The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
SITUATION V.

BLOCKADING BY MINES.

There is war between States X and Y. Other States are neutral. War vessels of State X are blockading a port of State Y. Two of the war vessels of State X are called away, leaving only two to aid in maintaining an effective blockade. The two remaining vessels lay a line of automatic contact mines of which they give notice to neutrals.

The neutrals protest on the ground that this is not a legitimate method of blockade and maintain that the mines should be removed.

What action should be taken?

SOLUTION.

Under the strict law such use of mines is not prohibited. It would seem, however, that mines should not be used for the maintenance of a commercial blockade and that neutrals would have good cause to protest against such use, which protest a belligerent should heed.

NOTES ON SITUATION V.

Effective blockade.—According to the Declaration of Paris, 1856, to which most States acceded "blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient to prevent access to the coast of the enemy." This principle has been so generally recognized as to be little questioned. The words "sufficient force" have received varied interpretations. It is not certain just what constitutes a "sufficient force," nor of what character such force must be. Sir Alexander Cockburn, in the case of Geipel v. Smith, said:

In the eye of the law a blockade is effective if the enemies' ships are in such numbers and position as to render the running of the blockade a matter of danger, although some vessels may succeed in getting through. (Law Reports, 7 Queen's Bench, 404.)
The definition of blockade, according to the armed neutrals of 1780 and 1800, spoke of its maintenance by vessels. The Declaration of Paris of 1856, however, mentions "a sufficient force" not defining the nature of the force.

*Treaty provisions.*—Article 13 of the treaty between the United States and Italy of 1871 contains the statement that those States—

Being desirous of removing every uncertainty which may hitherto have arisen respecting that which upon principles of fairness and justice ought to constitute a legal blockade, they hereby expressly declare that such places only shall be considered blockaded as shall be actually invested by naval forces capable of preventing the entry of neutrals, and so stationed as to create an evident danger on their part to attempt it.

There may in some cases be a doubt as to what might properly constitute "naval forces capable of preventing entry of neutrals." Some maintain that there may be question of the propriety of the use of mines for such purpose; others regard mines as legitimate as any form of naval warfare, whether for blockade or other service.

*Opinion of court.*—In the case of the *Circassian* in 1864, Mr. Justice Chase said, in regard to blockade:

It may be made effectual by batteries ashore as well as by ships afloat. In the case of an inland port, the most effective blockade would be maintained by batteries commanding the river or inlet by which it may be approached, supported by a naval force sufficient to warn off innocent and capture offending vessels, attempting to enter. (2 Wallace, U. S. Supreme Court Reports, p. 135.)

*Obstructions in aid of blockade, stone.*—Speaking in 1862 of the stone placed in Charleston Harbor to aid in maintaining the blockade and of the opposition raised by some European States to this method, Secretary Seward in a letter to Minister Dayton, at Paris, said:

Hitherto such obstructions have been regarded as an ordinary military appliance of war. No American ever conceived that the human hand could place obstructions in a river which the same hand could not remove. * * * We were, therefore, surprised, and even incredulous, when we saw that the placing of obstructions in the channels leading to Charleston was, in Europe, regarded as an act of peculiar and ruthless severity. (U. S. Diplomatic Correspondence, 1862, p. 316.)
In a letter two days earlier to Mr. Adams, Mr. Seward said:

I am not prepared to recognize the right of other nations to object to the measure of placing artificial obstructions in the channels of rivers leading to ports which have been seized by the insurgents in their attempt to overthrow this Government. I am, nevertheless, desirous that the exaggerations on that subject which have been indulged abroad may be corrected. I have, therefore, applied to the Navy Department for information, and I have now to inform you that between the channels leading to the harbor of Charleston which have been so obstructed there still remain two other channels, neither of which has been so obstructed, and in which there has been no design to place any artificial obstructions. These are the Swash channel and a part of the so-called Maffit's channel. These two latter channels are guarded, and passage through them prevented only by the blockading naval forces. (Ibid., p. 36.)

In 1884 certain Chinese harbors were in part blocked by stone. In a communication to the Secretary of State at this time the United States minister to China says:

On the 10th of January I was informed by the British minister, Sir Harry Parkes, and the German chargé d'affaires, Count Tattenbach, that dispatches had been received from their consuls at Canton saying that the Chinese authorities were preparing to obstruct the water approaches to Canton, and that the effect of these obstructions would be to imperil, if not to prevent, navigation. The German consul reported that Whampoa would be "totally blocked."

