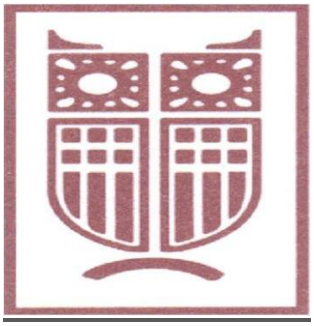
PANTEION UNIVERSITY OF SOCIAL AND POLITICAL SCIENCES



DEPARTMENT OF INTERNATIONAL, EUROPEAN AND AREA STUDIES

MA PROGRAM

"INTERNATIONAL & EUROPEAN LAW AND GOVERNANCE"

SPECIALIZATION: INTERNATIONAL LAW AND DIPLOMATIC STUDIES

The international legal framework on submarine warfare

Anachronistic laws for a contemporary weapon system?

DISSERTATION

SKLIVANOS CHRISTOS

Athens, 2020

Examining Committee:

Maria Daniella Marouda, Assistant Professor of Public International Law & International Humanitarian Law (Supervisor)

Konstantinos Koliopoulos, Assosiate Professor of International Politics & Strategic Studies

Nicholas Tsagourias, Professor of International Law, Director of the Sheffield Centre of International and European Law

To my family…

Acknowledgements

2020 has been undoubtedly a very challenging year from many different aspects, one of which was the preparation of the dissertation at hand. Throughout this period and the adversities it presented, I was fortunate enough to receive support by a great deal of esteemed people. First and foremost, I would like to thank my parents, Magdalini Ampatzi and Georgios Sklivanos, who have supported me during all these years. They taught me to never cower and despair in front of any challenge and to maintain a steady course of action while trying to materialize my goals. Most importantly though, they taught me to always fight with morals and honour no matter how envious and resentful people might be.

Sincere thanks deserve the following people that aided me in my attempt to complete this very dissertation. More specifically, special thanks to Kyriaki-Aikaterini Pisimisi, a classmate since my years in the National and Kapodistrian University of Athens, at the faculty of Law and an esteemed co-intern in the Hellenic Ministry of Foreign Affairs, for her continuous support and assistance through this MA Program. She was always there to cheer me up and provide her valuable and deep knowledge on the many different aspects of Public International Law.

In addition, I would like to thank the Hellenic Navy for its assistance in many different aspects of my life. Particularly, special thanks are reserved for the following. First and foremost, Commodore Athanasios Sampos and Captain Ioannis Pallas for putting their trust in a young recruit, allowing me to conduct a lecture on leadership and history to upcoming Sub Lieutenants and presenting me with new opportunities during my service time. Second, Lieutenant Commander Konstantinos Malliaris and Chief Petty Officer Dimitris Argyris for the valuable lessons they taught me throughout my basic training during which time they drilled into me the phrase of Thucydides: "*One who avoids hardships, avoids honours.*". Last, but not least, I would like to express my gratitude to Lieutenant Commander Georgios Karagiannis and Lieutenant Commander Ioannis Bilias, Lieutenant Andrianna Tsilivigou, Sub Lieutenant Manolis Katsoulis, and political personnel Eleutheria Athanasoulaki, for being ever supporting and encouraging to all my endeavours and tolerating with me during my service time. It has been an honour and pleasure to serve under these people and to make their acquaintance.

I would also like to sincerely thank Colonel Dr. George Anepsiou for his keen interest, valuable support and remarks during the preparation of this dissertation and throughout my MA Program.

Last, but not least, I would like to thank my supervisor, Assistant Professor Maria-Daniella Marouda, for her overall collaboration through all stages of this MA Program during the whole demanding academic year.

Contents

ABSTRACT

The History of mankind is filled with both glorious and damnable moments. It goes without saying that the most tragic reality is war. Despite the various efforts to regulate and ameliorate the different aspects that constitute armed conflicts, there is still a great deal of work to be done. One area of particular interest is that of submarine warfare. Born humbly in the twilight of the 19th century, subs introduced both themselves and an unprecedent revolution to the world and the Art of War. In just a matter of years they became a subject of shock and awe taking everyone completely by surprise. In an attempt to restrain the new weapon, the International Community took rush steps towards creating and implementing a concrete legal framework. However, due to various factors, it was not enough. Instead of learning from past mistakes and failures, the world kept repeating them leaving the submarines unchecked. From the dusk of the 20th to the dawn of the 21st century, these underwater, silent predators became bigger, stronger and deadlier to their appointed tasks capitalizing on every single major technological advancement such as, but not limited to, nuclear energy and ICBMs, not to mention making strides towards becoming unmanned and fully autonomous. And yet, despite all this progress, we still try to regulate their actions by implementing a legal framework nearly two centuries old. All these give birth to a series of questions. Why do we insist on such a course of action, could things change, and finally do we implement anachronistic laws for a contemporary weapon system?

INTRODUCTION

Run fast, run silent, run deep...

Submariners quote

Since time immemorial, mankind was fascinated by the sea, its vastness, its beauty, its potential. Ancient Greeks, Phoenicians and Egyptians took a step forward building massive fleets and setting sail across the oceans. It soon became evident that there was great potential in utilizing the countless possibilities that the sea offered being resources, trade or wealth. Unfortunately, as it happens in almost every case, the oceans soon turned into a field of confrontation between major naval powers, trying to surpass one another in every possible aspect, getting engulfed in a – seemingly – endless arms race. New vessels were developed, bigger, faster, better armed and armoured than their predecessors. In a matter of centuries, the mast gave its position to internal combustion engines; first coal, then oil and now nuclear energy. Throughout the ages, many nations and empires claimed that they dominated the waves and the sea. But what about the depths…?

What Jules Verne narrated in his classic novel "*20.000 leagues under the sea*", back in 1869, probably had never crossed anyone's mind in reality. Despite undoubtedly being overwhelmed by the beauty of the script, almost everyone disregarded such an idea as mere science fiction. Alas, in the following decades, weapon industries and nations alike diverted large amounts of money and resources towards making the "Nautilus" a reality. A vessel that could sail the seven seas on the surface and submerged, utilizing the element of surprise, capable of conducting both scout missions undetected and offensive operations before disappearing once again in the silent depths. The dawn of the 20th century saw the birth of the new weapon called the submarine[1].

From their humble beginnings, as a crude creation of the Nordenfelt Arms Industry, the subs proved to be quite promising with even small nations, such as Greece,

[1] Hence forth "sub" or "U-Boot" when referring to German submarines.

purchasing them[2]. The cost of obtaining one, along with the necessary ammunition, was not discouraging, even for relatively small or weak economies. In fact, it proved to be worth every single penny spent since a 20.000 German mark torpedo could cripple a 50 million mark battleship! At the same time, it ushered a new era of naval warfare. For the first time, an ambush could be set perfectly and stealth became the epitome of combat. It would not be an exaggeration to state that, although up to that point the world trembled at the thundering roar of naval guns, from there on it shivered at the deafening silence of the sea. However, it soon became evident that these silent hunters were not just ahead of their time in military terms, but also in legal ones.

For nearly a century, Britannia ruled the waves utilizing not an iron fist, but a heart of oak, the Royal Navy. Being virtually unopposed[3], the Lords of the British Imperial Admiralty had drafted a set of rules concerning conduct and operations at sea by taking into account not only the already existing customs, but also the advantages and strong-points of their fleets. This sense of superiority stood firm for decades, placing surface units at the very top of national and international interest. Consequently, it comes as no surprise that every attempt to internationally formalize the articles of war at sea, such as the Hague Conventions of 1899 and 1907 put the ship as its centre. When submarines surfaced on an international level, there was no legal document that set the boundaries of their operational status. This was due to a number of factors. First, all of the existing legal framework predated their creation. Secondly, subs were still at a developing stage and had not yet received their baptism by fire, therefore not unveiling their full potential. It could be said that the world was unaware of the revolution they would soon introduce upon it. Last but not least, a tremendous burden of responsibility lies with the British. As mentioned before, the Admiralty took pride in its surface units on which it based the majority of its doctrines and plans. Hence, the Lords of the Sea viewed the submarines as nothing more than a failed upstart with no future in the fires

[2] After a "proposition" by the then famous arms dealer Vasili Zackharov, Greece purchased a Nordenfelt sub as a deterrent towards the Ottoman Empire in the Aegean Sea.

[3] Since the great victory at the battle of Trafalgar in 1805, the Royal Navy had never met its match at sea. The French and Spanish fleets had been sunk, scuttled or surrendered, the Netherlands were but a faint mirage of their former might inspired by Michel del Rytter, the Ottoman, Austrian and Russian Empires focused on their land armies, Prussia had no interest in the sea and the United States were but a young state that had recently obtained its independence with only a token naval presence on the far side of the Atlantic.

of war. All these reasons contributed to underestimate the new weapon and created a legal gap, a grave mistake which did not go unnoticed by the Germans.

In the first years of World War I[4] German U-Boots wreaked havoc on British merchant shipping with surface ships falling prey to these new silent hunters. It was at that precise moment, after having paid a heavy price, that the world realized the mistake of leaving such a deadly weapon unchecked from a legal point of view. A hasty attempt was made to correct this error by implementing the already existing rules by analogy without even taking into consideration that they were not suited for subs or the new combat doctrine they had created. As a result, it can be stated that submarine warfare during WWI reminded more of the days of the Wild West in a manner. The apparent lack of legal frameworks allowed both sides to play a game unregulated, while at the same time conducting grave violations of international law.

Despite these facts, one would believe, with a certain degree of certainty, that the international community would learn from those mistakes and would attempt to amend them in the following years. Unfortunately, nothing could be further from the truth. Despite the hard and bloody lessons taught by the new revolutionary weapon, no appropriate steps were taken. Both the 1929 Geneva Conventions and the 1930 and 1936 London Naval Treaties, despite focusing on a myriad of other aspects, did not give subs the merit they deserved. A reminder had to be given, in a more brutal manner and that is precisely what happened during the Second World War[5]. Although that time submarine warfare was slightly better regulated, it still had a vast window of opportunity in which to operate allowing the opposing factions to capitalize on that freedom. To cut a long story short, if one observed the two periods, he could hardly point out any major differences in the manner that submarine warfare was conducted.

After six years of war, unprecedented horrors, untold destruction, unspeakable crimes and atrocities and a death toll rising to tens of millions, the international community attempted to re-organize and let see to her wounds. As a first step, to ensure that such a tragedy would not repeat itself, the United Nations were formed. It was in this spirit that new attempts were made to better and more efficiently regulate the conduct of armed conflicts. To that end, new treaties were discussed, drafted and

[4] Also known as the “Great War”, or the “War to end all wars”. Hence WWI.
[5] Hence WWII.

adopted. It is an undeniable truth that the 1949 Geneva Conventions are a true masterpiece of all those collective efforts. Unfortunately, once again the world failed to understand the impact of submarines in the field of battle.

Since 1945, the world has experienced a state unknown for centuries. Despite local conflicts, a large, continent – or world – scale armed conflict has not been witnessed for more than 70 years. In this time period, submarines have been developed, becoming more complex, more efficient and more lethal than before, but at the same time have not seen any major action. The same, unfortunately, cannot be said for their respective legal framework. Taking solace in the fact that peace was guaranteed, the international community made no attempt to further upgrade the 1949 Geneva Conventions introducing much needed reforms to cope with the strides conducted on a technological level. The efficiency, or rather deficiency, of the existing legal framework became evident in the two sole cases of submarine action that humanity has witnessed since the end of WWII, i.e., the sinking of INS Khukri during the Indo-Pakistani War of 1971 and ARA General Belgrano during the Falklands War of 1982.

All these facts give birth to a crucial question: Why? Why have we not taken the appropriate steps towards setting specific limits to submarine warfare or upgrading the existing ones at a relatively same pace as the subs have been upgraded? This is precisely the reason I have decided to conduct the dissertation at hand. With submarines becoming better, stronger and more efficient at their appointed tasks, the apparent lack of boundaries strikes us as a grave neglection. Is that so, however, or is there a greater purpose behind that inaction? That will be the main question at hand throughout my efforts to better comprehend and point out the basic reasons for implementing anachronistic laws in the conduct of contemporary submarine warfare. The central issue of the research will be whether the existing international legal framework is considered sufficient or not for the challenges posed by the utilization of submarines within the aspects of a modern war, while also giving my personal opinion on whether this, at first sight, international omission is justified or not.

In addition, I will attempt to examine other important aspects of the matter at hand. The beginning of the Cold War saw the rise of nuclear-powered submarines capable of conducting larger voyages and remain submerged for a greater period of

time. At the same time, the introduction of ICBMs[6] opened new horizons and offered more deadly, destructive capabilities to the subs, effectively transforming them from a regional menace to stealth weapons of mass destruction. This new lethal potential has given birth to new questions of different scales. From the aspect of pre-emptive or preventive self-defence to the environmental damage of a nuclear meltdown or a tactical strike.

Last but not least, I will attempt to engage in an up-to-date issue, that of the creation of unmanned submarines in the image of UAVs. Taking into consideration the fact that in order to deal with problems arising from the utilization of UAVs, the international community has attempted various legal manoeuvres extending the framework of certain rules, the future of unmanned submarines in that precise aspect looks rather grim. After all, such conduct was responsible for the chaos of submarine warfare during both World Wars. Since military technology is galloping forward, the legal framework keeping it in check cannot drop its pace to a crawl.

[6] Intercontinental Ballistic Missiles

PART I

From the twilight of the 19th century to the grim darkness of the Second World War.

"*Like the destroyer, the submarine has created*

its own type of officer and man

with language and traditions apart from the rest of the service,

and yet at the heart unchangingly of the service."

- Rudyard Kipling

Trying to reach a conclusion on the reasons why submarine warfare has been left largely unregulated up this day, is like attempting to solve a murder case. One does not start with the obvious conclusion, the existence of a victim. On the contrary he must first retrace the steps of the perpetrator, follow the trail of evidence left in his wake and spare no effort in order to get a better grasp of his mind and way of thinking. That is precisely what we shall attempt to do with the dissertation at hand. However, there is a very thin line on which we must balance our steps.

The origins of the rules regulating naval conduct in times of war can easily be traced back to the epics of Homer, the stories of Herodotus and the history of Thucydides. This course of action seems rather time-consuming and could be left as a subject for modern military historians to study. In order to thrust precisely, we shall begin our research from the Treaty of Paris (1856) followed by the Hague Conventions (1899, 1907), the exact time that submarines began to manifest.

CHAPTER 1

The legal framework before the First World War.

From the second half of the 19th century to the early dawn of the 20th, subs were still making their first, timid steps into manifestation and the arsenals of different nations of the era. Up to that point the seas were still dominated by vast surface fleets, featuring heavily armed and armoured vessels. It, therefore, comes as no surprise that the very

first attempts to regulate the conduct of belligerents at sea focused on these aspects leaving the still untested and infant weapon at the side-lines largely ignored.

The first legal document of importance, that was drafted and signed in the afore-mentioned period was the Treaty of Paris of 1856[7]. Amongst the chaos of the Crimean War, in 1854, two of Europe's Major Powers, the Second French Empire and the British Empire, came to an agreement concerning their conduct at sea during war time. What began as a bilateral product of diplomatic effort, soon evolved into a world-wide declaration, officially named "Declaration Respecting Maritime Law"[8]. The Plenipotentiaries who signed the Treaty of Paris, came to an obvious conclusion, that there was an absence of legal framework regulating maritime law in times of conflict which consequently offered states the capability of conducting their own interpretation on the matter. This resulted in serious problems for both the belligerent parties as well as those who struggled to remain neutral risking to be dragged into a war against their will.

