

ICRC Global Initiative: first state consultation

Workstream 7, Naval Warfare - BELGIUM

All operations at sea during armed conflict must be governed by the core principles of IHL. In the face of the dangers arising from modern naval warfare, Belgium upholds that the protection of civilian lives and objects, including merchant vessels, and hospital ships must remain central to any legal and operational considerations.

Belgium underscores the continued relevance of the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea, which remains a valuable point of reference for interpreting customary law in naval conflict. Belgium is attentive to emerging challenges in the maritime domain, including those posed by technological developments and the blurred lines between civilian and military maritime actors. These developments reinforce the urgency of continued legal clarification, capacity building, and multilateral dialogue.

Proposed answers to the questions

1. What do you consider to be the main issues of concern when considering humanity in naval warfare?

The core principles of IHL are undiminished in their centrality, be it in the analysis of past operations, or regarding technological advancements and future developments. Nevertheless, informed and thorough debate on modern-day issues affecting humanity in naval warfare is key in identifying how the core principles apply in different contexts.

Belgium identifies the following issues:

- **Non-International Armed Conflict (NIAC) at sea:** Despite the operational context in which war ships, auxiliary vessels and other state vessels play a defining role, there is a noted increase in NIAC situations at sea. These instances are marked by a heightening intensity over the course of time, which raises the relevance of maintaining respect for IHL. NIAC at sea, much like its land-based equivalent, is characterized by the higher complexity of applying the principle of distinction. This results in greater uncertainty and the implied risks for targeting decisions.
- **Technological developments:**
 - o As in other operational theatres, technological developments have led to an increase in unmanned and/or autonomous weapon systems at sea. However, a certain measure of autonomy has existed as a feature of naval warfare for a long time, as is evidenced by the use of torpedoes and sea mines. The regulation of these means of warfare is governed by the Geneva Conventions and the Additional Protocols, and to a lesser degree by older instruments, such as the 1907 Hague Convention VIII.
 - o The core principles of IHL are applicable to any innovation or development in the sphere of autonomous and unmanned weapon systems. However, Belgium asserts that States should ensure responsibility and accountability for the design, development and use of autonomous weapon systems in compliance with their obligations under national and international law.
 - o Particular attention may be needed to the issue of distinguishing some weapon systems from warships under the definition in Article 29 of the United Nations

Convention on the Law of the Sea (UNCLOS). The definition was developed with traditional, State-operated, crewed naval vessels in mind, typically flying a national flag and operating under the command of a commissioned officer. However, recent technological developments raise important legal and operational questions about whether these systems qualify as "warships" under international law. This ambiguity has significant implications for immunities, rights of innocent passage, and status-based protections. Conversely, the targeting, treatment, and classification of such systems during armed conflict may require further clarification under the law of naval warfare. The increasing deployment of these platforms requires legal clarity and operational predictability, particularly in contested maritime environments.

- AIS and spoofing: Warships are not under the obligation to broadcast AIS data under the SOLAS convention. However, many do so for the purposes of safe navigation. On the other hand, warships can purposely manipulate AIS data to disseminate false information about their location or status. Questions pertaining to IHL may arise when warships navigate under the pretense of being a merchant vessel. Whereas such a vessel still qualifies as a warship under UNCLOS art. 29 by every legal measure, it could be questioned whether this constitutes an abuse of IHL protections under Article 37 of Additional Protocol I to the Geneva Conventions.

2. In particular, what do you consider to be the main issues of concern when it comes to civilians and civilian infrastructure in naval warfare?

Considering the massive volumes of goods and the share of global trade being transported by sea, the naval theatre poses significant risks to civilian shipping during an armed conflict. Moreover, the busiest shipping routes are highly vulnerable as focal points for such conflicts, due to civilian shipping purposely being targeted on account of supposed links to parties to armed conflicts around the world.

Civilian ports and maritime infrastructure rarely exist strictly separated from military uses, giving the cities and ports containing military installations a 'dual-use' character. The risks for the civilian populations of these places are heightened by the presence of essential infrastructure and installations used in the conduct of naval warfare. Moreover, port cities can be rightfully subject to blockades, as they may serve as logistical hubs or resupply points for military operations. This status renders them legitimate military objectives under the law of armed conflict, even if their civilian population suffers significant disruption as a result.

Both belligerents and neutral States must pay due attention to the correct use and identification of vessels for military and non-military purposes. In the wider context of an armed conflict, the use of non-military State vessels or commercial vessels for military purposes may induce a higher degree of uncertainty with respect to the principle of distinction, especially if the identification is deliberately obfuscated.

Finally, Belgium notes a diminishing relevance of the use of flags in determining which States have an interest concerning a merchant vessel. Flags of convenience or the so-called practice of flag-hopping lead to a lack of clarity when assessing whether or not a merchant vessel belongs to a belligerent. Many factors, such as ownership, the nationality of the operator, the insurer, the owner of the cargo, or the ports of departure and arrival, play a role. Yet this determination greatly affects the rights of belligerent States in a conflict.

3. On the basis of the issues you identify, what areas of the law of naval warfare do you see as challenging to apply in modern naval warfare in order to preserve humanity?

Apart from the elements mentioned above, particular attention should be reserved to the fragmented and somewhat outdated nature of some of the Treaty Law governing naval warfare. 19th and 20th Century instruments such as the Paris Declaration and the Hague Conventions do not effectively regulate modern naval warfare, and are limited in their applicability.

Enforcement and accountability also present significant challenges. Mechanisms such as the prosecution of war crimes or the invocation of state responsibility are rarely applied in the context of naval warfare, which limits the potential for deterrence and undermines compliance. The relative invisibility of naval operations, the difficulty of attribution at sea, and the lack of precedents further complicate the enforcement of international humanitarian law in the maritime domain.

Furthermore, the principle of humanity may enter in the equation of proportionality when assessing attacks on Critical Underwater Infrastructure (CUI). If the effects of such attacks result in the deprivation of essential needs and provisions for a large number of civilians, the attacks in question may be qualified as disproportionate.

Another complexity arises in relation to non-state actors at sea. The law of naval warfare was developed primarily with inter-state conflict in mind, and its application to actors such as pirates, private military and security companies, or armed non-state groups operating maritime assets remains legally and operationally ambiguous. Issues of classification, accountability, and the applicability of combatant status pose serious challenges to the consistent application of the law in such contexts.