

Click on "CHAPTER BIBLIOGRAPHY" or "SPECIFIC BIBLIOGRAPHY" to see content

CHAPTER BIBLIOGRAPHY

Suggested reading:

- DOSWALD-BECK Louise (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge, CUP, 1995, 257 pp.
- HAINES Steven, "War at sea: Nineteenth-century laws for twenty-first century wars?", in *IRRC*, Vol. 98, No. 902, 2016, pp. 419-448.
- HEINTSCHEL VON HEINEGG Wolff, "The Law of Armed Conflict at Sea", in FLECK Dieter (ed.), *The Handbook of International Humanitarian Law*, 4th ed., Oxford, OUP, 2021, paras. 17.01-17.64.
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Introductory text

(For attacks from the sea on objectives on land, see *supra*, Conduct of Hostilities)

"Naval warfare" is the term used to denote "the tactics of military operations conducted on, under, or over the sea". [1] The general principles of International Humanitarian Law (IHL) applicable to conflicts on land (which have to do primarily with sparing non-combatants and civilian property) apply to this type of military operation. Naval warfare nevertheless has certain singular features that necessitate a specific set of rules.

Most of the international instruments governing the law of war at sea were adopted in the early twentieth century. [2] However, it became clear during the various conflicts that subsequently occurred that the rules governing war at sea had become obsolete. It was not until the early 1990s that experts and government officials drew up the San Remo Manual, which clarifies the law of war at sea and brings it up to date, taking account of the developments that had occurred over the previous hundred years.

Though incomplete, most of the work codifying the law of war at sea was done in 1907, the year in which the Hague Conventions were adopted. [3] Eight of the Conventions tackle different aspects of naval warfare. Their provisions deal both with the conduct of hostilities (the laying of underwater mines: Convention VIII; bombardment by naval forces: Convention IX; protection of the sick, wounded and shipwrecked: Convention X) and the protection of certain ships (the status of merchant ships and their conversion into warships: Conventions VI and VII; the right of capture: Conventions XI and XII, which never came into force; the rights and duties of neutral powers: Convention XIII).

The inability of the rules adopted in those Conventions to limit the number of victims of naval hostilities became evident during the two world wars. The rules also proved outdated in the light of the technological progress made during that time. Indeed, a treaty was adopted in London in 1936 stipulating that submarines were bound by the same rules as surface ships, but it proved insufficient: the Second World War was ridden with torpedo attacks on neutral vessels, merchant ships and hospital ships, the indiscriminate laying of underwater mines, etc.

In 1949 the Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea (Convention II) replaced the Hague Convention X of 1907. In addition, Protocol I of 1977 states that all its provisions concerning protection against the effects of hostilities also apply to naval operations "which may affect the civilian population, individual civilians or civilian objects on land". [4] However, these two fundamental instruments still failed to clarify matters concerning the conduct of hostilities at sea.

During the Falklands/Malvinas War (1982), for example, problems arose with the use of exclusion zones by the warring parties and Convention II's prohibition of the use of secret codes by hospital ships. [5] Moreover, the armed conflict between the Islamic Republic of Iran and Iraq (1980-1988) saw frequent attacks on neutral civilian ships and the use of underwater mines.

Between 1987 and 1994, experts and high-ranking government officials from 24 countries convened several times at the International Institute of Humanitarian Law in San Remo to draft the San Remo Manual. [6] The Manual is a non-binding document modelled on its ancestor, the Oxford Manual, [7] and containing laudable clarifications of the rules currently applicable to naval warfare. Its main virtue is that it allows post-war developments in international law, in particular IHL (1949 Geneva Conventions and Protocol I of 1977) to be explicitly combined.

The San Remo Manual recalls that the key principles of the law of war on land are applicable to war at sea. For example, the principle of distinction and the requirement to take precautionary measures when launching an attack are clearly formulated. The concept of "military objective" was included and adapted to war at sea.

The Manual also clears up certain problems specific to maritime hostilities: it contains detailed provisions on

the use of certain weapons (mines and torpedoes) and addresses interaction between ships and aircraft; distinctions between different kinds of maritime zone reflect developments in the law of the sea, etc. The fact that the text is non-binding and wars at sea are not common in no way robs the San Remo Manual of its usefulness today. It provides States with a coherent document enabling them to take account of the law of war at sea in their actions and legislation. [8] It is today the main reference document for the law of naval warfare.

