

# EXPERT DISCUSSION: INTERNATIONAL HUMANITARIAN LAW, LAW OF NAVAL WARFARE, AND THE APPLICATION OF UNCLOS IN TIMES OF WAR: REPORT

JAKARTA, INDONESIA, 6 – 7 MAY 2025

## INTRODUCTION AND BACKGROUND

States anticipate that military operations at sea are likely to increase in both scope and scale during future armed conflicts. Rapid technological advancements and emerging tactics are said to be transforming the nature of warfare in the maritime domain. States are increasingly becoming aware of the significant effect that naval warfare may have on humans and the environment. As a result, states are reflecting on how existing international law obligations applicable to armed conflict at sea shall be interpreted and applied, with particular attention to the most critical humanitarian issues that could emerge from such conflicts.

There has been no recent global dialogue among states on the most pressing humanitarian concerns arising from naval warfare. The Naval Warfare workstream of the Global Initiative to galvanize political commitment to International Humanitarian Law (Global Initiative) aims to start that conversation. The workstream is facilitating consultations between States to identify major humanitarian concerns posed by armed conflict at sea, to foster common understandings, share good practices, and address challenges to minimizing the adverse humanitarian impact of naval warfare.

To start the workstream with what was called “blue ocean thinking”, the ICRC and the government of Indonesia co-hosted this expert discussion among just over a dozen experts – with a balance between academic, operators and legal practitioners. The aim was to address the broad topic of “humanity in naval warfare” with particular focus on protection of civilians and civilian objects. To set the scene, the experts were also asked to consider the application of the United Nations Convention on the Law of the Sea (UNCLOS) and the law of the sea more generally during armed conflict in the maritime domain. It is of particular relevance to the topic of armed conflict at sea to assess the impact of UNCLOS as well as a series of treaties adopted under the auspices of the International Maritime Organization (IMO), conferring protection to persons in distress at sea. The outbreak of an armed conflict at sea does not terminate or suspend the applicability of most provisions of UNCLOS; they remain in operation and apply simultaneously to the Second Geneva Convention (GC II) during an armed conflict.<sup>1</sup> The discussions on the law of

<sup>1</sup> ICRC, Commentary on the Second Geneva Convention, Cambridge University Press, 2017, para 48.

the sea covered several key issues, such as navigation rights, and the obligations of states and non-state actors in safeguarding the marine environment and natural resources during conflicts. Further in-depth attention was also paid to the topics of protection of civilians at sea, encompassing the need to ensure essential goods and services reach civilians, protection of merchant vessels, and protection for the wounded, sick, shipwrecked and dead at sea. Protection of civilian infrastructure was also explored with topics such as the difference between critical and civilian infrastructure, challenges for civilians when undersea cables are cut, and the impact of attacks on oil rigs and gas pipelines.

## OBJECTIVES OF THE EXPERT DISCUSSIONS

**Examine** the application and relevance of UNCLOS and the law of the sea during times of war, particularly in relation to navigation rights, non-belligerent states, and environmental protection.

**Highlight** the importance of protecting the marine environment during international armed conflicts.

**Explore concerns** on the most critical humanitarian issues emerging from armed conflicts at sea.

**Identify** possible avenues to address these concerns.

**Facilitate** dialogue among experts to build a common understanding and promote practical recommendations aimed at minimizing the humanitarian impact of naval warfare.

## PANEL 1: APPLYING THE LAW OF THE SEA DURING ARMED CONFLICT

### GUIDING QUESTIONS

1. To what extent, and in what ways, does the law of the sea regime affect the conduct of belligerent operations at sea?
2. Where do you see that there may be challenges in applying certain aspects of the law of the sea during armed conflict? Conversely, where do you see that the law of the sea regime is complementary?
3. What are the rights and obligations of neutral states in respect of naval warfare?
4. How does international humanitarian law and law of the sea regulate the aspect of navigational rights of belligerents in respect of neutral water of archipelagic states?
5. Is there more clarity required as to how certain aspects of law of the sea interact with other legal regimes relevant to armed conflicts at sea, notably the rules governing the use of means and methods of warfare at sea and maritime neutrality?
6. How would you propose that states implement both legal regimes in a way to provide as much complementarity as possible?

### EXPERTS

*Chair:* Ambassador L. Amrih Jinangkung, Director General for Legal Affairs and International Treaties, Ministry of Foreign Affairs of the Republic of Indonesia

Mr Neil Silva, Legal Officer at the Institute for Maritime Affairs and Law of the Sea in the University of the Philippines (UP) Law Center

Professor Alexander Lott, Senior Researcher at the Norwegian Centre for the Law of the Sea at the UiT – The Arctic University of Norway

Rear Admiral Gottlieb Pandeni, Commander of Naval Support in the Namibian Navy

Professor Heribertus Jaka Triyana, International Law Lecturer and Vice Dean for Research, Community Service, and Information System in the Faculty of Law of the Gadjah Mada University, Yogyakarta, Indonesia

*All experts in attendance participated in the discussion*

## DISCUSSIONS

The law of the sea and the law of naval warfare have failed to keep pace with one another. While the San Remo Manual of 1994 incorporates a modern understanding of the law of the sea into the rules on naval warfare, as it was adopted at the time that the United Nations Convention on the Law of the Sea (UNCLOS) entered into force, there are still gaps in implementation of the rules.

