

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

PREPARED BY
INTERNATIONAL LAWYERS AND
NAVAL EXPERTS

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The present text, as well as a commentary, entitled the “Explanation”, was published in the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (edited by Louise Doswald-Beck), International Institute of Humanitarian Law, Grotius Publications, Cambridge University Press, Cambridge, 1995 (ISBN 0521 55188 9 hardback and ISBN 0521 55864 6 paperback).

INTRODUCTORY NOTE

The *San Remo Manual* was prepared during the period 1988-1994 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 applicable only 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 cooperation 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 recognized 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 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 authorize 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.

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;
 - (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 air-space. 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.
- 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 jeopardizing 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 jeopardized 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 jeopardized by the exercise of archipelagic sea lanes passage by belligerent warships, auxiliary vessels, or military or auxiliary aircraft.
- 26 Neutral warships, auxiliary vessels, and military and auxiliary aircraft may exercise the rights of passage provided by general international law through, under and over belligerent international straits and archipelagic waters. The neutral State should, as a precautionary measure, give timely notice of its exercise of the rights of passage to the belligerent State.

Transit passage and archipelagic sea lanes passage

- 27 The rights of transit passage and archipelagic sea lanes passage applicable to international straits and archipelagic waters in peacetime continue to apply in times of armed conflict. The laws and regulations of States bordering straits and archipelagic States relating to transit passage and archipelagic sea lanes passage adopted in accordance with general international law remain applicable.
- 28 Belligerent and neutral surface ships, submarines and aircraft have the rights of transit passage and archipelagic sea lanes passage through, under, and over all straits and archipelagic waters to which these rights generally apply.
- 29 Neutral States may not suspend, hamper, or otherwise impede the right of transit passage nor the right of archipelagic sea lanes passage.
- 30 A belligerent in transit passage through, under and over a neutral international strait, or in archipelagic sea lanes passage through, under and over neutral archipelagic waters, is required to proceed without delay, to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and otherwise to refrain from any hostile actions or other activities not incident to their transit. Belligerents passing through, under and over neutral straits or waters in which the right of archipelagic sea lanes passage applies are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerents in transit or archipelagic sea lanes passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary nor as a base of operations.

Innocent passage

- 31 In addition to the exercise of the rights of transit and archipelagic sea lanes passage, belligerent warships and auxiliary vessels may, subject to paragraphs 19 and 21, exercise the right of innocent passage through neutral international straits and archipelagic waters in accordance with general international law.

- 32 Neutral vessels may likewise exercise the right of innocent passage through belligerent international straits and archipelagic waters.
- 33 The right of non-suspendable innocent passage ascribed to certain international straits by international law may not be suspended in time of armed conflict.

SECTION III

EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF

- 34 If hostile actions are conducted within the exclusive economic zone or on the continental shelf of a neutral State, belligerent States shall, in addition to observing the other applicable rules of the law of armed conflict at sea, have due regard for the rights and duties of the coastal State, *inter alia*, for the exploration and exploitation of the economic resources of the exclusive economic zone and the continental shelf and the protection and preservation of the marine environment. They shall, in particular, have due regard for artificial islands, installations, structures and safety zones established by neutral States in the exclusive economic zone and on the continental shelf.
- 35 If a belligerent considers it necessary to lay mines in the exclusive economic zone or the continental shelf of a neutral State, the belligerent shall notify that State, and shall ensure, *inter alia*, that the size of the minefield and the type of mines used do not endanger artificial islands, installations and structures, nor interfere with access thereto, and shall avoid so far as practicable interference with the exploration or exploitation of the zone by the neutral State. Due regard shall also be given to the protection and preservation of the marine environment.

SECTION IV

HIGH SEAS AND SEA-BED BEYOND NATIONAL JURISDICTION

- 36 Hostile actions on the high seas shall be conducted with due regard for the exercise by neutral States of rights of exploration and exploi-

tation of the natural resources of the sea-bed, and ocean floor, and the subsoil thereof, beyond national jurisdiction.

- 37 Belligerents shall take care to avoid damage to cables and pipelines laid on the sea-bed which do not exclusively serve the belligerents.

PART III
**BASIC RULES AND
TARGET DISCRIMINATION**

SECTION I
BASIC RULES

- 38 In any armed conflict the right of the parties to the conflict to choose methods or means of warfare is not unlimited.
- 39 Parties to the conflict shall at all times distinguish between civilians or other protected persons and combatants and between civilian or exempt objects and military objectives.
- 40 In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
- 41 Attacks shall be limited strictly to military objectives. Merchant vessels and civil aircraft are civilian objects unless they are military objectives in accordance with the principles and rules set forth in this document.
- 42 In addition to any specific prohibitions binding upon the parties to a conflict, it is forbidden to employ methods or means of warfare which:
- (a) are of a nature to cause superfluous injury or unnecessary suffering; *or*
 - (b) are indiscriminate, in that:
 - (i) they are not, or cannot be, directed against a specific military objective; *or*

- (ii) their effects cannot be limited as required by international law as reflected in this document.
- 43 It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.
- 44 Methods and means of warfare should be employed with due regard for the natural environment taking into account the relevant rules of international law. Damage to or destruction of the natural environment not justified by military necessity and carried out wantonly is prohibited.
- 45 Surface ships, submarines and aircraft are bound by the same principles and rules.

