

DRAFT FOR FIFTH STATE CONSULTATION

Workstream 7 – NAVAL WARFARE

CO-CHAIRERD by Egypt, Indonesia and the International Committee of the Red Cross

Overview

The world's oceans, seas and waterways serve as a source of life: for fragile ecosystems and a diverse array of plants and animals, for the millions of fisherfolk who sustain global food security, for the ever-increasing volume of global trade, and for the expanding energy resources and infrastructure on which our societies depend. The oceans remain a shared global space, used by all, including in times of armed conflict. But naval warfare has undergone a significant transformation, expanding across multiple domains and exposing civilian seafarers, infrastructure and global supply chains to new and evolving risks. As maritime operations become more modernized, more complex and more interconnected, it is crucial that long-standing legal frameworks keep pace to ensure they achieve their protective purpose. At the same time, states have legitimate responsibilities in terms of safeguarding their security and protecting their populations and critical maritime interests. The application and interpretation of the law of naval warfare should therefore seek to protect those who are not involved in the fighting, including civilians and neutral states (i.e. states not party to the armed conflict), and address the security considerations of states, including the protection of maritime routes, sea lines of communication and civilian objects, including maritime infrastructure.

The law of naval warfare protects civilians and civilian objects at sea, as well as against the effects of naval warfare on land, including those arising from blockades, maritime zones and contraband controls. Similarly, merchant vessels – namely, ships engaged in commercial or private service – and states vessels other than warships and auxiliaries are civilian objects as such and are therefore protected against both direct attack and incidental harm. Submarine communication cables and pipelines are likewise protected. Civilian objects may become military objectives only for such time as, by their nature, location, purpose or use, they make an effective contribution to military action and where their total or partial destruction, capture, or neutralization offers, in the circumstances prevailing at the time, a definite military advantage.

The consultations on naval warfare have identified a number of practical measures and produced guidance as to how to apply the law of naval warfare in the 21st century in a way that best protects civilians and civilian objects and that upholds humanity even in armed conflict at sea while taking into account operational considerations.

The consultations also highlighted the importance of respecting maritime neutrality, that is a branch of international law that dictates the rights, duties and restrictions of neutral states during armed conflict at sea, to prevent the geographic spread of war and protect the populations of neutral states, particularly archipelagic and coastal states. The interlinkage between the law of naval warfare,

including the law of maritime neutrality, as well as the law of the sea, particularly the United Nations Convention on the Law of the Sea of 1982 (UNCLOS), has proven to be critical. Particular attention should also be given to the special geographical, legal and security circumstances of archipelagic and coastal states. Archipelagic sea lanes, territorial seas and surrounding waters are essential for the livelihoods, food security and economic stability of their populations, as well as for global maritime trade. Naval operations conducted in or near such waters should therefore respect the rights, duties and security interests of archipelagic and coastal states under international law, including the law of the sea, encompassing the protection of civilian navigation, fisheries and maritime connectivity. Further, the principle of humanity remains central to protecting civilians – both on land and at sea – from becoming an object of attack and from the risks arising from armed conflict at sea, including those associated with means and methods of naval warfare, such as blockades, which heighten risk of hunger, food insecurity and starvation. To this effect, the workstream has identified the following practical measures to respect humanity at sea and particularly protect civilians and civilian objects at sea.

Outcomes

1. Protecting civilians and civilian objects during naval warfare, including by applying the principles of distinction, proportionality and precautions

Merchant vessels, including container ships, bulk carriers, tankers, passenger ships, ferries, fishing vessels, and the persons and cargo on board, must never be made the object of attack unless they qualify as a military objective under international humanitarian law (IHL). Even then, the principles of proportionality and precautions apply to avoid, and in any event minimize, incidental harm to crews (including seafarers), passengers, nearby vessels, offshore infrastructure, civilian populations on land and the marine environment; and prohibit the attack if such harm may be expected to be excessive.

Certain categories of vessels – including small coastal fishing vessels, small boats engaged in local coastal trade, medical transports and humanitarian vessels – are exempt from attack and capture, subject to certain conditions, including the obligation not to take a direct part in hostilities.