There are a number of challenges nowadays that coastal states face in the application of the law of naval warfare in a modern maritime environment. Maritime neutrality and the rights and duties of coastal and archipelagic states are largely unexplored. Uncrewed underwater vessels, uncrewed surface vessels, and autonomous vessels, pose lingering questions on whether they can be classified as warships with the subsequent rights and duties attached. They also pose ethical, legal and policy challenges if used in an armed conflict at sea. The importance of protecting the marine environment is well stated in UNCLOS and in the 1994 San Remo Manual but are yet to be explored to the same extent that obligations to protect the natural environment on land have been.

The existing treaty law of naval warfare, dating back to the Hague Regulations of 1899 and 1907, has seen little updates since then. Understandably, the law focuses heavily on targeting, and moreover targeting of vessels and platforms, rather than considering the people who are attached to those vessels in, nowadays, increasingly complex ways that may affect their status. The Geneva Conventions, particularly GC II, and their First Additional Protocol provide for protections for persons at sea, but these provisions need to be better implemented and understood as an integral part of the law of naval warfare.

One of the challenges of applying the law of naval warfare is that classification of armed conflicts at sea remains difficult. Normative steps to address this *status mixtus* in relation to UNCLOS and IHL include recognizing the unique nature of operations at sea compared to land operations, determining the applicability of the law of armed conflict in grey zones versus peacetime norms, and considering the *lex specialis* doctrine. This involves navigating the hierarchy of rules, including UNCLOS, the UN Charter, and *jus cogens*, and balancing normative and political values and interests, especially concerning archipelagic sea lanes.

The delineation of Exclusive Economic Zones (EEZs) under UNCLOS introduces an additional layer of complexity. The deliberate targeting of oil rigs, for instance, raises concerns about long-lasting effects on both human populations and the environment, necessitating the consideration of complementary application of both IHL and UNCLOS. While the law of the sea regime significantly shapes the conduct of activities at sea and within EEZs, it also presents intricate legal challenges. The protection of civilian vessels and the principle of freedom of navigation, though fundamental, can be challenged during wartime when belligerent states may conduct attacks against shipping. Actions such as the laying of mines and the imposition of blockades within EEZs require international cooperation to mitigate their impact on civilian life and the environment.

The complexities of flag state nationality, including concepts of belligerency, neutrality, and qualified neutrality were issues that the experts came back to frequently. The latest International Chamber of Shipping information confirms that the vast majority of the global shipping is registered with flag states that strictly enforce global regulations. The next step will be for those states to implement and enforce neutrality laws, rights and duties applicable to ships flying their flags and to their Masters.

Another topic that experts continued to come back to was blockade. Rules 93–102 of the San Remo Manual specify when a blockade is lawful and when it is prohibited. Briefly, a blockade, to be lawful, must be effective, implying complete control of the relevant sea area. Furthermore, a blockading force is obligated to provide a period of grace

to allow neutral ships to depart safely. A blockade is prohibited if it denies civilians goods essential to their survival or it will affect the civilian population in a way that is disproportionate to the military advantage anticipated. The existence of a blockade should be determined by the factual situation on the ground rather than solely by a declaration so that the rules around blockade can be enforced to protect the civilian population. If a state denies a blockade, but the conditions on the ground demonstrate that there is indeed a blockade, the range of obligations associated with a blockade should be met. There was a discussion about whether blockade is a means and method of warfare which should even be allowed considering the global interconnectivity and reliance on sea trade and the effect on neutral shipping. Any blockade is liable to adversely affect the civilian population in terms of access to medication, food, fuel etc. therefore some wondered why it should continue to be thought of as a legitimate method of warfare. Conversely, it was argued that law of blockade is an important legal concept that enables and is designed to prevent unnecessary civilian suffering when applied correctly. It is this latter point that experts elaborated on – states need greater understanding and application of the existing law. This was further explored in later panels.

Overall, protection of shipping lanes particularly for neutrals but also belligerents was considered important. It was noted that in the past, the rights and duties of belligerent states have been brought to the fore, while in fact neutral states need a greater voice in the elaboration of the laws of naval warfare. It was agreed that greater clarity is needed regarding the means and methods of warfare at sea and the interaction between specific aspects of these laws and other regimes, such as the law of the sea and international human rights law. Belligerent states, unfortunately, can compromise the protections afforded under UNCLOS when they fail to have due regard for the rights of neutrals.

Some solutions were proposed: to maximize complementarity, a collaborative approach coupled with robust enforcement mechanisms is essential. States should adopt a multi-faceted strategy encompassing integrated legal frameworks through supplementary protocols, comprehensive training and education for both military and civilian authorities (including joint exercises and simulations), enhanced cooperation via real-time communication channels to minimize errors, the utilization of technical solutions like automated reporting systems for navigation rights, the active involvement of international oversight bodies such as the IMO, and the consideration of regular reviews and updates to these frameworks. Measures around understanding and applying the law of naval warfare and the law of the sea, side by side, and complementary to each other in cases where both may be applicable simultaneously need to be taken at the global, regional, national and even local government level – the latter because it will be ultimately the local government that could be responsible for environmental clean-up or protection of civilians along the coastline.