SECTION II

PRECAUTIONS IN ATTACK

- 46 With respect to attacks, the following precautions shall be taken:
 - (a) those who plan, decide upon or execute an attack must take all feasible measures to gather information which will assist in determining whether or not objects which are not military objectives are present in an area of attack;
 - (b) in the light of the information available to them, those who plan, decide upon or execute an attack shall do everything feasible to ensure that attacks are limited to military objectives;
 - (c) they shall furthermore take all feasible precautions in the choice of methods and means in order to avoid or minimize collateral casualties or damage; *and*
 - (d) an attack shall not be launched if it may be expected to cause collateral casualties or damage which would be excessive in relation to the concrete and direct military advantage anticipated from the attack as a whole; an attack shall be cancelled or suspended as soon as it becomes apparent that the collateral casualties or damage would be excessive.

Section VI of this Part provides additional precautions regarding civil aircraft.

SECTION III
**ENEMY VESSELS AND AIRCRAFT EXEMPT
FROM ATTACK**

Classes of vessels exempt from attack

- 47 The following classes of enemy vessels are exempt from attack:
- (a) hospital ships;
 - (b) small craft used for coastal rescue operations and other medical transports;
 - (c) vessels granted safe conduct by agreement between the belligerent parties including:
 - (i) cartel vessels, e.g., vessels designated for and engaged in the transport of prisoners of war;
 - (ii) vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations;
 - (d) vessels engaged in transporting cultural property under special protection;
 - (e) passenger vessels when engaged only in carrying civilian passengers;
 - (f) vessels charged with religious, non-military scientific or philanthropic missions, vessels collecting scientific data of likely military applications are not protected;
 - (g) small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection;
 - (h) vessels designated or adapted exclusively for responding to pollution incidents in the marine environment;
 - (i) vessels which have surrendered;
 - (j) life rafts and life boats.

Conditions of exemption

- 48 Vessels listed in paragraph 47 are exempt from attack only if they:
- (a) are innocently employed in their normal role;
 - (b) submit to identification and inspection when required; *and*
 - (c) do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

Loss of exemption

Hospital ships

- 49 The exemption from attack of a hospital ship may cease only by reason of a breach of a condition of exemption in paragraph 48 and, in such a case, only after due warning has been given naming in all appropriate cases a reasonable time limit to discharge itself of the cause endangering its exemption, and after such warning has remained unheeded.
- 50 If after due warning a hospital ship persists in breaking a condition of its exemption, it renders itself liable to capture or other necessary measures to enforce compliance.
- 51 A hospital ship may only be attacked as a last resort if:
- (a) diversion or capture is not feasible;
 - (b) no other method is available for exercising military control;
 - (c) the circumstances of non-compliance are sufficiently grave that the hospital ship has become, or may be reasonably assumed to be, a military objective; *and*
 - (d) the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

All other categories of vessels exempt from attack

- 52 If any other class of vessel exempt from attack breaches any of the conditions of its exemption in paragraph 48, it may be attacked only if:
- (a) diversion or capture is not feasible;

- (b) no other method is available for exercising military control;
- (c) the circumstances of non-compliance are sufficiently grave that the vessel has become, or may be reasonably assumed to be, a military objective; *and*
- (d) the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

Classes of aircraft exempt from attack

53 The following classes of enemy aircraft are exempt from attack:

- (a) medical aircraft;
- (b) aircraft granted safe conduct by agreement between the parties to the conflicts; *and*
- (c) civil airliners.

Conditions of exemption for medical aircraft

54 Medical aircraft are exempt from attack only if they:

- (a) have been recognized as such;
- (b) are acting in compliance with an agreement as specified in paragraph 177;
- (c) fly in areas under the control of own or friendly forces; *or*
- (d) fly outside the area of armed conflict.

In other instances, medical aircraft operate at their own risk.

Conditions of exemption for aircraft granted safe conduct

55 Aircraft granted safe conduct are exempt from attack only if they:

- (a) are innocently employed in their agreed role;
- (b) do not intentionally hamper the movements of combatants; *and*

- (c) comply with the details of the agreement, including availability for inspection.

Conditions of exemption for civil airliners

- 56 Civil airliners are exempt from attack only if they:
- (a) are innocently employed in their normal role; *and*
 - (b) do not intentionally hamper the movements of combatants.

Loss of exemption

- 57 If aircraft exempt from attack breach any of the applicable conditions of their exemption as set forth in paragraphs 54-56, they may be attacked only if:
- (a) diversion for landing, visit and search, and possible capture, is not feasible;
 - (b) no other method is available for exercising military control;
 - (c) the circumstances of non-compliance are sufficiently grave that the aircraft has become, or may be reasonably assumed to be, a military objective; *and*
 - (d) the collateral casualties or damage will not be disproportionate to the military advantage gained or anticipated.
- 58 In case of doubt whether a vessel or aircraft exempt from attack is being used to make an effective contribution to military action, it shall be presumed not to be so used.

SECTION IV

OTHER ENEMY VESSELS AND AIRCRAFT

Enemy merchant vessels

- 59 Enemy merchant vessels may only be attacked if they meet the definition of a military objective in paragraph 40.

