

State consultation on naval warfare – second round

Statement by France

Session 1 – Impact at sea of the conduct of hostilities

Ladies and gentlemen,

France would like to thank the ICRC and the States co-chairing this group – Egypt and Indonesia – for holding this second state consultation on naval warfare. The first round of consultations was particularly fruitful and France would also like to thank the ICRC for publishing the progress report, which highlights the quality of our discussions.

The maritime environment has seen profound changes, leading to increased dependency of populations on shipping and infrastructure at sea. Shipping now underpins the global economy and that means belligerent States need to preserve neutral states from the effects of hostilities, guaranteeing freedom of navigation and protection of their rights, particularly when hostilities take place in their exclusive economic zones, while also taking steps to protect civilians who may be affected by hostilities at sea.

Efforts to reconcile the different interests at stake – those of neutral States, on the one hand, and of belligerent States, on the other – illustrate the need to continue identifying provisions of the law of the sea – both in the Montego Bay Convention and in instruments adopted under the auspices of the International Maritime Organization – which continue to apply in times of armed conflict.

Concerning the principles applicable to the conduct of hostilities, and first and foremost the principle of distinction, we consider merchant vessels, whether belonging to neutral or belligerent States – to be civilian objects. As such, they must not be subject to attacks as long as they do not lose their protection. That protection may be lost either due to designation of the merchant ship as a military objective, for example if it sails under convoy, or due to the activities of crew members or passengers that could be qualified as direct participation in hostilities.

Concerning the principle of proportionality, we do not see any particular specificity to conflicts at sea, when it applies.

Moreover, several precautions may be taken in order to protect merchant ships from the effects of hostilities. For example, attacks may be preceded by a warning, so that merchant ships can change course or unload their cargo. Concerning infrastructure at sea, such as pipelines, such a warning would allow flows to be stopped so as to avoid damage to the environment.

Exclusion zones can also be delimited by the belligerents in order to enable neutral ships and aircraft to keep away from hostilities, reducing risks of collateral damage. The establishment and delimitation of these zones must not, however, interfere disproportionately with the traffic of neutral ships.

Lastly, there is the issue of the composition of merchant navy crews. We cannot ignore the fact that it has little in common with the model that existed when the first instruments on naval warfare were drafted. This issue justifies renewed reflection on the status and the most protective terms of detention that can be granted to both crews and passengers if they are captured. We understand that this point will be addressed in the February 2026 round of consultations.

France is grateful to the ICRC for its involvement in updating the San Remo Manual on International Law Applicable to Armed Conflicts at Sea. France fully supports the updating of this Manual, which started in September. This process is a unique opportunity to consider in depth the current challenges of naval warfare which have been and may still be identified by States, including within today's initiative.

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Enforcing IHL in an environment of interdependency and hyperconnectivity, where dissipated vectors and responsibilities rely on a complex ecosystem of merchant navy actors, is today a genuine collective challenge that we must rise to.

Thank you.

Session 2 – Impact on land of the conduct of hostilities

Ladies and gentlemen,

This new session will now allow us to focus on another fundamental issue: the impact on land of the conduct of hostilities at sea.

I would like to start by coming back to three points related to the guiding questions submitted ahead of this consultation: firstly, the issue of blockades; secondly, addressing collateral effects in attacks; and thirdly, the notion of critical infrastructure.

Firstly, concerning blockades, we would like to recall that blockades, a historic practice of warfare at sea, remain fully relevant today. They are a very tangible response to operational needs, enabling control of flows to the enemy. However, maritime blockades must never seek to deprive civilian populations of food, medicine or any other items essential for their survival.

Secondly, both the direct and indirect effects of an attack must be assessed in advance in order to avoid or minimize collateral damage to protected persons and objects. However, we would like to underline that only reasonably predictable indirect effects have to be taken into account. As such, the armed forces should not be required to predict, or be held liable for, indirect effects of an attack that were not reasonably predictable as they were too far off, notably in time or space.

Lastly, we are increasingly seeing the use of the notion of “critical”, or “essential” civilian infrastructure. This expression does not currently have any basis in positive law, be it in IHL or texts on naval warfare. It is therefore not possible to deduce or conclude on any particular protective regime from the use of these terms. Moreover, we are convinced that, while certain objects enjoy special protection, for example as items essential for the survival of civilian populations, that is not the case of all “critical” or “essential” infrastructure.

Prize law, meanwhile, is governed in France by the Decree-Law of 1 September 1939,¹ which was last amended by the Ordinance of 22 December 2014. The confiscation of ships and cargoes is carried out in a different legal framework from the seizure of material objects, which applies to enemy battleships. The exercising of this law must be compliant with France’s international obligations, both in principles and in practice.

Ladies and gentlemen, France reiterates its full support for the initiative we are participating in today.

Thank you.

¹ Decree-Law of 1 September 1939 (Article 2): “This Decree determines the rules of maritime prize applicable to ships, [...] and their cargoes which, in the course of hostilities, fall under the control of the French maritime forces.”