

Between warships and merchant ships: The legal status, operational functions and targeting rules of auxiliary vessels

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Abstract

Auxiliary vessels occupy an ambiguous space in the law of naval warfare. They possess neither the belligerent rights of warships nor the civilian immunity of merchant ships, yet they are generally treated as military objectives that may be attacked on sight. Despite their growing operational significance, international law provides no treaty definition of auxiliary vessels, and State practice diverges widely on what counts as an auxiliary and how such vessels should be treated in armed conflict at sea.

* The author is grateful to Bruno Demeyere and the anonymous peer reviewers for their constructive comments on earlier drafts of this article. The views expressed are solely those of the author and do not necessarily reflect the official policy or position of the Indonesian Navy, the government of Indonesia or the Australian National Centre for Ocean Resources and Security, University of Wollongong.

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This article examines the legal status of auxiliary vessels, drawing on treaty law, restatements and contemporary practice. Particular attention is given to the open question of whether auxiliary vessels are military objectives by their nature, as several manuals assume, or instead by their purpose or use. The absence of clear criteria – together with the unsettled issues of exclusive control, crew composition, the limits of support functions, targeting, and self-defence considerations – creates practical and legal risks for both belligerents and neutrals. Greater clarity is needed to distinguish auxiliary vessels from ordinary merchant ships performing auxiliary functions and to articulate the limits of support activities that may lawfully be undertaken by vessels without warship status.

Keywords: auxiliary vessels, naval auxiliaries, law of naval warfare, warships, international humanitarian law, belligerent rights, military objectives.

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Introduction

In February–March 2024, the United States and the United Kingdom conducted joint mine countermeasures exercises.¹ The United States deployed two mine countermeasures ships, USS *Gladiator* and USS *Sentry*, while the United Kingdom deployed RFA *Cardigan Bay* – a vessel that is not a warship but serves as an auxiliary. The fact that these three platforms could participate in comparable operational roles underscores a deeper legal question: how far may non-warship vessels lawfully engage in naval operations during armed conflict? If auxiliary vessels may perform many of the same missions as warships, what then distinguishes their legal status, both in rights and in vulnerabilities?

Auxiliary vessels sit between warships, which enjoy the exclusive rights to conduct hostilities, and merchant vessels, which benefit from presumptive protection unless and until they become military objectives by their use. Modern naval practice relies increasingly on auxiliaries, whether for logistics, intelligence support, mine countermeasure operations, medical work, repair tasks, or any of a wide range of other activities that often place them close to hostilities. Yet international law offers no generally applicable treaty definition of auxiliary vessels, no criteria for acquiring or losing auxiliary status, and no guidance on auxiliaries' permitted roles in war. Different States and different legal manuals adopt different definitions, complicating the determination of whether auxiliaries are military objectives by their "nature" or only by their "purpose" or "use".

A wider body of traditional naval warfare rules – including the law of blockade, visit and search, prize law, neutrality, and the regulation of naval operations in

1 US Naval Forces Central Command, "US and UK Forces Conducted a Bilateral Mine Countermeasure Exercise, Poseidon's Chalice", 7 April 2024, available at: www.cusnc.navy.mil/Media/News/Display/Article/3733252/us-and-uk-forces-conducted-a-bilateral-mine-countermeasure-exercise-poseidons-c/ (all internet references were accessed in February 2026).

neutral waters – provides the general background in which auxiliary vessels operate, but this article does not attempt to survey that broader framework. Its focus is narrower and more specific, addressing the legal status of auxiliary vessels, the circumstances under which they become targetable as military objectives, the limits of the functions they may perform during armed conflict, the scope of their self-defence rights, and the implications of contemporary State practice. These issues remain under-developed despite the increasing operational reliance on auxiliaries in modern navies.

This article examines the legal status of auxiliary vessels under the law of naval warfare. It first surveys definitional approaches in treaties, restatements and military doctrine, and then analyzes the implications of auxiliary status for belligerent rights, targeting, support functions and self-defence. The article argues that the current absence of uniform standards regarding auxiliary vessels – combined with inconsistent State practice – creates uncertainty for commanders and legal advisers, particularly regarding when auxiliaries may be attacked without warning and what support roles they may lawfully undertake. It further suggests that the widespread assumption in several modern manuals that auxiliary vessels are military objectives “by nature” warrants reconsideration. A more balanced approach – one that better reflects operational practice – would be to assess auxiliary vessels as military objectives on the basis of their purpose or use rather than on the assumption of an inherent status.

The first substantive section of the article discusses the definitional issues surrounding auxiliary vessels. The second section examines the requirements for warship status under Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships (Hague Convention VII) and their relevance for distinguishing auxiliaries from other State vessels.² The third section presents several examples of contemporary State practice, while the fourth evaluates the scope of belligerent rights and the limits of auxiliary functions. The fifth section considers challenges relating to targeting, exclusive control and the duration of auxiliary status, and the sixth addresses self-defence. Finally, the article concludes with observations on the need for clearer standards and interpretive guidance for auxiliary vessels in modern naval conflict.

Definition of auxiliary vessels or naval auxiliaries

Auxiliary vessels (or naval auxiliaries) occupy an ambiguous position in the law of naval warfare. They are neither warships – with the latter’s recognized belligerency rights – nor ordinary merchant ships, yet contemporary manuals generally assume that they may be attacked on sight as military objectives by their

2 Hague Convention (VII) relating to the Conversion of Merchant Ships into War-Ships, 205 CTS 319, 18 October 1907 (entered into force 26 January 1910) (Hague Convention VII).

nature.³ They may provide “direct support”,⁴ but they do not hold any entitlement to conduct hostilities. What exists instead is a scattered and inconsistent set of State practices and non-binding manuals that approach the concept in different ways.

The concept itself is not new. During the Second Hague Peace Conference of 1907, the idea of auxiliary vessels appeared repeatedly,⁵ although it never crystallized into treaty language. Lord Reay, for instance, suggested clarifying the position of vessels “intended to become warships” but ultimately withdrew the proposal, leaving the term “auxiliary fleet” undefined.⁶ The fact that the term continued to be used – without ever being codified – suggests that auxiliaries entered State practice by default rather than by design. However, their legal status has never been firmly anchored in treaty law.