Any use of force, during visit and search, contraband control, and blockade enforcement operations, against merchant vessels that do not qualify as military objectives under IHL must be strictly limited to the minimum lawful force necessary to compel compliance or submission to capture.

Ensuring that civilians and civilian objects are effectively protected during naval warfare requires clear, robust and actionable guidance to be embedded into military doctrine, training, planning, operational directives and procedures in a manner suited to the domestic framework. To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important:

- a) target selection and verification requirements, intelligence thresholds and authorization levels for accurately assessing whether a vessel is a military objective under IHL (see definition in introduction above)
- b) robust intelligence, surveillance and reconnaissance processes that support effective and reliable target verification, proportionality assessments, the selection of means and methods of naval warfare, and the identification of all reasonably foreseeable effects of attacks at sea on civilians, civilian objects, other protected persons, and other exempt or specifically protected objects, and to inform the implementation of all feasible precautions during naval hostilities
- c) measures to preserve, to the maximum extent feasible, civilian navigation, fishing activities and free, safe and unimpeded passage of ships engaging trade of essential goods during naval hostilities, including through clear notification, coordination and facilitation procedures
- d) use of safe harbours or areas and measures, as designated in agreements between states or parties to the armed conflict, to the maximum extent feasible, for the duration of the naval

operations to reduce the risk of civilian seafarers being caught in crossfire or becoming stranded on vessels and in turn exposed to prolonged physical, economic and psychological harm.

2. Protecting civilians from hunger, food insecurity and starvation caused by the effects of naval warfare, including blockade

Experience demonstrates that blockades and other maritime interdiction operations, such as exclusion zones and contraband control, can significantly increase the risk of hunger, food insecurity and starvation. They can severely disrupt the flow of commercial goods, foodstuffs, and medical and other essential supplies, and hinder humanitarian relief operations, even to neutral states. Prolonged operations may lead to, economic collapse, disruptions in global trade, interference to fishing and fishing related activities, loss of household income, deterioration of water and sanitation systems, severe public health impacts, and long-term dependency on humanitarian assistance all exacerbating civilian suffering on land. Blockade-like measures can have the same effect.

Blockades and similar measures can increase the risk of violating the prohibition of starvation of civilians as a method of warfare. This is especially the case when combined with violations of the obligations to ensure the civilian population under a belligerent's control can meet their basic needs and to allow and facilitate humanitarian relief.

In implementing measures aimed at protecting civilians from hunger, food insecurity and starvation during naval warfare, it is important to ensure that such measures are carried out in good faith and in accordance with international law and are not misused or disguised for purposes inconsistent with their humanitarian objectives. Preventing hunger, food insecurity and starvation should also be recognized as an essential component of broader efforts by the states and parties to armed conflict to safeguard the well-being, security and protection of civilian populations. The principle of distinction means that the employment of a particular method of warfare, including starvation or blockade, that would be indiscriminate in the circumstances, is unlawful regardless of any resulting military advantage. In particular, blockades and similar measures or other maritime interdiction operations must not violate the prohibition against starvation of civilians as a method of warfare. Furthermore, a blockade will be unlawful if the harm to civilians is or may be expected to be excessive in relation to the concrete and direct military advantage anticipated. Full respect for relevant obligations to provide for free passage of food and other essential supplies for the civilian population is necessary to ensure such means or methods of warfare are not indiscriminate in their application. An occupying power cannot enforce a blockade to circumvent its obligations to ensure the basic needs of the civilian population under occupation.

It is prohibited to attack, and, where provided safe conduct to capture, vessels exclusively engaged in humanitarian relief missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations.

