

# War at Sea: Nineteenth Century Laws for Twenty-first Century Wars?\*

## Part I

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### Abstract

While most law on the conduct of hostilities has been heavily scrutinised in recent years, the law dealing with armed conflict at sea has been largely ignored. This is not surprising. There have been few naval conflicts since 1945, and those that have occurred have been limited in scale; none has involved combat between major maritime powers. Nevertheless, navies have tripled in number since then, and today there are growing tensions between significant naval powers. There is a risk of conflict at sea. Conditions have changed since 1945, but the law has not developed in that time. Elements of it, especially that regulating economic warfare at sea, seem outdated and it is not clear that the law is well placed to regulate so-called “hybrid” warfare at sea. It seems timely to review the law, to confirm that which is appropriate and to develop that which is not. Perhaps a new edition of the San Remo Manual would be timely.

In the past quarter of a century, the *lex specialis* for armed conflict has been subjected to intense public, official, judicial and academic attention, becoming one of the most intensely scrutinized areas of public international law today. Much of this examination resulted from a combination of usage and abuse followed by due process in relation to breaches committed in a range of armed conflicts since the early 1990s. Most certainly, the jurisprudence of the various international tribunals has contributed a great deal to its interpretation. Extensive research into State practice has also been conducted under the auspices of the International Committee of the Red Cross (ICRC), for its Customary Law Study, which remains a “live” project.

One element of the *lex specialis* has been largely overlooked, however. The law regulating the conduct of hostilities in naval war – the law of armed conflict (LOAC) applicable at sea – has attracted little general attention or focused scrutiny. There have been very few instances of armed conflict at sea, and those that have occurred have not brought seriously into question the detailed rules regulating it. There have been no naval cases dealt with by the international tribunals and, compared with the law regulating armed conflict on land, in the air and even in cyberspace, that applied at sea has failed to attract very much academic analysis.<sup>2</sup> Finally, the ICRC did not research practice in naval warfare during its study into customary international humanitarian law.<sup>3</sup> Its stated reason for not doing so was that it believed international humanitarian law (IHL) applied at sea had already been adequately covered during work carried out in the early 1990s under the auspices of the International Institute of Humanitarian Law (IIHL) in Sanremo, resulting in the publication of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (San Remo Manual or SRM).<sup>4</sup>

This lack of attention prompts a question about whether or not a review of the LOAC applicable at sea is necessary. In providing an initial answer, this paper's objective is merely to start a debate on a subject that has been confined to the margins of dialogue by force of circumstance. No firm legal solutions are suggested, as these would require significant engagement with experts from around the world, in both the law and the naval operations it is meant to regulate. Nevertheless, how such engagement might be achieved may be a sensible issue briefly to address.

Before moving forward to the application of the law, some explanation of naval roles and functions will be useful to assist those unfamiliar with them. Some historical background is also important for providing perspective and explaining context. The paper starts, therefore, by placing naval war roles in the wider naval operational context. It then outlines the occurrence of armed conflict at sea since 1945 and provides a cursory assessment of the potential characteristics of war at sea in the future. The current law on the conduct of hostilities is then briefly described before

two particular forms of naval warfare are singled out for detailed comment: traditional economic warfare and the novel challenge of so-called “hybrid warfare”. Comment is then made on how the current law measures up in relation to them, before a suggestion is presented regarding how a review of the law might be conducted.

### **Naval Roles**

Navies do not exist simply to fight wars at sea with other navies. Indeed, since the Second World War very few have been engaged in armed conflict at sea. Their capacity for warfighting has served mostly as a means of deterring war rather than actively engaging in it. Effective deterrence requires equipment, manpower, and frequent training and exercises to maintain operational capability and effectiveness. All the major navies in the world have been developed with combat operations against other navies as the principal consideration. As naval wars have been a rare occurrence since 1945, it is not surprising that these expensive and sophisticated forces have been utilized by governments for other purposes. They have not been idle.

Naval operations can be categorized under three headings: “benign”, “constabulary” and “military”. Constabulary and military operations both involve the application of force, but neither benign nor constabulary operations involve combat. While benign and constabulary operations are not the focus of this paper, a brief explanation of each will be useful before the discussion moves on to the military functions of navies.<sup>5</sup> Later in the paper, the overlap between military and constabulary roles will become relevant to the discussion of hybrid warfare.

### **Benign Operations**

Benign operations deserve brief explanation, if only to satisfy the reader’s curiosity. They do not involve either the threat or the actual application of coercive force; the “benign” label says it all. In the early modern period, navies famously engaged in exploration, the charting of the seas and other voyages of scientific discovery; today they still conduct hydrographic surveying, including to provide data for the compilation of navigational charts. Search and

rescue, salvage, disaster relief and explosive ordnance disposal are notable additional examples of naval activities that provide assistance and a service to the maritime community. They entail helping communities and individuals cope with the challenges generated by the sea and its environment. Fascinating though these operations are, they will attract no further mention in this paper.

### **Constabulary Operations**

Constabulary operations entail law enforcement, both domestic and international, the former particularly within territorial waters and the latter principally on the high seas – with significant overlap between the two. Prior to 1945, the domestic law-related functions of navies were largely confined to enforcing law within three nautical miles of their own coasts. The enforcement of inshore fisheries regulations, for example, and the protection of the State from threats to its health and integrity through the enforcement of quarantine, customs and fiscal regulations, were primarily naval functions. Some States developed civilian- manned agencies for such tasks (e.g., coastguards), but it was principally navies that were routinely employed for that purpose.<sup>6</sup>

On the high seas, navies exercised exclusive flag State jurisdiction over their own States' merchant ships and other civilian vessels. They also engaged in anti- piracy operations, ensuring that the seas were free for safe and secure trading activities. This was a naval function with a long history dating back many centuries.<sup>7</sup> During the nineteenth century, the suppression of slavery became a further significant role for navies.<sup>8</sup> Both anti- piracy and anti-slavery operations remain potential naval functions today, although the former has been more in evidence recently than the latter.<sup>9</sup>

Since 1945, naval constabulary functions have increased substantially, principally as a consequence of maritime jurisdictional changes ushered in through the Third United Nations (UN) Conference on the Law of the Sea, between 1974 and 1982. The resultant 1982 UN Convention on the Law of the Sea (UNCLOS)<sup>10</sup> led to substantial increases in both the extent and nature of coastal State jurisdiction, most notably through the

extension of territorial seas from three to twelve nautical miles, the creation of contiguous zones beyond the territorial sea, and the introduction of the exclusive economic zone extending to 200 nautical miles from the coast. Each of these zones has caused the domestic coastal law enforcement task to increase, especially in relation to the enforcement of resource management arrangements.

