The law of the naval armed conflicts
Convergences and divergences with the ground armed conflicts. Questions and challenges.
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Every armed conflict is ruled by the laws and principles of the so-called International Humanitarian Law (Hereinafter referred just as IHL). According to the International Committee of the Red Cross (ICRH), this branch of the International Public Law gathers a variety of rules, whose mandate is to limit the effects of armed conflict for humanitarian reasons.

Which means that in every armed conflict, in principle, the rules and laws of the IHL are applicable. The IHL regulates the military actions that the belligerents in a conflict (Whichever are between States or between them and a non-state armed group) can employ.

Now, we must take in consideration the four fundamental principles of the IHL, which can be paragraphed very briefly in:

- **Military necessity**: IHL do not forbid war, and therefore it allows the belligerents to deploy every military manoeuvre that is necessary to ensure the complete submission of the enemy in the shortest time possible.

- **Distinction**: Without prejudice of the military necessity principle, the belligerents must distinguish between civil and military personnel, and civil and military targets, being only allowed the military manoeuvres that are targeted to the military objectives.

- **Proportionality**: Without affecting the military necessity principle, when the belligerents are due to act in the field, they are constrained to measure the possible advantages that the manoeuvre will give them, in relation to the possible loss of civil lives.

- **Limiting unnecessary suffering**: Without invalidating the military necessity principle, the belligerents are not allowed to employ any kind of weapon that are bound to cause superfluous or unnecessary suffering.

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1. International Comitee of the Red Cross (ICRC). In Spanish: Servicio de asesoramiento en Derecho Internacional Humanitario. “¿Qué es el Derecho Internacional Humanitario?”.

2. At this point, is important the distinction between “International Armed Conflict” and “Non-International armed conflict” whose analysis in deep will be drifted to another possible future text. For the sole end of this article, we will star from the basis of the International Armed Conflict, which group those conflicts that happens between States.

3. As of the distinction made in the latter paragraph, the principles of IHL deserves a specialized and deep analysis, which is not the scope of the present article.
As we can see, although the IHL does not prohibit the armed conflicts (due to the first principle already detailed), the other three principles take care of limiting the execution by imposing variables and prohibitions that must be considered by the commander, so that way they will not violate the IHL when they want to deploy a certain manoeuvre.

In other hand, the IHL also finds its base in positive law sources. In this sense, the four Geneva Conventions that were signed in 1949 and the first, second (1977) and third (2005) protocols shape the normative body of the IHL.

However, these conventional texts expand its regulation mainly to the ground armed conflicts, not happening the same with naval ones, as pointed out by Louise Doswald-Beck “the regulation related to the ground conflicts has been reaffirmed in recent treaties, particularly the two additional protocols of 1977 to the Geneva Conventions, but that has not happened yet to what is applicable to the naval armed conflicts”.

Because of this particularity, to study the international naval conflicts we must deploy a more exhaustive and interpretative task if one wants to understand which rules are relevant and in what way the rules of IHL really impact in the regulation of naval conflicts.

The first legal precedent in the matter is the Declaration of Paris of 1856, which was signed by European countries to eradicate privateering. Privateering was a practice employed during the Crimean Wars (1853 – 1856) which consisted in the authorization made by one State in a conflict to use private ships, allowing private armed ships to attack enemy vessels, or said shortly, employing private vessels in an armed conflict. This declaration consolidated one of the fundamental principles of the international law for naval armed conflicts (According to the doctor Wolff Heintschel von Heinegg) known as “Prize Law”.

Prize Law cannot be found in any of the legal text that regulate the ground armed conflicts and consist in allowing the capture and control of any enemy or neutral vessel, by any part of the conflict.