- 60 The following activities may render enemy merchant vessels military objectives:
- (a) engaging in belligerent acts on behalf of the enemy, e.g., laying mines, minesweeping, cutting undersea cables and pipelines, engaging in visit and search of neutral merchant vessels or attacking other merchant vessels;
 - (b) acting as an auxiliary to an enemy's armed forces, e.g., carrying troops or replenishing warships;
 - (c) being incorporated into or assisting the enemy's intelligence gathering system, e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions;
 - (d) sailing under convoy of enemy warships or military aircraft;
 - (e) refusing an order to stop or actively resisting visit, search or capture;
 - (f) being armed to an extent that they could inflict damage to a warship; this excludes light individual weapons for the defence of personnel, e.g., against pirates, and purely deflective systems such as 'chaff'; *or*
 - (g) otherwise making an effective contribution to military action, e.g., carrying military materials.
- 61 Any attacks on these vessels is subject to the basic rules set out in paragraphs 38-46.

Enemy civil aircraft

- 62 Enemy civil aircraft may only be attacked if they meet the definition of a military objective in paragraph 40.
- 63 The following activities may render enemy civil aircraft military objectives:
- (a) engaging in acts of war on behalf of the enemy, e.g., laying mines, minesweeping, laying or monitoring acoustic sensors, engaging in electronic warfare, intercepting or attacking other civil aircraft, or providing targeting information to enemy forces;
 - (b) acting as an auxiliary aircraft to an enemy's armed forces, e.g., transporting troops or military cargo, or refuelling military aircraft;

- (c) being incorporated into or assisting the enemy's intelligence-gathering system, e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions;
 - (d) flying under the protection of accompanying enemy warships or military aircraft;
 - (e) refusing an order to identify itself, divert from its track, or proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible, or operating fire control equipment that could reasonably be construed to be part of an aircraft weapon system, or on being intercepted clearly manoeuvring to attack the intercepting belligerent military aircraft;
 - (f) being armed with air-to-air or air-to-surface weapons; *or*
 - (g) otherwise making an effective contribution to military action.
- 64 Any attack on these aircraft is subject to the basic rules set out in paragraphs 38-46.

Enemy warships and military aircraft

- 65 Unless they are exempt from attack under paragraphs 47 or 53, enemy warships and military aircraft and enemy auxiliary vessels and aircraft are military objectives within the meaning of paragraph 40.
- 66 They may be attacked, subject to the basic³ rules in paragraphs 38-46.

SECTION V

**NEUTRAL MERCHANT VESSELS
AND CIVIL AIRCRAFT**

Neutral merchant vessels

- 67 Merchant vessels flying the flag of neutral States may not be attacked unless they:
- (a) are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally

- and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
- (b) engage in belligerent acts on behalf of the enemy;
 - (c) act as auxiliaries to the enemy's armed forces;
 - (d) are incorporated into or assist the enemy's intelligence system;
 - (e) sail under convoy of enemy warships or military aircraft; *or*
 - (f) otherwise make an effective contribution to the enemy's military action, e.g., by carrying military materials, and it is not feasible for the attacking forces to first place passengers and crew in a place of safety. Unless circumstances do not permit, they are to be given a warning, so that they can re-route, off-load, or take other precautions.
- 68 Any attack on these vessels is subject to the basic rules in paragraphs 38-46.
- 69 The mere fact that a neutral merchant vessel is armed provides no grounds for attacking it.

Neutral civil aircraft

- 70 Civil aircraft bearing the marks of neutral States may not be attacked unless they:
- (a) are believed on reasonable grounds to be carrying contraband, and, after prior warning or interception, they intentionally and clearly refuse to divert from their destination, or intentionally and clearly refuse to proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible;
 - (b) engage in belligerent acts on behalf of the enemy;
 - (c) act as auxiliaries to the enemy's armed forces;
 - (d) are incorporated into or assist the enemy's intelligence system; *or*
 - (e) otherwise make an effective contribution to the enemy's military action, e.g., by carrying military materials, and, after prior warning or interception, they intentionally and clearly refuse to divert from their destination, or intentionally and clearly refuse to pro-

ceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible.

- 71 Any attack on these aircraft is subject to the basic rules in paragraphs 38-46.

SECTION VI

PRECAUTIONS REGARDING CIVIL AIRCRAFT

- 72 Civil aircraft should avoid areas of potentially hazardous military activity.
- 73 In the immediate vicinity of naval operations, civil aircraft shall comply with instructions from the belligerents regarding their heading and altitude.
- 74 Belligerent and neutral States concerned, and authorities providing air traffic services, should establish procedures whereby commanders of warships and military aircraft are aware on a continuous basis of designated routes assigned to or flight plans filed by civil aircraft in the area of military operations, including information on communication channels, identification modes and codes, destination, passengers and cargo.
- 75 Belligerent and neutral States should ensure that a Notice to Airmen (NOTAM) is issued providing information on military activities in areas potentially hazardous to civil aircraft, including activation of danger areas or temporary airspace restrictions. This NOTAM should include information on:
- (a) frequencies upon which the aircraft should maintain a continuous listening watch;
 - (b) continuous operation of civil weather-avoidance radar and identification modes and codes;
 - (c) altitude, course and speed restrictions;
 - (d) procedures to respond to radio contact by the military forces and to establish two-way communications; *and*
 - (e) possible action by the military forces if the NOTAM is not complied with and the civil aircraft is perceived by those military forces to be a threat.

