1972

A juridical analysis of recent evolutionary developments concerning naval interdiction of seaborne commerce as a viable sactioning device.

Clark, Bruce Alan.

https://hdl.handle.net/10945/16228

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A JURIDICAL ANALYSIS OF RECENT EVOLUTIONARY DEVELOPMENTS CONCERNING NAVAL INTERDICTION OF SEABORNE COMMERCE AS A VIABLE SANCTIONING DEVICE

By

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A Thesis presented to

The Faculty of

The National Law Center
of
The George Washington University
in partial satisfaction
of the requirements for the degree of
Master of Laws

Thesis directed by

William Thomas Mallison, Jr.
Professor of Law

September 30, 1972

Preface

The basic complementary policies embodied in the contemporary prescriptions on recourse to coercion are reasonably clear. In its prohibition of certain coercion, the community attempts to effect a policy of promoting change through procedures of peaceful persuasion. . . .[1]

Myres S. McDougal
Law and Minimum World Public Order
(1961)

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A JURIDICAL ANALYSIS OF RECENT EVOLUTIONARY DEVELOPMENTS CONCERNING NAVAL INTERDICTION OF SEABORNE COMMERCE AS A VIABLE SANCTIONING DEVICE

I. INTRODUCTION AND BACKGROUND

When President Nixon announced on May 8, 1972 [1] that he had ordered the entrances to North Vietnam's ports and harbors mined so as to prevent access by foreign shipping to Communist docking facilities and to deny North Vietnamese naval forces their bases of operation, the almost immediate response by correspondents, columnists and commentators of various media was to either call the President's action a "blockade" or to contrast it to President John F. Kennedy's Cuban Missile Proclamation made almost ten years earlier. [2]

As could be expected, the action which President Nixon undertook was subject to intense and sometimes vitriolic public reaction ranging from criticism that such action was unwarranted, unlawful and excessive to praise that the President's action was justified, lawful and long overdue. Two lawyer publists who were among the most vociferous critics of President Nixon's actions were former Presidential Aide Theodore Sorensen and former Legal Adviser of the Department of State Abram Chayes.

Both of these men had played an active role in advising President Kennedy during the 1962 Cuban Missile Crisis. Mr. Sorensen, commenting in an article published in The New York Times, analyzed the Soviet's 1962 Cuban threat which he characterized as a rapid, clandestine and closeby offensive missile buildup by contrasting it to the Soviet's current South East Asia supply activity which he characterized as being an open, systematic and distant delivery of conventional weapons to their North Vietnamese ally. From this analysis, Mr. Sorensen concluded that the immediacy and magnitude of the threat which President Kennedy faced in 1962, amply justified his Cuban Presidential Proclamation which established a formidable but selective quarantine-interdiction whereas President Nixon's far reaching North Vietnamese mining order could, in no way, be considered as being justified since the United States was neither presently confronted with an equivalent crisis nor remotely faced with a comparable threat.[3] Mr. Sorensen also noted that whereas President Kennedy's quarantine-intetdiction remained flexible and was not directed against vessels carrying "food, petroleum, medicine and the necessities of life," President Nixon's maritime mining measures were directed against all foreign shipping and therefore lacked the high degree of discretionary, executive control which the Kennedy Proclamation possessed.

Writing in The Washington Post two days later, Professor Abram Chayes questioned the apparent avoidance by President Nixon of the term "blockade" in the Presidents announcement of May 8, 1972.[4] Professor Chayes followed with a discussion of the principle of freedom of navigation on the high seas by non-belligerents as well as the historical development of the rules of blockade and contraband. Professor Chayes compared President Nixon's mining announcement with the action taken by President Kennedy during the Cuban Missile Crisis but observed that the inherent right of self-defense presently used by the United States to justify its mining activities had, of necessity, to be based on the threat of force against U.S. troops in South Vietnam since the United States was not a party to the conflict.[5]

Finally, Professor Chayes observed that:

> What . . . President Nixon has ordered is not so different from [the] indiscriminate attack on non-belligerent [North Vietnamese bound] shipping. Perhaps there is a difference from what the German U-boat commanders did in 1917, but only if the impersonality of dropping mines is somehow cleaner than firing torpedoes."

It should be pointed out, however, that Professor Chayes comparison between the United States use of an announced and highly restricted naval mining interdiction operation conducted

in North Vietnam's territorial waters with the unannounced and unrestricted World War I submarine warfare campaigns conducted by Germany on the high seas is not a sound analogy. For unlike the major submarine mining campaigns conducted during World War I and II wherein advanced notification of various danger areas was seldom provided, in the case of the North Vietnamese mining interdiction, adequate notice of the existence and the general location of all hazardous areas was provided by the United States at least three days prior to the activation and arming of all U.S. mines.[6]

It should also be remembered that torpedoes, like bombs and rockets are aimed and released at their targets and are therefore classified as offensive weapons while mines, whether used by a nation for it coastal defense or for offensive purposes such as a shipping interdiction measure, remain exclusively passive weapons. That is to say, that the target vessel cannot be actively sought out by the mine and must therefore itself come within the proximity of the minefield in order to be destroyed.

In addition, it has seldom been recognized that mine warfare is really more humanitarian than other modes of warfare since a mining interdiction campaign enables the winner to materially reduce the resistance of a foe through the reduction of supplies and war materials without the actual necessity of

killing one's foe. Ships lost in a mine field enter it by their own choice; and those maritime nations supplying an enemy are free to keep their vessels and supplies out of mined waters or attempt to supply belligerent nations by other alternative means. It is precisely because modern minefields are so sophisticated, highly effective and not easily subject to countermeasures, that nations conducting maritime supply operations with a blockaded target country normally tend to give offensive minefields a wide berth. The mark of a successful mining operation , therefore, is not necessarily the number of ships destroyed or enemy killed, but rather the absence or significant reduction in shipping from the mined coastal areas of the target state.

A principle purpose for which a nation seeks to interdict its enemy's seaborne commerce is to obtain delays in the delivery of the enemy's weapons, munitions and other articles of war. While not always apparent, it is a fact that every ship sailing which is delayed, even for one day, represents a loss of cargo. Thus, it should be made clear that a mining interdiction campaign is principally directed against the exclusion and curtailment of the enemy's supplies and not the killing and extermination of the enemy's population as an intended foe.

Finally, a mining interdiction limited to the approaches of the ports and harbors of a belligerent target state is, in

most instances a less provocative measure than involking the sanctions of a "traditional" blockade which can require the searching, seizing, sequestering or even sinking of vessels on the high seas. Thus, the value of an effective naval interdiction campaign established through the utilization of aerial mines, surface vessels or a combination thereof, remains an extremely important and humanitarian sanctioning device which is intended to minimize the loss of life and property while avoiding an uncontrollable confrontation between superpowers.

Writing in rebuttal to Professor Chayes' caustic commentary, Professor John Norton Moore has noted that international law recognizes the right of a belligerent to interdict the flow of supplies to the enemy by naval blockade and, as is true of the law of hostilities generally, the applicability of the law of blockade depends on the factual existence of a state of international hostilities and does not require a formal declaration of war.[7]

Professor Moore has written that:

> The law of blockade represent[s] a compromise between the interests of non-belligerents in minimal disruption of shipping and the interests of belligerents in preventing war materiel from reaching the enemy. Through the compromise permits interdiction of commerce with the enemy, it requires notification as a means of enabling non-belligerents to avoid the blockade zone and the attendant risk of seizure.

Professor Moore has further observed that at a time when twelve North Vietnamese divisions were streaming into the South and many major South Vietnamese cities were under siege, it was the magnitude of the threat to South Vietnam and not just the safety of U.S. forces stationed there that permitted the United States to jointly act with the South Vietnamese Armed Forces in exercising the right of collective self-defense. Professor Moore concludes that the decision to avoid the term "blockade" was part of a series of careful limitations intended to minimize the risk of confrontation with all non-belligerents, particularly the Soviet Union, and to avoid any implication of a "long distance blockade" or any variety of other broad claims which have traditionally been associated with the principles of unrestricted maritime blockade.

The remarks expressed by the foregoing writers would, therefore, seem to point out that not only are there significant differences of opinion as to whether President Nixon's maritime interdiction measures were necessary and proportional but also whether the doctrines pertaining to naval or maritime interdiction were flexible enough to permit such an innovative mining interdiction procedure to be employed by the United States regardless of whether the circumstances pertaining to that particular mode of mine warefare and the realities of strategic power alignments might have clearly required such a

modification to be undertaken.

In this regard, Professor Myres S. McDougal writing in his book Law and Minimum World Public Order [8] has observed that:

> Much more effective than explicit agreement in the prescription of the law of war has been the less easily observed, slow, customary shaping and development of general consensus or community expectation. Decision-makers confronted with difficult problems, frequently presented to them in terms of principles as vague and abstract as "the laws of humanity and the dictates of public conscience" and in terms of concepts and rules admitting of multiple interpretations, quite naturally have had recourse both to the experience of prior decision-makers and to community expectation about required future practice and decision. The myth is that certain practices are repeated and mutually tolerated over a period of time by a substantial number of decision makers in the context of "oughtness" or "authority," a certain customary rule or principle of law emerges. On a more realistic level, the function of this myth is to permit and authorize decision-makers to achieve a more rational balancing of past experience, contemporary realities, and future probabilities without appearing to create new policy.

In describing such an evolutionary capacity with which conventional and customary prescriptive developments have been adapted to those rapidly changing technological fields as blockade, submarine and air warfare, Professor McDougal writes that:

> The process of customary development, considered as one continual, creative readaptation or reinterpretation of given prescription, whether conventional or customary, is particularly marked when it is in response to patterns of interaction, such as blockade and submarine and air warfare, which are themselves be cause of altered conditions and fast developing technology and technique, in a process of profound and rapid change. In such cases, the rate of attrition or obsolescence of particular inherited rules may be accelerated and the emergence of new ones hastened.[9]

In 1958, Captain (later Rear Admiral) Robert D. Powers Jr.[10] in an article entitled " Blockade: For Winning Without Killing," [11] greatly influenced U.S. naval thinking by stressing the urgent need for a re-evaluation of the customary rules of international law pertaining to measures short of war such as pacific blockade and quarantine-interdiction. In his article, Admiral Powers wrote that:

> The accepted rules of blockade are now in a state of evolution. The rules stated in most text books and even in the naval publications of nations, including the U.S. Navy's "Law of Naval Warfare," are those developed primarily in the nineteenth century and thus antedate the era of fast and powerful ships, submarines, airplanes, and guided missiles. These rules do not fit the conditions resulting from the increasing importance of economic factors in war and the mobilization of all resources of a nation for the war effort, nor do they provide for the extended use of blockade as a means of preventing war through deprival of trade. [12]

In forecasting some of the interdiction procedures which might be used in the future, Rear Admiral Powers wrote:

> The method by which blockade will be enforced can be expected to change. Submarines and minefields will be employed. . . . Furthermore, they [submarines and surface ships] can dispatch swift surface ships or swifter aircraft to intercept the would-be blockade runner.
>
> . . . .
>
> Aircraft operating from a supercarrier can be used to maintain a blockade over a large area. Control of surface ships approaching a blockaded area could be exercised by radio. For example, ships might be instructed by a plane to change course to converge with a surface vessel of the blockading power. [13]

In describing the possibilities of using a U.N. sanctioned blockade as a measure of collective security and as a measure short of war which was comparable to "pacific blockade," Admiral Powers wrote:

> . . . [O]ne of the interesting possible uses of blockade is a measure of collective security under Article 42 of the [U.N.] Charter. Such a blockade might have a limited purpose and thus be comparable to "pacific blockade." Under modern conditions, however, it might be completely ineffective if it limited only ingress and egress of ships of the blockaded nation. A blockade by the United Nations, though adopted as a measure short of war, would probably have utilized measures normally used only in [a] belligerent blockade.[14]

What Admiral Powers was apparently advocating was that those measures which were highly effective but the least provocative and which were normally associated with a wartime belligerent blockade should be selectively adapted to "peacetime" naval interdiction situations which would become more acceptable to non-belligerent trading nations as measures short of war thereby eliminating the most provocative of the belligerent blockade sanctions such as condemnation, sinking, searching and seizure.

Accordingly, this thesis will evaluate recent evolutionary trends whereby United States decision makers have endeavored to selectively modify or adapt the principles historically associated with the concept of belligerent blockade to maritime interdiction situations which were intended to present narrower sanctioning claims or represent acts which were intended as measures short of war.

In order to provide the necessary background pertaining to those measures which have "normally" been employed during belligerent blockade, a brief resume of the traditional twentieth century concepts pertaining to blockade and its related theories is set forth in the materials following this introduction.

Most judicial issues are necessarily determined one that those judgments which some judicial officialdom has the least perspectives and which can usually associated with a sub-time intelligent electoral choice is relatively behind in "mechanical social interactions" situations which must become more acceptable to constitutional limits which are measures short of our theory. Although the more prominent of the intelligent judicial decisions may be implemented, clearly, complicated and unlikely.

Fundamentally, this crisis will indicate cannot evolutionary trends which only under limits decision making also substantial or substantially modify or adopt any principles inextricably associated with the concept of intelligent judgment to maintain investigative structures which were inadequate in current response constitutional claims or research data which were intended to measures short of use.

It appears to matter, the constitutional environment accordingly to those decisions which have "socially" been considered intelligent judgments. A total reason of the institutional structures which recently demonstrate preferences to freedom and the civil character is not found in the necessarily difficulty with intelligence.

II. SUMMARY OF TRADITIONAL INTERDICTION MEASURES

A. Blockade

According to Lauterpacht's International Lawtreatise, a blockade is the blocking by men-of-war of the approaches to the enemy's coast, or any part of it, for the purpose of preventing ingress and egress of vessels or aircraft of all nations.[15] Although blockade is a means of warfare against the enemy, it also concerns neutrals as well because ingress and egress of neutral vessels are subject to interdiction and breaches thereof may be severely punished.[16]

The development of blockade as a twentieth century institution was not possible until neutrality was in some form recognized as an institution of the Law of Nations and this did not fully develop until freedom of neutral commerce was in some form guaranteed. The origin of the institution of blockade dates from 1584 and 1630 when the Dutch Government declared all the ports of Flanders in the power of Spain to be blockaded.[17] However, it was not until the rejection of the so called "paper blocblockades" of the late nineteenth century that blockade was required to be a total military committment in order to be binding and effective.[18]

The right of a belligerent to blockade an enemy's coast provided it uses "competent force" is provided for under the Law of Nations.[19] However, in order to exercise this right, a belligerent must satisfy the following requirements. First, the nation intending to establish a blockade must provide suitable and timely notice of his intentions.[20] This means that the Declaration of a blockade must be communicated to (1) neutral powers, by diplomatic means; and (2) to local authorities by the commander of the blockading fleet.[21]

A second requirement is that after proper notification has been provided, the blockade must be effectively maintained.[22] The third requirement for a lawful blocade is that the blocade to be valid, must be impartially enforced.

The condition of effectiveness of a blockade, as defined by the Declaration of Paris, is that it must be maintained "by such force as is sufficient to really prevent access to the coast."[23] During the early stages of the development of the concept of blockade, some Continental countries took the view that this provision was intended to require "a chain of men-of-war, anchored on the spot, and so near to one another that the line cannot be passed without obvious danger to the passing vessel."[24] Subsequently, however, considerably broader definitions were formulated so that an effective blockade was later

deemed capable of being established "by a force sufficient to render egress and ingress dangerous . . . and sufficient to render capture of vessels attempting to go in or come out most probable." [25] Ultimately, however, the requirement for the establishment of an effective blockade was relaxed to the point that during the Unites States Civil War, Union naval forces were considered able to effectively blockade 2500 miles of Confederate coastline with only 400 Union vessels.

Declaration of London

In order to establish formal rules pertaining to the use of naval blockades, twentieth century sea powers, governed by strong isolationist sentiment and neutrality oriented interests convened a conference in London in 1908 which produced a document which later became known as the "Declaration of London of 1909." The Declaration provided that (1) a blockade must be limited to the enemy's coasts and must not bar access to neutral ports, (2) to be legal, the blockade must be effective, (3) the blockade must be applied impartially throughout the blockaded area, (4) the blockade commander would have the discretionary power to permit warships from other nations to enter and depart the area and,

(5) the blockade had to be declared with sufficient specificity as to given dates, locations and boundaries. [26]

However, the concepts embodied in the Declaration of London saw little use during the First World War which would be fought less than ten years later. Instead of the so called "close in" traditional type blockade which had historically been used in Europe and which required blockading men-of-war to "hover" off the enemy's coasts, the Allies resorted to the so called "long distance" blockade which was an entirely new and different form of maritime interdiction. The reason for this sudden change of strategy was that during World War I, military decision makers saw the need to employ comprehensive economic and supply suppressing measures through the use of "war zones" and vast mine areas thereby greatly expanding the scope of a belligerent's economic warfare and blockade operations. [27] In addition, the rapid development of such offensive weapons as aircraft and long range submarines were two of the principle reasons why the continued maintenance of the "close in" type blockade was considered to be so dangerous that its future use was no longer considered to be feasible. [28] As Professor McDougal has pointed out:

> old style techniques of "close in" blockade] against the coasts of an enemy great power would not only be confronted with mines and long range shore batteries but would also present a choice target for attack by submarines, aircraft [and now, surface-to-surface and air-to-surface] missiles. [29]

Thus the traditional sanctions associated with hostile blockade such as interception, visit, search, capture and condemnation [in prize] were no longer militarily feasible and military decision makers soon relied upon a more comprehensive global approach than merely instituting local maritime interdiction measures.

The Long Distance (Economic) Blockade

By utilizing a comprehensive system of "war zones" and a system of wartime commercial "passports" or "letters of assurance" called "NAVICERTS," the belligerents during World War II (and to some extent during the later stages of World War I) utilized a complex system of strategic goods controls in an effort to deny the enemy access throughout the entire world, to the raw materials he needed in order to sustain his wartime operations. This form of economic warfare was designed to maximize the adverse impact that such a denial of strategic goods would have on the ability of an enemy to maintain both his military establishment

band or prohibited goods, which were excluded for both importation and exportation purposes, were vigorously enforced by both sides. It should also be noted that the "scope" of what was considered to be "contraband" when used in the context of the contraband of war during a naval blockade was generally determined by the belligerents themselves as being that which was unauthorized for import or export purposes. [30]

The contraband was called "Absolute" if it consisted of prohibited materiel such as weapons, ammunition, or naval stores. [31] Materiel which was more susceptible to peaceful utilization was called "Conditional" contraband. [32]

Absolute contraband could be seized and condemned by a belligerent without giving notice of any kind so long as the goods were apparently destined for the belligerent's adversary. [33] However, conditional contraband was subject to seizure and condemnation normally after more rigorous requirements of notice, "a resolution of the ambiguity inhering in their susceptibility to both military and nonmilitary types of use," and a determination that the goods were actually destined for use by the"enemy" had been met. [34]

In addition to these primary methods of goods control, certain other auxiliary control methods were devised and developed by the Allied Powers to buttress and enforce the "rationing of neutrals" and to enhance the effectiveness of

the navicert system.[35] One such scheme included the issuance of the "ship's warrant," a document which was issued to each vessel whose owner had given satisfactory assurance to do what the Allies required of him. In general, the owner agreed to comply with economic warfare, or blockade and contraband regulations and, in particular, he agreed that his ships would not sail to or from the areas which required a Navicert without possessing such a document. In return, the ship owner was guaranteed that his ships would have access to insurance, credit, fuel bunkers, stores, charts and dry dock and repair facilities over which the Allied Powers exercised authority and control.[36]

By the selective manipulation and administration of such shipping controls, an awesome array of economic sanctions could be imposed on a "neutral" shipper if he failed to adhere to the requirements set forth by the Allies.[37] After the United States entered the war, these economic sanctions became overwhelming. This was because not only were the ship warrant and Navicert schemes important to the Allies for the purposes of interdicting and controlling seaborne commerce, but these measures were also considered vital in order to secure merchant ship bottoms for the carriage of Allied cargoes.[38]

These comprehensive "total" war economic and regulatory controls became increasingly sophisticated and more thoroughly implemented as the war progressed. However, it is almost a certainty now that since the advent and reality of modern warfare methods including the possibility of both nuclear and local limited warfare, that such stringent economic measures are not likely to be either planned or repeated in the future.

B. Pacific Blockade

Pacific blockade is the attempt by one nation to effectuate maritime restrictive measures against the seaborne trade of another. The significant advantages which the proponents of "pacific blockade" have espoused is that neutral commerce traveling to the blockaded nation's ports is not adversely affected and the interdiction measures sought to be imposed can be commenced without the necessity of a declaration of war or the necessity of the existence of the state of such hostilities being proclaimed. One thing is certain, however, and that is that if the nation against whom these maritime measures are directed choses to treat them as being something other than "pacific," then in all likelihood the commencement of these measures will provoke either an armed conflict or the possibility of an all out war itself.

The utilization of surface vessels in the development of the concept of "pacific blockade" was familiar to the publists of the late nineteenth and early twentieth centuries. [39]

However, the acceptance of this concept of minimal force level application was far from established in international law and was particularly objected to by early twentieth century Unites States Naval sea power proponents who viewed pacific blockade as being entirely nonamicable in nature. [40]

Hyde [41] describes the term pacific blockade as referring to the cutting off of access to or egress from a foreign port or coast by a naval force designed to compel the territorial sovereign involved to yield to the demands made of it, such as granting redress for the consequences of wrongful conduct, and whereby the blockading state does not purport to bring into being a state of war. Such action is deemed to be pacific merely in the sense that the blockading state is disposed to remain at peace, while the state whose territory or maritime commerce is blockaded does not elect to treat the operation as producing war or compelling it to make war on its potential adversary.

A description of the consequences which follow in a pacific blockade is set forth in the United States Naval

War College International Law Situations 1932 as follows:

> Some act resembling pacific blockade has been generally regarded as one of the methods for bringing an offending state to terms without resort to war. Pacific blockade has the support of long practice and of a large majority of authorities, particularly since support given this form of action in resolutions of the Institut de International in 1887. In gerneral, the establishing of a pacific blockade is usually approved on the ground that it may make resort to war less probable, and thus limit the range of possible use of force.
>
> In its effects as between the state or states establishing the blockade, the blockade may close the blockaded areas to communication so far as it is effectively maintained and measures lawful for maintenance of a war blockade may be taken to this end. As the effects of pacific blockade should, so far as possible, be confined to the parties concerned, third parties as well as their vessels and goods should be interfered with only as necessary for physical maintenance of the blockade. This is also evident from the fact that there are no prize courts to pass upon rights. It may be necessary that the blockading forces approach, within the specific area of effective maintenance of the blockade, vessels of third states for verification of their right to fly the flag. The blockading force may take such measures as are necessary for closing the port before which it is maintaining an effective blockade. Though it may not take vessels of third states as prize, it may prevent their entrance; and for such detention the blockading state assumes no liability, though notice must be given the vessel of the third state at the time of blockade or in an unquestionable manner. [Finally], [v]essels of third states must be granted reasonable time to load and depart from a port [being placed] under pacific blockade. [42]

C. Boycott

Boycott as a modern form of retaliatory action involving the suspension of business and trade relations on the part of the nationals of an injured state as taken against the individual citizens of an offending country.[43] This private, collective refusal to continue to buy goods from the offending nation, so long as it does not involve pressure or persuasion from the government of the aggrieved citizens, is said to constitute a private remedy which is therefore outside the purview of international law.

However, if the government of the injured parties becomes involved in any manner, this involvement may create state responsibility since it involves a form of governmental self help.[44]

The most famous boycott in modern times was the widespread suspension by Chinese citizens of trade and business relations with Japan in 1931. The Japanese government protested this action as a violation of international law, but China expressed the view that prior illegal acts undertaken by Japanese authorities constituted a far more serious international law violation.

The Committee of Nineteen, appointed by the League of Nations to investigate the findings of a special commission concluded that the Chinese boycott represented a lawful economic reprisal.[45]

D. Embargo

The final type of traditional interdiction measure relates to the demands by belligerent nations to control or to embargo in varying degrees, the flow of strategic foods and supplies which may enhance the enemy's war potential. [46] In its earliest form, embargo consisted of detaining, in port, the vessels of an offending state in order to coerce the latter into remedying a given wrong. The best known American example of this type of embargo was established by Congress under the Act of December, 1807.

During the twentieth century, however, two new forms of embargo emerged as either a unilateral act by a single state or as a collective act of a number of states, to prevent an alleged or potential aggressor from increasing its stockpiles of essential war materials and strategic goods. [47]

Utilization of a measure such as embargo means that at the outbreak of a conflict, including a civil war, neutral states may prohibit the export of war materials to either or both belligerents by placing an embargo over all exports over which the neutral nation exercises authority or control. [48]

In modern times, the United Nations has recommended by a vote of 47-0, with 13 abstentions that an embargo on arms, strategic materials and other implements of war be placed on

The final type of jurisdictional interdiction involves relates to the decision by belligerent nations to control or to endeavor to prevent belligerent, the flow of strategic foods and supplies which may enhance the country's war potential. [46] In its earliest form, neutrals contraband liability, in order the remedy of a belligerent which in order to deprive the latter long remaining a river which the last known freedom remedy of this type of neutrals was established in Grotius under the act of neutrality, that.

During the Napoleonic wars, however, the use force of neutrals employed to attack a neutralized sea in a single area or as a neutralizing set of a number of states, to prevent an alleged or potential encroachment from interfering the policies of commercial war materials and strategic goods. [47]

Utilization of a neutral sea as weapon means that if the contraband of a belligerent, including a civil war, employed attack any prohibit the export of war materials to enemy to hurt belligerent by giving an advantage over all exports over which the neutral state exercising sovereignty or control. [48]

In modern times, the United Nations has recommended by a vote of 47-0, with 13 abstentions that no nations on arms, strategic materials and other instruments of war is placed on

the shipment of all such goods to those areas under the control of the Communist Chinese and North Korean Governments.[49]

The most recent example of the utilization of embargo was the action taken by the United States on January 1, 1964, when it prohibited all public and private sales of military equipment to the Republic of South Africa pending an end to that country's policy of racial segregation.[50] This step was taken after the United States Government had earlier (in 1962) forbidden the sale to the South African Government of all arms and military equipment which could be used by that government to enforce racial segregation either in South Africa proper or within the confines of Southwest Africa over which the South African Government exercised political authority and military control.[51]

III. ORIGIN OF MODERN MARITIME INTERDICTION PROCEDURES: THE CUBAN MISSILE QUARANTINE

A. Summary of the Circumstances Leading to the 1962 Presidential Proclamation Establishing The Cuban Quarantine- Interdiction

On October 22, 1962, President Kennedy announced that there had been a rapid and clandestine arms build-up by the Soviets which had transformed Cuba into an important strategic base capable of launching long-range and clearly offensive missiles which were weapons of sudden and mass destruction. [52] The President went on to state that such an action constituted an explicit threat to the peace and security of all the Americas and was in flagrant and deliberate defiance of the RIO Pact of 1947, the traditions of this nation and hemisphere, the joint resolution of the 87th Congress, the Charter of the United Nations and his own public warnings to the Soviets of September 4th and 13th. [53]

The President noted that nuclear weapons were so destructive and ballistic missiles were so swift that any increased possibility of their offensive use would be regarded as a clear threat to peace which would not be tolerated by the United States or the countries of this hemisphere. The Presi-

III. CRISIS OF MORES WHICH INTRODUCTION

Introduction: The Cuban crisis (continued)

A. Theory of the circumstances leading to the 1962 Geopolitical Proximality- Instability: The Cuban Crisis- Introduction

On October 22, 1962, President Kennedy announced that there had been a crisis and alarmingly more built up by the Soviets which had transformed Cuba into an impromptu strategic base capable of launching long-range and classify strategic missiles which could weapons of nuclear and mass destruction. In the President went on to say that just as nuclear crusaders in Napoleonic France to the menace and security of all the Americas and was in fact one nationwide defiance of the 20th year of 1947, the tradition of this nation and hemisphere, the joint resolution of the 87th Congress, the Charter of the United Nations and his own public warnings to the people of Cuban leader 4th and life. [1]

The President noted that nuclear weapons were so dangerous and destructive missiles were so small that any increased possibility of their attempted use could be regarded as a clear threat to peace which would not be tolerated by the United States or the countries of this hemisphere. The President-

dent went on to say that in order to prevent the use of missiles against this or any other country and in order to secure their withdrawal or elimination from the Western Hemisphere, he had directed that certain "initial" steps be immediately taken.[54] The first step taken by the President was to order a "strict quarantine" of all offensive military equipment under shipment to Cuba as well as turning back all ships, wherever found, carrying cargoes of offensive weapons.[55]

The following day, a quarantine-interdiction was established by President Kennedy's Presidential Proclamation of October 23, 1962. This proclamation entitled "Interdiction of the Delivery of Offensive Weapons to Cuba,"[56] went into effect at 2:00 P.M. Greenwich time on October 24, 1962. The operative part of the President's proclamation read as follows:

> Any vessel or craft which may be proceeding toward Cuba may be intercepted and may be directed to identify itself, its cargo, equipment and stores and its ports of call, to stop, to lie to, to submit to visit and search, or to proceed as directed. Any vessel or craft which fails or refuses to respond to or comply with directions shall be subject to being taken into custody. Any vessel or craft which it is believed is enroute to Cuba and may be carrying prohibited materiel or may itself constitute such materiel shall, wherever possible, be directed to proceed to another destination of its own choice and shall be taken into custody if it fails or refuses to obey such directions. All vessels or craft taken into custody shall be sent into a port of the United States for appropriate disposition.