## THEMATIC DISCUSSION: PROTECTION OF THE NATURAL ENVIRONMENT DURING ARMED CONFLICT AT SEA

### EXPERTS

*Chair:* Ambassador Adam M. Tugio, Senior Advisor to the Foreign Minister on Political, Legal and Security Affairs, Ministry of Foreign Affairs of the Republic of Indonesia

*All experts in attendance participated in the discussion*

### DISCUSSIONS

More thought is needed on the protection of the natural environment in times of armed conflict at sea. It was discussed that the consequences of conflict, including environmental damage, will persist long after hostilities cease, irrespective of the location. It was considered that potentially as part of *jus post bellum* or discussions in developing peace, the environmental remediation should be considered. It was noted that environmental damage in warfare is a potential war crime.

It was acknowledged that the increased understanding of, and information on fragile marine ecosystems and the impact of human activities at sea on the long-term survival of the human race is a factor that should move states

to adapt their conduct at sea during armed conflicts, and that the protection of particularly sensitive parts of the marine natural environment should become a more important factor during armed conflict at sea.

Certain weapons can be inherently polluting, and it was discussed that in using such weapons, the principle of precautions in attack and against the effects of attack should be applied. There may be alternative weapons that would have less impact on the environment. The discussion distinguished between the deliberate destruction of the environment as a tactic and environmental damage occurring as collateral damage. Alongside precautions, proportionality and the obligation to employ means that mitigate harm to the environment when attacking legitimate military targets should be factored into commanders' decisions. Moreover, when decommissioning weapons at the end of a conflict, more thought should be given to the environmental impact of the way they are destroyed.

## PANEL 2: PROTECTION OF PERSONS AT SEA

### GUIDING QUESTIONS

1. What do you consider to be the main issues of concern for civilians in naval warfare?
2. When applying the law of naval warfare in practice, what do you consider to be the main challenges to prevent and mitigate harm towards civilian seafarers and merchant shipping during armed conflict at sea? Do you have thoughts about how to better prevent and mitigate such harm?
3. Are the protections afforded to merchant shipping sufficiently clear in view of the development of the maritime domain over the last decades?
4. What are some of the risks and consequences for the civilian population on land resulting from belligerent interference with enemy and neutral merchant shipping in the maritime domain?
5. What measures can be implemented to ensure the continued flow of maritime transportation for the benefit of the civilian population?

### EXPERTS

*Chair:* André Smit, Regional Legal Adviser on Maritime Matters, ICRC Asia and the Pacific

Mr Neil Silva, Legal Officer at the Institute for Maritime Affairs and Law of the Sea in the University of the Philippines (UP) Law Center

Captain Yusuke Saito, Captain in Japan Maritime Self-Defense Force (JMSDF) and senior legal staff officer at Maritime Staff Office (Headquarters), Ministry of Defense, Japan

Rear Admiral Gottlieb Pandeni, Commander of Naval Support in the Namibian Navy

*All experts in attendance participated in the discussions*

### DISCUSSIONS

The discussion started with some stark figures: the deaths of civilians as a result of armed conflict at sea during WWII was huge (over 9000 deaths of protected persons in the single most tragic casualty with multiple casualties in that range) compared to well-known peace-time disasters (Titanic just over 1500 deaths). Proportionally, if you served as a crew member on a merchant marine vessel during WWII you were more likely to die than if you served on the front-line. At the time, such merchant marine vessels were flagged to the same country as their captain, crew and cargo. Today, there are 1.8 million seafarers on international trading ships. Civilian seafarers may be at risk of control measures which include measures up to attack if their neutral vessel resists visit, search or capture, or breaches a blockade and refuses to stop. Vast shipping and choke points around the world increase the dangers posed to civilian seafarers, as does blocking transportation of goods and services for civilians on land. There are many fishing vessels which may inadvertently come under attack. The law of naval warfare balances many considerations and offers protection to civilians and those who are not or are no longer taking part in hostilities. These issues must be considered further in light of changes in the maritime domain today.

A specific point of concern was raised regarding the protection of civilians on vessels, particularly the treatment of neutral vessels (but also belligerent government vessels on commercial service) and carrying civilian crew. The question arises as to the appropriate course of action when such vessels are targeted and captured, and whether it is feasible to adequately consider the presence of civilians within a large geographic area of operations in naval warfare. An alternative perspective suggested treating belligerent ships as floating assets of the state. However, the significant number of seafarers working on various vessels, not all necessarily associated with the belligerent flag state, complicates this view. Moreover, it was argued that the existence of the Second Geneva Convention (GC II) demonstrates that the well-being of individuals on vessels does matter. The increasing availability of Automatic Identification System (AIS) data, which can identify the vessels and who they are likely carrying, offers a potential avenue for considering proportionality in targeting decisions (although it was also noted that AIS can be spoofed and are known to be turned on and off by vessels which might make them look suspicious). Another complication was raised in terms of how contraband or military objectives on a container ship can be targeted nowadays when they may be one container in thousands. The discussants thought states should seriously consider the ramifications of targeting a container vessel in such a situation.

The discussion then turned to the practice of merchant vessels being accompanied by warships, with one expert noting that this has been a customary practice for several states and raised the question of whether such escort transforms the merchant vessels into legitimate military objectives when escorted by a belligerent's warships. The discussion then gravitated to considerations regarding the evacuation of civilians from conflict zones. Specifically, the discussion explored whether warships or ships with military capabilities should be employed for such evacuations and what the implications are if these vessels are also transporting civilians. In the context of naval operations, the idea of establishing a minimum distance rule to protect civilian vessels was also proposed as a potential measure. Some experts also suggested to use special signs for those warships conducting civilian evacuation to distinguish from normal warships.