Also, under UN auspices, the last fifty years have witnessed the development of maritime economic embargo operations, which are one means of enforcing economic sanctions imposed by the UN Security Council. The first such operation was not initiated until the mid-1960s,<sup>11</sup> but UN maritime embargos became a more common resort after the Cold War ended, with operations mounted in the Mediterranean (including the Adriatic), the Middle East and Haiti.<sup>12</sup>

It is important here to distinguish maritime embargo operations from what may appear at first sight to be a very similar naval operation – belligerent blockade. Constabulary UN maritime economic embargo operations are emphatically not a modern form of belligerent blockade, which is a method of economic warfare (discussed in more detail below). The UN Charter is very clear in this regard – while it mentions “blockade”, it does so deliberately in Article 42, dealing with military sanctions, and not in Article 41, which explicitly addresses “measures not involving the use of armed force” to enforce economic sanctions. Blockade and embargo operations have very different purposes, are conducted in different ways – one is an act of war (blockade) and the other a constabulary operation (maritime embargo) – and have completely different legal bases.<sup>13</sup>

Additional high seas constabulary operations include responses to illicit drugs trafficking and for the safety of maritime navigation.<sup>14</sup> Maritime crime is increasing; navies have an important function to perform in response.<sup>15</sup>

The majority of navies are engaged in constabulary operations to some degree. Indeed, for many today it is their principal employment. They require minimum levels of force to be

used at all times, the primary legal basis today being human rights law.<sup>16</sup>

### **Military Operations**

Naval doctrine supported by the study of naval history has generally identified three distinct forms of naval operation mounted against an opposing belligerent. All such naval operations can be located under one of the following three headings: sea control/sea denial, power projection, and economic warfare.<sup>17</sup> Each deserves some explanation. Indeed, it is impossible fully to understand naval power, its strategic value or its tactical application without an appreciation of these.

Navies traditionally exerted their influence in war by projecting power ashore (through shore bombardment or by landing troops in amphibious operations, for example) and by applying economic pressure on opposing belligerents through the interdiction of their trade via commerce raiding and blockade. Navies can only undertake such operations if they are secure and have sufficient control of the sea to conduct them. Navies fight other navies to secure such control of the sea so that they are able to mount either power projection or economic warfare operations against the enemy. They fight for sea control and at the same time seek to deny their opponent control of the sea for its own purposes. Sea control and sea denial are opposite sides of the same coin.

A notable historical example, the battle of Trafalgar in 1805, involved two rival fleets (the British on the one hand and the combined French and Spanish on the other) fighting for control of the sea. The British needed sea control in order freely to apply economic pressure on France through the interdiction of shipping bound for the continent. They also sought to deny the French control of the sea to prevent them launching an invasion of Britain itself. Viewed from the French and Spanish perspective, the aim was to deny the Royal Navy's (RN) ability to disrupt their trade, but also to achieve sufficient control of the sea to allow for a French invasion of Britain. The significance of the battle was not the fighting on the day but the strategic consequences that British tactical victory delivered. The ultimate function of navies has been to project power ashore in order to

influence events on land or to interfere with the enemy's trade, thereby undermining its ability to sustain its war effort. Obtaining sea control is the necessary precursor for these.<sup>18</sup>

In the age of sail, surface fleets fought surface fleets for sea control. In the early twentieth century, however, following the emergence of effective sea denial technologies (sea mines and submarines armed with torpedoes), powerful surface fleets could no longer be assured of dominance at sea. By the outbreak of the Second World War, aircraft had further complicated the achievement of sea control. Since then, both shore-based and ship-borne missiles have caused surface forces yet more sea control difficulties.<sup>19</sup>

Julius Caesar's and William of Normandy's invasions of Britain in 55 BC and 1066 were each major amphibious assaults; there is nothing new about "naval power projection". The traditional shore bombardment and amphibious landing retain their utility, but modern manifestations of power projection are far more varied and extensive. Naval forces can launch long-range attacks using both aircraft launched from carriers and land-attack missiles launched from surface warships or submarines. The big-gun battleships that were dominant in the early twentieth century gave way to aircraft carriers during the Second World War as the capital ship of choice for major naval powers, with the more ambitious subsequently procuring nuclear-powered submarines. While such warships may have originally been developed principally for sea control and sea denial operations, they are today frequently employed as powerful platforms for long-range power projection. The cruise missile, capable of reaching targets hundreds of miles inland, is routinely the weapon used by the more sophisticated naval forces when deployed to apply persuasive force against States. It has been a prominent feature of past attacks against targets in Iraq and Afghanistan, for example, and sea-launched attacks on Syria today are naval power projection involving both missiles and ship-launched aircraft (these days both manned and unmanned).

Economic warfare at sea was a distinctive feature of general naval warfare from the sixteenth century until the Second World War. It consisted of a combination of commerce-raiding and

blockade operations to prevent an enemy benefiting from maritime trading activities, especially in goods (contraband) that were likely to enhance its ability to continue waging war. There has been scant employment of this type of operation in the past seventy years because there has not been a general naval war during that period. Economic warfare is addressed in much more detail below.

### **Armed Conflict at Sea Since 1945**

The most recent period of major naval war was between 1939 and 1945. Historically, the naval conflicts then, in the Atlantic and Mediterranean and in the Pacific theatre, were the most recent in a long line of general and great-power naval wars stretching back to the sixteenth and seventeenth centuries. Some significant examples of these included the series of Anglo-Dutch wars between 1652 and 1674, the Seven Years War of 1756–63, the American Revolutionary War of 1775–84, the French Revolutionary and Napoleonic Wars from 1792 to 1815, the Anglo-American naval war of 1812, and the Russo-Japanese War of 1904–05.<sup>20</sup> All were struggles for power of an imperial nature in the era of maritime empires, which stretched from the early seventeenth to the mid-twentieth century.<sup>21</sup> These wars had potentially global impact, with navies frequently utilizing the extent of the free oceans to carry on their conflicts, especially in relation to the interdiction of trade. It was these wars that influenced the development of the laws of war and neutrality at sea.