> In carrying out this order, force shall not be used except in case of failure or refusal to comply with directions, or with regulations or directives of the Secretary of Defense issued hereunder, after reasonable efforts have been made to communicate them to the vessel or craft, or in case of self-defense. In any case, force shall be used only to the extent necessary.[57]

B. Application of Selective Naval Quarantine-Interdiction Sanctions Required to Preclude Uncontrolled Nuclear Confrontation

The principal credit for the operational success of the Naval quarantine-interdiction should be allocated to the United States military forces in their execution of directives emanating from higher authority. As a result of the issuance of these surveillance, confrontation and visit and search directives, vessels of third-party states were trailed, inspected, approached and boarded during various phases of the quarantine-interdiction.[58] Submarines of the Soviet Union in the mid-Atlantic and south-Atlantic were also located, tracked, surfaced and photographed.[59]

The Soviet tanker Bucharest was intercepted on October, 25, 1962. Her cargo was checked visually by a unit of the quarantine force and she was allowed to proceed to Cuba. The

In carrying out this duty, force shall not be used except in case of failure or refusal to comply with directions, or with prohibitions or restrictions of the Secretary of Defense issued hereunder, after reasonable efforts have been made to communicate them to the vessel or aircraft, or in case of self-defense. In any case, force shall be used only to the extent reasonable.[17]

6. Implication of Existing Naval Quarantine Interdiction Functions Designed as Freedom Theoretically Applies Conceptualization

The original intent of the operational nature of the Naval quarantine interdiction should be affected so the United States military forces in their execution of directive remained from direct authority. As a result of the increase of blame surveillance, confrontation and flight and naval directives, vessels of blue-water navies have limited, diverted, approached and boarded other various forms of air and marine-interdiction.[18] Submarines of the Soviet union in the mid-Atlantic and anti-military were also involved, tracked, surfaced and observed.[19]

The navies under Soviet were interrupted on October 25, 1962. Her course was checked visually by a unit of the marine/air force and she was allowed to proceed to Cuba. The

Marcula, a Lebanese ship under Soviet charter was boarded enroute to Cuba by units of the United States Navy quarantine force on October 26th. No items of prohibited cargo were discovered and the vessel was cleared to proceed to its destination. [60]

During the period that the blockade was effective, (October 24th - November 2nd), fifty-five merchant ships were reported to have been allowed to proceed after being scrutinized by United States quarantine-interdiction forces.[61] No vessels were reported to have been forcefully seized or forcefully boarded. [62] However, sixteen of eighteen Soviet cargo ships which were enroute to Cuba, were ordered by the Soviets not to enter the quarantine zone and to instead return to the Baltic Sea and Mediterranean areas. [63]

The details concerning the quarantine-interdiction procedures which were intended for foreign merchant shipping interests were broadcast by the Navy at regular intervals. For example, the pertinent part of Notice to Mariners, No. 47 (6206) was regularly broadcast and provided in part that,

> The President of the United States has proclaimed a quarantine of offensive military equipment under shipment to Cuba. Reactions may make Windward Passage, Yucatan Channel and Florida Straits Dangerous waters. Ships are advised to use Mona Passage. Ships transiting the Straits of Florida are advised to navigate the proximity of the Florida keys. . . . [64]

Marcela, a schooner that under [illegible] [illegible] was [illegible] [illegible] of Cuba by units of the United States Navy [illegible] [illegible] on October [illegible]. [illegible] arms of [illegible] [illegible] were discovered and the vessel was [illegible] to [illegible] to its destination.[11]

During the period that the Cubans [illegible] [illegible] (October [illegible] – December [illegible]), fifty-five vessels which were reported to have been allowed to proceed after being [illegible] in United States [illegible] [illegible] [illegible].[12] No vessels were reported to have been [illegible] [illegible] as [illegible] [illegible].[13] However, [illegible] of [illegible] [illegible] cargo ships which were [illegible] in [illegible], were [illegible] by the [illegible] [illegible] to [illegible] the [illegible] [illegible] and [illegible] to the [illegible] [illegible] and [illegible] [illegible].[14]

The details concerning the [illegible] [illegible] [illegible] which were [illegible] [illegible] [illegible] [illegible] were [illegible] of the Navy or [illegible] [illegible]. For example, the [illegible] [illegible] [illegible] [illegible] [illegible], No. [illegible] ([illegible]) was [illegible] [illegible] and [illegible] [illegible] [illegible],

---

The [illegible] of the United States has [illegible] a [illegible] of [illegible] [illegible] [illegible] to Cuba. [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] of [illegible] [illegible] [illegible] [illegible] the [illegible] of the Florida [illegible]. . . .[15]

On October 25th, the Department of Defense established submarine procedures for the quarantine area. This entailed notice that United States Naval vessels would require identification according to the international recognition code or signal "IDKCA" meaning "rise to the surface." The transmission of the international code was to be accompanied by the dropping of from four to five harmless explosive sound signals.[65] The announcement of these signals provided that "submerged submarines, upon hearing this signal, should surface on an easterly course" and that "signals and procedures employed were harmless" and are to "guarantee the safety of submerged submarines at sea in emergencies."[66]

The methods of visit and search of merchant vessels employed by the United States were consistent with the related visit and search provisions contained in the Law of Naval Warfare,[67] NWIP 10-2, which provides in pertinent part that:

> Before summoning a vessel to lie to, a warship must hoist her own national flag. The summons should be made by firing a blank charge, by international flag signal or by other recognized means. The summoned vessel . . . is bound to stop, lie to, and display her colors. . . . If a summoned vessel takes flight, she may be pursued and brought to, by forcible measures if necessary.[68]

A boarding officer should first examine a ship's papers in order to determine her character, ports of departure and destination, nature of cargo and employment, and other facts deemed essential. The papers which are generally found on board a merchant vessel are:

(a) Certificate of registry of nationality
(b) Crew list
(c) Passenger list
(d) Log book
(e) Bill of health
(f) Clearance
(g) Charter party, if chartered
(h) Invoice or manifests of cargo
(i) Bills of lading
(j) A consular declaration certifying the innocence of the cargo may be included

The evidence furnished by papers against a vessel may be taken as conclusive. However, regularity of papers and evidence of innocence of cargo or destination furnished by them are not necessarily conclusive, and if any doubt exists, the personnel of the vessel should be questioned and a search made, if practicable, of the ship or cargo." [69]

Within three days after the commencement of the quarantine, a series of letters was exchanged between President Kennedy and Chairman Khrushchev, whereby it was agreed that the Soviets would stop building their offensive missile bases in Cuba and would dismantle their offensive weapons systems and return them to the Soviet Union. [70]

On November 2nd, the President made an interim report to the American people wherein he stated that aerial photographs (presumably taken by U.S. A-3, F-8 and U-2 type aircraft) indicated that the Cuban missile sites were being destroyed.[71]

Subsequently, United States Naval forces verified that various "homeward bound" Soviet vessels were carrying what appeared to be offensive type missiles or their supporting equipment as deck cargo.[72] These vessels were visually observed to be carrying forty-two crates which appeared to contain the missiles or their respective components.[73] Thereafter, the quarantine was terminated on November 21, 1962 when the President received assurances from Chairman Khrushchev that the Soviet Ilyushin-18 jet bombers would be withdrawn within thirty days.[74]

1. Civil War Experience

Admiral David Farragut's famous order, "Damn the torpedoes, Four bells!" which the Admiral made during the Battle of Mobile Bay referred not to mobile naval torpedoes but to crude sea mines which the Confederate forces had employed during the Civil War.[78] At least a dozen different types of mines including spar, percussion, hydrogen and horological were used by Confederate naval forces during the Civil War and were credited with sinking thirty Union ships compared with a loss of only nine vessels due to Confederate gunfire.

By the Wars end, naval commanders such as Admiral Farragut recognized that "there is a natural fear of hidden dangers, particularly when so awfully destructive of human life as the torpedo [sea mine] which requires more than discipline to overcome." [79]

From the Civil War period until the advent of the massive World War I North Sea Mine Barrage in which 70,000 mines were laid, sea mines remained simple, unrefined but usually effective naval weapons. [80] These simple , sea mines consisted of a large charge of explosives encased in a suitable container which was anchored by a chain so that the mine remained undetected while submerged some ten to twenty feet beneath the water's surface. Numerous firing devices called "triggering horns" protruded

from the surface of the mine. In order for the triggering horns to become activated, a passing ship had to physically strike the mine or its triggering horns with some part of its hull. Hence the employment of the term "contact" mine was used to describe these horn studded primitive weapons.[81] However, it was not until the Second World War had been commenced that the naval mine warfare achieved its truly impressive levels of development and sophistication.

B. How Modern Underwater Mines Work

The recent May 22, 1972 issue of TIME Magazine has described the workings of naval mines for its readers in such graphic terms that the following verbatim extract is considered worthy of repeating:

> Most people envision underwater mines as sort of studded black balls that Cary Grant dodged in Destination Tokyo. But the delayed-action mines used to seal off North Vietnamese ports last week are considerably more complex. Sown by low-flying Navy planes, some of them were dropped to the surface by parachute; others, equipped with tail fins, plunged strait to the water. Then they were programed to settle at various depths in patterns designed to frustrate enemy minesweepers. Some were probably sent to the

bottom while others were moored by cables. The mines used last week were not the most sophisticated the U.S. possesses - - the risk was too great that one of them, packed with advanced technology might be recovered and eventually wind up in a Russian ordanance laboratory.

A minefield is generally seeded with a variety of devices. Some explode on contact. Some detonate magnetically when they pick up the magnetic field of a passing ship. Others go off when a ship's hull [creates a change] in the water pressure. A mines relatively simple computer can be programmed to react to combinations of signals. Thus some mines are equipped with "counters." They will allow, say, nine ships to pass by and then blow up the tenth. Such mines greatly increase the dangers of mine sweeping, since the [mine] sweeper may be the fatal tenth vessel. Some mines can sit on the bottom for a time, awaiting a coded signal to activate. On signal, they can [even] propel themselves through the water to a different position. . .. .[82]

1. The Magnetic Type Mine

The magnetic mine, first developed by the British, improved by the Germans and later mass produced by the United States, represented a significant improvement over the old style "contact" type mine which had been in use since the Civil War. For with the magnetic mine, it was no longer necessary for a vessel to actually strike a mine in order to detonate it. All that was required was that a steel hulled vessel which passed close enough - - caused a shifting in the lines of force of the earth's magnetic field - - thereby producing a "signature" of sufficient strength to activate, by induction, the mine's sensitive firing mechanism. At the heart of the mine's firing mechanism, was a sensitive device known as the "dip needles ."[83]

In order to nullify the magnetic effects which a ship produces, an expensive and time consuming process called degaussing has occasionally been used by shipbuilders. The degaussing process calls for a steel ship to be equipped with a web of insulated cables girdling its hull so as to carry electric current which creates a magnetic field equal but opposite to that of the earth. This process "demagnetizes" the ship's magnetic field which prevents the ship from activating the mine's "dip needles" so that they will not deflect causing the mine to detonate. However, during periods of mass construction of military and cargo vessels, the degaussing of each vessel is not considered feasible. Therefore, nations have principally relied upon fleets of mine sweepers to detect, remove or neutralize the enemy's [magnetic] type minefields.

In order to sweep an area of magnetic mines, however, a mine sweeper must create the same influence to which the magnetic mine responds. To do this, a mine sweeper must trail two electrical cables approximately 1200 feet astern through which is transmitted a powerfully pulsed electric current. Thus a strong magnetic field is created which is capable of detonating any magnetic mine which is within the cable's influence. [84]

In order to utilize the magnetic effects with a wire procedure, an impedance and line compensation network using derivative has successfully been used by Hildebrandt. The organizing process calls for a model gun to be equipped with a ring of insulated cables giving him full ac to go over electric current which carries a magnetic field equal and opposite to that of the earth. This causes "cancellation" the gun's magnetic field which prevents the gun from activating the mine's "air reading" so that the gun will not detect causing the mine to detonate. However, during periods of rapid acceleration, if gunfire and mine firing, the direction of the vehicle is not considered therefore, neither mine orientation nor gun detection is possible. Therefore, neither mine orientation or detection is possible. Hildebrandt says mineral type minefields.

In order to move on area of magnetic field, however, a mine sweeper must create the same influence or match the magnetic mine frequency. In a ship, a mine sweeper also uses two electrical cables approximately 1/4 from stern towing which is attached a powerful main electric current. This a strong magnetic field is applied at the cables of determining the magnetic mine which is within the cable's influence. [4]

2. The Acoustic Type Mine

Sonic and subsonic sounds produced by a passing ship, its machinery or its propellers are amplified to energize the firing circuit of an acoustic type mine. The acoustic type mine can be planted on the sea floor where it utilizes a simple hydrophone or "artificial ear" to hear a ship's engines or propellers. When it does, the firing mechanism's "diaphragm" is caused to vibrate thereby activating the firing circuit.[85] Mine sweepers attempt to duplicate the equivalent noise of a ship's propellers by safely dragging through the water behind them a mechanism called a "hammer" or a "bumble-bee." This device creates the necessary signature to which the mine's firing mechanism will respond thereby causing it to detonate.[86]

3. The Pressure Type Mine

The pressure mine initially introduced by Hitler during World War II and further perfected by American and British scientists, is regarded as the most "unsweepable" of modern mines particularly when their firing circuits are complicated by a variety of accessories such as arming delays, ship counters, intermittent deactivating mechanisms called "sterilizers" and other anti-sweep devices.[87]

2. The Economic Life Line

Social and economic factors involve, in a partial list, the availability or low availability of mobility in relation to the flight attempts of an economic life line. The economic life line also can be related to the sea flood line in relation to a single high-cost or "initiative" act to gain a job, a medical or procedure. Thus in fact, the flight attempt "disorders" in regard to minority activity involving the flight attempt. [illegible] The economic factor is particularly the economical value of a case's consulting or early, involving because the water behind line a successive action is "dammed" or a "sudden lake." This factor involves the necessary alternative or value the man's flight mobility will [illegible] involving it to decrease. [illegible]

3. The Economic Life Line

The economic life line is usually represented by living behind work and it and further, mediators to decision or service motivation, is received as the good "economic life" of minor minor particularly when their flight attempts are complicated by a variety of economic and so forth factors, also commerce, institutional constraints including [illegible] "availability" for other [illegible] factors. [illegible]

In a pressure type mine, the negative pressure of a passing ship sucks a diaphram upward thereby closing the firing switch. In order to sweep them, a mine sweeper must try to attempt to duplicate the change of pressure produced by a passing vessel. Since the sensitivity of the pressure mine's firing mechanism can be adjusted to respond to a variety of "hull displacements," it becomes exceedingly difficult for a minesweeper to duplicate, by towing a "guinea pig" hull through the water, the exact amount of negative pressure to which the mine's pre-programmed firing mechanism will become activated.[88]

Add to the three basic types of mines (magnetic, acoustic and pressure) a fourth catagory of mine which combinesone or more of the above arming and detonating capabilities in the same mine assembly and incorporates additional arming delay switches, ship counters and other anti-sweep devices - - and you have a formidable, highly sophisticated, effective and virtually unsweepable naval weapon.

Accordingly, the effectiveness of a nation's mining or maritime interdiction campaign will not only depend upon the different types and quantities of naval mines that are at its disposal, but also upon the nature and scope of the mine warfare activities it seeks to conduct in exerting pressure upon its intended enemy. In order to understand more fully some of the different settings in which mine warfare has been employed, the following material relating to selective mining campaigns conducted during World War II and Korea has been included for illustrative purposes.

C. United States Mine Warfare Experience in the Pacific During World War II and Korea

1. The United States World War II Mine Blocade of Japan

When one reflects on the most decisive of the U.S. military campaigns conducted against Japan during World War II, one usually envisions either those highly publicized air and naval battles such as the Battles of Coral Sea and Midway, or the awesome specter of those atomic weapons which were unceremoniously used to annihilate much of the population of Nagasaki and Hiroshima. However, it was neither the decisive naval battles in the Pacific nor the spectacular atomic weapons employed against Japan's industrial cities which completely assured Japan's World War II defeat. For in the words of naval historian Lieutenant Commander Arnold S. Lott,[89] "[d]efeat, when Japan admitted the fact, was a slow creeping process which began with [the] blockade of her distant sea lanes and was completed when virtual destruction of seaborne commerce reduced her to economic, industrial and personal starvation."[90]

The effectiveness of the U.S. Pacific blockade was also apparent to Japan's industrialists such as Takashi Komatsu of the Nippon Steel and Tube Company when he observed that:

> It was not only the bombing of factories that defeated us, it was the blockade which deprived us of essential raw materials [such as] aluminum and coal. (Emphasis original).[91]

Japan, like most southeast Asian countries, was vulnerable to blockade since most of her shallow coastal waters were highly mineable while her population was almost entirely dependent for its manufacturing output upon imported raw materials. For example, Japan's war effort depended on the importation of 90 per cent of all its oil and 88 per cent of all iron in order to maintain its military production output.[92]

The United States mine blockade of Japan's waterborne commerce first began in October, 1942 when the submarines Thresher and Gar planted 64 mines in Bankok's coastal approaches.[93] In early 1943, Tenth Air Force B-24s began planting mines in the Japanese controlled Rangoon River. (It should be noted that all of these mining operations were unannounced and clandestine operations the existence of which remained a secret until the enemy confirmed his suspicions that his waters were being mined usually through the damage or destruction of one or more of his manned cargo vessels).

Air Force mining operations also included interdicting river traffic by using floating mines. In one phase of the Fourteenth Air Force's operation, traffic on the Yangtze River,

It may not only the particular of interest
that determine us, it may the principle
which implies is of essential in
materials cause and structure all cost,
(emphasis original).

Japan, like most industrial nations, considered, and rejected, an attempt to blockade alone some of the major coastal ports which were likely adjacent with the materials and strategic utility demanded for its manufacturing nation and increasing the pressure. For example, Japan's war effort depended on its imports of 93 per cent of all its oil and 41 per cent of its iron in order to maintain its military operations.[70]

The United States also considered of some a strategic bombing campaign first based in Europe, with the intention of forcing the Japanese to divert a great deal of effort to defensive measures.[71] In early 1941, Hawkins wrote to the Army Planning Board in the Japanese commercial economy (for should be noted that all of these civilian industries are interdependent and interactive) concluded the existence of only certain a secret weapon can cause the failure of the nation's war effort. Hawkins wrote that the Japanese were unable to maintain, or restore, line of one or more of its major war industries.

Air Force strategic considerations also involved bombing river traffic by using floating mines. In the mind of the Americans air force's mentalism, traffic on the Japanese rivers,

an important Japanese supply line for forces in Central China, was virtually halted through the use of floating mines. These "floaters" were designed to float with the current from between three to six feet beneath the surface during the entire length of the river. At the end of the three day armed period, these floating mines detonated themselves.[94]

In 1944, both the Royal and the Australian Air Force began conducting long range mining raids. These 3,000 mile missions were systematically flown from bases in India and Ceylon in order that the harbors and waterways of Singapore could be mined. This increase in mining activity, principally through the utilization of magnetic type mines, slowed Japanese shipping operations to the point that cargo could no longer move from Bangkok to Singapore in iron ships, but instead had to be transferred to wooden vessels of 150 tons or less. The Japanese also attempted towing 500 ton barges from Singapore to Bangkok but were defeated in this effort when accoustic mines were used to augment those magnetic minefields already in place. Fuel for Bangkok was sent to French Indochina and then hauled overland. However, excessive demands placed on limited rail and road facilities, soon reduced efficiency by 50 per cent while merchant crews became increasingly reluctant to venture onto the inland and coastal rivers as well as to venture upon the surrounding high seas.[95]

By the Spring of 1945, a parallel situation also prevailed upriver from Shanghai. No metal-hulled ship dared to sail upriver because of the presence of magnetic type mines. Thus river traffic was confined to small wooden vessels. As a result, the Japanese drive into South China slowed down, with troops and materiel being sent inland over inadequate rail systems.

During the same time period, the blockade of Japan's maritime "outer zone" had nearly been completed and the effects were being felt in the Japanese home islands. Prior to 1945, the principal hazard to Japan's maritime commerce was not so much aircraft mining activities but seaborne attacks and mining operations conducted by United States submarines. U.S. submarines went where Japanese vessels could also be found - - placing mines in areas of maximum shipping density. As a result, United States submarines claimed one ship casualty for <u>every eight mines laid</u> with only slight damage or destruction to U.S. submarine forces. [96]

However, the massive interdiction of <u>all</u> waterborne traffic headed for Japan's huge eastcoast ports and harbors did not reach its final degree of intensity until the Air Force launched its "OPERATION STARVATION" [97] on March 27, 1945. While the title of OPERATION STARVATION was chosen during a period when "World public opinion" for the selection of such descriptive nomenclature was of only minimal significance, the effects of this total industrial blockade, even though it meant severe deprivation of fuel, food and clothing for Japan's population was,

in reality, the very instrumentality which convinced the Japanese that their cause was now hopeless and which therefore mandated a quick and humane surrender.

Hisanobu Terai, the President of NYK, then Japan's largest shipping line blamed food and raw material shortages for Japan's defeat and claimed, somewhat inaccurately, that in the last few months of the war, "proportions of shipping sunk were 1 by sub, 6 by bombs, [and] 12 by mines. [98] While these proportions are not correct, the statement gives some indication of the relative magnitude of the threat to Japan's waterborne commerce which Japanese shipping interests attributed to the U.S. mining blockade.

In remarking on the effectiveness of the U.S. mine blockade, Captain Kyuzo Tamura, of the Imperial Japanese Navy, claimed that at least 20,000 men and 349 minesweepers were kept busy in an attempt to keep Japan's sea lanes and harbors open during the U.S. blockade. Losses in Japan's minesweeper fleet were extremely heavy with only one in four of these vessels surviving Japan's minesweeping operations. [99] Captain Tamura told post-war interrogators that "the result of the B-29 mining was so effective against shipping that it eventually starved the country. I think you probably could have shortened the war by beginning [the mining] earlier." [100] So intense had become the fifth and final stage of OPERATION STARVATION (9 July to 15 August) that 66 Japanese ships were sunk during a 36 day period in the

In reality, the very instrumentality which convinced Ala-
Tagawa that their cause was one hopeless and their sacrifices
rendered a quick and honest surrender.

Tiangchu Tawi, the President of PRP, also Tawia's trusted
adviser like Datoe Bodo and ex-minister of Sabah's
defect and elected, however immediately, that in the last
few months of the war. Conversations of Malaysia and were
I by cut, 4 in Tawia, (and) 10 by phone.[65] While these ex-
pertises are not correct, the statement cited sums totally for
of the relative sensitivity of the Chief to Chief's endeavors
convince their Japanese colleague instead attributed to his
U.S. active identity.

In reading on the differences of the 1-4- and 1-2-man groups,
Captain Frank Tomura, of the Japanese Imperial Army, claims
that at least 10,000 men and the missionaries were lost when
in an attempt to keep Tawia's men lower and harbors were further
the U.S. Tiangchu. Lessons in Japan's disadvantage first were
necessarily lower with only one in lieu of three months identifies
Tagawa's disappointing overtaken.[66] Tomura (author) both years
war interrogation that the result of the 1-4 policy was an
effective auxiliary activity that it successfully stayed the country
I while you probably could have accomplished his men to basically
like physical reality.[67] In lessons that happens the life and
final value of operational experience in Only in Japanese that
to Japanese which were most during a 31 day period in the

Shimonoseki Straits alone.[101] Of Japans's 22 major merchant shipyards, all but three were rendered useless due to mines.[102] Acute shortages of coal, oil, salt and food nearly wiped out the remaining operative portions of Japanes industry which had survived the U.S. bombing raids of the Japanese Islands.[103] Dispite modest B-29 losses, over 12,135 mines were sown in Empire waters alone during the four month period in which OPERATION STARVATION was conducted.[104] This vast aerial mining effort represented an expenditure of only 5.7 per cent of the Twenty-first Bomber Command's resources. The Twenty-first Bomber Command sank or damaged 606 ships totaling 1,251,256 tons. Against a total loss during OPERATION STARVATION of of 670 Japanese ships, only 15 U.S. B-29s were lost or destroyed. This meant that for each 45 Japanese ships sunk by mines laid by B-29 aircraft, only one U.S. B-29 aircraft was sacrificed.[105] By any measurement of effectiveness, the ratio of the losses of ships and the curtailment of Japanese imports including weapons and strategic materiel when compared to the losses of U.S. aircraft, clearly justified the U.S. mining blockade from an economy of force standpoint alone.

Through competent planning by the Navy and effective implementation by the Air Force, OPERATION STARVATION, regardless of the Draconian title used to describe it, significantly reduced Japan's capacity to wage its offensive operations.

[illegible] 101 [illegible] shipyards, [illegible] 102 bomb [illegible] the [illegible] survived the U.S. [illegible] 103 Despite [illegible] B-29 losses, [illegible] Empire [illegible] offensive [illegible] 104 [illegible] effort [illegible] Twenty-first Bomber Command [illegible] Bomber Command [illegible] tons. [illegible] of 410 Japanese ships, only 11 U.S. [illegible] so. This [illegible] laid by [illegible] sacrificed. 105 By any [illegible] of the [illegible] imports [illegible] to the losses of U.S. [illegible] mining [illegible]

Through [illegible] implementation [illegible] loss of the [illegible] reduced Japan's [illegible]

The cumulative effect of the U.S. blockade and mining operation was to materially reduce the time for the U.S. to win the war and to eliminate the need for the United States to conduct massive invasion operations in the Japanese mainland.

Had the above mining operation commenced in January, 1945 as the United States Navy had recommended, the increased attrition of enemy merchant shipping might have significantly reduced Japan's resistance by the time the Okinawa assault had arrived. Almost certainly, the increase in shipping losses suffered by the Japanese plus the drastic reduction of imports to Japan, would have brought the Japanese, even before the first atomic test bomb was exploded at Alamogordo, N.M., to negotiations which might have prevented the tragic effects of Hiroshima and Nagasaki.[106]

2. The United States Mine Warfare Experience in Korea: The Lesson of the Wonsan Invasion

During the 1950 Korean War, Russian manufactured sea mines were supplied to North Korea for defensive coastal emplacement against U.S. invasion forces at Wonsan, Korea. Russia avoided a direct confrontation with the United Nations forces and decided instead to content itself with merely supplying mine warfare technicians and materiel which meant in effect that Russia was attempting to fight the U.S. invasion fleet at Wonsan by proxy.[107]

Initially, the Soviet mining effort in North Korea was probably intended to keep the United Nations ships out of North Korean coastal waters thereby hampering U.N. offensive capabilities. However, since the bulk of the U.N.'s naval force was comprised of ships of the Unites States Navy, the Korean war also provided the Soviet Navy with an ideal opportunity to test the U.S. Navy's ability, as of 1950, to cope with Russian mine warfare technology.[108] In addition, the Korean peninsula was almost ideally suited for an experiment in defensive naval mine warfare since most of its coastal waters were shallow and muddy thereby offering optimum ine laying and concealment conditions.

Early in September 1950, U.N. ships and aircraft sighted mines in the Yellow Sea on 54 separate occasions. Worse yet,

more than 25 of these mines were of the floating contact variety and had been sighted on the surface in the high seas around the Korean Peninsula.[109] These "drifter" type mines were assumed to have become detached from their moorings and had therefore floated to the ocean surface. Whether the ommission of self-scuttling devices on these Soviet built mines was intentionally planned for operational purposes or whether the demands of economy or a crash production schedule resulted in the elimination of this required self-destruction device could not be positively ascertained.

Article 1 of the Hague Convention of 1907 forbids nations "[t]o lay anchored submarine mines which do not become harmless as soon as they have broken loose from their moorings."[110] Since this convention was principally the result of the neutral trading nations, at that time, attempting to protect their own commercial maritime interests, it could be argued that the treaty provision requiring that contact mines once having broken their moorings must detonate themselves is inapplicable to a wartime situation where no "neutral" traffic can be found on the surrounding high seas and the defending coastal nation's waters are controlled by hostile naval forces. In any case, since Russia and North Korea were not signatories to Hague Convention VIII (1907) relative to the laying of automatic submarine contact mines, it could be argued that the two

more than 25 of those which were of the floating contact variety and had been placed on the platform in the Alor area around the Indian Peninsula.[47] These "floating" type mines were anchored to have lanyons unreached from their anchors and had therefore floated to the ocean surface. Despite the emplacement of self-destructing devices or chase device built which was intentionally placed for operational purposes or during the demands of economy or a crash production schedule, the elimination of this requisite self-destruction device could not be positively ascertained.

Article 1 of the Hague Convention of 1907 Governing Mines states "[t]o lay anchored automatic mines which do not become harmless as soon as they have broken loose from their moorings."[48] Since this convention was principally the result of the naval treaty negotiations, at that time, concerning or contact mines or commercial maritime interests, it could be argued that the treaty provision requiring that contact mines cease laying broken while moorings must automatically disintegrate if immediately to a warlike attempts where no "neutral" traffic can be found on the surrounding high seas and the adjacent neutral maritime waters are controlled by hostile naval forces. In any case, since Russia and Japan were not signatories to Hague Convention VIII (1907) relative to the laying of automatic submarine contact mines, it could be argued that the two

nations were neither bound by the Convention's provisions [111] nor the customary practices of international law. [112] However, despite the existence of a significant number of "floating" type mines which had been observed drifting in North Korean coastal waters, the primary threat to U.N. naval forces at Wonsan was not the existence of floating contact mines but massive North Korean laid mine fields in which the Communists had sown an estimated 3000 moored contact and pressure type mines. [113]

To counteract the presence of this Communist mine threat, the exact presence and location of which was merely suspected but not actually confirmed by the United States amphibious forces, the U.S. Navy was able to deploy a small force of only <u>six</u> minesweepers. [114] This diminutive minesweeper force, which was manned principally by reserve personnel, represented the remnants of a once sizeable reservoir of of highly trained talent which had dwindled almost to the vanishing point between 1945 and 1950.

In 1947, the headquarters of the United States Mine Force, Pacific Fleet was abolished and severe budgetary cuts as well as the general military de-emphasis of mine warfare had reduced the U.S. Navy's World War II Pacific minesweeping fleet from its former level of 525 ships to a mere handful of 22 vessels for the entire Far East. [115] This extremely small minesweeping force, which was assigned the task of sweeping the approaches

of Wonsan harbor for an entire U.S. amphibious landing force, was allowed only five days in which to complete an extremely hazardous operation the extent and complexity of which, at the time of its inception, was absolutely unknown.(As a result of the Wonsan operation, the status, composition and readiness of the U.S. Navy's mine warfare forces were subject to in depth review and re-evaluation during the post Korean War period).

The attempt to clear Wonsan Harbor of mines commenced on October 10, 1950 and ended fifteen days later when Wonsan channel had been swept clear. However, the operation took three times longer than initially planned. During the fifteen day period that the tiny minesweeper force of six ships was attempting to clear Wonsan Channel, a jam-packed naval amphibious task force carrying most of the First Marine Division repeatedly steamed southward for twelve hours only to double back over the same course for over a week in what the Marines sarcastically called "Operation Yo-Yo" [116]

The herculean U.S. mine sweeping effort which culminated in an unopposed landing on October 25th, was completed only after an expenditure of thousands of manhours of planning and preparation and after the sinking of two U.S. minesweepers known as the Pirate and the Pledge. [117]

Even more astonishing was the revelation that the entire

Wonsan amphibious landing force which was unable to carry out its objective for a period of ten days, was absolutely stymied due to the efforts of a relatively small force of North Korean trainees who were expertly supervised and assisted by Russian naval and mine warfare personnel. Post-Wonsan assault prisoner interrogations revealed that over 3000 mines were laid by the North Koreans using simple wooden barges of the type normally used in river and coastal traffic.[118] These craft were fitted to carry approximately ten to fifteen mines. In some instances, North Korean coastal fishing vessels also participated in Communist mine laying activities.[119] The mines were manually loaded on wooden barges and were then towed to a pre-determined location where, on signal, they were rolled off the stern of the barges at intervals of from one to one and one-half minutes. While these North Korean mining techniques may have appeared primitive by U.S. standards, they proved to be highly effective judging from the results of the excellent mine field patterns which were laid in close intergration with Wonsan's coastal defenses.[120]

Two major lessons were learned from the serious delays which the Communist mine fields created for the United States Navy. First, dispite the ability to sink an enemy's fleet and cope with his submarines while simultaneously conducting offensive air and naval support missions for friendly troops ashore, it remains militarily unacceptable if U.S. troops and essential

Thanks considerations London Force which was unable to carry out its objective for a period of two years, was disbanded, ostensibly due to the efforts of a solicitor, small force of black terror trainees who were actually functional and trained in tactics, arsenal and also written pamphlets. Post-Soviet Russian civilian-as intelligentsia remained that some 2001 times been tied by the Kurd Korsakia Lenin always ensure ensure of are some necessity need in river and general credit. [137] Some small were fitted to many crematoriums can in fitness clubs. In some instances, just across, Soviet Finnish troops also gratified in Communist this Tavin Lithuania, [138] the times were usually lands or Soviet Union and the also been in a non-determined location, in Israel, this take politics out the whole of the Jewish in Jerusalem of time you to and one-half minutes. While there are still Soviet Union that cities may have accepted citizens in U.S. universities, they proved to be slowly effective helping into the lives of his specialist also field military-also not. Lot in close interaction with Moscow's Soviet citizens. [139]

One major lesson main lesson that can be drawn during which the Commander came facing problem in the Soviet Union Army. First, disable the ability to see in Jewish and cope with his supporters while electronically communicate otherwise air and naval support simulies for Israeli troops battle. It remains militarily unconvincible if U.S. troops and specialist

supplies cannot be moved and landed ashore when and where they are needed because the Navy has been denied, due to the presence of enemy mine fields, the effective control of the sea and, Second, in order for the U.S. Navy to remain prepared to cope with either an offensive or defensive enemy mine warfare threat, no so-called "subsidiary" branch of the Naval service, such as occurred during 1945 to 1950 to U.S. mine warfare, should ever be neglected or relegated to such a minor role in the future. [121]

D. Circumstances Leading to the Commencement of Naval Interdiction Operations of North Vietnamese Harbors

1. Presidential Announcement Describing the Need to Mine North Vietnamese Harbors so as to Interdict Seaborne Commerce

At the very beginning of his May 8, 1972 radio and television address, President Nixon told his listening audience that in early April, 1972 North Vietnamese Communist forces had "launched [a massive] invasion that was made possible by tanks, artillery, and other advanced offensive weapons supplied to Hanoi by the Soviet Union and other Communist nations." [122] After reviewing all of the measures which he had previously directed Dr. Henry A. Kissinger [Assistant to the President for National Security Affairs] and Ambassador William Porter [Chief United States Negotiator at the Paris peace talks] to undertake in and effort to achieve a peaceful settlement, the President said that the North Vietnamese had flatly refused to consider any of these new proposals.[123] Instead of being cooperative, the President said the North Vietnamese had met each of his offers with insolence and insult. The President went on to observe that:

> In the 2 weeks alone since I offered to resume negotiations, Hanoi has launched three new military offensives in South Vietnam. In those 2 weeks the risk that a Communist government may be imposed on 17 million people of South Vietnam has increased, and the Communist offensive has now reached the point that it gravely threatens the lives of 60,000 American troops who are still in Vietnam.
>
> There are only two issues left for us in this war:
>
> First, in the face of a massive invasion do we stand by, jeopardize the lives of 60,000 Americans, and leave the South Vietnamese to a long night of terror? This will not happen. We shall do whatever is required to safeguard American lives and American honor.
>
> Second, in the face of complete intransigence at the conference table do we join with our enemy to install a Communist government in South Vietnam? This, too, will not happen. We will not cross the line from generosity to treachery." [124]

The President then went on to outline three "hard choices" which confronted him: (1) "immediate withdrawal of all American forces, (2) continued attempts at negotiation, or (3) decisive military action to end the war." [125] After reviewing his available options, the President concluded that:

> There is only one way to stop the killing [and] that is to keep the weapons of war out of the hands of the international outlaws of North Vietnam. [126]

The President ended this phase of his presentation with the observation that when the enemy abandons all restraint, throws his entire army into battle while refusing to negotiate, we simply face a new situation. Under such circumstances, with 60,000 American servicemen threatened, any President who failed to act decisively would have betrayed the trust of his country and betrayed the cause of world peace.[127]

The President went on to state that he had concluded that Hanoi must be denied the weapons and supplies it needs to continue its aggression and, therefore, in full coordination with the Republic of [South] Vietnam, he had ordered the following measures implemented:

> All entrances to North Vietnamese ports will be mined to prevemt access to these ports and North Vietnamese naval operations from these ports.
>
> United States forces have been directed to take appropriate measures within the internal and claimed territorial waters of North Vietnam to interdict the delivery of any supplies.
>
> Rail and all other communications will be cut off to the maximum extent possible.
>
> Air and naval strikes against military targets in North Vietnam will continue.[128]

President Nixon stressed that the above actions which he had ordered taken were not directed against "any other nation."