The discussion shifted back to the significant humanitarian concerns surrounding naval blockades. This raised some debate. Even if blockades are considered a legal method of warfare, their effectiveness can have severe consequences for civilians. The prevailing view among experts is that starvation blockade is illegal and this prohibition constitutes customary international law. However, the inherent usefulness of blockades (conducted in a lawful manner) for denying access to or controlling sea lanes in naval warfare means many states are likely to object to their outright prohibition. From a humanitarian perspective, the question remains as to how to shield civilians unconnected to the conflict from the detrimental effects of blockades. Disruptions in supply chains resulting from naval conflict can have profound and far-reaching consequences, including significant economic instability for businesses and nations, environmental damage, the devastation of local livelihoods, and the potential to exacerbate ongoing conflicts. Establishing and maintaining secure shipping lanes in areas prone to conflict was therefore deemed crucial. To achieve this, several key measures were proposed: enhancing information sharing among relevant actors, investing in technological solutions for maritime security, equipping ports and vessels with specialized protective measures, and implementing robust cyber security protocols to safeguard against digital threats. Joint exercise programs coupled with comprehensive training initiatives are advocated to improve preparedness and interoperability. Furthermore, public awareness campaigns are suggested as a means to garner broader support for protective measures.

The conversation further explored the legal framework for civilians captured at sea, as distinct from those directly attacked. These individuals may be protected as prisoners of war if they were crew in merchant marine of an enemy state, but there may be no rationale in keeping them interned until the end of the conflict, highlighting a possible gap in the existing legal regime. The need for clear coordination among states regarding the treatment of neutral civilians captured at sea was emphasized. If they present no threat to the state that captured them, they could benefit from protections better than POW status. Further discussion and agreement are needed on this point.

Additionally, the discussion touched upon maritime law enforcement, where military assets are often employed and may use force, leading to the highly complex issue of the triggering of an armed conflict at sea (both non-international armed conflicts (NIACs) and international armed conflicts (IACs) at sea. This area involves the intersection of various competing legal regimes, including domestic laws concerning rebellions and terrorism, as well as global anti-terrorism maritime security regimes which may apply at the same time as rules of IHL, further underscoring the intricate legal landscape of maritime warfare and the challenges for the protection of civilians at sea.

# PANEL 3: PROTECTION OF CIVILIAN INFRASTRUCTURE AT SEA

## GUIDING QUESTIONS

1. What would you consider to be the major risks and concerns for critical infrastructure upon which civilians depend, during armed conflict in the maritime domain? What are the major risks for the civilian population on land if civilian infrastructure is affected by naval operations? For the marine environment? For states not participating in armed conflict?
2. Is the law sufficiently clear to ensure in practice the protection of such infrastructure during armed conflict at sea?
3. How can militaries plan to implement and apply the existing law better?
4. What other steps can governments take to prevent and mitigate the impact of damage to civilian infrastructure at sea?

## EXPERTS

*Chair:* Abby Zeith, Legal Adviser, Arms and Conduct of Hostilities Unit, ICRC Geneva

Dr Garima Kumawat, Assistant professor at the School of Internal Security, Defence and Strategic Studies (SISDSS) at Rashtriya Raksha University, Gujarat, India

Professor Alexander Lott, Senior Researcher at the Norwegian Centre for the Law of the Sea at the UiT – The Arctic University of Norway

Commander Peggy McGregor, Special Adviser for naval and maritime law to the Head of the French Armed Forces Legal Department, Paris, France

*All experts in attendance participated in the discussions*

## DISCUSSIONS

The maritime domain is home to an ever-multiplying set of interconnected and interdependent infrastructure. Much of this underpins global trade, energy and food security, supply chains and communications. It is also critical for ensuring the continuity of essential services; safe passage of civilians and other protected persons and enabling humanitarian assistance and rescue operations. Yet, this maritime infrastructure exposed to substantial risks, both humanmade and natural for reasons both related and unrelated to warfare.

While not all civilian infrastructure at sea qualifies as essential for the survival of the civilian population, the evolving social and economic contexts requires the law to adapt – particularly, given the increasing dependence of lifelines, commerce, governance, and nations on such infrastructure. The interconnectedness of this infrastructure means that disruption to one element can destabilize entire regions without direct military conflict. Remote sabotage of assets like oil rigs and submarine cables and pipelines, can halt trade, weaken supply chains, and undermine state preparedness, capable of crippling essential services like banking, air travel, and electricity, while maritime strike and other forms of interdiction operations such as blockades can inflate prices and harm marine biodiversity.

When certain maritime infrastructure is used simultaneously by warring parties and civilians, the vulnerabilities to direct attack and incidental harm increases significantly. Challenges with attribution complicates accountability. Armed conflict in the maritime domain poses significant risks to civilian populations on land, with damage to undersea cables and pipelines being one example. Coastal states need to examine the legal resilience of their critical infrastructure both within their territory and in other maritime zones such as the Exclusive Economic Zones (EEZ).