I telegraphed Mr. Consul Seymour for information, and his reply I inclose. Mr. Seymour, as you will observe, said that there would be "serious obstructions without equivalent benefits." * * * The United States during the rebellion saw fit to obstruct the channels in Charleston Harbor by sinking ships laden with stone to secure an effective blockade. Germany during her latest war with France protected her Baltic ports with torpedoes. I should have felt some embarrassment in seeking to persuade the yamen that what Germany and the United States regarded as honorable warfare could not be permitted to them. (U. S. Foreign Relations, 1884, p. 66.)

A later dispatch, No. 267, from Secretary Frelinghuysen says:

Even, however, under this favorable modification (the opening of channels 100 to 150 feet in width) the obstruction to the channel at Canton and Whampoa can only be tolerated as a temporary measure, to be removed as soon as the special occasion therefor shall have passed, and under no circumstances to be admitted as a precedent for setting
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obstacles to open navigation at the treaty ports in time of peace, under pretext of being intended for ultimate strategic defense in the contingency of future war. (Ibid., p. 96.)

A dispatch of Secretary Bayard to Mr. Denby, United States minister to China, July 28, 1886, says:

Your No. 141 is before me, and brings to the Department, with much clearness, a question of great interest. It is unquestionable that a belligerent may, during war, place obstructions in the channel of a belligerent port, for the purpose of excluding vessels of the other belligerent which seek the port either as hostile cruisers or as blockade runners. This was done by the Dutch when attacked by Spain in the time of Philip II; by England when attacked by the Dutch in the time of Charles II; by the United States when attacked by Great Britain in the late civil war; by Russia at the siege of Sebastopol; and by Germany during the Franco-German war of 1870. But while such is the law, it is equally settled by the law of nations that when war ceases such obstructions, when impeding navigation in channels in which great ships are accustomed to pass, must be removed by the territorial authorities. Such is the rule apart from treaty; and it was implicitly admitted by Mr. Seward, when, in replying to the remonstrances by the British Government on the placing by the blockading authorities of obstructions in the harbor of Charleston, he stated that these obstructions were placed there merely temporarily. Were there any doubt about this question, which I maintain there is not, it would be settled by the provisions of our treaties with China, which virtually make Canton a free port, to which our merchant ships are entitled to have free access in time of peace. You are therefore instructed to make use of the best efforts in your power to induce the Chinese Government to remove the obstructions in the Canton River, which, as you state, operate to close the port of Canton to the merchant vessels of the United States.

In sending to you this instruction, I affirm the instruction of Mr. Frelinghuysen to Mr. Young, No. 267, dated April 18, 1884, printed in the Foreign Relations of that year. (U. S. Foreign Relations 1886, p. 95.)

Professor Moore summarizes the Chinese action in the Chino-Japanese war of 1894 as follows:

During the war with Japan in 1894, the Tsung-li yamen announced the closure of Foochow for purposes of defense. One entrance was left open, and a place was designated as an anchorage for foreign and Chinese steamers outside the mouth of the river, where they were required to discharge and load cargo, which was conveyed to and from Foochow by lighters registered at the customs. These lighters followed an indicated route and plied only in the daytime. In reporting these measures, the American chargé at Peking observed that,
burdensome as they doubtless would prove to be, no objection could be made to them in view of the demoralization of the Chinese naval forces, Foochow being an important naval depot which must be guarded at all hazards. The Government of the United States reaffirmed the position taken by Mr. Frelinghuysen in his telegram to Mr. Young of January 22, 1884, and by Mr. Bayard, in his instructions to Mr. Denby of July 28, 1886. (7 Int. Law Digest, p. 858; U. S. Foreign Relations 1894, Appendix I, p. 71.)

Obstructions in aid of blockade, sunken vessels.—Professor Lawrence, writing of the Russo-Japanese war of 1904, said:

In the present war no one, even in Russia, has hinted that the Japanese went beyond their rights in attempting to block the channel leading to the inner harbor of Port Arthur by sunken merchantmen, or in mining the sea pathway which they had observed the Russian ironclads to take when going in and coming out. (War and Neutrality in the Far East, 2d ed., p. 104.)