The President made this phase of his presentation with the observation that "we are already employing all reserves, there is only one line left to defend, and we simply have a new situation. Since each divisionnaire, with 10,000 American servicemen therein, has been asked to act decisively, would they betray the trust of his country and betrayed the cause of world peace."[27]

The President went on to state that he was convinced that Canada must be denied the reserves and position it would be necessary to take in Newfoundland, Greenland, in full consultation with the Republic of Iceland Ultimately, he was drafting the following message to Churchill:

> All endeavour to avoid fighting there will be made by Canada acting on these lines and then if necessary would cooperate from other bases.
>
> United States forces have been directed to take immediate steps with the Canadian and Icelandic authorities to secure the defence of Iceland against attack by Germany or any complicity.
>
> Hull and all other communications will be put at the disposal of the Canadian authorities.
>
> Air and naval service against military threats to Canada will somehow. [28]

Roosevelt also stressed that the above letter which he had ordered taken were not directed against Vichy [illegible]

Countries with ships presently in North Vietnamese ports had already been notified that these ships had "three daylight periods to leave in safety." After that time, the President said, the mines will have become active and any ships attempting to leave or enter the mined ports will do so "at their own risk."

Finally, the President set forth two conditions which had to be met in order for him to order a cessation of the interdiction measures which he had ordered. First, all of the United States prisoners of war had to be returned; and second, there must be an internationally supervised cease-fire throughout Indochina. Once the prisoners were released and once the internationally supervised cease fire had begun, the President said, then all acts of force throughout Indochina would be terminated and at that time, all American forces would be withdrawn within four months time. [129]

2. Justification Advanced by U.N. Ambassador George H. Bush in Communicating the U.S. Position to the United Nations

In his letter to the President of the Security Council of May 8, 1972, U.S. representative George H. Bush wrote that the

Countries with which currently in such Vietnamese ports had already been notified that these ships and "their defilade provided to leave in safety." After this time, the President said, the mines will have forever worthy and our total mission had to leave or enter the ports will be "as safe as the rivers."

Finally, the President was there was considerable reason to be sure in order for all to assure a cessation of the intensive bombing campaign which he had ordered. First, all of the United States prisoners of war had to be returned; the second, there must be an internationally supervised cease-fire throughout Indochina. Once the prisoners were released and once the internationally supervised cease fire had begun, the President said, then all sorts of force throughout Indochina would be terminated and as time went, all American forces would be withdrawn within four months time.[17]

3. Justification Advanced by U.S. Government Officers Is Used to Reconciliation with U.S. Position to the Vietnam Dispute

In his letter to the President of the Security Council of May 8, 1973, U.S. representative George H. Bush wrote that the

President of the United States had directed United States forces in Southeast Asia, in conjunction with forces of the Republic of Vietnam, to mine the entrances to the ports of North Vietnam in an effort to prevent the delivery of seaborne supplies.[130] Ambassador Bush's letter asserted that the massive invasion across the demilitarized zone and the continuing aggression by the forces of North Vietnam against the people and territory of the Republic of Vietnam had created unprecedented dangers to the country, its people and the forces of the Republic of Vietnam and those U.S. forces which still remained in South Vietnam. As a result of this North Vietnamese aggression, the Ambassador said that the U.S. had commenced interdiction activities of all North Vietnam bound seaborne supplies as measures of collective self-defense.[131] These collective self-defense measures were being reported to the United Nations Security Council as required by Article 51 of the United Nations Charter.[132]

The Ambassador's letter noted that since a major portion of the supplies through which the invasion of South Vietnam was being supported entered North Vietnam by sea, it was essential that further delivery of seaborned supplies be completely halted. After restating the interdiction measures which President Nixon had ordered as a minimum necessary to meet the North Vietnamese threat, the Ambassador expressed the belief that these measures were restricted both in extent and purpose and were therefore

President of the United States had directed United States forces in Southeast Asia, in conjunction with forces of the Republic of Vietnam, to stop the aggression by the people of North Vietnam in an effort to prevent the military of communism overall.[120] Secretary Rusk's letter reported that the massive invasion means the mobilization once and for constituting aggression by the forces of North Vietnam against the security and territory of the Republic of Vietnam has created unprecedented danger to the country, the people and the forces of the Republic of Vietnam and those U.S. forces which still remained in South Vietnam. As a result of this North Vietnamese aggression, the Ambassador said that the U.S. had commenced immediation activities of all sorts within United Nations Charter collectively self-defense.[121] These collective self-defense measures were being reported to the United Nations Security Council as required by article 51 of the United Nations Charter.[122]

The Ambassador's letter noted that since a major portion of the supplies through which the invasion of South Vietnam was being supported entered South Vietnam by sea, it was essential that further delivery of unauthorized supplies be successfully halted. After restating the international commitments which President Nixon had ordered as a minimum necessary in view of the North Vietnamese threat, the Ambassador stressed the belief that these commitments were restricted both in extent and purpose and were knowledge

completely reasonable. The letter also noted that in addition to general notices being given of the measures taken against North Vietnam, the naval forces of the United States and the Republic of Vietnam would also notify any vessel approaching the mined internal and claimed territorial waters of North Vietnam of the existence of these mined waters.

3. Amplifying Remarks Made by Presidential Adviser, Dr. Henry A. Kissinger

During his preliminary remarks made on May 9, 1972 at a press conference given at the White House, Presidential Adviser Henry A. Kissinger outlined the steps which he had taken in early 1972 on behalf of the United States to achieve meaningful negotiations with the North Vietnamese Government.[133] Dr. Kissinger indicated that in March of 1972, United States intelligence sources showed that the North Vietnamese, while steadfastly refusing to resume negotiations, were rapidly building up their forces and that by Easter Sunday (1972), the United States had become aware of the beginning but not the size and scope of a new North Vietnamese major offensive. Dr. Kissinger said that since the United States was then committed to trying to cultivate its improved relations with Peking and Moscow, the United States did not wish to take any immediate action in response to this new North Vietnamese military offensive.

completely unacceptable. The United States could not acquiesce to general terms being given or the economic sanctions lifted. Thus, the novel course of the United States in the Republic of Vietnam would also prevent any general agreement the above internal and external territorial matters of concern vitaness of the existence of those robust nations.

3. Negotiation Tactics Used by Ambassador Henry C. Lodge

During the continuing tension over the May 8, 1963 a tense confrontation arose at the White House. Ambassador Henry C. Lodge's cable contained the phrase which is had been in early 1963 on behalf of the United States to achieve meaningful negotiations with the South Vietnamese Government.[13] Mr. Kennedy indicated that in March of 1963 United States Ambassador Nolting stated that the South Vietnamese, also, strategically retaining to various constituents, they realize Buddhism as their source and that to take Diem (1963), the United States that Diem's house of the Vietnamese and was also and means of a the South Vietnamese major officials. Mr. Kennedy said that since the United States was then essentially to trying to negotiate its internal relations with Saigon and Hanoi, the United States did not wish to take any immediate action in response to this new South Vietnamese military offensive.

However, Dr. Kissinger also noted that during his recent visit to Moscow in the Spring of 1972, "We pointed out to the Soviet leaders the extraordinary complexity that was posed for us by a massive invasion of the entire North Vietnamese field army against South Vietnam, an invasion that if it achieved its objective was bound to jeopardize the security of 60,000 Americans, and the impact that such developments had to have on our attempts to move forward on a broad front."[134] Dr. Kissinger said that the Soviet leaders felt every effort should be made to resume negotiations; and on this basis the U.S. proposed a return to plenary sessions provided the U.S. was given firm assurance that a productive private meeting would quickly follow.

Unfortunately, no substantive discussions with the North Vietnamese were to be immediately forthcoming. When a meeting between the U.S. and the North Vietnamese negotiators was finally arranged after six months of attempting to set up such a meeting, the North Vietnamese simply read a previously published statement which, according to Dr. Kissinger, could have been "clipped from a newspaper and sent to us in the mail."[135] Dr. Kissinger concluded this phase of his press conference by saying that:

> No one can believe that 2 weeks before a summit meeting that it had taken us 2 years to se up, the President would lightly engage in the sort of decisions he had taken.

> We were confronted with the fact that an opponent was insisting on continuing an all-out military offensive which would stop only on terms that no American President can be asked to accept. And this is why, with enormous pain and great reluctance, this administration was forced into those [interdiction] decisions.
>
> For 2 years we have been engaged in negotiations on a broad range of issues with the Soviet Union. We are on the verge not just of success in this or that negotiation but of what could be a new relationship of benefit to all of mankind - - a new relationship in which, on both sides, whenever there is a danger of crisis, there will be enough people who have a commitment to constructive programs so that they could exercise restraining influences. But in order for such a policy to succeed, it cannot be accepted that one country can be oblivious to the impact on another of the actions of its friends, particularly when those friends are armed with the weapons of this country. [137]

4. Remarks of Deputy Secretary of Defense Kenneth Rush

In an early morning televised appearance [138] on the day after President Nixin's May 8th mining-interdiction announcement, Deputy Secretary of Defense Kenneth Rush made the following distinction between the interdiction of supplies bound for North Vietnam and the interception of foreign ships bound for North Vietnamese ports:

> We are not stopping ships. We are saying that we are preventing the delivery of supplies to North Vietnam. We have laid mines and no ship need to hit those mines.

When asked a question by Pentagon Correspondent Robert Goralski pertaining to the possibility if a Soviet vessel going within North Vietnamese territorial waters, the Secretary responded that while there was no decision to bomb such a ship, a decision had been made to prevent the offloaded supplies from that ship from ever reaching the shore. When asked how North Vietnamese bound supplies could be prevented from reaching shore, Secretary Rush responded as follows:

> There are many ways. One of them is, of course, that the ship itself would be taking a very grave risk if it came within the 12-mile limit and hit a mine. Another is, of course, once the ship is unloaded and if you have lightering (unloading of a ship or a barge for transport of supplies ashore), we, of course could subject the lightering ships to bombing. We could [also] bomb [them] once they reach shore. We have alternatives in that regard, but the measures we will take will depend upon the circumstances.

When asked how great a risk the United States had assumed by taking such an apparent "escalatory move", Secretary Rush answered:

> That, too depends on one's point of view. We feel that the way to bring about peace, to bring about a ceasefire, is to prevent the munitions of war and the supplies needed for this invasion from reaching the invaders. We are not stopping ships on the high seas. We are not even bombing ships anywhere as of now, and we've made no decision to bomb at all. So

When asked a question by [illegible] correspondent [illegible] Communist [illegible] to the [illegible] of a Soviet vessel going through [illegible] waters, [illegible] responded that while there was no [illegible] such a [illegible], a decision had been made to [illegible] from that side from [illegible]. When asked [illegible] Vietnamese [illegible] shore, [illegible] as follows:

> There are many ways. [illegible] if it came within the [illegible] with a [illegible]. Another is, of course, [illegible] if you [illegible] for transport of supplies [illegible] subject the [illegible] book [illegible] in that regard, [illegible].

When asked whether [illegible] by taking such an [illegible], [illegible]:

> Well, [illegible] that the way to [illegible] is to [illegible] of war and the supplies [illegible] the [illegible]. We are not [illegible] and we're [illegible] at all. [illegible]

there need be no escalation whatever as between us and any other countries and there should be a deescalation with regard to the North Vietnamese if they don't have the munitions and the supplies and are unable to carry on this massive invasion of the South.

Mr. Goralski thereafter asked Secretary Rush a question which was perhaps one of the most pertinent inquiry of the interview and which pertained to the selectivity of the U.S. mining-interdiction and its effects on freedom of navigation on the high seas:

> Mr. Goralski: Mr. Secretary, a mine can't discriminate between a Soviet ship hauling in SAM missiles or tanks and a Japanese [ship] carrying in foodstuffs. Aren't you, in effect, saying that you don't want anybody to trade with North Vietnam now because if they do, if they bring in their equipment by sea, they risk the possibility of those ships [hitting a mine and being] lost?
>
> Secretary Rush: Yes, we're saying that we cannot distinguish between ships carrying munitions or war and ships that might be carrying just food. Therefore, we cannot allow <u>any</u> cargoes to reach shore. (Emphasis added).

During the concluding segment of his interview, the Secretary was asked what was perhaps the most probing question presented to him during the course of the interview. In this question, Secretary Rush was asked by Mr. Goralski if, not withstanding the recent favorable results achieved by the United States and the Soviet Union on such matters as the

Four Power Agreement on Berlin and the great progress made on the SALT negotiations, whether it was "expecting an awful lot from Moscow" for them to "just sit back and tell the North Vietnamese we're not going to help you any more?

To this question Secretary Rush responded as follows:

> A war is a very serious calculated risk in any event. There was a serious calculated risk when the arms supplied primarily by the Soviets, massive arms, North Vietnam moved virtually her entire forces into South Vietnam in this massive invasion. This involved very serious risks which the President pointed out. The North Vietnamese are equipped with the very latest in missiles, in SAMs, in artillery and tanks, in trucks and all those things, everything needed for a massive invasion by a military state of a neighbor. This involves military risks. There are also, obviously, risks involved in attempting to prevent this invasion from going forward sucessfully, by preventing supplies from reaching the armed forces of that invading country, and <u>we think those risks are acceptable</u>. (Emphasis added).

5. Explanation of United States Activities Presented by Secretary of Defense Melvin Laird

On the morning following Deputy Secretary of Defense Rush's television appearance, Secretary of Defense Melvin Laird was asked during a Pentagon press conference [139] what the United States would do if the Soviet Union attempted to remove any of the mines which the United States had laid. To this question the Secretary responded, "First, we will take all steps that are necessary in order to maintain an adequate mining operation.

As you know, mines are a passive weapon. No one has to get involved with a mine. That decision is made not by us, but is made by those people that confront the mines."

When asked to explain the reason the administration chose not to call the mining operation a "blockade" and why Senate Republican Leader Hugh Scott, (R-Pa.) stated "that the term 'blockade' is a legal term which has a lot of support in international law," Secretary Laird replied as follows:

> Of course, this is not in the terms that you refer to it, in Senator Scott's terms, and you quote Senator Scott, a blockade in the international sense, that we are challenging ships beyond the territorial waters of North Vietnam. We are merely giving notification to all shipping that the harbors of North Vietnam have been mined, and we have notified the entire world and we have notified the United Nations that we will not permit the landing of supplies in North Vietnam
>
> This is a much different type of action than the international blockade to which you refer that applies on the high seas beyond the territorial waters of a given country so there is difference. 140 (Emphasis added).

When asked whether the mining and maritime interference with seaborne shipping deliveries might be considered as a warlike act against other nation's shipping interests without the existence of the required Declaration of War, the Secretary responded:

> The situation is such . . . that mines have been used by the enemy in the South and in the tributaries and in the rivers in the South over a period of time. We have had damage done to [our] ships from the mines that have been laid by the North Vietnamese. These have been in most cases Soviet mines that have been placed in those particular entrances to river facilities and in other areas in the South. I think it is important to point out that mines have [previously] been used by the enemy in South Vietnam. [141]

Finally, in response to the question as to whether any flag ship belonging to a country other than North Vietnam would be attacked if it attempted to land cargo on the shore, the Secretary of Defense reiterated the order previously announced by President Nixon that the United States policy "is to stop the delivery to the North Vietnamese of these supplies, and we will take those actions that are necessary to stop that delivery." [142] (Emphasis added).

B. Evaluation of Strategic Planning, Implementation and Policy Considerations Related to United States Naval Interdiction Activities

The sudden developments leading up to the President's mining announcement of May 8, 1972 appears to have been due, in large part, to the rapid, clandestine and massive North Vietnamese buildup which apparently surprised U.S. intelligence experts by its timing and its direction. [143] One intelligence

source reported that although "we saw the [Communist] build-up [coming], we could not tell when or where he'd strike." [144]

During their assault in the Central Highlands, the North Vietnamese gained a major tactical surprise - - and almost four or five days of virtually unimpeded advance leading to the seizure of Quantri, by hitting when and where it was least expected. After the North Vietnamese offensive had been launched, U.S. intelligence sources acknowledged that they had not suspected that the North Vietnamese would take the "short route" down Coastal Highway 1. One U.S. intelligence source reported that "[t]he surprise was that for the first time in 18 years, the Communists stopped the pretense of 'infiltration' caused by a 'peoples' civil war and [openly] went down Coastal Highway 1." [145] The sudden appearance of thirty North Vietnamese tanks, thought to be disassembled and brought south by truck or river boat, also produced instant and extreme psychological shock to the South Vietnamese defending forces.

These sudden and successful advances by the North Vietnamese resulted in severe military losses for the South Vietnamese including a major debacle where one South Vietnamese General, Brigadier General Vu Van Giai, actually abandoned his command post at Quantri when his position wasn't even under threat of ground attack. [146]

Such demonstrated weakness on the part of some South Vietnamese military commanders apparently caused President Nixon to include a statement in his May 8th presentation which was addressed "to the people of South Vietnam." In this segment of his speech, the President said:

> You shall continue to have our firm support in your resistance against aggression. It is your spirit that will determine the outcome of the battle. It is your will that will shape the future of the country." [147]

Following the President's urging of South Vietnamese leaders to get tough and show more spirit and leadership, South Vietnamese President Nguyen Van Thieu imposed martial law in a move to heighten public awareness of the country's critical military situation. [148]

Thus, the President of the United States was not only faced with a massive movement of North Vietnamese troops and heavy equipment into the South, but he was also confronted with the spectre of a rapid deterioration of South Vietnamese military leadership and battlefield morale. The possibility of a catastrophic collapse of South Vietnam's military posture which might have subsequently lead to an election year debacle after three and one-half years of continued promotion of the Administration's Vietnamization program, was likely to have been one of the principal considerations which influenced President Nixon to order North Vietnam's ports and harbors mined.

[illegible] Congressional committee in July 1966 of some [illegible] Vietnamese military commanders concerning [illegible] which to include a statement in his [illegible] was addressed "by the people of South Vietnam" in view [illegible] support of his mission. The Tonkin Gulf [illegible]

> You shall convince us that you have [illegible] your revolutionary spirit or [illegible]. If [illegible] notify the [illegible] the [illegible] of the [illegible] basis. If [illegible] will [illegible] the [illegible] of the country.[illegible]

Following the [illegible] of some Vietnamese leaders to get [illegible] South Vietnamese [illegible] law in a move to [illegible] political military [illegible].[illegible]

Thus, the [illegible] faced with a [illegible] and heavy [illegible] with the [illegible] military leadership and [illegible] of a [illegible] which [illegible] allow time and [illegible] Administration's [illegible] been one of the [illegible] President [illegible] to [illegible]

The President's May 8th decision to mine North Vietnamese waters also had to be carefully considered in light of his scheduled visit to the Soviet Union which would occur two weeks hence. (May 22, 1972).

In his May 8th address, the President made several pointed references to the Soviet Union, the most important of which is as follows:

> I particularly direct my comments tonight to the Soviet Union. We respect the Soviet Union as a great power. We recognize the right of the Soviet Union to defend its interests when they are threatened. The Soviet Union in turn must recognize our right to defend our interests.
>
> No Soviet soldiers are threatened in Vietnam. Sixty thousand Americans are threatened. We expect you to help your allies, and you cannot expect us to do other than to continue to help our allies. But let us, and let all great powers, help our allies only for the purpose of their defense, not for the purpose of launching invasions against their neighbors.
>
> Otherwise the cause of peace, the cause in which we both have so great a stake, will be seriously jeopardized.
>
> Our two nations have made significant progress in our negotiations in recent months. We are near major agreements on nuclear arms limitation, on trade, on a host of other issues.
>
> Let us not slide back toward the dark shadows of a previous age. We do not ask you to sacrifice your principles, or your friends, but neither should you permit Hanoi's intransigence to blot out the prospects we together have so patiently prepared.
>
> We, the United States and the Soviet Union, are on the threshold of a new relationship that can serve not only the interests of our two countries but the cause of world peace. We are prepared to continue to build this relationship. The responsibility is yours if we fail to do so. [149]

The President's Tour in Australia to plan their joint statement

where also had to be carefully coordinated in light of the

scheduled visit to the Soviet Union which would begin two weeks

hence. (May 23, 1972).

In his May 4th message, the President made several related

references to the Soviet Union. The more important of which is

as follows:

> I particularly intend to consult in depth with the Soviet Union. We stand on the verge of a great power. In reaching its place of the Soviet Union is defined by the leadership which they are prepared. The Soviet Union is also more accessible than China to defend our interests.
>
> Its social relations are determined in Moscow. Many important decisions are interwoven. We must see to their very utility. But our ability depends in an one other than to convince us well and effort. But the me, and let all equal effort. Only the effort only for the purpose of their decisions. For the purpose of leadership in military state relations.
>
> Concerning the change of power, the Soviet is which we have an great a state, will be critically focused last.
>
> For the nations have made significant progress in our negotiations in recent months. We are now ready agreements on Berlin and Strategic Limitations, as well a part of public issues.
>
> Let us put aside last issues the last months of a previous one. We do not ask you to sacrifice your principle, or your friends. Let neither doubt you would insist's interdiction to that our the pressure we consider have no political relevance.
>
> We, the United States and the Soviet Union, are on the threshold of a new relationship that can serve not only the interests of our two countries but the cause of world peace. We are prepared to continue to build this relationship. The responsibility is yours if we fail to do so. 143

At stake in this calculated gamble of Herculean proportions, was not only the possibility that the United States might provoke a major confrontation with the Soviets in Southeast Asia and in other parts of the World, but that the detente between the United States and the Soviet Union which had been so carefully cultivated after years of negotiations, was being threatened with total destruction.

In effect, the President's mining announcement required the Soviet Union to elect whether contrary to the interests of World stability, the Soviet Union would continue to provided the means to its remote and small ally to take over another small ally of the United States while both were engaged in fighting one another in the same distant and war torn land; or whether the Soviet Union would abide by these suggested and self-imposed rules of intervention which called for a military response by the superpowers only when the territorial interests considered vital to each were clearly and convincingly affected.

In taking this calculated risk, the President was relying heavily upon his judgment that the Soviet Union would not hastily react to the United States mining measures because (1) these measures did not, in themselves, constitute a threat to Soviet vessels on the high seas and were instead strictly limited to measures affecting North Vietnam's territorial waters, (2) because Moscow may have felt that it had been betrayed by Hanoi's

launching of its heavy offensive into South Vietnam after the Soviets had recommended [150] that the tanks, artillery and other weapons which they had supplied the North Vietnamese should not be used until after all American forces had been withdrawn, rather than before President Nixon's visit to the Soviet Union had been completed, and (3) because a long sought stabilizing treaty in Central Europe, a highly desired agreement to limit the arms race between the super powers and an extremely generous arrangement for trade with access to American technology were all at stake for the Soviet Union if they chose to provoke a military confrontation over the President's mining measures. [151]

Another major factor which weighed heavily when the President made his evaluation of the long range strategic effects associated with the commencement of his North Vietnamese mining measures was that the President could also take effective action against North Vietnam because the Russians and the Chinese, whose border confrontations had been steadily growing, had each considered their future links with the United States to be more important than their present commitments to Hanoi. On the other hand, the President had to consider whether his actions might stimulate latent competitive forces between the Soviets and the Chinese which could compel them to demonstrate to Hanoi and the Commuinst World the degree of individual commitment stemming from their own competitive version of Marxism.

launching of its heavy offensive into South Vietnam after the Geneva Accords[130] that the tanks, artillery and other weapons which they had supplied the North Vietnamese should not be used until after all American forces had been withdrawn, rather than before (Hanoi's wish) to the Soviet Union had been neutralized, and (3) because a long security stabilizing strategy in Central Europe, a highly detailed arrangement to limit the arms race between the superpowers and an outstanding generous arrangement for trade with Japan to Russian Embassy were all at stake for the Soviet union, it was close to provoke a military confrontation over the Americans's China measures.[131]

Another major factor which worked heavily when the President made his evaluation of the Sino-Soviet Russian effects associated with the commencement of his Nixon Visit-memos making memorize was that the President could also take effective action against both Vietnam because its Russians and the Chinese, whose leader confrontations had been already growing, had been considering their future lines with the United States to be more important than their common commitments to Hanoi. On the other hand, the President had to consider whether his actions might stimulate latent competitive forces between the Soviets and the Chinese which could compel them to demonstrate to Hanoi and the Communist world the degree of individual commitment absorbing from their own competitive version of Marxism.

Indeed, The New York Timesreported that on May 17th, with only five days remaining before the arrival of President Nixon in Moscow, the Soviet media was conveying the impression that the American measures taken at Haiphong had fostered new collaboration between the Soviet Union and China.[152] Soviet insiders were reportedly telling friendly diplomats that the two feuding Communist powers were either about to sign or had already signed new agreements arranging for the shipment of Soviet war supplies for Hanoi across China to outflank the American attempt to choke off supplies by sea. However, the prevailing view, at that time, was that most of the Soviet publicity including private leaks, was being given for appearance sake only and did not portend any fundamental easing of tension between the Soviet Union and China. Indeed, the Soviet desire to upstage Peking coupled with an almost obsessive fear of unlimited United States-Chinese cooperation, was rekoned by Western diplomats as the principal factor for the Kremlin's decision not to cancel President Nixon's visit.[153]

Subsequently, a May 23rd report from Peking showed that China had, from the outset, balked at Russian requests that Soviet bloc freighters carrying supplies to North Vietnam be allowed to use Chinese ports. Instead, the Chinese merely agreed to increase Soviet bloc rail shipments through China proper.[154] One diplomatic source reported that this Chinese refusal was coupled with a suggestion that the Soviets instead begin to attempt to clear the North Vietnamese ports and harbors

of mine fields.[155] In addition, sources reported that while the Chinese rail system had geared up for a substantial increase on rail traffic caused by the requested Soviet accomodation, the goal of satisfying these increased Soviet cargo requirements when coupled with a five-fold increase in rail tonnage in order to compensate for the loss of sea routes, would be extremely difficult to achieve.[156]

Subsequently, a news report from Moscow dated June 18th, told of Soviet citizens being informed during political lectures that China had "categorically refused" to let Soviet ships unload supplies destined for North Vietnam at Chinese ports.[157] (Lectures are a basic form of adult education in the Soviet Union). The lecturers told the Soviet public that immediately after the United States laid the mines along the North Vietnamese coast on May 8th, nine Soviet minesweepers set out toward North Vietnam from Vladivostok, Russia's naval base in the Sea of Japan. One reason these minesweepers were never used the Soviet audiences were told, was that the United States could have quickly replaced its mines as soon as they were swept.

Russian audiences were also told that China favored heating up the Indochina war in the Spring of 1972 because the Chinese hoped this might interfere with President Nixion's visit to the Soviet Union. However, it was acknowledged that the developments created by by Mr. Nixon's May 8th mining order severely complicated preparation for the May, 1972 summit and caused

the Soviet Central Committee to reconsider the desirability of President Nixon's visit.[158] The Soviet audiences were told that the Central Committee decided to go ahead with the Summit after keeping in mind certain "long term considerations." Canceling the Summit would have meant sacrificing a long list of important diplomatic opportunities, the lecturers said, and the results of the Summit proved that this was the right decision.[159]

The calculated risks which President Nixon took with regard to his ordering of a naval mining interdiction would, of course, only have been undertaken if a significant benefit for the United States or its ally could have been achieved. Since 1966, the comparative advantages and disadvantages of mining North Vietnam's harbors had been actively considered by United States planners. In 1967, President Johnson refused, however, to authorize such actions as "mining" or "quarantine-interdiction" which were designed, among other things, to "decrease the Hanoi and Haiphong sanctuary areas."[160] One of the most vocal supporters of a tough mining thrust against the North Vietnamese Communists was Admiral U.S. Grant Sharp, former Commander of American forces in the Pacific. Writing in the Reader's Digestin May, 1969 after he had retired from the Navy, Admiral Sharp disclosed that he had proposed a plan which proved to be almost identical to the one ultimately carried out by President Nixon on May 8, 1972.[161]

the Soviet Central Committee to propagandize the leadership in Kennedy's stead. [14] The Soviet mediamen were told that the Central Committee decided to do so about 4:00 the morning after Kennedy by mid-morning. [15] Soviet commentators, Cancelling the Moscow would deny about abandoning a long list of important diplomatic commitments, the Lockheed SR-71, and the remains of the Cuban crews that shot down by pilot decision. [16]

The relaxed style which Khrushchev then took was respect to his relation of a small civilian investigation and of course, only has been celebrated. If a timetable needs for the United States to the air could have been accepted. Since 1963, the commodities exchanges and discussions of stating North Korean's insults and such activity conducted by United States planes. In 1967, Khrushchev [illegible] however, to authority such actions as "violations or "territorial interdiction" which were unknown. Some cases exist, to "determine the level and [illegible] necessary steps." [17] One of the most vocal [illegible] of a [illegible] attack against the North Vietnamese Communists was Admiral [illegible] former Commander of Southern Force in the Pacific. Writing in the Saturday Evening Post, [illegible] the Navy, Admiral Clark [illegible] that he had proposed a plan which proved to be almost impossible to [illegible] carried out by President Nixon on May 9, [illegible] [18]

In advancing his arguments for a United States mining interdiction operation against North Vietnam, Admiral Sharp asserted that "closing an enemy's harbor is customary and logical in warfare."162 Admiral Sharp said that although he had recommended blocking Haiphong with mines laid by aircraft which represented the simplest and most effective measure the U.S. could have taken, these suggestions were always vetoed on the grounds that it "Would not affect the enemy's capability of waging war in South Vietnam." [163] In placing the blame for the "needless casualties" that resulted, Admiral Sharp wrote that Secretary of Defense Robert S. McNamara arbitrarily and consistently discarded the advice of his military advisers while pursuing the campaign on a "gradualistic basis that gave the enemy plenty of time to cope with our every move." [166]

According to The Washington Post the Pentagon Papers revealed that the Joint Chiefs of Staff adopted Admiral Sharp's proposal as early as October, 1966. [165] But these recommendations were principally rejected for the following two reasons: (1) such a move constituted an unacceptable risk with regard to the Soviet Union which "would place Moscow in a particular galling dilemma of how to preserve the Soviet position and its prestige in such a disadvantegous place," [166] and (2) these measures were essentially ineffective since "no combination of actions [e.g. mining and bombing] against the North short of destruction of the regime or occupation of North Vietnamese territory [would] physically reduce the flow [of supplies] needed by the enemy . . . to continue the war against the South." [167]

Secretary McNamara also estimated that if Peking read the mining of Haiphong as an indication that the United States "was going to apply military pressure until the North capitulated," the Chinese might "intervene in the war with combat troops. . . ." [168]

Therefore, President Johnson rejected the advice given to him by Admiral Sharp and the Joint Chiefs of Staff not only because he was reluctant to risk a clash with the Russians and the Chinese, but also because he was wary of domestic political opposition if such a course of action should ever be adopted.