There are many questions as to whether and under what circumstances attacks directed against or affecting certain maritime infrastructure might be lawful under the law of naval warfare. One example mentioned was submarine cables outside of neutral waters. Can such a cable qualify as a military objective within the meaning of IHL? On some views, submarine cables generally do not possess a sufficiently relevant connection to an armed conflict to be qualify as military objectives, particularly if their use is not exclusively used for military purposes. And gas pipelines might contribute to so called “war-sustaining” activities, but the prevailing views of states is that they do not consider these sufficient grounds to classify it as a military objective under IHL. Attacking gas pipelines also raises concerns about significant impacts on the marine environment, an obligation for states to protect even during peacetime, which arguably extends to the context of naval warfare. Recent attacks highlight the need for stronger protection under the law of naval warfare. Belligerents must respect the rights and duties of neutral states including within their EEZ, particularly in relation to the protection of the marine environment. Several states’ military manuals acknowledge that belligerent states are required to exercise “due regard” in this context. However, further clarification on what this principle entails in practice during armed conflict would be highly beneficial.

Unlike WWI and WWII where cutting cables often had clear military significance, the rerouting capabilities and predominantly civilian use of modern cables necessitate a case-by-case assessment. Cables directly used for military action can be classified as military objectives, and wind farms or pipelines cannot be entirely excluded as potential targets. Classifying infrastructure as indispensable for civilian survival is challenging due to the substitutable nature of many goods, underscoring the need for robust legal protection for essential items like food and drinking water. The so called “dual-use” nature of infrastructure, even wind farms, complicates targeting, as attacks causing disproportionate civilian damage without a foreseeable direct and concrete military advantage would likely be prohibited. Burying submarine cables can enhance security and provide legal grounds for enforcement. Extending international cooperation to maintain not only communication cables but also larger power cables, along with capacity building and the use of larger vessels, is crucial. Expert knowledge should inform these considerations, and states should be encouraged to fully utilize the legal provisions within UNCLOS, such as maritime safety zones.

Some further solutions were proposed: the military can enhance protection through interagency coordination, integrating IHL into doctrine and training (as many states have done with SRM), embedding legal advisors, improving operational plans, and rigorously assessing proportionality. Governments can prevent and mitigate damage by mapping civilian assets, estimating potential collateral damage, coordinating contingency plans with telecommunications, agreeing on neutral oversight, and providing training on distinction, proportionality, and precautions, all requiring better inter-state cooperation.

## THEMATIC DISCUSSION: MARITIME NEUTRALITY

### EXPERTS

*Chair:* Ambassador Adam M. Tugio, Senior Advisor to the Foreign Minister on Political, Legal, and Security Affairs, Ministry of Foreign Affairs of the Republic of Indonesia

Commander Richard Smith, Lead on international law, Royal Navy of the United Kingdom

Professor Andrew Clapham, Professor of International Law at the Geneva Graduate Institute

*All experts in attendance participated in the discussions*

### DISCUSSIONS

The prevailing view is that the legal framework concerning neutrality primarily applies in International Armed Conflicts (IAC) and not Non-International Armed Conflicts (NIAC), political neutrality in non-international armed conflicts was another topic. Neutral states, as non-participating parties, possess the right to prevent their territory from being used by belligerent states. However, the principle that a belligerent may not use force to compel a neutral state to abide by its obligations of neutrality is arguably enshrined in UN Charter law, suggesting that reverting to older laws of neutrality concerning the right to enforce neutrality obligations might not be helpful. Neutrality



continues to be relevant in the context of the under- and over-seas, particularly when warships operate within the EEZ of neutral states.

Four various “packages” of obligations and rights relate to neutrality—both in terms of formal neutral status in a strict sense and for states not actively participating in conflict.

- Rights and duties of all third states to protect their territory from the IAC. Rights flow from states’ sovereignty over their own territory under the UN Charter.
- The duty of all third states including neutral states to provide humanitarian protection for victims of armed conflict under IHL. References to “neutral Powers” in GCs and APs, for example, includes any state not participating in armed conflict.
- Where UNSC has not acted, some states may declare that they will assume a Neutral Status in a strict sense and abide by the obligations in Hague Convention V and XIII which are often stated as three main obligations: Abstention, Prevention, and Impartiality.
- Belligerent states’ apparent right to engage in economic warfare at sea against neutral ships and aircraft (e.g. seizing and confiscating neutral ships for carrying contraband, engaging in unneutral service or breach of blockade) under the laws of naval warfare.

A key question under this last heading is whether belligerents have the right to disrupt neutral vessels. It has been argued that a state can only use force against a neutral vessel if this is covered by the law of self-defence. Belligerents cannot employ backdoor methods to use force against neutrals.

The legal relationship between belligerent and neutral states is generally binary, without degrees of neutrality, but the recent behaviour of states when it comes to arming belligerents suggests that the idea of ‘qualified neutrality’ is still alive in some quarters. While a neutral state might breach the law of neutrality, it does not necessarily become a legitimate target for attack. The possibility of conflict occurring in unbounded maritime spaces, involving vessels with no interest in the conflict, presents unique challenges to the application of neutrality laws.

The question of whether a neutral ship breaching a blockade can be attacked raises further complexities, including the necessity of a formal declaration of a blockade as part of a formal state of war. There was a suggestion that neutral merchant ships should not be attacked unless directly participating in hostilities (DPH), implying a need to revise the traditional “visit, search, attack, capture” framework. Some experts explained that proper procedure of visit and search may secure the safety of neutral merchant vessels, but it may require proper knowledge of law of naval warfare of crew of merchant vessels at the same time to keep them “safe”. Lack of knowledge of law of naval warfare by civilian crew of merchant vessels also may raise issues, and perhaps states should consider training merchant vessels in naval warfare for exceptional circumstances they may find themselves in.

