

Helsinki Principles on the Law of Maritime Neutrality

1. General provisions

1.1. Definition

For the purposes of the following Principles, 'neutral State' means any State which is not party to an international armed conflict; 'belligerent' means a State which is a party to that conflict; 'neutral waters' comprise the internal waters of a neutral State, its territorial sea, and, where applicable, its archipelagic waters within the meaning of Articles 9 and 50 of the United Nations Convention on the Law of the Sea of 1982 (hereinafter: UNCLOS); prima facie 'neutral ships' are ships flying the flag of a neutral State.

1.2 The Effect of the Charter of the United Nations

Nothing in the present Principles shall be construed as implying any limitation upon the powers of the Security Council under Chapters VII and VIII of the United Nations Charter. In particular, no State may rely upon the Principles stated herein in order to evade obligations laid upon it in pursuance of a binding decision of the Security Council. Nor shall the present principles be construed as denying the inherent right of individual or collective self-defence recognized in Article 51 of the Charter.

1.3 General Rule

The relations between a party to a conflict and the neutral State, are, as a matter of principle, governed by the law of peace. These relations may, however, be modified to the extent that there exist other principles or rules of international law to that effect, including those contained in the present Principles.

1.4 Inviolability of Neutral Territory

Belligerents must respect the inviolability of neutral territory. In consequence, belligerents may not conduct hostilities in neutral territory and in neutral waters, except in individual or collective self-defence and subject to Principle 2.1. In conducting hostilities elsewhere, belligerents must exercise due regard to prevent to the maximum extent possible collateral damage on neutral territory, neutral waters or the airspace over these areas.

2. Belligerent activities in neutral waters

2.1 Hostilities in neutral waters

If neutral waters are permitted or tolerated by the coastal State to be used for belligerent purposes, the other belligerent may take such action as is necessary and appropriate to terminate such use.

2.2 Twenty-four hours rule

The right of passage and sojourn of belligerent warships in neutral waters and ports is governed by the relevant provisions of The Hague Convention XIII of 1907, which reflect customary law. In particular, the duration of such passage and sojourn must not exceed 24 hours, except where the condition of the ship or the sea do not permit the ship to leave the neutral waters. The neutral State may establish different time limits, provided that the principle of impartiality is observed and the measure is given due publicity. In case of a violation, the neutral State must take measures to terminate this violation.

2.3 Suspension of passage

The neutral State may suspend temporarily in specified areas of its territorial sea and archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security, provided that the principle of impartiality is observed, and the suspension is duly published.

2.4 Special rights of passage

The 24 hour limitation does not apply to innocent passage through archipelagic waters, to transit passage through international straits or archipelagic sea lanes passage if the time ordinarily needed for this passage is more than 24 hours. In this case, the passage is subject to the relevant rules of international law. In particular, it must be continuous and expeditious.

3. Hostilities on the High Seas

3.1 The Conduct of Hostilities

In conducting hostilities on the high seas, the parties to the conflict must have due regard to the exercise of the freedoms of the high seas by neutral States. In particular, neutral shipping and fishing activities may be limited pursuant to these Principles, but in no case completely excluded.

3.2 Areas of naval hostilities

Neutral ships should be aware of the risk and peril of operating in areas where active naval hostilities take place. Belligerents engaged in naval hostilities must, however, take reasonable precautions including appropriate warnings, if circumstances permit, to avoid damage to neutral ships.

3.3 Special Zones

Subject to Principle 5.2.9 and without prejudice to the rights of commanders in the zone of immediate naval operations, the establishment by a belligerent of special zones does not confer upon that belligerent rights in relation to neutral shipping which it would not otherwise possess. In particular, the establishment of a

special zone cannot confer upon a belligerent the right to attack neutral shipping merely on account of its presence in the zone. However, a belligerent may, as an exceptional measure, declare zones where neutral shipping would be particularly exposed to risks caused by the hostilities. The extent, location and duration must be made public and may not go beyond what is required by military necessity, regard being paid to the principle of proportionality. Due regard shall also be given to the rights of all States to legitimate uses of the seas. Where such a zone significantly impedes free and safe access to the ports of a neutral State and the use of normal navigation routes, measures to facilitate safe passage shall be taken.

4. Sea Areas Subject to Limited Jurisdiction

Exclusive economic zone, fishery zones and continental shelf

When conducting hostilities, the belligerents shall have due regard for the neutral States' sovereign and jurisdictional rights over their exclusive economic zone, fishery zones or in sea areas above their continental shelf, for the preservation of the marine environment and for underwater cultural property in neutral States' territorial sea and contiguous zone. Belligerents shall, in particular, have due regard for artificial islands, installations, structures and safety zones established by neutral States in their exclusive economic zone and on their continental shelf.

5. Neutral Ships and Activities

5.1 Limitations on attacks

5.1.1 Neutral ships in belligerent ports

A neutral ship in a belligerent port enjoys the same protection against attacks as civilian objects in land warfare. Neutral ships exempt from attack, e.g. hospital ships, retain that exemption in belligerent ports. Neutral warships in belligerent ports retain their right of self-defence.

5.1.2 Protection against attacks

(1) Subject to Principle 5.2, neutral ships enjoy freedom of navigation according to the law of the sea regardless of the existence of an armed conflict and even if they carry goods exported from a belligerent State to a neutral State.

(2) Merchant ships flying the flag of a neutral State may not be attacked except as provided in paragraphs 3 and 4.

(3) Merchant ships flying the flag of a neutral State may be attacked if they are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search, capture or diversion.

