d rev. ed. 1959).

29. D.P. O'CONNELL, THE INTERNATIONAL LAW OF THE SEA 1138-1139 (I.A. Shearer ed. 1984) The conclusion is reached that although influence mines are not covered by the Convention, the "generic principle" established by it "has rigidified in recent times so as to encompass the influence as well as the anchored contact mine." *Id.*

30. 3 SCOTT Annex 12, *supra* note 1, at 663.

31. *Id.* at 286. *But see* Corfu Channel Case [1949] I.C.J. 22.

32. There is some disagreement as to whether this weapon system should be treated as a torpedo, or as a mine. *See* RAUCH, *supra* note 8, at 117; *see also* L.E. Prima *Deep Threat*, 26 SEA POWER 41, 46 (May 1983). It is, of course, both. It is a mine while it lies in wait and a torpedo when it is triggered to seek its target. The United States Navy version of this device is called "CAPTOR", a contraction of "enCAPsulated TORpedo."

33. *Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction*, 11 February 1971, 10 I.L.M. 146 (1972).

34. States have heretofore drafted the 1971 *Seabed Arms Control Treaty* prohibiting the emplacement of nuclear weapons on the seabed and the ocean floor. *See supra* note 33; *see also* *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, signed at Geneva, 18 May 1977, 16 I.L.M. 88; SCHINDLER & TOMAN, *supra* note 2, at 131; and *supra* note 16, at arts. 35 and 55 of the 1977 Protocol I. However, it is extremely doubtful that any belligerent would find any of these rules to be applicable to the problems raised, at least in so far as its own actions were concerned.

35. A number of tankers have been hit by rockets or missiles in the Red Sea in the conflict between Iran and Iraq without any sinkings. Whether this is due to the construction of the tankers or to the nature of the projectiles used is unknown. Such a result could not be expected in a war involving major naval Powers with state-of-the-art missiles, rockets, torpedoes, mines, bombs, and shells.

36. SCHINDLER & TOMAN, *supra* note 7.

37. 1977 Protocol I, *supra* note 6.

38. D.P. O'Connell, *The Legality of Naval Cruise Missiles*, 66 AM. J. INT'L L. 785, 786 (1972). The recent incident involving the U.S.S. *Stark* in the Persian Gulf would seem to indicate that the problem of target identification still exists. *See also* Truver, *The Legal Status of Submarine Launched Cruise Missiles and International Law: A Response*, 103 NAVAL INST. PROC. 82 (August 1977) and Parks, *Submarine Launched Cruise Missiles and International Law: A Response*, 103 NAVAL INST. PROC. 120 (1977).

39. Fenrick, *The Exclusion Zone Device in the Law of Naval Warfare*, 1986 CAN. Y.B. INT'L L. . (As this volume of the Yearbook is not yet available, page references are to the manuscript kindly furnished by the author. The quotation in the text appears at page 3 of that manuscript.)

40. *See* Procès-Verbal, *supra* note 3.

41. Opinion and Judgment of the International Military Tribunal, Nuremberg, 1 October 1946, *reprinted in* 1 TRIAL OF MAJOR WAR CRIMINALS 221, 313 (1948).

42. Fenrick, *supra* note 39, at 22.

43. *Id.* at 30.

44. *Id.* at 32. The British policy statement of 7 May 1982 was not an extension of the TEZ. *Id.* at 33.

45. Argentina protested the original United Kingdom "military exclusion zone" as being a violation of the General Assembly resolution which defined aggression. *See supra* note 20.

46. Fenrick, *supra* note 39, at 41-49.

47. *Id.* at 55.

48. *Treaty for the Limitation and Reduction of Naval Armaments*, signed at London, 22 April 1930, 112 L.N.T.S. 65; 25 A.J.I.L. 63 (Supp. 1931).

49. *See* Procès-Verbal, *supra* note 3.