The only treaty that defines auxiliary vessels is the 1936 Convention Regarding the Regime of the Straits (Montreux Convention),⁷ and even then, the definition is clearly tailored to the specific purpose of regulating transit through the Straits (the Bosphorus and the Dardanelles). It is framed exclusively for a geographical and functional context concerned with peacetime and wartime passage rather than the status or the allocation of rights and obligations of auxiliaries, and it therefore cannot serve as a general definition for the law of naval warfare. In the modern era, the lack of a universal definition becomes evident when comparing the main restatements and manuals.

The 1994 *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (San Remo Manual) defines an auxiliary vessel as “a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a state and used for the time being on government non-commercial service”.⁸ This

3 Newport Manual Expert Group, *The Newport Manual on the Law of Naval Warfare*, 2nd ed., US Naval War College, Newport, RI, 2025 (2025 Newport Manual), § 8.5.1, p. 149, and § 8.6.1, p. 154; Louise Doswald-Beck (ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Cambridge University Press, Cambridge, 1995 (adopted in 1994) (San Remo Manual), para. 65.

4 2025 Newport Manual, above note 3, § 3.4, p. 51.

5 During the discussions for Hague Conventions VI, VII and XIII. See Alexander Pearce Higgins, *The Hague Peace Conferences and Other International Conferences concerning the Laws and Usages of War: Texts of Conventions with Commentaries*, Cambridge University Press, Cambridge, 1909, available at: <https://oll.libertyfund.org/title/higgins-the-hague-peace-conferences-concerning-the-laws-and-usages-of-war?html=true>.

6 *Ibid.*

7 See Convention Regarding the Regime of the Straits (Montreux Convention), 173 LNTS 213, 20 July 1936 (entered into force 9 November 1936), Annex II(B)(6), stating that “[a]uxiliary Vessels are naval surface vessels the standard displacement of which exceeds 100 tons (102 metric tons), which are normally employed on fleet duties or as troop transports, or in some other way than as fighting ships, and which are not specifically built as fighting ships, provided they have none of the following characteristics: (a) Mount a gun with a calibre exceeding 6.1 in. (155 mm); (b) Mount more than eight guns with a calibre exceeding 3 in. (76 mm.); (c) Are designed or fitted to launch torpedoes; (d) Are designed for protection by armour plate; (e) Are designed for a speed greater than twenty-eight knots; (f) Are designed or adapted primarily for operating aircraft at sea; (g) Mount more than two aircraft-launching apparatus.”

8 San Remo Manual, above note 3, para. 13(h).

relatively minimal definition is reflected in several States' manuals, including those of the United States,⁹ Australia,¹⁰ New Zealand¹¹ and the United Kingdom.¹²

In 2023, the first edition of the *Newport Manual on the Law of Naval Warfare* (Newport Manual) introduced an additional requirement not found in other manuals – namely, that auxiliary vessels be “under the command of a civilian master and not a commissioned officer”.¹³ This strict formulation created a significant divergence from the San Remo Manual and from the practice of many States, both of which recognize that civilian- and military-commanded vessels may be considered auxiliaries. The 2025 second edition of the Newport Manual, however, softens this position, stating instead that auxiliary vessels “are usually under the command of a civilian master”.¹⁴ By recasting civilian command as a description of common practice rather than a mandatory criterion, the 2025 revision narrows the doctrinal gap between the Newport and San Remo definitions and reduces the number of vessels excluded from the auxiliary category solely because they are commanded by military officers.

Germany adopts a different approach: its manual defines auxiliary vessels as government-owned or -operated ships with civilian crews,¹⁵ while reserving the term “auxiliary warships” for merchant ships converted into warships that are commanded and crewed by military personnel.¹⁶ Under the German model, such vessels are considered warships in the legal sense.

While warships must meet the cumulative criteria found in Hague Convention VII,¹⁷ auxiliary vessels have no equivalent set of formal requirements.¹⁸ A vessel may become an auxiliary simply by being placed under military control (or even government control) and used for non-commercial service. No commissioning process is needed, no distinctive markings are required, and there is no obligation to notify other States. This flexibility results in broad variation among States as to what counts as an auxiliary vessel.

The absence of a universal definition makes auxiliary vessels a status category that is recognized in practice but lacks a clear legal foundation. Some States

9 US Navy, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M, Newport, RI, 2022 (US Commander's Handbook), § 2.3.1.

10 Australian Defence Force, *Law of Armed Conflict*, ADDP 06.4, Canberra, 2006 (Australian Manual), para. 6.6.

11 New Zealand Defence Force, *Manual of Armed Forces Law*, Vol. 4: *Law of Armed Conflict*, Wellington, 2017, para. 10.2.1.

12 UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, JSP 383, 2004 (UK Manual), para. 13.5, p. 349.

13 Newport Manual Expert Group, *The Newport Manual on the Law of Naval Warfare*, 1st ed., US Naval War College, Newport, RI, 2023 (2023 Newport Manual), § 3.4, p. 45.

14 2025 Newport Manual, above note 3, § 3.4, p. 51.

15 German Federal Ministry of Defence, *Humanitäres Völkerrecht in bewaffneten Konflikten [Law of Armed Conflict Manual]*, ZDv A-2141/1, Berlin, 2018 (German Manual), para. 1004. The German Manual states that crews are civilian; the word “crews” in the German Manual might also include the master of the ship as well as the crew.

16 *Ibid.*, para. 1003, p. 140.

17 See Hague Convention VII, above note 2.

18 The requirements of warships will be discussed in detail in the following section.

treat auxiliaries as being functionally close to warships, others consider them closer to government service vessels, and still others rely on a case-by-case assessment. The divergence between the San Remo definition, the more restrictive 2023 Newport definition (and its 2025 revision) and Germany's distinct approach shows that "auxiliary vessel" is not a settled legal term. It is closer to a floating concept that is shaped, sometimes quite inconsistently, by national practice.

This definitional uncertainty then spills over into more substantive questions. Are auxiliary vessels military objectives "by nature"? Does their status depend on their purpose, their actual use, or some inherent quality? What is the legal consequence of being under "exclusive control" of the armed forces? And how does one distinguish an auxiliary vessel from a merchant ship that merely performs auxiliary functions "for the time being"?