The importance of this Declaration can be pinpointed to the following two aspects. On one hand, it was the first time, that the Major Powers came to the unilateral agreement, that the war at sea should be regulated by some form of legal document. On the other, it established the basis of commerce raiding[9], the essence of which is that an unarmed vessel should not be fired upon without warning. She can only be attacked if she repeatedly fails to stop when ordered to do so or resists being boarded by the attacking ship. The armed ship may only intend to search for contraband (such as war materials) when stopping a merchantman. If that is the case, the ship may be allowed on her way, as it must be if she is flying the flag of a non-belligerent, after removal of any contraband. However, if she is intended to take the captured ship as a prize of war, or to destroy her, then adequate steps must be taken to ensure the safety of the crew. This would usually mean taking the crew on board and transporting them to a safe port. It is not acceptable to leave the crew in lifeboats unless they can be expected to reach safety by themselves and have sufficient supplies and navigational equipment to do

[7] The Treaty of Paris heralded the end of the Crimean War (1853 – 1856).

[8] It was signed in Paris, on April 16, 1856. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=473FCB0F41DCC63BC12563CD0051492D

[9] This set of directives was given the name "*cruiser rules*".

so[10]. As it was expected, the Declaration took into consideration the capabilities of the existing naval armaments. Since warships of the period relied on sheer firepower and had a large displacement it was possible to conduct operations in such a manner.

The second, and more productive legal document that was drafted was none other than the Hague Conventions of 1899 and 1907. These paved the road for the upcoming regulation of warfare both on land and at sea. For the purposes of this dissertation, we shall focus solely on the sections that are relevant to the war at sea and affected submarine warfare.

The First Hague Conference was the brainchild of Tsar Nicholas II of Russia[11], opening on 18 May 1899, the Tsar's birthday. By July 29, of the same year, a tremendous amount of work had been concluded, leading to the signing of various treaties and declarations along with the final act of the conference, with all produced documents entering into force on 4 September 1900. Of particular interest, for our research purposes was the "*Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864*" regulating the treatment of hospital ships, shipwrecked and/or wounded sailors and prisoners of war[12]. Amongst the different clauses of said treaty, Articles 1, 5, and 9 stand out[13].

Upon taking a closer look to them, we are in the position to extract some interesting conclusions. First, the names of all military hospital ships must be made known to all belligerents either at the beginning or during the course of the armed conflict, in order to be distinguished from other vessels. As a precaution measure, they must be also painted in a specific pattern while hoisting the flag of the Red Cross. These visual features ensured that the hospital ships can be identified by warships belonging to either side of the conflict. Second, captured seamen were to be considered POWs and treated accordingly either kept imprisoned upon the warship that captured them or

---

[10] Gillespie, A. (2011), *A History of the Laws of War: Volume 1*, Hart Publishing, p. 174

[11] See Yale Law School, Lillian Goldman Law Library, "*Peace Conference at the Hague 1899: Rescript of the Russian Emperor, August 24 (12, Old Style), 1898*". Available at: https://avalon.law.yale.edu/19th_century/hag99-01.asp

[12] Henceforth POWs.

[13] For said articles see Yale Law School, Lillian Goldman Law Library, "*Peace Conference at the Hague 1899: Rescript of the Russian Emperor, August 24 (12, Old Style), 1898*". Available at: https://avalon.law.yale.edu/19th_century/hag99-01.asp

be delivered to the nearest port, be it friendly, neutral or even hostile, at the discretion of the ship's captain.

These terms took surface units into consideration only, since subs had not yet been fielded. Soon, however, they would prove ineffective for a number of reasons. To begin with, the colour pattern was not visible at night or at times when the weather conditions reduced vision. In addition to that, a submarines trump card was the element of surprise which no captain would willingly discard by announcing himself and his vessel to his target and demanding they identify themselves. Furthermore, collecting shipwrecked seamen though a relatively easy task for a ship was something really difficult and dangerous, if not impossible, for a sub as it meant relinquishing the safety of the depths and remaining exposed on the surface for a prolonged period of time. Last, but not least, there was simply no available and secure space for POWs onboard the cramped quarters of the submarine.

Despite the above-mentioned, it is safe to report that the First Hague Conference was mainly land oriented with little to no attention being given to the war at sea. This would change, in 1907 and the Second Hague Conference. Realizing that naval warfare was equally important, the Major Powers of the era, at the suggestion of US President Theodore Roosevelt, expanded the already existing legal framework while adding new parameters. This time, the British Empire attempted to forward limitations concerning naval armaments but was met with fierce resistance from other nations led by the German Empire[14]. Despite the fact that the continental European Powers (mainly France and Germany) had started the production and introduction of submarines to their respective navies, foreseeing the new weapons deadly potential, no action towards the regulation of them was made. Again, this inactivity may be excused, since submarines had not been utilized in any major engagement[15]. Another possible explanation could

[14] The stance of these two countries was to be expected. Being the world's greatest naval power, Great Britain saw to maintain that position by limiting the power of potential adversaries such as France, Germany and the US. On the contrary, Germany had recently begun the construction of the so-called "High Seas Fleet", the brainchild of Admiral Alfred von Tirpitz and viewed the British initiative as an attempt to halt its naval reinforcing.

[15] The first recorded submarine action in history is that of the Greek submarine "Dolphin" during the First Balkan War. On December 9, 1912, the submarine spotted via periscope the ottoman cruiser Mecidiye exiting the Dardanelle Straight. Upon identifying the target, the submarine conducted the first submerged torpedo launch in history. Unfortunately, due to its poor manufacturing quality, though the French-made torpedo found her mark it did not detonate, therefore not revealing the destructive capabilities of submarines to the world. Had it been otherwise, it is likely that states would have attempted

be that since the British disregarded subs focusing instead on surface units, the continental European Powers wanted to leave the legal framework as void as possible in order to utilize their submarines to the fullest potential, free from any kind of restriction. This error in judgement would soon prove to be fatal as the outbreak of the Great War drew ever closer.

CHAPTER 2

The "Crash Test" of the Great War

The assassination of Archduke Franz Ferdinand, in Sarajevo, triggered a chain of cataclysmic events which, in turn, resulted in the outbreak of the First World War, dividing the world in two separate factions; on one hand, the Powers of Entente[16] and on the other the Central Powers[17]. The time had come for submarines to make their grand entrance and test the efficiency of the existing legal framework. In order to better understand these parameters, we must first take a look upon the doctrines and conduct of both belligerent parties and then carefully examine some notorious cases of submarine warfare from which we shall extract valuable conclusions.

2.1. British and German Doctrines and Conduct

With a fleet numbering 141 ships, the Royal Navy was the unchallenged overlord of the seas and the pride of the British Empire. Consequently, it comes as no surprise that it received the lion's share of the imperial budget. As a matter of fact, on 31 May 1889 the British Parliament adopted the Naval Defence Act of 1889, commonly known as "Two Powers Standard" which stated: "*The strength of our fleet should be 10% greater than the combined might of continental Europe's two strongest fleets*."[18][19] which proved to be a staging ground for the construction of more, better armed and armoured

to regulate submarine warfare. For a more detailed analysis of the actions of the Hellenic Royal Navy during the Balkan Wars see: Kargakos S. (2012). *Greece during the Balkan Wars (1912 – 1913).* Athens

[16] Mainly Great Britain, France, Russia, Italy and the US alongside other minor nations.

[17] Germany, Austro-Hungary, the Ottoman Empire and Bulgaria.

[18] At that time, those were the French and German Fleets.

[19] Sondhaus L. (2001), *Naval Warfare 1815-1914*, New York: Routledge, p. 161.

surface vessels. This costly enterprise resulted in the Royal Navy resting its entire hope on these ships while neglecting submarines.

At the same time, taking into consideration the fact that the existing legal framework concerning the conduct of operations at sea favoured the Royal Navy and that the majority of the Lords of the Sea[20] were mentally stuck in the Victorian Period resulted in the underestimating of subs and their chastising as a coward's weapon lacking honour. The Admiralty went as far as to declare that all enemy submariners that were captured should be hanged as pirates! As a result of this narrow-sighted approach, the British were slow to adopt anti-submarine measures[21] and precautions[22]. For example, merchant vessels were left without escort, while all ships sailed at night with their lights turned on!

The exact opposite can be said about the Germans. Being well aware of the strengths and weaknesses of their own naval forces, the German High Command was more welcoming to new ideas, resulting in the mass production of submarines[23]. Their objective was to slip past the enemy blockade and harass British trade, inflicting a slow but steady strangulation to the enemy economy and supply lines. The sole problematic in this course of action was the complete lack of a respective regulative international legal framework. As a result, the existing legislation was applied in analogy. It soon became evident that it was not enough.

The first recorded incident was the sinking of the British merchant ship SS Glitra by the German sub, U-17. Abiding by the cruiser rules, U-17 surfaced and issued a warning for the Glitra to stop and prepare to be boarded. After conducting the necessary inspection, the Germans allowed the crew to board the lifeboats which they later towed to shore. This lawful behaviour soon proved to be problematic. First and foremost, the U-Boots sank ships in the middle of the Atlantic. It was impossible to accommodate prisoners onboard as there was barely enough space for the crew. They either had to

[20] In the British Royal Navy, the Admirals bear the title of "Lords of the Sea", the Commander in Chief of the Navy "First Sea Lord" and the Minister of Navy "First Lord of the Admiralty".

[21] To underline the severity of the situation one needs only to take a look at the counter-submarine measures implemented in the naval dockyard of Scapa Flow. The British sent out rowboats to patrol the waters. In case a periscope was detected, the sailors would row as hard as they could to close the distance and then a man armed with a mallet would strike hard at the periscope in order to damage it!

[22] For a more thorough view regarding Anti-Submarine Warfare during WWI see: Messimer D. R. (2001). *Find and Destroy: Antisubmarine Warfare in World War I*. Naval Institute Press

[23] Throughout the course of WWI, Germany laid down 375 U-Boots.

tow lifeboats to the nearest shore, which exposed the sub to many dangers as she had to remain surfaced for a prolonged period of time, consuming precious fuel, or send out an S.O.S. a move that gave away the U-Boot's location, effectively depriving her from the element of surprise while at the same time there was no proof that the distress signal would be received by any nearby vessel. Even if it was, the safety of the shipwrecked seamen was jeopardized as they were exposed to the elements of nature or they could drift far from their initial position by the strong currents[24]. Despite those difficulties, it is to the Germans credit that they abide by the cruiser rules for the first years of the war and with great success.

In order to put an end to the mounting U-Boot menace, the British came up with a new countermeasure, the Q-Ships. Those were heavily armed vessels disguised as merchant ships with the purpose of luring submarines in. The plot was simple. A Q-ship sailed unescorted on known trade routes. Upon being spotted by a U-Boot, she headed the warnings to stop, drawing the sub ever closer. When the sub came within firing range, the crew rushed to the concealed guns opening fire on their unsuspecting victim. Another option was to ram the surfaced submarine. This was a grave violation of international law and particularly Articles 2, 5 and 6 of the Conversion of Merchant Ships into War Ships, of the second Hague Conference of 1907[25] which clearly stated that upon converting a merchant vessel to a warship, said ship must bear distinctive features in order to be identified as such and also be added in the list of respective country's warships. In addition, the British Admiralty advised[26] merchant ships to attempt to ram emerging submarines offering a cash bonus in case said action resulted in the sinking of an enemy sub[27]. Such actions effectively turned every merchant ship headed for the British Isles to a possible submarine hunter.

The German response was immediate, accusing openly the British for violating the rules of war but to no effect. As a result, on February 4th, 1915, Germany declared the waters surrounding the British Isles a war zone issuing a warning period of 14 days,

---

[24] Gillespie, pp. 174-175
Nolan & Nolan, pp. 38-39

[25] Yale Law School, Lillian Goldman Law Library, "*Laws of War: Conversion of Merchant Ships into War Ships (Hague VII); October 18, 1907*" Available at: https://avalon.law.yale.edu/19th_century/hag99-01.asp

[26] This directive was carefully worded as to not to amount to an order to ram.

[27] Beesly p.94

after which all Allied ships in the region would be sunk without warning. Despite this, the U-Boot captains were instructed to continue to abide by the cruiser rules when encountering neutral or unknown vessels in order to avoid their sinking. Though willing to follow the above-mentioned orders, German commanders had many close calls with both Q-ships and merchant ships eager for some extra profit. Being responsible for their vessels and the lives of their men, U-Boot captains drafted a rule of their own: "When in doubt, sink upon sight.".

2.2. "Casualties of War"

With one party bending the rules and the other violating them, it was only a matter of time before disaster stroke and innocent lives paid the ultimate price. At this point, we shall examine some of the most notorious incidents of the war, the sinking of RMS Lusitania, SS Arabic and SS Sussex along with the Balarong Incidents, in order to better witness the effectiveness of the international legal framework.

The first victim was the vessel of a neutral country and perhaps the most known case, the RMS Lusitania, a passenger ship travelling from the US to the UK. The fact that it was a ship of a neutral country, along with her high speed and large capacity of passenger accommodation encouraged the owning company, Cunurd, to conduct contraband[28][29] using both neutrality and passengers as a shield. Though there was no rule against such action, it was considered to be highly unethical and dishonourable. Upon her return voyage to the British Isles, the German Embassy[30] in Washington published a warning reminding the existence of the war zone and advising passengers against sailing onboard the Lusitania. Strictly speaking, with the intelligence the Germans had at the time and the international legal framework of the era, she was a passenger vessel of a neutral country and therefore not a legitimate target. Under current

[28] According to the ships manifest, on her last journey, the Lusitania was carrying over 4 million rounds of small-arms ammunition, almost 5,000 shrapnel shell casings, and 3,240 brass percussion fuses.

[29] Pfeifer, D. C. (2016), *Choosing War: Presidential Decisions in the Maine, Lusitania, and Panay Incidents*, Oxford University Press p. 269
King, G., Wilson, P. (2015), *Lusitania: Triumph, Tragedy, and the End of the Edwardian Age*, St. Martin's Press, page 5

[30] The Germans had grown suspicious of the Lusitania. The presumed that she conducted some sort of illegal activity but lacked concrete evidence to prove it.

circumstances, however, the ship was in violation of International Humanitarian Law[31] and had therefore relinquished her protective status.

While sailing inside the war zone, the ship's captain had received three warnings of U-Boot activity but did not take the necessary measures while also refusing to give his exact coordinates to British warships dispatched to escort the Lusitania safely to port. On the morning of May 6th, 1915, she was spotted by U-20. The subs commander, captain Schwieger, identified the ship as a passenger liner but could not spot her flag or name[3233]. Fearing she was a Q-ship or that her captain might attempt a ramming manoeuvre against his sub, Schwieger decided to launch a torpedo without warning[34]. After scoring a direct hit, U-20 remained submerged making no attempt to rescue the shipwrecked passengers and crew. Of the 1.959 passengers and crew aboard, 1.195 were lost. Amongst the victims were 128 Americans, for who Germany offered an official apology and proposed to pay a reparation of 1.000 US dollars for each one of the victims, a motion rejected by the US. All these were a severe violation of the cruiser rules but a direct consequence of British violation of international law.

Three months later, on August 19, a second liner, the SS Arabic, would share the same fate as the Lusitania. The Arabic was a British liner that sailed well within the declared war zone, therefore being a legitimate target. She was spotted zig-zagging by U-24, the commander of which misinterpreted the liners move as a ramming attempt. Consequently, he fired a torpedo scoring a direct hit and left the area without collecting survivors. Contradictory to the Lusitania, the Arabic did not prove to be a hecatomb, with the number of victims rising to 44, three of whom were Americans. This incident led to the so-called "Arabic Pledge" when the German Government promised to halt the practice of attacking unarmed passenger ships without warning and to provide for the safety of crew and passengers of any passenger vessels under attack[35]. The case of the Arabic was yet another violation of the cruiser rules.