(4) Merchant ships flying the flag of a neutral State may be attacked if they

- (a) engage in belligerent acts on behalf of the enemy;
- (b) act as auxiliaries to the enemy's armed forces;
- (c) are incorporated into or assist the enemy's intelligence system;
- (d) sail under convoy of enemy warships or military aircraft; or
- (e) otherwise make an effective contribution to the enemy's military action, e.g., by carrying military materials, and

it is not feasible for the attacking forces to first place passengers and crew in a place of safety. Unless circumstances do not permit, they are to be given a warning, so that they can re-route, off-load, or take other precautions.

(5) Merchant ships flying the flag of a neutral State and carrying only civilian passengers, e.g., liners, may not be attacked but must be diverted to an appropriate port to complete capture, unless they are incorporated into or assist the enemy's intelligence system.

(6) Ships flying the flag of a neutral State and entitled to exemption from capture, e.g., hospital ships, may not be attacked if they are innocently employed in their normal role, do not commit acts harmful to the enemy, immediately submit to identification and inspection when required, and do not intentionally hamper the movement of combatants and obey orders to stop or to move out of the way when required.

5.1.3 Precautions in attacks

In conducting attacks by whatever means, the armed forces of a party to the conflict must take all feasible precautions in order to avoid that

- the attack is directed against a neutral vessel or aircraft,
- lawful neutral activities on the high seas or in other sea areas where the neutral State possesses sovereign rights are unduly endangered.

5.2 Belligerent control over neutral shipping

5.2.1 Visit and search

As an exception to Principle 5.1.2. paragraph 1 and in accordance with Principle 1.3 (2nd sentence), belligerent warships have a right to visit and search vis-à-vis neutral commercial ships in order to ascertain the character and destination of their cargo. If a ship tries to evade this control or offers resistance, measures of coercion necessary to exercise this right are permissible. This includes the right to divert a ship where visit and search at the place where the ship is encountered are not practical.

5.2.2 Seizure and condemnation

Cargo constituting contraband and a ship carrying such cargo may be seized by a belligerent, brought before a prize court and condemned. Confiscation without a prize court decision is prohibited.

5.2.3 Contraband

Contraband are goods ultimately destined to the enemy of a belligerent which are designed for the use of war fighting and other goods useful for the war effort of the enemy.

5.2.4 Enemy destination

In cases of doubt concerning the enemy destination of goods or their use for enemy military purposes, the burden of proof lies with the captor State. Fuel or other material which could be used for energy production purposes destined for a belligerent constitutes contraband, unless a non-military destination is clearly established.

5.2.5 Exports

Goods with a neutral destination coming from a belligerent port do not constitute contraband.

5.2.6 Navicert

In order to simplify control procedures in respect of neutral shipping, a party to the conflict may issue an inspection document (navicert) to a neutral ship in the port of loading. This navicert constitutes proof that the ship in question is not carrying contraband if controlled by the party having issued the document. The navicert is not binding on the other party, but the fact that a ship carries a navicert issued by another party may not be used to the ship's disadvantage.

5.2.7 Public ships not subject to visit and search

A neutral warship or other governmental ship operated for non-commercial purposes is not subject to the right of visit and search or the rights described in Principle 5.2.10.

5.2.8 Immunity of convoys

The same rule stated in Principle 5.2.7 applies to a convoy of merchant ships flying a neutral flag and accompanied by one or more neutral warships. The commander of the convoy, or the neutral State whose flag the convoying warships fly, has the responsibility to certify that no contraband is carried in the convoy. The neutral flag State has to take all reasonable steps to ensure that the certificate is correct.

5.2.9 Transit

Neutral ships, whether commercial or warships, enjoy the right of transit passage through international straits, the right of archipelagic sea lanes passage through archipelagic waters and the right of innocent

passage through the territorial sea or archipelagic waters of belligerents, regardless of the existence of an armed conflict. A coastal State may, however, subject such rights to reasonable defence requirements. The belligerent may not close international straits and archipelagic sea lanes.

5.2.10 Blockade

Blockade, i.e. the interdiction of all or certain maritime traffic coming from or going to a port or coast of a belligerent, is a legitimate method of naval warfare. In order to be valid, the blockade must be declared, notified to belligerent and neutral States, effective and applied impartially to ships of all States. A blockade may not bar access to neutral ports or coasts. Neutral vessels believed on reasonable and probable grounds to be breaching a blockade may be stopped and captured. If they, after prior warning, clearly resist capture, they may be attacked.

5.3 Relief

A blockade may not be used to prevent the passage of relief consignments which has to be free according to the applicable rules of international humanitarian law, in particular those contained in Articles 23, 59 and 61 of the Fourth Geneva Convention or Articles 69 and 70 of Protocol I Additional to the Geneva Conventions.

6. The Protection of Neutral Shipping and Other Neutral Activities

6.1 Right of Convoy

The right of neutrals to convoy is recognized. Consequently, neutral States have the right to accompany commercial ships flying their own or another neutral State's flag by their warships. The exercise of a right of innocent passage, transit passage or archipelagic sealanes passage by such convoys does not constitute a forbidden use of force.

6.2 Mines

Neutral warships have the right to remove mines laid by a belligerent in violation of applicable rules of international law, in particular if they illegally hamper neutral shipping, on the high seas, in an exclusive economic zone (including its own) or in waters above the continental shelf. They may not do so within the territorial sea of a belligerent State, except to the extent necessary for the exercise of the right of transit passage or archipelagic sea lanes passage.

7. Land-locked States

Land-locked States

If a port in one belligerent State is used for the purposes of transit to and from a neutral landlocked State under any applicable international agreement or arrangement, the other belligerents shall not prevent ships carrying goods destined for, or exported by, the neutral landlocked State from leaving or entering the port. Nor shall the belligerent State through whose port such goods transit take measures to interfere with their passage other than in accordance with Article 125 of the UNCLOS.