While there has been no general naval war since 1945, there have been at least a dozen armed conflicts with naval dimensions worth mentioning. The Arab–Israeli wars which commenced in 1948 included the 1956 Anglo-French amphibious assault on the Suez Canal Zone in Egypt, and continue today with the conflict between Israel and the Palestinians, which recently featured the Israeli naval blockade of Gaza.<sup>22</sup> The Korean War (1950–53) included the September 1950 amphibious assault by UN forces at Inchon.<sup>23</sup> The Vietnam War (1955–75) included various naval operations, with substantial US involvement following the August 1964 Tonkin Gulf incident and concluding with the *Mayaguez* incident in May 1975. In between, naval operations included the provision of naval support from the sea and extensive riverine



operations.<sup>24</sup> The Indo-Pakistan War (1971) lasted a mere thirteen days but included submarine attacks on surface warships and an Indian blockade of the East Pakistan/Bangladesh coast in the Bay of Bengal.<sup>25</sup> Between 1971 and 1974, the “Troubles” in Northern Ireland arguably crossed the threshold into non-international armed conflict in the early 1970s and, perhaps surprisingly to some, involved a significant naval element in 1972 when substantial British military reinforcements were landed into the province from RN amphibious shipping.<sup>26</sup> The Battle of the Paracels lasted just two days in January 1974 and involved the armed forces of the People’s Republic of China and Vietnam. The outcome was Chinese control over the islands, still a source of dispute in the South China Sea today.<sup>27</sup> In stark contrast, the Iran–Iraq War (1980–88) was a long-drawn-out conflict, the naval dimension of which lasted from 1984 to 1987. It was initiated by Iraqi attacks on Iranian oil facilities on Kharg Island, and included attacks on neutral shipping and an Iranian blockade of the Iraqi coast.<sup>28</sup> The Falklands/Malvinas War (April–June 1982) was fundamentally a maritime campaign involving classic sea-control and sea-denial operations coupled with power projection through amphibious assault. A number of surface warships were sunk, with the Argentine cruiser *General Belgrano* and the British destroyers *Sheffield* and *Coventry* being prominent casualties.<sup>29</sup> The Sri Lankan Civil War (1983–2009) had a notable naval dimension, with the Tamil Tigers deploying forces at sea (an unusual capability for an armed non-State actor in a non-international armed conflict).<sup>30</sup> The Gulf of Sidra Action in 1986 involved air and sea forces of Libya and the US Sixth Fleet and resulted in the sinking of two Libyan warships.<sup>31</sup> Both of the Gulf Wars against Iraq (1990–91 and 2003) had naval dimensions, with coalition forces defeating Iraqi naval forces and conducting landings in Kuwait and Southern Iraq.<sup>32</sup> Finally, of interest is the Kosovo armed conflict in 1999 between the North Atlantic Treaty Organisation (NATO) Alliance members and Serbia – although the most significant observation is to do with naval inactivity. A naval blockade of the Montenegrin port of Bar was considered within NATO because there was a fear that Serbia might be

resupplied with war materiel by neutral vessels through Bar. The Kosovo operation was mounted without a UN Security Council resolution authorizing NATO's intervention. For that reason, there was certainly no possibility of putting a UN maritime embargo in place to prevent ships entering Bar. Having considered blockade as an option, the Alliance rejected the idea, however. While this decision not to employ a blockade may seem irrelevant in terms of State practice, the reasons for not doing so included a belief within some NATO capitals that, while the Alliance was engaged in an armed conflict, this method of naval warfare was not a lawful option and would be too controversial.<sup>33</sup>

These post-1945 conflicts have all been markedly limited in their naval scope, with none having strategic naval influence beyond the immediate region of the core conflict. Only three (the Battle of the Paracels, the Falklands/Malvinas War and the Gulf of Sidra Action) were principally maritime conflicts at the operational level.<sup>34</sup> In the others, the main operational-level focus was on land campaigns, with the naval dimensions being clearly subordinate. These armed conflicts were certainly not global in scope, and none had the characteristics of the notable naval wars of the maritime imperial era. Economic warfare has not figured as a major component, although belligerent blockades have been imposed, including, for example, the Indian blockade of Bangladesh in the Bay of Bengal in 1971, the blockade of Haiphong Harbour in 1972 during the Vietnam War, and the controversial Israeli blockade of Gaza. There was also the serious interference with shipping during the so-called "Tanker War" phase of the Iran–Iraq war. Two of the conflicts were non-international (Sri Lanka and Northern Ireland), but there were also non-international features of the Vietnam War and the Indo-Pakistani War of 1971, which saw East Pakistan (Bangladesh) break away from West Pakistan. The recent naval activities of the Tamil Tigers in Sri Lanka, in particular, have served as a reminder that civil wars (or non-international armed conflicts) can involve the bringing to bear of naval influence. It is worth stressing here that no post-1945 war has involved the

principal naval powers in major and sustained combat operations against each other.

Compliance with the law during these naval engagements was mixed, with the Falklands/Malvinas War being largely compliant, while the Iran–Iraq “Tanker War” certainly breached the rules on the interdiction of shipping.<sup>35</sup> The Israeli conduct of the Gaza blockade operation was tactically compliant with the *jus in bello*, albeit controversial and resulting in a UN enquiry.<sup>36</sup> All other engagements raised legal issues, but none in a manner or to an extent that seriously challenged the existing law. While there has clearly been some evidence of practice resulting from these recent wars, this has not caused any discernible trend towards customary development of the law.<sup>37</sup> Nor has there been any demand for new conventional law. The status quo is a comfortable place for States to occupy, especially when they are not being challenged by circumstance.