- 76 Civil aircraft should file the required flight plan with the cognizant Air Traffic Service, complete with information as to registration, destination, passengers, cargo, emergency communication channels, identification modes and codes, updates en route and carry certificates as to registration, airworthiness, passengers and cargo. They should not deviate from a designated Air Traffic Service route or flight plan without Air Traffic Control clearance unless unforeseen conditions arise, e.g., safety or distress, in which case appropriate notification should be made immediately.
- 77 If a civil aircraft enters an area of potentially hazardous military activity, it should comply with relevant NOTAMs. Military forces should use all available means to identify and warn the civil aircraft, by using, *inter alia*, secondary surveillance radar modes and codes, communications, correlation with flight plan information, interception by military aircraft, and, when possible, contacting the appropriate Air Traffic Control facility.

PART IV

METHODS AND MEANS OF WARFARE AT SEA

SECTION I

MEANS OF WARFARE

Missiles and other projectiles

- 78 Missiles and projectiles, including those with over-the-horizon capabilities, shall be used in conformity with the principles of target discrimination as set out in paragraphs 38-46.

Torpedoes

- 79 It is prohibited to use torpedoes which do not sink or otherwise become harmless when they have completed their run.

Mines

- 80 Mines may only be used for legitimate military purposes including the denial of sea areas to the enemy.
- 81 Without prejudice to the rules set out in paragraph 82, the parties to the conflict shall not lay mines unless effective neutralization occurs when they have become detached or control over them is otherwise lost.
- 82 It is forbidden to use free-floating mines unless:
- (a) they are directed against a military objective; *and*
 - (b) they become harmless within an hour after loss of control over them.
- 83 The laying of armed mines or the arming of pre-laid mines must be notified unless the mines can only detonate against vessels which are military objectives.
- 84 Belligerents shall record the locations where they have laid mines.
- 85 Mining operations in the internal waters, territorial sea or archipelagic waters of a belligerent State should provide, when the mining is first executed, for free exit of shipping of neutral States.
- 86 Mining of neutral waters by a belligerent is prohibited.
- 87 Mining shall not have the practical effect of preventing passage between neutral waters and international waters.
- 88 The minelaying States shall pay due regard to the legitimate uses of the high seas by, *inter alia*, providing safe alternative routes for shipping of neutral States.
- 89 Transit passage through international straits and passage through waters subject to the right of archipelagic sea lanes passage shall not be impeded unless safe and convenient alternative routes are provided.
- 90 After the cessation of active hostilities, parties to the conflict shall do their utmost to remove or render harmless the mines they have laid, each party removing its own mines. With regard to mines laid in the territorial seas of the enemy, each party shall notify their position and shall proceed with the least possible delay to remove the mines in its territorial sea or otherwise render the territorial sea safe for navigation.
- 91 In addition to their obligations under paragraph 90, parties to the conflict shall endeavour to reach agreement, both among themselves

and, where appropriate, with other States and with international organizations, on the provision of information and technical and material assistance, including in appropriate circumstances joint operations, necessary to remove minefields or otherwise render them harmless.

- 92 Neutral States do not commit an act inconsistent with the laws of neutrality by clearing mines laid in violation of international law.

SECTION II

METHODS OF WARFARE

Blockade

- 93 A blockade shall be declared and notified to all belligerents and neutral States.
- 94 The declaration shall specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral States may leave the blockaded coastline.
- 95 A blockade must be effective. The question whether a blockade is effective is a question of fact.
- 96 The force maintaining the blockade may be stationed at a distance determined by military requirements.
- 97 A blockade may be enforced and maintained by a combination of legitimate methods and means of warfare provided this combination does not result in acts inconsistent with the rules set out in this document.
- 98 Merchant vessels believed on reasonable grounds to be breaching a blockade may be captured. Merchant vessels which, after prior warning, clearly resist capture may be attacked.
- 99 A blockade must not bar access to the ports and coasts of neutral States.
- 100 A blockade must be applied impartially to the vessels of all States.
- 101 The cessation, temporary lifting, re-establishment, extension or other alteration of a blockade must be declared and notified as in paragraphs 93 and 94.

- 102 The declaration or establishment of a blockade is prohibited if:
- (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; *or*
 - (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.
- 103 If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to:
- (a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; *and*
 - (b) the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.
- 104 The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted.

Zones

- 105 A belligerent cannot be absolved of its duties under international humanitarian law by establishing zones which might adversely affect the legitimate uses of defined areas of the sea.
- 106 Should a belligerent, as an exceptional measure, establish such a zone:
- (a) the same body of law applies both inside and outside the zone;
 - (b) the extent, location and duration of the zone and the measures imposed shall not exceed what is strictly required by military necessity and the principles of proportionality;
 - (c) due regard shall be given to the rights of neutral States to legitimate uses of the seas;
 - (d) necessary safe passage through the zone for neutral vessels and aircraft shall be provided:

- (i) where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral State;
 - (ii) in other cases where normal navigation routes are affected, except where military requirements do not permit; *and*
 - (e) the commencement, duration, location and extent of the zone, as well as the restrictions imposed, shall be publicly declared and appropriately notified.
- 107 Compliance with the measures taken by one belligerent in the zone shall not be construed as an act harmful to the opposing belligerent.
- 108 Nothing in this Section, should be deemed to derogate from the customary belligerent right to control neutral vessels and aircraft in the immediate vicinity of naval operations.