In short, although the idea of naval auxiliaries is deeply rooted in State practice, the absence of a treaty definition and the inconsistencies between modern manuals leave the category legally unstable. This uncertainty becomes even more consequential when assessing auxiliaries' relationship with warships under Hague Convention VII, the scope of their permissible support functions, and whether their status alone justifies treating them as military objectives during naval warfare.

This article does not advance its proposals as definitive statements of *lex lata*. Rather, where the positive law remains under-specified, the analysis is offered as interpretive guidance for the development and revision of national military manuals – an incremental process that may, over time, contribute to the clarification of customary international law. In using analogy, the article proceeds with restraint: analogy cannot substitute the recognized sources of international law, but it may serve as an interpretive aid where the law contains genuine lacunae.

Auxiliary vessels, warships and Hague Convention VII

Before analyzing auxiliary vessels in greater depth, it is necessary to revisit the basic distinction between warships and auxiliary vessels. Unlike auxiliary vessels (which lack a treaty definition), warships are governed by a relatively clear and long-standing treaty regime. Although the 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) contain definitions of warships, however, both instruments expressly limit those definitions to the purposes of their respective conventions: Article 29 of UNCLOS contains a definition formulated within a general law of the sea framework, while Article 8(2) of the Convention on the High Seas is likewise confined to the scope of that treaty.¹⁹ Since this article examines warships in relation to their exclusive rights to directly participate in hostilities (something auxiliary vessels may not lawfully do), the 1907 Hague Convention VII definition is more appropriate. Hague Convention VII is the binding instrument

19 Convention on the High Seas, 450 UNTS 11, 29 April 1958 (entered into force 30 September 1962), Art. 8; United Nations Convention on the Law of the Sea, 1833 UNTS 3, 10 December 1982 (entered into force 16 November 1994) (UNCLOS), Art. 29.

that sets out the formal criteria for the conversion of merchant vessels into warships, and, by implication, identifies what counts as a warship under international law.²⁰ Since warships possess exclusive belligerent rights, the criteria determining their status must be satisfied cumulatively. The very existence of this treaty framework reflects the historical abolition of privateering and the corresponding need to cabin belligerent authority within a professional naval service.

Hague Convention VII's requirements are relatively straightforward. A warship must be commanded by a commissioned officer;²¹ its crew must be subject to military discipline; it must bear external marks distinguishing it from warships of other nationalities;²² and it must be included on a list of State warships or otherwise publicly announced. Notably, there is no requirement regarding tonnage, armament or particular technical capabilities. In practice, it is quite easy for a State to convert almost any platform into a warship if it wishes to do so. Conversely, where a State-owned vessel cannot satisfy these cumulative criteria (most importantly, the personnel requirements), it cannot be given warship status and may instead be designated an auxiliary vessel.

The personnel requirement is, in practice, the most demanding. A vessel commanded by a civilian master and crewed by civilians cannot qualify as a warship, even if it otherwise possesses sophisticated sensors, weapon systems or naval communications. Conversely, a vessel of modest tonnage may become a warship if its command and crew arrangement satisfies the personnel requirement and the vessel displays appropriate external marks. This flexibility allows States to tailor their fleets according to operational needs. A vessel that is not intended to exercise belligerent rights may simply be placed under auxiliary status. A vessel intended to conduct belligerent operations, even temporarily, must satisfy the Hague Convention VII criteria.

Under Hague Convention VII, a State that converts a merchant ship into a warship must announce such conversion.²³ The purpose of this obligation is to ensure clarity for neutral States and enemy belligerents.²⁴ However, the

20 For the legal status of Hague Convention VII, especially regarding the announcement of conversion, see Kresno Buntoro and Pornomo Rovani Astri Yoga, "Making a Warship: Ceremony, Command, and Legal Recognition at Sea," *Sanremo Review*, 4 November 2025, available at: <https://iihl.org/making-a-warship-ceremony-command-and-legal-recognition-at-sea/>.

21 With respect to the term "commissioned" in Article 3, practice suggests that international law may place greater emphasis on whether the commander is appointed by the State rather than on formal commissioning as such. At the same time, Article 29 of UNCLOS continues to require that a warship be under the command of "an officer duly commissioned by the government of the State", indicating that the concept has not been displaced in modern treaty law. See Convention on the High Seas, above note 19; UNCLOS, above note 19.

22 This provision requires warships to bear external marks serving to identify a vessel as a warship of a particular State vis-à-vis other States. Although in practice some States use markings to differentiate between categories of their own government vessels, such as the use of pendant and ensign, the treaty text is framed in terms of national identification rather than internal classification. See Institute of International Law, *Manual of Naval War*, Oxford, 1913 (Oxford Naval Manual), Art. 2(1). It is not the purpose of the present article to discuss this issue in depth; the article adopts the inter-State understanding.

23 Hague Convention VII, above note 2, Art. 6.

24 K. Buntoro and P. R. A. Yoga, above note 20.

announcement obligation has no parallel in the context of auxiliary vessels – their conversion does not require notification, and there is no treaty requirement to maintain a list of auxiliaries or to distinguish them visually. This omission may not matter in peacetime, but in wartime it creates uncertainty for belligerents attempting to distinguish between warships, auxiliaries and merchant ships.

Historically, States were more inclined to broaden the category of warships, given the legality of prize capture and the operational need for a wider class of vessels authorized to exercise belligerent rights. Today, with the decline of prize-taking and the high cost of maintaining fully commissioned warships, many States adopt the opposite tendency: they prefer to keep a substantial number of State-owned or State-operated vessels in an auxiliary status. The United States, for example, regularly employs civilian-crewed auxiliary vessels under the Military Sealift Command (MSC), converting them into warships only when operational requirements demand. The logic is largely economic: military personnel are expensive, and the use of civilian-crewed auxiliaries under the MSC allows the US Navy to reduce personnel costs and manpower burdens.²⁵

This dynamic demonstrates the functional flexibility built into the Hague Convention VII framework. States may move a vessel between statuses depending on operational needs, but only the warship status carries the legal entitlement to conduct hostilities. Auxiliary status operates as a legal “middle space” – more than a merchant vessel but less than a warship. The absence of a notification requirement, however, creates an element of opacity: whereas warship status must be affirmatively asserted and is internationally recognizable, auxiliary status may be applied, altered or withdrawn without any formal process.