The following measures, which reflect a combination of existing law and good practices, are particularly important to ensure civilians are effectively protected from hunger, food insecurity and starvation resulting from methods of naval warfare:

- a) use of established maritime and, where applicable, aviation notification channels to inform all potentially affected parties – including all states (belligerent or neutral) and parties to the armed conflict, seafarers, local authorities, and vessels and aircraft in the affected areas – in a clear, timely and effective manner about any maritime interdiction operations imposed
- b) procedures to ensure that the scope, geographic extent, location and duration of operations such as blockades and maritime exclusion zones are strictly required by military necessity and consistent with the principle of proportionality and respect the rights of neutral states and the legitimate uses of the seas, including the requirement to avoid adversely affecting neutral uses

of maritime space and facilitating safe passage of vessels and aircraft where such zones significantly impede access to ports or coastal waters of neutral states, except where military necessity does not permit

- c) regularly assessment of the proportionality of operations such as blockades, including by anticipating and monitoring civilian harm (such as shortages of food, medicine and other essential goods and services; malnutrition) – including harm resulting from the cumulative impact of other restrictions; ensuring that any claimed military advantage remains concrete and not speculative; and adopting the least harmful means while taking steps to effectively mitigate the civilian impact
- d) special international agreements or other technical arrangements aimed at avoiding or at any event minimizing disruption of shipments of food, agricultural inputs and medical and other relevant supplies to civilian populations, including in neutral states
- e) when a civilian population is inadequately supplied with food, medical or other essential supplies, allowing and facilitating rapid and unimpeded passage of humanitarian relief, which is impartial in character and conducted without any adverse distinction, subject to the right to prescribe the technical arrangements, including search under which such passage is permitted. This includes ensuring safe passage for vessels exclusively engaged in humanitarian activities; safeguarding the transit of medical and other essential supplies, identifying safe passage routes and procedures in coordination with relevant stakeholders; and communicating these arrangements and adjusting operations as necessary
- f) taking active measures to reduce interference with merchant shipping upon which civilian populations depend, including by establishing safe navigation routes, operational procedures, and technical arrangements to ensure the continued flow of adequate food, other essential supplies, and medical supplies for civilians and wounded or sick members of the armed forces, and exclude such items from contraband lists while clearly notifying belligerent and neutral states and relevant authorities of the goods subject to contraband control.

3. Complying with IHL rules on means and methods of naval warfare, including means and methods relying on new or emerging technologies

Traditional means and methods of naval warfare can have devastating effects on civilians at sea, such as the detonation of naval mines which can damage or destroy civilian vessels and injure, kill or shipwreck people on board, or exploded ordnance at sea which may pose a long-term danger.

New and emerging technologies are increasingly used in the maritime domain, including weapons with varying degrees of autonomy and systems relying on artificial intelligence to inform decisions about targets and the means of attack. While new and emerging technology capabilities may enable belligerents to achieve military objectives without necessarily causing harm, or with less harm to civilians or civilian objects than kinetic operations, their use in contemporary conflicts has also given rise to harmful activities affecting civilian populations, including at sea. Certain electronic, cyber and space-enabled means and methods of warfare may significantly disrupt commercial shipping, aviation and fishing activities and impact the civilian population.

The right of the parties to the conflict to choose methods or means of warfare at sea is not unlimited. Parties to a conflict must comply with international law applicable during armed conflict at sea when employing all means and methods of warfare, including those based on new and emerging technologies. Advancements in naval technology and the increasing use of unmanned maritime systems raise important questions regarding the status of such vessels, their navigational rights and the extent to which they may engage in belligerent acts under the international law applicable to armed conflict at sea. In the study, development, acquisition or adoption of a new weapon, means or method of naval

warfare, the determination must be made whether their employment would, in some or all circumstances, be prohibited by international law.

To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important to ensure that the development and use of weapons, means and methods of naval warfare, including those relying on new and emerging technologies, comply with IHL:

