

**Contribution to the Second State Consultation on Naval Warfare, 6 November 2025,  
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Thank you for giving me the opportunity to contribute to this State Consultation. I participated in the expert meeting in Jakarta, Indonesia, earlier this year, and have been following the process carefully.

Guiding question 1.2 for Session 3 asks: In what ways do we need to re-evaluate the implementation of **prize measures and related operations**?

I think that the protection of civilians requires a radical rethinking of the traditional law on prize. [I have detailed these suggestions for a re-evaluation in an extensive article '[Booty, Bounty, Blockade, and Prize: Time to Reevaluate the Law](#)', *International Law Studies*, Vol. 97, 2021, 1200-68. Also discussed in almost identical terms as Chapter 8 '[Belligerent Rights and the Future of Naval Economic Warfare](#)' in my Book entitled *War* (2021).]

I would like to make three concrete suggestions here which would undoubtedly lead to better protection of civilians at sea.

These suggestions take the law of prize as a starting point, and address the fact that this old branch of international law is very problematic when applied in today's world. I am not sure that prize law can continue now that recourse to war is no longer an acceptable way to settle disputes. The law of prize accompanied the right of certain states to wage war from a time when war was not outlawed. If states no longer have the right to wage war at will, I do not see how they can retain the accompanying right to seize ships in prize.

**1. There should be no seizure of enemy civilian ships or goods in prize.** The ancient idea that either warring party could seize an enemy merchant ship in a war, and that the seizing state could keep the enemy civilian ship and all the enemy goods it was carrying, makes little sense in the 21<sup>st</sup> century. (For the scope of the rule see [San Remo Manual \(1995\) Paras 135-8.](#))

It is absurd for international law to outlaw aggression, and then, at the same time, say that the aggressors can keep under prize law all they can seize in naval warfare from enemy civilians outside neutral waters. Prize law in naval warfare should be declared obsolete - just as it is in the context of conflict on land (See [Convention respecting the Laws and Customs of War on Land \(1907\) Regulation Article 46](#) 'Private property cannot be confiscated').

Neither the aggressor nor the victim state should be allowed to acquire these civilian prizes. This would save lives at sea, and at the same time, it should be made clear that enemy merchant ships **cannot be attacked** merely for refusing an order to stop and be captured. [San Remo Manual \(1995\) Paras 60-61.](#))

[For completeness, let me mention that prize law is understood to **allow for the destruction** of the enemy civilian merchant cargo ship, as an alternative to adjudication in prize court, where military circumstances preclude this, and where the safety of the passengers and crew has been assured. [San Remo Manual Paras 139 and 140.](#) This should no longer be acceptable.]

Why do I think this matters so much? Continuing to pretend that the law of prize applies, so that all enemy civilian merchant vessels and their crew are considered part of the enemy's war effort, will lead to huge loss of innocent lives. Tens of thousands died at sea in the Second World War

as a result of considering enemy merchant shipping part of the War. Repeating the idea that civilians contribute to the war effort, simply by transporting goods on the high seas, is to erode the cardinal principle that there should be a distinction made between civilians and military objectives.

I think every state here should ask whether it agrees that the law of modern naval warfare should include the idea that **the merchant ships, and their cargoes belonging to its nationals, could be seized and acquired as of right by an enemy nation**. And does it agree that the law today sanctions such seizures under something called the ancient law of prize in naval economic warfare? There are very few instances of prize law having been used since the end of the Second World War.

As things stand, any state could start a war against another state and arguably begin seizing all enemy civilian ships with their cargoes and claim that they had the right to do this because of something called prize law. I would urge the states in the present consultation to be clear that they consider that this law should no longer apply. The 'Humanity in Law' project should not approve this outdated prize law idea of the capture of civilian property at sea. There is no humanity in legally seizing merchant ships, their cargo and crew, and claiming that the property rights have passed to the captor and the crew are to be held as prisoners of war (On the crew being interned as prisoners of war see Geneva Convention III (1949) [Article 4A\(5\)](#)).

**2. There should be no use of force or interception of neutral ships beyond what is necessary for self-defence.** The only excuse for the use of force against neutral shipping should be what is countenanced under the UN Charter as a matter of self-defence. Such an approach has been taken by at least one state when its ships were searched during the Iran-Iraq war in 1986 ([here](#) and [here](#)).

And yet there still seems to be a lingering sense that the traditional law of naval warfare allows an aggressor state to intercept and search neutral ships looking for contraband using force if necessary, and under some circumstances **being entitled to attack neutral shipping** [San Remo Manual \(1995\) Paras 67-8](#) . In my view, the 'Humanity in Law' project should not end up endorsing the right of an aggressor to use force against neutral shipping. If there is to be an attack on neutral shipping this should be in accordance with a rule which confines attacks to enemy military objectives (as for land warfare). There is no need for special naval warfare rules which create vulnerabilities for neutral vessels and their crews and passengers.

**3. There should be no right for any state to acquire neutral ships in prize as their own property.** The ancient rule in prize law, which gave belligerent states the right permanently to acquire neutral ships, is no longer appropriate ([San Remo Manual \(1995\) Para 146.](#)) This consultation can take the opportunity to declare that prize law no longer entitles states to seize and condemn neutral ships in prize court. Neither the aggressors nor the victims of aggression should be awarded prizes in the form of neutral ships.

[Again, for completeness, let me reference that the **destruction of neutral merchant cargo ships** is foreseen as an alternative to adjudication in prize court, where military circumstances preclude this, and where the safety of the passengers and crew has been assured. [San Remo Manual Paras 151 and 152.](#) This should no longer be acceptable.]

In fact, no state should be allowed to acquire merchant ships that belong to foreigners (whether they are enemies or neutrals) just by referencing ancient prize law and seizing them in war. This

is not only a point about property rights, and the protection of the military - civilian distinction, in seizing the ship and the civilian crew there will be an increased risk of violence and casualties.

I would suggest that these three simple proposals outlined above would go a long way to ensuring that future naval warfare does not repeat much of the inhumanity of past conflicts. There is a real opportunity to ensure humanity through law here. Please take it.

Thank you.