

Contribution to the Fourth State Consultation on Naval Warfare, 6 May 2026, Intervention by Andrew Clapham, Professor of International Law, Geneva Graduate Institute

I should like to thank the Co-Chairs, the Governments of Egypt and Indonesia, for giving me the opportunity to contribute to this State Consultation. I was lucky to participate in the expert meeting in Jakarta, Indonesia, last year and have been following the process carefully.

I should like to address an issue that is not covered in the draft document. There is a need to discuss the legality of attacking neutral ships in a convoy with enemy warships. This is of contemporary relevance, and the law is not settled.

Although some manuals suggest that merchant vessels flying the flag of neutral states may be attacked if they sail under convoy of enemy warships or military aircraft [[eg San Remo Manual at para 67\(e\)](#)], I do not consider that this 'permission' should apply unless the neutral merchant ship independently qualifies as a military objective under the customary definition (reproduced in the draft where it is stated that there is a need to accurately assess 'whether a vessel's nature, location, purpose or use makes an effective contribution to military action and whether its total or partial destruction, capture or neutralization would, in the circumstances at the time, offer a definite military advantage.' [[And see para 68 San Remo Manual](#)]). Unless this is clarified, there is a danger that some people could consider it legal to attack neutral merchant ships under the convoy of enemy warships, without first establishing that they have become military objectives. Today shipowners fear that they would be targeted if they were to sail under escort.

There may be very good reasons to convoy neutral vessels, not least where the crew have been unable to proceed for long periods due to war. The idea that sailing under convoy means that a merchant ship should be considered to have forfeited its immunity from attack due to an implied intention to resist visit or capture involves a lot of assumptions. It implies that there is some sort of belligerent right to capture neutral merchant ships under certain conditions. But in the post-UN Charter world, it is, [in my view](#), very doubtful that a right of capture as prize over neutral ships (even for carrying contraband) should be afforded to an aggressor or indeed any state or organisation.

It is worth noting that this apparent 'right' to attack neutral merchant ships in convoy is omitted in several modern manuals published by states. I consider it useful for the eventual outcome document to reiterate that neutral vessels have not lost their immunity from attack simply because they are under convoy of enemy warships.

I am not sure there was ever a clear written rule in an international text that neutral merchant ships under enemy convoy could be attacked. There is no such rule in the [London Declaration of 1909](#), and no such rule in the [Oxford Manual on The Laws of Naval War](#) of 1913 (Institut de droit international), nor in the most recent [Helsinki Principles on the Law of Maritime Neutrality](#) of 1988 (International law Association). It is therefore unfortunate that this idea has been adopted by the San Remo Manual and the manuals which have copied the idea. The loss of life following attacks on convoys seeking to bring food to starving populations in World War II seems to have been quite forgotten today.

This state consultation to ensure humanity in war could highlight that neutral merchant vessels should be immune from attack unless they become military objectives; such vessels should not become military objectives merely by sailing under enemy convoy.