Ultimately, the permissible actions of a belligerent state concerning neutral shipping remain a debated area in the law of naval warfare. Some interpretations might unduly favour the powers of belligerents at the expense of neutral freedoms, and there was an agreement that the rights of neutral states need to be further explored in the context of naval warfare.

## **PANEL 4: WHAT OTHER TOPICS ARE OF INTEREST TO BE EXPLORED IN THE FUTURE?**

### **GUIDING QUESTIONS**

1. What scenarios can you come up with as to how armed conflict in the maritime domain will occur and the humanitarian or environmental impacts that we may have missed in the previous discussions?
2. What other issues preoccupy you on naval warfare? What other issues do you think preoccupy states now and in the future?
3. What aspects of the law of naval warfare require better implementation to ensure better humanitarian outcomes?
4. What suggestions would you give to states to implement the existing laws more effectively to better ensure protection of civilians and civilian objects at sea, or the impact of naval warfare on civilians on land?

## EXPERTS

*Chair:* André Smit, Regional Legal Adviser on Maritime Matters, ICRC Asia and the Pacific

Professor Andrew Clapham, Professor of International Law at the Geneva Graduate Institute

Commander Mohamed Ahmed Zaky Abdelwahab (retired), former Head of the Naval Judiciary Department and Legal Advisor to the Egyptian Navy Commander

Professor Adrianus Ramon, Assistant Professor of International Law at the Faculty of Law, Parahyangan Catholic University, Bandung, Indonesia

Professor Sarah Williams, Professor in the Faculty of Law & Justice University of New South Wales, Sydney, Australia

*All experts in attendance participated in the discussions*

## DISCUSSIONS

The law of naval warfare encompasses a wide range of concerns and there are pressing issues like search and rescue, detention at sea, management of the dead, and humanitarian access. It was agreed here that the law under GC II applies, but there needs to be better implementation of the law. Neutral and non-belligerent powers need to be aware of the role that they can play in collection and care for the wounded, sick, shipwrecked and dead, as must belligerents, who should factor this into their planning and preparedness. How can persons be collected and cared for with the use of drones and autonomous weapon systems, as was asked earlier too. It is estimated that there are 30 million people at sea at any moment – fishing, transporting cargo, conducting research, transporting passengers, conducting government activities, and more. Looking at peace time and armed conflict, there is a growing recognition that those people at sea may, should or do have rights and protections under a range of different regimes of which IHL is one. There may be other regimes which are more protective, and we should look at how these regimes interact to provide the most appropriate protective scope.

On protection, there was a discussion about the status of civilians from neutral states crewing enemy vessels and whether they would have prisoner of war status when captured in certain circumstances or come under some other more protective regime. It was suggested that potentially there is a need to consider the crew of enemy merchant vessels as civilian internees if interned or, as they might not necessarily be involved in the rest of the armed conflict nowadays, perhaps they should simply be allowed to return to their state of nationality as has been the practice.

Many of the recommendations proposed were around better implementation of existing law. Should merchant shipping be safeguarded where the disruption of maritime trade routes will impact the civilian population in multiple countries? Should there be legally binding guarantees of safe passage for ships?

Means and methods of warfare arose during the discussions at several points. The debate around whether it is timely to consider whether neutral vessels should ever be the subject of attack was raised. The old idea that a state can open fire on a neutral vessel when it is carrying cargo that is war sustaining is not necessarily sustainable nowadays. It was developed as a result of the aim of strangling the economy of a state, where traditionally civilians still relied on locally produced goods. Considering how interconnected and interdependent the world has become, states may wish to consider whether civilian vessels ships should not be attacked at all in such circumstances. The more expansive framework for attacking of civilian vessels at sea is contrary to the principles of humanity as applied in armed conflict on land and may be in need of reconsideration.

Some issues raised delved into the amendments of weapons treaties and further, into the continued development of the law of the sea, including managing overlapping maritime rights and Deep-sea resource exploration. These demonstrate the continued overlapping challenges for the application of international law during armed conflict at sea. There was “blue ocean thinking” which challenged participants with such ideas as prize law which allows belligerent to capture enemy merchant vessels which have nothing to do with the war should be considered as onsolete, a discussion on submarine drones and autonomous weapons at sea and electromagnetic warfare, including drones not used as lethal weapons, and the challenges of blurred lines between maritime law enforcement and naval warfare. In this environment where states no longer own or control the majority of shipping, should the owners of

shipping play a larger role in the legal protections. How would private companies, Masters, crew and owners be made aware of their rights and obligations in naval warfare? Once again, the weakness of the flag state regime was highlighted.

The session agreed that in discussing humanity in naval warfare over the last few days, we were choosing “humanity over havoc”. The point was made that there should not necessarily be a difference between naval warfare and land warfare where it is not justifiable. States have agreed to apply IHL and the question was posed, why states would consider lowering the standards on these very vital interests at sea? Why should there be any differences between land and sea? An expanded humanitarian protection is paramount – the developments in the past decades have changed the oceans and their uses for humans, and the importance of safeguarding civilian maritime activities and infrastructure have become much more critical for all states than at the time that the rules were formulated. Some experts emphasized that States may need to rethink some naval warfare rules in the current environment.