- a) measures to develop and clarify robust legal and policy frameworks along with standard operational procedures for employing new and emerging technologies – including unmanned and autonomous maritime systems, and those relying on artificial intelligence or space capabilities – during armed conflict at sea; these frameworks and procedures should set out permissible roles and missions, operational limits, command and control requirements, risk mitigation for civilians and civilian objects, and standards for training and accountability
- b) development and refinement of systems and procedures to prevent or mitigate disruptions to civilian systems resulting from cyber and electronic warfare activities – including jamming and spoofing – which may lead to target misidentification, navigation errors, collisions and groundings, and interfere with search and rescue and port operations
- c) operating unmanned aerial and maritime systems in the maritime domain in a manner that protects civilian navigation and aviation, including by ensuring attacks are strictly limited to military objectives; implementing procedures to prevent misidentification, collision risks, and interference with civilian vessels, aircraft and offshore infrastructure; and coordinating with air and maritime traffic management authorities
- d) conducting naval mining operations in a manner that avoids, or in any event minimizes, risks to civilian navigation and respects the rights of neutral states, including by:
 - i) using mines only for lawful military purposes and only against military objectives
 - ii) refraining from the use of free-floating mines due to their indiscriminate nature
 - iii) when laying mines in belligerent waters, ensuring that neutral vessels can safely exit the mined area once the mining operation begins and
 - iv) prohibiting the laying of mines and other hostiles actions in neutral waters (i.e. the internal waters, the territorial sea, and the archipelagic waters, including their seabed and subsoil)
 - v) if necessary to lay mines in the exclusive economic zone or the continental shelf of a neutral state, notifying that state and ensuring, *inter alia*, that they do not endanger artificial islands, installations, and structures, within such zones, nor interfere with access thereto, and avoid as far as practicable interference with the exploration or exploitation of the zone by the neutral state; and paying due regard to the protection and preservation of the marine environment
 - vi) by ensuring that existing passage rights for neutral vessels through international straits and archipelagic sea lanes are not impeded, unless safe and convenient alternative routes are provided
 - vii) paying due regard to lawful uses of waters subject to high seas freedoms by neutral states and neutral shipping, including by providing safe and practicable alternative routes.
- e) after the cessation of hostilities, in addition to fulfilling applicable legal obligations regarding clearance of naval mines, reaching agreements without delay between the parties to the armed conflict and, where appropriate, with other states and international organizations to share information and provide technical or material assistance, including, where appropriate, through joint operations, to remove minefields or otherwise render them harmless
- f) conducting legal reviews of capabilities at sea or to be used on land that would have an effect at sea that function as new weapons, means or methods of warfare at the earliest possible stage

of their study, development, acquisition or adoption, to ensure that their employment would not, in some or all circumstances, be prohibited by international law. Such reviews should be conducted through, *inter alia*, rigorous testing, evaluation, verification and validation of capabilities, to better understand their functioning, propagation and potential effects on civilians.

4. Respecting civilian objects at sea, in particular civilian infrastructure such as submarine communication cables and pipelines, and protecting it from the effects of naval warfare

There is a wide variety of civilian objects at sea, in particular infrastructure such as submarine communication cables and pipelines, energy infrastructure (e.g. offshore windfarms, oil platforms, power cables, tidal generators, navigational aids, ports, infrastructure supporting roadstead use, aquaculture installations, inshore or offshore desalination plants, and maritime search and rescue installations). Submarine communication cables and oil or gas pipelines are crucial for virtually all aspects of modern life. At the same time such infrastructure is inherently vulnerable to attack or incidental harm during armed conflict at sea. Damaging or destroying them can cause potentially far-reaching civilian consequences.

Protection of civilian objects at sea, including offshore infrastructure, such as submarine communication cables and pipelines, is enhanced by good-faith international cooperation, recognizing that many such facilities transcend national boundaries and are essential to global connectivity, economic stability and the well-being of populations, including those in archipelagic and coastal states.

The principles and rules on the conduct of hostilities during armed conflict at sea apply to attacks and other military operations that may affect civilian objects at sea, including civilian infrastructure (see outcome 1 above). All civilian objects, including civilian infrastructure, are protected from attack and reprisals under IHL. They remain protected unless and for such time as they satisfy the strict criteria in the definition of military objectives. Even when an object fulfils the definition to be a military objective, if it is simultaneously being used for civilian purposes, it must not be attacked if the expected incidental harm to civilians, civilian objects or the natural environment would be excessive in relation to the concrete and direct military advantage anticipated.