The lack of a unified definition of auxiliary vessels, combined with the rigid definitional structure of warships under Hague Convention VII, thus creates a gap in the law. Auxiliary vessels may support naval operations in ways that bring them close to the conduct of hostilities, yet they do not meet the criteria to lawfully exercise belligerent rights.²⁶ State practice further blurs the distinction between categories. Vessels performing functionally identical tasks may be classified very differently in law: for example, the United Kingdom deploys Royal Fleet Auxiliary (RFA) vessels for mine countermeasure support, while the United States performs comparable functions using commissioned warships, such as USS mine countermeasure vessels.²⁷ Similarly, US MSC ships operate as auxiliary support vessels without warship status,²⁸ whereas Germany assigns analogous logistical functions to vessels that are legally classified as warships.²⁹ This functional convergence, combined with

25 Gregory P. Belanger, *Civilian Mariners on Warships: Progress or Piracy?*, US Army War College, Carlisle Barracks, PA, 2007.

26 Oxford Naval Manual, above note 22, Art. 12.

27 US Naval Forces Central Command, above note 1.

28 For example, USNS *Big Horn*, an auxiliary replenishment oiler, has no warship status. See Alex Pape, *Janes Fighting Ships 2023–2024*, Janes Information Group, London, 2023, p. 947.

29 German Manual, above note 15, para. 1003, pp. 140–141.

divergent legal classification, obscures the boundary between warships and auxiliary vessels.

The distinction between warships and auxiliary vessels, and the uncertainty surrounding it, is central to the analysis presented in this article. The divergence between States' practices regarding auxiliary vessels is not merely a technical variation; it has direct implications for the status of such vessels as potential military objectives, for the legality of certain support functions, and for the relationship between auxiliary vessels and the law of maritime neutrality. It is in this doctrinal space – between the rigid treaty regime applicable to warships and the flexible, loosely defined category of auxiliaries – that many of the contemporary challenges arise.

Practices of naval auxiliaries by States in the modern era

States employ auxiliary vessels in different ways, and the principal divergence concerns crewing arrangements. In some navies (such as that of the United Kingdom), auxiliary vessels are commanded by merchant marine officers and manned entirely by civilian crews, while other States employ military personnel as commanders and crew. The United States uses both systems: most of its naval auxiliaries are civilian-crewed under the MSC, but the US Army also operates State-owned vessels manned by uniformed personnel. In still other States, ships with no direct combat function are nonetheless commissioned as warships, not auxiliaries. Although such vessels may perform auxiliary functions, their legal status is that of warships because they fulfil the requirements of Hague Convention VII and are expressly designated by their governments as warships.

This section outlines the practices of several States whose examples are publicly available and illustrative of the definitional and conceptual challenges surrounding auxiliary vessels. The selection reflects the unevenness of publicly available doctrine in this area. While some States articulate detailed legal positions on auxiliaries, many – including major naval powers – address such vessels only obliquely or subsume them within broader categories of State-owned shipping or naval support vessels. This asymmetry in accessible practice is itself indicative of the under-theorization of auxiliary vessels in contemporary naval warfare law.

The United States

The United States defines auxiliary vessels in substantially the same way as the San Remo Manual. The 2022 US *Commander's Handbook on the Law of Naval Operations* (US Commander's Handbook) states that “auxiliary vessels are vessels, other than warships, that are owned by or under the exclusive control of the armed forces”.³⁰

30 US Commander's Handbook, above note 9, § 2.3.1. It is further stated that “[b]ecause they are state owned or operated, and used for the time being only on government noncommercial service, auxiliary vessels enjoy sovereign immunity”.

In recent decades, the general trend in the United States has been toward the “civilianization” of large parts of its fleet: where possible, the US Navy prefers to downgrade platforms from warship to auxiliary status because using civilian masters and crews is significantly more cost-efficient than employing uniformed personnel.³¹ When a vessel must undertake activities that might amount to an exercise of belligerent rights, its status can be upgraded to that of a warship.³² Accordingly, the US Navy does not maintain a category of “non-fighting warships” or “auxiliary warships”.³³

Most US naval auxiliaries are operated by the MSC. These ships carry the prefix USNS (United States Naval Ship) and are commanded and crewed by civilians. They fit neatly within the auxiliary definitions of both the San Remo Manual and the 2025 Newport Manual. By contrast, many US Coast Guard cutters are treated as warships, as the Coast Guard forms part of the US Armed Forces and such vessels are typically commanded by commissioned officers and crewed by personnel subject to military discipline.³⁴

The US Army also operates numerous State-owned vessels.³⁵ These ships are crewed and commanded by military personnel,³⁶ but because their commanders are not commissioned officers, they do not satisfy Article 3 of Hague Convention VII and are therefore not regarded as warships under international law. Following the San Remo Manual’s criteria, they qualify as auxiliary vessels;³⁷ under the US Commander’s Handbook’s definition, they are likewise treated as auxiliary vessels.³⁸

31 See G. P. Belanger, above note 25. While this source dates from 2007, subsequent US practice continues to reflect extensive reliance on civilian-manned auxiliary and support vessels operated by the MSC, particularly for logistics and replenishment functions.

32 For example, in the case of the USS *Lewis B. Puller* (ESB-3). See 2025 Newport Manual, above note 3, § 3.4, pp. 52–53.

33 See above note 28. USNS *Big Horn* differs from Australia’s HMAS *Stalwart* and HMAS *Supply*, which have warship status despite performing similar replenishment functions: A. Pape, above note 28, p. 40.

34 US Commander’s Handbook, above note 9, § 2.2.1. The prefix USCGC stands for US Coast Guard Cutter. However, not all US Coast Guard cutters are commanded by commissioned officers; some smaller vessels may be led by warrant officers or senior petty officers. See, for example, US Coast Guard, “Coast Guard Cutter Charles David Jr. Holds Change of Command Ceremony”, press release, 27 June 2024, available at: www.news.uscg.mil/Press-Releases/Article/3820361/coast-guard-cutter-charles-david-jr-holds-change-of-command-ceremony/.