---

[31] Hence IHL.

[32] The Lusitania travelled without having raised her flag and with her name painted with dark coloured dye. All these were common practice for Q-ships of the time.

[33] Bailey, T. A., Ryan, P. B. (1975), *The Lusitania Disaster: An Episode in Modern Warfare and Diplomacy.*, Free Press/Collier Macmillan, New York/London

[34] Beesly p.84-85

[35] Brune, L. H., Burns R. D. (2003). *Chronological History of US Foreign Relations.* Routledge p. 371.

The last known case is that of the SS Sussex, a passenger ship traversing the Channel under a French flag. On 24 March 1916, she was torpedoed by U-29 and though damaged managed to reach the shore and be repaired. Unfortunately, at least 50 souls perished in the attack. Though amongst the victims was no American citizen, the Sussex incident came to the forefront of attention in the US resulting, on May 4, 1916, in the "Sussex Pledge" from Germany to the US, according to which passenger ships would not be targeted, merchant ships would not be sunk until the presence of weapons had been established, if necessary, by a search of the ship and not be sunk without provision for the safety of passengers and crew[36].

However, it takes two to tango. The German actions were provoked by British violations of the international legal framework which, at times, bordered war crimes. One such case was the lesser known "Balarong Incidents"[3738]. HMS Balarong was a British Q-ship captained by Lieutenant-Commander Godfrey Herbert. A few days after the sinking of the Lusitania, Herbert was instructed by officers of the Admiralty's Secret Services to take no prisoners when it came to U-Boots[39]. In addition, he instructed his men to cease hailing him as "Sir" and use a pseudonym instead[40], a violation of Article 3 of the Conversion of Merchant Ships into War Ships (Hague VII)[41] stating that a Q-ship's captain must be an active officer of the belligerent's navy and his name should appear in the list of active personnel of said navy.

On August 19, 1915, U-27 spotted the British streamer Nicosian. Abiding to the fullest with the cruiser rules, a boarding party was dispatched and upon discovering military cargo, escorted her crew and passengers to the lifeboats and prepared to sink her with deck gun fire. At that moment, Balarong appeared hoisting the US flag, another violation of Article 2 of the Conversion of Merchant Ships into War Ships (Hague

[36] It must be credited to the Germans that they would uphold their pledges up until 1917 when the German Navy (Kriegsmarine) declared unrestricted submarine warfare.
[37] Coles A. (1986). *Slaughter at Sea: The Truth Behind a Naval War Crime*. London: R. Hale.
[38] Bridgland, T. (1999). *The Baralong: Germany is Outraged. Sea Killers in Disguise: Q Ships and Decoy Raiders.* Leo Cooper. p. 20 – 55
[39] Bridgland 1999, p. 21
[40] Messimer, D. R. (2002). *Verschollen: World War I U-boat Losses.* Naval Institute Press. p. 23.
[41] See Yale Law School, Lillian Goldman Law Library, *Laws of War: Conversion of Merchant Ships into War Ships (Hague VII); October 18, 1907*. Available at: https://avalon.law.yale.edu/20th_century/hague07.asp

VII)[42] under which it should fly British colours. At a distance of approximately 900 metres, the Balarong signalled she was going to pick up survivors from the Nicosian and the captain of U-27 steered his submarine behind the streamer to intercept the incoming "neutral" vessel as he had previously done with the British ship.

When the German sub was out of vision, the Balarong hoisted the Royal Navy's coat of arms and revealed her guns. When she had a clear line of fire to U-27, at a distance of 550 metres, she commenced bombardment firing a total of 34 shots to the stunned subs one, sinking her[43]. The 12 survivors of U-27 were gunned down on the spot, while swimming to the Nicosian by the crew of the Balarong after a direct order of her captain[444546]. After that, a detachment of marines was dispatched to the Nicosian to deal with the German boarding party. The marines were specifically ordered not to take any prisoners[47]. The actions of the Balarong and her captain mounted to an unprecedented breach of international law. The execution of shipwrecked seamen violated specifically Article 14 of the Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X)[4849].

For the Germans, this proved to be the turning point, since it led the Kriegsmarine to cease adhering to the cruiser rules and engage in unrestricted submarine warfare. Henceforth, U-Boot captains were relieved from the asphyxiating framework of international law, sinking merchant ships upon their discretion without issuing any warning. From a strict legal point of view, such a decision was inexcusable. The fact that the opposing party systematically violates the rules of war, is by no means an excuse for the same conduct on your behalf. From a military standoff, it could be justified. A naval officer is first and foremost responsible for his ship and the lives of

[42] See Yale Law School, Lillian Goldman Law Library, *Laws of War: Conversion of Merchant Ships into War Ships (Hague VII); October 18, 1907*. Available at: https://avalon.law.yale.edu/20th_century/hague07.asp

[43] McGill, H. W., Norris, M. B. (2007). *Medicine and Duty: The World War I Memoir of Captain Harold W. McGill, Medical Officer, 31st Battalion, C.E.F.* Calgary: University of Calgary Press.

[44] Gibson, R.H., Prendergast, M. (2002). *The German Submarine War 1914–1918.* Periscope Publishing Ltd. p. 53

[45] Grant, R. M. (2002). *U-boats Destroyed: The Effect of Anti-submarine Warfare 1914–1918*. Periscope Publishing Ltd. p. 27

[46] Halpern, P. G. (1994). *A Naval History of World War I.* Routledge. p. 301

[47] Messimer 2002, p. 42.

[48] See Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907*. Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

[49] It must be noted that Britain did not ratify this specific convention.

his men. If any of these is threatened by the dishonourable behaviour of his opponent then he is bound to choose a course of action that will balance between his interests and his duties. Unfortunately, though Germany came really close to starving Britain with unrestricted submarine warfare, it also forced the hand of the US which entered the war in 1917 signalling the beginning of the end for the Great War.

CHAPTER 3

Legal Reforms of the Interwar Period

At the end of the Great War, Europe was nothing but a smoking ruin. Through the ashes of that disastrous experience, the continent managed to extract some bloody earned lessons. It became apparent, among other things, that the existing international legal framework was inadequate for the challenges presented throughout those five years of agony and pain. At the same time, submarines had made their best and yet most destructive debut making everyone aware of their devastating capabilities. Still in shock, the world attempted to create a new, more efficient legal framework in order to correct the errors of the past. To that end we have the Geneva Convention of 1929, concerning the treatment of POWs[50] and the Geneva Protocol of 1925 for the prohibition of use of gas in armed conflict[51].

Contradictory to the Hague Conventions, where signing parties focused their interest on land warfare and added supplementary provisions for naval operations, the interwar period is filled with relative treaties. All these were manifested by the five Great Powers that emerged victorious in WWI[52] in an attempt to prevent a naval arms race, while at the same time regulating aspects of naval warfare, still left unchecked. A particularly interesting point is that while all the signatories focused on the tonnage and displacement of their surface fleets, the British delegation was extremely interested and pressed hard for limitations on submarines given the horrific experience of German U-Boots.

---

[50] See International Committee of the Red Cross, *Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929.*, Available at: https://ihl-databases.icrc.org/ihl/INTRO/305

[51] See United Nations, *1925 Geneva Protocol*, Available at: https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Bio/pdf/Status_Protocol.pdf

[52] Britain, France, USA, Italy, Japan

The first document to be produced was the Washington Naval Treaty of 1922 which concluded the negotiations of the Washington Naval Conference that preceded it. The British gave their best to abolish submarines completely but were met with stiff resistance from the other signatories and especially France which demanded an allowance of 90.000 tons when it came to subs[53]. With both parties being unwilling to compromise on the subject, the negotiations came to end without achieving any kind of restrictions for submarines[54]. This confrontation definitely brought back memories from centuries past, since the British claims were the equivalent of those of the French aristocracy during the medieval period regarding crossbows[55].

The second attempt came in the form of the Geneva Naval Conference of 1927 in which all parties attempted to impose further restrictions concerning surface vessels, and particularly cruisers. Unfortunately, little to no progress was made during the deliberations. In both these conferences one can point out that submarines were kept pretty much in disregard with the exception of the British and French. Such an action could be justified by the fact that up to that period, surface vessels dominated the battlefield posing a lethal threat to national security and interests while subs were more or less treated as a nuisance. Another possible explanation could be that states did not want to suffocate themselves leaving small loopholes for manoeuvring in case an armed conflict was ignited. This status quo, was not meant to last however.

In 1930, the five major Powers met yet again in London in an attempt to better regulate the situation at hand and advance their interests. The brainchild of these negotiations was the London Naval Treaty. Understanding the error of keeping subs in the side-lines, the interested parties moved dynamically for a regulating framework which can be identified in the wording of Articles 7 and 22. Article 7 moved for the restriction of the total displacement of a submarine to 2.000 tons and the limitation of

---

[53] Marriott, L. (2005), *Treaty Cruisers: The First International Warship Building Competition*, Barnsley: Pen & Sword, p. 10, 11

[54] Birn, D. S. (1970). *Open Diplomacy at the Washington Conference of 1921–2: The British and French Experience*. Comparative Studies in Society and History. 12 (3): 297.

[55] During the medieval period French ironclad mounted knights were the deadliest opponent on the field of battle. Having received extensive training for decades and spent tremendous amounts of money to obtain their armour and mounts they were taken completely by surprise when crossbows emerged. From that point on, a homeless peasant, with a few days training and at a miniscule cost could take down a knight with ease. The French nobles spared no effort in an attempt to ban crossbows extending a petition even to the Pope so as to excommunicate them along with their users. Needless to say, their attempts were met with complete failure.

the deck guns caliber to 155 mm[56]. Article 22 attempted to settle things concerning submarine warfare by finally providing a solid legal basis. In the above-mentioned article, it was clearly stated that the already existing international law concerning surface vessels would henceforth apply to submarines as well, an obligation that literally tied the hands of submariners. This handicap was partially counter balanced by a clause that allowed submarine captains to sink merchant ships that repeatedly refused to stop or actively resisted without being responsible for the delivery of passengers and crew to a place of safety[57]. It must be clarified that the ships lifeboats were not considered to be such a place unless another ship was in close proximity in order to collect them.[58]

These regulations were nothing more than half measures for a keen observer. The problems concerning submarine warfare during WWI were caused by the analogical implementation of the cruiser rules to submarines which forced them to relinquish their main advantage, the element of surprise, exposing them to enemy fire. Instead of learning from their mistakes, the world repeated them! Even the article allowing submariners to sink ships stood under the clause that they refused to stop or resisted actively, which meant that in both cases the sub would have to surface and issue a warning once again being exposed.

The British push for the complete and total abolition of submarines would not cease, despite the previously mentioned treaties. During the Geneva Conference of 1932 – 1934, the British delegation once again made her intent clear. They expressed what many Great Powers felt; Submarines were a dishonourable weapon posing a direct threat to civilians as proved during WWI. Once more, their proposal was rejected under a simple basis. If submarines were to be abolished, so should be battleships, since the subs were the equivalent of battleships for countries with small financial capabilities

---

[56] *LIMITATION AND REDUCTION OF NAVAL ARMAMENT (LONDON NAVAL TREATY)*, Available at: https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-1055.pdf

[57] International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

[58] International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

unable to construct – purchase – maintain the latter. In addition, though subs were not capable of conducting offensive operations, they were ideal for hit and run tactics and a valuable defensive asset. With negotiations grinding to a halt, the British motion was recalled[59].

The final attempt to regulate naval warfare was the Second London Naval Treaty of 1936. Concerning submarines, the Treaty repeated what was established in the previous relative ones but included some modifications. One of these was Article 25 which allowed the lifting of all limitations concerning the displacement of ships and subs either in case they were violated by any other third party or if national security demanded[60]. Technically, this clause voided the entire treaty since any state could call upon matters of national security of any type and proportion in order to break free of the confining boundaries of the treaty. The other was the reaffirming of Article 22 of the Naval Treaty of London of 1930 which became known as the London Submarine Protocol[61].

Summarizing all of the above mentioned, we can extract the following; It goes without saying that the experience of WWI was crippling for all parties involved and various attempts were made with the goal being both the prevention of another armed conflict of such scale and the establishment of boundaries concerning the conduct of operations. In reference to naval warfare, it is evident that everything begun as an initiative of the nations that emerged victorious from the Great War with the intent of preventing an arms race between them which in turn might escalate to a potential conflict among their ranks. In a later stage, the treaties and agreements of these nations were signed by other countries around the globe with the exception of Germany and the USSR. In fact, both states were invited to participate solely to the Second Naval Treaty of London in order for them to recognise and accept a fait accompli.

In terms of regulation on the field of submarine warfare little to no progress was made as the world seemed incapable at learning from the mistakes made. Instead of recognising the new era ushered by submarines and the fact that the cruiser rules were

---

[59] GlobalSecurity.org, *Geneva Conference 1932 – 1934.*, Available at: https://www.globalsecurity.org/military/world/naval-arms-control-1932.htm

[60] *Limitation of Naval Armament (Second London Naval Treaty)*, Available at: https://www.loc.gov/law/help/us-treaties/bevans/m-ust000003-0257.pdf

[61] Holwitt, J. I. *Execute Against Japan*, PhD dissertation, Ohio State University, 2005, p.94, 95.

simply not possible to be applied to this revolutionary weapon, the interested parties decided to enforce them upon subs. At the same time no prohibition of arming merchant vessel was drafted ensuring that the conduct of WWI would be implemented to the letter in a future conflict[62]. The only effective change was that equipping merchant ships with armaments stripped them of the protective vail provided by the cruiser rules making them legitimate targets[63]. All these factors effectively made any restriction posed on submarines void of context[64]. The stage was set for WWII and submarines were ready to prove themselves once again.

CHAPTER 4

The Ultimate Test of the Second World War

For anyone willing to accept reality, it was crystal clear that Europe and the entire world were headed straight for yet another major confrontation, more destructive than the previous one. Once more, the preparations and efforts of all states would be put to the ultimate test with the very same applying for submarine warfare as well. It was time for the world to examine whether the efforts of the past 20 years would rise up to the challenge at hand or fail miserably.

4.1. In the Crosshairs of U-Boots.

In order to capitalize on the use of submarines, the German Navy deployed them both as single units and in groups, known as "Wolfpacks"[65]. These groups proved deadly, inflicting crippling blows to allied convoys crossing the Atlantic[66]. Though the Kriegsmarine entered the war determined to abide by the cruiser rules it soon became evident that such course of action was not sustainable[67] for a variety of reasons. The

---

[62] Holwitt, p.6.

[63] Dönitz, K. Memoirs: *Ten Years and Twenty Days;* von der Poorten, Edward P. *The German Navy in World War II* (T. Y. Crowell, 1969); Milner, Marc. *North Atlantic run: The Royal Canadian Navy and the battle for the convoys* (Vanwell Publishing, 2006)

[64] Holwitt, p.6.

[65] Tarrant, V. E. (1989) *The U-Boat Offensive 1914-1945.* Naval Institute Press

[66] German U-Boots were also deployed in the Mediterranean and around Africa in order to cripple Allied shipping.