However, beginning in 1969, during President Nixon's "winding down phase of the war," the debate on the mining plan took on a new sense of urgency as it related to the President's committment to accelerate the withdrawal of U.S. troops stationed in Vietnam. According to The Washington Post, a collection of Secret documents compiled under the auspices of Dr. Henry Kissinger in 1969, showed that the debate during the early stages of the Nixon Administration fundamentally followed the position adopted during the Johnson years. However, since 80 per cent of all Communist aid passed through the Port of Haiphong, the Pentagon favored "a strong effort to interdict road and rail transport" from China to North Vietnam in "a concerted air campaign against all transportation. [169] Such moves, Pentagon analysts said, "would in large part, isolate Hanoi and Haiphong from each other" and would be "highly effective in reducing North Vietnam's capability to reinforce aggression in South Vietnam. [170] However, the CIA disputed this contention and argued that the effects of a sea

blockade "would be widespread but temporary" and that the North Vietnamese would find "alternative procedures for maintaining the flow of essential econonic and military imports" within two or three months. The CIA said that the North Vietnamese could continue to recieve supplies from China by rail, highways or rivers, and therefore the Communists had sufficient alternative avenues for transporting their supplies. The CIA report therefore concluded that "total interdiction of seaborne imports would be difficult because shallow-draft lighters could be used to unload cargo from the mined major harbor areas. [171]

Dispite the misgivings expressed by the CIA and other administration analysts concerning the effectiveness of a Harbor mining interdiction campaign, the series of sudden military setbacks for the South Vietnames Armed Forces in the Spring of 1972, coupled with the appearance of enemy convoys of up to 200 trucks [172] recklessly running down South Vietnam's major highways in broad daylight, apparently convinced President Nixon that he had no alternative but to act decisively.

These convoys carrying ammunition, weapons and fuel for North Vietnames heavy armored vehicles (some of which consumed up to 18 gallons of fuel per mile of operation) were, for the most part, supplied by Soviet ships being offloaded at major deepwater ports such as Haiphong. Between 35,000 and 40,000 metric tons of fuel had been shipped into North Vietnam by the Soviet Union each month. [173] It is also estimated that the

blockade "would be aboveboard but blockadery" and that the North Vietnamese would find "alternative logistics for maintaining the flow of essential commodities by military means within Laos or other neighbors. The CIA said that the North Vietnamese would continue to receive supplies from China by rail, highways or rivers, and therefore the commodity and military alternative avenues for transporting their supplies. The CIA expect therefore concluded that "total interdiction of military imports would be difficult because multi-modal lines could be used to extend supply from the wider outer Southern areas."[172]

Despite the alternative advanced by the CIA and other administration analysts concerning the effectiveness of a strong mining interdiction campaign, the notion of mining airfields and ports for the North Vietnamese Army Forces in the Spring of 1972, coupled with the appearance of some Communist ships in 200 fathoms[173] eventually swayed Nixon from Hanoi Vietnam's water highways to local dirtfields, monsoonfield-overflown Trans-Laos Pass the ho chi minh trail is not destroyed.

These concepts carrying immediate, massive aid flow for North Vietnamese heavy armored military lines of relief combined up to 12 gallons of fuel per mile of equipment) many, the sea lane part, supplied by Soviet ships from offshore as major deepwater ports such as Haiphong. Between January and 40,000 metric tons of fuel had been delivered here north Vietnam by the Soviet Union each month.[173] It is also calculated that the

Soviet Union supplied three times the tonnage of military goods as was furnished the North Vietnamese by China.[174]

According to a New York Timesarticle, the mining of the seven North Vietnamese ports would also cut down on North Vietnamese food supplies since as much as 40 per cent of North Vietnam's rice is imported from the Soviet Union and other Communist countries.[175] U.S. Defense Department officials acknowledged that food ships would be kept out of North Vietnamese ports since the only remaining alternative was to attempt to stop and search vessels which the United States had refused to do because of its contention that its current mining interdiction was not a blockade. According to recent intelligence reports, approximately 200,000 tons of supplies were delivered to North Vietnam each month, the bulk of which was shipped through Haiphong.[176]

Six weeks after the mining if North Vietnam's ports had been completed, U.S. State Department spokesman, Charles W. Bray announced that U.S. air strikes on the North Vietnamese transportation network had substantially reduced the flow of military supplies from China and that over 1000 boxcars had been bottled up at the Chinese border.[177] Mr. Bray then said: "What does seem clear is that the air strikes on the North Vietnamese transportation network, and particularly the railroads, have had a very substantial effect, [although] less conclusive perhaps than the mining of the ports which has had the total effect of closing those ports to sea traffic."[178] (Emphasis added).

Soviet Union supplied arms since the beginning of military aid as was furnished the North Vietnamese by China.[17]

According to a New York Times article, the mining of the seven North Vietnamese ports would give our men on board Vietnamese food supplies since we much as 45 per cent of North Vietnam's rice is imported from the Soviet Union and other Communist countries.[17] U.S. officers interviewed off-shore acknowledged that food ships could be lost on of North Vietnamese ports since the only economic disruption we is attempt to stop the North Vietnamese from the Soviet ships had refused to be aware of the instruction that the operation violate international law or a mistake. According to Pentagon officials reports, approximately 225,000 tons of supplies were delivered to North Vietnam each month, the bulk of which was shipped through Haiphong.[17]

This week after the mining of North Vietnam's ports had been completed, U.S. State Department officers in Saigon announced that U.S. air strikes on the North Vietnamese transportation network had substantially reduced the flow of military supplies from China and that over 1,000 freighters had been bottled up at the Chinese border.[17] Mr. Tony Kim said: "Our men were glad to find the air strikes on the North Vietnamese transportation network, and particularly the railroads, have had a very substantial effect, internal lines communication more than the mining of the ports which has had the same effect of closing those ports to sea traffic."[17] (Emphasis added).

Later, at the Pentagon, a spokesman said that there had been no movement in or out of North Vietnamese ports since they had been mined nor had any mines exploded.

On May 29, 1972, The Washington Postalso reported that there was no evidence that either China or the Soviet Union was attempting to supply North Vietnam by air or by ground to compensate for the reduction in war material caused by the U.S. mining of its ports. [179] Another American source said that North Vietnam had not taken any measures itself to offset the mining or the renewed U.S. bombing raids although it had three weeks in which to do so. U.S. intelligence sources noted that the American strategy in the North was having its intended effect since the firing of artillery and surface-to air, anti-aircraft missiles as well as other offensive weapons was reported to have dropped off sharply. [180] These U.S. officials also claimed that there was already a gasoline shortage in the North. Although exact figures as to how long it would take using May 8th as a starting point for the U.S. mining campaign to become completely effective were not available, military sources did estimate that it would take between two to six months for the U.S. mining campaign to seriously impede the North Vietnamese war-making capability. [181] It was also noted that as late as three weeks after President Nixon had announced the mining of North Vietnamese ports, no indication could be found that the North Vietnamese were making any effort to repair destroyed or

damaged bridges, roads or rail lines.[182] This inactivity was in marked contrast to the "Rolling Thunder" bombing campaign of 1965-1968 when the North Vietnamese, with the aid of some 50,000 Chinese repair crewmen, made almost superhuman efforts to keep these vital communication lines operating.[183] One possible explanation may be that U.S. Navy and Air Force aircraft have had far greater success in hitting their targets due to the utilization of laser and television guided "smart bombs."[184]

According to informed U.S. sources, the so-called "smart bombs" which in one instance successfully destroyed, in a single air strike, the center span of the Thanhhoa Bridge which had earlier withstood repeated aerial sorties using conventional bombs, were guided to their target by laser beams transmitted by attacking aircraft or by mini-T.V. sets carried in the nose of the bomb depending on which version of the weapon was used.[185] In stressing the accuracy of these new weapons, military sources said that fewer aircraft releasing fewer weapons could be used to achieve better bombing results while minimizing the casualties and damage to civilians and their property due to the inaccurate or inadvertent delivery of weapons. The high degree of accuracy of these newly developed guided weapons is extremely significant since a principal effect of the U.S. mining campaign is to compel the North Vietnamese to rely upon road and rail shipment methods since seaborne delivery of supplies has been extensively curtailed.

F. Description of Naval Interdiction Techniques Employed by the United States

1. Composition, Deployment and Tactics of United States Interdiction Forces

A U.S. task force which was reported to represent the largest air and naval armada ever assembled off the coast of Vietnam, mined the entrances of Haiphong and six other North Vietnamese ports [186] in an attack which commenced on the evening of May 8, 1972 and which was successfully concluded a few hours later when all U.S. aircraft safely returned to their assigned carriers. [187] While the exact number of mines laid was not disclosed by the Navy, an earlier Pentagon study showed that a total of only 200 mines which could be dropped by A-6 attack bombers, would effectively seal off virtually all of North Vietnam's major ports and waterways. The study revealed that as few as two dozen well-placed mines would be sufficient to make impassable the 10-mile-long Cua Cam River which leads from the Gulf of Tonkin to the Port of Haiphong.

Later, In a news conference on May 10, 1972, Secretary of Defense Melvin Laird confirmed that on May 8th, at 9:04 P.M. Washington time, U.S. Navy aircraft had indeed launched from two U.S. carriers and had successfully concluded their first

F. Description of Naval Interdiction Technique Employed by the United States

1. Composition, Deployment and Position of United States Interdiction Forces

A U.S. task force which was reported to encompass the largest air and naval armada ever assembled off the coast of Vietnam, aided the enforcement of embargoes and the other naval Vietnamese ports [181] in an attempt which commenced on the morning of May 8, 1972 and which was successfully concluded a few hours later when all U.S. aircraft safely returned to their respective carriers. [187] While the exact number of mines laid was not disclosed by the Navy, an earlier Pentagon report stated that a total of only 200 mines which could be dropped in the air attack bombers, would effectively seal off virtually all of North Vietnam's major ports and waterways. The study revealed that as few as two dozen well-placed mines would be sufficient to make impassable the 10-mile-long Cua Cua River which leads from the Gulf of Tonkin to the Port of Haiphong.

Later, in a news conference on May 19, 1972, Secretary of Defense Melvin Laird continued that on May 9th, at 7:30 Washington time, U.S. navy aircraft had launched launched from two U.S. carriers and had successfully completed their first

mine drops in North Vietnamese harbors utilizing interdiction techniques which were substantially the same as those outlined in earlier Pentagon studies.[188] After the mines had been laid, the Navy disclosed that its task force had consisted of at least 60 ships including five aircraft carriers with 350 to 400 planes aboard, four cruisers and thirty destroyers.[189]

The aerial mining of Haiphong Harbor centered on a narrow channel called the Canal Maritime which had been laboriously dredged into Haiphong Harbor by the French and later by the North Vietnamese. The Canal Maritime is about one mile long, 500 yards wide and dredged to a depth of about twenty feet.[190]

The mines which the U.S. Navy aircraft laid were set to become automatically activated after three "daylight periods" 191 or at 1800 hours, Thursday, May 11th, Saigon time.[192] After this three day "grace period" had elapsed, any ships which had not yet departed from North Vietnamese ports would have to do so at their own peril.[193]

Information as to which type of aerial mines were laid (e.g. magnetic, acoustic or pressure) was not initially supplied by Pentagon sources except to say that the U.S. mines which were used weighed between 1000 and 2000 pounds and were sown by carrier aircraft. However, five days later, Pentagon sources revealed that only the magnetic type of mines had been planted adding, however, that if any future mining was required, it might involve "other types" of advanced mines such as those

activated by pressure or sound.[194]

In addition to planting mines at the entrances of North Vietnam's harbors, the United States simultaneously laid mines in North Vietnam's canals, rivers and other inland waterways. These mines were placed in the Inland waterways as part of an overall effort to mine "choke points" and other transshipment locations critical to the North Vietnamese waterborne supply system.[196] This action was said to be in compliance with the President's May 8th directive to U.S. forces "to take appropriate measures within the internal and territorial waters of North Vietnam to interdict the deliveries of [enemy] supplies."[197]

The initial public disclosure of the measures taken by the United States were summarized by The New York Times lead article of Tuesday, May 9, 1972 which succinctly outlined the President's interdiction techniques as follows:

> All major North Vietnamese ports would be mined, ships of other countries in the harbors, most of which are Russian, would have three "daylight periods" in which to leave. After that, the mines will become active and ships coming and going will move at their own peril.
>
> United States naval vessels will not search or seize ships of other countries entering or leaving North Vietnamese ports, thus avoiding a direct confrontation with Russia.

> American and South Vietnamese ships and planes would take "appropriate measures" to stop North Vietnam from unloading material on beaches from unmined waters.
>
> United States and South Vietnamese forces would Interdict, presumably by bombing, the movement of materiel in North Vietnam over rail lines originating in China. [198]

Immediately following the President's May 8th announcement, Daniel Z. Henkin, Assistant Secretary of Defense for Public Affairs, insisted that the United States mining action was not a "blockade" and that stopping foreign ships and searching them would not be undertaken by U.S. naval forces. [199] While small intercoastal cargo vessels and lighters attempting to offload supplies from ocean going vessels would be subject to air and sea attack, the Soviet Union, China and other Communist nations whose large ocean-going ships remained beyond the North Vietnamese claimed territorial 12-mile-limit would not be subject to any offensive interdiction measures whatsoever. During subsequent Pentagon briefings, military analysts said that a full-scale blockade, in which United States vessels tried to turn away, stop or search Soviet or Chinese vessels under threat of sinking them if they failed to heed such a command, would clearly have raised a totally unacceptable risk of major confrontation among the superpowers which the United States was attempting, at all costs, to try and avoid. [200]

However, administration officials distinguished the President's current mining interdiction campaign by noting that: "If they [foreign ships] chose to run our minefields and are sunk, [then] they've been forewarned. That's fundamentally different than signalling a Soviet vessel to turn back or be shot out of the water by us." [201]

A synopsis of the courses of action which the United States was prepared to undertake would therefore appear to be as follows:

(1) All Ocean-going foreign vessels bound for North Vietnamese ports would be warned by the United States of the existence of U.S. mine fields while they were still enroute to their destination and then warned again while at a sufficiently safe distance before making their approach to dangerous coastal waters.

(2) No attempt to stop any foreign vessel which sought to penetrate the U.S. mine fields would be undertaken except to provide specific warning that these vessels were proceeding at their own peril into mined waters.

(3) Foreign vessels offloading supplies beyond North Vietnam's territorial waters for lightering by barges or other

shallow draft vessels would not themselves be subject to attack. However, the barges and lighters would be attacked by air and naval forces once they had safely cleared the foreign vessel, had entered territorial waters and were headed for shore.

(4) No attempts at direct interference with third country forces (such as Russian minesweepers) attempting to sweep North Vietnamese harbor approaches would be undertaken. However, "reseeding" of mine fields previously swept would be undertaken immediately by U.S. forces as soon as U.S. mines had been swept.

2. Notification Methods Employed by the United States to Warn Foreign Nations

During his May 10th Pentagon press conference, Secretary of Defense Melvin Laird said that the United States had given worldwide general notification "that the harbors of North Vietnam have been mined . . . [and] that we [the U.S.] will not permit the landing of supplies in North Vietnam." [202] Presumably, Secretary Laird's reference to notification of "the entire world" was intended to refer to Special Warning No.42 (O 090142Z) which was a naval message transmitted to all mariners by the Naval Oceanographic Office, Washington, D.C. warning that

shallow draft vessels would not, therefore, be prudent to attack. However, the ports and harbors could be attacked by air and naval forces once the enemy already occupied the foreign vessel, but between territorial waters and were based for attack.

(4) No attempt to limit transformation into enemy country during peace in battle circumstances, although even Mare Vinculum Dulcor attempted to limit to conflicts. However, "revolution" of this kind probably would be unbearable intolerable to U.S. Navy to do so in future naval war.

4. Qualification Includes Conflicts in the United States or Some Foreign Nations

During the war (1) between Great Britain and the United States of America (also) the United States Navy was unable to assert its rights of neutral vessels. Britishers have been stated ... that it is illegal for U.S. will not permit the landing of munition in such "ports." Internally, Secretary Baird's response to notification of the entire world was intended to state to neutral nations (O Quinlan) which was a naval weapons transported to all nations by the naval commercial nations. Washington, D.C. warning that

the internal and claimed territorial waters in and around the entrances to seven North Vietnamese ports had been mined (See Appendix B). The third paragraph of this Naval Message advised that:

> The Naval Forces of the Republic of Vietnam and the United States have been instructed to use their best efforts to insure that all vessels transiting the high seas in this area are notified by appropriate signals of the above-noted measures being undertaken within the internal and claimed territorial waters of the Democratic Republic of Vietnam.

The degree of careful planning and commitment with which the U.S. Navy approached the problem of giving appropriate notification to foreign vessels which were about to enter North Vietnamese mined waters is revealed in a U.S. Seventh Fleet announcement reporting that a number of U.S. destroyers assisted by 164-foot-long gun boats stationed along the "notification line" off Vietnam were prepared to "warn any merchant ship away from North Vietnam <u>in 10 spoken languages and [in the appropriate] international signal codes</u>." [203] (Emphasis added).

In one such incident, a Russian-speaking American aboard the U.S. destroyer escort <u>McMorris</u> hailed the Russian surveillance trawler <u>Izmeritell</u> by means of a loudspeaker to warn the

Soviet ship away from the mine field at North Vietnam's second largest port of Vinh. After telling the Russians that they were about to sail into the U.S. planted mine field, the Soviets ran up international signal flags which said: "Thank you for your cooperation and have a pleasant voyage," then the Izmeritell altered course and sailed away.[204]

3. Preliminary Results of United States Mining Interdiction Measures

At the time the President made his mining announcement, 37 ships were nearly filling the Port of Haiphong to its capacity. Of these, 16 were Soviet vessels, 11 were from other Communist bloc nations and the remainder flew the flags of Somali or Great Britian with Hong Kong registry.[205] Within the three day "grace period" before the American-laid mines became active, five vessels, four of them Russian, safely departed the Port of Haiphong.[206] About one-half of the approximately 25 Soviet vessels which were then enroute to Haiphong when the mining interdiction was first announced turned back or changed course for alternate ports.[207] While few targeting restrictions remained for U.S. aircraft assigned missions to bomb Haiphong, an apparent agreement between the United States and the Soviet Union to protect the latters trapped vessels, clearly placed the Haiphong dock area off limits to future U.S. air strikes.[208]

Despite the apparent early course changes ordered for Soviet merchant vessels by the Soviet Union, five days after the mining had commenced, a Soviet shipping official revealed that eight Soviet merchant vessels carrying fertilizer, agricultural machinery, food and clothing were steaming for the Port of Haiphong.[209]

Presumanly this order accompanied by the announcement of the innoffensive nature of the ships' cargoes was made to emphasize the fact that the United States publically had made no provisions whatsoever for ships carrying civilian consumer goods to enter the mined ports and harbors of North Vietnam.

Less than ten days after the American mining campaign had begun, North Vietnamese authorities reported that minesweeping operations were being conducted to clear Haiphong's approaches of mines as soon as U.S. planes dropped them. [210] The North Vietnamese claim that ships were moving in and out were difficult to verify, but, "independent sources" reported the arrival of a single East German ship [211] during the second week of May and Radio Hanoi claimed that one Japanese ship carrying medical supplies had gotten through the American "blockade" although the name of the vessel and the time and place of its departure were not disclosed. [212] In refuting these North Vietnamese claims, Admiral Thomas H. Moorer, Chairman of the Joint Chiefs of Staff, said on May 13th at Newport News, Virginia that no attempt by North Vietnamese minesweepers to clear U.S. mines had been observed and no foreign ships had attempted to run U.S. mine fields. [213]

Despite the apparent nearly constant changes ordered for foreign merchant vessels by the Soviet Union, life goes after the mining had commenced, a Soviet shipping official revealed that eight Soviet merchant vessels carrying fertilizer, agricultural machinery, food and clothing were standing by for the port of Haiphong.[20]

Ironically this order recommended by the announcement of the interdiction notice of the allies' campaign was made to underline the fact that the (Nixon) Administration unilaterally had made no provisions whatsoever for ships carrying civilian commerce bound to enter the mined ports and harbors of North Vietnam.

Less than ten days after the Haiphong mining campaign had begun, North Vietnamese authorities announced that minesweeping operations were being conducted to clear Haiphong's approaches of mines as soon as U.S. planes dropped them.[21] The North Vietnamese claim that mines were moved in and out were difficult to verify. But, "international sources" reported the arrival of a single last foreign ship.[22] During the second week of May and Radio Hanoi claimed that the Japanese air carrying medical supplies had gotten through the Haiphong "blockade" although the name of the vessel and the time and place of its departure were not disclosed.[23] In refuting these North Vietnamese claims, Admiral Thomas H. Moorer, Chairman of the Joint Chiefs of Staff, said on May 12th at Newport News, Virginia that no attempt by North Vietnamese minesweepers to clear U.S. mines had been observed and no foreign ships had attempted to run U.S. mine fields.[24]

Despite conflicting claims as to whether an occasional ship was fortunate enough to pass through the U.S. mine fields unharmed, one significant fact remains and that is that the hazards and difficulties for merchant vessels to safely navigate U.S. mine fields as well as the delays and dangers of using lighters and barges to transfer cargo ashore, has effectively reduced North Vietnam's capacity for seaborne delivery of supplies to a tiny fraction of their pre-May 8th shipping levels. One measure of the effectiveness of the U.S. mining interdiction campaign was clearly spelled out by Air Force Lieutenant General George Eade in a briefing given on June 8, 1972. At this briefing, General Eade cited as an indication of the effectiveness of the U.S. campaign, a decrease in supplies moved by North Vietnamese coastal shipping to the South. This shipping loss, according to General Eade, has resulted in a reduction of approximately 20,000 tons of supplies a week to the present capacity of virtually no deliveries at all.[214]

Furthermore, despite strenuous efforts which have been undertaken by the North Vietnamese to reduce the effectiveness of the U.S. mining campaign by using barges to transfer cargo from freighters outside the area of its mined ports, the North Vietnamese have continued to sustain high losses of lighters and barges in and attempt to circumvent the restrictions imposed by the U.S. mining measures. According to one news report originating

in Saigon, North Vietnamese barges, after receiving supplies from cargo vessels anchored off the coast of North Vietnam, attempt during the night, to slip ashore through marshes and canals not screened off by U.S. mines. But these evasive tactics are seldom successful because U.S. "high speed", "low, level" reconnaissance planes are constantly flying over the beach areas around the seven mined ports and their observers usually sight the "blockade-running" barges in time to summon bombers to sink them. [215]

Another senior Air Force Officer credited Navy carrier-based planes for most of these new interdiction measures since the Seventh Fleet has the primary responsibility for Haiphong and other coastal areas. He said that unless the barges reach a tidewater jungle wilderness where they can disperse and be camouflaged, they are easy targets for attack bombers and are invariably destroyed. "One day, we caught fifty barges and destroyed them all," he said. [216] Small barges, after being loaded from freighters, are usually towed in tandem by tugs. But some wooden barges are more than 100 feet long, and are self-propelled with a greater cargo-carrying capacity than a coastal steamer. [217]

The Officer said that the freighters always anchored safely away from the mined waters. However, he did not indicate that they always anchored in international waters. [218]

When the mining of North Vietnam's harbors was first commenced on May 8, 1972, Admiral Thomas Moore, Chairman of the Joint Chiefs of Staff, said that Seventh Fleet warships would not intercept supply vessels on the high seas. However, Admiral Moore also made it clear that if any vessel attempted to land cargo ashore, "we [would] take whatever action is necessary to prevent this." [219] But the high ranking Air Force source intimated that while the ocean-going freighters may be at anchor in weather protected territorial waters needed for cargo-transfer operations, these ships were not attacked simply because they were no longer considered to be on the "high seas." [220] It was only after the barges had left the "mother ship" that the barges themselves were subject to attack, he said. [221]

Three weeks after this interview had been conducted, the U.S. Seventh Fleet in a delayed report, announced that U.S. destroyers sank 13 barges off the coast of North Vietnam 30 miles northeast of Dong hoi in predawn attacks conducted on July 10, 1972. [222]

Not only were barges attacked by U.S. forces when they were "in transit" from off shore freighters; but enemy naval bases had also been hit by U.S. aircraft in an effort to prevent off-loaded supplies from Chinese freighters anchored off the Port ov Vinh, from being safely moved on shore. [223]

To date, there have been no reported incidents involving foreign vessels striking mines or sustaining damage due to mines or other unexplained underwater explosions. However, a single incident involving an underwater explosion which damaged the U.S. destroyer Warrington was reported on July 18th when the 390 foot ship sustained damage from what was later reported to be a North Vietnamese laid mine.[224] After sustaining moderate damage, the Warringtonleft the Tonkin Gulf where it had been engaged in sinking barges and other craft which were attempting to ferry war materials ashore from Chinese freighters. The 3,4000 ton Warrington left its station under its own power. Only one sailor among the destroyer's crew of 270 crewmen was injured and his minor injuries were quickly treated so that he was able to return to duty.[225]

While the statistics concerning the sinking of enemy barges is significant, it can not be overemphasized that the mark of a successful mining interdiction campaign is not necessarily the number of barges or lighters sunk, but the total amount of supplies which have been eliminated from the enemy's supply lines. A significant indication of the telling effects which the United States mining interdiction is causing, can be observed in the increase efforts which the North Vietnamese have expended in seeking alternate methods of supply and communication and in increased propaganda efforts designed to curtail and minimize the psychological effects of these U.S. operations. For example,

one Communist news agency reported that "youth shock brigades" are taking a large share of the work in keeping "bridges, highways and ferries open despite heaving bombing" [226] The same agency also claimed that sea communications are still functioning despite American air raids and the mining of ports while "young seamen have made every effort to ship more cargoes within a short period to bring them safely to their destinations. [227] Countering these Communist claims, however, are U.S. assertions that North Vietnam "is no longer in a position to send south large amounts of supplies because communications, railroads, highways and truck fleets have been seriously damaged and because the supplies of fuel and ammunition in depots has been drastically reduced. [228] After reviewing these conflicting claims, however, one significant factor still remains, and that is that the more petroleum supplies which the North Vietnamese are effectively prevented from receiving by sea, the more limited and restricted will be the movement and advances of their mechanized land forces and the more dependent they will become on rail and other modes of transportation.

It may be that it is still too early to accurately assess the true impact of the U.S. mining interdiction activities on the North Vietnamese or to intelligently evaluate the competing and often conflicting claims of both sides. Perhaps, however, it would be more prudent and realistic to accept the cautious appraisal made by Secretary of State William P. Rogers when he said that there are "indications" that the Communist offensive

has not succeeded [and] that Hanoi is disappointed with the outcome of the [recent military] offensive while the U.S. mining and bombing is [becoming] effective and a number of other governments want a peaceful solution. "These and other indications in the Diplomatic Community," the Secretary said, "give us some hope that the other side is interested in a negotiated peace." [229] Perhaps the continued implementation of the current U.S. mining campaign can materially expedite the advent of the meaningful and long awaited negotiations which are now envisioned by Secretary Rogers.

G. Reactions to United States Mining and Naval Interdiction Operations

1. Domestic Reaction

Amidst vocal, anguished and uncommonly strong cries from leading Presidential contenders such as Senators Humphrey and McGovern that President Nixon's decision to mine North Vietnam's harbors was a "serious escalation" of the war which was fraught with "unpredictable danger" [230] and represented a "new escalation [which was] reckless, unnecessary and unworkable" [231] and risked the possibility of triggering World War III, United States domestic reaction to the President's move, particularly in the political arena, seemed to be almost evenly divided along predict-

able patterns of party alignment. While leading Republicans acclaimed the President's interdiction actions, Democratic leaders, on the other hand, called them reckless. Republican House Leader Gerald R. Ford (R- Mich.) said that the President was "generous in his bid for peace but firm in his determination that we will not surrender [and that] [t]he only way left to end the Vietnam war is to deprive the enemy of the supplies he needs to continue the invasion." [232]

Senator Robert P. Griffin of Michigan, the Assistant Republican Leader in the Senate said of the president's announcement that " it was strong medicine but necessary" [233] while Senate Majority Leader Mike Mansfield (D-Mont.) said that the President's decision "expands the war and makes settlement more difficult." [234]

Senate Minority Leader Hugh Scott (R-Penna.) on the other hand told reporters that "we are probably not in any more danger of a serious confrontation with either Russia or China as a result of the President's action [and], I assume that they understand [that] the President will proceed within the rules of war." The Senator also said that "the decision does not constitute a widening of the war or a blockade which would interdict third-nation ships at sea, [since] it's a restriction on supplies . . . [which] should [only] have an effect on hampering the North Vietnamese." [235]

Amidst calls for massive marches and rallies in the Capitol and while speeches delivered both in protest and in support of the war were being given throughout the Washington, D.C. area, [236]

Senator Mike Gravel, (D-Alaska), proceeded to read, from the floor of the Senate, a National Security Study memorandum prepared by Dr. Henry A. Kissinger setting forth that North Vietnamese shallow-draft vessels could readily be used to overcome most U.S. mine laying measures. [237]

Following these developments, Senate Democrats met in a caucus on May 9th, and adopted a resolution by 29 to 14 condemning the President's action while "disapproving [of] the escalation of the war." [238]

On the opposite side of the issue, the White House mounted a formidable effort to demonstrate that the President's decision was supported by the majority of the American public. On Wednesday, May 10, 1972 White House Press Secretary Ronald L. Ziegler released the results of a poll conducted by Opinion Research Corporation indicating that three out of four Americans backed the President's decision while the first 20,000 telegrams received at the White House from American citizens indicated that "five to six to one" were in favor of the U.S. mining." [239]

The Administration also counter attacked with cabinet-level spokesman such as Secretary of the Treasury John B. Connally who accused the Democrats of playing politics with the war in such a manner as to "raise doubts in my mind about their essential commitment to the best interests of the nation." [240] Meanwhile, Senator Gale McGee (R-Wyo.) saw the President's move as being so serious that "this [was] a time to keep quiet and hope that the

Senator Mike Gravel, (D-Alaska), presented to read, from the floor of the Senate, a national security study commissioned by Dr. Henry A. Kissinger which found that north Vietnamese shallow-draft vessels could readily be used to overcome our U.S. mine laying measures. [217]

Following these developments, Senate opponents won in a canvass on May 5th, and shorter a resolution by 55 to 39 condemning the President's action with "disapproval [of] the escalation of the war." [218]

On the opposite side of the issue, one Senator sponsored a formidable effort to demonstrate that the President's decision was supported by the majority of the American public. On Memorial-day, May 10, 1972 Senator Frank Church Democrat Donald G. Tinglar released the results of a poll conducted by Opinion Research Corporation indicating that three out of four Americans backed the President's decision with the like 27,000 subsequent received at the White House from American citizens indicated that "five to six to one" were in favor of the Tinglar mining." [219]

The Administration also counter attacked with Nixon-level spokesmen such as secretary of the Treasury John B. Connally who accused the Democrats of playing politics with the war in such a manner as to "raise doubts in my mind about their essential commitment to the best interests of the nation." [220] Meanwhile, Senator Cale Boggs (R-Del.) met the President's move as being so serious that "this [was] a time to keep quiet and hope that the

President lucks out." [241]

Despite the strong rhetoric and the violence of some of the demonstrations following the President's mining announcement, the nations's reaction as a whole to the mining decision was distinctly more muted than the anguished outcry which followed the invasion of Cambodia in May, 1970. Perhaps this wait-and-see attitude demonstrated by many Americans was taken in the belief that something more was involved in the President's mining announcement than met the eye and that the President was also engaged in a complex military-political maneuver with the Soviet Union which ultimately could bring anout a negotiated solution to the war. Significant support for such a view was graphically provided to Americans on May 11, 1972, the day that U.S. laid mines automatically became activated, [242] when Soviet Ambassador Anatoliy F. Dobrynin and the Soviet Minister of Foreign Trade, Nikolai Patolichev met with President Nixon in the Oval Office of the White House in what was later described as "affable talks" reaffirming the likelihood of a scheduled May 22nd U.S. - Moscow Summit meeting.