35 A. Pape, above note 28, p. 941.

36 However, the rank of their master is warrant officer, not commissioned officer. See US Army Recruiting Command, “Warrant Officer Prerequisites and Duty Description: 880A – Marine Deck Officer”, available at: <https://recruiting.army.mil/ISO/AWOR/880A/>; Zulema Sutelo, “Assistant Secretary of the Army for Manpower and Reserve Affairs Tours U.S. Army Vessel CW3 Harold C. Clinger”, *DVIDS*, 27 February 2024, available at: www.dvidshub.net/image/8311877/assistant-secretary-army-manpower-and-reserve-affairs-tours-us-army-vessel-cw3-harold-c-clinger; Jen Judson, “Pacific Exercises Help to Shape US Army’s Watercraft Strategy”, *Defense News*, 22 May 2024, available at: www.defensenews.com/land/2024/05/22/pacific-exercises-help-to-shape-us-armys-watercraft-strategy/.

37 San Remo Manual, above note 3, para. 13(h).

38 US Commander’s Handbook, above note 9, § 2.3.1. The Handbook also mentions USSs and USCGCs as warships but does not mention USAVs as warships: *ibid.*, § 2.2.1. The Handbook does not clearly classify USAVs as auxiliary vessels, referring only to three types of MSC vessels as auxiliary vessels: USNSs, ships chartered by the MSC, and “ships under US Maritime Administration’s National Defense Reserve Fleet and its Ready Reserve Force when activated and assigned to MSC”: *ibid.*, § 2.3.2.

Under the 2025 Newport Manual, their status is less problematic than under the 2023 edition, as the requirement for civilian masters is no longer mandatory but merely described as the usual practice.³⁹

Australia

Australia adopts the same definition of auxiliary vessels found in the San Remo Manual. The 2006 Australian manual on *The Law of Armed Conflict* (Australian Manual) states that “[a]n auxiliary vessel is a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a state and used for the time being on government non-commercial service”.⁴⁰

Australia operates two categories of naval vessels: commissioned and non-commissioned. Commissioned vessels include both fighting ships and non-fighting ships (auxiliary warships).⁴¹ Non-commissioned vessels carry the prefix ADV (Australian Defence Vessel). ADVs function partly as law enforcement vessels under the Australian Border Force,⁴² and in wartime may serve as patrol assets near the Australian mainland.⁴³ Many ADVs are commanded by naval officers and manned by military personnel; therefore, they meet the San Remo and Australian Manual criteria for auxiliary vessels as well as warships (pending announcement as warships). ADVs would not have qualified as auxiliary vessels under the 2023 Newport Manual, but the 2025 edition adopts a more flexible formulation, under which ADVs may fall within the Newport definition.

Although many ADVs also fulfil the criteria of warships under UNCLOS, the Convention on the High Seas and aspects of Hague Convention VII (being commanded by military officers and crewed by personnel under military discipline, and bearing external marks), they are not formally commissioned as warships. They

39 The 2023 Newport Manual mentions that “[s]uch vessels are under the command of a civilian master and not a commissioned officer”. See 2023 Newport Manual, above note 13, § 3.4, p. 45. For the definition of auxiliary vessels in the 2025 edition, see 2025 Newport Manual, above note 3, § 3.4, p. 51.

40 Australian Manual, above note 10, Chap. 6, “Definitions”, para. 6.6.

41 For example, HMAS *Supply* and HMAS *Stalwart*, which have a function as auxiliary oiler replenishment ships. Even though both ships have an auxiliary function, they have warship status instead of auxiliary vessel status. Both ships are commanded and manned by active Australian naval personnel under military discipline. See A. Pape, above note 28, p. 40; Royal Australian Navy, “HMAS *Stalwart* (III)”, available at: www.navy.gov.au/capabilities/ships-boats-and-submarines/hmas-stalwart-iii; Sea Power Centre – Australia, “HMAS *Supply* (II)”, available at: www.navy.gov.au/capabilities/ships-boats-and-submarines/hmas-supply-ii; Royal Australian Navy, “HMAS *Stalwart* (III)”, available at: <https://seapower.navy.gov.au/hmas-stalwart-iii>; Australian Department of Defence, “HMAS *Supply* Welcomed to Fleet”, 13 April 2021, available at: www.defence.gov.au/news-events/news/2021-04-13/hmas-supply-welcomed-fleet.

42 Royal Australian Navy, “ADV *Cape Otway*”, available at: www.navy.gov.au/capabilities/ships-boats-and-submarines/adv-cape-otway. At the time of writing, several vessels previously designated as ADVs – including the *Cape Naturaliste*, *Cape Pillar*, *Cape Woolamai* and *Cape Capricorn* – had been subsequently commissioned into the Royal Australian Navy as HMAS (His Majesty’s Australian Ship) units. While these vessels had initially been used as illustrative examples of ADVs, their change in status renders them less suitable for that purpose; accordingly, this article instead refers to ADV *Cape Otway* as a continuing example.

43 *Ibid.*

do not undergo commissioning ceremonies,⁴⁴ they operate under the prefix ADV rather than HMAS, and they are not announced as warships – because Australia is not a party to Hague Convention VII, there is no treaty obligation to make such an announcement. While elements of customary international law may be relevant, the absence of any formal notification or domestic legislation leaves the legal status of ADVs uncertain. In practical terms – especially in peacetime – these vessels are best understood as auxiliary vessels.

The Australian Army historically operated vessels under the prefixes AV (Army Vessel) and AS (Army Ship),⁴⁵ commanded and crewed by army personnel. Australia's current plan to acquire new landing craft raises similar questions regarding their legal status and classification; they will likely satisfy the criteria of warships under international law, but their eventual legal status will depend on how the government chooses to designate them.

China

The People's Liberation Army Navy, the People's Armed Police Force (PAPF) and the militia all form part of the armed forces of the People's Republic of China (PRC).⁴⁶ Therefore, any non-warship vessel under their exclusive control is, under the San Remo Manual, an auxiliary vessel when used for non-commercial purposes. Maritime militia vessels that are State-operated may qualify as auxiliary vessels if not used for commercial fishing – and in wartime, fishing may cease, bringing many militia boats within the auxiliary definition of the San Remo Manual.⁴⁷ Because the maritime militia is organized as part of China's militia system, its personnel operate under military command; under China's National Defence Law, the militia is a component of the armed forces of the PRC and “shall perform combat readiness service and carry out non-war military operations and defensive operations under the command of the military authorities”.⁴⁸

44 In this regard, the practice of commissioning as a formal means of announcing the conversion of a vessel into a warship. Where such ceremonies or equivalent public acts are absent, the vessel's status is not formally declared, even if it otherwise fulfils the functional criteria associated with warships under international law.