### **Potential for Naval War in the Twenty-First Century**

What is the potential for naval war in the future? Even if prediction is difficult, it would be naive to dismiss the possibility altogether. On the basis of what has occurred since 1945, there would certainly appear to be some potential, even if recent past evidence suggests it is likely to be brief, lower-intensity and geographically limited. Equally, the absence of general naval war suggests that it may now be a feature of the past rather than something to contemplate in the future. Such general wars require two ingredients. First, there is the need for navies to be capable of engaging at that level. Second, it would require an international security situation that would give rise to it. It is worth saying something about both.

There are three times as many navies today than there were at the end of the Second World War.<sup>38</sup> Not all are capable of high-intensity and sustained operations at significant distance from their home waters, but an increasing number are. A useful hierarchy of navies currently in use places each in one of eight categories based on an assessment of size, reach, combat capability and general utility.<sup>39</sup> The single remaining “major global force projection navy” is that of the United States. Below it are a growing number of medium-ranked, well-developed navies, whose

force structures are predicated principally on the need to engage in combat operations. These include the second-rank navies of China, France, India, Japan, Russia and the United Kingdom, and third-rank navies like those of Australia, Brazil, Canada, Italy, Germany, Singapore and South Korea, together with those of Denmark, Norway and Sweden. The majority of the world's navies are in ranks four to six, and while they are less capable, it has been combat capability that has driven their force development. Only seventh-ranking "constabulary navies", capable of law enforcement operations within their own States' offshore jurisdictional zones, and eighth-ranking "token navies" fail to deploy effective combat capability. Nevertheless, the lower-ranked navies, with limited combat capacity, still possess potential for low-intensity applications of force that could cross the armed conflict threshold. Given the proliferation of navies and the range of States in politically unstable regions of the globe, it is perhaps surprising that there have so far been so few conflicts at sea.

Of the more than 160 navies currently operating, only the US Navy (USN) has the capability to operate globally in the true sense. It has no peer competitor and is unlikely to face one for decades to come. Those navies that might aspire to compete at that level (perhaps the Chinese and Russian) fall well short at present and would take some time to reach it. Even so, the USN does not enjoy the dominance and full command of the oceans that the collective naval power of the British Empire did during the nineteenth-century *Pax Britannica*.<sup>40</sup> It is even doubtful that it could adequately defend its own trade globally from concerted submarine attack.

If that sounds surprising, one might reflect on some figures from the Second World War, focusing on just one of the powers involved, to give some impression of how its naval forces coped with the conflict. Overall, the combined British Empire navies deployed a total of almost 885 significant warships (battleships, battle cruisers, aircraft carriers, cruisers, destroyers and submarines) during the Second World War, of which 278 (31 per cent) were lost to enemy action.<sup>41</sup> The losses alone, then, amounted to around the same number of significant warships currently possessed by the USN. During the Battle of the Atlantic

in the 1940s, the Allied navies (including the USN after US entry as a belligerent in December 1941) had around 300 destroyers available for convoy escort duty. The British Empire alone lost 153 destroyers to enemy action while defending transatlantic shipping.<sup>42</sup>

Technology has developed since then, with faster, more powerful and far more capable warships fitted with advanced sensors and weapon systems. Without conducting operational analysis around the subject, it would be difficult to predict both force requirements for defensive economic warfare, given current maritime trade volumes, and the likely losses that defensive forces would face. Nevertheless, with submarine technology also vastly improved and with quantity having a quality of its own when it comes to convoy escort tasking, it is difficult indeed to imagine a re-run of the sort of campaign that was fought in the North Atlantic between 1940 and 1943. In the 1930s and 1940s, the design, development and construction of new warships took a matter of mere weeks or months. Today's equivalent vessels take years from drawing board to operational deployment, and the sort of rapid force generation possible during the Second World War would now be impossible to achieve. The strategically vital battle – for both sides – in the Atlantic theatre in the middle of the last century represented an extreme manifestation of warfare at sea, with the focus on threats to shipping. The Pacific theatre saw a greater concentration of naval power than the Atlantic and was more about the projection of power from sea to shore. Both theatres witnessed extremes in terms of sea control and denial operations, with the war against submarines being the focus in the Atlantic, while the maritime air war dominated the Pacific theatre. While prediction is fraught with difficulty, it seems unlikely that a global great-power naval war on that scale will occur again, no matter what combinations of naval powers are ranged against each other. The end of empires does appear to have brought an end to conflict between the major powers, with none having occurred since 1945. Why might that be?

There seem to be a number of reasons: an increased number of international organizations, including the impact of the UN; the rapidity/ immediacy of international communications and

the fundamental changes it has ushered in as far as international political and diplomatic practice are concerned; and the positive effect of nuclear weapons, which seem to have had a calming and beneficial influence on great-power relations, reducing the tendency for them to resort to force against each other. If the major powers today did engage in war, then it is fair to say that general naval war would be a likely feature. This would have potentially catastrophic economic consequences, with a considerable risk of a halt to globalization through the disruption to oceanic trade. There would likely be considerable international diplomatic effort to avoid it.<sup>43</sup> It is difficult to imagine international order breaking down to the extent that the world becomes embroiled in another global conflict.

This is not to say that there will not again be war at sea having some of the characteristics of the naval war in the 1940s. If a significant and sustained naval war were to occur between combat-capable naval powers, it is even possible that aspects of economic warfare could return to the oceans. Nevertheless, on the balance of probability, future armed conflicts at sea seem most likely to be limited geographically and almost certainly to be confined to a single region or even locality. Obvious potential flashpoints currently are in the South and East China Seas, in proximity to the Korean Peninsula, in the Gulf, in the Eastern Mediterranean and in parts of Africa (although few African navies are equipped for sustained naval confrontation, regardless of the potential for bloody conflict ashore). One should also be conscious of the unpredictable occurring in regions not thought of as being at high risk – and over time, of course, new tensions will undoubtedly emerge in places that are currently relatively benign.

### **The Conduct of Naval Hostilities: The Established Law**

The existing law on the conduct of hostilities at sea is a part of the broader body of the LOAC, with most of the rules applied at sea reflecting those applied in other environments. The basic principles of military necessity, humanity, distinction and proportionality and the rules on precautions in attack most certainly apply at sea as they do elsewhere.<sup>44</sup> The principles regulating weapons are also identical, with new weapons for use at sea subject to Article 36 weapons review in common with those

deployed on land or in the air.<sup>45</sup> A notable feature of the law applied at sea is that it allows for warships to disguise themselves, including by wearing a false flag until the point at which they launch an attack, although such “ruses of war” are probably not as significant as they once were (and will not be addressed further as the topic falls outside the scope of this article).