[67] Ronzitti, N. (1988). *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, Martinus Nijhoff

introduction of naval convoys with destroyer escort made it impossible for submarines to conduct inspections. On the contrary, the presence of a merchant ship within the ranks of a convoy made her a de facto legitimate target. Additionally, the British persisted on the deployment of Q-ships while also arming merchant ships under the pretext of self-defence. Understanding the severity of the situation, the Kriegsmarine's commander in chief, Grand Admiral Karl Dönitz issued, at the end of November to the beginning of December 1939, the infamous War Order No. 154 which quoted: "*...Do not rescue any men; do not take them along; and do not take care of any boats of the ship. Weather conditions and proximity of land are of no consequence. Concern yourself only with the safety of your own boat and with efforts to achieve additional successes as soon as possible…*"[68]. This order constituted the first explicit instruction for the Kriegsmarine to engage in unrestricted submarine warfare and a direct violation of international law, the consequences of which would soon become evident.

Despite War Order No. 154, many U-Boot captains were still willing to abide by the cruiser rules either in fear of future persecution or in the spirit of honourable warfare. The most notorious incident when such determination backfired was the "Laconia Case". The RMS Laconia was a passenger ship converted in 1942 to a troop transport and armed with deck guns. On September 12, 1942 she was sailing along the coast of West Africa carrying military personnel, civilian passengers and Italian POWs. She was spotted by U-156 and was consequently torpedoed without warning. While Allied soldiers and officers rushed to the lifeboats along with the passengers, the POWs were left locked in the cargo holds and abandoned to their fate. When they finally managed to break out and attempted to board the lifeboats several were shot and bayoneted on the spot by Allied troops[69]! To his credit, the captain of U-156, Werner Hartenstein, ordered an immediate surfacing and begun rescue operations. He ordered the deck gun to be covered with a Red Cross flag, all hands to aid the shipwrecked people indiscriminately, radioed the German Admiralty informing them of the situation, requesting instructions and support and also sent a message in open frequency to the

[68] Yale Law School, Lillian Goldman Law Library, *Nuremberg Trial Proceedings Vol. 13 ONE HUNDRED AND TWENTY-FIFTH DAY Thursday, 9 May 1946 Morning Session*, Available at: https://avalon.law.yale.edu/imt/05-09-46.asp

[69] Quinzi, A. (2005). *La tragedia della Laconia* (in Italian). Triboo Media.

Allied forces, stating his name, rank, ship and location ensuring any allied ship intent with picking up survivors, that she would not be targeted[70].

Responding to U-156, the German Admiralty diverted seven U-Boots to aid in the rescue along with three Vichy France's warships. At the same time, the Allied High Command perceiving the transmission as a ruse of war, dispatched recon planes to verify it. An American bomber located U-156, was hailed in Morse code in English and informed of the rescue operation by an RAF officer onboard the sub[71]. Despite that, the American duty officer, Robert C. Richardson III, ordered U-156 to be sunk, an order carried out without protest on the Allied side. A bombing run was conducted against the German sub killing a number of Laconia's survivors. On September 17, a group of five US medium bombers attacked U-506 which was also carrying survivors, fortunately without success[72]. In the end, the rescued survivors were delivered to safety. Of the initial 2.732 passengers of the Laconia, 1.619 perished in the sinking, 1.420 of whom were Italian POWs left locked in the cargo hold.

Examining the Laconia Case from a legal point of view we can pinpoint several areas of interest. First of all, the fact that the Laconia was converted into a troop ship and was armed made it a legitimate target of war that could be fired upon without the need of a previous warning[73]. At the same time, the captain of U-156 was not obliged to deliver the crew and passengers to safety according to Article 22 of the London Naval Treaty[74]. Despite that, captain Hartenstein decided to collect survivors broadcasting in open frequency his exact location and taking all necessary measures such as flying a Red Cross insignia.

The conduct of the Allies, on the contrary, was a clear and severe violation of international law! To begin with, no attempt was made to rescue the Italian POWs when

---

[70] Duffy, J. P. (2013). *The Sinking of the Laconia and the U-Boat War.* Lincoln: University of Nebraska Press. p. 78.

[71] Hood, J. (2006). *Come Hell and High Water: Extraordinary Stories of Wreck, Terror and Triumph on the Sea.* Ithaca: Burford Books. p. 335.

[72] Blair, C. (1998). *The Hunted, 1942–1945*. Hitler's U-boat War: The German Navy in World War II. **2**. New York: Random House. p. 64

[73] Blair 1998, p. 431.

[74] International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

the Laconia was sinking, resulting in many deaths, while a number of them were executed on the spot by their guards upon trying to escape the doomed vessel. These constituted a breach of both the Hague Conferences of 1899 and 1907 (Article 11)[75] and the Geneva Convention of 1929 (Article 2)[76], regarding the treatment of POWs. The most serious and inexcusable violation however, were the American bombing runs against both U-156 and U-506 despite the fact that both vessels were conducting rescue operations, carrying dozens of survivors and were on their way to disembark them in a safe/secure area. To that extent, the order issued by Richardson constituted a prima facie war crime since according to the conventions of war at sea, ships – submarines included – engaged in rescue operations are held to be immune from attack[77]. Following the incident, the "Laconia Order", similar to order No. 154, was issued to all U-Boot captains. Both these directives were in clear violation of international law and promoted unrestricted submarine warfare.

Another instance of particular interest was the "Peleus Trial". In 1944, U-852 was dispatched to the Indian Ocean in a top-secret mission to disrupt allied shipping in the region. For the purpose of her objective, it was of the outmost importance to maintain a high degree of secrecy. During her journey, on March 13, 1944, she spotted the lone Greek streamer SS Peleus. Despite the orders to remain unnoticed, the captain of U-852, Heinz-Wilhelm Eck decided to sink the unsuspecting streamer, launching two torpedoes and effectively cutting her in half. Instead of continuing on with his journey, Eck believed that the presence of survivors and wreckage would jeopardize his mission. Thus, he ordered his men to fire upon the shipwrecked crew and leave no trace of their actions. For five consecutive hours U-852 circled the area firing upon everything her crew spotted with small-arms, grenades and even using the twin heavy anti-air machine guns. After finishing her macabre task, the German sub departed the area. Of the original 35 crewmembers of the Peleus, only four survived their ordeal. A few days

---

[75] Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907*, *CONVENTION FOR THE ADAPTATION TO MARITIME WAR OF THE PRINCIPLES OF THE GENEVA CONVENTION.*, Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

[76] International Committee of the Red Cross, *Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/eb1571b00daec90ec125641e00402aa6

[77] Mallison, S. V.; et al. (1993). "Naval Practices of Belligerents in World War II: Legal Criteria and Developments" (PDF). *International Law Studies*. p. 94.

later, on April 1st, U-852 sank another vessel, the British SS Dahomian but this time continued on her way without firing upon the survivors[78].

The actions of the crew of U-852 constituted grave violations of international law on many different levels. To begin with, the Peleus was an unarmed merchant ship sailing alone without escort and completely unaware of the presence of the German U-Boot and therefore did not constitute a legitimate target of war to be fired upon without previous warning. Captain Eck could have easily by-passed her if he considered secrecy to be of the outmost importance; Instead, he opted to engage. In that case he could have abided by the cruiser rules[79] and seen to the safety of the crew. The second most grave violation was the killing of shipwrecked sailors who were protected by Article 11 of the Hague Conference of 1907 (Hague X)[80] in addition to bringing to bear disproportionate firepower against them. To his defence, Captain Eck, later claimed that such course of action, though regrettable, was the only way of maintaining the secrecy of his mission. This statement cannot stand neither on a legal basis, for reasons mentioned above, nor on a strategic one. The German captain could have left the area unnoticed without attacking the survivors as was the case with the Dahomian a few days later. Instead, he remained on scene for five hours gunning down not only the survivors but also their only means of salvation, the lifeboats and rafts.

4.2. Allied Submarines at Work.

During WWII the Allies utilized their own submarines to the fullest as well. Both the US and the USSR had declared unrestricted submarine warfare immediately upon their entry to the new global conflict, the consequences of which would soon become evident. Though axis shipping was mainly for military purposes, there were still merchant ships carrying goods, ammunitions and supplies to the different theatres of

---

[78] International Committee of the Red Cross. *British Military Court at Hamburg, The Peleus Trial*, Available at: https://casebook.icrc.org/case-study/british-military-court-hamburg-peleus-trial

[79] International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

[80] Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907, CONVENTION FOR THE ADAPTATION TO MARITIME WAR OF THE PRINCIPLES OF THE GENEVA CONVENTION.*, Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

operations. With allied naval supremacy ensured throughout the war, these vessels proved to be easy pickings. From the many different cases, two stand out in particular due to their nature and the problematics they raise from a legal perspective conducted in different parts of the globe, against a different adversary.

The first case is the sinking of the Japanese passenger ship, Tsushima Maru, by the American submarine USS Bowfin on August 22, 1944. The surprise attack on Pearl Harbour not only inflicted some considerable blows to the American Pacific Fleet but also lit the fire of vengeance in the US Navy. As a result, American submariners took it upon themselves to lift the heavy burden of the war effort in the first stages of the Pacific Campaign engaging in unrestricted submarine warfare. US submarines ventured as far as the main Japanese Islands conducting reconnaissance missions, cutting off supply lines and striking at targets of opportunity. On August 22, 1944, USS Bowfin spotted a Japanese convoy made of three passenger/cargo vessels and two small warships acting as escort returning from Okinawa. The captain of Bowfin, chose to ignore the escorts and the two cargo vessels and trained his sights at the Tsushima Maru eventually sinking her. Unknown to the Americans, the ship was evacuating 1.661 civilians including 834 children[81].

The sinking of the Tsushima Maru can be considered a war crime for the following reasons[82]. First, the Americans were obliged to abide by the cruiser rules as one of the main signatories of the Second London Naval Treaty (1936)[83]. Second, the ship was unarmed and her name did not appear in the list of military vessels of the Imperial Japanese Navy. Third, it was a passenger ship carrying civilians. The Bowfin could have targeted any of the two escort warships, both legitimate targets of war, or one of the two cargo vessels of the convoy. Instead, she torpedoed the only passenger

[81] The death toll of the sinking rose to 780 children and a yet unknown number of civilians.

[82] In the 1950s when the Ultra encryption records were revealed to the public, it was discovered that the US had broken the Japanese encryptions and could clearly read any message the enemy sent including ship timetables and manuscripts thus being aware of their cargo. However, in order to maintain a high aggressive spirit among their submariners, the captains were never informed of the cargo of each vessel since it was certain that they would hesitate to fire upon a convoy including ships that were carrying civilian and/or POWs.

[83] International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

ship even though she was on a return journey and could not possibly be transporting military personnel, a fact implied also by the almost non-existing armed escort[84].

The second case is the sinking of the German ship Wilhelm Gustloff on January 30, 1945, in the Baltic Sea by the soviet submarine S-13. Originally designed as a cruise ship, the Wilhelm Gustloff was refitted as a hospital ship from 1939 to 1940 according to Article 5 of the Second Hague Conference[85] and later on converted into floating barracks after having all hospital ship insignia removed and being repainted and armed. In 1945 she was order to participate in the evacuation of military personnel and civilians from Courland, East and West Prussia. It was during these operations that she was torpedoed and sank by S-13. Despite the heavy loss of life[86], the attack on Wilhelm Gustloff was conducted within the legal boundaries of international law. She was an armed vessel, painted in the colours of the German Navy, therefore consisting a legitimate target not covered by the cruiser rules.

PART II

From the Geneva Conventions and up to Date.

It is an undisputed fact that WWII proved far more catastrophic than its predecessor. One aspect that was also noted was the great number of violations of international law conducted during that period. The international legal framework proved to be ineffective and full of blind spots for anyone to take advantage of. The very same applied for submarine warfare as well. The formation of the United Nations was an important step towards the amelioration of the situation at hand and a form of security override ensuring that such a disaster would not re-occur while the revised Geneva Conventions of 1949 and their Additional Protocols drafted a new regulation for the conduct of armed conflicts in an effort to minimize the barbarism of war.

Unfortunately, the dusk of WWII saw the dawn of the Cold War. The world held its breath bracing for the worst-case scenario and the submarines were once more

[84] Tsushima Maru Memorial Museum, Available at: http://tsushimamaru.or.jp/?page_id=85

[85] Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907*, *CONVENTION FOR THE ADAPTATION TO MARITIME WAR OF THE PRINCIPLES OF THE GENEVA CONVENTION.*, Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

[86] It is estimated that a total of 9.600 souls, military and civilian alike, perished in the sinking.

brought to the frontlines of this engagement. Bigger, better equipped and deadlier than before they tested the concrete nature of the existing regulating framework surrounding them. Fortunately, since no local engagement escalated into a world-wide conflict, submarines limited themselves to scout and espionage missions acting more as a deterrent and less as a weapon. This led humanity into believing that the worst was behind her and the existing legal framework was sufficient. But, was/is that so?

CHAPTER 1

Leges Inter Arma[87]

If we had to point out the legal framework that regulates, at least to an extent, submarine warfare in the second half of the 20th century and the 21st that would be the law of the sea, the law of neutrality and the law setting the boundaries for the conduct of military operations. However, these sets of rules must be examined under the scope of the missions a modern submarine is built for; a stealthy scout and silent hunter. The greatest challenge at hand, when trying to get a better grasp of submarine warfare, is the lack – to virtual nonexistence – of modern-day relative treaties regarding the use of force in naval operations. Both the Geneva Conventions of 1949 and their Additional Protocols nor the United Nations Convention on the Law of the Sea[88] avoided the subject[89] or thoroughly examined the aspect of peaceful utilization of the sea by warships. This is the result of the lack of large-scale naval operations in the second part of the 20th century.

The introduction of UNCLOS in 1982 radically altered the tables on which submarine warfare was conducted for over a decade. During WWII, international law recognized the existence of only the 3 miles[90] wide territorial sea. From that point on,

---

[87] For a better understanding of the effect of UNCLOS on submarine warfare as well as Anti-submarine warfare see: Zedalis R. (1979) *Military Uses of Ocean Space and the Developing International Law of the Sea: An Analusis in the Context of Peacetime ASW.* University of Tulsa College of Law, available at: https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1149&context=fac_pub&fbclid=IwAR0m8eH35kB015gf5voKBpw1EU__aQCGmDRGtHbsBCZsCut811G1vdezRFo

[88] Henceforth UNCLOS.

[89] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *ILM* 16 (1977), 1391, hereinafter Additional Protocol I, and Additional Protocol II, ibid., 1442 et seq., relating to the Protection of Victims of Non-International Armed Conflicts.

[90] To avoid any misunderstandings, every time the word "mile" is mentioned it will stand for "nautical mile".

there was the high sea. Consequently, submarines were given free reign of the entirety of the globe's oceans with the exception of the territorial waters of neutral states. From 1982 and onwards, however, this complete and total reign has been significantly reduced and nearly diminished. First of all, the territorial waters have increased from 3 miles up to 12 removing approximately 3.000.000 square miles of ocean from a potential global confrontation field[91]. Another limitation emerged in the form of archipelagic states[92] resulting in vast sea areas to be considered as territorial waters. However, it should be stated that despite the official status of territorial waters, there have been plenty of cases when the coastal states sovereignty might mean little to none for a submarine, with the latter violating them systematically in an effort to field test her level of stealth and the response time – probably along with the limits – of a potential adversary, as can be observed by the conduct of the Chinese Navy against Japan[93]. Additionally, the birth of UNCLOS saw the legal birth of the exclusive economic zone with a range of 200 miles (if claimed) and the continental shelf[94] which not only further limit the possible area of operations but impose other restrictions since belligerents must be extra careful and respect the rights of coastal states in the above-mentioned regions[95].