Use of mines during blockade.—Sir Thomas Barclay says of the general use of mines at Port Arthur:

During the blockade of Port Arthur, the Russians laid mines in all parts of the sea adjacent to that port. The Japanese allege that from the beginning to the end of the siege they removed 395 Russian mines. The removal continued after the siege, so that the total number removed they estimate to have much exceeded this number. In an excellent article, dated November 24, 1905, published in the Times of December 27, the able Tokyo correspondent of that paper remarked that "this chapter of history would not have retained a prominent place in general recollection, had it not been vividly illustrated from time to time by shocking disasters to merchant steamers, which, while navigating routes comparatively remote from the scene of the combat, struck errant mines, and were sent to the bottom." The Russians were not alone the offenders. The Japanese made almost equally extensive use of such mines, as has been learned from a document compiled at the Japanese Hydrographers' Office in answer to an application from the Russian headquarter staff for information as to the locality of any mines placed by the Japanese in the neighborhood of Vladivostok. The Japanese Admiralty replied, says the same correspondent, by a detailed statement showing that two mine-laying operations had been carried out by the Japanese in Vladivostok waters—the one in April, 1904, to render impassable the entrance and exit through the straits which must be passed to reach the port; the other, about a year later, when the Baltic fleet had arrived in Far Eastern waters. In this case 715 mines were laid "right across Peter the Great Bay, from Askold Island to Korsakoff Island, a distance of forty miles." These figures show that there must have been a mine at
"In spite of this great plexus of destructive engines," communications with Vladivostok continued undisturbed during the period of eight months—from April 15, 1905, when the Askold-Korsakoff line was laid, to November 9 of the same year—when the Japanese Admiralty replied to the Russian inquiry. (Problems of International Practice and Diplomacy, p. 59.)

**Discussion of the use of mines at the Hague Conference, 1907.**—In the letter of instructions as to the Second Hague Conference, Sir Edward Grey says to Sir Edward Fry in regard to mines:

15. His Majesty's Government would view with satisfaction the abandonment of the employment of automatic mines in naval warfare altogether. Failing the acceptance of such a total prohibition, they earnestly hope that the employment of these engines of war will only be sanctioned under the strictest limitations. They would advocate an arrangement by which the use of automatic mines should be limited to territorial waters, and, if possible, to such portions of territorial waters as adjoin naval bases or fortified ports. All mines thus employed should be effectively anchored, and so constructed that, in the event of their breaking adrift, they would either automatically become harmless or sink, and that in any case their active life should not exceed a limited period of say six months. (Correspondence Respecting the Second Peace Conference, Parliamentary Papers Misc. No. 1 (1908) [Cd. 3857].)

Various questions were raised as to the meaning of any prohibition of the use of mines for the maintenance of a blockade. Great Britain proposed an article to the following effect:

L'emploi de mines sous-marines automatiques de contact pour établir ou maintenir un blocus de commerce est interdit.

The British proposition became the point of departure for discussion on this topic. It was asked whether such a regulation would prohibit the use of mines by the blockading fleet for its own defense, etc. Captain Ottley replied that the intent was to prevent the closing of a great commercial port by the exclusive use of a line of mines. The president of the commission, M. Hagerup, said that two main questions seemed to be raised:

1. Les bâtiments établissant ou maintenant un blocus pourront-ils employer des mines pour leur défense personnelle?

2. Peut-on établir un blocus de commerce uniquement à l'aide de mines? Tout le monde paraît être d'accord pour répondre négativement à la seconde question.
The discussion in regard to the use of automatic contact mines introduces the conflict of interests between neutral and belligerent. The belligerent of large resources, ample military forces, varied and extended commercial interests would naturally desire that these should have the greatest freedom in use. The belligerent of small resources, both commercial and military, would naturally desire to use the most economical means of defense and to use these means with the least possible restraint. Some of the States having less military resources regard mines as essential to their protection against the more powerful and as a possible means by which they can close the ports of the great powers. Neutrals may also be involved in many ways. This is to some extent shown in the remarks of the Italian delegate, Captain Castiglia, at the opening of the discussion on the subject of submarine mines at the Second Hague Conference, June 27, 1907:

L’emploi des mines est un moyen de défense auquel ne pourront jamais renoncer ni les grandes puissances qui ont une longue étendue de côtes à protéger, ni, à plus forte raison, celles qui ne possédant pas une grande marine de guerre trouveront dans l’emploi de ces armes un puissant auxiliaire à leur défense maritime.

