

Workstream 7

Naval warfare

Outcome Document

Global Initiative to Galvanize
Political Commitment to
International Humanitarian Law



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, and against the effects of naval warfare on land as well, including those arising from blockades, maritime zones and contraband controls. The principles of distinction, proportionality and precautions act as key safeguards for merchant vessels – namely, ships engaged in commercial or private service – and for state vessels other than warships and auxiliaries, all of which are civilian objects and as such 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 several 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 – a branch of international law that governs 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, and 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. Furthermore, 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.

This outcome document does not seek to create new obligations, nor does it replace, reduce or otherwise modify the obligations that states and parties to armed conflict have under international law, in particular international humanitarian law (IHL). Rather, it provides guidance to facilitate the implementation of those obligations in a manner consistent with the protective purpose of IHL. 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.

Outcome

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 and for such time as they qualify as a military objective under 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 they prohibit attack if such harm may be expected to be excessive.

Certain categories of vessels – including, *inter alia*, small coastal fishing vessels, small boats engaged in local coastal trade, medical transports, humanitarian vessels and vessels engaged in transporting cultural property – 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) deploying robust intelligence, surveillance, reconnaissance and authorization processes that support effective and reliable target selection and 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 ensuring that such intelligence informs the implementation of precautions in attack, whether in offence or defence
- b) taking measures to preserve, to the maximum extent feasible, civilian navigation, fishing activities and free, safe and unimpeded passage of ships engaging in the trade of essential goods during naval hostilities, including through clear notification, coordination and facilitation procedures
- c) using 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.

A blockade that has starvation of civilians as a purpose is unlawful. A blockade will also 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. Furthermore, a blockade must not be implemented in a manner that involves indiscriminate use of starvation as a method of warfare, regardless of any resulting military advantage. Full respect for relevant obligations, for example to provide for free passage of food and other essential supplies for the civilian population, is necessary to ensure a blockade is not indiscriminate in its application. Restricting relief to civilians for purposes such as seeking to intimidate or punish the civilian population would also be inconsistent with IHL rules governing humanitarian relief, as well

as other rules of IHL. An occupying power cannot establish and maintain a blockade to circumvent its obligations to ensure the basic needs of the civilian population under occupation.

Vessels exclusively engaged in humanitarian relief missions must not be attacked and, where they have been granted safe conduct, must not be captured. This includes vessels carrying supplies indispensable to the survival of the civilian population, as well as 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) using 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) establishing 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 that they respect the rights of neutral states and the legitimate uses of the seas in accordance with the UNCLOS, including the requirements to avoid adversely affecting neutral uses of maritime space and facilitate safe passage of vessels and aircraft where such zones significantly impede free and safe access to ports and coasts of neutral states and in other cases where normal navigation routes are affected, except where military necessity does not permit it.
- c) regularly assessing the proportionality of operations such as blockades, including by anticipating and monitoring civilian harm (such as malnutrition and shortages of food, medicine and other essential goods and services) – 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) adopting special international agreements or other technical arrangements aimed at avoiding, or in 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 in strict accordance with IHL and in good faith. 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 excluding 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 unexploded 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 obligations 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) taking 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) developing and refining 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 that attacks are strictly limited to military objectives; implementing procedures to prevent misidentification, collision risks, and interference with civilian vessels, aircraft and off-shore infrastructure; and coordinating with air and maritime traffic management authorities.
- d) conducting naval mining operations in a manner that avoids, and 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 refraining from any attack using mines that is not, or cannot be, directed against a specific military objective.
 - ii) refraining from the use of free-floating mines, particularly where their use would be indiscriminate or would otherwise violate international law applicable to armed conflict at sea.
 - iii) when laying mines in belligerent waters, ensuring that neutral vessels can safely exit the mined area once the mining operation begins.
 - iv) prohibiting the laying of mines and other hostile actions in neutral waters (i.e. the internal waters, the territorial sea and the archipelagic waters, including their seabed and subsoil).
 - v) if it is 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 and do not interfere with access thereto; avoiding, 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) 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.
 - viii) after the cessation of active hostilities, parties to the conflict doing their utmost to remove or render harmless the mines they have laid, with each party removing its own mines. Regarding mines laid in the internal waters, archipelagic waters and territorial seas of the enemy, each party must notify the other party of their position and proceed with the least possible delay to remove the mines in its internal waters, archipelagic waters and territorial seas or otherwise render these waters safe for navigation.
 - ix) in addition to fulfilling applicable legal obligations to remove or otherwise render harmless naval mines, endeavouring to reach 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.

- e) conducting legal reviews of capabilities at sea (or those 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, maritime search and rescue installations, and underwater cultural heritage. 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 or civilian objects, including 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 that 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 directing attacks against offshore civilian infrastructure, including submarine communication cables, oil and gas pipelines; avoiding, and in any event minimizing, all reasonably foreseeable incidental civilian harm anticipated from attacks affecting such infrastructure; and, to the maximum extent feasible, refraining from using such infrastructure for military purposes
- c) taking care to avoid damage to cables and pipelines laid on the seabed which do not exclusively serve the belligerents
- d) respecting specific protections, including those applicable to objects indispensable to the survival of the civilian population
- e) 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
- f) 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
- g) 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) taking 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 and other means and methods of warfare at sea if they are likely to cause wide-spread, 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), the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (Part XI Agreement), relevant conventions and instruments under the International Maritime Organization, 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 often 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 Protocol I additional to the Geneva Conventions, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the 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 belligerents' 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) putting in place measures to assist belligerents with informing, where required, and without prejudice to the belligerent's own obligations in terms of search and rescue, 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 for 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) embedding 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) establishing 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) supporting 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, persons detained at sea fall under the protection of the Third or Fourth Geneva Conventions (where they meet the relevant criteria) and are in all cases protected by customary IHL. In addition, wounded, sick or shipwrecked prisoners of war recovered at sea are simultaneously protected by the Second 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. Similarly, 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 the law of neutrality, including maritime neutrality, among other bodies of law. Such rules are 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, including their populations and their trade.

The law of naval warfare includes the right of neutral states to continue to trade among themselves, and with belligerents, subject to lawful 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 free and safe passage, for example, through a maritime exclusion zone if that zone impedes free and safe access to neutral ports and coasts, 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 free and safe passage for neutral vessels, 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 shipping, 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 and processes 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 from belligerent territorial waters, ports or other areas of active hostilities safely, and are protected from attack during their transit, including when under escort where necessary
- e) restricting the use of visit and search of neutral merchant vessels to circumstances where there are reasonable grounds for suspecting 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 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 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 law, etc.) into military doctrine, operational planning, the conduct of operations and standard operating procedures.
- b) clarifying the interaction between the law of the sea and the law of naval warfare, particularly the obligation of both coastal and user states to ensure the safety of sea lanes, especially straits used for international navigation during armed conflict.
- 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, such as maritime-domain-awareness tools, mine-clearance expertise, environmental-response capacity, legal training and regional information-sharing, 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.