Ensuring submarine communication cables and pipelines and other civilian infrastructure at sea are effectively protected from the effects of naval warfare requires integrating clear, robust and actionable guidance into military doctrine, planning, operational guidance and procedures in a manner suited to the domestic framework. To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important:

- a) ensuring civilians working aboard, or otherwise present on or near civilian infrastructure at sea are appropriately considered in the assessments of proportionality and the application of precautionary measures
- b) refraining from direct attacks against, and avoiding, and in any event minimizing, all reasonably foreseeable incidental harm anticipated from attacks affecting offshore civilian infrastructure such as submarine communication cables as well as oil and gas platforms and pipelines and refraining from using offshore civilian infrastructure for military purposes
- c) respecting specific protections, including those applicable to objects indispensable to the survival of the civilian population
- d) considering the establishment of protected or demilitarized zones around civilian infrastructure at sea to protect them against the effects of naval hostilities, for example, through special agreements between parties to the conflict
- e) exploring in peacetime, together with all relevant stakeholders, the feasibility of legal, technical and other measures aimed at enhancing the protection of civilian infrastructure at

sea during armed conflict, including studying and better understanding the fragility of civilian infrastructure at sea, assessing and quantifying the potential human and environmental cost on land and at sea of military operations affecting this infrastructure, and ensuring such information is available to commanders and informs their planning and decisions

- f) strengthening collaboration, including through enhanced information-sharing, maritime domain awareness, and civil-military coordination with relevant civilian infrastructure operators, with a view to preventing, mitigating and responding to risks affecting such infrastructure in accordance with international law.

5. Protecting the natural environment from the effects of naval warfare

Armed conflict at sea can have significant long-lasting impacts on the marine and land environment. Damage to vessels in combat may result in oil spills, the release of hazardous substances and debris. Bombardments, underwater explosions and shipwrecks can devastate fragile ecosystems and marine environments, and incidents involving nuclear-powered vessels carry risks of radioactive contamination to both human and marine life.

The natural environment must not be the object of an attack unless it becomes a military objective. It must be respected and protected consistent with the applicable international law during armed conflict at sea.

Ensuring that the natural environment is effectively protected from unlawful damage during naval warfare requires clear, robust and actionable guidance to be embedded into military doctrine, training, planning, operational directives and procedures in a manner suited to the domestic framework. To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important:

- a) measures to prevent and mitigate environmental damage, such as oil spills, hazardous waste release and the destruction of fragile ecosystems, including:
 - i) incorporating appropriate limitations, including in standard operating procedures and operational orders, on the use of certain weapons at sea if they are likely to cause widespread, long-term and severe damage to the natural environment, or other unlawful environmental damage in contravention of the applicable international law
 - ii) determining how to properly handle and dispose of destroyed or damaged vessels and their cargo
 - iii) protecting vessels designed or adapted exclusively for pollution response in the marine environment when they are engaged in such activities, such as by designating a special emblem for such vessels and ensuring that all parties to the armed conflict are notified of their protected status.
- b) adopting and implementing measures prior to and regularly during military operations, to avoid, and in any event minimize, all reasonably foreseeable incidental harm to the natural maritime environment, such as by adopting internationally recognized indicators for those effects and supporting scientific research to increase understanding of them
- c) avoiding hostile actions, where feasible, in marine areas containing rare or fragile ecosystems or the habitat of depleted, threatened or endangered species or other forms of marine life by:
 - i) identifying and designating – ideally in peacetime – areas of particular environmental importance or fragility at sea and notifying all states and parties to armed conflict
 - ii) creating protected or demilitarized zones around areas of rare or fragile ecosystems at sea to prevent damage or attack through special agreements between parties to the conflict

- iii) ensuring that the protection of these areas is reflected in a strategic objective at the highest level prior to military operations and this objective is integrated into all military doctrine and training.
- d) using existing legal frameworks that regulate and designate marine protected areas to inform decision-making under the law of naval warfare, including assessments of environmental harm arising from means and methods of warfare, notably the Agreement under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), and the World Heritage Convention. Given that analysis of marine protected areas involves personnel with specialized skills, conservation and coordination mechanisms in place under such treaties may provide further guidance to shape operational planning and conduct in a given location.