SECTION III

DECEPTION, RUSES OF WAR AND PERFIDY

- 109 Military and auxiliary aircraft are prohibited at all times from feigning exempt, civilian or neutral status.
- 110 Ruses of war are permitted. Warships and auxiliary vessels, however, are prohibited from launching an attack whilst flying a false flag, and at all times from actively simulating the status of:
- (a) hospital ships, small coastal rescue craft or medical transports;
 - (b) vessels on humanitarian missions;
 - (c) passenger vessels carrying civilian passengers;
 - (d) vessels protected by the United Nations flag;
 - (e) vessels guaranteed safe conduct by prior agreement between the parties, including cartel vessels;
 - (f) vessels entitled to be identified by the emblem of the red cross or red crescent; *or*
 - (g) vessels engaged in transporting cultural property under special protection.

- 111 Perfidy is prohibited. Acts inviting the confidence of an adversary to lead it to believe that it is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, constitute perfidy. Perfidious acts include the launching of an attack while feigning:
- (a) exempt, civilian, neutral or protected United Nations status;
 - (b) surrender or distress by, e.g., sending a distress signal or by the crew taking to life rafts.

PART V

MEASURES SHORT OF ATTACK: INTERCEPTION, VISIT, SEARCH, DIVERSION AND CAPTURE

SECTION I

DETERMINATION OF ENEMY CHARACTER OF VESSELS AND AIRCRAFT

- 112 The fact that a merchant vessel is flying the flag of an enemy State or that a civil aircraft bears the marks of an enemy State is conclusive evidence of its enemy character.
- 113 The fact that a merchant vessel is flying the flag of a neutral State or a civil aircraft bears the marks of a neutral State is *prima facie* evidence of its neutral character.
- 114 If the commander of a warship suspects that a merchant vessel flying a neutral flag in fact has enemy character, the commander is entitled to exercise the right of visit and search, including the right of diversion for search under paragraph 121.
- 115 If the commander of a military aircraft suspects that a civil aircraft with neutral marks in fact has enemy character, the commander is entitled to exercise the right of interception and, if circumstances require, the right to divert for the purpose of visit and search.
- 116 If, after visit and search, there is reasonable ground for suspicion that the merchant vessel flying a neutral flag or a civil aircraft with

neutral marks has enemy character, the vessel or aircraft may be captured as prize subject to adjudication.

- 117 Enemy character can be determined by registration, ownership, charter or other criteria.

SECTION II

VISIT AND SEARCH OF MERCHANT VESSELS

Basic rules

- 118 In exercising their legal rights in an international armed conflict at sea, belligerent warships and military aircraft have a right to visit and search merchant vessels outside neutral waters where there are reasonable grounds for suspecting that they are subject to capture.
- 119 As an alternative to visit and search, a neutral merchant vessel may, with its consent, be diverted from its declared destination.

Merchant vessels under convoy of accompanying neutral warships

- 120 A neutral merchant vessel is exempt from the exercise of the right of visit and search if it meets the following conditions:
- (a) it is bound for a neutral port;
 - (b) it is under the convoy of an accompanying neutral warship of the same nationality or a neutral warship of a State with which the flag State of the merchant vessel has concluded an agreement providing for such convoy;
 - (c) the flag State of the neutral warship warrants that the neutral merchant vessel is not carrying contraband or otherwise engaged in activities inconsistent with its neutral status; *and*
 - (d) the commander of the neutral warship provides, if requested by the commander of an intercepting belligerent warship or military aircraft, all information as to the character of the merchant vessel and its cargo as could otherwise be obtained by visit and search.

Diversion for the purpose of visit and search

- 121 If visit and search at sea is impossible or unsafe, a belligerent warship or military aircraft may divert a merchant vessel to an appropriate area or port in order to exercise the right of visit and search.

Measures of supervision

- 122 In order to avoid the necessity of visit and search, belligerent States may establish reasonable measures for the inspection of cargo of neutral merchant vessels and certification that a vessel is not carrying contraband.
- 123 The fact that a neutral merchant vessel has submitted to such measures of supervision as the inspection of its cargo and grant of certificates of non-contraband cargo by one belligerent is not an act of unneutral service with regard to an opposing belligerent.
- 124 In order to obviate the necessity for visit and search, neutral States are encouraged to enforce reasonable control measures and certification procedures to ensure that their merchant vessels are not carrying contraband.

SECTION III

**INTERCEPTION, VISIT AND SEARCH
OF CIVIL AIRCRAFT**

Basic rules

- 125 In exercising their legal rights in an international armed conflict at sea, belligerent military aircraft have a right to intercept civil aircraft outside neutral airspace where there are reasonable grounds for suspecting they are subject to capture. If, after interception, reasonable grounds for suspecting that a civil aircraft is subject to capture still exist, belligerent military aircraft have the right to order the civil aircraft to proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible.

If there is no belligerent airfield that is safe and reasonably accessible for visit and search, a civil aircraft may be diverted from its declared destination.

126 As an alternative to visit and search:

- (a) an enemy civil aircraft may be diverted from its declared destination;
- (b) a neutral civil aircraft may be diverted from its declared destination with its consent.

***Civil aircraft under the operational control
of an accompanying neutral military aircraft or warship***

127 A neutral civil aircraft is exempt from the exercise of the right of visit and search if it meets the following conditions:

- (a) it is bound for a neutral airfield;
- (b) it is under the operational control of an accompanying:
 - (i) neutral military aircraft or warship of the same nationality; *or*
 - (ii) neutral military aircraft or warship of a State with which the flag State of the civil aircraft has concluded an agreement providing for such control;
- (c) the flag State of the neutral military aircraft or warship warrants that the neutral civil aircraft is not carrying contraband or otherwise engaged in activities inconsistent with its neutral status; *and*
- (d) the commander of the neutral military aircraft or warship provides, if requested by the commander of an intercepting belligerent military aircraft, all information as to the character of the civil aircraft and its cargo as could otherwise be obtained by visit and search.