45 For example, AS 3051 *John Monash*. See Australian War Memorial, “Seamanship and Navigation Course on Army Small Ship *John Monash* (DPR/TV/948)”, *Australian War Memorial*, available at: www.awm.gov.au/collection/F04254. Another example is AV 1355 *Vernon Sturdee*. See NavSource Naval History, “Landing Ship Medium LSM-315”, *NavSource Naval History*, www.navsource.org/archives/10/14/14315.htm (no longer available).

46 Law of the People's Republic of China on National Defence, 14 March 1997 (amended 26 December 2020), Art. 22, available at: www.npc.gov.cn/englishnpc/c2759/c23934/202109/t20210914_384857.html; Conor M. Kennedy and Andrew S. Erickson, *China's Third Sea Force, The People's Armed Forces Maritime Militia: Tethered to the PLA*, China Maritime Report No. 1, Center for International Maritime Security, 2017, p. 2.

47 However, those ships do not fall under the definition of auxiliary vessels based on the 2023 Newport Manual, since their personnel are under military discipline and are not civilians. See 2023 Newport Manual, above note 13, § 3.4, p. 45.

48 Law of the People's Republic of China on National Defense, above note 46, Art. 22.

The China Coast Guard (CCG) forms part of the PAPF⁴⁹ and is therefore under the command and control of the armed forces of the PRC. As such, CCG vessels meet the criteria of auxiliary vessels under the definition provided in the San Remo Manual. Under the 2023 Newport Manual, their military command structure would have excluded them from the auxiliary vessel category, but the 2025 edition's softer formulation ("usually" under civilian masters) makes their status less clear-cut, and they could conceivably fall within the Newport definition despite being military-commanded. Consequently, if their commanding officers are commissioned officers, these vessels would, under international law, satisfy the requirements for warships, pending formal announcement of their status by China.

Germany

Germany's practice distinguishes between auxiliary warships and auxiliary vessels. Merchant vessels, once converted and commissioned, are classified as auxiliary warships, but their legal status remains that of warships because they are commanded and crewed by military personnel and have undergone conversion consistent with Hague Convention VII.⁵⁰

The German *Law of Armed Conflict Manual* (German Manual) defines auxiliary vessels as "vessels with civilian crews which are owned or operated by the state, in other words government ships, which perform auxiliary services for the naval forces but are not warships".⁵¹ Unlike the San Remo and Newport definitions, Germany does not require that auxiliary vessels be owned or operated by the armed forces; any State-owned or State-operated vessel performing auxiliary services qualifies. This broad definition makes the scope of "auxiliary services" crucial, since any government vessel performing such functions may fall within it. Yet it also creates a temporal ambiguity: once those services end, does the vessel retain or lose its auxiliary status? At least in publicly available documents, the German approach leaves this question unresolved.

German Federal Coast Guard vessels are crewed and commanded by civilians. They are government vessels in peacetime, and under the German Manual, may become auxiliary vessels in wartime if they perform auxiliary services.

Denmark

Denmark adopts a more flexible approach to crewing than Germany. The 2016 *Military Manual on International Law Relevant to the Danish Armed Forces in International Operations* states that auxiliary vessels may be manned either wholly

49 Following the 2018 institutional reform, the China Coast Guard was incorporated into the PAPF under the unified leadership of the Central Military Commission. See relevant Chinese legislative and institutional materials on the 2018 reform of the People's Armed Police system.

50 German Manual, above note 15, para. 1003. pp. 140–141.

51 *Ibid.*, para. 1004, p. 141.

or partly by military personnel, or entirely by civilians, so long as the vessel is owned or under the exclusive control of the armed forces.⁵² This mirrors the formulation adopted in the San Remo Manual and reflects the approach taken in a range of State manuals. Marine Home Guard (Hjemmeværnet) vessels fall within the definition of auxiliary vessels.⁵³

Summary

Across these examples, several points of convergence and divergence emerge. First, States generally agree that auxiliary vessels must be owned or controlled by the State, though they differ on whether that control must be exercised by the armed forces specifically. Germany is the main outlier, categorizing government ships of any agency as auxiliary vessels if performing auxiliary services.

Second, the States examined above agree that auxiliary vessels must serve non-commercial purposes, though again practice diverges on the status of crews. Among these States, most do not impose crew-status requirements. Only Germany expressly requires civilian crews.

These variations demonstrate that the auxiliary vessel category, although widely used, lacks a uniform definition in treaty law or customary law. They also highlight the difficulty of treating auxiliary vessels as a coherent legal status with predictable consequences.

The concept of exclusive rights of warships, the concept of “auxiliary functions”, and naval auxiliaries as a status

Building on the divergences and points of convergence identified in the preceding section, this section examines the core concepts that shape the legal position of auxiliary vessels in naval warfare. First, it revisits the long-established notion that only warships and military aircraft may exercise belligerent rights at sea. Second, it considers the meaning of “auxiliary functions” and the degree to which such functions bring auxiliary vessels closer to the conduct of hostilities. Finally, it analyzes the emerging tendency in practice and doctrine to treat auxiliary vessels as a distinct status of ship – separate from both warships and merchant ships – despite the absence of a uniform treaty definition or shared theoretical foundation.

52 Danish Ministry of Defence, *Military Manual on International Law Relevant to Danish Armed Forces in International Operations*, Copenhagen, 2016, p. 636. The San Remo Manual allows auxiliary vessels to be crewed wholly or partly by civilians, provided they remain under State control. The Australian and UK military manuals adopt a comparable approach, permitting civilian crewing of auxiliary vessels where they are owned by, or under the exclusive control of, the armed forces. To some extent, this approach is also reflected in the 2025 Newport Manual and in US practice, which recognize civilian crewing as common for, though not exclusive to, auxiliary and support vessels.

53 *Ibid.*, pp. 636, 161.