In common with all laws regulating war, those dealing with the conduct of war at sea were entirely of a customary nature until the middle of the nineteenth century. The development of the relevant treaty law occurred in the eighty-year period between 1856 (the Paris Declaration<sup>46</sup>) and 1936 (the London Protocol on Submarine Warfare<sup>47</sup>), with the bulk of it emerging from the Hague Conference of 1907.

There were eight naval conventions agreed that year, although only five of them remain extant:<sup>48</sup>

- (a) Hague Convention (VII) relating to the Convention of Merchant Ships into War-Ships;<sup>49</sup>
- (b) Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines;<sup>50</sup>
- (c) Hague Convention (IX) Concerning Bombardment by Naval Forces in Time of War;<sup>51</sup>
- (d) Hague Convention (XI) relative to certain restrictions with regard to the Exercise of Capture in Naval War;<sup>52</sup> and
- (e) Hague Convention (XII) Concerning the Rights and Duties of Neutral Powers in Naval War.<sup>53</sup>

Attempts to develop the law conventionally since 1907 have had minimal effect, the only treaty of current relevance being the 1936 London Protocol on Submarine Warfare. This was the final act in the process set in train to outlaw unrestricted submarine warfare following the First World War. It determined that submarines were subject to the same economic warfare rules as surface warships. If applied, it would have had the effect of virtually ruling out the use of submarines for commerce raiding on practical grounds. They would have found it almost invariably impossible to conduct visit and search, or the seizure or lawful

destruction of enemy merchant ships and others carrying contraband. Once war broke out in 1939, the protocol was generally ignored.

Since 1936, there has been no substantial conventional development of the law, despite naval power having changed in important respects.<sup>54</sup> Operations have also been affected by fundamental changes to the general maritime legal environment and in the nature of ocean governance ushered in by conventional developments in the law of the sea. While that regulates the relations of States in peacetime, it also affects the areas within which naval armed conflict could legitimately be waged. The post-UNCLOS extensions and enhancements in coastal State jurisdiction mean that the seas are not as “free” as once they were. This was well recognized as UNCLOS was moving towards ratification, with calls then to review the law of naval warfare.<sup>55</sup>

Once the Cold War was over, the IIHL in Sanremo, supported by the ICRC, initiated its project to produce a contemporary restatement of the international law applicable to armed conflict at sea. The results were published in 1995 as the San Remo Manual.<sup>57</sup> The project’s methodology was rigorous and thorough, involving a series of meetings of the leading scholars on the subject as well as representatives of many of the world’s navies – and all the major naval powers were represented, albeit informally.

The San Remo Manual’s influence is significant, and for very good reason. Both the USN and the British Ministry of Defence have quoted the SRM rules in their manuals dealing with the LOAC.<sup>57</sup> The SRM was used in its entirety as the “first draft” of the “Maritime Warfare” chapter in the UK’s *Manual of the Law of Armed Conflict* (UK Manual).<sup>58</sup> It was quoted by Israel in support of its conduct of the blockade of Gaza, following the May 2010 attempt by a flotilla of neutral vessels to enter the territory.<sup>59</sup> In subsequent enquiries into that incident, the SRM was again relied upon.<sup>60</sup> Most recently, the editors of a guide to human rights law applications in armed conflict have relied on a combination of the SRM and the UK Manual in their own “Maritime Warfare” chapter.<sup>61</sup> There is, therefore, strong evidence that the SRM is



widely regarded as a reliable statement of the LOAC to be applied at sea.

One does need to be circumspect in assuming that the San Remo Manual is definitive of the law, however. Its Foreword describes it as “a contemporary restatement of the law, together with some progressive development, which takes into account recent State practice, technological developments and the effects of related areas of the law”.<sup>62</sup> It is neither conventional law nor a codification of customary law, but it very clearly relies on both. It is authoritative, in so far as it is the product of a rigorous process of review, but that authority is limited by the fact that States were not officially represented in the process of consultation, with all officials contributing in their “personal” capacities. Not all of its rules are invariably accepted. For example, while the UK Manual’s “Maritime Warfare” chapter relied heavily on the SRM, the rules were modified to reflect the UK’s position.<sup>63</sup> Nor is the SRM declaratory of customary law. One might be forgiven for assuming that it is; the ICRC Customary Law Study deliberately excluded any practice in naval warfare, because “this area of law was recently the subject of a major restatement, namely the San Remo Manual”.<sup>64</sup> Nevertheless, it is appropriate to regard the SRM as a basic statement of the extant law. This is convenient for the purposes of this paper, which alludes to the SRM rules and thereby avoids lengthy reference to conventional sources and historic practice.

A comprehensive review of the law would require an examination of all SRM rules and their conventional and customary antecedents. This paper does not attempt that. It examines only two aspects of naval warfare, which are regarded as particularly challenging from a legal point of view: economic warfare and hybrid warfare.

## Endnotes

<sup>1</sup>Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study). The ICRC Customary Law Database is kept updated at: [www.icrc.org/en/war-and-law/treaties-customary-law/customary-law](http://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law) (all internet references were accessed in May 2017).

<sup>2</sup> It would be wrong to claim that it has received no attention at all. The most significant and notable concentration of scholarship has been conducted under the auspices of the US Naval War College in Newport, Rhode Island, within the Stockton Center for the Study of International Law. Its extensive “Blue Book” International Law Studies series is an essential source of scholarly and professional opinion on the subject and is now openly available online at: [www.usnwc.edu/departments—/international-law.aspx](http://www.usnwc.edu/departments—/international-law.aspx).