Measures of interception and supervision

128 Belligerent States should promulgate and adhere to safe procedures for intercepting civil aircraft as issued by the competent international organization.

- 129 Civil aircraft should file the required flight plan with the cognizant Air Traffic Service, complete with information as to registration, destination, passengers, cargo, emergency communication channels, identification modes and codes, updates en route and carry certificates as to registration, airworthiness, passengers and cargo. They should not deviate from a designated Air Traffic Service route or flight plan without Air Traffic Control clearance unless unforeseen conditions arise, e.g., safety or distress, in which case appropriate notification should be made immediately.
- 130 Belligerents and neutrals concerned, and authorities providing air traffic services, should establish procedures whereby commanders of warships and military aircraft are continuously aware of designated routes assigned to and flight plans filed by civil aircraft in the area of military operations, including information on communication channels, identification modes and codes, destination, passengers and cargo.
- 131 In the immediate vicinity of naval operations, civil aircraft shall comply with instructions from the combatants regarding their heading and altitude.
- 132 In order to avoid the necessity of visit and search, belligerent States may establish reasonable measures for the inspection of the cargo of neutral civil aircraft and certification that an aircraft is not carrying contraband.
- 133 The fact that a neutral civil aircraft has submitted to such measures of supervision as the inspection of its cargo and grant of certificates of non-contraband cargo by one belligerent is not an act of unneutral service with regard to an opposing belligerent.
- 134 In order to obviate the necessity for visit and search, neutral States are encouraged to enforce reasonable control measures and certification procedures to ensure that their civil aircraft are not carrying contraband.

SECTION IV

CAPTURE OF ENEMY VESSELS AND GOODS

- 135 Subject to the provisions of paragraph 136, enemy vessels, whether merchant or otherwise, and goods on board such vessels may be

captured outside neutral waters. Prior exercise of visit and search is not required.

136 The following vessels are exempt from capture:

- (a) hospital ships and small craft used for coastal rescue operations;
- (b) other medical transports, so long as they are needed for the wounded, sick and shipwrecked on board;
- (c) vessels granted safe conduct by agreement between the belligerent parties including:
 - (i) cartel vessels, e.g., vessels designated for and engaged in the transport of prisoners of war; *and*
 - (ii) vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations;
- (d) vessels engaged in transporting cultural property under special protection;
- (e) vessels charged with religious, non-military scientific or philanthropic missions; vessels collecting scientific data of likely military applications are not protected;
- (f) small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection; *and*
- (g) vessels designed or adapted exclusively for responding to pollution incidents in the marine environment when actually engaged in such activities.

137 Vessels listed in paragraph 136 are exempt from capture only if they:

- (a) are innocently employed in their normal role;
- (b) do not commit acts harmful to the enemy;
- (c) immediately submit to identification and inspection when required; *and*
- (d) do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

- 138 Capture of a merchant vessel is exercised by taking such vessel as prize for adjudication. If military circumstances preclude taking such a vessel as prize at sea, it may be diverted to an appropriate area or port in order to complete capture. As an alternative to capture, an enemy merchant vessel may be diverted from its declared destination.
- 139 Subject to paragraph 140, a captured enemy merchant vessel may, as an exceptional measure, be destroyed when military circumstances preclude taking or sending such a vessel for adjudication as an enemy prize, only if the following criteria are met beforehand;
- (a) the safety of passengers and crew is provided for; for this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing sea and weather conditions by the proximity of land or the presence of another vessel which is in a position to take them on board;
 - (b) documents and papers relating to the prize are safeguarded; *and*
 - (c) if feasible, personal effects of the passengers and crew are saved.
- 140 The destruction of enemy passenger vessels carrying only civilian passengers is prohibited at sea. For the safety of the passengers, such vessels shall be diverted to an appropriate area or port in order to complete capture.

SECTION V

CAPTURE OF ENEMY CIVIL AIRCRAFT AND GOODS

- 141 Subject to the provisions of paragraph 142, enemy civil aircraft and goods on board such aircraft may be captured outside neutral airspace. Prior exercise of visit and search is not required.
- 142 The following aircraft are exempt from capture:
- (a) medical aircraft; *and*
 - (b) aircraft granted safe conduct by agreement between the parties to the conflict.

- 143 Aircraft listed in paragraph 142 are exempt from capture only if they;
- (a) are innocently employed in their normal role;
 - (b) do not commit acts harmful to the enemy;
 - (c) immediately submit to interception and identification when required;
 - (d) do not intentionally hamper the movement of combatants and obey orders to divert from their track when required; *and*
 - (e) are not in breach of a prior agreement.
- 144 Capture is exercised by intercepting the enemy civil aircraft, ordering it to proceed to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible and, on landing, taking the aircraft as a prize for adjudication. As an alternative to capture, an enemy civil aircraft may be diverted from its declared destination.
- 145 If capture is exercised, the safety of passengers and crew and their personal effects must be provided for. The documents and papers relating to the prize must be safeguarded.

