

Third session on Workstream 7 regarding Naval Warfare as part of the Global Initiative to Galvanize Political Commitment to IHL (12/02/2026)

Statement by the Kingdom of the Netherlands

First of all, I would like to thank the ICRC and the co-sponsors of this workstream for organizing today's consultation. The Netherlands welcomes this State consultation, examining the core challenges belligerents face at sea.

It is the view of the Netherlands that in an international armed conflict, belligerent military operations and attacks at sea are primarily to be considered from a Law of Naval Warfare perspective. The Netherlands recognizes that in contemporary naval operations the application of the applicable norms may be challenging, and therefore subscribes to the importance of this Global IHL initiative.

The Netherlands recognizes the general legal obligation to search for the shipwrecked, wounded, sick and dead.

Under Article 18 GC II, however, this obligation only comes into play 'after each engagement'. What constitutes an engagement cannot be determined in advance nor in general, since it depends on an operational assessment, taking into account the broader mission accomplishment, and ongoing or expected enemy activity. For instance, if one conducts an amphibious operation, there can pass a considerable time between the striking of an enemy surface action group and the final completion of the amphibious landing. Even if completed, enemy activity can still prolong the engagement. If the engagement is however assessed to have ended, the obligation applies 'without delay'.

Further, the obligation to search for the shipwrecked, wounded and dead must be exercised with due diligence and good faith efforts. In the view of the Netherlands, therefore, the measures that can be undertaken to search for the shipwrecked, wounded and dead at sea, after each engagement, must be possible to execute. For example, a commander of a warship making use of missiles and unmanned systems such as one-way-attack drones (which is not unlikely in contemporary naval warfare) to engage military targets far beyond the line of sight, may have limited means to search for the shipwrecked, wounded and dead. In this sense, the Netherlands recognizes that the obligation to take all possible measures lies primarily with (both) belligerent parties, and not with the individual commander. In contemporary operations, it is of particular importance that the search-and-rescue after each engagement is coordinated at the higher tactical or operational level, and that it will be taken into account in both the planning and execution of the engagement. Close cooperation and communication with the international maritime community is required as a best practice. Where applicable, the SAR authority and nearby coastal States, and third party (merchant) vessels in the vicinity must be informed of the location and time where a targeted vessel was struck, and of any other relevant information - if not prevented by national security or intelligence considerations.

The Netherlands does not regard it as a legal obligation of neutral merchant vessels to respond to an appeal made by the belligerent parties, but neutral merchant vessels may be obliged to render assistance or proceed with all possible speed to the rescue of persons in distress under their domestic laws (in light of the general obligations for Flag States to implement such legislation under Article 98 UNCLOS). Neutral merchant vessels responding to the appeal of a belligerent, are in principle protected from capture. As the shipwrecked, wounded and sick that are taken on board of the neutral merchant vessel fall under the jurisdiction of the Flag State of the merchant vessel, the Flag State has a responsibility to ensure the transport of the persons on board to a Neutral port

and to assist the master of the vessel in the handling of the person on board. The commander of a belligerent warship may demand the surrender and transfer of the persons on board, provided that the wounded and sick are in a fit state to be moved.

Considerations regarding migrants at sea do not form part of the Law of Naval Warfare and hence do not need to be considered in this forum.”