<sup>3</sup> It is important to clarify the terminology, not least because there is a tendency today to regard the law of armed conflict (LOAC) as synonymous with international humanitarian law (IHL). Although the debate on overlaps and distinctions between the LOAC and IHL falls outside the scope of this paper, it is important to state what the LOAC addresses and what it does not. The law that is the focus of this paper is that which regulates the conduct of hostilities at sea. Traditionally known as the “law of war and neutrality at sea”, it is now more commonly referred to as the “law of armed conflict applicable at sea”. This paper does not deal with the application of IHL at sea and will not address that subject (which derives from Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 UNTS 85, 12 August 1949 (entered into force 21 October 1950) (GCII), and related instruments).

<sup>4</sup> ICRC Customary Law Study, above note 1, p. xxx. See also Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge University Press, Cambridge, 1995 (San Remo Manual). It should be noted that while the IHL is located in Sanremo (one word) in Italy, the manual is invariably referred to as being associated with “San Remo” (two words).

<sup>5</sup> This is the way that operations have been categorized by the British Royal Navy (RN); see Defence Council, *BR 1806 British Maritime Doctrine*, 2nd ed., Stationery Office, London, 1999, pp. 57–58. Other navies have admittedly departed slightly from this formula. See, for example, Royal Australian Navy Sea Power Centre, *Australian Maritime Doctrine*, Defence Publishing Service, Canberra, 2000, p. 57; Maritime Concepts and Doctrine Centre, *Indian Maritime Doctrine*, INBR 8, Ministry of Defence (Navy), Mumbai, 2009, p. 91. For a leading academic treatment, see Geoffrey Till, *Seapower: A Guide for the Twenty-First Century*, 2nd ed., Routledge, Abingdon, 2009, which discusses both military tasks and “maintaining good order at sea”.

<sup>6</sup> Interestingly, the US Coastguard traces its origins to before those of the US Navy. For a discussion of different navy/coastguard arrangements, see *ibid.*, pp. 314–319.

<sup>7</sup> Grotius makes reference in his “Defence of Chapter V of *Mare Liberum*” to Julius Caesar’s involvement in countering piracy; see David Armitage (ed.), *Hugo Grotius’ The Free Sea*, Liberty Fund, Indianapolis, 2004, p. 129. A notable early nineteenth-century example of naval action against pirates was that ordered by President Thomas Jefferson and conducted by the US Navy (USN) against the Barbary Pirates; see Robert Turner, “President Thomas Jefferson and the Barbary Pirates”, in Bruce Elleman, Andrew Forbes and David Rosenberg (eds), *Piracy and Maritime Crime: Historical and Modern Case Studies*, Naval War College Newport Papers No. 35, Newport, RI, 2011.

<sup>8</sup> For a recent comprehensive treatment of this subject, see Peter Grindal, *Opposing the Slavers: The Royal Navy’s Campaign against the Atlantic Slave Trade*, I. B. Tauris & Co., London, 2016. The USN was also employed in suppressing the slave trade, despite slavery itself remaining lawful in its own southern States until the Civil War. Congress outlawed the slave trade in 1808, and a West African USN squadron was established in 1821 to suppress it. See Craig Symonds, *The US Navy: A Concise History*, Oxford University press, Oxford, 2016, pp. 37–38.

<sup>9</sup> Although navies are currently doing little to suppress slavery, it is of growing concern at sea, in particular with slave crews in fishing vessels engaged in illegal, unregulated and unreported fishing. See the website of Human Rights at Sea, at: [www.humanrightsatsea.org](http://www.humanrightsatsea.org).

<sup>10</sup> UN Convention on the Law of the Sea, 1833 UNTS 3, 10 December 1982 (entered into force 16 November 1994).

<sup>11</sup> This was mounted by the British navy off the Mozambique port of Beira between 1966 and 1975 to enforce economic sanctions against the white minority-ruled British colony of Rhodesia, which had illegally declared its independence from Britain. The operation was authorized by UNSC Res. 217, 20 November 1965. The author himself served on the “Beira Patrol”, but see Richard Mobley, “The Beira Patrol: Britain’s Broken Blockade against Rhodesia”, *Naval War College Review*, Vol. 55, No. 1, 2002. It is incorrect to describe this law enforcement operation as a “blockade”; see the discussion immediately below.

<sup>12</sup> James Kraska and Raul Pedrozo, *International Maritime Security Law*, Martinus Nijhoff, Leiden and Boston, MA, 2013, pp. 903–923.

<sup>13</sup> This distinction has admittedly been difficult for some to discern, but see Rob McLaughlin, *United Nations Naval Peace Operations in the Territorial Sea*, Martinus Nijhoff, Leiden and Boston, MA, 2009, pp. 129-152.

<sup>14</sup> For these constabulary operations on the high seas, two conventions are of some importance: the Vienna Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988 (entered into force 1 March 1992), together with its Protocol of 2005; and the Vienna Convention on the Suppression of the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988 (entered into force 11 November 1990). See also J Kraska and R Pedrozo, above note 12, pp. 801–858, 531–540.

<sup>15</sup> Ibid., pp. 1-5.

<sup>16</sup> Daragh Murray, *Practitioners' Guide to Human Rights Law in Armed Conflict*, Oxford University Press, Oxford, 2016, p.91.

<sup>17</sup> Different analysts may produce different ways of describing and ordering these “military” operations. This categorization is the author’s preferred way of doing so, born of a lengthy period employed as a naval analyst on the Naval Staff within the UK’s Ministry of Defence, including the period during which he was the lead author for the RN’s maritime strategic doctrine.

<sup>18</sup> Nicholas Roger, *The Command of the Ocean: A Naval History of Britain 1649–1815*, Allen Lane, London, 2004, especially pp. 542-544.

<sup>19</sup> Martin Van Creveld, *Technology and War: From 2000BC to the Present*, Brassey’s, London, 1991, pp. 204– 216; Max Boot, *War Made New: Technology, Warfare and the Course of History, 1500 to Today*, Gotham Books, New York, 2006, pp. 241–267.