SECTION VI

CAPTURE OF NEUTRAL MERCHANT VESSELS AND GOODS

- 146 Neutral merchant vessels are subject to capture outside neutral waters if they are engaged in any of the activities referred to in paragraph 67 or if it is determined as a result of visit and search or by other means, that they:
- (a) are carrying contraband;
 - (b) are on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy;
 - (c) are operating directly under enemy control, orders, charter, employment or direction;
 - (d) present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents;

- (e) are violating regulations established by a belligerent within the immediate area of naval operations; *or*
- (f) are breaching or attempting to breach a blockade.

Capture of a neutral merchant vessel is exercised by taking such vessel as prize for adjudication.

- 147 Goods on board neutral merchant vessels are subject to capture only if they are contraband.
- 148 Contraband is defined as goods which are ultimately destined for territory under the control of the enemy and which may be susceptible for use in armed conflict.
- 149 In order to exercise the right of capture referred to in paragraphs 146(a) and 147, the belligerent must have published contraband lists. The precise nature of a belligerent's contraband list may vary according to the particular circumstances of the armed conflict. Contraband lists shall be reasonably specific.
- 150 Goods not on the belligerent's contraband list are 'free goods', that is, not subject to capture. As a minimum, 'free goods' shall include the following:
 - (a) religious objects;
 - (b) articles intended exclusively for the treatment of the wounded and sick and for the prevention of disease;
 - (c) clothing, bedding, essential foodstuffs, and means of shelter for the civilian population in general, and women and children in particular, provided there is not serious reason to believe that such goods will be diverted to ~~other~~ purpose, or that a definite military advantage would accrue to the enemy by their substitution for enemy goods that would thereby become available for military purposes;
 - (d) items destined for prisoners of war, including individual parcels and collective relief shipments containing food, clothing, educational, cultural, and recreational articles;
 - (e) goods otherwise specifically exempted from capture by international treaty or by special arrangement between belligerents; *and*
 - (f) other goods not susceptible for use in armed conflict.
- 151 Subject to paragraph 152, a neutral vessel captured in accordance with paragraph 146 may, as an exceptional measure, be destroyed when military circumstances preclude taking or sending such a

vessel for adjudication as an enemy prize, only if the following criteria are met beforehand:

- (a) the safety of passengers and crew is provided for; for this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board;
- (b) documents and papers relating to the captured vessel are safeguarded; *and*
- (c) if feasible, personal effects of the passengers and crew are saved.

Every effort should be made to avoid destruction of a captured neutral vessel. Therefore, such destruction shall not be ordered without there being entire satisfaction that the captured vessel can neither be sent into a belligerent port, nor diverted, nor properly released. A vessel may not be destroyed under this paragraph for carrying contraband unless the contraband, reckoned either by value, weight, volume or freight, forms more than half the cargo. Destruction shall be subject to adjudication.

- 152 The destruction of captured neutral passenger vessels carrying civilian passengers is prohibited at sea. For the safety of the passengers, such vessels shall be diverted to an appropriate port in order to complete capture provided for in paragraph 146.

SECTION VII

CAPTURE OF NEUTRAL CIVIL AIRCRAFT AND GOODS

- 153 Neutral civil aircraft are subject to capture outside neutral airspace if they are engaged in any of the activities in paragraph 70 or if it is determined as a result of visit and search or by any other means, that they:

- (a) are carrying contraband;
- (b) are on a flight especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy;

- (c) are operating directly under enemy control, orders, charter, employment or direction;
 - (d) present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents;
 - (e) are violating regulations established by a belligerent within the immediate area of naval operations; *or*
 - (f) are engaged in a breach of blockade.
- 154 Goods on board neutral civil aircraft are subject to capture only if they are contraband.
- 155 The rules regarding contraband as prescribed in paragraphs 148-150 shall also apply to goods on board neutral civil aircraft.
- 156 Capture is exercised by intercepting the neutral civil aircraft, ordering it to proceed to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible and, on landing and after visit and search, taking it as prize for adjudication. If there is no belligerent airfield that is safe and reasonably accessible, a neutral civil aircraft may be diverted from its declared destination.
- 157 As an alternative to capture, a neutral civil aircraft may, with its consent, be diverted from its declared destination.
- 158 If capture is exercised, the safety of passengers and crew and their personal effects must be provided for. The documents and papers relating to the prize must be safeguarded.

PART VI

PROTECTED PERSONS, MEDICAL TRANSPORTS AND MEDICAL AIRCRAFT

GENERAL RULES

- 159 Except as provided for in paragraph 171, the provisions of this Part are not to be construed as in any way departing from the provisions of the Second Geneva Convention of 1949 and Additional Protocol I of 1977 which contain detailed rules for the treatment of the wounded, sick and shipwrecked and for medical transports.

- 160 The parties to the conflict may agree, for humanitarian purposes, to create a zone in a defined area of the sea in which only activities consistent with those humanitarian purposes are permitted.

