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0521558646 - San Remo Manual on International Law Applicable to Armed Conflicts at Sea

Edited by Louise Doswald-Beck

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SAN REMO MANUAL
on
INTERNATIONAL LAW APPLICABLE
TO ARMED CONFLICTS AT SEA

Prepared by
International Lawyers and Naval Experts
convened by the IIHL
Adopted in June 1994

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INTRODUCTORY NOTE

The San Remo Manual was prepared during the period 1988–94 by a group of legal and naval experts participating in their personal capacity in a series of Round Tables convened by the International Institute of Humanitarian Law. The purpose of the Manual is to provide a contemporary restatement of international law applicable to armed conflicts at sea. The Manual includes a few provisions which might be considered progressive developments in the law but most of its provisions are considered to state the law which is currently applicable. The Manual is viewed by the participants of the Round Tables as being in many respects a modern equivalent to the Oxford Manual on the Laws of Naval War Governing the Relations Between Belligerents adopted by the Institute of International Law in 1913. A contemporary manual was considered necessary because of developments in the law since 1913 which for the most part have not been incorporated into recent treaty law, the Second Geneva Convention of 1949 being essentially limited to the protection of the wounded, sick and shipwrecked at sea. In particular, there has not been a development for the law of armed conflict at sea similar to that for the law of armed conflict on land with the conclusion of Protocol I of 1977 additional to the Geneva Conventions of 1949. Although some of the provisions of Additional Protocol I affect naval operations, in particular those supplementing the protection given to medical vessels and aircraft in the Second Geneva Convention of 1949, Part IV of the Protocol, which protects civilians against the effects of hostilities, is only applicable to naval operations which affect civilians and civilian objects on land.

A preliminary Round Table on International Humanitarian Law Applicable to Armed Conflicts at Sea, held in San Remo in 1987 and convened by the International Institute of Humanitarian Law, in co-operation with the Institute of International Law of the University of Pisa (Italy) and the University of Syracuse (USA), undertook an initial review of the law. The Madrid Round Table, convened by the International Institute of Humanitarian Law in 1988, developed a plan of action to draft a contemporary restatement of the law of armed conflict at sea. In conformity with its mandate to prepare developments in international humanitarian law, the International Committee of the Red Cross supported this project throughout. In order to implement the Madrid Plan of Action, the Institute held annual Round Tables which met in Bochum in 1989, in Toulon in 1990, in Bergen in 1991, in Ottawa in 1992, in Geneva in 1993 and finally in Livorno in 1994. Basing themselves on thorough reports made by rapporteurs between the meetings, comments thereto by participants and careful discussion during the meetings, these groups drafted the Manual which was adopted in Livorno in June 1994.

The related Explanation was prepared by a core group of experts who had also been the rapporteurs for the Round Tables. The Manual should be read together with this Explanation for a full understanding of the Manual's provisions.

The Authentic text of the Manual is English.

PART I

GENERAL PROVISIONS

Section I Scope of application of the law

- 1 The parties to an armed conflict at sea are bound by the principles and rules of international humanitarian law from the moment armed force is used.
- 2 In cases not covered by this document or by international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of the public conscience.

Section II Armed conflicts and the law of self-defence

- 3 The exercise of the right of individual or collective self-defence recognised in Article 51 of the Charter of the United Nations is subject to the conditions and limitations laid down in the Charter, and arising from general international law, including in particular the principles of necessity and proportionality.
- 4 The principles of necessity and proportionality apply equally to armed conflict at sea and require that the conduct of hostilities by a State should not exceed the degree and kind of force, not otherwise prohibited by the law of armed conflict, required to repel an armed attack against it and to restore its security.
- 5 How far a State is justified in its military actions against the enemy will depend upon the intensity and scale of the armed attack for which the enemy is responsible and the gravity of the threat posed.
- 6 The rules set out in this document and any other rules of international humanitarian law shall apply equally to all parties to the conflict. The equal application of these rules to all parties to the conflict shall not be affected by the international responsibility that may have been incurred by any of them for the outbreak of the conflict.