<sup>20</sup> There are numerous works covering these naval wars but, for example, see James Jones, *The Anglo-Dutch Wars of the Seventeenth Century*, Longman, London and New York, 1996; Daniel Baugh, *The Global Seven Years War 1754–1763*, Routledge, London and New York, 2011; Andrew Lambert, *The Challenge: Britain Against America in the Naval War of 1812*, Faber & Faber, London, 2012; Alfred Mahan, *The Influence of Sea Power upon the French Revolution and Empire 1793–1812*, 2 vols, Sampson Lowe, Marston & Co., London, 1892; Julian Corbett, *Maritime Operations in the Russo-Japanese War 1904–1905*, 2 vols, Naval Institute Press, Newport, RI, 2015; Paul Halpern, *A Naval History of World War I*, UCL Press, London, 1994; Correlli Barnett, *Engage the Enemy More Closely: The Royal Navy in the Second World War*, Hodder & Staughton, London, 1991.

<sup>21</sup> Arguably, the age of empires (including maritime-based empires) came to an end in the middle of the twentieth century. See Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference*, Princeton University Press, Princeton, NJ, and Oxford, 2010, especially Ch. 13, pp. 413–433; Michael Mann, *The Sources of Social Power*, Vol. 3: *Global Empires and Revolution 1890–1945*, Cambridge University Press, Cambridge, 2012.

<sup>22</sup> Keith Kyle, *Suez: Britain's End of Empire in the Middle East*, I. B. Tauris, London, 2003. In relation to the Gaza blockade, see Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, September 2011 (Palmer Report), available at: [www.un.org/News/dh/infocus/middle\\_east/Gaza\\_Flotilla\\_Panel\\_Report.pdf](http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf).

<sup>23</sup> James Patterson, *Grand Expectations: The United States, 1945–1974*, Oxford University Press, Oxford, 1996, pp. 218–219.

<sup>24</sup> Stanley Karnow, *Vietnam: A History*, Guild Publishing, London, 1983, pp. 366–373, 687.

<sup>25</sup> James Goldrick, *No Easy Answers: The Development of the Navies of India, Bangladesh, Pakistan and Sri Lanka 1945–1996*, Papers in Australian Maritime Affairs No. 2, Royal Australian Navy Maritime Studies Programme, Lancer Publishers, New Delhi, 1997, pp. 68–103.

<sup>26</sup> See Steven Haines, “Northern Ireland 1968–1998”, in Elizabeth Wilmshurst (ed.), *International Law and the Classification of Conflicts*, Oxford University Press, Oxford, 2012, p. 126.

<sup>27</sup> See Toshi Yoshihara, “The 1974 Paracels Sea Battle: A Campaign Appraisal”, *Naval War College Review*, Vol. 68, No. 2, 2016.

<sup>28</sup> See Ronald O'Rourke, “The Tanker War”, *US Naval Institute Proceedings*, Vol. 114, No. 5, 1988, available at: [www.usni.org/magazines/proceedings/1988-05/tanker-war](http://www.usni.org/magazines/proceedings/1988-05/tanker-war).

<sup>29</sup> Sir Lawrence Freedman, *The Official History of the Falklands Campaign*, 2 vols, Routledge, London, 2005.

<sup>30</sup> Justin Smith, *Maritime Interdiction in Counterinsurgency: The Role of the Sri Lankan Navy in the Defeat of the Tamil Tigers*, unpublished Masters Thesis, US Naval Postgraduate School, Monterey, June 2010, available at: [calhoun.nps.edu/bitstream/handle/10945/5346/10Jun\\_Smith\\_Justin.pdf?sequence=1](http://calhoun.nps.edu/bitstream/handle/10945/5346/10Jun_Smith_Justin.pdf?sequence=1).

<sup>31</sup> Alessandro Silj, "The Gulf of Sidra Incident: March–April 1986", in *The International Spectator: Italian Journal of International Affairs*, Vol. 28, No. 1, 1993.

<sup>32</sup> See Iain Ballantyne, *Strike from the Sea: The Royal Navy and the US Navy at War in the Middle East 1949–2003*, Pen and Sword Maritime, Barnsley, 2004.

<sup>33</sup> The author was serving in the UK Ministry of Defence at the time and was consulted by the director of naval operations. He suggested blockade as an option, in the absence of a UN Security Council resolution allowing for the possibility of a UN maritime embargo operation – caused by a likely Russian veto in the Council.

<sup>34</sup> The "operational level" is the level of command at which campaigns are planned in order to achieve strategic objectives. In many instances, the maritime element of a campaign will be manifestly subordinate to the land or air element – as were the naval operations during the two Gulf Wars. In other cases, the principal focus at the operational level will be maritime, as it was during the British campaign to recover the Falkland/Malvinas Islands in 1982. Since 1945, the vast majority of naval/ maritime contributions to military campaigns have been subordinate to other, principally land-based elements.

<sup>35</sup> Mention of the 1982 conflict in the South Atlantic must not pass without some comment on exclusion zones declared by the British, in one instance seemingly establishing what one distinguished international lawyer has described as an unlawful "free-fire zone" (a description with which this author agrees), although this did not result in any unlawful action. See Wolff Heintschel von Heinegg, "How to Update the San Remo Manual on International Law Applicable to Armed Conflict at Sea", *Israel Yearbook on Human Rights*, Vol. 36, 2006, pp. 144–145.

<sup>36</sup> See Palmer Report, above note 22.

<sup>37</sup> One shift that did occur was in relation to the encryption of communication employed by hospital ships, which is prohibited under Article 34(2) of GC II but which proved problematic during the 1982 Falklands/ Malvinas War. As a consequence of that, Rule 171 of the San Remo Manual permits the use of encryption for the purpose of effecting the humanitarian mission of such vessels but asserts a ban on their use of encrypted communications to pass intelligence or to gain any other military advantage

<sup>38</sup> The principal reference book on the world's navies listed fifty-six navies in 1950; see Raymond Blackman, *Jane's Fighting Ships 1949–50*,

McGraw Hill, New York, 1949. The volume covering the period 2016–17 lists just over 160; see Stephen Saunders and Tom Philpott (eds), *Jane's Fighting Ships 2016–17*, 116th ed., Jane's Information Group, London, 2016.

<sup>39</sup> In descending order, they are: major global force-projection navies; medium global force-projection navies; medium regional force-projection navies; adjacent force-projection navies; offshore territorial defence navies; inshore territorial defence navies; constabulary navies; and token navies. See Steven Haines, "New Navies and Maritime Powers", in Nicholas Roger, *The Sea in History*, Vol. 4: The Modern World, Boydell and Brewer, Martlesham, 2016, pp. 88–89.