Exclusive rights of warships

International law reserves the conduct of hostilities at sea – however defined – to warships and military aircraft.⁵⁴ Auxiliary vessels may directly support belligerent operations, but they cannot lawfully exercise belligerent rights.⁵⁵ The difficulty, however, lies in determining the precise boundary between “direct support” or “auxiliary function” and “belligerency”,⁵⁶ particularly given the lack of a uniform definition of what those belligerent rights entail.

Different manuals employ different terminology. The Oxford Naval Manual speaks of “acts of hostilities”,⁵⁷ while the 2025 Newport Manual alternates between “belligerent rights” and “belligerent acts”.⁵⁸ The San Remo Manual does not define belligerent rights at all. The US Commander’s Handbook uses a broad formulation – “rights to engage in hostilities”⁵⁹ – but likewise does not articulate a single, definitive list. The result is a conceptual uncertainty: the scope of “belligerent rights” remains unsettled even in contemporary practice.

To avoid engaging in terminological disputes among manuals, this article uses the term “exclusive rights of warships”, referring to acts that may only be undertaken by warships (and military aircraft) during armed conflict at sea, as a more coherent umbrella concept. The question then becomes how to distinguish these exclusive rights from other acts – such as logistical support, replenishment or certain surveillance activities – that auxiliary vessels may lawfully conduct.

This uncertainty is compounded by the absence of any objective criterion for determining whether a particular activity amounts to the conduct of hostilities. The 2025 Newport Manual suggests case-by-case assessment under customary international law,⁶⁰ but this approach risks extreme variability in State practice and potentially incentivizes States to test the limits of auxiliary vessel employment. As new naval technologies and operational methods emerge, the lack of clear parameters becomes increasingly problematic.

One possible approach is to draw selectively – and with caution – on the 2009 *Interpretive Guidance on Direct Participation in Hostilities* (ICRC Interpretive

54 Paris Declaration Respecting Maritime Law, 16 April 1856 (Paris Declaration); Hague Convention VII, above note 2; Oxford Naval Manual, above note 22, Art. 12; 2025 Newport Manual, above note 3, § 3.1, p. 41. See Pornomo Rovani Astri Yoga and Lowell Bautista, “The Concept of Levée en Masse at Sea and Its Possible Relevance to the South China Sea”, *Journal of Conflict and Security Law*, Vol. 30, No. 3, 2025, discussing the possible – albeit highly limited – application of the concept of *levée en masse* in the maritime context and its implications for the temporary participation of civilian vessels in hostilities.

55 They may only defend themselves if they are attacked by the enemy. See Oxford Naval Manual, above note 22, Art. 12. The issue of self-defence for auxiliary vessels will be discussed in the below section “Naval Auxiliaries and Self-Defence”.

56 The 2025 Newport Manual, for example, admits that “some uncertainty remains as to the precise boundary between a warship and the exercise of belligerent rights on the one hand and naval auxiliaries and permissible support roles on the other.” See 2025 Newport Manual, above note 3, § 3.4, p. 52.

57 Oxford Naval Manual, above note 22, Art. 12.

58 2025 Newport Manual, above note 3, § 3.1, p. 41. Tucker also uses the term “belligerent rights at sea”: see Robert W. Tucker, *The Law of War and Neutrality at Sea*, Lawbook Exchange, Clark, NJ, 2006, p. 43.

59 Sometimes it also uses term “belligerent rights”. See US Commander’s Handbook, above note 9, § 2.2.1.1.

60 2025 Newport Manual, above note 3, § 3.4, pp. 51–53.

Guidance) published by the International Committee of the Red Cross (ICRC).⁶¹ Although influential, the ICRC Interpretive Guidance has not been universally accepted by States and was developed to assess the conduct of individuals rather than platforms. It is therefore used here only as a limited analytical reference point and not as a consolidated statement of customary law governing naval operations.

The ICRC Interpretive Guidance identifies three cumulative criteria: threshold of harm, direct causation and belligerent nexus. Applied by analogy, these criteria offer a structured way to assess when the conduct of an auxiliary vessel begins to resemble belligerent activity – namely, when an act significantly affects the enemy's military operations or causes physical harm; bears a direct causal link to that harm; and is specifically designed to support one party to the conflict against another.⁶² While this analogical use does not purport to re-characterize platforms as “participants” under international humanitarian law, it provides a more objective framework than a purely practice-driven assessment, at least in the absence of a more tailored doctrinal framework for naval auxiliaries.

The distinction between actions that fall under the exclusive rights of warships and those falling within “auxiliary functions” has immediate operational consequences. Once the conduct of an auxiliary vessel is understood to have crossed into the realm of belligerency, its crew may be exposed to allegations of unlawful belligerency notwithstanding their otherwise privileged status upon capture. For merchant ships temporarily performing auxiliary functions, the same threshold determines whether civilians aboard retain protection or become targetable for the duration of their participation. The categorization also affects when auxiliary vessels may lawfully be attacked on sight as military objectives. Without clearer criteria, States will continue to apply divergent and *ad hoc* standards – an uncertainty that, in real naval operations, increases the risk of misinterpretation and misidentification at sea.

Having outlined the conceptual difficulty of defining the exclusive rights of warships, the next step is to examine the specific activities that are commonly understood – whether by treaty, manuals or consistent practice – to fall within this category. Although the terminology varies, certain functions recur across most formulations of the law of naval warfare. The following sections therefore analyze these functions individually, beginning with the right to conduct hostilities and continuing through other measures traditionally reserved for warships, such as visit and search, blockade enforcement, control of neutral shipping, convoy operations, and reprisals.

The right to conduct hostilities

There is no universally accepted definition of “conduct of hostilities” at sea. The San Remo Manual's list of “hostile actions” in neutral waters suggests a broad

61 By using three criteria: threshold of harm, direct causation, and belligerent nexus. See Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009 (ICRC Interpretive Guidance), pp. 46–64.

62 *Ibid.*

understanding, encompassing attacks, captures, mining operations and prize measures, and the Newport Manual also places “conducting hostilities” at the centre of belligerent rights⁶³ – yet neither provides a precise analytical test.

Clearly auxiliary vessels may not conduct offensive operations, but the more difficult question is whether they may perform activities that indirectly harm the enemy or provide operationally decisive support. The term “direct support”, which appears in the Newport Manual, is not defined and must be distinguished from “direct participation in hostilities”, which is far closer in nature to belligerent acts.⁶⁴ Some support functions – such as replenishment, towing, dredging or logistic transport – may be benign, while others – such as target acquisition, intelligence relay or cyber support – may be operationally decisive.