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I. Scope of application: the different zones

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1. Zones

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 - a. **internal waters, territorial sea and archipelagic waters**

• CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 14-22]
 - a. **international straits and archipelagic sea lanes**

• CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 23-33]
 - Sri Lanka, Naval War against Tamil Tigers

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- a. **exclusive economic zone and continental shelf**

• CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 34-35]

- a. **high seas and seabed beyond national jurisdiction**

• CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 36-37]

2. Sea areas for protected vessels

- a. **stay in neutral ports – limit 24 hours**
- b. **by agreement between parties: create a neutral zone**

• CASES AND DOCUMENTS

- Argentina/United Kingdom, The Red Cross Box

- a. **passage of protected vessels through restricted areas: exclusion zones**

II. Principles of naval warfare

• CASES AND DOCUMENTS

- ICTY, The Prosecutor v. Tadic [Part A., para. 100]
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole

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2. The law of neutrality in naval warfare: *jus ad bellum* or *jus in bello*?

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a. basic rules

1. distinction between civilian objects and military objectives

► CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 38-41]
- Sri Lanka, Naval War against Tamil Tigers

a. precautions in attack

► CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Para. 46]
- Sri Lanka, Naval War against Tamil Tigers

a. **military objectives**

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1. Hospital ships

(See infra, VI. Hospital Ships)

▪ CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 47-51]
- Argentina/United Kingdom, The Red Cross Box

2. Other protected vessels

a. vessels guaranteed safe conduct by prior agreement between belligerents

aa) cartel ships

▲ CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 47 and 48]

bb) vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population

▲ CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 47 and 48]

a. passenger vessels

b. vessels charged with religious, non-military scientific, or philanthropic missions

c. vessels transporting cultural property under special protection

d. small coastal fishing vessels and small boats engaged in local trade

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e. vessels engaged in the protection of the marine environment

f. ships which have surrendered

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g. life boats and rafts

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3. Protection of enemy merchant vessels

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- a. **except if they are military objectives**
- b. **activities which may render them military objectives**

4. Protection of neutral merchant vessels

- a. **circumstances which make them subject to attack**

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VI. Hospital ships

GCII, Arts 22-35; PI, Art. 22

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1. Specific protection

- small craft used for coastal rescue operations
- medical transports
- neutral vessels

2. Loss of protection

- using codes

▲ CASES AND DOCUMENTS

- Argentina/United Kingdom, The Red Cross Box

VII. The status and treatment of war victims at sea

▲ CASES AND DOCUMENTS

- San Remo Manual on International Law Applicable to Armed Conflicts at Sea [Paras 161-168]
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Footnotes

- [1] Encyclopedia Britannica, online: <http://www.britannica.com>
- [2] To consult all these texts, see SCHINDLER Dietrich & TOMAN Jiri, *The Laws of Armed Conflicts*, 4th ed., Leiden/Boston, M. Nijhoff, 2004, pp. 1055-1178 and 1409-1430.
- [3] These texts are available at <http://www.icrc.org/ihl>
- [4] P I, Art. 49(3)
- [5] GC II, Art. 34(2); see also Argentina/United Kingdom, *The Red Cross Box*,
- [6] The San Remo Manual on International Law Applicable to Armed Conflicts at Sea. Prepared by International Jurists and Naval Experts Brought Together by the San Remo International Institute of Humanitarian Law. Adopted in June 1994. Reproduced in *IRRC*, No. 816, 1995, pp. 583-637. See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*
- [7] Manual of the Laws of Naval War, Oxford, 1913; available at <http://www.icrc.org/ihl>
- [8] The German military manual, for example, was based on the work carried out at San Remo: Humanitarian law in armed conflicts Manual, Federal Ministry of Defence, Germany, VR II 3, DSK VV207320067, Zdv 15/2, August 1992, pp. 97-112. The recent military manuals of the United States and the United Kingdom equally follow, as far as the law of sea warfare is concerned, largely the San Remo Manual.