2. Soviet Reaction

While the official Soviet news agency Tass quickly bristled with accusations concerning President Nixon's "naked aggressive

acts" of mining North Vietnamese ports, the Communist news agency was nevertheless conspicuously silent as to what Moscow's official response might ultimately be. [243] While this initial six paragraph Soviet dispatch was relatively free of the usual Communist rhetoric, it did, in fact, clearly focus on what President Nixon had actually said during his mining address of May 8th. The Tass report said that while "the Nixon speech contains a lot of assurances that the United States wants to put an end to the war in Vietnam . . . [the] practical steps including the measures announced by the President, speak of something else. [244]

Tass did report, however, that President Nixon had said that the blockade "was not aimed against any 'other' nations" and accurately reported the U.S. President's pledge to withdraw all forces within four months after a cease-fire and the liberation of all American prisoners had occurred. [245]

Meanwhile, in Helsinki, Finland, U.S. and Russian negotiators met as scheduled on the day following the U.S. mining announcement in a continuation of their Strategic Arms Limitation Talks (SALT). The only reported departure from normalcy was the late arrival of the Soviet delegation to the 122nd session. The Soviet delegation which was headed by chief negotiator Vladimir S. Semenov, deviated only slightly from its pattern of perfect punctuality by arriving some seven minutes late. [246]

A similar desire on the part of Russian negotiators to continue, in spite of U.S. mining measures, to negotiate those agreements which were important to the Soviet Union was also reported by Secretary of the Navy John W. Warner, the chief U.S. negotiator at the U.S. - Soviet talks concerning naval incidents on the high seas. Secretary Warner, while entertaining a group of senior Russian naval officers, the first to visit the United States since World War II, provided the following anecdote:

> [On] [t]he night the President announced the mining of Haiphong, I was having a dinner for the Russians in my home . . . by pure coincidence at nine [P.M.], the hour of the [President's] speech. I greeted [the Russians] at the door, giving them not a vodka but whiskey - a Virginia bourbon whiskey cocktail. [D]uring the [President's] speech they received a simultaneous translation. At the end [of the President's speech] there was not one word of acrimony. The chief of the Soviet delegation, Fleet Admiral Vladimir Kasatonov got up and said, 'Secretary Warner, shall we continue to enjoy the evening.'" [247]

When the Soviet Union did finally issue its long awaited statement, the fact that it contained no ultimatum was considered as a favorable sign. The Soviet Statement, while resolutely condemning the United States "blockade" as a gross violation of the generally recognized principle of freedom of navigation" as well as a violation of the 1958 Geneva Conventions and the basic requirements of international law, did not set a firm deadline for the United States to cancel "without delay" its dangerous and

disruptive mining operations.[248]

The first U.S. reaction to the Soviet response concerning the mining interdiction was that the Soviet statement constituted a delaying action in order to obtain more time for internal deliberations at home and for secret diplomacy abroad. In addition, it was widely believed by U.S. observers that the Russians were particularly eager to upstage their Chinese adversaries in relations with the United States and wanted to avoid, at all costs, anything that might jeopardize West Germany's ratification of treaties accepting its present European boundaries.[249] Many of the above mentioned gains which the Soviets had hoped for, could have been delayed or postponed - - in fact, it was Mr. Nixon's preliminary judgement that the Soviet leaders would probably rescind their invitation until the harbor blockage had been lifted.[250] However, it was also believed just possible that Hanoi had strained its relations with the Soviet Union in attempting to embarrass the Soviets over President Nixon's visit so that the Russians were no longer willing to run any serious risks on behalf of the North Vietnamese leadership.

The White House had repeatedly argued to the Soviet Union that nothing in Indochina was vital enough for either of the superpowers to justify the destruction of their promising negotiations and the mining of North Vietnam's

disruptive airlift operations.[340]

The first sub-question to the Soviet economic concerning the Chinese intervention was that the Soviet Government constituted a lasting action in order to obtain root cause for internal deliberations in Hanoi and for proper statement abroad. In addition, it was widely believed by U.S. officials that the Russians were particularly eager to overcome their Chinese adversaries in relations with the Indian Ocean and wanted to avoid, at all costs, supplying the Chinese Government West Germany's restriction of transfer according to present European foundaries.[341] Many of the above conditions with which the Soviets had found for, could make long dialogue or postponed -- in fact, it was so. Kosygin's preliminary judgment that the Soviet Leaders would probably receive their invitation until the Soviet Ambassador had been called. [342] However, it was also believed that possible that Soviet had strained the relations with the Soviet union in attempting to embarrass the Soviets over President Johnson's visit so that the Russians were no longer willing to run any risks also on behalf of the North Vietnamese immediately.

The White House was irrevocably agreed by the Soviet Union that nothing is impossible was vital enough for alone of the superpowers to justify the constituents of their protecting communications and the status of North Vietnam's

harbors was merely meant to compensate for the heavy weapons which the Soviet's had provided for Hanoi's offensive. [251] Whether the reasons cited herein were of any major importance in convincing the leaders of the Soviet Politboro not to cancel the scheduled Summit meeting or whether other categories of controlling considerations prevailed, is impossible to ascertain at this time. One thing remains apparent, and that is the desire of the Soviets to continously restrain themselves in reacting to the American mining policy was clearly of paramount importance to the Soviet Union in light of the long term benefits to be gained as compared to the short term inconveniences and delays which the Soviets might encounter. Were it not for the careful planning and prudent consideration shown the Soviet Union by the United States through timely notification and candid disclosure of our intentions, the outcome of the U.S. Mining campaign and the Summit meeting held on May 22nd, would no doubt, have been considerably different.

V. LEGAL ANALYSIS OF THE UNITED STATES MINING AND NAVAL INTERDICTION OPERATIONS CONDUCTED IN NORTH VIETNAMESE TERRITORIAL WATERS

A. Comparison Between the 1972 United States Mining Interdiction and the United States Cuban Missile Quarantine of 1962

1. Similarities Between the 1962 Cuban Missile Quarantine and the 1972 Mining Interdiction Campaign

a. Necessity and Proportionality Considerations

President Nixon, like President Kennedy ten years before him, relied heavily upon the provisions of Article 51 of the United Nations Charter in justifying the mining interdiction measures which he had ordered taken on May 8, 1972. Both Presidents Kennedy and Nixon asserted that the United States was clearly confronted with an immediate threat which required that the inherent right of collective self-defense provided for under the U.N. Charter be immediately exercised in order to protect the interests of the United States.

Article 51 provides in part that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. . . ."

While Article 51 provides for the exercise of the "individual" and the "collective" right of self-defense, both in the Cuban missile crisis and the North Vietnamese mining interdiction campaign, United States decision makers couched the invocation of this inherent right almost entirely in terms of being a collective self-defense measure. [252]

The two primary legal requirements which must both be shown to exist for the lawful invocation of the doctrine of self-defense are the requirements of necessity and proportionality. [253]

Requirements of Necessity

Necessity has traditionally been structured in rather narrow and abstract terms. Decision makers have attempted to limit lawful anticipatory self-defense by projecting a customary requirement that the expected attack exhibit so high a degree of imminence expressed in terms of being

"great and immediate" or "compelling and instant" so as to preclude effective resort by the intended victim to effective non-violent modalities of proportional response.[254]

These unfortunate and anachronistic terms of dire compulsion appear to have been generated in the aftermath of the Caroline case by Secretary of State Webster when he formulated the requirements of necessity along lines closely resembling the law of self-defense used in domestic law.

In the Caroline case,[255] a steamer of that name was utilized to transport personnel and equipment from United States territory to Canadian rebels by crossing the Niagara River to a rebel held island and from there to the mainland of Canada. The United States did nothing to prevent the rebels from benefitting from the use of this United States sanctuary. Because of this inaction, Canadian troops were compelled to cross into United States territory and destroy the Caroline by setting her adrift so that she was wrecked on the Falls. Great Britian claimed that the conduct of the Canadian troops was justifiable self-defense. The United States made several feeble responses and the incident ultimately led to the tacit acceptance by the United States of the validity of

the initial self-defense claims which Great Britian had asserted.

In the light of the rapidity with which a modern military aggressor can jeopardize the security of a target state, it would seem that Secretary of State Webster's unfortunate formulation of the requirements of national self-defense as involving a "necessity of that self-defense [which] is instant, overwhelming, and leaving no choice of means and no moment of deliberation" is so narrow and unrealistically restrictive that in the era of highly mobile mechanized armor offensives as well as thermo nuclear missile delivery techniques, it would be unrealistic to insist that decision makers defer decisive action until it was entirely too late. [256]

Requirements of Proportionality

In describing the coordinate requirements of proportionality when ascertaining the validity of a claim of self-defense, Professor McDougal and Dr. Feliciano have written that:

> Proportionality in coercion constitutes a requirement that responding coercion be limited in intensity and magnitude to what

> is reasonably necessary promptly to secure the permissible objectives of self-defense. For present purposes, these objectives may be most comprehensively generalized as the conserving of important values by compelling the opposing participant to terminate the condition which necessitates responsive coercion. [257]

In the Case of President Kennedy's quarantine-interdiction action, the magnitude and the intensity of the United States responding coercion was precisely tailored to meet the emerging threat with which the nation was faced. In expressing the belief that the U.S. formulation and implementation of the Cuban naval quarantine-interdiction amounted to the least possible use of the military instrument, Professor William T. Mallison, Jr. in a work entitled "Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid Under International law" has concluded that:

> Any lesser use [of force] would have amounted to [an] abandonment of the military instrument and [resulted in the] exclusive reliance upon non-coercive procedures which most certainly would have been ineffective without supporting military power. The quarantine-interdiction clearly meets the requirement of reasonable necessity in its most stringent form. In the same way, the proportionality requirement in most extreme form, is easily met. [258]

While the proportionality and necessity requirements which were needed to satisfy the collective self-defense standards of Article 51 were clearly and convincingly established by the United States during the Cuban missile crisis, it does not necessarily follow that any other situation such as a threat to the safety and the integrity of U.S. forces in South Vietnam must also reach the exact level and intensity of the 1962 missile crisis in order to support a valid self-defense claim. In other words, while it is difficult to imagine a situation since October of 1962 in which a more extreme and apparent threat to the United States has been shown to exist, it does not necessarily follow that a more remote and less immediate threat to the United States mainland and its people, such as in the case of the 1972 Spring offensive in South Vietnam, would not also, under the circumstances, be able to satisfy the requirements of Article 51. For while the President may have chosen for foreign and domestic political purposes to stress the jeopardy of the lives of 60,000 Americans in South Vietnam during his speech, he also acknowledged that a failure on the part of the United States to effectively repel the North Vietnamese invading forces would, in essence, mean "abandoning our commitment in Vietnam . . . and turning

17 million South Vietnamese over to Communist tyranny and terror." [259]

In terms of the immediacy of the threat to those South Vietnamese living in the Central Highlands of our small ally, the threat imposed by the full scale, twelve division, North Vietnamese Army invasion of Spring, 1972 should have more than satisfied the self-defense "necessity" requirements of Article 51.

While the proportionality requirements of self-defense will be reviewed again later in this thesis, it should suffice , at this point, to say that both the Cuban quarantine and the North Vietnamese mining interdiction appear to amply meet requisite self-defense standards. While both were highly selective, all though entirely different types of interdiction measures, each interdiction policy was carefully tailored to precisely meet the political and military demands placed on our respective decision makers during each critical period.

b. Claims of Interference with Navigation on the High Seas

During both the Cuban missile crisis and the current United States mining campaign, Communist claims criticizing

United States interdiction measures for an abridgment of high seas rights of navigation have repeatedly been made. While the Soviet Union, during the Cuban missile crisis found it to its advantage to quickly drop such an untenable assertion, the Russians and the Chinese, more recently, have become increasingly steadfast in their position that their right to unrestricted navigation had been abridged by the U.S. mining measures commencing on May 8, 1972.[260] While the official Chinese statement referred to the American mining measures as an "act of war escalation by U.S. imperialism" which "grossly violates the freedom of international trade," the Soviets, on the other hand, took a more global approach saying that the mining interferes with access of foreign ships to North Vietnamese territorial and inland waters and thus creates a "direct threat to the ships and to the lives of seaman of many states . . . ."[261]

Obviously, the historic concept of "blockade" itself focuses on the very need for interference with the freedom of international navigation of non-belligerent nations by belligerents imposing restrictive measures on non-belligerent commercial traffic navigating on the high seas. That a quarantine or maritime interdiction policy, to a much lesser extent, limits or interferes with international

maritime trade should therefore come as no great surprise. For in modern times, the desire by decision makers to impose maritime restrictive measures which lessen the likelihood of the unnecessary destruction of human values while continuing to maintain a high degree of military effectiveness has often been a controlling consideration in resolving a variety of recent crisis management situations.

In discussing the lack of universal or positivistic rules of developed law in the field of maritime restrictive measures, Professor Neil H. Alford has noted that:

> . . . it has become almost routine to tolerate naval interferences with shipping in areas in which tensions are great, as in the Formosa Straits or Caribbean, with little more than token protests. Policy makers of states have been conditioned to accept naval interference without a routine violent response although protests may be filed. . . .
>
> This general attitude seems to be based upon four factors: (1) The close control maintained by the state over its naval forces and the high degree of discipline of officers and men which the efficient conduct of naval affairs requires; (2) The usual familiarity of naval officers with international law pertaining to their duties; (3) The lack of an adequate system of international police upon the high seas; and (4) The range of persuasion and coercion of which a naval force is capable. [262]

Furthermore, naval interdiction of territorial and inland waters in both South and North Vietnam by surface craft and mine warfare forces did not suddenly commence

with the President's May 8th interdiction order. The practice by both Communist and Allied forces of mining inland and territorial waters had long been in effect.

As was pointed out by Secretary of Defense Melvin Laird in his press conference of May 10, 1972:

> The situation is such that mines have been used by the enemy in the South and in tributaries and rivers in the South over a period of [years]. We have had damage done to [our] ships from mines that have been laid by the North Vietnamese. These mines that have been placed in those particular entrances to river facilities and in other areas of the South. . . . [263]

Furthermore, while the observance of the rights of foreign vessels to engage in international trade and to obtain access to a nation's territorial waters has long been recognized, these rights are not considered to be absolute. [264] For instance, while the right of innocent passage of an international strait, which may also be part of a nation's territorial sea is generally recognized as a right of navigation, this right as to all types of cargoes and craft, is not without restriction. A coastal state may, for instance, without discrimination temporarily suspend in "specified areas" of its territorial sea, the right of innocent passage of foreign ships if such

with the President's key ten international crises, the overflies by both Communist and Allied forces of foreign nations and territorial waters are illustrative.

It was pointed out by Secretary of Defense Dulles later in his press conference of Mar 31, 1955:

> The allegation is made that these flights have been used by the Soviet in its efforts to collectively and flights in the Black Sea are a method of general. We have no reports that in local ships from these flights have been hit by gun fire recently. There seems that that have been shooting in those territorial waters in a manner to close territories and in a manner that is a threat of the South. . . .[343]

Furthermore, while the observation of the rights of foreign vessels on occasion is unnecessarily severe and to obtain access to a nation's territorial waters has long been recognized, these rights are not considered to be absolute.[344] The business, civil law right of innocent passage of an international stream, which may also be part of a nation's territorial sea is generally recognized as a right of navigation, this right is to be all types of carriage and craft, is not without restrictions. A coastal state can, for instance, adopt discriminations necessarily against in "specified areas" of its territorial sea. The right of innocent passage of foreign ships is not

suspension is essential for the protection of its security.[265] Commencing in 1965, such measures were employed by the South Vietnamese to prevent infiltration of war goods by sea and to subject all vessels "not clearly engaged in innocent passage" to visit and search procedures.

It would therefore seem that while in both the Cuban missile crisis and in the current North Vietnamese mining interdiction campaign, protests have been raised by Communist countries with regard to U.S. interference with foreign shipping, the controlling consideration is not so much a question of slavishly responding to such protests, but of instead avoiding the type of interdiction measures which, under the circumstances, are the most likely to provoke an uncontrolled confrontation in the first place.

C. Claims of Unlawful, Unilateral Imposition of Maritime Blockade

As was the case during the Cuban crisis, claims pertaining to the unlawful, unilateral imposition of the current U.S. mining interdiction campaign appear to fall into two general catagories. The first catagory of claims which favors the condemnation of current U.S.

cooperation is essential for the preservation of the security.[325] Consequently in 1973, only Canadian very employed by the Joint Visitation to attempt investigation of war crimes by and to protect all remains that already engaged in treasonous activity to visit and assist prosecutions.

It would therefore seem that while in such the cases mineral exists and in the certain Joint Visitation claims interdictions requires, problems have been raised in connection countries with regard to (i.e. information gift) cultural adapting, the restrictions constitution. It not to look a question of liability responsible to post problems, but of instead avoiding the type of international measures taken under the circumstances, are the case claims to consider a moderate-fact investigation in the final issue.

c. Claims of Unlawful Interment Deposition of the Idle Stories

As was the case during the Cold crisis, China participating to the without unlawful immediate of the current U.S. minister interrogation research signed to fall into the general measures. The first measure of crime which ensure the responsible of treaties U.S.

mining measures arises from intense domestic criticism of the President's action and holds that since there has been no "Declaration of War", there can be no lawful interdiction because one of the essential elements of a lawful blockade is lacking. The second category of claims favors castigating the United States because "blockade" is one of the sanctions specifically contained in Article 42 of the U.N. Charter as a measure which may only be imposed by the Security Council in order to lawfully maintain or restore international peace and security.

As for the first claim asserting that there must be a declaration of war in order to support the President's mining interdiction measures, there would appear to be at least two apparent replies. First, a declaration of war is not required since, in the words of Professor John Norton Moore, the "applicability of the law of blockade depends on the factual existence of a state of internal hostilities and does not require a formal declaration of war" as,for example, was the case during the Korean "police action" when the U.S. maintained a blockade along the entire Korean coastline. [266] Second, the mining interdiction measures which the President ordered taken on May 8, 1972 did not constitute a blockade since these measures were exclusively limited to North Vietnam's "internal and claimed territorial waters" and did not purport to authorize measures traditionally associated with blockade

such as visit and search upon the high seas.[267] This latter supportive reasoning would seem to be especially valid since the Cuban quarantine-interdiction, long since recognized as a tightly controlled and moderated interdiction measure, was not considered by many authorities to be a blockade in the legal sense while nevertheless making significantly broader claims than the current U.S. mining interdiction campaign in North Vietnam. In sharp contrast to the Cuban quarantine, which included provisions for stopping, warning, visiting and searching foreign vessels on the high seas, the current mining interdiction campaign has made virtually no claims whatsoever as to high seas merchant shipping except to provide specific warnings to foreign vessels which may be approaching mined conditions in North Vietnam's internal or claimed territorial waters.

As to the second category of claims relating to the issue of whether the United States has unilaterally imposed a sanction which, under Article 42 of the U.N. Charter, may only be collectively imposed by the Security Council - - the answer would appear to lie in the interpretation of Article 42 itself. Regrettably, Article 42 has itself been criticized as representing one of the Charter's most notorious examples of vague wording

such as visits and searches upon the high seas, and [illegible] This latter interpretation presumably would seem to be especially valid since the Cuban quarantine-interdict-ion, long since recognized as a [illegible] unilateral and moderated interdiction measure, was not considered by many authorities to be a blockade in the legal sense while nevertheless making significantly broader claims than the current U.S. pacific interdiction campaign in South Vietnam. In sharp contrast to the Cuban quarantine, which included provisions for visitation, warning, diversion and [illegible] vessels on the high seas, the current pacific interdiction campaign has made virtually no public [illegible] as to [illegible] merchant [illegible] to [illegible] to foreign vessels which may be [illegible] conditions in [illegible] of [illegible] belligerent [illegible].

As to the second [illegible] of [illegible] to the issue of [illegible] has [illegible] assumed a [illegible] article 51 of the U.N. Charter, [illegible] by the Security Council - - the [illegible] would appear to lie in the inconsistency of Article 51 [illegible]. [illegible] Article 51 [illegible] in [illegible] one of the Charter's most [illegible] of [illegible]

and bad draftsmenship.[268] It is also by no means clear whether the drafters of the Charter intended the maritime restrictive measure of "blockade" to be imposed solely by the Security Council as opposed to permitting individual member states to unilaterally impose such a sanction under Article 51 of the Charter.

The pertinent portions of Article 42 provide in part that the Security Council "may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations." (Emphasis added). While such a sanction may be imposed by a collectivity of member nations pursuant to Article 42, it does not follow that individual member nations themselves are precluded from utilizing blockade as a permissible self-defense measure. Such a conclusion would seem to be supported by the observation that Article 51 of the Charter preserves to the individual member states the inherent right of self-defense if an armed attack occurs and that the permissible objects of self-defense as well as the Charters goals of maintaining international peace and security would be defeated if an effective and value conserving sanction such as blockade or maritime-interdiction were denied to

a member state in its exercise of its inherent right of self-defense under Article 51. To hold otherwise would seem to invite individual member states to exercise their right of self-defense through alternative albeit more destructive means not expressly contained in Article 42.

Finally, the view expressed by Professor W.T. Mallison as to the desirability of keeping maritime restrictive measures fully available for use by nations both individually and collectively would appear to be well taken when Professor Mallison observes that:

> A careful legal appraisal should avoid automatically ruling out the drastically restricted use of naval power either in limited war or coercive situations short of war. Whether it is termed "limited naval blockade," "quarantine-interdiction," . . . or given another label, one should be slow to condemn as illegal such limited measures especially when they are used to maintain world public order.[269]

2. Significant Differences Between the 1962 Cuban Missile Quarantine and the Present U.S. Mining Interdiction Campaign

a. Nature of Objectives

Unlike the Cuban missile crisis of 1962 where the principal U.S. objective was the total removal of fewer

than fifty offensive Soviet missiles from the Soviet Union's "host state," the current mining interdiction of North Vietnam is a large scale and comprehensive attempt to prevent the delivery of all supplies to an enemy presently engaging in offensive operations against the United States and its South Vietnamese ally. While the United States had also announced the important objective of preventing the further introduction of offensive missiles into Cuba, the paramount U.S. concern was not the presence of Soviet missiles in transit on the high seas, but the elimination of those nearly operational missiles which were already in place on Cuban soil. Since the United States could not, short of an invasion, effectively neutralize the offensive missiles already in place, it became the primary objective of President Kennedy's Proclamation to induce negotiations with the Soviet Union for the removal of thisobvious threat to the American heartland. The Soviet Union as the manufacturer, shipper and "consignee" of these missiles was also the intended recipient and user of these weapons. Therefore, it was the Soviet Union and not Cuba which was the real party in interest.

The present U.S. mining interdiction, on the other hand, is principally directed against North Vietnam as a

target state, and not those nations, such as the Soviet Union and China, which are delivering the bulk of North Vietnam's military and civilian supplies. Therefore, the current U.S. mining campaign has not been instituted for the removal of any offensive weapons but for the prevention and disruption of their supply. Since the United States has made it clear that it is the North Vietnamese which are considered the aggressors and not the nations providing war materials to that country, the objectives of the current mining interdiction measure are controlled by the U.S. desire to exert the strongest pressures possible on its adversary while attempting to avoid altogether any direct confrontation with those nations providing North Vietnam with its supplies.

Thus, the current decision by the United states to limit its actions to selective mining of North Vietnam's waters whereby foreign shipping nations can chose to avoid such a danger, has totally eliminated the necessity of instituting measures similar to those required during the Cuban missile crisis requiring the confrontation and searching of foreign shipping while still in transit on the high seas. Finally the nature of the ultimate objectives of the Cuban quarantine which in 1962 was principally limited to a massive type of offensive weapon and those objectives sought during the current

mining campaign are, in themselves, exactly opposite: In Cuba, the U.S. objective was to prevent the possibility of a war from ever beginning while in North Vietnam, the U.S. objective is to bring an existing war to its final end.

b. Scope of Operations

Any comparison of the significant differences between the scope of the naval interdiction operations conducted in Cuba in 1962 and of those commenced in North Vietnam ten years later, would have to center around the relatively narrow limits imposed by U.S. decision makers as to the interception of "offensive cargoes" which were subject to the 1962 quarantine in the Carribean and the prevention of the delivery of "any supplies" in 1972 to our foes in North Vietnam.

In President Kennedy's Cuban Proclamation, the following supplies were declared to be prohibited materiel:

> Surface-to-surface missiles; bombers aircraft; bombs; air to surface rockets and guided missiles; warheads for any of the above weapons; mechanical or electrical equipment to support or operate the above items and any other classes of materiel designated by the Secretary of Defense.[270]

As a quick review of this list of prohibited materiel readily discloses, virtually all of the items which were subject to quarantine were massive pieces of Soviet weaponry. In North Vietnam, on the other hand, a broad array of smaller sized munitions and war materiel such as small caliber ammunition, weapons, grenades and the like were either being shipped in vessels which looked alike, or mixed together with Soviet bloc shipments including heavy military equipment and bulky consumer goods. Therefore, aerial detection of vessels believed to be carrying these mixed cargoes to North Vietnam, would not have yielded the same precise information as to the quantity and quality of the offensive weapons being carried by merchant vessels as was provided United States decision makers during the Cuban missile crisis of 1962. Accordingly, the scope of naval interdiction operations currently being conducted in North Vietnam must, of necessity, be much broader than the Cuban quarantine since selective interception of Soviet and Communist bloc maritime traffic on the high seas is not politically feasible and the areas of strategic significance include, at the present time, at least seven North Vietnamese Ports and a number of inland canals and tributaries.

The reason the United States has been required to

as a major review of this list of prohibited material reveals absolutely. Virtually all of the items which were subject to suspicion were dealing items of Soviet manufacture. In Second Station, on the other hand, a broad array of smaller alcohol containing and non material such as small military ammunition, weapons, grenades and the like were either under actual vessels which looked alike, or taken together with Soviet blue alcoholic including lower military ammunition and light weapons combo. Therefore, serial defectors of vessels believed to be carrying blues items cargoes to local "Kamsar" would not have prior to the same precise information as to the availability and quantity of the offending weapons items carried in commercial vessels as was provided prior Soviet checking manifest during the Cuban missile crisis of 1962. Accordingly, the scope of naval interdiction operations currently being conducted in Cuban waters, of necessity, is much broader than at that time with strict interception of Soviet and Soviet-bloc military traffic on the high seas is not jurisdictionally possible the scope of necessary circumstances involves, or the crews, or least some sorts "Lawrence Tarts and a number of joined merely and trinkets.

The crews the Soviet Union had been restricted to

prohibit all foreign nations from delivering seaborne supplies to North Vietnam has been pointed out by Deputy Secretary of Defense Kenneth Rush during a May 9th television interview, when the Secretary said:

> Yes, we're saying that we cannot distinguish between ships that carry munitions of war and ships that might be carrying food. Therefore, we cannot allow any cargoes to reach shore.[271] (Emphasis added).

Because the United States is compelled to deny the North Vietnamese all imported materials, the effects of the U.S. mining interdiction are felt equally among the military and civilian segments of the North Vietnamese population. However, before scorn and criticism is heaped upon American decision makers for arriving at a mining interdiction policy which might be criticized by some as an excessively harsh and inhumane decision to deprive the North Vietnamese civilian population of needed fuel, clothing and foodstuffs,[272] it should be pointed out that militarily speaking, the deprivation of civilian supplies is considered to be the very function of a blockade or maritime-interdiction since it forces an enemy to ration, divert or otherwise conserve his existing war supplies and scarce natural resources. For instance, during the Korean War, the

United Nations Command prohibited coastal as well as deep-sea fishing by the North Koreans. The principal reason for justifying such a prohibition was "that this sea food was legitimate contraband and should be stringently denied [to] the Communists. The restriction on fishing by the U.N. blockading force would seriously add to the Communist logistics problems ashore, and force them to import fish from Chinese and Russian sources." [273]

In much the same way that the U.N. maritime restrictions caused the North Korean Communists to seek foodstuffs from the Soviets and the Chinese in lieu of receiving weapons which would have ordinarily occupied the same merchant vessel's cargo space, the current U.S. mining campaign may produce the same type of results although it is principally the heavy weapons, war materials and fuel supplies being shipped to North Vietnam by sea which has caused the United States to institute its present inderdiction measures.

In any event, despite the significant differences between the naval interdiction operations which were conducted in Cuba in 1962 and those which are presently being conducted in North Vietnam, there is a common thread running throughout the two measures which is that they both have contained within them carefully imposed limitations which were incorporated by U.S. decision makers in order

to achieve military and political effectiveness while attempting to avoid excessive burdens or irreparable harm for each affected country's non-combatant population.

c. Duration of the Campaign

Perhaps the most obvious difference between the 1962 Cuban quarantine-interdiction and the current U.S. mining campaign is the amount of time taken to implement and successfully complete each of these operations.