Section III Armed conflicts in which the Security Council has taken action

- 7 Notwithstanding any rule in this document or elsewhere on the law of neutrality, where the Security Council, acting in accordance with its powers under Chapter VII of the Charter of the United Nations, has identified one or more of the parties

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to an armed conflict as responsible for resorting to force in violation of international law, neutral States:

- (a) are bound not to lend assistance other than humanitarian assistance to that State; *and*
 - (b) may lend assistance to any State which has been the victim of a breach of the peace or an act of aggression by that State.
- 8 Where, in the course of an international armed conflict, the Security Council has taken preventive or enforcement action involving the application of economic measures under Chapter VII of the Charter, Member States of the United Nations may not rely upon the law of neutrality to justify conduct which would be incompatible with their obligations under the Charter or under decisions of the Security Council.
- 9 Subject to paragraph 7, where the Security Council has taken a decision to use force, or to authorise the use of force by a particular State or States, the rules set out in this document and any other rules of international humanitarian law applicable to armed conflicts at sea shall apply to all parties to any such conflict which may ensue.

Section IV Areas of naval warfare

- 10 Subject to other applicable rules of the law of armed conflict at sea contained in this document or elsewhere, hostile actions by naval forces may be conducted in, on or over:
- (a) the territorial sea and internal waters, the land territories, the exclusive economic zone and continental shelf and, where applicable, the archipelagic waters, of belligerent States;
 - (b) the high seas; *and*
 - (c) subject to paragraphs 34 and 35, the exclusive economic zone and the continental shelf of neutral States.
- 11 The parties to the conflict are encouraged to agree that no hostile actions will be conducted in marine areas containing:
- (a) rare or fragile ecosystems; *or*
 - (b) the habitat of depleted, threatened or endangered species or other forms of marine life.
- 12 In carrying out operations in areas where neutral States enjoy sovereign rights, jurisdiction, or other rights under general international law, belligerents shall have due regard for the legitimate rights and duties of those neutral States.

*General provisions***Section V Definitions**

13 For the purposes of this document:

- (a) 'international humanitarian law' means international rules, established by treaties or custom, which limit the right of parties to a conflict to use the methods or means of warfare of their choice, or which protect States not party to the conflict or persons and objects that are, or may be, affected by the conflict;
- (b) 'attack' means an act of violence, whether in offence or in defence;
- (c) 'collateral casualties' or 'collateral damage' means the loss of life of, or injury to civilians or other protected persons, and damage to or the destruction of the natural environment or objects that are not in themselves military objectives;
- (d) 'neutral' means any State not party to the conflict;
- (e) 'hospital ships, coastal rescue craft and other medical transports' means vessels that are protected under the Second Geneva Convention of 1949 and Additional Protocol I of 1977;
- (f) 'medical aircraft' means an aircraft that is protected under the Geneva Conventions of 1949 and Additional Protocol I of 1977;
- (g) 'warship' means a ship belonging to the armed forces of a State bearing the external marks distinguishing the character and nationality of such a ship, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;
- (h) 'auxiliary vessel' means a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service;
- (i) 'merchant vessel' means a vessel, other than a warship, an auxiliary vessel, or a State vessel such as a customs or police vessel, that is engaged in commercial or private service;
- (j) 'military aircraft' means an aircraft operated by commissioned units of the armed forces of a State having the military marks of that State, commanded by a member of the armed forces and manned by a crew subject to regular armed forces discipline;

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- (k) 'auxiliary aircraft' means an aircraft, other than a military aircraft, that is owned by or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service;
- (l) 'civil aircraft' means an aircraft other than a military, auxiliary, or State aircraft such as a customs or police aircraft, that is engaged in commercial or private service;
- (m) 'civil airliner' means a civil aircraft that is clearly marked and engaged in carrying civilian passengers in scheduled or non-scheduled services along Air Traffic Service routes.