C’est la défense la moins coûteuse et pour cela elle est à la portée de tous. Mais si l’on pense aux désastreuses conséquences que ces instruments de guerre peuvent causer au commerce pacifique des neutres et à l’exercice de la pêche, pendant et même après la guerre, c’est bien naturel que l’on cherche à mettre quelque frein dans l’usage de ces terribles instruments pour en éliminer les conséquences fatales.

Mais les types des mines adoptés sont si différents, et les cas particuliers de leur emploi sont si nombreux, que même avec toute la meilleure bonne volonté, il serait impossible de dicter des règles générales pouvant être toujours suivies fidèlement.

La défense sous-marine idéale dans le sens de ne produire aucun dommage aux navires des neutres est celle qu’on obtient avec des obstructions composées de mines fixes, que des observateurs font éclater moyennant l’électricité. Mais l’emploi de ces mines est non seulement limité près des côtes, mais aussi il n’est pas toujours possible.

Sir Ernest Satow, speaking before the Third Commission at the Second Hague Conference, on September 17,
1907, said of the amended form of the British proposition to absolutely prohibit blockade by mines:

L'article 4, alinea 3, déclare qu'il "est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire dans le seul but d'intercepter la navigation de commerce." C'est là une clause qui laisse au belligérant une échappatoire bien dangereuse. On avait proposé dans le Comité de ne permettre la pose de mines devant un port de commerce qu'à la condition qu'il y eût dans ce port au moins une grande unité de combat, mais la proposition fut vivement combattue et dut, par conséquent, être retirée. Cependant il serait, à notre avis, tout à fait contraire à l'esprit et à la lettre de la Déclaration de Paris de permettre qu'un blocus fût maintenu totalement ou en partie à l'aide de mines. Je me permets de vous rappeler le texte même du passage qui a trait à cette question—"les blocus, pour être obligatoires, doivent être effectifs," c'est-à-dire maintenu par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi. Il est clair qu'il s'agit ici d'une force suffisante composée de navires de guerre, et que l'on ne peut comprendre dans cette catégorie des mines sous-marines, qui ne sont sujettes à aucun contrôle, et qui ne contiennent en elles aucune preuve évidente de l'intention de fermer l'accès du port bloqué. Il serait par conséquent bon de tirer ce point au clair, afin de ne laisser subsister aucune équivoque, et c'est pourquoi nous avons l'honneur de proposer le texte suivant à la place de celui que nous avons sous les yeux.

It was recognized in the discussions of Article II of the convention relative to the laying of automatic contact submarine mines that the introduction of the last clause would introduce possible complications. The article is as follows:

It is forbidden to lay automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping.

According to the last clause the prohibition extends to the mines laid with the "sole object of intercepting commercial shipping." This introduces the question of intent, which is always difficult to prove. The intent is, however, restricted by the introduction of the adjective "sole" (le seul but).

The report of the subcommission which had the matter of automatic contact mines under consideration was as relates to the question of blockade by mines as follows:

Art. 4. Devant les côtes et les ports de leurs adversaires, les belligérants peuvent placer des mines automatiques de contact amarrées dans les limites indiquées aux deux articles précédents.
Toutefois, ils ne peuvent dépasser la limite de trois milles marins devant les ports, qui ne sont pas des ports de guerre, que s’il s’y trouve des établissements de constructions navales ou de radoub, appartenant à l’État.

Il est interdit de placer des mines automatiques de contact devant les côtes et les ports de l’adversaire dans le seul but d’intercepter la navigation de commerce.

Après avoir fixé des limites à la défense des côtes, le règlement s’occupe dans l’article 4 de l’attaque. Les deux premiers alinéas de cet article se rapportent aux limites que, dans l’espace, les belligérants doivent garder en posant des mines amarrées devant les côtes ennemies; le troisième alinéa y apporte une nouvelle restriction, c’est que même là, où devant les côtes ennemies on peut placer dans la zone des deux premiers alinéas, des mines amarrées, on ne peut pas en placer “dans le seul but d’intercepter le commerce.”

