

Blockades: Acts of War

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From July 21 - 31, Joint Task Force (mostly US, but also UK, France, Brazil and Italy) "Operation Brimstone" large scale war games were conducted off the US East coast in the North Atlantic. Its purpose may have been to prepare for a naval blockade of Iran. From what's known a naval deployment may be planned, and a blockade may ensue. The situation remains tense and worrisome.

Under international and US law, blockades are acts of war and variously defined as:

- surrounding a nation or objective with hostile forces;
- measures to isolate an enemy;
- encirclement and besieging;
- preventing the passage in or out of supplies, military forces or aid in time of or as an act of war; and
- an act of naval warfare to block access to an enemy's coastline and deny entry to all vessels and aircraft.

In 2009, it's believed that the International Criminal Court in the Hague will include blockades against coasts and ports as acts of war.

International law expert Professor Francis Boyle is very outspoken on this topic as well as on others of equal importance. He defines blockades under international and US law as:

— "belligerent measures taken by a nation (to) prevent passage of vessels or aircraft to and from another country. Customary international law recognizes blockades as an act of war because of the belligerent use of force even against third party nations in enforcing the blockade. Blockades as acts of war have been recognized as such in the Declaration of Paris of 1856 and the Declaration of London of 1909 that delineate the international rules of warfare."

America approved these Declarations, so they're binding US law as well "as part of general international law and customary international law." Past US presidents, including Dwight Eisenhower and Jack Kennedy, called blockades acts of war. So has the US Supreme Court.

In *Bas v. Tingy* (1800), the High Court addressed the constitutionality of fighting an undeclared war. Boyle explained that it ruled that "the seizure of a French vessel (is) an act of hostility or reprisal requiring Congressional approval....The Court held that Congress

pursuant to Constitutional war powers had authorized hostilities on the high seas under certain circumstances.” The Court cited *Talbot v. Seaman* (1801) in ruling that “specific legislative authority was required in the seizure....”

In *Little v. Barreme* (1804), the Court held that “even an order from the President could not justify or excuse an act that violated the laws and customs of warfare. Chief Justice John Marshall wrote that a captain of a United States warship could be held personally liable in trespass for wrongfully seizing a neutral Danish ship, even though” presidential authority ordered it. Only Congress has that power. “The Court’s position seems consistent with a typical trespass case, where defendants are liable even when they have a reasonable, good faith (but mistaken) belief in authority to enter on the plaintiff’s land.”

Boyle cites “The Prize Cases” (1863) as the most definitive Supreme Court ruling on blockades requiring congressional authorization. The case involved President Lincoln’s ordering “a blockade of coastal states that had joined the Confederacy at the outset of the Civil War. The Court....explicitly (ruled) that a blockade is an act of war and is legal only if properly authorized under the Constitution.” It stated:

“The power of declaring war is the highest sovereign power, and is limited to the representative of the full sovereignty of the nation. It is limited in the United States to its Congress exclusively; and the authority of the President to be the Commander-in-Chief....to take that the law be faithfully executed, is to be taken in connection with the exclusive power given to Congress to declare war, and does not enable the President to (do it) or to introduce, without Act of Congress, War or any of its legal disabilities or liabilities, on any citizen of the United States.”

Article I of the Constitution pertains to powers “vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Section 8 relates to powers “to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and welfare of the United States....” Two Section 8 clauses relate to this article.

— clause 14: to “make rules for the government and regulation of the land and naval forces;” and most importantly

— clause 11: “to declare war, grant letters of marque and reprisal, and make rules concerning capture on land and water.”

The framers believed that no single official, including the President, should ever have sole authority over this most crucial of all constitutional powers because of how easily it can be abused as post-WW II history shows. In 1793, James Madison wrote that the “fundamental doctrine of the Constitution....to declare war is fully and exclusively vested in the legislature.” During the 1787 Constitutional Convention, George Mason said that the President “is not safely to be trusted with” the power to declare war. Nonetheless, Congress only observed its responsibility five times in the nation’s history, lastly on December 8, 1941 following Japan’s attack on Pearl Harbor the previous day.

All treaties to which America is a signatory, including the UN Charter, are binding US law. Its Chapter VII authorizes only the Security Council to “determine the existence of any threat to the peace, or act of aggression (and, if necessary, take military or other actions to) restore

international peace and stability.” It permits a nation to use force (including blockades) only under two conditions: when authorized by the Security Council or under Article 51 allowing the “right of individual or collective self-defense if an armed attack occurs against a Member....until the Security Council has taken measures to maintain international peace and security.”

Iran poses no threat to the US, its neighbors, or any other nations, including Israel. Imposing a blockade against it violates the UN Charter and other international and US law. It will constitute an illegal act of aggression that under the Nuremberg Charter is the “supreme international crime” above all others. It will make the Bush administration, every supportive congressional member, and governments of other participating nations criminally liable.

Two more events further up the stakes. On April 3, in spite of strong public opposition, the Czech Republic agreed to the installation of US “advanced tracking missile defense radar” by 2012. On July 9, a Russian Foreign Ministry statement responded: “We will be forced to react not with diplomatic, but with military-technical methods.”

Then on August 14, Poland defied its own people and most Europeans by agreeing to allow offensive “interceptor missiles” on its soil. Legislatures of both countries must approve it, but that will likely follow. Deployment is reckless and indefensible and will head the world closer to serious confrontation.

For two countries wracked by prior wars, these actions are irresponsible and foolhardy. They further heighten tensions and assure a new Cold War arms race or much worse. Russia’s deputy military chief of staff, General Anatoly Nogovitsyn, stated: Poland is “exposing itself to a strike, 100%.” Russian President Dmitri Medvedev said: “The deployment (aims at) the Russian Federation.” Even Polish Prime Minister Donald Tusk showed fear by his comment that “We have crossed the Rubicon.” Yet he did it anyway. Where this is heading remains to be seen, but the signs are deeply worrisome.

So is the possibility that Washington will blockade or attack Iran before year end. Things won’t likely crystallize before Congress reconvenes in September after both parties hold their nominating conventions.

Hopefully a wider Middle East war will be avoided because of what might follow. What Barbara Tuchman recounted in her 1962 book, “The Guns of August,” on how WW I war began and its early weeks. Once started, things spun out of control with cataclysmic consequences. Before it ended, over 20 million died, at least that many more were wounded, and a generation of young men was erased.

Igniting another world conflict should give everyone pause. Especially given the destructive power of today’s weapons and the Bush administration’s design for “full spectrum dominance” and stated unilateral right to achieve it with first-strike nuclear weapons. Avoiding that possibility is the top priority of every world leader. It’s unclear if any are up to the challenge.

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