In the case of the Cuban missile crisis, President Kennedy issued his Proclamation on October 23, 1962 to become effective at 2:00 P.M. on October 24th, Greenwich time. Within three days after the commencement of the quarantine, a series of letters was exchanged between President Kennedy and Chairman Khrushchev, whereby it was agreed that the Soviets would dismantle their offensive weapons systems and return them to the Soviet Union.[274]

On November 2nd, the President made an interim report to the American people wherein he stated that aerial photographs indicated that the Soviet type offensive missiles had been dismantled and the Cuban missile sites were being destroyed.[275] Subsequently, United States Naval forces verified that various "homeward bound" Soviet

vessels were carrying what appeared to be offensive type missiles or their supporting components as deck cargo.[276] These Soviet vessels were visually observed to be carrying forty-two crates which appeared to contain the missiles or related equipment. [277] Thereafter, the quarantine was terminated on November 21, 1962 when President Kennedy received assurances from Chairman Khrushchev that the remaining Soviet jet bombers would be withdrawn within thirty days. The U.S. Cuban quarantine was therefore terminated in less than a months time after it had started with a peak military operative period lasting less than ten days.

By contrast, the duration of the U.S. mining interdiction measures conducted in North Vietnam's territorial waters has, as of this writing, already lasted over three months and will not be considered to have had its intended effect until six months from the date of its inception. [278] While the total time which the U.S. mining interdiction will remain in effect is highly conjectural, it certainly can be said , at this point in time, that its duration and effects will outlast those of the Cuban crisis by a factor of at least five to ten times.

B. Evolutionary Trends Arising From the Circumstances Surrounding the Current U.S. Mining Interdiction Campaign

1. Localization of Impact

One of the requirements associated with the "traditional law of blockade" embodied in the Declaration of Paris of 1856 and the Declaration of London of 1909 was that the blockading forces must have been deemed capable of enforcing a continously effective interdiction measure which prevented both the entry and exit of ships from the blockaded area.[279] The historic concept associated with this requirement of "effectiveness" was commonly interpreted to require an indeterminate number of ships of war so situated as to bring about a reasonable expectation that a vessel seeking to breach the blockade would probably be captured.[280]

The early nineteenth century situation usually associated with the maintenance of a continuous force capable of blockading a given geographic area was a cordon of surface cruisers hovering a few miles off the enemy's coast. It was, at one time, even insisted that a "closed" or stationary cordon as distinguished from a cruising

patrol was essential in order to maintain the requisite degree of effectiveness of a naval blockade. [281] The legal requirements for the so-called "close in" blockade were principally formulated and advanced by the United States and British strategists in an effort to minimize the effects of third party nations attempting to interfere with neutral American and British shipping.

However, after the experiences of two World Wars which saw the major powers introduce and later perfect the so-called "long distance blockade" - - which relied heavily upon a combination of mine fields, surface patrols and associated measures - - the future utilization and success of the close in type blockade was thought to be virtually eliminated. [282] This alteration in the traditional concepts pertaining to the "close in" blockade became necessary because of the extended range of shore artillery batteries, the emergence of fast torpedo boats and the development of long range aircraft and submarines. Any attempt for a blockading surface force to try to maintain a close in type blockade against the modern weapons of the future, was though to be not only an economically, unworkable measure, but also a militarily disastrous course of action to undertake. Therefore, only broad based, long distance interdiction measures were believed to be on the

wave of the future. To a certain extent this prediction was accurately borne out since the only reported instance of a "close in" type blockade during the Second World War was that naval interdiction measure instituted by the Soviet Union against Finland in the Russo-Finnish War of 1939.[283]

However, the Korean conflict saw a resumption of the traditional type of close in coastal blockade principally because the United States possessed air and naval superiority and the Russians, who were in effect fighting the war by proxy, chose not to introduce any of their air or submarine forces into the conflict.[284]

However, after the passage of a decade of development in the fields of long range bombers and intercontinental ballistic missile delivery systems, the likelihood of the reapplication of a blockade, <u>in any form</u>, was thought to be highly unlikely by military and civilian defense planners since the outcome of any nuclear scale conflict would be decided in only a fraction of the time necessary to even begin a blockade.

However, the 1962 Cuban quarantine-interdiction re-established the validity of the maritime interdiction process as a measure having great potential for use in either a "limited war" situation of as a "measure short

of war."

During the Cuban missile quarantine, not only were claims pertaining to the exclusion of prohibited subject matter carefully limited, but claims pertaining to the location of any possible areas of maritime confrontation were similarly reduced. Unlike the "long distance" type blockades of World War I and II, where throughout every part of the world, maritime commerce was subject to sweeping controls and tight restrictions, in Cuba, on the other hand, the United States chose merely to designate a single "interception zone" in the Caribbean Ocean where only those ships which might be carrying Soviet offensive missiles and aircraft could be stopped, boarded or inspected.

A continuation of the trend which appears to have evolved from the concept of limited inspection zones or "maritime confrontation areas" and which was embodied in the Cuban missile Proclamation has also been incorporated in President Nixon's mining interdiction order of 1972 which limits U.S. offensive measures to the "internal and claimed territorial waters of North Vietnam" while avoiding altogether any possible maritime confrontation on the high seas. By carefully limiting the scope of these mining measures to seven North Vietnamese ports and their assoc-

iated inland canals and tributaries, the United States has significantly reduced the area of maritime impact pertaining to foreign shipping and has narrowed the scope of those "confrontation" areas affected to nearly coincide with those of the old-style "close in" type blockade. It would indeed be difficult to imagine just how U.S. decision makers could have designed a maritime interdiction measure with a smaller zone of impact and still retained the high degree of military effectiveness which has thus far been achieved. By carefully limiting the areas which have been mined to North Vietnamese inland and claimed territorial waters, the United States has insured that neither foreign vessels transiting the areas adjacent to North Vietnam nor those foreign vessels bound for that country's mined harbors and port facilities are in any way interfered with while they continue to remain on the high seas.

2. Degree of Notification

Under the historic concepts associated with maritime blockade, a maritime interdiction measure did not become effective until the appropriate notification of the "Blocade Declaration" had been accurately communicated

[illegible] island chain and [illegible], the United States has significantly reduced the area of maritime zones particularly to foreign aircraft and has narrowed the scope of those "contravention" areas affected to nearly coincide with those of the air-style "zones in open airspace. It would indeed be difficult to imagine just how the U.S. decision zones could have maintained a maritime interdiction measure with a smaller area of [illegible] and still replicate the high degree of military effectiveness which has thus far been achieved. By carefully limiting the areas which have been aimed to worth "[illegible] [illegible] two distinct territorial waters, the United States has ensured that neither foreign warship [illegible] the zones [illegible] to both Vietnam nor those foreign warships bound for [illegible] country's naval bases and port facilities are in any way interfered with while [illegible] to remain on [illegible] zone.

2. Degree of Notification

Under the historic doctrine associated with maritime blockade, a maritime interdiction measure did not become effective until the appropriate notification of the "Blocade Declaration" had been reasonably communicated

to the proper port, consular and diplomatic authorities.[285] While some nations such as France and Italy had traditionally ordered their blockading men-of-war to board every approaching neutral vessel and notify her of the establishment of the blockade, other countries including Japan, Great Britian and the United States, did not consider such individual notification to be essential for the effective institution of a blockade. [286]

With the advent of the long distance type blockade which was employed during the course of World Wars I and II, the ability of the blockading nation concerned to give individual notification to each vessel approaching a blockaded area was determined to be totally infeasible. This lack of ability to provide specific warning to approaching vessels not only stemmed from the enormous expanses of ocean areas which were declared "war zones,"[287] but it also stemmed from the fact that much of these ocean areas were being blockaded almost exclusively through the use of an entirely uncommunicative instrumentality called the naval magnetic mine.

Furthermore, once hostilities had commenced during such unlimited wartime situations (as occurred in the Pacific in December, 1941), not only did the combatants fail to describe blockaded areas in terms of the outside

geographic perimeter-limits of these enormous ocean areas called "war zones," but the entire theaters of operation themselves were described in such sweeping terms as to constitute no notification whatsoever. For instance, the Secret U.S. message sent on December 7, 1941 to EXECUTE AGAINST JAPAN UNRESTRICTED AIR AND SUBMARINE WARFARE, included no provision whatsoever concerning operational areas except that for the purpose of command control against Japan, all of the Pacific Ocean areas were declared a theater of operations.[288] As a result of the unrestricted U.S. Naval wartime policy in the Pacific, American submarines and aircraft established massive blockades throughout Japan's inland and territorial waters as well as in Japanese controlled ocean and river areas.[289] In virtually every case, the establishment of the blockaded areas through the use of submarine and aerial laid mines was totally unannounced, and it remained for a passing ship or barge to subsequently verify the blockading mine field's presence and precise location.

In sharp contrast to the establishment of the far-flung and unannounced Pacific mining blockades of World War II, there has evolved from the Cuban and North Vietnamese maritime restrictive measures, communications techniques which have provided, under the circumstances, the highest degree of notification believed to be attainable .

During the Cuban quarantine, both U.S. air and naval craft were used to intercept those Soviet controlled merchant vessels headed for the quarantine zone which had not previously been instructed by the Soviet Union to return home. During the Cuban crisis, notification of the establishment of the U.S. quarantine-interdiction was provided by special and general communications techniques on a scale never before seen in the history of naval blockade. Not only were individual Soviet chartered and controlled surface vessels selectively notified of the existence of the Cuban quarantine by voice and by visual communications, but submerged Soviet submarines as well were signaled through the use of harmless underwater explosive sound signals utilizing the international recognition code "IDKCA" meaning "rise to the surface." [290]

While it would seem hard to improve upon the extensive and carefully planned communication and notification techniques employed by the United States during the Cuban quarantine, it would now appear that the United States has, because of its advance lead time and the known seriousness of its present mining measures, provided for even more in depth notification procedures during its North Vietnamese mining operation than was provided during the 1962 Cuban "blockade".

During the Cuban quarantine, some U.S. air and naval craft were used to intercept those Soviet controlled merchant vessels headed for the quarantine zone which had not previously been interdicted by the Soviet Union to return home. During the Cuban crisis, notification of the establishment of the U.S. quarantine-interdiction was provided by special and general communication techniques on a scale never before seen in the history of naval blockade. Not only were individual Soviet chartered and controlled surface vessels selectively notified of the existence of the Cuban quarantine by radio and by visual communications, but submerged Soviet submarines as well were signaled through the use of underwater explosive sound signals utilizing the international recognition code "DDDD" meaning "stop in the interest of safety."

While it would seem wise to improve upon the extensive and carefully planned communication and notification techniques employed by the United States during the Cuban quarantine, it would one suppose that the United States has, because of its extensive land, sea and the Cuban experience of its present sighting capabilities, provision for even more in depth notification procedures during its nearly simultaneous mining operation that was providing Cuban ports with "blockade".

This is because not only were the affected Communist vessels located in North Vietnamese ports given a three day "grace period" before the mines were activated, but because detailed notification of the planned U.S. mining measures was also communicated to the nations concerned before the President had even concluded his May 8th presentation. [291] It was even believed by some sources that the Soviets and possibly the Chinese were provided with some broad based indication of the measures which the U.S. might have planned since modern diplomatic contacts are "virtually continuous" and the United States, in private talks with the Kremlin, might have "conditioned" the Soviet's reaction to a possible mining interdiction. [292]

Once the North Vietnamese mining interdiction was commenced, United States vessels were instructed to "use their best efforts to insure that all vessels transiting the high seas in this area are notified by appropriate signals of the . . . measures being undertaken in the internal and claimed territorial waters of the Democratic Republic of Vietnam." [293]

These efforts, as previously noted, included having personnel aboard U.S. vessels stationed on the "notification line" who could "warn away" any merchant ship from these dangerous waters by utilizing ten spoken languages in addition

to existing international signal codes.[294]

The high degree of complexity and preparation associated with manning and operating such a "notification line" would be substantial when one realizes that the capability to be able to provide notification in all ten foreign languages was probably within the assigned mission of several of these U.S. notification vessels.

In fact, it would be difficult to imagine any other situation where a country engaged in naval interdiction operations against an enemy then under heavy air and naval attack by forces of the same land had intentionally diverted its own warships in order to give timely warning to vessels of third party countries destined for the mined ports of the enemy and carrying munitions and supplies to that foe. Nevertheless, the United States, in order to minimize excessive domestic criticism, while being ever mindful of North Vietnam's strategic power alignments, chose this method as the most prudent and restrained course of action possible by imposing such onerous notification requirements upon elements of its own forces. Never in the history of naval warfare has a nation gone to such lengths to give detailed notification of dangerous conditions to those "non-belligerent" third party countries known to have been providing war materials to the notifying nations foe.

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The high degree of complexity and preoccupation associated with manning and operating such a 'notification line' would be substantial when one realizes that the capability to be able to provide notification in all ten foreign languages was probably within the peacetime mission of several of these U.S. notification vessels.

In fact, it would be difficult to imagine any other situation where a country engaged in naval interdiction operations against an enemy than under heavy air and naval attack by forces of the same level had intentionally diverted its own warships in order to give friendly warning to vessels of third party countries destined for the named ports of the enemy and carrying munitions and supplies to that foe. Nevertheless, the United States, in order to minimize excessive domestic criticism, while being ever mindful of North Vietnam's strategic power alignments, chose this method as the most prudent and restrained course of action possible by imposing much onerous notification requirements upon elements of its own forces. Never in the history of naval warfare has a nation come to such lengths to give detailed notification of dangerous conditions to those "non-belligerent" third party countries known to have been providing war materials to the notifying nations foe.

3. Avoidance of Unnecessary Confrontation

Perhaps the most significant feature of the current mining campaign is the selective employment of passive naval weapons to interdict the delivery of all seaborne supplies. Through the employment of carefully laid mine fields, the United States has placed North Vietnam's maritime suppliers in a position which requires them to make one of three choices: The first, to attempt to "run the blockade" and risk possible damage or destruction to their ships as well as to risk injury or death to their crews; the second, to seek alternate unmined ports of entry for transshipment of cargoes by overland routes and the third, to undertake to make no shipments to North Vietnam whatsoever. Of the three principal courses open to the countries which have been making seaborne deliveries to North Vietnam, the first and the third choices are clearly the most unpalatable, leaving the second choice as the most logical course of action to be undertaken. Regardless of which course of action was undertaken by North Vietnam's major seaborne suppliers, the initial choice in every case was for each cargo carrying nation involved to make, rather than the first post-mining move being left up to the United States.

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This general built-in deterrent feature of "blockade" or "maritime interdiction" which because of its relative

slowness to operate gives each side time to think, and therefore reduces the risks associated with such an operation, is of critical importance to the decision makers involved in reducing the likelihood that a hasty decision might be forthcoming.

In some cases, the blockading or interdicting nation must also make a decision such as boarding or blocking passage of a vessel. However, it is the blockade-running nation which must first make the key decision to bring about such a confrontation once the blockader's prestige is placed on the line.[295] Thus, Mr. L.W. Martin, in his book entitled The Sea in Modern Strategy, has deliniated one of the most valuable features of blockades in general and delayed action mining interdiction in particular when he states that: "Blockade thus has one of the most desirable characteristics in a technique of crisis management, that of transferring the onus of escalation to the other side."[296]

Indeed, with the computers in the newly sown mines automatically activating their arming devices after the passage of three "day light periods," all that was required of the United States if it wanted to forego the possibility of the offloading of supplies by North Vietnamese lighters, was to sit back and see of any foreign vessels would attempt to confront the mines which it had planted.

Of course, under the circumstances of the current mining interdiction, every effort was made to minimize any possible superpower confrontation. For this reason, the U.S. mines were exclusively sown in North Vietnam's territorial and inland waters in an effort to preclude any possible surface craft confrontation or possible mine damage or losses to foreign vessels engaged in navigation on the high seas.

It should also be remembered, however, that during the period that the Cuban quarantine was effective (October 24th to November 2nd 1962) fifty-five merchant ships were scrutinized by the United States before they were allowed to proceed. [297] Among them, was the Soviet tanker Bucharest which was intercepted on October 25, 1962 and visually inspected while the Lebanese ship Marcula was actually stopped, boarded and searched by units of the United States Navy's quarantine force on the following day. [298]

The United States, not wanting to even hint at the possibility of such a high seas interception of Communist bloc commerce, took great pains to emphasize that North Vietnam was the sole intended target and, in the words of President Nixon's May 8th address, "these actions are not directed against any other nation." [299]

It was also for the same reason of attempting to arrive at an effective interdiction policy which was made as

Of course, under the circumstances of the recent white insurrection, serious efforts are made to establish any possible connection communists. For this reason the U.S. press was seriously and in most vigorous partisanship and latent anger in an effort to mention any possible evidence really substantiation of possible that among or lower in Soviet Russia support is surrounding on the bird area.

It should also be remembered, however, that Lenin the belief that the Soviet government are attempting through the to provoke the Jewish pogroms-Jews accused which were accentuated by the United States entering the war against to prevent. [17] Among them, the U.S. Senate Judiciary Committee was instructed to inquire if Jews and revolutionaries happened while for instance that revolution and anarchist accused, hunted and shooting in spite of the United Army's restoration force on the Siberian.[18]

The United States, not wanting to have fall in the possibility of such a big some investigation of Soviet Bible commerce, that great value is indicative that such visitors was the with Jewish Lenin before and, in the words of President Wilson's for his address, "some actions and not literary actions are other matter." [19]

It was also for the same reason of attempting to avoid at an effective intervention policy which was made at

inoffensive as possible to third party shippers, that the current mining interdiction measures were devised. However, unlike the Cuban crisis wherein President Kennedy proclaimed a quarantine which included interception, boarding and search orders, in the case of the U.S. mining interdiction in North Vietnamese waters, all descriptive nomenclature such as "blockade", "pacific blockade" or "naval quarantine" was scrupulously avoided.

In noting that some maritime restrictive measures such as 'pacific blockade' have acquired a specific and ascertainable meaning, Mr. L.W. Martin makes the following analytical observation:

> Some measures such as 'pacific blockade,' have at times acquired a technical meaning and are recognized to involve certain rules. But the legitimacy of acts of force, at least in the eyes of the lawyers, lies not so much in their intrinsic nature as in the overall circumstances of the case, although certain proportionality [considerations] must be observed. In other words, it is the circumstances of [the] action rather than the precise means employed that determine the legal claim of a state to depict its action as lawful. [300]

Finally, Professor John Norton Moore, in analyzing the reasons why President Nixon did not use the term "blockade" in describing his North Vietnamese mining measures has provided us with the following descriptive commentary:

ineffectively as possible to foiled naval blockers, that the current airlift interdiction measures were devised. However, unlike the Cuban crisis, should President Kennedy proclaimed a quarantine which included interception, boarding and search orders, in the case of the U.S. airlift investigation in North Vietnamese waters, all descriptive nomenclature such as "blockade", "pacific blockade" or "naval quarantine" was scrupulously avoided.

To notify that some restrictive territorial measures such as 'pacific blockade' have actually a specific and ascertainable meaning, Mr. L.V. Martin makes the following analytical observation:

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Finally, Professor John Norton Moore, in analyzing the reasons why President Nixon did not use the term 'blockade' in describing his Naval Quarantine listing measures was provided us with the following qualifying commentary:

> If, then, the conditions were present for a lawful blockade why was it carefully announced only as an 'interdiction of weapons and supplies?' It was not because the President lacks constitutional authority to institute a blockade. The U.S. action, whether termed 'blockade' or 'interdiction,' was the kind of tactical decision about the conduct of ongoing hostilities which fall within the President's power of Commander-in-Chief. Rather, the decision to avoid the term 'blockade' was part of a series of careful limitations intended to minimize the risk of confrontation with non-belligerents. By speaking only of 'interdiction,' President Nixon avoided inadvertently signalling a wider objective, such as the economic or political subjugation of North Vietnam, which might have been implied by use of the term 'blockade.' [301]

It would therefore seem apparent that through the prudent and limited utilization of automatic mines and naval surface craft, the United States has established a highly effective maritime interdiction campaign while simultaneously avoiding any unnecessary confrontation between superpowers and while minimizing the possibility of the unnecessary destruction of a wide range of human values.

4. Modification Of Tactics So As To Moderate The Scope Of Claims

In discussing the difficulties in attempting to impose fixed and unyielding legal doctrine to areas of rapidly developing military technology and tactics such as in the

If, then, the conditions were present for a lawful blockade why was it carefully announced only as an 'interdiction of weapons and supplies'? It was not because the President lacks constitutional authority to institute a blockade. The U.S. action, however termed 'blockade' or 'interdiction,' was the kind of tactical decision about the command of overall hostilities which fell within the President's power of Commander-in-Chief. Rather, the decision to avoid the term 'blockade' was part of a series of careful limitations intended to minimize the risk of confrontation with non-belligerents. By specifying only of 'interdiction,' President Nixon avoided inadvertently alienating a vital constituency, such as the economic or political establishment of North Vietnam, which might have been implied by use of the term 'blockade.' [30]

It would therefore seem apparent that through the prudent and limited utilization of automatic mines and naval surface craft, the United States has established a highly effective maritime immobilization campaign while simultaneously avoiding any unnecessary confrontation between superpowers and while minimizing the possibility of the unnecessary destruction of a wide range of human values.

4. Modification Of Tactics So As To Moderate The Scope Of Claims

In discussing the difficulties in attempting to impose fixed and unvarying legal doctrine to cases of rapidly developing military technology and tactics such as in the

areas of naval blockade and quarantine interdiction, Professor Myres McDougal has observed that:

> It was also in response to these changed [blockading] conditions of military technology and combat operations that instrumentalities other than surface cruisers were resorted to for physically controlling the flow of commerce to the enemy. The principal instrumentalities employed for this purpose in the last two World Wars were the mine, the submarine and the aircraft. Frequently all three weapons were utilized to supplement one another. . . . [302]

In responding to the proposition advanced by Professor Robert W. Tucker that "[t]he effectiveness required of valid blockades cannot be secured by means violative of other firmly established rules [while] the element of danger associated with an effective blockade is . . . understood in terms of a liability to seizure and eventual condemnation, though not in terms of a liability to destruction [as in the case of mines and submarines] upon entrance into a forbidden area," Professor McDougal has observed that this requirement for all blockading instrumentalities to conform to the blockading standards originally projected for surface squadrons is in effect a comprehensive ban against technological improvements being effectively used in the maritime blockades of the future.

Professor McDougal then continues his rebuttal of Professor Tucker's totally inflexible assertion by observing that:

for it should be evident even upon casual observation that, of itself, a minefield can never, and submarines and aircraft only in very exceptional cases, meet the requirements of a cordon of vessels. The position taken by Professor Tucker would appear to represent an inadequate generalization of past experience and perspectives, and, so far as concerns estimations of probable future practice and decision in comparable contexts, [appears] substantially to have escaped contact with reality. [303]

. . . .

To illustrate, with particular reference to the establishment of war zones where stretches of ocean are sown with mines, the important general consideration would seem to be that mines, as an instrumentality of blockade, need not be more destructive of neutral values than surface vessels. More specifically, the strategic importance, in the particular war in question, of the object of stemming the stream of commerce with the enemy; the details of the particular use of mined war zones, including the specific disposition of mines; the economics made possible in time, effort, and commitment of surface craft; the giving or witholding and timing of notification of neutrals - - all appear factors appropriately included in the assaying of reasonableness. Thus, as the Allied Powers used them in the last World Wars, [304] minefields functioned strategically as blockade devices by channeling shipping in particular parts of the ocean to predetermined routes for subjection to contraband and export control procedures. Both effectiveness and minimum destruction [of values] were served by giving notice to neutrals of the extent and location of minefields . . . and of safe passage through them . . .. The neutral vessel which ignored the notice and which would presumably do so only if engaged in commerce with the enemy of course became liable to destruction in the minefield. It is . . . only by the examination of the above and other types of detailed factors in the use of minefields as in the use of submarines and aircraft, that rational discriminations can be made as [to] the lawfulness (reasonableness) of particular, newer instrumentalities for securing the requirement of effectiveness in interdiction of passage. [305]

In order that the reasonableness of the current U.S. mining interdiction can be evaluated in terms of military effectiveness and minimum destruction of human values, the five factors outlined by Professor McDougal are thought to constitute meaningful and appropriate guidelines from which to evaluate each competing claim.

Factor (1) The Strategic Importance in the Particular War in Question

The strategic significance and the importance of the U.S. mining interdiction in North Vietnam was stressed by President Nixon during his May 8th address when he stated that:

> I have therefore concluded that Hanoi must be denied the weapons and supplies it needs to continue the aggression [since] [a] major portion of the supplies through which the invasion of South Vietnam is being supported [is coming] from the sea. It is essential that this delivery of supplies from the sea be prevented so that North Vietnam cannot continue to resupply both its forces in the field and its logistics base [at home].[306]

Clearly, the strategic importance of the mining interdiction measures which the President commenced on May 8, 1972 were of paramount concern to him as President and to the people of the nation as a whole in endeavoring not only to eliminate all future war supplies from being

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Clearly, the strategic importance of the mining interdiction measures which the President commenced on May 8, 1972 were of paramount importance to the President and to the people of the nation as a whole in substituting not only to eliminate all future war supplies from being

delivered to the enemy but also to bring about the speedy and humane end of the conflict itself.

Factor (2) <u>The Object of Stopping the Stream of Commerce with the Enemy</u>

As previously noted above, the object of stopping the "stream of commerce" with which the enemy was being supplied was of paramount importance to the United States. The very first paragraph of the President's May 8th address referred to the massive Communist invasion landed five weeks earlier which was made possible by "tanks, artillery, and other advanced weapons supplied to Hanoi by other Communist nations.[307] In addition, the very life blood of the North Vietnamese Communist's mechanized offensive was dependent on 35 to 40 thousand metric tons of petroleum being pumped into its storage areas from those Soviet tankers at Haiphong which had, for years, been providing over 80 per cent of North Vietnam's oil supplies.[308]

Factor (3) <u>Details of the Particular Use of the Mined "War Zones"</u>

Unlike the extensive mine "barrages" employed during

delivered to the enemy [illegible] to bring about the speedy and [illegible] end of the conflict itself).

Factor (2): The Option of Stopping the Stream of Weapons into the South

As previously noted above, the option of stopping the "stream of weapons" with which the enemy was being supplied was of paramount importance as the central issue. The very first paragraph of the President's Dec 18 address referred to the massive Communist invasion [illegible] five months earlier which was made possible by 'tanks, artillery, and other advanced weapons supplied to Hanoi by other Communist nations.'[387] In addition, the very life blood of the North Vietnamese capability to sustain the offensive was [illegible] of petroleum being shipped into the country [illegible] those Soviet tankers at Haiphong could not have been completed even if the [illegible] oil supplies.[388]

Factor (3): Details of the Particular Use of the Armed [illegible]

Unlike the extensive air "campaigns" employed during

World War I and the unlimited naval mine blockades of World War II, the evolutionary trends pertaining to the modern naval interdiction techniques first inaugurated during the Cuban quarantine and subsequently refined in the current U.S. mining interdiction of 1972, show a marked reduction in the size and scope of blockading claims. This reduction in the size and scope of modern interdiction claims is clearly the result of the more moderating influences brought about by the extremely conservative "limited war" and "measures short of war" interdiction techniques which stem from the desire on the part of modern decision makers to minimize excessive or unreasonable areas of confrontation and to avoid the excessive and unwarranted destruction of human resources and associated values.

In order to achieve these more moderate methods of maritime interdiction, the United States has relied upon supply interdiction and embargo techniques which are practices somewhat related to the restrictive measures associated with the traditional concepts of "pacific blockade." However, the emergence of the newer maritime restrictive measures, starting with the development of the quarantine-interdiction, ignored the limiting characteristics of pacific blockade which, if followed slavishly, would not have permitted interference with vessels of

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In order to achieve these more moderate methods of maritime interdiction, the United States has relied upon supply interdiction and seizure techniques which are practices commonly related to the restrictive measures associated with the traditional concepts of "modified blockade." However, the measures of the newer maritime restrictive measures, starting with the development of the quarantine-interdiction, imposed the lasting characterization of pacific blockade which, it followed naturally, would not have permitted interference with vessels of

third party states. Professor Gerhard von Glahn, in his book Law Among Nations has expressed the belief that the evolutionary changes in the laws of naval blockade were accelerated by the Cuban crisis since the utilization of a "quarantine" did not meet the "traditional" standards of international law. In arriving at this conclusion, Professor von Glahn observes that:

> The term 'quarantine,' [which] was initially used to describe the action adopted [by the United States] indicated the realization that this was a new method of blockade. Analysis reveals that it falls somewhere between the two traditional types of blockade; it was a pacific blockade in that neither the element of intent for war nor a "state of war" did exist; at the same time, it was a hostile blockade in that the quarantine was to be applied against vessels of a third state. [309]

In the most recent evolutionary refinement of the concept of "blockade," the United States, in planning and executing its current North Vietnamese mining interdiction campaign, relied on an assimilation of the practices established in Cuba while further limiting the scope of its claims by substituting as the dominant enforcement device the presence of magnetic mines in lieu of a fleet of intercepting surface cruisers.

Factor (4) Economics Made Possible in Terms of Time, Effort and the Commitment of Surface Craft

The evolutionary trends associated with a possible economic saving and the more efficient utilization of available surface craft have not been overriding factors in the planning and execution of recent maritime restrictive measures. If anything, the United States has conspicuously "over deployed" its forces in an attempt to convince apparent "target" nations of the extent of its resolve and commitment. However, in the case of a combined mine-surface craft interdiction measure such as is currently in progress in North Vietnam, there can be no doubt that the employment of significant numbers of sophisticated mines in conjunction with modern surface vessels is consistent with the traditional concepts of "economy of force" in terms of the savings of time, effort and the availability of a reserve of naval forces.

Factor (5) The Giving or Witholding of Notification to Neutrals

As previously stated, one of the most significant aspects of the Cuban quarantine and the current U.S. mining

Factor (4) Economics Made Possible in Terms of Time, Effort and the Constraint of Surface Craft

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Factor (5) The Timing or Extinction of Hostilities is Uncertain

As previously stated, one of the most significant aspects of the Cuban quarantine and the current U.S. Military

interdiction campaign now being conducted is the extensive utilization of elaborate notification measures designed to minimize inadvertent damage or destruction to third party "neutral" shipping values. The extent of the U.S. communication effort both in terms of the notification given as well as its timing, are two of the key indicia pertaining to the increase in the number of moderating measures being adopted as between the "blockading powers vs the "neutral shipping nations" and the extent of the U.S. effort in attempting to convince these third party nations of the reasonableness of U.S. interdiction claims.

In applying these five factors which Professor McDougal has provided for the purposes of assaying the reasonableness of a given interdiction campaign, it is believed that even the most ardent critic of U.S. defense policies would be in accord with the proposition that the evolutionary trends associated with modern methods of naval interdiction have resulted in a substantial modification of tactics and a significant reduction in both the size and scope of claims.

C. Value Conserving Considerations Shown During the 1972 U.S. Mining Interdiction Campaign

1. The Employment of Comprehensive Warning Measures

As previously mentioned in earlier portions of this thesis, the United States may have employed one of the most elaborate warning techniques during the course of its North Vietnamese mining interdiction as has any nation during the recorded history of maritime blockade. These stringent, self-imposed notification requirements are all the more significant since the so-called "neutral" third party trading nations which were provided such detailed warnings, were in reality, the principal suppliers of North Vietnam's armed forces. Were it not for the comprehensive and timely notification measures employed by the United States, however, the enormous risks involved in such a mining "blockade" would clearly have been multiplied a hundred-fold.

The true measure of the effectiveness of the value conserving considerations embodied in the United States notification techniques is that as of this writing, there has not been a single reported incident of damage or

6. False Concerns Concerning Short Order the Life B.C. During Reconstruction Campaign

7. The Development of Comprehensive Training Programs

In previously mentioned in earlier sections of this thesis, the Dallas Bishop has been involved one of the more elaborate merging, beginning during the course of the Earth Viscosness during Reconstruction in the day before during the recorded history of written dynamics. There attempt, multi-layered motivational considerations are all the more significant given the so-called course. This very practice nations which were involved were Latin/Lu varieties, more in reality, the practical consistent of world Tiberius's actual forces. Here it was in the economic-overview and timely modification process employed in the United States, however, the economic field involved in such a mining "blockade" could clearly have been multi-piled a hundred-fold.