PART II

REGIONS OF OPERATIONS

Section I Internal waters, territorial sea and archipelagic waters

- 14 Neutral waters consist of the internal waters, territorial sea, and, where applicable, the archipelagic waters, of neutral States. Neutral airspace consists of the airspace over neutral waters and the land territory of neutral States.
- 15 Within and over neutral waters, including neutral waters comprising an international strait and waters in which the right of archipelagic sea lanes passage may be exercised, hostile actions by belligerent forces are forbidden. A neutral State must take such measures as are consistent with Section II of this Part, including the exercise of surveillance, as the means at its disposal allow, to prevent the violation of its neutrality by belligerent forces.
- 16 Hostile actions within the meaning of paragraph 15 include, *inter alia*:
 - (a) attack on or capture of persons or objects located in, on or over neutral waters or territory;
 - (b) use as a base of operations, including attack on or capture of persons or objects located outside neutral waters, if the attack or seizure is conducted by belligerent forces located in, on or over neutral waters;
 - (c) laying of mines; *or*
 - (d) visit, search, diversion or capture.
- 17 Belligerent forces may not use neutral waters as a sanctuary.
- 18 Belligerent military and auxiliary aircraft may not enter neutral airspace. Should they do so, the neutral State shall use the means at its disposal to require the aircraft to land within its territory and shall intern the aircraft and its crew for the duration of the armed conflict. Should the aircraft fail to follow the instructions to land, it may be attacked, subject to the special rules relating to medical aircraft as specified in paragraphs 181–183.
- 19 Subject to paragraphs 29 and 33, a neutral State may, on a non-discriminatory basis, condition, restrict or prohibit the entrance to or passage through its neutral waters by belligerent warships and auxiliary vessels.

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- 20 Subject to the duty of impartiality, and to paragraphs 21 and 23–33, and under such regulations as it may establish, a neutral State may, without jeopardising its neutrality, permit the following acts within its neutral waters:
- (a) passage through its territorial sea, and where applicable its archipelagic waters, by warships, auxiliary vessels and prizes of belligerent States; warships, auxiliary vessels and prizes may employ pilots of the neutral State during passage;
 - (b) replenishment by a belligerent warship or auxiliary vessel of its food, water and fuel sufficient to reach a port in its own territory; *and*
 - (c) repairs of belligerent warships or auxiliary vessels found necessary by the neutral State to make them seaworthy; such repairs may not restore or increase their fighting strength.
- 21 A belligerent warship or auxiliary vessel may not extend the duration of its passage through neutral waters, or its presence in those waters for replenishment or repair, for longer than 24 hours unless unavoidable on account of damage or the stress of weather. The foregoing rule does not apply in international straits and waters in which the right of archipelagic sea lanes passage is exercised.
- 22 Should a belligerent State be in violation of the regime of neutral waters, as set out in this document, the neutral State is under an obligation to take the measures necessary to terminate the violation. If the neutral State fails to terminate the violation of its neutral waters by a belligerent, the opposing belligerent must so notify the neutral State and give that neutral State a reasonable time to terminate the violation by the belligerent. If the violation of the neutrality of the State by the belligerent constitutes a serious and immediate threat to the security of the opposing belligerent and the violation is not terminated, then that belligerent may, in the absence of any feasible and timely alternative, use such force as is strictly necessary to respond to the threat posed by the violation.

Section II International straits and archipelagic sea lanes*General rules*

- 23 Belligerent warships and auxiliary vessels and military and auxiliary aircraft may exercise the rights of passage through, under or over neutral international straits and of archipelagic sea lanes passage provided by general international law.
- 24 The neutrality of a State bordering an international strait is not jeopardised by the transit passage of belligerent warships, auxiliary vessels, or military or auxiliary aircraft, nor by the innocent passage of belligerent warships or auxiliary vessels through that strait.
- 25 The neutrality of an archipelagic State is not jeopardised by the exercise of archipelagic sea lanes passage by belligerent warships, auxiliary vessels, or military or auxiliary aircraft.