6. Respecting, protecting, searching for, collecting and caring for the wounded, sick, shipwrecked and dead

Becoming shipwrecked at sea, whatever the reason, is oftentimes deadly, and when a vessel is attacked or damaged during an armed conflict at sea, the people on board may be wounded, fall ill or be shipwrecked or killed. Modern search and rescue operations at sea already face numerous challenges in peacetime, including the sheer scale of the ocean and the difficulty of locating individuals in vast, dynamic environments, the dangers posed by marine wildlife, the absence of food and fresh water, and the dangers posed by weather and sea conditions. Search and rescue is made infinitely more perilous during armed conflict particularly where hostilities are intense and conducted on a large scale: vessels and aircraft collecting and caring for the wounded, sick, shipwrecked and dead – already in limited supply – are likely to find themselves in highly dangerous areas affected by the conflict.

Assisting people in distress at sea is a fundamental legal obligation, both in times of peace and armed conflict, as reflected in the Second Geneva Convention and Additional Protocol I to the Geneva Conventions, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, UNCLOS and in customary international law. After each engagement, parties to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick, shipwrecked and dead without adverse distinction.

Such people must be respected and protected in all circumstances. Under the rules of IHL, belligerents must refrain from attacking such people and hospital ships, coastal rescue craft and other medical transports. The dead at sea must be treated with dignity and must not be despoiled. Belligerents must search for those who remain unaccounted for, to provide the families with answers about the fate and whereabouts of their loved ones. Information on the wounded, sick, shipwrecked and dead must be collected and transmitted to the other belligerent or the Central Tracing Agency of the International Committee of the Red Cross (ICRC) to inform families and their armed forces (this is also important for detainees – see outcome 7).

To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important to ensure that the wounded, sick, shipwrecked and dead are respected, protected, searched for, collected and evacuated:

- a) embedding the search and collection of the wounded, sick, shipwrecked and dead into a belligerent's tactics to ensure that they are treated as standard functions in any military operation
- b) establishing, where feasible, a communications procedure by agreement between the belligerents which may include notification of the shipwreck or of the shipwrecked people to other belligerents or as appropriate those able to undertake search and collection; temporary cessation of hostilities in affected areas; sharing the coordinates of safe areas or routes where the use of supporting aircraft, vessels and other craft and installations can operate; and establishing a humanitarian zone in contested waters

- c) without prejudice to the belligerent's own obligations in terms of search and rescue, put in place measures where by belligerents informing, where required, the search and rescue authority and the nearby coastal states and third-party vessels in the vicinity of an engagement of the time and location where a targeted vessel was struck and of any other relevant information to support effective search and rescue; ensuring that protected search and rescue assets are clearly identifiable and factored into belligerent targeting and notification processes; and putting in place measures to ensure that other vessels that may be called on to support search and rescue are not attacked
- d) establishing clear procedures for belligerents to appeal to the humanitarian assistance of commanders of neutral merchant vessels or other craft to take on board and care for wounded, sick or shipwrecked people and to recover the deceased; taking appropriate measures to coordinate with responding vessels and their flag states, including those that provide assistance on their own initiative; ensuring that all such vessels are granted the necessary special protection, support and facilities to effectively carry out these humanitarian functions; and ensuring that a clear distinction is maintained between military vessels and neutral vessels providing humanitarian action to ensure that neutral vessels are not accused of breaching neutrality
- e) deploying new technology to enhance the search for and evacuation of the wounded, sick, shipwrecked and dead at sea and provide needed medical support, and developing innovative technologies to increase these capabilities
- f) embed into military doctrine, standard operating procedures and rules of engagement the systems, forms and processes to ensure that information on all wounded, sick, shipwrecked and dead people is collected; this includes procedures for the national information bureau or equivalent entity to inform the Central Tracing Agency of the ICRC for onward transmission to the state or party to the armed conflict concerned and the families
- g) establish clear procedures and forms for handling the dead at sea with dignity, including standardizing record-keeping; promoting dignified land burial, and, if burial at sea is unavoidable, ensuring burials are carried out individually and that all relevant information has been recorded; using standardized identification procedures; and carrying out a careful medical examination prior to disposal
- h) support after-action reviews, which should assess the handling of the dead to ensure that lessons are learned for future engagements and operations.