As a result of this Declaration, in 1907 eight Conventions were adopted in The Hague. Their purpose were to give a sense of normative complexity to the armed conflicts in the sea, however, as pointed out by Doswald-Beck “The 1907 treaties are not
themselves a full codification of the law that applies to naval conflicts, but they indeed explore many subjects such as, the statute of merchant enemy vessels and how they can become targets in the conflict, the use of submarine mines activated through contact and the immunity of some vessels that cannot be captured during the conflict.\(^8\)

Finally, other relevant documents are the 2nd Geneva Convention relative to “the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” and the 1st additional Protocol of 1977 relative to “the protection of the victims of international armed conflicts”. This shows how the legal documents which purpose is the regulation of armed conflicts, only regulates a single portion of the naval warfare in comparison to the ground conflicts.

An example of this statement is the fact that the 1st Protocol only protects the civil population that is on a terrestrial platform in the moment of the attack, and in this sense the article 49 section 2 says “The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.” And section 3 clarifies the scope saying, “The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land.”

However, we cannot diminish the lots of subjects that are indeed regulated in these treaties, for example:

- The obligation for all belligerents to make distinctions between civil and military targets (art. 48 1st Protocol).
- The regulation relative to the special protection from attacks or hostilities against hospital vessels, sanitary ships, costal saving navy and their personnel (art. 22 1st Protocol and Chapter III of the 2nd Convention).
- The regulation destined to protect the wounded, sick and shipwrecked (Chapter II of the 2nd Convention).

Due to the limited and outdated rules relative to naval armed conflicts, some countries have started to develop manuals that worked as a guidance and doctrine source in the eventuality of facing a naval war. In this matter, a source of high relevance is the textbook known as the “San Remo Manual of 1994” which was developed and approved by a group of international naval law experts called by the Institute of International Humanitarian Law of San Remo.

This manual is a non-binding document and therefore it lacks the strength that other texts like the Geneva Conventions may have, however is useful for the comprehension of determinate institutes that make naval armed conflicts a phenomenon of unique nature.

In this sense, is important to recognize some convergences or similarities that can be found between the naval and ground warfare law, and how they are reflected in the Manual of San Remo:

- **Distinction:** The San Remo manual in its Part III designated “Basic rules and target discrimination” says in its paragraph 39 that “(p)arties to the conflict shall at all times distinguish between civilians or other protected persons and combatants and between civilian or exempt objects and military objectives.” Until this point it looks like the exact same principle of distinction narrated moments before, however we must continue the analysis and therefore we can find that there is a certain divergence with the principle of distinction applied to ground conflicts. The San Remo manual in its paragraph 59 states that “enemy merchant vessels may only be attacked if they meet the definition of a military objective in paragraph 40” and then continues to develop the cases where a merchant vessel can be shot down in battle.

- **Military necessity:** The Manual in its paragraph 40 says “(i)n so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

- **Proportionality:** The manual dictates that “an attack shall not be launched if it may be expected to cause collateral casualties or damage which world be excessive in relation to the concrete and direct military advantage anticipated from the attack as a whole” (paragraph 46 section d).

- Limiting unnecessary suffering: The paragraph 42 section a of the manual dictates that “any use of methods or means of warfare which are of a nature to cause superfluous injury or unnecessary suffering are forbidden”.

The latter allows us to conclude that, without prejudice of the IHL scope, which is regulating the armed conflicts, its true that there are substantial differences between ground and naval conflicts, which compiled us to make a different analysis of the rules that may apply in both scenarios, considering not only the divergences in the object of protection, but also the particularities that make the essence of naval conflicts.

I cannot finish this article without mentioning to a subject that is causing a great deal of controversy in either doctrinaire and jurisprudential level, and in which the international law of naval armed conflicts is no exempt and is the use of autonomous ships or vessels to make an attack in the context of an armed conflict. They violate the IHL and in specific, the laws of naval armed conflicts? Are the rules of naval conflicts able to confront the challenge to regulate the unmanned vessels? How can we assign international responsibility in these cases?

These questions are uncertainties that deserves their own space to be fully studied; to comprehend the colliding ideas and search in the own legal text solutions to this great innovation of the warfare of the 21st century (if it can be found), are challenges that must be approached in other time.