1) Occupons-nous d’abord de cette dernière disposition. Elle doit son existence à une proposition britannique, contenue dans le projet primitif de la Délégation de Grande-Bretagne et portant que “il est interdit d’employer des mines sous-marines automatiques de contact pour établir ou maintenir un blocus de commerce.”

Dans la Sous-Commission, M. le Contre-Amiral Arago fit remarquer, qu’avant tout il serait nécessaire de déterminer la portée précise de cette disposition. “Interdit-elle par exemple aux vaisseaux belligérants, qui établissent un blocus, tout usage de mines sous-marines, même pour leur défense propre, ou, au contraire, a-t-elle seulement pour but d’interdire l’établissement d’un blocus à l’aide d’un cordon de mines sous-marines placé devant une côte ennemie?” à quoi M. le Capitaine de Vaisseau Ottley répondit “que la pensée à laquelle cette disposition s’est inspirée, était l’interdiction à un belligérant de fermer un port de commerce de son ennemi par l’emploi de mines automatiques de contact.”

Devant cette position de la question on dut se demander, si la discussion de la proposition britannique n’outrepassait pas les limites de la compétence de la 3ème Commission. On fit observer que la question de savoir quant et comment un blocus peut être établi, est du ressort de la 4ème Commission, qui aurait à s’occuper de la matière du blocus de guerre; c’est notamment à la 4ème Commission qu’il devrait appartenir de se prononcer sur toute question concernant l’effectivité du blocus. Après un échange de vues au sein de la Sous-Commission, le Président put constater l’unanimité de la Sous-Commission à ne s’occuper que de l’une des faces que présentait la proposition britannique; il s’agirait seulement de déterminer, en examinant les mines, comme moyen de nuire à l’ennemi, si l’on peut s’en servir dans le but de barrer la navigation commerciale de l’adversaire—question à laquelle, paraît-il, on devrait répondre négativement. Cela établi, on pourrait confier au Comité le soin de bien faire ressortir cette pensée commune, tout en laissant hors de discussion l’application, au sujet
de l'emploi des mines, des principes de la déclaration de Paris concernant l'effectivité du blocus.

C'est en effet dans cet ordre d'idées que le Comité eut à s'occuper de la proposition anglaise. On commença par être d'accord sur ce point, que, pour se soustraire à tout équivoque, il fallait abandonner le terme de blocus, employé dans cette proposition.

This Article 4 subsequently was amended and became Article 2.

Art. 2. Il est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire dans le seul but d'intercepter la navigation de commerce.

Opinions of text writers.—There have been claims that the blockade of ports must be wholly by war vessels. Fauchille says of this subject:

En général, les traités qui ont précédé la déclaration de Paris (voir notamment traités de 1780 et 1800) ne précisèrent point la nature des vaisseaux qu'on pouvait employer dans un blocus. La déclaration de 1856, elle-même, est restée muette sur ce point: seulement l'abrogation de la course qu'elle a prononcée ne peut permettre aucun doute à cet égard. Cette dernière observation s'applique également aux conventions postérieures à 1856. Les lois intérieures des États sont au contraire plus explicites sur la question: la plupart reconnaissent expressément le principe qu'un navire de guerre seul peut constituer un blocus: nous citerons notamment l'ordonnance des Pays-Bas du 26 janvier 1781 (art. 6), les ordonnances suédoises du 21 janvier 1804 (§ XI) et du 8 avril 1854 (§ 4), les règlements danois du 1er mai 1848 (§ 1) et du 16 février 1864 (§ 1), le règlement de la Prusse de 20 juin 1864 (§ 1), l'ordonnance autrichienne du 3 mars 1864 (§ 1), et celle du 21 mars 1864 (§ 5), le règlement russe de 1869 (§ 7) et les instructions françaises du 25 juillet 1870 (art. 7). L'Institut de droit international, qui, dans sa dernière séance, a essayé de codifier les lois du blocus, a aussi déclaré formellement que l'accès du port bloqué devait être interdit au moyen de vaisseaux de guerre. (Du Blocus Maritime, p. 132.)