## KEY TAKEAWAYS

- The law of the sea and the law of naval warfare are complementary and operate side by side. More work is needed on how these and other legal regimes interact and indeed complement each other to provide protective outcomes for civilians (including crew on merchant vessels) and civilian objects (including merchant vessels).
- Greater consideration needs to be given to the implementation of existing law on search and rescue that may continue to apply in certain circumstances during armed conflict at sea, as well as the IHL obligations applicable during armed conflict at sea to search for and collection and care of the wounded, sick, shipwrecked and dead. There are practical considerations at play including the identification of victims; how capture is effected (if capture is appropriate); how detention at sea is effected; and the appropriate provision of medical treatment.
- More work is needed on the protection of the natural environment during armed conflict at sea. UNCLOS and international environmental law, and indeed, IHL, provide a number of protections for the natural environment. The applicability of the different regimes during armed conflict must be clarified and the relevant protections must be implemented by states when conducting naval warfare.
- Protection of international shipping lanes, and particularly the obligation of belligerent states to respect the rights of neutral states and their access to international shipping lanes is crucial for the survival of the civilian population both in belligerent and neutral states.
- In particular, there should be further examination of the rights and duties of neutral states in naval warfare. For example, more thought is needed as to how the law of naval warfare can strengthen the consideration that must surely be given to activities by the coastal state in a neutral states’ EEZs.
- While there is no room to justify starvation blockade as a method of warfare, more work should be done on clarifying the obligations of states when imposing blockades. While the law of naval warfare requires certain procedures to conduct blockade and it is illegal to exercise similar power over neutral vessels both as a matter of *jus ad bellum* and *jus in bello*, if there is a blockade as a matter of fact, then all the laws applicable to blockade should be implemented so as to ensure the protection of the civilian population and those on neutral merchant vessels.
- More consideration is needed on the protection of submarine cables and pipelines at sea, as well as other installations which support the civilian population such as oil rigs.
- Greater consideration should be given to the impact of new technologies on civilians in armed conflict at sea.
- The majority of navies have been trained well in maritime law enforcement, in many instances with less extensive experience in naval warfare. The need remains to be better trained in the law regulating naval warfare including better understanding and implementation of IHL. More government officials beyond naval forces should be trained in the humanitarian consequences of naval warfare and how to address them.

## NEXT STEPS

The expert discussion has given us all great food for thought about the humanitarian consequences of armed conflict at sea. This report and reflections will be shared with states in the lead up to the all-state online consultations on 4 June 2025. That meeting will then feed into an interim report of the global IHL initiative as a whole to be presented

in September 2025. Going forward further expert-state consultations may take place. Topics to be explored further may include maritime neutrality, protection of the natural environment, and protection of international shipping during armed conflict at sea among other topics which may arise from the state consultations which are relevant to preserving humanity in naval warfare. These consultations will in turn feed into the final recommendations on humanity in naval warfare to be presented to all states at the end of 2026.

## AGENDA

| AGENDA 6 May 2025 |                                                                                                       |                                                                                                                                                                                                                                                                                                                                                              |
|-------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| • Time            | • Topic                                                                                               | • Discussants                                                                                                                                                                                                                                                                                                                                                |
| • 09.00           | • Opening remarks                                                                                     | <ul style="list-style-type: none"> <li>• Vincent Ochilet, Head of Regional Delegation in Jakarta, International Committee of the Red Cross (ICRC)</li> <li>• Ambassador L. Amrih Jinangkung, Director General for Legal Affairs and International Treaties, Ministry of Foreign Affairs of the Republic of Indonesia</li> </ul>                              |
| • 09.40           | • Token of appreciation from the ICRC to the Ministry of Foreign Affairs of the Republic of Indonesia |                                                                                                                                                                                                                                                                                                                                                              |
| • 09.45           | • Introduction to the expert discussion                                                               | • Kelisiana Thynne, Senior Legal Adviser and Lead Naval Warfare Workstream, ICRC                                                                                                                                                                                                                                                                             |
| • 10.00           | • Coffee break and Photo opportunity                                                                  |                                                                                                                                                                                                                                                                                                                                                              |
| • 10.30           | • Panel 1: The law of naval warfare and interaction with the law of the sea (UNCLOS)                  | <ul style="list-style-type: none"> <li>• Chair: Ambassador L. Amrih Jinangkung, Director General for Legal Affairs and International Treaties, Ministry of Foreign Affairs of the Republic of Indonesia</li> <li>• Mr Neil Silva</li> <li>• Professor Alexander Lott</li> <li>• Rear Admiral Pandeni</li> <li>• Professor Heribertus Jaka Triyana</li> </ul> |
| 12.30             | Lunch                                                                                                 |                                                                                                                                                                                                                                                                                                                                                              |

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|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13.45 | <ul style="list-style-type: none"> <li>Thematic discussion on topics arising from the interaction of UNCLOS and naval warfare (1): the protection of the marine environment in armed conflict at sea</li> </ul> | <ul style="list-style-type: none"> <li>Chair: Ambassador Adam M. Tugio, Senior Advisor to the Foreign Minister on Political, Legal and Security Affairs, Ministry of Foreign Affairs of the Republic of Indonesia</li> <li><i>All experts in attendance participated in the discussion.</i></li> </ul> |
| 14.30 | Coffee break                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                        |
| 14.45 | <ul style="list-style-type: none"> <li>Panel 2: Protection of civilians at sea</li> </ul>                                                                                                                       | <ul style="list-style-type: none"> <li>Chair: André Smit, Regional Legal Adviser on Maritime Matters, ICRC</li> <li>Atty Neil Silva</li> <li>Captain Yusuke Saito</li> <li>Rear Admiral Pandeni</li> </ul>                                                                                             |
| 17.00 | Closing day 1                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                        |
| 19.00 | Dinner hosted by ICRC Jakarta                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                        |