The true meaning of the effectiveness of the airline connecting considerations involved in the United States modification campaigns is that as of this writing, there has not been a single reported incident of Latin or

destruction to any foreign merchant vessel while the only known casualty which occurred to date was been the underwater damage sustained by a vessel assigned to the United States interdiction forces.[310]

By providing detailed notification of the type of mining measures which it intended to employ and by simultaneously coupling this notification to a three day "grace period" in which foreign vessels could enter or depart North Vietnam's mined ports, the United States not only minimized the possible damage or destruction to third party shipping but it also minimized the likelihood of any retaliatory action being taken against the United States by the other superpowers involved.

2. The Exemption of Small Vessels From Maritime Restrictive Measures

Until the advent of the United States decision in Korea to forego the traditional immunity usually accorded small coastal fishing vessels engaged in peacefule fishing operations, United States forces, ever since the turn of the century, had observed the letter and spirit of a 1900 U.S. Supreme Court decision declaring that under the rules of customary international law, such small craft were

destroying by any foreign nonpeace vessel while the only known casualty which occurred to date was from the unsuccessful German attempt by a vessel assigned to the United States Intervention Force. [19]

By providing detailed modification of the type of minimum measures which it intended to employ had by mistakenly assuming this modification to a course any "force majeure" in which foreign vessels would enter or leave North Vietnam's inland ports, the United States not only minimized the possible damage or destruction to pilot party minimum but it also eliminated the liability of any retaliatory action being taken against the United States by the other belligerent (Hanoi).

2. The Question of Hanoi's Non-Existing Territorial Sovereign

Until the advent of the United States intervention it force to force the traditional immunity enjoyed by public vessels coastal fishing vessels engaged in peaceful fishing operations. During fishing voyage, they stayed too from of the country, but observed the limit and rights of a 1800 U.S. Freedom Point Maritime Convention that under the rules of customary international law, such small craft were

not liable to capture and condemnation in prize.[311] In the landmark decision of The Paquette Habana, the United States Supreme Court reiterated the established rule of customary law that small coastal fishing vessels could engage in local fishing activities without being subject to capture and without destroying the effectiveness of the blockade. In reaching his decision, Mr. Justice Gray reasoned that the prevailing humanitarian views of mutual accommodation and the tenderness traditionally shown to a "poor and industrious order of people", required the United States to forego the capture and condemnation in prize of these small coastal fishing vessels. However, Justice Gray went on to qualify this exemption by setting forth the following limitations:

> The exemption, of course, does not apply to [coastal] fishermen or their vessels, if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way.[312]

During the Korean conflict, the United States blockading forces made no exception for the usually exempt fishing craft and all such vessels which had been located were seized and summarily destroyed. The announced

not liable to capture and condemnation in prize. [11] In the landmark decision of *The Paquete Habana*, the United States Supreme Court reiterated the established rule of customary law that small coastal fishing vessels could engage in local fishing activities without being subject to capture and without destroying the effectiveness of the blockade. In penning his decision, Mr. Justice Gray reasoned that the overwhelming economic value of normal commodities and the noncombatant traditionally accorded to a "peaceable and laborious order of mankind" convinced the United States to forbear the capture and condemnation in prize of these small coastal fishing vessels. However, Justice Gray went on to qualify this exemption by setting forth the following limitations:

> The exemption, of course, does not apply to [coastal] fishermen or fishing vessels, if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way. [12]

During the Korean conflict, the United States Hydrographic Office made no exception for the usually peaceful fishing craft and all such vessels which had been located were raised and reasonably destroyed. The announced

purpose of these U.S. actions was to cut off the main source of food supply for North Korean and Chinese Communist troops since fish was a staple in their diet. In addition, incidents of North Korean "deep sea" fishing vessels serving as military communications and weather craft had frequently occurred throughout the course of the war.

However, during this country's most recent mining interdiction campaign in North Vietnam in 1972, the United States saw fit to again afford coastal fishing vessels their traditional immunity through the exclusive employment of magnetic type mines, the utilization of which was designed to permit wooden-hulled vessels, such as fishing boats, to exercise their right of unhindered passage. It should be noted that during a Defense Department briefing which released information that U.S. mines could only be triggered by the passage of " a sizeable metalic object, " U.S. spokesmen also inferred that acoustic and pressure type mines were readily available and would be employed in the future if North Vietnam should nullify the immunity accorded its wooden fishing vessels by trying to temporarily convert them into minesweepers or use them in any other unauthorized manner. [314]

purpose of these U.S. actions was to cut off the main source of food supply for North Korean and Chinese Communist troops since fish was a staple in their diet. In addition, incidents of North Korean "hog-wae" fishing vessels serving as military communications and weather craft had frequently occurred throughout the course of the war.

However, during this country's most recent minor interdiction campaign in North Vietnam in 1972 the United States was fit to again afford coastal fishing vessels their traditional immunity through the accidental employment of magnetic type mines. The utilization of which was designed to permit wooden-hulled vessels, such as fishing boats, to operate their right of unhindered passage. It should be noted that during a Defense Department briefing which released information that U.S. mines could only be triggered by the presence of " a sizeable metallic object, " U.S. scientists also indicated that acoustic and pressure type mines were readily available and would be employed in the future if North Vietnam actually nullify the immunity accorded its wooden fishing vessels by trying to temporarily convert them into minesweepers or use them in any other unauthorized manner. [12]

3. The Attempt to Minimize Loss of Life and Human Suffering

While the critics of the current United States mining interdiction campaign have pointed out that the U.S. attempts to throttle the delivery of war materials contained in the seaborne cargoes destined for the ports of North Vietnam would also deny "food, petroleum and the necessities of life" to that country's civilian population, [315] and may not be so different from the indiscriminate attacks against non-belligerent shipping which were carried out by World War I German U-boat Commanders in 1917, [316] these same critics despite their self-professed interest in U.S. naval interdiction policies, have failed to suggest any other reasonably effective and available alternative to the U.S. naval interdiction measures which are now being enforced off the coast of North Vietnam. For when one discusses those value conserving considerations shown during the planning and implementation stages of the present U.S. mining policy, or the lack thereof, one should also bear in mind the nature of the "other" available military instrumentalities of war which might be employed as as alternative coercive measures the use of which,

3. The Danger in Shifting Law of Site and Human Toleration

While the action of the Supreme Court United States
states Independent Commission have written on more than
U.S. attempts to broaden the definition of our nationality
mentioned in the Endangered species Commission for the period
of years viewers would view deep 'Does' neighbor and
the Bonneville of Silver as that minority's eligible
population.[33] and may not be a difference from the
Independent albeit national constitutional Building
which were created out by World War I during 1-Year
Commission. In 1973, [34] Among the critics demanding state
self-government Indonesia in U.S. social international
policies, have called to consider the entire economic
effective and politicians alternative to the U.S. based
Independent measures which are not being enforced all
the coast of North Vietnam. For this the discussion
those value conservation constitutions about United the
planning and implementation clause of the Indonesia U.S.
state policy, or the land Congress, the should also been
in what the period of the Indonesia environmental
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as discussing economic measures the use of radio.

however, might tend to cause extremely high losses of life and produce excessive amounts of human pain and suffering.

For instance, if U.S. decision makers had not decided to utilize a mine warfare interdiction campaign, then an alternative mode of coercion such as extremely heavy bombing raids, might have been exclusively employed to destroy Haiphong's docks and other port facilities. It would seem to follow, therefore, that the less reliance the United States placed upon traditional as well as innovative maritime restrictive measures, the greater reliance the United States would have had to place on massive bombing raids.

While the results of the U.S. air war against North Vietnam were already staggering in terms of the costs in human lives and in losses of property, any additional U.S. commitment in order to produce the equivalent effects of a successful mining interdiction, would have required the United States to drastically increase its use of the following offensive air interdiction measures:

Industrial Bombing

The U.S. air war campaign which is presently termed "Operation Linebacker" [317] has, during the past year,

however, might tend to cause extremely high losses of life and produce excessive amounts of human pain and suffering.

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While the results of the U.S. air war against North Vietnam were already atrocious in terms of the costs in human lives and in losses of property, any additional U.S. commitment in order to produce the equivalent efforts of a successful mining interdiction, would have required the United States to dramatically increase its use of the following offensive air interdiction measures:

Industrial Bombing

The U.S. air war campaign which is presently termed "Operation Linebacker" [317] has, during the past year,

increasingly concentrated on the systematic destruction of all industrial and manufacturing plants, electric power and transformer sites, petroleum storage facilities and numerous other civilian installations vital to the North Vietnamese war effort and economy.[318] In addition to the destruction of the industrial targets previously mentioned, U.S. offensive air activities have also included the targeting and destruction of numerous major highway and canal bridges as well as other rail and surface communication links.[319] Because of the small amount of steel and building materials which are produced within North Vietnam itself, the immediate repair and replacement of such bombed out facilities would have been extremely limited. However, on June 25, 1972, United States jets were reported to have dropped laser-guided 2000 pound "smart bombs" into the Thai Nguyen Steel Plant's open hearth furnace thereby destroying North Vietnam's entire steel-producing capacity. The complex, two square miles in area, is the biggest industrial plant in North Vietnam and the only domestic source of structural steel available for railroads, bridges and buildings.[320]

Dikes

Shortly after the U.S. mining interdiction campaign was announced, the North Vietnamese Government began to lodge protests against those American air strikes which were said to have damaged or endangered North Vietnam's important network of flood-control dikes. After vehemently denying that the United States had ever "targeted" North Vietnamese dikes as such, a crescendo of criticism engulfed U.S. policy makers during the third and fourth weeks of July, 1972 concerning U.S. air attacks which were said to have damaged these flood control structures. While traveling in Moscow, United Nations Secretary-General, Kurt Waldheim said, on July 22nd, that he was concerned about U.S. bombings of North Vietnam's dikes and that thousands would die if such bombings were carried out.[321] Secretary-General Waldheim's appeal to the United States expressing hope that "this [result] will be avoided," produced a high degree of confusion, consternation and belated clarification concerning just what the United States air policy was with regard to the bombing of North Vietnam's dike network. As an outcome of these heated accusations and rebuttals, the U.S. Department of State

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released a Government intelligence report on July 28, 1972 which indicated that American bombing had damaged North Vietnam's dike system at twelve points but that the bombing was said to be unintentional and that the damage which had been inflicted was said to be only slight. [322]

Civilian Casualties

Following the renewed commencement of full scale bombing which was resumed on April 6, 1972, charges from Hanoi that "great numbers" of civilians were killed or wounded in U.S. bombing raids on shipyards, warehouses and army depots were followed by official U.S. acknowledgments that "If civilians were working in army depots and in the areas that were hit, there probably were casualties because the bombs went in right on target." [323]

The apparent results of similar bombing attacks provoked Sweden's Ambassador to Hanoi to accuse the United States of pursuing "a policy of annihilation" in its bombing of North Vietnam. [324] In an interview published in the Stockholm newspaper Aftonbladet, Ambassador Jean-Christophe Oeberg said that "American bombing was designed to weaken North Vietnam's economy for a long time to come and make it a second or third rank nation

in Southeast Asia. The Ambassador also alleged that the United States was not only bombing military targets but it was also "dropping antipersonnel bombs on housing areas, schools and hospitals. . . ." [325]

Anti Personnel Bombs

Reports giving the North Vietnamese versions of U.S. air attacks which were published in The New York Times assert that American planes, on June 28, 1972, destroyed two dispensaries in the Port of Haiphong while "dart bombs" were released by U.S. aircraft which "killed and wounded many people in the city." [326]

Dart Bombs

In an article published in The Washington Post on July 13, 1972 announcing that American warplanes had been dropping a whole range of bombs including a special variety which dispensed tear and nausea gases, U.S. intelligence sources at the same briefing, provided the following background information concerning the following types of "specialty bombs:"

in Southeast Asia. The Ambassador also alleges that the United States was not only bombing military targets but it was also "dropping antipersonnel bombs on populous areas, schools and hospitals. . . ." 335

Anti Personnel Bombs

Reports giving the South Vietnamese versions of U.S. air attacks which were published in The New York Times assert that American planes, on June 16, 1972, "destroyed two dispensaries in the Port of Haiphong while 'fire bombs' were released by U.S. aircraft which 'killed and wounded many people in the city.'" 336

Fire Bombs

In an article published in The Washington Post on July 14, 1972 announcing that American warplanes had been dropping a wide range of bombs including a wonderful variety which dispensed fear and causes pause, U.S. intelligence sources at the same briefing, provided the following background information concerning the following types of "specialty bombs:"

(1) The CBU-24 and CBU-33 bombs packed with dozens of small bomblets designed to blow the tires off trucks and the treads off tanks which pass over them;

(2) The gravel anti-personnel cluster bomb unit which according to a military manual has the appearance of gravel but "can blow a man's foot off but will not blow a hole in a truck tire"; and

(3) The Mk-36 incendiary cluster bomb, an 800 pound weapon packed with 182 fire bomblets of World War II design.[327]

It does not take a significant amount of imagination to envision the awesome effects which these antipersonnel weapons might produce if inadvertently released over North Vietnamese population centers. And, even if repeated U.S. assurances that North Vietnamese population centers are not being "targeted" or subjected to direct air attacks utilizing these and other similarly destructive weapons are taken at face value, a strong possibility would seem to exist that out of the 400 to 500 air strikes conducted weekly, some inadvertent or premature releases of explosive weapons including U.S. "specialty bomb" cannisters could conceivably occur, particularly if the U.S. aircraft involved was attempting to avoid anti-aircraft fire, surface to air missiles, North Vietnamese interceptors or to engage in other highly evasive maneuvers.

Therefore, after analyzing the potential horrors

(1) The CBU-24 and CBU-27 bombs packed with dozens of small bomblets designed to blow the track-off trucks and the tracks off tanks which pass over them;

(2) The newest anti-personnel cluster bomb mate which according to a military manual has the appearance of toys! but "can blow a man's foot off but will not blow a hole in a truck tire"; and

(3) The M-16 incendiary cluster bomb, an 800 pound weapon packed with 1[?] fire bomblets of napalm II design. [27]

It does not take a significant amount of imagination to envision the massive effects which these antipersonnel weapons might produce if inadvertently released over North Vietnamese population centers. Yet, even if Department U.S. assurances that North Vietnamese population centers are not being "targeted" or subjected to direct air attacks utilizing these and other similarly destructive weapons are taken at face value, a strong possibility would exist to exist that out of the 600 to 700 air strikes conducted weekly, some inadvertent or accidental release of indicative weapons inflicting U.S. "specially built" casualties would conceivably occur, particularly if the U.S. aircraft involved are attempting to avoid anti-aircraft fire, surface to air missiles, North Vietnamese interceptors or to engage in other highly evasive maneuvers.

Therefore, after analyzing the potential hazards

which can be produced by the inadvertent bombing of population centers, the alternative value conserving considerations associated with maritime mining interdiction become graphically clear. As Lieutenant Commander Arnold S. Lott, the author of "Japan's Nightmare - - Mine Blockade" has written:

> A mine blockade enables the winner to win without killing. Enemy ships lost in a mine field enter it by their own choice; the enemy is free to keep his ships in port and save them if he wishes. But more important, mines never destroy homes, hospitals or industrial facilities necessary to peacetime rehabilitation, nor do they wipe out non-combatant civilians [and their population centers]. [328]

VI. RECOMMENDATIONS

While it would appear that at the time the President made his May 8th mining interdiction announcement and during the subsequent amplifying news conferences held by high Administration officials, the need for the United States to conduct offensive mining measures was amply demonstrated - - it is recommended that future broader-based and more fully coordinated follow-up efforts be undertaken by utilizing news media and public information channels to more actively portray the effects of the U.S. mining interdiction in terms of minimizing the destruction of human values and as a positive protection against the unnecessary destruction of human life. It is conceded, however, that such an announced presentation of the positive virtues of the current mining interdiction policy might unnecessarily alter the apparently successful "low profile" posture of the current mining interdiction by either re-introducing it as a controversial public issue or causing it to be contrasted with other unpopular military measures (such as the heavy bombing of North Vietnam's industrial centers or the alleged bombing attacks along North Vietnam's system of dikes) thereby causing such a public information policy to be considered by U.S.

decision makers as being counter productive. However, because of the sensitivity of such a course of action, it is recommended, that, to the greatest extent possible, the major portion of any announcement concerning the humane and value conserving considerations relating to the commencement of a naval mining interdiction be made contemporaneously with the inauguration of such maritime restrictive measures or made as soon thereafter as is practicable.

Likewise, in order to demonstrate the concern of the United States for such humanitarian considerations as would safely permit the carefully monitored introduction of medical supplies through mined North Vietnamese ports and harbors, it is recommended that special provisions be made by United States decision makers to permit the passage of needed medical stores through the mined "interdiction zone" on a prudent and selective basis. One major difficulty in such a course of action lies, of course, in the inability of the United States to insure that such medical supplies will not ultimately be forwarded to the armed forces of our foes. However, to the greatest extent possible, the inauguration of such humanitarian measures should be actively explored and and the decision to engage in such a value conserving undertaking should, if warranted, be made the subject of a public disclosure.

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guarding of classified mine warfare technology, consideration be given to the public release of information concerning proposed or contemplated methods of mine deactivation and removal after the current U.S. mining interdiction has served its intended purpose. Such a public disclosure given to international shipping interests would tend to make the choice of U.S. decision makers to employ current mining interdiction measures even more palatable to third party nations and would also serve to dramatize the fact that the United States has the capability of safely removing the offensive mines which it has sown once a satisfactory solution to bring the present hostilities to an end has been achieved.

Finally, recognizing the extreme political and military sensitivities in arriving at the initial decision to mine a belligerent's inland or territorial waters, once the risks associated with the commencement of such measures during future hostilities have been deemed to be acceptable, it is highly recommended that the militarily effective and value conserving instrumentality of a maritime interdiction be implemented as soon as possible after the advent of hostilities in order to maximize the flexibility and the impact which this viable and highly selective naval sanctioning device possesses for humanely restoring and maintaining world public order.

question of classified mine warfare technology, consideration be given to the public release of information concerning proposed or contemplated methods of mine deactivation and removal after the current U.S. mining interdiction has served its intended purpose. Such a public disclosure given to international shipping interests would lead to both the choice of U.S. decision makers to employ current mining interdiction measures even more palatable to their party masters and would also serve to demonstrate the fact that the United States has the capability of safely removing the effective mines which it has been done a satisfactory solution to both the present hostilities or as and has achieved.

Finally, reconsidering the attempts political and military sensitivities in arriving at the initial decision to mine a belligerent's inland or territorial waters, even the mines associated with the contemplated if such measures during future hostilities have been deemed to be acceptable, it is highly recommended that the military effective and safe conservice instrumentality of a reversible interdiction be implemented as soon as feasible after the advent of hostilities in order to maintain the flexibility and the dynamic which this viable and highly effective naval countering device possesses for immediate reactions and maintaining world public order.

FOOTNOTES

[1] For text of President Nixon's address of May 8, 1972 made to the Nation on television and radio, see Dept. State Bull., May 29, 1972, vol. LXVI, no. 1718 at 747; Washington Post, May 9, 1972, at A 15, col.5; N.Y. Times, May 9, 1972, at 18, col. 1.

[2] See Reston, " Moscow's Waiting Game," N.Y. Times, May 12, 1972, at 39, col. 1; Sorensen, "It Isn't the Cuban Missile Crisis," at 39, col. 3, same edition and Chayes, "Mr. Nixon Avoids Use of 'Blockade,'" Washington Post, May 14, 1972, at B 6, col. 1.

[3] Sorensen, "It Isn't the Cuban Missile Crisis," N.Y. Times, May 12, 1972, at 39, col. 3. [hereinafter cited as Sorensen].

[4] Chayes, "Nixon Avoids Use of 'Blockade,'" Washington Post, May 14, 1972, at B 6, col. 1. [hereinafter cited as Chayes]

[5] Id.

[6] See text of the President's speech, supra note 1 wherein President Nixon stated that "countries with ships presently in North Vietnamese ports have already been notified that their ships have three daylight periods to leave in safety. After that time, the mines will become active and any ships attempting to leave or enter these ports will do so at their own risk."

[7] Moore, "A Professor on the Law of Blockade," Washington Post, May 21, 1972.

[8] M. McDougal and F. Feliciano, Law and Minimum World Public Order 50 (1961) [hereinafter cited as McDougal and Feliciano].

Footnotes

1

For text of President Nixon's address of May 8, 1972 made to the nation on television and radio, see Daily Texas Staff., May 22, 1972, vol. [illegible], no. [illegible] of [illegible]. Washington Post, May 9, 1972, at A 1, col. [illegible]; [illegible], May 9, 1972, at 16, col. 1.

2

See Newton, "Nixon's Military Gamble," [illegible], May 12, 1972, at 56, col. 1; Lardner, "It Isn't Too Late to Stop Crisis," at 12, col. 1. Some editing and changes, "Mr. Nixon Breaks Law of Blockade," Washington Post, May 14, 1972, at A 8, col. 1.

3

Brennan, "It Isn't the Time Middle Ground," N.Y. Times, May 11, 1972, at 19, col. 2. [Parenthetical cited as Brennan].

4

Chayes, "Nixon Sends Ultimatum of Blockade," Washington Post, May 14, 1972, at A 1, col. 1. [Parenthetical cited as Chayes].

5

Id.

6

The text of the President's speech, [illegible] Nixon President stated that "[illegible] [illegible] presently in North Vietnam [illegible] mining and blockade [illegible] believe is [illegible]. After that time, the mines will become active and any ships attempting to leave or enter these ports will do so at their own risk."

7

Jones, "A Professor on the Law of Blockade," Washington Post, May 21, 1972.

8

R. Falkenstein and F. Tatlow, [illegible] World Public Order 38 (1971) [hereinafter cited as Falkenstein and Tatlow].

[9] Id. at 51.

[10] Captain Powers later attained the rank of Rear Admiral in 1961 while serving as the Deputy and Assistant Judge Advocate General of the Navy

[11] Powers, "Blockade: For Winning Without Killing," 84 Nav. Inst. Proc. 61 (1958).

[12] Id.

[13] Id.

[14] Id.

[15] L. Oppenheim - H. Lauterpacht, 2 International Law 768 (7th ed. 1952). [hereinafter cited as Oppenheim- Lauterpacht].

[16] Id.

[17] Id. at 769.

[18] Id.

[19] Id. at 796.

[20] C. Colombos, International Law of the Sea 587 (3d ed. 1954) [hereinafter cited as Colombos].

[21] Id.

[22] Oppenheim - Lauterpacht, supra note 15, at 779.

9

Id. at 31.

10

Cabanis, supra note [illegible] (the lack of [illegible] is-[illegible] is [illegible] within [illegible] [illegible] Judge Alexander [illegible] of the [illegible]).

11

Cowen, [illegible] for [illegible] [illegible] [illegible] 34 Ind. Univ. Proc. 31 (1959).

12

Id.

13

Id.

14

Id.

15

A. [illegible] - A. [illegible], [illegible] [illegible] [illegible] (2d ed. [illegible]) [illegible] [illegible] [illegible] [illegible] [illegible]).

16

Id.

17

Id. at [illegible].

18

Id.

19

Id. at [illegible].

20

C. [illegible], [illegible] [illegible] [illegible] [illegible] (2d ed. [illegible]) [illegible] [illegible] [illegible] [illegible]).

21

Id.

22

[illegible] - [illegible] [illegible] [illegible] [illegible] [illegible]

23
Id.

24
Id.

25
Id.

26
See Colombos, supra note 20, at 594.

27
McDougal and Feliciano, supra note 8, at 493.

28
Id.

29
Id. at 492.

30
McDougal and Feliciano, supra note 8, at 480.

31
Id. at 481.

32
Id.

33
Id. at 482.

34
Id.

35
McDougal and Feliciano, supra note 8, at 516.

36
Id.

37
Id. at 517.

38
Id.

[illegible]

[illegible]

[illegible]

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[illegible] Collaborative, [illegible] [illegible] [illegible] [illegible]

[illegible] Editorial and Publication, [illegible] [illegible] [illegible] [illegible]

[illegible]

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[illegible] Editorial and Publication, [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

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[illegible] [illegible] [illegible]

[illegible]

[illegible] Editorial and Publication, [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] [illegible]

[illegible]

39
Hogan, Pacific Blockade (1908); 2 Hyde International Law 1607 (2nd ed. 1945); 2 Oppenheim - Lauterpacht, International Law 144 (7th ed. 1945).

40
U.S. Naval War College, International Law Situations 94 (1932).

41
2 Hyde, International Law 1667-68 (2nd ed. 1945).

42
International Law Situations 1932, supra note 40, at 94.

43
G. von Glahn, Law Among Nations 505 (1965). [hereinafter cited as von Glahn].

44
Id.

45
Id.

46
McDougal and Feliciano, supra note 8, at 477.

47
von Glahn, supra note 43, at 504.

48
Id.

49
Id. at 505.

50
Id.

51
Id.

52
47 Dept. State Bull. 715.

53
Id.

54
Id.

55
The proclamation included surface to surface missiles, bomber aircraft, and assorted armament and supporting equipment.

56
Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1963), 47 Dept. State. Bull. 717 (1962).

57
Id.

58
"Actions of the Military Services in the Cuban Crisis Outlined," U.S. Dep't of Defense News Release No. 1942-62, Nov. 29, 1962, pp. 1-7.

59
Id.

60
Id.

61
Id.

62
Id.

63
The October 22, 1962 statement of Secretary of Defense Robert S. McNamara contained in 9 U.N. Review 6-17, 77-84 (Nov. 1962).

64
Excerpts from Notice to Mariners, No. 47; Dep't. of the Navy Oceanographic Office, Wash., D.C. 2547-8.

65
N.Y. Times, Oct. 25, 1962; See also Special Warning No. 32 (6208), note 66 above.

53
Id.

54
Id.

55
The proclamation included surface to surface missiles, bomber aircraft, and armored armament and supporting equipment.

56
Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1962), 47 Comp. Stats. Suppl. 711 (1962).

57
Id.

58
"Actions of the military services in the Cuban Crisis Continued," U.S. Dep't of Defense Press Release No. 1942-62, Nov. 29, 1962, pp. 1-7.

59
Id.

60
Id.

61
Id.

62
Id.

63
The October 22, 1962 statement of Secretary of Defense Robert S. McNamara contained in 7 U.S. Serial 6-17, 77-94 (Nov. 1962).

64
Excerpts from Section 10 Hearings, No. 47, Dep't. of the Navy Communications Office, Wash., D.C. 1961-62.

65
N.Y. Times, Oct. 21, 1962; the also Special Service No. 32 (0706), note 56 above.

66
N.Y. Times, October 26, 1962; Para. No. 5982, Notice to Mariners No. 45, 1962.

67
United States Navy, Law of Naval Warfare, NWIP 10-2 (1955).

68
Id. (Sec. 502 b.3).

69
Id. (Sec. 502 b.6-7).

70
47 Dept. State Bull. 740

71
Id.

72
Dept. of Defense News Release No. 1835-62, Nov. 12, 1962.

73
Id.

74
N.Y. Times, Nov. 21, 1962, at 10, col. 1; Pres. Proc. No. 3507, 27 Fed. Reg. 11525 (1962).

75
Coletta, "Naval Mine Warfare," 85 Nav. Inst. Proc. 82 (1959). [Hereinafter cited as Coletta].

76
Lott, "Japan's Nightmare - Mine Blockade," 85 Nav. Inst. Proc. 39 (1959). [hereinafter cited as Lott]

77
Coletta, supra note 75, at 82.

78
Cagle and Manson, "Wonsan: The Battle of the Mines," 83 Nav. Inst. Proc. 598 (1957). [hereinafter cited as Cagle and Manson].

79
Coletta, supra note 75, at 82.

80
Cagle and Manson, supra note 78, at 599.

81
Id.

82
"How Underwater Mines Work," TIME, May 22, 1972, at 14, col. 1.

83
Coletta, supra note 75, at 84.

84
Cagle and Manson, supra note 78, at 599.

85
Cagle and Manson, supranote 78, at 600.

86
Id.

87
Coletta, supra note 75, at 84.

88
Cagle and Manson, supranote 78 at 600.

89
LCDR Arnold S. Lott, USN served on Commander Seventh Fleets Staff during World War II and later as special writing assistant for the Chief of Naval Information. He is the author of the book Most DangerousSea which is a portrayal of the history of mine warfare in World War II.

90
Lott, supra note 76, at 85.

91
Id. at 49.

92
Id. at 39.

[78] Colletta, supra note 71, at 81.

[79] Cagle and Hanson, supra note 14, at 100.

[80] Id.

[81] "Now Underwater Glass Work," time, May 22, 1972, at 14, col. 1.

[82] Colette, supra note 71, at 84.

[83] Cagle and Hanson, supra note 71, at 101.

[84] Cagle and Hanson, supra note 14, at 100.

[85] Id.

[86] Colletta, supra note 71, at 84.

[87] Cagle and Hanson, supra note 14 at 100.

[88] Lynn Arnold I. Lore, who served on Commander Edwards' flight crew during World War II and later as special writing consultant for the Global of Naval Information. He is the author of the book Pearl Harbor Conspiracy which is a portrayal of the history of film activity in World War II.

[89] Lore, supra note 16, at 82.

[90] Id. at 19.

[91] Id. at 32.

93
Id. at 40.

94
Id. at 41.

95
Id. at 45.

96
Id. at 41

97
Id. at 46.

98
Id. at 49

99
Id.

100
Id.

101
Id. at 50.

102
Id.

103
Id.

104
Id.

105
Id.

106
Id. at 47.

107
McDougal and Feliciano, *supra* note 8, at 492.

108
Cagle and Manson, *supra* note 78, at 599.

109
Id. at 602-3.

110
The Second Hague Peace Conference (VIII) Relative to the Laying of Automatic Submarine Contact Mines (36 Stat 2332; Treaty Series 541, signed 18 October 1907.

111
Hague Convention VIII (1907), Article 1(1).

112
Id. at 601.

113
Cagle and Manson, supra note 78, at 609.

114
The widespread use by U.S. forces of floating mines which had not, pursuant to Article 1 (1) of the 1907 Hague Convention rendered themselves harmless after "one hour at most after they have escaped from the control of the person who laid them", appears to have been largely ignored during World War II in case of aerial mining conducted against Japanese controlled rivers. (See notes 20 and 21 supra). Such a "customary" practice of nations not engaging in "floating mine warfare" in a zone occupied exclusively by belligerents is not therefore clearly supported by the established practice among nations.

115
Id.

116
Id.at 610.

117
Id. at 608.

118
Id. at 610.

119
See W. Mallison, Studies in the Law of Naval Warfare, 53 International Law Studies 1966, U.S. Naval War College 126 (1968) [hereinafter cited as "Studies in the Law of Naval Warfare] where the author notes that

the traditional immunity afforded coastal fishing boats in time of war was not allowed North Korean coastal and and deep sea fishing boats because sea food was thought to be such a vital staple in the Communist diet that its denial would have had a strategic effect on North Korean imports. Likewise, the utilization of North Korean fishing vessels for mine warfare activities completely intergrated these craft into the North Korean military force structure so as to destroy any exemption under the U.S. Supreme Court holding of The Paquete Habana , 175 U.S. 677 (1900) and the provisions of Article 3 of the Hague Convention XI (1907).

120 Cagle and Manson, supra note 78, at 610.

121 Id. at 611.

122 Text of Presidential News Conference, supra note 1, at 747.

123 Id.

124 Id. at 748.

125 Id.

126 Id.

127 Id. at 749.

128 Id.

129 Id.

130 For the text if Ambassador Bush's letter of May 8, 1972, see Dept. State Bull., May 29, 1972, vol. LXVI, No. 1718, at 750; Washington Post, May 9, 1972, at A 15, col. 1.