Another aspect to be taken into consideration is the law of neutrality in regard to submarine warfare, the basics of which can be summarized to the following aspects. To begin with, belligerent parties are not to conduct operations within neutral waters[96] while at the same time attempt – to their maximum level possible – to prevent any collateral damage to these waters[97], unless the coastal state permits their use by one of the belligerents in which case the opposing side may take any necessary and appropriate action to terminate such use[98]. At the same time, even the high seas are not free from

---

[91] US Navy, *Commander's Handbook on the Law of Naval Operations*, NWP 1 – 14M, note 7, para. 7.3.4.1 at 7 – 13.

[92] UNCLOS, Articles 46, 47, 49

[93] See Miyoshi M. (2006). *The Submerged Passage of a Submarine Through the Territorial Sea – The Incident of a Chinese Atomic-powered Submarine* – Singapore Year Book of International Law and Contributors, Available at: http://www.asianlii.org/sg/journals/SGYrBkIntLaw/2006/13.pdf?fbclid=IwAR0iLPSknk5RPjlasaI8UorAP7hVjxeMcy86yE3B544sIhiKobMuvLdah8c

[94] Ibid., Parts V and VI.

[95] San Remo Manual, note 9, para. 10, 8. Helsinki Principles, note 10, para. 4, 505.

[96] Be they internal, territorial or archipelagic waters.

[97] Helsinki Principles, note 10, para. 1.4, 500

[98] Ibid., para. 2.1, 501

restrictions since the opposing parties must take every possible reasonable precaution to prevent depriving any freedoms existing on the high seas by neutral states[99] and avoid inflicting damage and/or casualties to neutral vessels[100].

Last, but not least, one must not forget the general principles regulating the conduct of military operations. At every moment, it must not elude the attention of the belligerents that their right to adopt means of injuring their opponents is limited, they are prohibited from striking at civilian targets and must always make distinctions between combatants and non-combatants to the extent that the later be spared as much as possible[101]. If there is such a distinction then consequently, there exist military assets ripe for targeting. In regard to naval operations, these targets are designated as enemy warships, naval auxiliaries and any shore installations that effectively support and sustain the enemy's war effort and fighting capabilities[102].

CHAPTER 2

Third Party Vessels: To be sunk or to be spared?

Having concluded the presentation of the previously mentioned issues at hand, the time has come for a question permanently standing at the lips of every submariner and the states that employ them; "Which vessels can be targeted and sunk and which must be left unharmed?". This shall be the point of interest of this chapter. But before we proceed, some clarifications and distinctions are in order. The question posed has two parts in reality; one concerning warships and merchant vessels belonging to the enemy and one about neutral vessels. After having clarified that, we shall move onwards.

2.1. Enemy Vessels

Up to this point, the international legal framework regarding submarine warfare is without doubt one of the least developed areas of interest. In fact, up to this day, the restrictions regarding merchant shipping raiding imposed upon submarines by the

[99] Ibid., para 3.1, 503
[100] Ibid., para 3.2, 504
[101] Additional Protocol I, note 3, Articles 35(1), 48 and 51(2).
[102] Commander's Handbook NWP 1 – 14M, note 7, para. 8.1.1, 8 – 1

Second London Naval Treaty of 1936 still stand strong! It is a tragic conclusion, that the proven problematic framework of the cruiser rules is still applicable today. This can be clearly observed in the US Navy's "Commanders Handbook". For the American Navy, the old and outdated legal framework set up by the Second London Naval Treaty alongside the practise of belligerents throughout WWII – which is to be considered customary practise – are still in effect making submarine commanders responsible for the safety of a ship's passengers, crew and papers before she is sunk! Naturally, such a hand tying restriction comes with a number of exceptions. Submariners bear no such responsibility when an enemy merchant vessel:

- refuses to stop when duly summoned to do so.
- actively resists boarding and search or capture.
- sails under escort of warships or military aircraft.
- is armed.
- is incorporated into, or is assisting by any means the enemy's military intelligence system.
- acts as naval or military auxiliary in any capacity.
- it is integrated into the enemy warfighting/war-sustaining effort and the compliance with the London Naval Treaty of 1936 is deemed, under the circumstances arising from the specific encounter, to expose the sub to imminent danger or preclude the accomplishment of her mission[103].

The first six clauses can objectively be determined either on the spot or after the end of the armed conflict. The last one, however, proves to be controversial since it is vague. It goes without saying that in a major conflict, the merchant fleet of a state will be integrated to support the war effort by transporting arms and ammunition, supplies, fuel, spare parts, medicine and/or provisions. Some of these materials double for both military and civilian use. The question at hand is when do they constitute support for the war effort and when they do not. Another problem is the last part regarding imminent danger and the accomplishment of the mission. To issue a due warning, the submarine must surface revealing herself and relinquishing the element of surprise. If she is operating behind enemy lines, within the range of the enemy air force and in close proximity to the opposing side's shores – as it is most likely to do – does her surfacing

[103] Commander's Handbook NWP 1 – 14M. note 7, para. 8.3.1, 8 – 5

expose her to imminent danger of being spotted, her position revealed and consequently come under attack? Most likely yes. This, in turn, hampers her capability of fulfilling the mission she was initially assigned. Therefore, it comes as no surprise that this last clause is widely considered as a convenient excuse to avoid/lift any restrictions[104]. To cut a long story short, it is evident that the old cruiser rules are back to haunt submariners once again while enemy merchant vessels are still fair prey for the lurking submarines.

Let us move on to enemy vessels in general. This category includes both warships and ships serving other purposes. Warships are considered legitimate targets and can be sunk without warning at any time. However, there are vessels that are exempt from capture and/or destruction according to the rules of naval warfare. This set of rules is imposed to surface vessels. Despite the hard lessons learned from both World Wars concerning the analogical implementation of rules, nothing seems to have changed, since the exemption rules have been enforced upon submarines as well! The excluded vessels are the following:

- those designated for and engaged in POW exchange.
- hospital ships, medical transports and aircraft that are properly designated and marked.
- those engaged in religious, non-military scientific[105] or philanthropic missions.
- those guaranteed safe conduct by prior agreement of the belligerents.
- small coastal fishing vessels and small boats engaged in local coastal trade[106].
- civilian passenger vessels[107][108].
- those designed or adapted exclusively for responding to pollution incidents in the maritime environment[109].

The above-mentioned exceptions come as no surprise since, hospital ships, non-combatants and POWs are protected by the Geneva Conventions. Additionally, all these

[104] San Remo Manual, note 9, paras 60.7 – 60.11, 148 – 150
[105] Vessels engaged in the collection of scientific data of potential military application can be targeted.
[106] These ships are still subject to the regulations of a belligerent naval commander operating in the area.
[107] Though exempt from destruction they are still subject to capture.
[108] Commander's Handbook NWP 1 – 14M, note 7, para. 8.2.3, 8 – 3, 8 – 4
[109] San Remo Manual, note 9, para. 47, 16 – 17

categories of vessels are not military ones and therefore they do not constitute legitimate targets in case of war.

2.2. Neutral Merchant Ships

Even amongst the chaos of WWII, life kept moving on for states that chose to remain neutral in the conflict. One of the aspects, and perhaps the most iconic, was the continuation of trade even with belligerent states[110]. An important parameter of the law of neutrality is to regulate the operations conducted by belligerent parties in respect to neutral merchant shipping, which includes both commercial activities among neutral states as well as between a neutral and a belligerent one. As long as neutral merchant vessels do not carry contraband or materials necessary for the war-effort they are to be respected and not targeted or captured by any of the belligerent's vessels. However, they are still prone to visit and search[111].

This set of rules exists because there is no legislation prohibiting trade relations with belligerent factions, unless of course the Security Council decides otherwise. However, the moment a neutral state, decides to engage in contraband or supply a combatant with military equipment and material, said state relinquishes the protection the law of neutrality has bestowed upon it since it violates its duties of abstention and impartiality while at the same time risks losing its neutral status. Another important thing that should be taken into consideration is that today, the lion's share of the worlds naval merchant shipping is conducted by the private sector. These individuals cannot be forced by their respective governments to refrain from conducting non-neutral commerce or contraband, unless there is a binding Security Council resolution. The activities of these individuals do not reflect upon their respective state therefore not jeopardising its neutrality. As we can see, the law of neutrality creates a delicate balance between safeguarding neutral commercial shipping and providing the belligerents with the capability of hampering the war effort of their adversary. All these apply to surface vessels as well as submarines[112].

[110] The most known cases being those of Sweden and Turkey.
[111] Commander's Handbook NWP 1 – 14M, note 7, para. 7.4, 7 – 5
[112] Ibid., para. 7.4, 7 – 5

Any merchant ship flying the colours of one the belligerents possess enemy character and consequently can be targeted under the provisions that have been previously mentioned. However, this does not mean that any vessel flying neutral colours has a neutral character. On the contrary, if she is owned or controlled by a belligerent it is considered to possess enemy character. A neutral merchant vessel may acquire enemy character and be treated as an enemy ship when she engages in either of the following:

- Operating directly under enemy control, orders, charter, employment or direction.
- Resisting attempts to establish identity, including visit and search[113].

To get a better understanding of this concept we shall examine it through the perspective of both the US Navy and the San Remo Manual on International Law Applicable to Armed Conflicts at Sea.

The American Navy's doctrine states that neutral vessels acquire enemy character and can be treated as hostile warships either when they take direct part in the hostilities on the opponent's side or when they act as naval or military auxiliaries for the enemy's Armed Forces[114]. The San Remo Manual, on the other hand, sets the playing field in a different fashion, according to which merchant ships flying neutral colours are not to be attacked unless they fall under any of the following clauses:

- They are believed on reasonable grounds to be conducting contraband, or breach a blockade, they clearly and intentionally refuse to stop, or resist visit, search or capture after having received relative warnings.
- Engage in belligerent acts on behalf of the enemy.
- Act as auxiliaries to the enemy's Armed Forces.
- Sail escorted by enemy naval or air forces.
- Make an effective contribution to the enemy's military action[115] and it is feasible for the attacking force to place passengers and crew in a place of safety

[113] Ibid., para. 7.5.2, 7 – 6
[114] Ibid., para. 7.5.1, 7 – 6
[115] E.g., carrying military grade materials.

before striking. Even then, however, they are to be warned, if the circumstances allow it, in order to re-route, off-load, or take other precautions[116].

As we can see, there is quite a number of security measures taken in order to ensure the protection of neutral merchant shipping with relatively solid exemptions to the rules. By closely examining the two separate manuals (US Navy and San Remo) one cannot fail to notice the difference in the relative provisions and clauses on the subject at hand. While the San Remo Manual offers a more thorough and protective framework, the US Navy keeps things simple and minimalistic. The explanation behind such great difference can be found in the diametrically opposite purpose of these two manuals. The San Remo Manual, aims for the creation of a concrete international legal framework in order to better enforce a protective veil over merchant shipping. On the other hand, The US Navy, prefers a more hands-on approach and to be precise a more hands freeing framework providing American submarine commanders with great liberties in the field of battle, disregarding precautions. Last, but not least, regarding neutral commerce shipping there is one significant difference in comparison to the respective enemy one. The San Remo Manual clearly states that the fact, a neutral merchant vessel is armed does not constitute an excuse for her to be targeted and sunk. In addition to being armed she must also fall within one of the above-mentioned clauses the Manual sets in effect[117].

Last but not least, another interesting aspect to be examined is the capability of the belligerents to establish special zones in specific areas and the effect of those on neutral shipping. This has come into practise during WWI by the Germans as mentioned in the first part of our dissertation. Could such an action be implemented today as well? According to the Helsinki Principles on the Law of Maritime Neutrality, the establishment of any kind of special zones at sea by a belligerent, does not confer upon him any kind of rights which he would not otherwise possess, regarding neutral merchant shipping such as the right to attack neutral vessels simply because they are present within the boundaries of the zone[118]. Of course, every rule has its exceptions. In this case, the exception is that a belligerent is capable of declaring zones where neutral ships would be particularly exposed to hazards and risks due to the hostilities,

[116] San Remo Manual, note 9, para. 67, 21 – 22.
[117] Ibid., para. 69, 22.
[118] Helsinki Principles, note 10, para. 3.3, 504 – 505

but only as an exceptional measure! As a security measure, the extent, location and duration of said zone must be made public and not overstep the boundaries set by military necessity. To cut a long story short, such zones must take into serious considerations the principle of proportionality[119]. A successful case of setting special zones while respecting neutral shipping and the principle of proportionality can be found in the Falklands war of 1982 during which time, the British set up a total exclusion zone of 200 miles surrounding the islands. That zone, was targeted to the Argentinian Navy only and was largely respected by neutral merchant shipping as well[120][121].

CHAPTER 3

The Last Stand of the Submarines.

After having concluded with the international legal framework in effect, it is time to examine its implementation on the last two incidents of submarine warfare up to this point. The second half of the 20th century saw a technological rise in all sectors of life, of which submarines could not have been excluded. Many of their previous technical limitations were gradually lifted turning them in an object of shock and awe. Having earned their laurels during the two World Wars resulted in their mass production and deployment in theatres around the globe. Once again, the world shook in terror in the sound of their silence. Fortunately, the Cold War, never warmed up enough to escalate into a destructive conflict and submarines saw limited action.

The first case, was the sinking of INS Khukri, a frigate of the Indian navy, sunk by the Pakistani submarine Hangor on December 9, 1971 during the Indo-Pakistani War of 1971. From a legal stand-off, the incident was not considered alarming since the target was a warship in period of war and therefore a legitimate target. As a result, the loss of INS Khukri was considered merely an act of armed conflict with no further interest given[122]. A tragic realisation is that despite the bloody-earned lessons of both

[119] San Remo Manual, note 9, para. 106, 28
Helsinki Principles, note 10, para. 3.3, 505.
[120] San Remo Manual Explanation, note 9, para. 106.2, 182.
[121] Churchill, R. R., Lowe, A. V. (1983). *The Law of the Sea.* Manchester University Press., p. 272.
[122] Mankekar, D.R. (1972). *Twenty-Two Fateful Days: Pakistan Cut to Size*. New Delhi: Indian Book Co.
Roy, M. K. (1995). *War in the Indian Ocean*. Lancer International.

World Wars, the very same rules that apply for surface vessels are applied to submarines as well! This became clearer in the next, and more complicated, incident that we shall examine.

The second case was the sinking of ARA General Belgrano, a light cruiser of the Argentinian Navy, by the British nuclear submarine HMS Conqueror during the Falklands War of 1982. After the Argentinians invaded and occupied the Falkland Islands, the United Kingdom issued an ultimatum, on April 2, drawing a 200 nautical miles exclusion zone around the islands within which any Argentinian warship or aircraft considered a threat would be attacked[123]. On April 30, the British upgraded the area to a total exclusion zone within which any sea vessel or aircraft from any country entering the zone might be fired upon without further warning, according to the right of self-defence under Article 51 of the UN Charter[124]. The total exclusion zone was something unprecedent in maritime law since the UNCLOS had no relative provision[125]. On April 29, ARA Belgrano was spotted within the exclusion zone by HMS Conqueror. The next day, a transmission ordering all Argentinian warships to strike at the British task force was intercepted by the British, a move that forced their hand. Consequently, the Admiralty ordered Conqueror to sink the Belgrano, an order that was carried out successfully on May 1.

Following the British move, a hailstorm of questions rose around it and whether it was an action conducted within the respective boundaries of the international law of the period with pro or against arguments being fielded. However, there was one aspect, that all parties agreed upon and that was that the Belgrano constituted a legitimate military target. One area of confrontation was whether or not, a state of armed conflict between Britain and Argentina existed at the time of the torpedoing, since throughout the duration of the Falklands war, neither side had officially declared war on the other[126].