<sup>40</sup> For a recent study of British naval dominance, see Barry Gough, *Pax Britannica: Ruling the Waves and Keeping the Peace before Armageddon*, Palgrave Macmillan, Basingstoke, 2014.

<sup>41</sup> The combined British Empire navies were the Royal Navy (by far the largest), the navies of Australia, Canada, New Zealand and India, and the South African Naval Forces.

<sup>42</sup> Figures from the website Naval History, available at: [www.naval-history.net/WW2aBritishLosses10tables.htm](http://www.naval-history.net/WW2aBritishLosses10tables.htm)

<sup>43</sup> None of these reasons are the subject of this paper, and the nuclear dimension will undoubtedly be contested by those who regard nuclear weapons as a threat rather than a guarantor of security. The value of nuclear weapons in this respect is, of course, controversial. The author takes the view that nuclear weapons have been beneficial in deterring great-power war, but certainly acknowledges that others will disagree profoundly. Importantly, the legality of the actual use of such weapons, many of which are sea-launched (the ultimate in power projection terms), is not the subject of this paper.

<sup>44</sup> See the chapter on "Basic Principles of the Law of Armed Conflict", in UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford University Press, Oxford, 2004 (UK Manual), pp. 21–26.

<sup>45</sup> "Article 36" being a reference to the provision in Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 36, requiring such reviews. Although not all States are party to AP I, the requirement for legal reviews is more than simply a requirement of treaty law. Indeed, the United States, which is not party, has long conducted such reviews to ensure the legality of weapons being procured

<sup>46</sup> Declaration Respecting Maritime Law, Paris, 16 April 1856.

<sup>47</sup> Procès-verbal relating to the Rules of Submarine Warfare set forth in Part IV of the Treaty of London of 22 April 1930, London, 6 November 1936.

<sup>48</sup> Hague Convention (VI) relative to the Legal Status of Enemy Merchant Ships at the Outbreak of Hostilities has fallen into desuetude; Hague Convention X is now covered by GC II, and Hague Convention (XII) relative to the Establishment of an International Prize Court did not enter into force – see Adam Roberts and Richard Guelff, Documents on the Laws of War, 3rd ed., Oxford University Press, Oxford, 2007, p. 67.

<sup>49</sup> Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships, The Hague, 18 October 1907 (entered into force 26 January 1910).

<sup>50</sup> Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines, The Hague, 18 October 1907 (entered into force 26 January 1910).

<sup>51</sup> Hague Convention (IX) Concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907 (entered into force 26 January 1910) (Hague Convention IX).

<sup>52</sup> Hague Convention (XI) relative to Certain Restrictions with regard to the Exercise of the Right to Capture in Naval War, The Hague, 18 October 1907 (entered into force 26 January 1910).

<sup>53</sup> Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War, The Hague, 18 October 1907 (entered into force 26 January 1910).

<sup>54</sup> The diplomatic conference that negotiated AP I did not have the purpose of reforming the law regulating naval operations and was careful to avoid becoming seized of naval issues (see AP I, Art. 49(3)), although it admittedly did have some influence on naval conduct in hostilities. There have also been no protocols added to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1342 UNTS 137, 10 October 1980 (entered into force 2 December 1983), to do with specifically naval weapons – its Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 10 October 1980 (and the 1996 Amendment to it), did not deal with sea mines.



<sup>55</sup> Natalino Ronzitti, “The Crisis in the Law of Naval Warfare”, in Natalino Ronzitti (ed.), *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, Martinus Nijhoff, Dordrecht, Boston, MA, and London, 1988, especially the section on “The Theatre of Naval Operations”, pp. 13–41 (which includes some comment on the effects of AP I).

<sup>56</sup> See San Remo Manual, above note 4.

<sup>57</sup> US Navy, *The Commander’s Handbook on the Law of Naval Operations*, July 2007 (USN Handbook), available at: [www.jag.navy.mil/documents/NWP\\_1-14M\\_Commanders\\_Handbook.pdf](http://www.jag.navy.mil/documents/NWP_1-14M_Commanders_Handbook.pdf); UK Manual, above note 44.

<sup>58</sup> The current author was one of the joint authors of that chapter, together with Professor Vaughan Lowe QC (then the Chichele Chair of Public International Law at the University of Oxford), Miss Elizabeth Wilmschurst (then the deputy legal adviser in the Foreign and Commonwealth Office) and Commodore Jeff Blackett (then the chief naval judge advocate).

<sup>59</sup> See, for example, [www.abc.net.au/lateline/content/2010/s2914517.htm](http://www.abc.net.au/lateline/content/2010/s2914517.htm), quoting Israeli government spokesman Mark Regev in an interview to the Australian Broadcasting Corporation in which he cites the San Remo Manual, on 31 May 2010. The Israeli Ministry of Foreign Affairs has also relied on both the USN Handbook and the UK Manual as containing authoritative statements on blockade; see: [www.mfa.gov.il/mfa/aboutisrael/state/law/pages/gaza\\_flotilla\\_maritime\\_blockade\\_gaza-legal\\_background\\_31-may-2010.aspx](http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/gaza_flotilla_maritime_blockade_gaza-legal_background_31-may-2010.aspx).

<sup>60</sup> See, for example, Palmer Report, above note 22.

<sup>61</sup> Daragh Murray et al. (eds), *Practitioners’ Guide to Human Rights Law in Armed Conflict*, Oxford University Press, Oxford, 2016, pp. 289–303. The editorial team that produced this guide consists of a distinguished group of leading UK-based experts on both international human rights law and the LOAC/IHL; their reliance on the San Remo Manual is indicative of its status as a reference on the extant LOAC applicable at sea.

<sup>62</sup> San Remo Manual, above note 4, p. ix (emphasis added).

<sup>63</sup> The present author has previously provided a full account of the differences between the San Remo Manual and the UK Manual and the reasoning behind them, in Steven Haines, “The United Kingdom’s Manual on the Law of Armed Conflict and the San Remo Manual:

Maritime Rules Compared”, Israel Yearbook on Human Rights, Vol. 36, 2006.

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