Fauchille also says of the opinion expressed at the meeting of the Institute of International Law in 1877 (Annuaire 1878, p. 110) in regard to the difference between blockade by ships or by coast batteries or torpedoes which render access to the port impossible:

Nous croyons donc que l'emploi de torpilles, nullement défendu par la déclaration internationale du 11 décembre 1868, est légitime pour former un blocus lorsque leur disposition est telle qu'elle permet un
investissement effectif. Et il en sera ainsi, si, outre l'escadre volante, il se trouve devant la côte ennemie des vaisseaux dont les torpilles sont entre elles à une distance telle que leur puissance explosible puisse embrasser tout l'espace de mer qui les sépare du vaisseau qui les porte ou qui s'étend entre chacune d'elles. (Du Blocus Maritime, p. 134.)

Fauchille says of the propriety of blockade by sinking vessels loaded with stones before the blockaded port:

Pour résoudre cette question il faut, ce nous semble, envisager plusieurs hypothèses: Supposons d'abord qu'outre la ligne de pierres il se trouve devant le port une escadre de vaisseaux en nombre suffisant pour avertir tous les navires étrangers de l'existence du blocus. En ce cas, le blocus par pierres sera-t-il légitime? Nous devons faire une distinction. De deux choses l'une: Ou bien la ligne de pierres est une ligne ininterrompue et alors ce mode de blocus n'est pas légitime. En effet, quoique bloqué, un port ne se trouve point pour cela fermé à tous les vaisseaux étrangers: selon l'usage international, certains bâtiments peuvent encore sortir du port pendant les premières semaines du blocus, et même pendant la durée de l'investissement la place reste toujours accessible à certains navires particuliers; or, avec le système que nous supposons, comment ces vaisseaux pourraient-ils pénétrer dans le lieu bloqué ou s'en éloigner? Ce serait chose impossible, car, en vérité, on ne peut obliger la flotte bloquante à ouvrir un passage dans la ligne de pierres à chaque fois qu'un de ces bâtiments voudrait passer! Ou bien, au contraire, la ligne de barrage n'est pas ininterrompue et renferme certains passages; le blocus par pierres est alors parfaitement légitime, puisque ces passages, sans empêcher l'effectivité du blocus, permettent l'entrée ou la sortie de la place aux bâtiments qui ont ce droit. Ces passages, disons-nous, ne rendent pas le blocus non effectif, attendu qu'ils sont connus des seuls navires bloquants, et que ces vaisseaux bloquants sont supposés être en nombre suffisant pour avertir les neutres, les visiter et poursuivre ceux qui résisteraient à leurs ordres.

Cette première hypothèse est purement théorique, jamais elle ne se réalisera dans la pratique, car elle n'offre au belligérant bloquant aucun avantage spécial. Un blocus par pierres ne sera appliqué par un État qu'autant qu'il présentera pour celui-ci une certaine utilité, et il n'offrira quelque utilité que s'il nécessite pour son existence l'emploi d'un nombre de bâtiments moins considérable que le blocus par vaisseaux stationnés. Pour examiner si un semblable moyen est vraiment légitime, il faut donc supposer qu'il n'y a devant la place ainsi cernée que quelques rares croiseurs insuffisants pour prévenir de l'existence du blocus tous les navires qui se présenteraient. Or, dans ce cas, une objection nouvelle s'élève aussitôt. De nombreux navires pourront échapper à la surveillance des croiseurs; ignorant l'existence du blocus, ils s'approcheront sans crainte du port bloqué, et ils iront se briser sur la ligne de pierres qui ferme l'entrée de la place: des dommages considérables seront ainsi infligés à des innocents. Un pareil
résultat ne peut, ce nous semble, permettre aucun doute sur la légitimité du système qui l'entraîne. Ce système n'est donc, comme l'a dit le président des États confédérés, Jefferson Davis (Message du 12 janvier 1863), qu'une "odieuse barbarie." Certes, aucune définition ne pouvait mieux convenir au blocus par piers qui fut établi en 1861 par les Américains, puisque ceux-ci avaient déclaré n'y recourir que parce qu'ils ne possédaient pas une flotte suffisante pour constituer, avec des navires, un blocus effectif. (Du Blocus Maritime, p. 144.)