7. Respecting and protecting those deprived of their liberty at sea

Boarding, inspection and seizure of vessels at sea can all lead to people being detained. Likewise, once the wounded, sick and shipwrecked are collected after an engagement, certain individuals among them might be identified for detention. People deprived of their liberty under any circumstances are inherently vulnerable; this is even more true for detention at sea during armed conflict. Certain obligations must therefore be fulfilled to ensure that the conditions of detention are good, such as registering detainees and providing them with procedural safeguards. In international armed conflict, people recovered at sea might also meet the criteria for prisoner-of-war status under the Third Geneva Convention, or protected person status under the Fourth Geneva Convention.

Persons deprived of their liberty at sea should be transferred to IHL-compliant places of detention on land as soon as practicable. In some instances, transfer to land is required by law: the Third Geneva Convention strictly prohibits the internment of prisoners of war at sea. IHL applicable to all detainees requires minimum living conditions and procedural safeguards. Furthermore, holding detainees aboard a warship or other seaborne military objective without necessity risks violating prohibitions against holding detainees in places where they are exposed to the dangers of hostilities, and violating the

obligation to protect civilians from the effects of attacks, and, more generally, the obligation to take constant care to spare the civilian population in military operations. In accordance with the law, any detainees must be held in line with IHL, meeting the minimum standards of conditions and treatment. Where detainees are held for reasons unrelated to the conflict, detention must be in line with applicable human rights law. Likewise, detainees must be provided with the procedural safeguards and judicial guarantees relevant to the grounds on which they are detained to the best of the detaining authority's ability until they disembark. In certain circumstances, neutral states may be required to receive and intern people deprived of their liberty at sea.

To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important to ensure detainees at sea are respected and protected:

- a) integrating IHL obligations on detention at sea into military manuals, doctrine, rules of engagement, training and operational planning, including procedures to limit temporary detention or transit at sea to the absolute minimum, ensure suitable onboard conditions and trained personnel, provide for the transfer of detainees promptly to appropriate land-based facilities – including through coordination with neutral states where necessary (including resource pooling arrangements for example) – and ensure the provision of applicable judicial guarantees and procedural safeguards
- b) embedding systems and procedures into national legal and policy frameworks, military doctrine and operational planning to ensure that information on all people taken into custody at sea is collected and transmitted through the party's national information bureau or equivalent entity to the Central Tracing Agency of the ICRC for onward transmission to the state or party to the armed conflict concerned and the families, and ensuring that the ICRC has access to people deprived of their liberty for reasons related to the conflict, whether interned or detained
- c) ensuring the prompt release of all merchant crew and passengers captured at sea unless they have taken direct part in hostilities
- d) creating guidelines and educational materials on the protection of detainees at sea and exchanging good practice
- e) ensuring that neutral states have the necessary legal and policy frameworks and operational procedures in place to accept, process and accommodate people deprived of their liberty at sea in accordance with their legal obligations under treaty and customary law.

8. Protecting neutral maritime trade and ensuring global commerce continues, as any disruption would create adverse effects on civilian populations worldwide

During an international armed conflict at sea, the relationship between belligerents and neutrals is governed by maritime neutrality, among other bodies of law. Maritime neutrality is rooted in the desire to limit the geographic spread of war and protect the interests of states that are not involved in an armed conflict, and their populations. Its principles establish the rights and duties of neutral states, and of belligerent states vis-à-vis neutral states (other belligerent rights and duties are governed by IHL).

One of the pillars of the law of naval warfare is the right of neutral states to continue to trade among themselves, and with belligerents subject to restrictions such as the rules governing contraband and blockade. Nowadays, disruptions to global commerce, in particular of essential goods and services including energy resources, could adversely affect civilian populations worldwide. The exercise of navigational rights and freedoms by merchant vessels, in accordance with international law, must be respected. All neutral vessels must be guaranteed safe passage, for example, through a maritime exclusion zone if that zone impedes free and safe access to neutral ports, and in other cases where normal navigation routes are affected. Neutral vessels must be allowed to leave the territorial waters of

a belligerent state safely and to resume commercial activity. The key maritime and port infrastructure of neutral states must be protected.