SECTION I

PROTECTED PERSONS

- 161 Persons on board vessels and aircraft having fallen into the power of a belligerent or neutral shall be respected and protected. While at sea and thereafter until determination of their status, they shall be subject to the jurisdiction of the State exercising power over them.
- 162 Members of the crews of hospital ships may not be captured during the time they are in the service of these vessels. Members of the crews of rescue craft may not be captured while engaging in rescue operations.
- 163 Persons on board other vessels or aircraft exempt from capture listed in paragraphs 136 and 142 may not be captured.
- 164 Religious and medical personnel assigned to the spiritual and medical care of the wounded, sick and shipwrecked shall not be considered prisoners of war. They may, however, be retained as long as their services for the medical or spiritual needs of prisoners of war are needed.
- 165 Nationals of an enemy State, other than those specified in paragraphs 162-164, are entitled to prisoner-of-war status and may be made prisoners of war if they are:
- (a) members of the enemy's armed forces;
 - (b) persons accompanying the enemy's armed forces;
 - (c) crew members of auxiliary vessels or auxiliary aircraft;
 - (d) crew members of enemy merchant vessels or civil aircraft not exempt from capture, unless they benefit from more favourable treatment under other provisions of international law; *or*
 - (e) crew members of neutral merchant vessels or civil aircraft that have taken a direct part in the hostilities on the side of the enemy, or served as an auxiliary for the enemy.

- 166 Nationals of a neutral State:
- (a) who are passengers on board enemy or neutral vessels or aircraft are to be released and may not be made prisoners of war unless they are members of the enemy's armed forces or have personally committed acts of hostility against the captor;
 - (b) who are members of the crew of enemy warships or auxiliary vessels or military aircraft or auxiliary aircraft are entitled to prisoner-of-war status and may be made prisoners of war;
 - (c) who are members of the crew of enemy or neutral merchant vessels or civil aircraft are to be released and may not be made prisoners of war unless the vessel or aircraft has committed an act covered by paragraphs 60, 63, 67 or 70, or the member of the crew has personally committed an act of hostility against the captor.
- 167 Civilian persons other than those specified in paragraphs 162-166 are to be treated in accordance with the Fourth Geneva Convention of 1949.
- 168 Persons having fallen into the power of a neutral State are to be treated in accordance with Hague Conventions V and XIII of 1907 and the Second Geneva Convention of 1949.

SECTION II

MEDICAL TRANSPORTS

- 169 In order to provide maximum protection for hospital ships from the moment of the outbreak of hostilities, States may beforehand make general notification of the characteristics of their hospital ships as specified in Article 22 of the Second Geneva Convention of 1949. Such notification should include all available information on the means whereby the ship may be identified.
- 170 Hospital ships may be equipped with purely deflective means of defence, such as chaff and flares. The presence of such equipment should be notified.
- 171 In order to fulfil most effectively their humanitarian mission, hospital ships should be permitted to use cryptographic equipment. The

- equipment shall not be used in any circumstances to transmit intelligence data nor in any other way to acquire any military advantage.
- 172 Hospital ships, small craft used for coastal rescue operations and other medical transports are encouraged to implement the means of identification set out in Annex I of Additional Protocol I of 1977.
- 173 These means of identification are intended only to facilitate identification and do not, of themselves, confer protected status.

SECTION III

MEDICAL AIRCRAFT

- 174 Medical aircraft shall be protected and respected as specified in the provisions of this document.
- 175 Medical aircraft shall be clearly marked with the emblem of the red cross or red crescent, together with their national colours, on their lower, upper and lateral surfaces. Medical aircraft are encouraged to implement the other means of identification set out in Annex I of Additional Protocol I of 1977 at all times. Aircraft chartered by the International Committee of the Red Cross may use the same means of identification as medical aircraft. Temporary medical aircraft which cannot, either for lack of time or because of their characteristics, be marked with the distinctive emblem should use the most effective means of identification available.
- 176 Means of identification are intended only to facilitate identification and do not, of themselves, confer protected status.
- 177 Parties to the conflict are encouraged to notify medical flights and conclude agreements at all times, especially in areas where control by any party to the conflict is not clearly established. When such an agreement is concluded, it shall specify the altitudes, times and routes for safe operation and should include means of identification and communications.
- 178 Medical aircraft shall not be used to commit acts harmful to the enemy. They shall not carry any equipment intended for the collection or transmission of intelligence data. They shall not be armed, except for small arms for self-defence, and shall only carry medical personnel and equipment.

- 179 Other aircraft, military or civilian, belligerent or neutral, that are employed in the search for, rescue or transport of the wounded, sick and shipwrecked, operate at their own risk, unless pursuant to prior agreement between the parties to the conflict.
- 180 Medical aircraft flying over areas which are physically controlled by the opposing belligerent, or over areas the physical control of which is not clearly established, may be ordered to land to permit inspection. Medical aircraft shall obey any such order.
- 181 Belligerent medical aircraft shall not enter neutral airspace except by prior agreement. When within neutral airspace pursuant to agreement, medical aircraft shall comply with the terms of the agreement. The terms of the agreement may require the aircraft to land for inspection at a designated airport within the neutral State. Should the agreement so require, the inspection and follow-on action shall be conducted in accordance with paragraphs 182-183.
- 182 Should a medical aircraft, in the absence of an agreement or in deviation from the terms of an agreement, enter neutral airspace, either through navigational error or because of an emergency affecting the safety of the flight, it shall make every effort to give notice and to identify itself. Once the aircraft is recognized as a medical aircraft by the neutral State, it shall not be attacked but may be required to land for inspection. Once it has been inspected, and if it is determined in fact to be a medical aircraft, it shall be allowed to resume its flight.
- 183 If the inspection reveals that the aircraft is not a medical aircraft, it may be captured, and the occupants shall, unless agreed otherwise between the neutral State and the parties to the conflict, be detained in the neutral State where so required by the rules of international law applicable in armed conflict, in such a manner that they cannot again take part in the hostilities.
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