---

[123] Middlebrook, M. (2009). *Argentine Fight for the Falklands*. Barnsley: Pen & Sword Military. p. 74, 75.

[124] United Nations, Charter of the UN, Chapter VII, Article 51. Available at: https://www.un.org/en/sections/un-charter/chapter-vii/index.html

[125] Churchill, R. R., Lowe, A. V. (1983). *The Law of the Sea.* Manchester University Press.

[126] This legal gap became evident when the first Argentinian pilot was shot down and captured by British forces. Prime Minister Margaret Thatcher argued that since there had been no official declaration of war, the pilot could not be considered a POW and therefore was not protected by the Geneva Conventions.

On one hand, it was stated that since Argentina had invaded the Falklands and Britain had taken respective measures[127] it was evident that there existed a de facto status of armed conflict between the two countries and no official declaration was needed to be handed. Under the light of this perspective, the sinking of the Belgrano was a legitimate act of war. On the other hand, it was argued that a state of armed conflict did not exist. The supporters of that argument attempted to interpret the incident and the British Total Exclusion Zone under the guise of the right to self-defence. They claimed that since the Belgrano was steaming away from the zone and did not pose an immediate threat to the British task force, she could not be attacked lawfully. That argument did not take into consideration two equally important facts. First and foremost, the British had informed Buenos Aires on April 23 that they did not considered the exclusion zone as the limit of their military operations[128]. Consequently, they could strike at targets of interest even outside the range of the exclusion zone. The second fact was that the ARA Belgrano was ordered to strike against the British task force the following day. This, along with her being armed with Exocet missiles made the Argentinian cruiser a significant and imminent threat which in turn gave the British the right to pre-emptive self-defence.

Another dispute that arose came from the Second Geneva Convention. Said Convention requires all naval units – submarines included – to search for and collect survivors after each engagement, taking all possible measures[129]. The critics of the sinking lay blame on the commander of HMS Conqueror for not attempting to rescue survivors from the sinking ARA Belgrano[130]. However, the British could not abide by the Geneva Convention, in that specific case for various reasons. First of all, the Conqueror could not accommodate the large number of Argentinian seamen onboard in a manner that ensured both their and the subs safety. Second, the Belgrano was escorted by two other warships which could have easily and quickly intervened to rescue their brothers in arms. It was due to the escorts lack of coordination and

[127] The British had severed diplomatic ties with Argentina and despatched a naval task force with orders to retake the Falklands by use of force.
[128] Middlebrook (2009), p. 74, 75
[129] Convention No. II for the Amelioration of the Condition of the Wounded, Sink and Shipwrecked Members of Armed Forces at Sea, 1949, UNTS Vol. 75 No. 971, art. 18(1)
[130] It is a sad truth that the majority of the victims of the sinking of the ARA Belgrano was caused by the late and ill-coordinated rescue operation launched by her escort ships.

communication that the casualty number grew tremendously after the sinking[131]. Last, but not least, the escorts had begun dropping depth charges indicating their will to sink the enemy sub lurking in the depths. This meant that had the Conqueror surfaced and attempted to pick up survivors, there was no guarantee that she would not have been fired upon. The action, or for some the inaction of the commander of HMS Conqueror was in accordance with the customs of submarine warfare, as they were laid down during WWI and WWII. These customs state, that the picking of survivors is to be conducted only to the extent that military exigencies permit. This code of conduct is depicted today, in the US Navy's manual where it is written that in case such a humanitarian action would subject the submarine to undue additional hazard or prevent it from accomplishing her military mission, then the location and rescue of survivors is to be passed at the first opportunity to a surface ship, aircraft or shore facility capable of rendering assistance[132]. In the light of these, the choice of the commander of HMS Conqueror, though condemnable under a humanitarian perspective, was absolutely reasonable under a military and operational perspective.

CHAPTER 4

Nuclear Submarines: Modern Day Leviathans.

Despite the fear that submarines instilled in the hearts and minds of their enemies they still had an Achilles' heel; They could not remain submerged for a prolonged period of time. Eventually, they would have to surface to recharge their batteries, refuel and/or restock on ammunitions and supplies. Additionally, even though submarines constituted a true menace at sea, their capability to inflict damage upon shore installations was limited, if non-existent. All these shortcomings were undone thanks to the technological progress made in various fields in general along with the introduction of nuclear-powered engines and ICBMs in particular.

Nuclear-powered submarines can rightfully be considered as modern artificial Leviathans. With a displacement that occasionally dwarfs even surface vessels, capacities far exceeding those of their sister-subs and firepower that would put many

[131] Middlebrook (2009), p. 113

[132] Commander's Handbook NWP 1 – 14M, note 7, para. 8.3, 8 – 4

ships to shame, they are undoubtedly a force to be reckoned with. Therefore, it comes as no surprise that all the major naval powers[133] have introduced them to their respective fleets. However, the birth of these colossi also gave birth to a number of important questions regarding various aspects of their operational range such as the use of nuclear weapons, the right to pre-emptive/preventive self-defence and the potential damage to be inflicted upon the environment in case of an accident and/or sinking.

4.1. Use, Construction and Update of Nuclear Weaponry[134].

We shall begin with the use of nuclear weapons. On this regard we have two legal texts of tremendous importance; The Treaty on the Non-Proliferation of Nuclear Weapons of 1968[135][136] and the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons of the International Court of Justice[137] of 1996[138]. Examining the NPT, one could argue that it consists of three main aspects; Non-proliferation, disarmament and the right to peacefully use nuclear technology. Of the eleven articles comprising the NPT, perhaps the most important is Article 6 which calls for nuclear disarmament[139]. Unfortunately, upon witnessing the wording of the article, it becomes evident that said article is merely an euchology since it imposes a merely vague obligation and nothing mandatory. Due to this fact, we shall move ahead to the Advisory Opinion of the ICJ. In its opinion, the Court stated pretty much the obvious, pointing out the absence of any source of law, be it custom or treaty, that explicitly forbids the possession or even use

[133] China, France, India, Japan, Russia, UK, USA

[134] Also see, Geneva Academy (2014). *Nuclear Weapons Under International Law: An Overview.* Available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/Nuclear%20Weapons%20Under%20International%20Law.pdf?fbclid=IwAR0DY-12Qp64HQCh06TLSIOFBDIA0Kj5vMLiaGtMdsRpFgEjQkwnZgizr0c

[135] Hence NPT.

[136] See Jonas S. D., Braunstein A. E. *What's Intent Got to Do with It? Interpreting "Peaceful Purpose" in Article IV.1 of the NPT.* Emory International Law Review. Available at: https://law.emory.edu/eilr/content/volume-32/issue-3/articles/intent-interpreting-peaceful-purpose-article-npt.html?fbclid=IwAR2qSbXQIzwLiYquS18rdrCQXwBSXx_V9mNC14MbatlNMdv3C7m8-llirQk

[137] Hence ICJ.

[138] On both the NPT and the Advisory Opinion of the ICJ see: Gagas D. (2009) *Introduction to the International Law of Armed Conflicts. Third Revised Publication.* I. Sideris, Athens, p. 166 – 172

[139] US Department of State, US delegation to the 2010 nuclear proliferation treaty conference. 2010. *Treaty on the Non-Proliferation of Nuclear Weapons*. Available at: https://2009-2017.state.gov/documents/organization/141503.pdf

of nuclear armaments[140]. At the same time, it left open a window stating that the sole existing requirement is that the use of nuclear armaments is in conformity with the right of self-defence and the principles of International Humanitarian Law[141].

One of the first things the Court took into consideration was the issue of deterrence which also includes the threat of use nuclear weapons, under certain circumstances, on an enemy (existing or potential) and whether such a threat was illegal or not. Despite the dissenting opinions of some judges, the Court ruled that if a threatened retaliatory strike was consistent with military necessity and proportionality, it would not necessarily made it illegal[142]. Unfortunately, the Court failed to further elaborate and explain what kind of military necessity may legitimise the use of a weapon of unlimited destructive magnitude or what sort of proportionality would deem it reasonable. One plausible interpretation could be that such case would be a confrontation with a state that also possesses a nuclear arsenal and is willing to utilize it.

Another point of interest examined in the Court's Advisory Opinion was the legality of the possession of nuclear armaments, a question examined under the aspect of various international treaties, including the UN Charter. As expected, there was no specific mention categorically forbidding the possession of nuclear weapons. After all, such weapons came relatively late in the arsenals of different states and constituted a hidden ace providing them with a tremendous military and diplomatic advantage, something these states would, under no circumstances, toss aside willingly.

Taking all these into consideration the Court made its final ruling. First of all, it clearly stated that there was nothing prohibiting the threat or use of nuclear weapons[143]. Following up, it ruled that any threat or use of force by means of nuclear weapons contradicting Article 2, paragraph 4, of the UN Charter and failing to meet all the

---

[140] International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996. Available at: https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf

[141] For a more thorough analysis of IHL see: Marouda M. D. (2015) *International Humanitarian Law*. I. Sideris, Athens

[142] Ibid., paras. 37 – 50

[143] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, para 105, Sections 2A, 2B. Available at: https://web.archive.org/web/20041013111214/http://www.icj-cij.org/icjwww/icases/iunan/iunan_judgment_advisory%20opinion_19960708/iunan_ijudgment_19960708_Advisory%20Opinion.htm

requirements of Article 51, is to be considered unlawful[144]. A point of particular interest was the Court's perspective regarding the further use of nuclear weapons as it mentions that it should be compatible with IHL and any other obligations regulating nuclear arms[145] though at the same time it stated that the threat or use of nuclear weapons is to be considered contradictory to IHL. In a turn of the tables unprecedented in international law chronicles, the ICJ stated that due to the existing state of international law, and of the elements of fact at its disposal, it cannot definitely conclude whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake[146]. The phrase "*…in which the very survival of a State would be at stake…*" provides a rather foggy window of opportunity since it could mean the imminent threat or launch of a nuclear strike or an unstoppable attack by conventional means. Such was the case of the 1973 Yom Kippur war between Israel, Syria and Egypt. Facing certain defeat at the hands of the united Arab forces, Israel threatened with a nuclear retaliatory strike. Despite this incident occurring many years before the ruling of the ICJ it proves that a threat to the survival of a state is not necessary a nuclear one.

Summarizing all of the above mentioned, we come to a pretty conclusion. According to both the NPT and ICJ's Advisory Opinion although the proliferation and construction of nuclear weapons is prohibited, their use is not, under certain circumstances. What about nuclear submarines though? Technically speaking, they are not considered a weapon per se but rather a system that utilizes nuclear energy for its propulsion. Therefore, their construction and development are within the legal boundaries and capabilities of a state[147]. What about their ICBMs? Once again, from a strict technical perspective an ICBM is not a nuclear weapon itself but rather a means of delivering a nuclear strike. But is that so? The answer to this question could be possibly found in the 2005 British decision to upgrade their Trident missile system[148].

---

[144] Ibid., para 105, Section 2C

[145] Ibid., para 105, Section 2D

[146] Ibid., para 105, Section 2E.

[147] An interesting question would be the weaponization of a nuclear submarine herself. In an act of outmost desperation, a state may decide to sacrifice one of its submarines by purposely causing a core meltdown resulting in catastrophic events. Such course of action, though looking like a science fiction scenario, could effectively turn a nuclear propelled vessel into a nuclear weapon, which in turn would constitute a violation and severe breach of the NPT.

[148] House of Commons Defence Committee, *Memoranda on the Future of the Uk's Strategic Nuclear Deterrent: The White Paper*. Available at: https://publications.parliament.uk/pa/cm200607/cmselect/cmdfence/ucwhite/ucmemo.htm

Before proceeding with the further development, the UK published a white paper supporting the legitimacy of its course of action under International Law[149].

This very white paper became the subject of criticism and contrast with two other legal opinions issued respectively on December 19, 2005 and November 13, 2006. The first one, given by Rabinder Singh QC and Professor Christine Chinkin addressed the issue of whether Trident's successor constituted a breach of customary international law[150]. Drawing on the Advisory Opinion of the ICJ, the opinion argued that the use of the Trident system would breach customary international law, in particular because it would infringe the "intransgressible" requirement that a distinction must be drawn between combatants and non-combatants. The second legal opinion submitted by Philippe Sands QC and Helen Law addressed a greater variety of problematics regarding the compatibility of the Trident's upgrade with jus ad bellum, IHL and the NPT[151]. Starting with the jus ad bellum it was noted that the use of the Trident and its possible successor, under the current circumstances, was bound to violate the proportionality boundary and therefore constitute a severe breach of Article 2, paragraph 4 of the UN Charter[152]. Moving on to IHL, the opinion stated that the use of the Trident system would not abide by the prohibition established by IHL regarding indiscriminate attacks and unnecessary suffering while at the same time there is a high probability that the use of the Trident may also lead to a violation of the principle of neutrality[153]. Last, but not least, the opinion addressed the issue of probable breaches of the NPT and the UN Charter in a five-step move. To begin with, it argued that a broadening of the deterrence policy to incorporate prevention of non-nuclear attacks so as to justify replacing or upgrading Trident would appear to be inconsistent with Article

---

[149] Concerning nuclear deterrence see also: Day A. J. (2019). *A New Era For Nuclear Deterrence? Modernisation, And Allied Nuclear Forces.* NATO, Defence and Security Committee (DSC). Available at: https://www.nato-pa.int/view-file?filename=%2Fsites%2Fdefault%2Ffiles%2F2019-10%2FREPORT%20136%20DSC%2019%20E%20rev.%201%20fin%20-%20A%20NEW%20ERA%20FOR%20NUCLEAR%20DETERRENCE%20-%20MODERNISATION%20ARMS%20CONTROL%20AND%20ALLIED%20NUCLEAR%20FORCES.pdf&fbclid=IwAR02z7r7xWsYlT7s4mo9bUbiZDA2-z22T7kJv_gnaqf4hE5bvMekC5bXKUI

[150] Singh R., Chinkin C. *The Maintenance and Possible Replacement of the Trident Nuclear Missile System.* Available at: http://www.acronym.org.uk/old/archive/docs/0512/doc06.htm

[151] Sands P., Law H., *The United Kingdom's Nuclear Deterrent: Current and Future Issues of Legality.* Available at: https://web.archive.org/web/20160303174330/http://www.greenpeace.org.uk/MultimediaFiles/Live/FullReport/8072.pdf

[152] Ibid., para 4(i)

[153] Ibid., para 4(iii)

VI. Furthermore, it was stated that any effort to justify the upgrade or replacement of the Trident as an insurance against unascertainable future threats would also appear to be inconsistent with Article VI. Additionally, the enhancement of the targeting capability or yield flexibility of the Trident system would also likely be considered to be inconsistent with Article VI. At the same time, the renewal or replacement of the Trident to the same level of capacity might be inconsistent with Article VI. Finally, summarizing all the previous steps the opinion argued that in any case such inconsistency could give rise to a material breach of the NPT[154].

Taking a closer look at both the British white paper and the two legal opinions we can draw an interesting conclusion. According to the perspective of a nuclear power, the construction and/or upgrade of weapon systems relevant to nuclear arms such as nuclear-powered submarines and ICBMs do not constitute a violation of neither the NPT nor the UN Charter. However, as it became evident by the two legal opinions there is also a more protective/defensive point of view. In our personal opinion, the construction/upgrade of weapon systems that are either powered by nuclear energy or could be used to provide nuclear strike capabilities should not be considered a breach of International Law.