Pradier-Fodéré agrees with Fauchille that the maintenance of a blockade by coast batteries is allowable, citing a treaty between France and Denmark of 1742, the German code, and other sources. He also says:

La seule règle en cette matière est que les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi: or, les matelots et les soldats qui desservent les batteries constituent bien une force, et si cette force est suffisante pour interdire l'accès du littoral, l'entrée ou la sortie des ports, il est difficile de ne pas dire qu'il y a là un blocus effectif, quoique, à la vérité, les blocus maritimes soient le plus généralement constitués et maintenus par des forces navales. Les blocus par batteries placées sur les côtes sont une exception à la manière ordinaire de bloquer, mais ne sont pas une exception à une règle qui n'existe pas, et, dès lors, il n'y a pas lieu d'appliquer les principes de l'interprétation.

Les mêmes observations doivent être faites, et la même solution doit être donnée, au sujet de l'interdiction de l'accès d'un littoral, ou d'un port, au moyen de torpilles dormantes répandues devant le lieu qu'on veut bloquer. Ces torpilles, qui font explosion au contact des navires, s'opposent à l'entrée dans les ports, ou à la sortie de ces ports, par tout bâtiment de guerre ou de commerce, neutre ou ennemi, et réalisent un blocus très absolu, très effectif. Ce n'est pas le blocus ordinaire et régulier, ce n'est point le blocus effectif, tel que le définissaient les Neutralités armées de 1780 et 1800, ni même la déclaration du congrès de Paris de 1856, mais c'est un moyen de fermeture qui expose à un danger évident tout navire qui tenterait de la forcer, et qui ne pouvait être visé avant l'invention et la vulgarisation des torpilles. Ces engins de guerre, dont l'usage est condamné par l'humanité, mais licite d'après le droit international, pouvant être disposés de manière à constituer un investissement complet, il n'y a pas de raison déterminante bien sérieuse pour ne pas admettre les blocus au moyen de torpilles; d'autant plus que ce genre de blocus n'exclut pas, mais même exige, la présence de navires de guerre, afin de concilier ce moyen de fermeture avec la nécessité généralement reconnue aujourd'hui d'une notification spéciale faite en dehors de la notification diplomatique, pour surveiller les torpilles posées et pour les défendre contre les entreprises de l'ennemi bloqué. Ce besoin de maintenir des navires de guerre
Lawrence, speaking of the maintenance of blockade, says:

But it is not necessary that channels should in every case be closed by ships, though a maritime blockade without vessels to support it would be a contradiction in terms. As an operation supplementary to those of the fleet, a waterway may be closed by stones, sunken hulls, torpedoes, or other obstructions. When, in 1861, Earl Russell remonstrated on behalf of the British Government against the attempt made by the Federal forces to block up some of the approaches to Charleston and Savannah by sinking vessels in the channels, Mr. Seward replied that the obstructions were only temporary and would be removed at the termination of the war. In this particular case there was no intention to inflict permanent injury upon "the commerce of nations and the free intercourse of the Southern States of America with the civilized world." But even if such a design had been entertained, it is difficult to see on what grounds of law neutrals could protest against it. A belligerent, who may knock the fortified ports of his enemy to pieces by bombardment if they resist his attack, may surely destroy the approaches to them from the sea in order to further the objects of his war. Neutrals are jealous, and properly jealous, of methods which inflict severe injury on their trade; but they can hardly claim to make its future prosperity the measure of the legality of hostile acts. (Principles of Int. Law, p. 583.)

Opinion of Professor Lawrence on the Hague Convention.—Speaking of the convention in regard to the laying of submarine automatic contact mines, Professor Lawrence says:

Here we have a code which possesses the great advantage of being short, terse, and free from legal technicalities. But unfortunately the first two articles are greatly diminished in force by a subsequent provision, and the third is useless. He must indeed be a curiously simple-minded naval commander who cannot think of some other reason for laying a cordon of mines off an enemy's port than that of intercepting commercial shipping. Even if there be no gunboat, however aged and rotten, reposing on the mud of some interior creek, or no naval store, however ill-furnished and depleted, hidden in some remote corner, there always remains the resource of alleging that the enemy's warships must be prevented from gaining the shelter of the harbour. Germany saw this and made a reservation against the regulation on the ground that "the belligerent has only to assert a different
object in order to make it illusory." One would have thought her next step would be to suggest that it be turned into a reality. But she objected to a British proposal to prohibit outright the use of contact mines for closing against commerce ports that were not being attacked from the sea, and her opposition was backed by France and Russia. The result is that, so far as the conference is concerned, no restraint has been put on the activity of belligerents in this direction, though there is good reason for the assertion that it would be absolutely contrary to existing International Law. (International Problems and Hague Conferences, p. 122.)