#### AGENDA 7 May 2025

| • Time | • Topic                                                                                                                                                           | • discussants                                                                                                                                                                                                                                                                                    |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09.00  | <ul style="list-style-type: none"> <li>Summary and questions and remarks from day 1</li> </ul>                                                                    | <ul style="list-style-type: none"> <li>Chair: Kelisiana Thynne, Senior Legal Adviser and Lead Naval Warfare Workstream, ICRC</li> </ul>                                                                                                                                                          |
| 09.30  | <ul style="list-style-type: none"> <li>Panel 3: Protection of Civilian Infrastructure at Sea</li> </ul>                                                           | <ul style="list-style-type: none"> <li>Chair: Abby Zeith, Legal Adviser, Arms and Conduct of Hostilities Unit, ICRC Geneva</li> <li>Dr Garima Kumawat</li> <li>Professor Alexander Lott</li> <li>Chargé de mission Peggy McGregor</li> </ul>                                                     |
| 11.30  | <ul style="list-style-type: none"> <li>Coffee break</li> </ul>                                                                                                    |                                                                                                                                                                                                                                                                                                  |
| 11.45  | <ul style="list-style-type: none"> <li>Thematic discussion on topics arising from the interaction of UNCLOS and naval warfare (2): Maritime neutrality</li> </ul> | <ul style="list-style-type: none"> <li>Chair: Ambassador Adam M. Tugio, Senior Advisor to the Foreign Minister on Political, Legal, and Security Affairs, Ministry of Foreign Affairs of the Republic of Indonesia</li> <li>Commander Richard Smith</li> <li>Professor Andrew Clapham</li> </ul> |
| 12.30  | <ul style="list-style-type: none"> <li>Lunch</li> </ul>                                                                                                           |                                                                                                                                                                                                                                                                                                  |

|       |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------|----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14.00 | <ul style="list-style-type: none"> <li>Panel 4: What other topics are of interest to be explored in the future?</li> </ul> | <ul style="list-style-type: none"> <li>Chair: André Smit, Regional Legal Adviser on Maritime Matters, ICRC</li> <li>Professor Andrew Clapham</li> <li>Commander (retired) Abdelwahab</li> <li>Professor Adrianus Ramon</li> <li>Professor Sarah Williams</li> </ul>                                                                                                                                                       |
| 16.00 | <ul style="list-style-type: none"> <li>Coffee break</li> </ul>                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 16.30 | <ul style="list-style-type: none"> <li>Closing remarks</li> </ul>                                                          | <ul style="list-style-type: none"> <li>Vincent Ochilet, Head of Regional Delegation in Jakarta, International Committee of the Red Cross (ICRC)</li> <li>Ambassador L. Amrih Jinangkung, Director General for Legal Affairs and International Treaties, Ministry of Foreign Affairs of the Republic of Indonesia</li> <li>Osama Hamdy, Counsellor, Embassy of the Arab Republic of Egypt in Jakarta, Indonesia</li> </ul> |

## EXPERTS

Commander Mohamed Ahmed Zaky Abdelwahab (retired), former Head of the Naval Judiciary Department and Legal Advisor to the Egyptian Navy Commander

Professor Andrew Clapham, Professor of International Law at the Geneva Graduate Institute

Dr Garima Kumawat, Assistant Professor at the School of Internal Security, Defence and Strategic Studies (SISDSS) at Rashtriya Raksha University, Gujarat, India

Professor Alexander Lott, Senior Researcher at the Norwegian Centre for the Law of the Sea at the UiT – The Arctic University of Norway

Commander Peggy McGregor, Special Adviser for naval and maritime law to the Head of the French Armed Forces Legal Department, Paris, France

Rear Admiral Gottlieb Pandeni, Commander of Naval Support in the Namibian Navy

Professor Adrianus Ramon, Assistant Professor of International Law at the Faculty of Law, Parahyangan Catholic University in Bandung, Indonesia

Berit Reiss-Anderson, Special Advisor and Attorney at Law, Norwegian Red Cross

Captain Yusuke Saito, Captain in the Japan Maritime Self-Defense Force (JMSDF) and senior legal staff officer at Maritime Staff Office (Headquarters), Ministry of Defense, Japan

Neil Silva, Legal Officer at the Institute for Maritime Affairs and Law of the Sea in the University of the Philippines (UP) Law Center

André Smit, Regional Legal Adviser on Maritime Matters, ICRC Asia and the Pacific

Commander Richard Smith, Lead on international law, Royal Navy of the United Kingdom

Professor Heribertus Jaka Triyana, International Law Lecturer and Vice Dean for Research, Community Service, and Information System, Faculty of Law of the Gadjah Mada University, Yogyakarta, Indonesia

Kelisiana Thynne, Senior Legal Adviser and lead naval warfare workstream, Global Initiative on IHL, ICRC Geneva

Professor Sarah Williams, Professor in the Faculty of Law & Justice University of New South Wales, Sydney, Australia

Abby Zeith, Legal Adviser, Arms and Conduct of Hostilities Unit, ICRC Geneva