4.2. The right to self-defence?

Having completed the analysis on the construction and use of nuclear-powered submarines, it is time to move on to another important matter regarding these water colossi, and that is no other than the question regarding the right to self-defence and more importantly the right/capability of pre-emptive or even preventive self-defence.

To begin with, the right to self-defence is recognised to every state under Chapter VII, Article 51 of the UN Charter. As mentioned in the first part of this dissertation every warship and sub is considered a legitimate target in times of war and thus can be freely targeted and hit. What about in times preluding the outbreak of an armed conflict or even in times of a peace in turmoil and particularly when it comes to nuclear submarines capable of delivering a catastrophic strike to the adversary? Against such a devastating and irreparable force which needs only a few minutes to demonstrate its

[154] Ibid., para 4(iv)

destructive capacity a state cannot afford the luxury of time waiting for the attack to be launched in order to exercise its legitimate right to self-defence. Consequently, when it comes to such cases self-defence is updated to pre-emptive or even preventive. In order for such a course of action to be taken, there are some terms that need to be fulfilled first.

The right to pre-emptive self-defence may be invoked upon the presence of an imminent threat. What constitutes an "imminent threat" has been delivered to us by the famous "Caroline Affair" and described in the best possible fashion as "*instant, overwhelming, and leaving no choice of means, and no moment of deliberation*". Furthermore, the estimated damage and losses in the aftermath of a nuclear strike beyond immeasurable are also irreparable and totally crippling. Consequently, in the case of nuclear submarines, a state can invoke the right to pre-emptive self-defence in order to ensure its security and very survival. Unfortunately, the world is not so simple as we tend to believe and depict it. In fact, it is far more complicated than we could possibly imagine. For instance, let us move to the following plausible scenario. The tensions between the DPRK and the Republic of Korea, Japan and the US are always running high due to serious historical animosities, the aggressive behaviour of the DPRK and its unpredictable character. Let us for an instance imagine that a DPRK submarine carrying non-conventional ICBMs is located sailing off the coast of Japan. What would be the appropriate course of action for the Japanese?

Technically, a state of armed combat does not exist among the afore-mentioned states and no act of aggression has been conducted. Therefore, Article 51 cannot be invoked. In said case, a possible attack is certainly instant and it goes without saying that a nuclear strike is overwhelming. Does such an act of aggression leave time for deliberation or a potential choice of means? The answer to that question is categorically no! Taking all of these factors into consideration, one could definitely argue that the deliverance of a pre-emptive strike against an enemy submarine capable of delivering a nuclear strike is within the boundaries of the legitimate right of self-defence.

Another interesting problematic may arise from the following factors. Instead of international waters, let us, for an instance, presume that a submarine is located in the territorial waters of a neutral state. To begin with, a belligerent's units should not have violated the national borders of a non-combatant state. However, borders are sometimes

irrelevant to stealthy units such as submarines as it has been proven plenty of times throughout history. Moving back to our presumption. If said submarine is located by another belligerent party, that party has no right to intervene. Unfortunately, the neutral state may either be unable or unwilling to force the submarine to depart. Under such circumstances and the imminent fear of a nuclear strike, the belligerent party is left with no choice but to take matters in its own hands. Consequently, use of force could be authorised but only to a small scale and within the boundaries of necessity.

4.3. An Underwater Chernobyl?

The introduction and utilization of nuclear energy despite offering humanity a large variety of options and opportunities came at a terrible prise at the same time forcing us to eternally remain on alert. One slight mistake, one moment of relaxation and the consequences will be devastating beyond measure as the tragedies of Chernobyl and Fukushima have proven. Unfortunately, the same risks apply to nuclear submarines as well since a possible mistake is bound to cause a reactor meltdown resulting in the emission of radiation. Another possible danger may present itself from the sinking of a nuclear submarine during combat.

Starting with the first case scenario, the probability of a reactor meltdown in a nuclear submarine under today's standards may sound a little far-fetched but first, that has not always been the case, and second, statistically speaking the possibility of an accident occurring, though minuscule, still exists. The most notable incident of a core meltdown dates back to 1961 and includes one of the soviet nuclear submarine prototypes, the K-19, more commonly known by her notorious nickname, "Hiroshima". Due to a mechanical failure, resulting in the cooling systems malfunction, radioactive steam was released irradiating the entire crew causing many of them to perish within a matter of two years[155]. Thanks to the self-sacrifice of the crew, the worst was averted and a complete catastrophe was prevented. To get a better understanding of the scale of a possible disaster, we have to mention that the repairs undertaken in secure and regulated environments resulted in the contamination of both the repair crew and the

[155] Polmar N. (2003), *Cold War Submarines. The Design and Construction of U.S. and Soviet Submarines.* Potomac Books Inc.

land within 700 meters[156]. Had the situation went critical, it is difficult to speculate the damage a radiation leak might have caused or the area it would have covered. It is safe, though, to assume that it would have been a much larger area than a mere 700 meters radius.

The second case though unprecedented is not such a far-fetched scenario. It is almost certain, that in the outbreak of an armed conflict both conventional and nuclear submarines are bound to find themselves in the forefront of the struggle, a move that will definitely bring them in the crosshairs of the belligerent parties as legitimate targets. The destruction and the following sinking of a nuclear submarine will have cataclysmic consequences for the environment. At times past, such thing would have been disregarded as a mere side effect of the conflict. However, following the Gulf War there has been a development of rules aimed at the protection of the environment in times of war, though inflicting collateral damage to the environment while attacking a legitimate military target is still not considered to be illegal. Consequently, a commander should always take into consideration the environmental damage caused by his actions[157]. Does this mean that when targeting a nuclear submarine, one must also take a similar approach? Both arguments can be fielded and supported depending on the perspective of their supporters. On the one hand, it could be argued that the possible contamination of the environment could be far greater than any possible gain. On the other hand, military necessity and the survival of the state, dictate otherwise. In our personal opinion, when it comes to life and death situations, military necessity and survival should always prevail[158].

[156] Ibid., p. 112

[157] Commander's Handbook NWP 1 – 14M, para. 8.1.3, 8-2.

[158] For a more thorough examination of the effects of submarine warfare on the environment see: Gillespie A. *The Limits of International Environmental Law: Military Necessity v. Conservation.* Available at: https://www.colorado.edu/law/sites/default/files/GILLESPIE%20_correctedv2_.pdf?fbclid=IwAR1WjFbhh3oXU6CgNPaBcrLdKvKLO4pUF5MBEuxhWRl9_6p_DgBYuiXwOv0

CHAPTER 5

The Surface of Unmanned Underwater Vehicles[159][160]

It is an undeniable truth that as time moves forward, so does technology which, to be more precise, leaps forward. The very same thing applies to the modern battlefield as well. Within the lapse of a mere two decades, unmanned weapon systems have been tremendously developed. While the spotlights and the interest of nearly every military in the world is focused on UAVs, or Drones, the same cannot be said about UUVs despite their development having made considerable progress in the same period of time. This is largely due to the fact that submarine development has always been much more secretive in accordance with the sub's doctrines and objectives. The high level of secrecy and danger that surrounds submarine operations is breath taking. A slight error may result in the loss of a multi-million weapon system, dozens of lives and is bound to cause a hailstorm in international politics probably leading to an escalation. Consequently, the efforts of many modern Great Powers have been centred in the development, construction and fielding of state-of-the-art UUVs capable of eliminating the afore mentioned risks. Unfortunately, the rise of these new innovative weapons has been followed by a multitude of problematics.

The greatest of them all is the question regarding the regulatory legal framework. As we have mentioned plenty of times in this dissertation, while technological progress leaps forward, legislation crawls. This situation is most likely bound to change due to the necessities presented/arising from the reality of modern operations. Unfortunately, until this change manifests into reality we have to make due with those tools available to us. As it has always been the case regarding new weapon systems, their owners attempt to bypass legal regulations in order to allow themselves a wider window of opportunity in case an armed conflict erupts. The very same goes for UUVs. There are those, the Americans first among them, who attempt to prove that these new submersibles are not bound by the most fundamental international legislation, the UNCLOS. In order to support their argument, they take advantage of an existing "loop hole" in the treaty, the lack of a clear and definite term regarding "ships" which is

[159] Hence UUV.

[160] For a more thorough view of Unmanned Maritime Systems (UMSs) read Schmitt M. N. and Goddard D. S., *International law and the military use of unmanned maritime systems*., International Review of the Red Cross (2016), Available at: https://international-review.icrc.org/sites/default/files/irc98_10.pdf

partially covered by means of other treaties, such as The Vienna Convention on the Law of Treaties, particularly Article 31[161] or through Articles of UNCLOS referring to ships, such as but not limited to, Article 94. Consequently, if UUVs are not considered as "ships" then they are free to operate as deemed fit. This constitutes a legal manoeuvre and nothing more. UNCLOS regulates clearly the code of conduct of all naval units, be they surface vessels or submarines. Taking into consideration that UNCLOS was drafted in 1982 and UUVs emerged into our world just a few years ago, it was impossible for the minds behind this Convention to predict their creation. Consequently, it is safe to assume that UUVs fall under the same regulations as submarines do in the light of UNCLOS.

Moving ahead from the above-mentioned "technicalities" it is time to examine other issues of the aspect at hand. There might be an argue over whether UUVs are to be considered ships or not, but it is an undeniable truth that they constitute a weapon or to put it in a more official manner, a "means of conducting warfare". Consequently, their use is governed by the laws of international armed conflict and therefore fall under the general terms mentioned in previous chapters. One issue that will most likely prove to be a point of interest and conflict is the way these new weapons will be utilized in the field[162]. To be more precise, the dilemma arising is whether the new UUVs shall be operated from a distance, like their flying counterparts, the UAVs, or be completely autonomous. If they follow the first course, then it is most likely to fall under the same rules that UAVs do. However, despite the technological progress achieved there are still technical difficulties that could not be overcome. The most crucial among them is that radio waves are not as easily emitted in water as they are in the air which, consequently, limits the distance the submersible can transverse from the position of the operator. Taking this into serious consideration, it comes as no surprise that further steps are being made in order to achieve some degree of autonomy, which in turn raises another series of questions regarding the capability of the system to distinguish between military targets and civilians/non-combatants[163]. As mentioned extensively in previous chapters, when it comes to target acquisition things are not at all clear but instead

[161] Vienna Convention on the Law of Treaties (VCLT), 1155 UNTS 331, 23 May 1969, Art. 31(1) – (2).
[162] ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare*, November 2006
[163] Additional Protocol I to the Geneva Conventions, Article 51(4)(b) – (c). San Remo Manual, paras 40, 42(b)(i), 46.

covered in a great deal of grey areas. Up to this point autonomous weapon systems can distinguish between friendly and hostile units but not between legal and illegal targets raising a lot of concern for a case of probable misfire. Another question is the accountability. Should an error occur and innocent lives are lost, who shall be held accountable? The operator who dispatched them, his commanding officer, the state that fielded them or the company that installed the programming?[164]

CONCLUSION

Today, we stand a few steps past the doorway of the 21st century. The introduction of nuclear-powered subs, armed with ICBMs and capable of delivering total destruction around the globe along with the tremendous progress regarding UUVs have presented humanity with a whole new aspect of terrae incognitae. Even though such breakthroughs should have raised the alarm of potential havoc we still rest on our laurels utilising a legal framework dating back to 19th century – with no significant progress made – and expect/pray it suffices for a 21st century weapon system and possibly an armed conflict while at the same time attempting an analogical implementation of certain legal frameworks on submarines without taking into consideration that such practise was the exact cause for all the problems that arose in years past. Demanding from a submarine to abide by the same legal framework that applies to surface vessels is like the demand of 11th century French aristocrats that peasants should wage war in the same manner as an ironclad mounted knight. It is precisely this kind of practice that leads to an unavoidable, yet still unanswered question: Why? Why has submarine warfare been left largely unregulated despite the bitter lessons it has given us? Why do we persist in employing anachronistic and impossible to implement rules despite knowing that such practise bears no significance and effect?

Since it is highly unlikely to take a dive into the deepest thoughts and ideas of the minds responsible for the above-mentioned question, we shall attempt to answer it by presenting our own personal opinion upon the matter at hand. Despite the atrocities

[164] For more on autonomous weapon systems see: Trumbull IV C. P. *Autonomous Weapons: How Existing Law Can Regulate Future Weapons.* Emory International Law Review. Available at: https://law.emory.edu/eilr/content/volume-34/issue-2/articles/autonomous-weapons-law-regulate-future.html?fbclid=IwAR3MR6ztS5DufthVJbu9v12Q2oZ6LnmHsL5Z-FRK7aL7XDEJfqo6X_WllPs

committed during times of war throughout History, the commanders and troops enjoyed certain liberties regarding the manner they would wage it. With the passing of time, the creation and development of International Humanitarian Law and multiple other treaties and documents certain restrictions were implemented and that false/criminal sense of liberty began to fade away causing a great deal of disappointment for some people who considered that their hands had been tied resulting in the decrease of their efficiency in waging war. Consequently, it came as no surprise that states and general staffs were constantly looking for a window of opportunity that bypassed any restrictions, thus leaving certain aspects of combat deliberately unregulated. When submarines made their appearance, everyone saw the golden opportunity that was long due expected.

Another possible explanation may present itself in the shape and image of these submersible predators. Unlike surface vessels that take pride in their appearance, submarines prefer a more humble approach. A ship cannot hide her armaments, systems and countermeasures. Of course, she keeps some trump cards for herself but she is otherwise an open book to read. On the contrary, upon spotting a submarine one can only see a dark coloured tube which leaves much to the imagination. An outside observer can be certain – to a degree – about her main armament, may presume her role by the sheer size and form of the sub but the rest are all matters of speculation. To the defence of our statement, one has only to take a look at the amount of secrecy submarine building companies put around these marvellous constructions.

Last, but not least, we should not allow the manner of missions and tasks assigned to submarines skip from our attention. By nature, submarines rely on stealth and secrecy making them ideal for clandestine operations around the globe. Black ops, monitoring "hostile" activities, intelligence gathering, even pure espionage, all utilize submarines to some extent and it is precisely this kind of operations that passionately encourage the development of UUVs. One can always be aware of the position of a satellite in orbit, of the presence of planes and drones in the air, of a patrolling vessel in the sea but not of the lurking eyes of a submerged submarine that lies in wait patiently and silently beneath the waves. Consequently, taking into serious consideration all of the above-mentioned facts along with the reality that cloak and dagger operations as well as espionage, though chastised by everyone are certain to be carried out for decades to come, it is our humble opinion that, despite any efforts made, submarine warfare shall

always remain a subject of debate and probably be the last aspect of armed conflict to ever be regulated, if such thing occurs.

EPILOGUE

Having reached the apparent end of this dissertation it is time to conduct a summary of all the facts and problematics that have been mentioned and examined in the previous parts and chapters, extract some valuable lessons from them and present our personal opinion on the matter at hand.

It constitutes an undeniable truth that the dawn of the 20th century saw the dawn of new forms of conducting warfare along with the birth of weapons that revolutionized the modern battlefield be it land, sea or air. Along with these new machines of death and destruction came new challenges and responsibilities. It would not be an overstatement to claim that while waging war became more and more catastrophic at the very same time, the Art of War became more refined and to some extent humane. This was the collective achievement and result of the efforts of different states, with the Major Powers of the era paving the way and acting as the vanguard. To that end various conferences were held while legal documents, Conventions and Treaties were drafted and signed even in the twilight of the 19th century such as the First Hague Convention.