Just as a consideration of the law of contraband in conference must lead to discussion on the carriage of food stuffs in neutral vessels to un-blockaded belligerent ports, so it will be impossible to deal with the law of blockade without encountering the question of how a lawful blockade is constituted. For generations past there has been one common element in all the answers that have been given. Without exception they have asserted or assumed that the closure of the blockaded port must be effected by ships. There have been controversies as to the number of ships to be employed, the necessity of a cross fire being brought to bear from them on any vessel attempting to enter, the manifest nature of the danger threatened by them, and the question whether they must be stationed on the spot or may be allowed to cruise within reach of it. But no State has ever claimed the right to institute a blockade without placing some of its men-of-war in close proximity to the place blockaded. Yet at the last Hague Conference such a claim was made, not indeed directly, but by implication. The rejection of the British proposal to limit the use of anchored contact mines to the attack and defence of fortified naval ports involved a belief in the right to use them for closing against commerce ports which were not being attacked from the sea. A prohibition against laying them "off the coasts and ports of the enemy with the sole object of intercepting commercial shipping" was indeed inserted in the convention on the subject, but we have already (see pp. 122, 123) exposed its futility. On this point the proceedings of the conference were reactionary in the highest degree. Whereas in the past the only way of closing an enemy's port against all neutral commerce was to blockade it, and the only way to blockade it was to station a ship or ships in such a position as to create evident danger to all vessels attempting ingress or egress, for the future it will suffice in the judgment of many powers, to lay a cordon of anchored contact mines across the approaches. Neutrals must indeed have lost all virility if they will quietly submit to this. It will not mean the comparative triviality of having their ships and goods confiscated by a belligerent Prize Court. They will be destroyed instead; and all on board will be sent to their doom. (Ibid., p. 189.)

Dangers from the use of mines for blockade.—It is evident that there are many dangers from the use of mines in blockade. If notification is not given to every vessel
approaching the line of blockade, vessels may run upon mines. It is usually admitted that a vessel may occasionally pass the line of blockade without being seen by the blockading forces, perhaps by reason of darkness or storm. Vessels may approach the line of blockade not knowing of its existence and innocently try to enter the port. Neutral public vessels may even when knowing of blockade approach the port. If in such a case, the blockading vessels are absent in pursuit of a vessel which has violated a blockade; are driven away by the stress of the weather; are driven away by the forces of the other belligerent, without removing the mines, there remains a hidden danger to the vessels innocently approaching the port. A neutral attempting to violate a blockade, if captured, is liable, after trial by a proper court, to condemnation of vessel and cargo. A neutral vessel approaching, perhaps innocently, a port blockaded by mines, is liable to be destroyed without trial, and not merely may the vessel and cargo be sunk but the lives of the officers and crew may be sacrificed.

A neutral coming within the area of actual hostilities is generally held liable to the consequences of his action. Therefore, a difference may be made in the means used in war in case the place blockaded is a military stronghold of the enemy. It may be necessary that such places be closed to ingress or egress by mines.

It seems, therefore, that there should be a distinction made in the use of mines for the purpose of closing ports, and that the use of mines for commercial blockades should not be allowed, or if allowed should be under very careful restrictions.

However, the Hague Convention of 1907 only prohibits the use of mines for "the sole object of intercepting commercial shipping." As has been said it is very easy to introduce an additional object for which a blockade is maintained while still leaving innocent shipping liable to gravest dangers.

From the nature of the blockade, as stated in this Situation V, there is a small blockading force from which it might be inferred that it was rather a commercial than
a military blockade. The representatives of neutral States protest against the use of mines before the port. Protest would naturally not be lodged against the use of mines in any reasonable manner before a military stronghold.

CONCLUSION.

Under the strict law such use of mines is not prohibited. It would seem, however, that mines should not be used for the maintenance of a commercial blockade and that neutrals would have good cause to protest against such use, which protest a belligerent should heed.