To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important to limit the impacts of naval warfare on neutral states:

- a) enabling neutral vessels to navigate safely, in accordance with international law applicable during armed conflicts at sea, by taking protective measures and maintaining and operating safe maritime corridors to keep shipping lanes open for safe transit of neutral shipping, and at a minimum when disruptions to global trade cannot be avoided, ensuring that belligerents are paying special attention to essential goods
- b) incorporating the protections for neutral trade and territory during armed conflict at sea into military doctrine, standard operating procedures and rules of engagement
- c) taking steps to enhance maritime domain awareness to ensure that belligerents are monitoring neutral trade, including vessel movements, cargo, crew and other personnel, with a view to mitigating risks that could affect the safety and security of neutral trade during hostilities at sea, including through the effective notification of military activities in areas potentially hazardous to merchant shipping
- d) developing guidance on protecting neutral seafarers from the effects of armed conflict at sea, including by ensuring that, upon the outbreak of an armed conflict, neutral merchant vessels are permitted to depart safely from belligerent territorial waters or ports and are protected from attack while doing so, including when under [safe] escort where necessary
- e) restricting the use of visit and search of neutral merchant vessels to circumstances where there are reasonable grounds to believe that the vessel is liable to capture under international law applicable to armed conflict at sea, and ensuring that such measures are applied with full consideration for the safety of the crew, the protection of civilian cargo and the continuity of lawful neutral trade
- f) exchanging practices and policies among governments and the shipping industry to protect merchant vessels from being unduly delayed or affected by the enforcement of contraband measures
- g) ensuring investigations are prompt and there is accountability when harm caused to seafarers or damage to civilian vessels may contravene international law applicable to armed conflict at sea.

9. Strengthening training, dialogue and cooperation on the law of naval warfare and its implementation and application

Training for naval forces, cross-government engagement, and international dialogue are essential to promote and improve understanding of and adherence to the law of naval warfare, including IHL. In addition, these cooperative measures would reinforce the understanding of the interplay between the law of naval warfare, including IHL, and the law of the sea, particularly the United Nations Convention on the Law of the Sea of 1982 (UNCLOS).

To this effect the following measures, which reflect a combination of existing law and good practices, are particularly important to ensure effective training, dialogue and cooperation on the law of naval warfare:

- a) systematically integrating the international law applicable to armed conflict at sea (including IHL, maritime neutrality, prize law, the law of the sea, environmental law, human rights etc.) into military doctrine, operational planning, the conduct of operations and standard operating procedures

- b) encouraging clarification of the interaction between law of the sea and the law of naval warfare, such as the obligation of states to ensure the safety and accessibility of sea lanes, including archipelagic sea lanes and straits used for international navigation
- c) reinforcing the critical importance to commanders of having legal advisers at all levels and across all domains who are well-versed in the international law applicable to armed conflict at sea
- d) putting in place continuous and comprehensive training programmes on international law applicable to armed conflict at sea for all armed forces that may be required to fight at sea and training other government personnel who may be involved in maritime operations
- e) developing and adopting all necessary legislative, regulatory and other measures, including, where appropriate, criminal sanctions, to prevent and suppress IHL violations committed by persons or on territory under their jurisdiction or control during naval operations
- f) encouraging cooperation to support capacity-building and the sharing of relevant expertise, including through, where appropriate, the transfer of search and rescue technology, with a view to narrowing gaps in capabilities and strengthening states' ability to effectively implement and apply the international law applicable to armed conflict at sea
- g) clarifying states' views on how international law applicable to armed conflict at sea applies during non-international armed conflict
- h) supporting the update of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994)
- i) engaging in sustained international dialogue and cooperation to build a common understanding of legal, humanitarian, and military challenges posed by contemporary naval warfare to collectively develop practical responses and solutions. In this regard, states are encouraged, on a voluntary basis and in accordance with their national frameworks, to exchange relevant experiences, best practices and lessons learned, including through dialogue and information-sharing, with a view to enhancing the effective application of the law of naval warfare and improving the protection of civilians and civilian objects at sea.