Despite the various efforts undertaken by different states there were still some shortcomings. First among them was the lack of foresight. Every attempt to ameliorate the conditions of warfare was conducted after the nightmarish events of a major conflict had already transpired and been written down in the history books. Consequently, it all looked like patchwork whose true objective was to cover grim errors of the past, while at the same time no effort was made to predict possible dangers for the future. This situation can be excused for two reasons. The first is that, contradictory to military related technology that always rushes ahead of its time, the regulatory legal framework takes baby steps forward or, more precisely, crawls forward at a very slow pace. The second one is located in a military point of view. To the defence of the brilliant minds behind the creation and development of International Humanitarian Law and all the relevant legal documents it was simply impossible for them to imagine the capabilities

of new weapons that came out marching from modern industries and had not been fielded yet.

That is precisely the case of submarines. Their humble beginnings, their crude appearance and the mile-long list of technical malfunctions they presented did not predict a bright future for these revolutionary machines. Additionally, their birth occurred at the same time that the spotlights were focused on the new breath-taking Dreadnoughts. It was the combination of all these factors that led to a grievous error in judgment and reaction, applying the existing legal framework that regulated the conduct of surface vessels to submarines as well. Being underestimated and looked down upon, their full capacities still overlooked and operating under an anachronistic and impossible to abide with legal boundary, the submarines made a thundering entrance in the theatres of WWI wreaking havoc and building a formidable name and reputation for themselves.

Although the Great War served as a rude awakening to humanity regarding submarine warfare, little to no effort was made in the interwar period to ameliorate, at least to some extent, the situation contradictory to other aspects of warfare. It soon became apparent that a second "courtesy call" from the deeps was needed and that came in a more destructive manner during WWII. At the end of such a universal horrific experience, the world received yet another disappointment as once more, submarines were neglected when it came to the Geneva Conventions.

With the outbreak of the Cold War submarines found themselves once more into the forefront but this time in a more subtle manner. This time, they traded their role of silent hunters for a more discreet one, that of stealthy observer and spy. It soon became abundantly clear that subs were extremely efficient at their new objectives, which, in turn, moved them away from the spotlights and unwanted attention. In a time-span of nearly 80 years, there have been countless clandestine operations involving submarines but only two cases when these underwater predators saw combat action.

It is precisely due to these conditions along with the mantle of secrecy surrounding them that no matter how many decades pass, it is highly unlikely that a concrete legal framework will come into effect. So long as that happens, humanity may only pray that these deep-sea predators never awaken from their current slumber and be called into action once more, for with a rusty legal boundary acting as their

restraining shackles, one can be almost certain that it shall be easily broken with terrifying consequences.

Bibliography

Greek

Gagas D. (2009) *Introduction to the International Law of Armed Conflicts. Third Revised Publication.* I. Sideris, Athens

Kargakos S. (2012). *Greece during the Balkan Wars (1912 – 1913).* Athens

Marouda M. D. (2015) *International Humanitarian Law*. I. Sideris, Athens

English

Bailey, T. A., Ryan, P. B. (1975), *The Lusitania Disaster: An Episode in Modern Warfare and Diplomacy.*, Free Press/Collier Macmillan, New York/London

Beesly, P. (1982), *Room 40: British Naval Intelligence, 1914–1918.* Long Acre, London: Hamish Hamilton Ltd.

Birn, D. S. (1970). *Open Diplomacy at the Washington Conference of 1921–2: The British and French Experience*. Comparative Studies in Society and History.

Blair, C. (1998). *The Hunted, 1942–1945. Hitler's U-boat War: The German Navy in World War II*. New York, Available at: Random House

Bridgland, T. (1999). *The Baralong: Germany is Outraged. Sea Killers in Disguise: Q Ships and Decoy Raiders.* Leo Cooper.

Brune, L. H., Burns R. D. (2003). *Chronological History of US Foreign Relations.* Routledge.

Churchill, R. R., Lowe, A. V. (1983). *The Law of the Sea.* Manchester University Press.

Coles A. (1986). *Slaughter at Sea: The Truth Behind a Naval War Crime*. London: R. Hale.

Day A. J. (2019). *A New Era for Nuclear Deterrence? Modernisation, And Allied Nuclear Forces.* NATO, Defence and Security Committee (DSC). Available at: https://www.nato-pa.int/view-file?filename=%2Fsites%2Fdefault%2Ffiles%2F2019-10%2FREPORT%20136%20DSC%2019%20E%20rev.%201%20fin%20-%20A%20NEW%20ERA%20FOR%20NUCLEAR%20DETERRENCE%20-

%20MODERNISATION%20ARMS%20CONTROL%20AND%20ALLIED%20NUCLEAR%20FORCES.pdf&fbclid=IwAR02z7r7xWsYlT7s4mo9bUbiZDA2-z22T7kJv_gnaqf4hE5bvMekC5bXKUI

Dönitz, K. (1997), *Memoirs: Ten Years and Twenty Days*, Da Capo Press

Duffy, J. P. (2013). *The Sinking of the Laconia and the U-Boat War*. Lincoln, Available at: University of Nebraska Press

Edward P. von der Porten (1969), *The German Navy in World War II*, T. Y. Crowell

Geneva Academy (2014). *Nuclear Weapons Under International Law: An Overview.* Available at: https://www.geneva-academy.ch/joomlatools-files/docman-files/Nuclear%20Weapons%20Under%20International%20Law.pdf?fbclid=IwAR0DY-12Qp64HQCh06TLSIOFBDIA0Kj5vMLiaGtMdsRpFgEjQkwnZgizr0c

Gibson, R.H., Prendergast, M. (2002). *The German Submarine War 1914–1918.* Periscope Publishing Ltd.

Gillespie A. *The Limits of International Environmental Law: Military Necessity v. Conservation.* Available at: https://www.colorado.edu/law/sites/default/files/GILLESPIE%20_correctedv2_.pdf?fbclid=IwAR1WjFbhh3oXU6CgNPaBcrLdKvKLO4pUF5MBEuxhWRl9_6p_DgBYuiXwOv0

Gillespie, A. (2011), *A History of the Laws of War: Volume 1*, Hart Publishing

Grant, R. M. (2002). *U-boats Destroyed: The Effect of Anti-submarine Warfare 1914–1918.* Periscope Publishing Ltd.

Halpern, P. G. (1994). *A Naval History of World War I.* Routledge.

Holwitt, J. I. (2005), *Execute Against Japan*, PhD dissertation, Ohio State University

Hood, J. (2006). *Come Hell and High Water: Extraordinary Stories of Wreck, Terror and Triumph on the Sea.* Ithaca: Burford Books.

House of Commons Defence Committee, *Memoranda on the Future of the Uk's Strategic Nuclear Deterrent: The White Paper*. Available at: https://publications.parliament.uk/pa/cm200607/cmselect/cmdfence/ucwhite/ucmemo.htm

International Committee of the Red Cross. *British Military Court at Hamburg, The Peleus Trial*, Available at: https://casebook.icrc.org/case-study/british-military-court-hamburg-peleus-trial

King, G., Wilson, P. (2015), *Lusitania: Triumph, Tragedy, and the End of the Edwardian Age*, St. Martin's Press

Mallison, S. V., et al. (1993). "Naval Practices of Belligerents in World War II: Legal Criteria and Developments" (PDF). Available at: *International Law Studies*.

Mankekar, D.R. (1972). *Twenty-Two Fateful Days: Pakistan Cut to Size*. New Delhi: Indian Book Co.

Marriott, L. (2005), *Treaty Cruisers: The First International Warship Building Competition*, Barnsley: Pen & Sword

McGill, H. W., Norris, M. B. (2007). *Medicine and Duty: The World War I Memoir of Captain Harold W. McGill, Medical Officer, 31st Battalion, C.E.F.* Calgary: University of Calgary Press.

Messimer D. R. (2001). *Find and Destroy: Antisubmarine Warfare in World War I*. Naval Institute Press

Messimer, D. R. (2002). *Verschollen: World War I U-boat Losses.* Naval Institute Press.

Middlebrook, M. (2009). *Argentine Fight for the Falklands*. Barnsley: Pen & Sword Military

Milner, M. (2006) *North Atlantic run: The Royal Canadian Navy and the battle for the convoys*, Vanwell Publishing

Miyoshi M. (2006). *The Submerged Passage of a Submarine Through the Territorial Sea – The Incident of a Chinese Atomic-powered Submarine* – Singapore Year Book of International Law and Contributors, Available at: http://www.asianlii.org/sg/journals/SGYrBkIntLaw/2006/13.pdf?fbclid=IwAR0iLPSknk5RPjlasaI8UorAP7hVjxeMcy86yE3B544sIhiKobMuvLdah8c

Natalino, R. (1988). *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, Martinus Nijhoff

Nolan, L., Nolan, J. E. (2009), *Secret Victory: Ireland and the War at Sea, 1914-1918*, Mercier Press

Pfeifer, D. C. (2016), *Choosing War: Presidential Decisions in the Maine, Lusitania, and Panay Incidents*, Oxford University Press

Polmar N. (2003), *Cold War Submarines. The Design and Construction of U.S. and Soviet Submarines.* Potomac Books Inc.

Ronzitti, N. (1988). *The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries*, Martinus Nijhoff

Roy, M. K. (1995). *War in the Indian Ocean*. Lancer International.

Sands P., Law H., *The United Kingdom's Nuclear Deterrent: Current and Future Issues of Legality.* Available at: https://web.archive.org/web/20160303174330/http://www.greenpeace.org.uk/MultimediaFiles/Live/FullReport/8072.pdf

Sands, P., Law, H., *The United Kingdom's Nuclear Deterrent: Current and Future Issues of Legality.* Available at: https://web.archive.org/web/20160303174330/http://www.greenpeace.org.uk/MultimediaFiles/Live/FullReport/8072.pdf

Schmitt M. N., Goddard D. S., *International law and the military use of unmanned maritime systems*., International Review of the Red Cross (2016), Available at: https://international-review.icrc.org/sites/default/files/irc98_10.pdf

Schmitt, M. N. and Goddard, D. S. (2016), *International law and the military use of unmanned maritime systems*., International Review of the Red Cross, Available at: https://international-review.icrc.org/sites/default/files/irc98_10.pdf

See Jonas S. D., Braunstein A. E. *What's Intent Got to Do with It? Interpreting "Peaceful Purpose" in Article IV.1 of the NPT.* Emory International Law Review. Available at: https://law.emory.edu/eilr/content/volume-32/issue-3/articles/intent-interpreting-peaceful-purpose-article-npt.html?fbclid=IwAR2qSbXQIzwLiYquS18rdrCQXwBSXx_V9mNC14MbatlNMdv3C7m8-llirQk

Singh, R., Chinkin, C. *The Maintenance and Possible Replacement of the Trident Nuclear Missile System*. Available at: http://www.acronym.org.uk/old/archive/docs/0512/doc06.htm

Sondhaus, L. (2001) *Naval Warfare, 1815-1914*, New York: Routledge

Tarrant, V. E. (1989) *The U-Boat Offensive 1914-1945*. Naval Institute Press

Trumbull IV C. P. *Autonomous Weapons: How Existing Law Can Regulate Future Weapons*. Emory International Law Review. Available at: https://law.emory.edu/eilr/content/volume-34/issue-2/articles/autonomous-weapons-law-regulate-future.html?fbclid=IwAR3MR6ztS5DufthVJbu9v12Q2oZ6LnmHsL5Z-FRK7aL7XDEJfqo6X_WllPs

Tsushima Maru Memorial Museum, Available at: http://tsushimamaru.or.jp/?page_id=85

United States Government US Navy (2019), *Commander's Handbook on the Law of Naval Operations*

Zedalis R. (1979) *Military Uses of Ocean Space and the Developing International Law of the Sea: An Analusis in the Context of Peacetime ASW*. University of Tulsa College of Law, available at: https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1149&context=fac_pub&fbclid=IwAR0m8eH35kB015gf5voKBpw1EU__aQCGmDRGtHbsBCZsCut811G1vdezRFo

Italian

Quinzi, A. (2005). *La tragedia de la Laconia*, Triboo Media.

Legal Texts

Convention No. II for the Amelioration of the Condition of the Wounded, Sink and Shipwrecked Members of Armed Forces at Sea, 1949, UNTS Vol. 75 No. 971

Doswald-Beck, L. (ed.) (1995), San Remo Manual on International Law Applicable to Armed Conflicts at Sea

GlobalSecurity.org, *Geneva Conference 1932-1934*. Available at: https://www.globalsecurity.org/military/world/naval-arms-control-1932.htm

Helsinki Principles on the Law of Maritime Neutrality, ILA Conference Report 68 (1998)

International Committee of the Red Cross, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare*, November 2006

International Committee of the Red Cross, *Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929.* Available at: https://ihl-databases.icrc.org/ihl/INTRO/305

International Committee of the Red Cross, *Declaration Respecting Maritime Law. Paris, 16 April 1856.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=473FCB0F41DCC63BC12563CD0051492D

International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977*. Available at: https://ihl-databases.icrc.org/ihl/INTRO/470

International Committee of the Red Cross, *Treaty for the Limitation and Reduction of Naval Armaments, (Part IV, Art. 22, relating to submarine warfare). London, 22 April 1930.* Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=05F68B7BFFB8B984C12563CD00519417

International Committee of the Red Cross. *The Geneva Conventions of 1949 and their Additional Protocols.* Available at: https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

International Court of Justice. *Legality of the Threat or Use of Nuclear Weapons.* Available at: https://web.archive.org/web/20041013111214/http://www.icj-cij.org/icjwww/icases/iunan/iunan_judgment_advisory%20opinion_19960708/iunan_ijudgment_19960708_Advisory%20Opinion.htm

LIMITATION AND REDUCTION OF NAVAL ARMAMENT (LONDON NAVAL TREATY), Available at: https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-1055.pdf

Limitation of Naval Armament (Second London Naval Treaty), Available at: https://www.loc.gov/law/help/us-treaties/bevans/m-ust000003-0257.pdf

United Nations Convention on the Law of the Sea. Available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

United Nations, *1925 Geneva Protocol*, Available at: https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Bio/pdf/Status_Protocol.pdf

United Nations, *Charter of the UN, Chapter VII, Article 51*. Available at: https://www.un.org/en/sections/un-charter/chapter-vii/index.html

United Nations, *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*. Available at: https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Bio/pdf/Status_Protocol.pdf

US Department of State, US delegation to the 2010 nuclear proliferation treaty conference. 2010. *Treaty on the Non-Proliferation of Nuclear Weapons*. Available at: https://2009-2017.state.gov/documents/organization/141503.pdf

Vienna Convention on the Law of Treaties (1969). Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907*. Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

Yale Law School, Lillian Goldman Law Library, *Laws of War: Adaptation to Maritime War of the Principles of the Geneva Convention (Hague X); October 18, 1907, CONVENTION FOR THE ADAPTATION TO MARITIME WAR OF THE PRINCIPLES OF THE GENEVA CONVENTION.*, Available at: https://avalon.law.yale.edu/20th_century/hague10.asp

Yale Law School, Lillian Goldman Law Library, *Laws of War: Conversion of Merchant Ships into War Ships (Hague VII); October 18, 1907*. Available at: https://avalon.law.yale.edu/19th_century/hag99-01.asp

Yale Law School, Lillian Goldman Law Library, *Nuremberg Trial Proceedings Vol. 13 ONE HUNDRED AND TWENTY-FIFTH DAY Thursday, 9 May 1946 Morning Session*, Available at: https://avalon.law.yale.edu/imt/05-09-46.asp

Yale Law School, Lillian Goldman Law Library, *Peace Conference at the Hague 1899: Rescript of the Russian Emperor, August 24 (12, Old Style), 1898*. Available at: https://avalon.law.yale.edu/19th_century/hag99-01.asp