

# Neutral Ships in War - Legal Protection, Blockades, and India's Options

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## Neutral Ships Latest News

- The deaths of three Indian seafarers in recent attacks on merchant tankers have raised serious legal questions about whether neutral ships can be lawfully targeted during armed conflict.

## Neutral Ships and International Law

- In an international armed conflict, neutral merchant vessels are generally protected from attack. This protection comes from a combination of:
  - International Humanitarian Law (IHL) or the law of armed conflict,
  - The law of naval warfare, and
  - The law of the sea, especially the principles reflected in **UNCLOS**.
- Together, these legal frameworks regulate how hostilities at sea are conducted, what may be targeted, and how neutral shipping must be treated.

## Two Main Legal Frameworks

- The first is the law of naval warfare, which governs military conduct at sea. It regulates:
  - Attack on vessels,
  - Visit and search,
  - Capture and destruction after capture,
  - Naval blockades,
  - Rights and duties of belligerents and neutral states.
- The second is the law of the sea, mainly reflected in the UNCLOS. It defines:
  - Territorial sea,
  - Exclusive Economic Zone (EEZ),
  - High seas,
  - International straits,
  - Transit passage rights.
- Even where some states are not parties to UNCLOS, many of its rules are treated as customary international law.

## Protection of Neutral Merchant Ships

- Under IHL, civilians and civilian objects are generally protected from attack. This includes merchant ships, oil tankers, container ships, pipelines, submarine cables, ships carrying food, fertiliser, or commercial cargo.
- Neutral merchant vessels also benefit from the law of maritime neutrality, which protects neutral commerce from unnecessary interference while requiring neutral states not to directly aid a belligerent's war effort.
- In areas like the Strait of Hormuz, neutral vessels remain entitled to transit passage, even during conflict.

## When Neutral Ships Can Lose Protection

- This protection is not absolute. Neutral merchant vessels may lose protection in limited circumstances.
- The most widely cited guide here is the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994). It allows action against neutral merchant vessels if they are reasonably believed to be:
  - Carrying contraband,
  - Breaching a lawful blockade,
  - Refusing to stop after a warning,
  - Resisting visit, search, or capture,
  - Or otherwise making an effective contribution to enemy military action.
- The basic rule is that attacks may be directed only against military objectives. A vessel becomes a military objective when its destruction, capture, or neutralisation offers a definite military advantage and it effectively contributes to military action.
- So, neutral ships do not lose protection merely because they are commercially active. There must be a much stronger legal basis.

## Can Oil Tankers Be Attacked?

- Oil may qualify as contraband in certain cases, especially if it is clearly destined for enemy-controlled territory or directly supports a military effort.
- But that does not automatically make every oil tanker a lawful military target.
- The more difficult question is whether a tanker itself qualifies as a military objective.
- Under the traditional view, commercial exports do not become lawful targets merely because they generate revenue for a belligerent state.
- There must be a direct and effective contribution to military action.
- However, some states, especially the U.S., have promoted a broader “war-sustaining” theory, under which objects that generate revenue sustaining an enemy’s war effort may also become targetable. This approach remains controversial in international law.

## What About Naval Blockades?

- A blockade is recognised under the law of naval warfare as a belligerent tool, but only if it is:
  - Publicly declared,
  - Effective,
  - Applied impartially to all vessels,
  - And enforced according to international law.
- Neutral ships can be stopped or even attacked if they are knowingly breaching a lawful blockade, but this raises an additional legal issue: whether the blockade itself is lawful under the UN Charter.
- That is where ***jus ad bellum*** and ***jus in bello*** must be distinguished:
  - *Jus ad bellum* concerns the legality of using force in the first place.
  - *Jus in bello* concerns the legality of conduct during war.
  - A blockade may satisfy technical rules of naval warfare, but still be unlawful if the broader use of force lacks justification under the UN Charter. Unless there is:
    - UN Security Council authorisation, or
    - A valid claim of self-defence under Article 51,
    - The use of force may itself be unlawful.
- This matters because belligerent rights like blockade enforcement cannot automatically override the UN Charter’s prohibition on the use of force.

## India’s Legal Options

- The deaths of Indian seafarers raise not just a diplomatic issue, but a legal one.
- Under the doctrine of diplomatic protection, a state can take up claims on behalf of its nationals if they are injured by an internationally wrongful act. India, therefore, has the legal standing to:
  - Seek explanations,
  - Demand accountability,
  - Call for an independent investigation,
  - Seek compensation,
  - And raise the issue in relevant international forums.
- Important legal questions remain:

- What intelligence supported the attack?
- Were the vessels warned adequately?
- Could less intrusive measures, such as boarding, diversion, or capture, have been used?
- Were civilians given a fair chance to protect themselves?
- These questions go directly to the principles of distinction, proportionality, necessity, and precaution under IHL.

**Source: TH**

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