131
See Smith, "Legal Basis Cited for Nixon Action," N.Y. Times, May 9, 1972, at 18, col. 4.

132
Article 51 of the United Nations Charter provides in pertinent part that "Nothing in the present charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right shall be immediately reported to the Security Council . . .."

133
For the Text of Dr. Henry Kissingers news conference of May 9, 1972, See Dept. State Bull., May 29, 1972, vol. LXVI, No. 1718, at 752.

134
Id. at 753.

135
Id. at 754

136
Id.

137
Id. at 755.

138
Appearance on the "Today" Show, NBC-TV, May 9, 1972, at 8:15 A.M.

139
For text of Secretary of Defense Melvin Laird's news conference of May 10, 1972, See Dept. State Bull., May 29, 1972, Vol LXVI, No. 1718, at 761.

140
Id. at 764.

141
Id. at 770.

131

See Lesley, "Legal Basis Cited for Close Watch," N.Y. Times, May 7, 1972, at 14, col. 4.

132

Article II of the United Nations Charter provides in pertinent part that "Nothing in the present chapter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right shall be immediately reported to the Security Council . . . ."

133

For the text of St. Louis Post-Dispatch news conference of May 9, 1972, see Cong. Rec. S8456 (daily ed., May 23, 1972), vol. 118, No. 172, at 192.

134

Id. at 752.

135

Id. at 754

136

Id.

137

Id. at 753.

138

Appearance on the "Today" show, NBC-TV, May 9, 1972, at 8:15 A.M.

139

For text of Secretary of Defense Melvin Laird's news conference of May 10, 1972, see Dept. State Bull., May 29, 1972, vol. LXVI, No. 1718, at 742.

140

Id. at 744.

141

Id. at 770.

142
Id. at 768

143
Welles, "U.S. Intelligence Was Surprised by Enemy's Drive," N.Y. Times, May 11, 1972, at 1, col. 7.

144
Id. at 19

145
Id. at 19.

146
Whitney, "Thieu Orders Martial Law," N.Y. Times, May 11, 1972, at 1, col. 6.

147
Text of Presidential News Conference, supra note 1, at 749.

148
Note 146 supra.

149
Text of Presidential News Conference, supra note 1, at 750.

150
N.Y. Times, May 14, 1972, at 28, col. 4.

151
Frankel, "Nixon's Gamble: Counting on Moscow to Avoid the Brink," N.Y. Times, May 14, 1972 (The Week in Review) Sec. 4, at 1, col. 1.

152
Smith, "Soviet Mining Fosters Cooperation with China to Aid Hanoi," N.Y. Times, May 18, 1972, at 10, col. 1.

153
Id.

154
Washington Post, May 24, 1972, at 1, col. 6.

142

Id., at 750.

143

Wallace, "U.S. Intelligence Was Surprised by Hussein's Drive," N.Y. Times, May 11, 1972, at 1, col. 1.

144

Id. at 15

145

Id. at 12.

146

Mulcahy, "Than Cooper Martial Law," N.Y. Times, May 11, 1972, at 1, col. 8.

147

Text of Presidential Bank Confirmation, supra note 1, at 742.

148

Note 144 supra.

149

Text of Presidential Bank Confirmation, supra note 1, at 750.

150

N.Y. Times, May 24, 1972, at 32, col. 4.

151

Franks, "Nixon's Cheats: Counting on Hussein to Avoid the Crisis," N.Y. Times, May 14, 1972 (Sec. Review) Sec. 4, at 1, col. 1.

152

Kotz, "Security Mining Projects Convention Will Unite to Aid Guest," N.Y. Times, May 12, 1972, at 12, col. 1.

153

Id.

154

Washington Post, May 24, 1972, at 1, col. 4.

155
Id.

156
Id.

157
Washington Post, June 19, 1972, at A8, col. 1.

158
Id.

159
On May 15, 1972, Secretary of State William P. Rogers expressed confidence when he appeared before the Senate Appropriations Subcommittee that "none of the dire predictions about the catastrophic consequenses of the President's decision has come to pass. He said the mining of North Vietnam's harbors might likely be the turning point in the war."

160
Karnow, "President's Move Long Urged By Military, Fought By Others," Washington Post, May 9, 1972, at A15, col. 3.

161

162
Id.

163
Id.

164
Id.

165
Note 160 *supra*.

166
Id.

167
Id.

168
Id.

169
Id.

170
Id.

171
Id.

172
Evening Star, May 9, 1972, at 1, col. 7.

173
Id.

174
Evening Star, May 9, 1972, at 1, col. 6.

175
N.Y. Times, May 11, 1972, at 19, col. 8.

176
Id.

177
Washington Post, May 26, 1972, at 1, col.8.

178
Id.

179
Washington Post, May 30, 1972, at 1, col. 5.

180
Id.

181
Washington Post, June 10, 1972, at 1, col. 1.

182
Note 179 *supra*.

164
16.

165
16.

170
16.

171
16.

172
Traveling star, Dec 3, 1972, at 1, col. 7.

173
20.

174
Traveling Star, Dec 9, 1972, at 1, col. 8.

175
W.T. Times, May 12, 1973, at 10, col. 1.

176
20.

177
Washington Post, Nov 22, 1972, at 1, col.2.

178
16.

179
Washington Post, May 30, 1973, at 1, col. 3.

180
16.

181
Washington Post, June 17, 1972, at 1, col. 2.

182
Dole 172 supra.

183
Id.

184
Washington Post, May 16, 1972, at A14, col. 8. N.Y. Times, May 24, 1972, at 1, col. 1.

185
Id.

186
The Washington Evening Star reported that the other ports on the U.S. target list included, Hon gai, Cam pha, Quang Khe, Dong Hoi, Vinh and Than Hoa. The Evening Star, May 9, 1972, at A6, col. 5. (See Appendix A).

187
Id. at 1, col. 4.

188
Note 139 supra at 765.

189
Note 186 supra.

190
Id.

191
N.Y. Times, May 9, 1972, at 1, col. 7.

192
Washington Post, May 9, 1972, at 1, col. 4.

193
Note 191 supra.

194
N.Y. Times, May 14, 1972, at 1, col. 7.

195
The Evening Star, May 15, 1972, at 1, col. 8.

196
Id.

183

Id.

184

Washington Post, May 16, 1972, at A14, col. 3-
N.Y. Times, May 24, 1972, at 1, col. 1.

185

Id.

186

The Washington Evening Star reported that the other parts on the U.S. Patrol Ship involved, Pon Qui, Can Qua, Quang Ngai, Song Gai, Vinh and Tien Sao. The Evening Star, May 3, 1972, at A8, col. 3. (See Appendix A).

187

Id. at 1, col. 4.

188

Note 137 supra at 765.

189

Note 186 supra.

190

Id.

191

N.Y. Times, May 9, 1972, at 1, col. 7.

192

Washington Post, May 3, 1972, at 1, col. 4.

193

Note 191 supra.

194

N.Y. Times, May 14, 1972, at 1, col. 7.

195

The Evening Star, May 15, 1972, at 1, col. 8.

196

Id.

197
Id.

198
Note 191 supra

199
N.Y. Times, May 9, 1972, at 18, col. 1.

200
Id.

201
Id.

202
Note 139 supra at 764.

203
Navy Times, July 19, 1972, at 36, col. 1.

204
Washington Post, June 4, 1972, at A10, col 1.

205
The Evening Star, May 12, 1972, at A6, col. 7.

206
N.Y. Times, May 12, 1972, at 1, col. 5. According to Pentagon sources, of the 31 vessels which were "trapped" at Haiphong, 12 were of Soviet registry; five are Chinese; three are British, under Hong Kong registry; two were Cuban; three Polish; one East German and five flew the Somali flag. Washington Post, May 12, 1972, at 1, col. 7.

207
Id.

208
N.Y. Times, June 10, 1972, at 10, col. 4.

209
Washington Post, May 14, 1972, at 1, col. 8.

210
N.Y. Times, May 18, 1972, at 1, col. 6.

211
Id.

212
The Sunday Times (London), June 11, 1972, at 1, col. 1.

213
Washington Post, May 14, 1972, at A 11, col. 7.

214
N.Y. Times, June 9, 1972, at 10, col. 4.

215
Washington Post. June 21, 1972, at 1, col. 4.

216
Id.

217
Id.

218
Id.

219
Id.

220
Id.

221
Id.

222
Washington Post, July 13, 1972, at A8, col. 1; Similarly, The Navy Times, July 19, 1972, at 15, col. 1, published 7th Fleet "sitreps" for the period of 19 June to 26 June in which aircraft of the USS Coral Sea were reported to have sunk 13 barges on the 23rd of June while the USS Midway reported sinking 7 supply boats during the same period.

223
The Wall Street Journal, June 22, 1972, at 1, col. 3.

211

12.

212

The Sunday Times (London), June 13, 1977, at 1, col. 1.

213

Washington Post, May 14, 1978, at A 11, col. 3.

214

U.P., Times, June 8, 1977, at 10, col. 4.

215

Washington Post, June 22, 1977, at 1, col. 6.

216

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222

Washington Post, July 17, 1977, at A8, col. 1; Reality, The Navy Times, July 18, 1977, at 12, col. 2; Publishing The Times "Alternate" for the period of 24 June to 26 June in which attempts at the two Coral Sea were repeated in Bora Bora, 27 June, on the 28th of June while the USS Midway engagements (starting 7 August during the Guam raids).

223

The Wall Street Journal, June 27, 1977, at 1, col. 7.

224
Washington Post, July 17, 1972, at A18, col. 6, initially reported that a U.S. laid mine had apparently "broken loose" from its moorings and struck the Warrington. A month later, however, the Navy Times reported that Navy officials were "virtually certain" that North Vietnam or its allies had planted the mine which damaged the Warrington since the mines which were dropped by U.S. A-6 aircraft were the type that remain in a fixed position. Navy Times, August 16, 1972, at 38, col. 1.

225
Id.

226
The Times (London), May 15, 1972, at 6, col. 6.

227
Id.

228
N.Y. Times, June 25, 1972, at 3, col. 5; Washington Post, August 14, 1972, at A 10, col. 1.

229
Washington Post, June 25, 1972, at A4, col. 1.

230
Washington Post, May 9, 1972, at 1, col. 5.

231
Id.

232
N.Y. Times, May 9, 1972, at 1, col. 5.

233
Id.

234
The Evening Star, May 9, 1972, at 1, col. 6.

235
Id.

224

Washington Post, July 17, 1972, at A16, col. 6.

Initially reported that a U.S. laid mine had accidentally "broken loose" from its moorings and struck the Warrington. A month later, however, the Navy Times reported that Navy officials were "virtually certain" that North Vietnam or its allies had planted the mine which damaged the Warrington since the mines which were dropped by U.S. A-6 aircraft were the type that remain in a fixed position. Navy Times, August 16, 1972, at 39, col. 1.

225

Id.

226

The Times (London), May 15, 1972, at 6, col. 6.

227

Id.

228

N.Y. Times, June 25, 1972, at 3, col. 5; Washington Post, August 14, 1972, at A 10, col. 1.

229

Washington Post, June 25, 1972, at A4, col. 1.

230

Washington Post, May 9, 1972, at 1, col. 5.

231

Id.

232

N.Y. Times, May 9, 1972, at 1, col. 6.

233

Id.

234

The Evening Star, May 9, 1972, at 1, col. 6.

235

Id.

236
Washington Post, May 12, 1972, at 1, col. 6.

237
Evening Star, May 9, 1972, at 1, col. 5.

238
N.Y. Times, May 14, 1972 (The Week In Review), Sec. 4, at 1, col. 3.

239
Id. According to Mr. Ziegler, about 20,000 telegrams had been received at the time of the announcement with a backlog of 17,000 more still waiting to be delivered by Western Union. Washington Post, May 11, 1972, at A 18, col. 1.

240
Id.

241
Id.

242
Washington Post, May 12, 1972, at 1, col. 7 reported that "the mines dropped by U.S. warplanes into the Port of Haiphong and six other North Vietnamese harbors were activated on schedule at 7 a.m. EDT, Thursday, May 11, 1972.

243
The Evening Star, May 9, 1972, at 1, col. 7.

244
Id.

245
Id.

246
Id.

247
Navy Times, August 2, 1972, at 21, col. 5.

239
Washington Post, May 12, 1972, sec 1, col. 6.

240
Evening Star, May 9, 1972, sec 1, col. 7.

241
N.Y. Times, May 14, 1972 (the book is reviewed), sec. 7, sec 1, col. 1.

242
16. According to Mr. Sigular, about 20,000 telegrams had been received at the time of the announcement with a total of 17,000 more still waiting to be delivered by Western Union. Washington Post, May 11, 1972, sec 2 10, col. 1.

243
<u>Id.</u>

244
<u>Id.</u>

245
Washington Post, May 12, 1972, sec 1, col. 7 reported that "the views dropped by U.S. warplanes into the Port of Haiphong and six other north Vietnamese harbors were activated on schedule at 7 a.m. EDT, Thursday, May 11, 1972.

246
The Evening Star, May 9, 1972, sec 1, col. 7.

247
<u>Id.</u>

248
<u>Id.</u>

249
<u>Id.</u>

250
Navy Times, August 2, 1972, sec 21, col. 5.

248

For the text of the Soviet statement see the translated version contained in the New York Times, May 12, 1972, at 18, col. 1.

249

N.Y. Times, May 12, 1972, at 18, col. 6.

250

Id.

251

Id.

252

Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1962) , 47 Dept. State Bull. 717 (1962) and notes 47 and 55 supra. It is interesting to note that while Ambassador Bush's letter of May 8, 1972 to the President of the U.N. Security Council specifically referred to the U.S. mining interdiction measures as " [t]hese measures of collective self-defense," the President, on the other hand, seemed to instead rely on the seriousness of the Communist offensive which "gravely threatens the lives of 60,000 American troops who are still in Viet-nam."

253

McDougal and Feliciano, supra note 8, at 217.

254

Id. at 231.

255

1 Oppenheim - Lauterpacht, International Law 300-01 (8th ed. 1955); 1 Hyde, International Law 239-40, 821-22 (2nd ed. 1945).

256

W. Mallison, "Limited Naval Blockade or Quarantine - Interdiction: National and Collective Defense Claims Valid Under International Law," 31 Geo. Wash. L. Rev. 355 (1962) [hereinafter cited as Mallison].

257

McDougal and Feliciano, supra note 8, at 242.

[illegible]

For the text of the Soviet statement see the translated version appearing in the New York Times, May 12, 1972, at 12, col. 1.

[illegible]

N.Y. Times, May 11, 1972, at 14, col. 6.

[illegible]

Id.

[illegible]

Id.

[illegible]

Presidential Proclamation No. 3904, 37 Fed. Reg. 10601 (1972), 87 Stat. State Bull. 717 (1972) and notes 47 and 55 supra. It is interesting to note that while announcing Cuba's letter of May 8, 1972 to the President of the U.N. Security Council specifically referred to the U.S. mining interdiction measures as " [illegible] measures of collective self-defense," the President, on the other hand, appeared to instead rely on the seriousness of the Communist situation which "narrowly threatens the lives of 60,000 American citizens who are still in Vietnam."

[illegible]

Hohfeld and Feliciano, supra note 8, at 727.

[illegible]

Id. at 731.

[illegible]

1 Oppenheim - Lauterpacht, International Law 300-01 (8th ed. 1955); 1 Wyne, International Law 729-40, 821-22 (2nd ed. 1945).

[illegible]

M. Halliman, "Limited Naval Blockade or Quarantine - Interdiction, National and Collective Defense Under Modern International Law," 11 Geo. Wash. L. Rev. 335 (1942) (hereinafter cited as Halliman).

[illegible]

Hohfeld and Feliciano, supra note 8, at 747.

258
Mallison, supra note 256, at 392.

259
Text of Presidential News Conference, supra note 1, at 748.

260
Text of Soviet statement on mining in Vietnam is contained in The New York Times, May 14, 1972, at 18, cols. 1 and 6 respectively.

261
Id.

262
N. Alford, U.S. Naval War College, International Law Studies 272 (1963) [herinafter cited as Alford].

263
Note 139 supra at 764.

264
Article 16 3., Convention on the Territorial Sea and the Contiguous Zone, U.N. Doc. A/CONF. 13/L.52.

265
Vietnam Decree on Sea Surveillance Communique of the Ministry of Foreign Affairs, April 27, 1965, 4 International Legal Materials 461 (1965).

266
Note 7 supra.

267
Note 1 supra, at 749.

268
Kunz, "Sanctions in International Law," 54 Am. J. Intl. L. 324 (1960).

269
Studies in the Law of Naval Warfare, supra note 119, at 95.

270
Presidential Proclamation No. 3504, 27 Fed. Reg. 10401 (1962), 47 Dept. State Bull. 717 (1962).

[illegible]

[illegible]

[illegible] of Presidential Some Conference, supra note [illegible], at [illegible].

[illegible]

Text of Soviet statement on visits to Vietnam is contained in the New York Times, May 14, 1972, at 12, cols. 1 and 6 respectively.

[illegible]

[illegible].

[illegible]

M. Alford, U.S. Naval War College, International Law [illegible] 277 (1973) (hereinafter cited as Alford).

[illegible]

Note 139 supra at 764.

[illegible]

Article 18 3, Convention on the Territorial Sea and the Contiguous Zone, U.N. Doc. A/CONF. 13/L.52.

[illegible]

Vietnam Decree on the Surveillance Commission of the Ministry of Foreign Affairs, April 27, 1973, 4 International Legal Materials 417 (1965).

[illegible]

Note 7 supra.

[illegible]

Note 1 supra, at 129.

[illegible]

Young, "Sanctions in International Law," 54 Am. J. Intl. L. 124 (1960).

[illegible]

Sweden in the Law of Naval Warfare, supra note 119, at 93.

[illegible]

Presidential Proclamation No. 3504, 27 Fed. Reg. 10601 (1962), 47 Dept. State Bull. 717 (1967).

271
Note 138 supra.

272
See notes 3 and 4 supra.

273
Cagle and Manson, The Sea War in Korea 281 (1957)

274
47 Dept. State Bull. 740.

275
Id.

276
Dept. of Defense News Release No. 1835-62, Nov. 12, 1962.

277
Id.

278
See note 105 supra.

279
McDougal and Feliciano, supra note 8, at 490.

280
Oppenheim- Lauterpacht, supra note 15, at 779.

281
See "Rights and Duties of Neutral Powers in Naval Aerial War," 33 Am. J. Intl. L. Supp. 711 (1939).

282
H. Lauterpacht, supra note 15, at 792.

283
McDougal and Feliciano, supra note 8, at 491.

284
Id. at 492.

285
Lauterpacht, supra note 15, at 776.

271
Note 129 supra.

272
See notes 7 and 4 supra.

273
Davis and Warren, The Sea War in Korea 281 (1957)

274
47 Dept. State Bull. 140.

275
Id.

276
Dept. of Defense Press Release No. 1252-62, Nov. 12, 1962.

277
Id.

278
See note 185 supra.

279
Robson, and Politano, supra note 8, at 450.

280
Quandahl- Lauterwasser, supra note 12, at 278.

281
See "Rights and Duties of Neutral Powers in Naval Battle Zone," 37 Ac. J. Intl. L. Supp. 223 (1939).

282
R. Lauterpacht, supra note 15, at 283.

283
Robson and Politano, supra note 8, at 451.

284
Id. at 452.

285
Lauterpacht, supra note 15, at 282.

286
Id.

287
Studies in the Law of Naval Warfare, supra note 119, at 57.

288
Id.

289
See notes 20 and 21 supra.

290
New York Times, October 25, 1962; Para. No. 5982, Notice to Mariners No. 45, 1962.

291
In his May 8th address , President Nixon told his audience that "these actions are not directed against any other nations. Countries with ships presently in North Vietnamese ports have already been notified that their ships have three daylight periods [in which] to leave in safety." Text of Presidential News Conference, supra note 1, at 749.

292
The Times(London), May 15, 1972, at 1, col. 1. contained an article captioned "Washington Reports of Mine Deals" wherein a statement attributed to Senator Hugh Scott, the Republican Minority Leader, referred to the "hopeful" possibility that the Soviet reaction to the mining of North Vietnamese ports had been worked out privately in advance.

293
See Appendix B.

294
See note 203 supra.

295
L. Martin, The Sea in Modern Strategy 160 (1968) [hereinafter cited as Martin].

286

Id.

287

Quoted in the Law of Naval Warfare, supra note 119, at 37.

288

Id.

289

See notes 20 and 21 supra.

290

New York Times, October 25, 1972; Pres. No. 5287, Notice to Mariners No. 45, 1972.

291

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292

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293

See Appendix B.

294

See note 203 supra.

295

I. Martin, The Sea in Modern Strategy 160 (1968) [hereinafter cited as Martin].

296
Id.

297
See note 58 supra.

298
Id.

299
Text of Presidential address, note 1 supra, at 749.

300
Martin, supra note 295, at 157.

301
Moore, note 7 supra.

302
McDougal and Feliciano, supra note 8, at 493.

303
Id. at 494.

304
See McDougal and Feliciano, supra note 8, at 495n.271. The obsolete character of Art. 2 of Hague Convention VIII, 1907,(text of the Hague Conventions and the Declarations of 1899 and 1907 are contained in (2nd ed., Scott, 1915) prohibiting the laying of automatic contact mines off enemy coasts and ports for "the sole object of intercepting commercial shipping" is commonly conceded.

305
Id.

306
Text of Presidential address, note 1 supra, at 749.

307
Id. at 747.

308
See note 172 supra.

295

Id.

297

See note 55 *supra*.

298

Id.

299

Text of Presidential address, note 1 *supra*, at 749.

300

Martin, *supra* note 295, at 327.

301

Moore, note 7 *supra*.

302

McDougal and Feliciano, *supra* note 8, at 832.

303

Id. at 494.

304

See McDougal and Feliciano, *supra* note 8, at 495n.271. The obsolete character of Art. 3 of Hague Convention VIII, 1907 (text of the Hague Conventions and the Declarations of 1899 and 1907 are contained in (2nd ed., Scott, 1913) prohibiting the laying of auto-matic contact mines off enemy coasts and ports for "the sole object of interception commercial shipping" is commonly conceded.

305

Id.

306

Text of Presidential address, note 1 *supra*, at 749.

307

Id. at 747.

308

See note 177 *supra*.

309
von Glahn, supra note 43, at 510.

310
See note 224 supra.

311
The Paquete Habana, 175 U.S. 677 (1900).

312
175 U.S. 677,708 (1900).

313
N.Y. Times, May 14, 1972, at 28, col. 5.

314
Id.

315
Sorensen, supra note 3.

316
Chayes, supra note 4.

317
Washington Post, May 23, 1972, at 1, col. 3.

318
N.Y. Times, May 24, 1972, at 1, col. 1.

319
Id.

320
Washington Post, June 26, 1972, at 1, col. 4.

321
Washington Post, July 23, 1972, at A31, col. 3.

322
N.Y. Times, July 29, 1972, at 1, col. 5.

323
Washington Post, July 24, 1972, at A 10, col. 2.

324
Washington Post, June 29, 1972, at A 17, col. 1.

309

Von Glahn, Supra note 43, at 310.

310

See note 224 supra.

311

The Pocono Sabena, 175 U.S. 677 (1900).

312

175 U.S. 677,705 (1900).

313

N.Y. Times, May 17, 1972, at 28, col. 3.

314

Id.

315

Sorensen, Supra note 2.

316

Cheyne, Supra note 4.

317

Washington Post, May 24, 1972, at 1, col. 2.

318

N.Y. Times, May 24, 1972, at 1, col. 4.

319

Id.

320

Washington Post, June 16, 1972, at 1, col. 4.

321

Washington Post, July 28, 1972, at A14, col. 1.

322

N.Y. Times, July 30, 1972, at 1, col. 5.

323

Washington Post, July 24, 1972, at A 10, col. 2.

324

Washington Post, June 27, 1972, at A 17, col. 2.

325
Id.

326
N.Y. Times, June 28, 1972, at 1, col. 5.

327
Washington Post, July 13, 1972, at A 33, col. 1.

328
Lott, *supra* note 76, at 47.

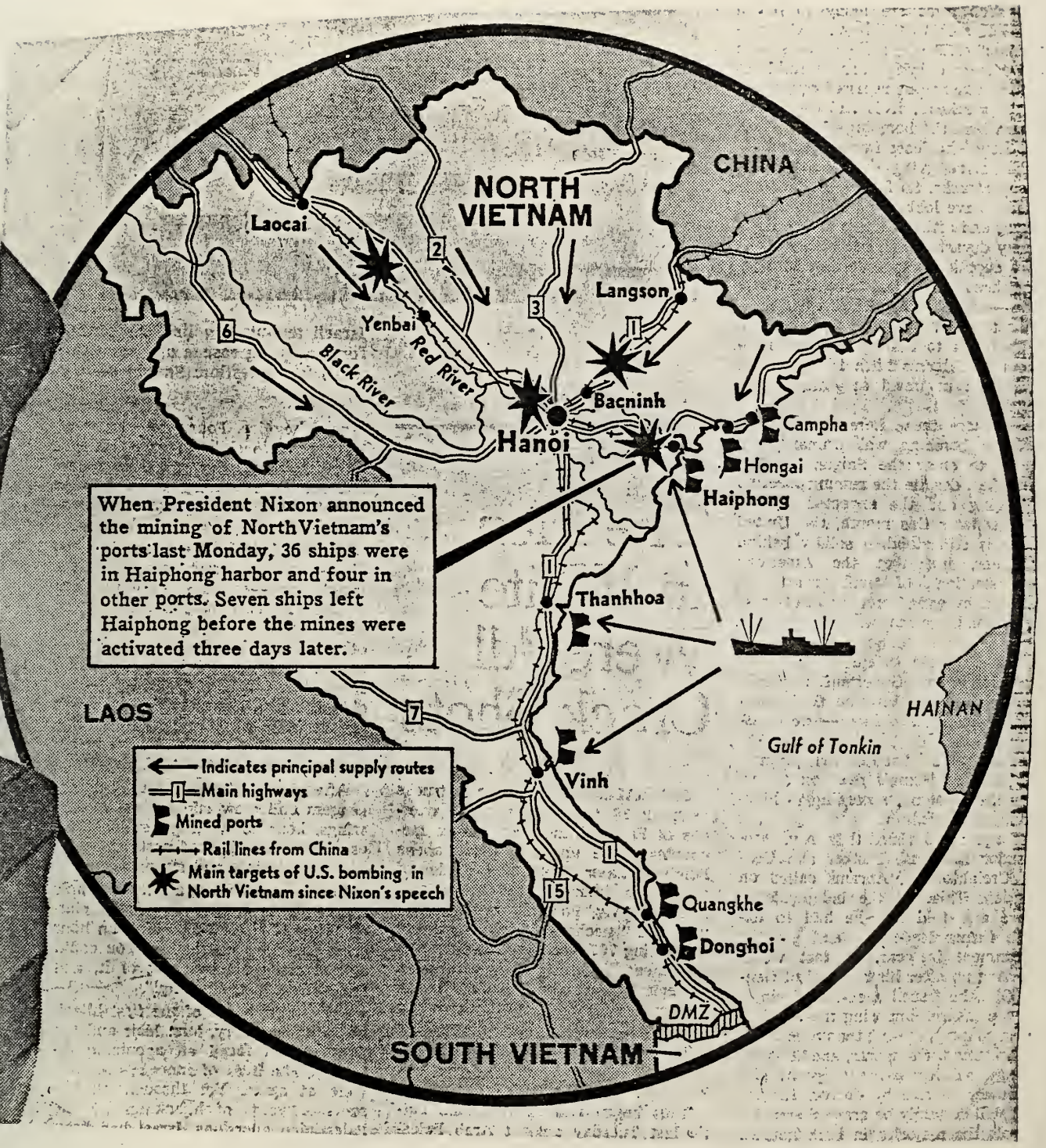
[125] Ibid.

[126] N.Y. Times, June 20, 1972, sec 1, col. 7.

[127] Washington Post, July 11, 1972, sec A 25, col. 1.

[128] Ibid. Supra note 76, at 47.

Pictorial Map of Mined North Vietnamese Ports
The New York Times (Week in Review),
May 14, 1972, Section 4, at 1, col. 1.



When President Nixon announced the mining of North Vietnam's ports last Monday, 36 ships were in Haiphong harbor and four in other ports. Seven ships left Haiphong before the mines were activated three days later.

APPENDIX A

U.S. Navy, Unclassified Message providing
Special Warning No. 42 to all Mariners.
Date-time-group 09090147Z (9 May 1972).

U.S. Navy, Unclassified Message providing
Special Warning No. 42 to all Mariners.
Date-time-group 090301417Z (9 May 1972).

NAVAL MESSAGE NAVY DEPARTMENT

IMMEDIATE
U 0903017 MAY 72
FM JCS

INFO CSA
ANMCC

CNO

C2

U 0901477 MAY 72
FM NAVAL OCEANOGRAPHIC OFFICE WASHDC

TO ALL SHIPS AND AFLOAT COMMANDS COPYING THE FLEET AND COMPOSITE BCST

INFO AIG NINE TWO EIGHT ZERO
OSD
MARITIME ADMIN
COMIDEASTFOR
COMSC
COMSCFE

STATE DEPT
JCS
USCG
OCEANAV
COMNAVINTCOM

UNCLAS //N02112//

SPECIAL WARNING NO 42:

1. ALL MARINERS ARE ADVISED THAT THE UNITED STATES HAS ANNOUNCED THAT, IN FULL COORDINATION WITH THE REPUBLIC OF VIETNAM, THE INTERNAL AND CLAIMED TERRITORIAL WATERS OF THE DEMOCRATIC REPUBLIC OF VIETNAM IN AND AROUND THE ENTRANCES TO THE PORTS OF HAIPHONG, HON GAI, CAM PHA, VINH, QUANG KHE, DONG HOI, AND THANH HOA, ARE BEING MINED BY THE UNITED STATES AS A PART OF THE COLLECTIVE DEFENSE EFFORTS IN RESPONSE TO THE NEW ARMED ATTACKS BY THE DEMOCRATIC REPUBLIC OF VIETNAM AGAINST THE REPUBLIC OF VIETNAM AND THE UNITED STATES FORCES REMAINING IN THAT COUNTRY. THE MINE FIELDS WILL BE ACTIVATED AT 1100Z, 11 MAY 1972. VESSELS TRANSITING THESE WATERS AFTER THAT DATE MUST DO SO AT THEIR OWN RISK.

2. ADDITIONALLY, ALL VESSELS ARE ADVISED THAT THE NAVAL AND AIR FORCES OF THE UNITED STATES AND THE REPUBLIC OF VIETNAM HAVE BEEN DIRECTED TO TAKE APPROPRIATE MEASURES WITHIN THE INTERNAL AND CLAIMED TERRITORIAL WATERS OF NORTH VIETNAM TO PREVENT THE DELIVERY OF SEABORNE SUPPLIES TO NORTH VIETNAM.

3. THE NAVAL FORCES OF THE REPUBLIC OF VIETNAM AND THE UNITED

73(1) ...CNO
943(5) NMIC(6) DFR(1)

APPENDIX B

AFP/

0011 G 016

CONTROL NO.	PAGE	OF	PAGE	TIME OF RECEIPT	DATE TIME GROUP
134527/130 CSN:DTR 5968	1		2	130/03:02Z	090147Z MAY 72

Thesis 135644
C48066 Clark
A juridicial analysis of recent evolutionary developments concerning naval interdiction of seaborne commerce as a viable sanctioning device.

Thesis 135644
C48066 Clark
A juridicial analysis of recent evolutionary developments concerning naval interdiction of seaborne commerce as a viable sanctioning device.