If one adopts the ICRC Interpretive Guidance test, the threshold of harm and the direct causation elements become important.⁶⁵ For example, can an auxiliary vessel that deploys unmanned systems which generate targeting coordinates be said to directly participate in hostilities? The use of naval auxiliaries also involves various naval mining missions. States generally accept that mine-laying constitutes the conduct of hostilities, whereas mine countermeasure operations remain less clearly categorized.⁶⁶ Based on this premise, mine-laying may only be carried out by warships (or military aircraft), while mine countermeasure operations may lawfully be undertaken by any vessel, including naval auxiliaries. If so, this begs the question as to whether it would be lawful for belligerents to employ naval auxiliaries to lay defensive mines within their own internal waters, territorial seas (or, where applicable, archipelagic waters) or exclusive economic zones, or even on the high seas, as opposed to offensive mining in enemy waters. Without objective criteria, States may unilaterally expand the scope of activities that auxiliaries may legally undertake, potentially undermining the distinction between warships and non-warships.

Measures short of attack

Measures short of attack – visit, search, diversion and capture – are explicitly reserved for warships and military aircraft.⁶⁷ This exclusivity flows from the 1856 Paris Declaration Respecting Maritime Law, which abolished privateering.⁶⁸ Auxiliary

63 2025 Newport Manual, above note 3, § 3.1, p. 41.

64 *Ibid.*, § 3.4, p. 51. This is why the author suggests applying the ICRC Interpretive Guidance as a useful alternative tool to distinguish between belligerent acts and activities that amount only to direct support or auxiliary functions. The use of the term “direct support” also implies the existence of roles amounting to “indirect support”.

65 ICRC Interpretive Guidance, above note 61, pp. 46–64.

66 2025 Newport Manual, above note 3, § 3.4, p. 52.

67 San Remo Manual, above note 3, Part V. Measures short of attack also include interception, but this is for military aircraft. Search and capture are included in the definition of “acts of hostility” that are forbidden to be conducted within neutral waters. See Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, 205 CTS 395, 18 October 1907 (entered into force 26 January 1910), Art. 2.

68 Paris Declaration, above note 54, Art. 1.

vessels cannot exercise prize powers on the high seas, but they may do so within their own territorial sea or internal waters, where a State may confer such authority under domestic law. State practice confirms this distinction.⁶⁹

Control of neutral vessels in the vicinity of naval operations

Belligerents possess a recognized right to control neutral vessels and aircraft operating near naval engagements.⁷⁰ The question, however, is whether this right may be exercised only by warships and military aircraft or also by other government vessels, including auxiliaries. As Tucker observes, the right to control derives from the belligerent's right "to insure the security of his forces" and "to attack and to defend himself without interference from neutrals."⁷¹ If the authority stems partly from the right to attack, it logically belongs only to warships and military aircraft. The 2025 Newport Manual affirms that on-scene commanders may impose restrictions in the immediate vicinity of naval operations,⁷² reflecting the customary belligerent right preserved in the San Remo Manual.⁷³ Yet, read together with section 3.1 of the Newport Manual, such authority may not be exercised while embarked on an auxiliary vessel; commanders possess this enforcement power only when operating from a warship or military aircraft.

Blockade establishment

The authority to establish a blockade lies with the belligerent State, typically exercised through its naval commanders.⁷⁴ Hague and post-Hague practice does not clarify whether the commander must be embarked on a warship at the moment of proclamation, but it is arguable that as long as the blockade is effectively enforced by forces capable of exercising belligerent rights, the physical platform from which the order is issued is irrelevant. Thus, a naval commander embarked on an auxiliary vessel may establish a blockade, though the auxiliary itself cannot enforce it.

Blockade enforcement

Enforcement is more complex. Because blockade enforcement necessarily involves measures short of attack and the potential use of force, auxiliaries cannot perform enforcement functions independently; they may, however, serve in supporting roles

⁶⁹ There are many State practices where capture has been conducted within territorial seas or internal waters by vessels other than warships or military aircraft. See Mitsuo Maehara, "Review of Decisions of Japan's Wartime Prize Courts: The Santa Fe Case", *Japanese Annual of International Law*, Vol. 8, 1964, pp. 27–28. (summarizing German and Dutch prize court considerations of capture by non-warship authorities).

⁷⁰ 2025 Newport Manual, above note 3, § 3.1, p. 37; San Remo Manual, above note 3, para. 108; R. W. Tucker, above note 58, p. 300.

⁷¹ R. W. Tucker, above note 58, p. 301.

⁷² 2025 Newport Manual, above note 3, § 7.2.2, pp. 127–128.

⁷³ San Remo Manual, above note 3, para. 108.

⁷⁴ R. W. Tucker, above note 58, p. 287.

– such as resupply platforms, communication nodes or target reporting units – provided they do not themselves conduct measures short of attack. Historical examples such as the mining of Haiphong⁷⁵ highlight the debate over what constitutes “effective” enforcement. Auxiliaries can only participate when supporting warships or military aircraft capable of performing enforcement acts.

Other belligerent rights

The remaining belligerent rights – the right to establish exclusion zones, demand surrender, conduct convoy operations and exercise reprisal – are inherently tied to combat capability and thus restricted to warships. While auxiliaries may support these operations (e.g., as logistical platforms or sensor nodes), they may not exercise these rights directly.

Auxiliary vessels as military objectives: The problem of “nature,” “purpose” and “use”

A crucial doctrinal question is whether auxiliary vessels are military objectives by nature, or whether they become military objectives by virtue of their purpose or use.⁷⁶ The answer determines when – and on what basis – they may be attacked on sight, and it affects how civilians on board are treated in proportionality assessments. This classification also affects the legal consequences for crews who engage in actions that resemble belligerency despite lacking warship status.

At the outset, it is necessary to clarify the legal basis on which this analysis proceeds. This article does not assume that Article 52(2) of Additional Protocol I (AP I) applies as such to naval warfare, nor that its formulation reflects customary international law in the maritime domain, particularly in light of Article 49(3) of AP I and the position of certain non-party States. Nor does it proceed on the basis that auxiliary vessels are military objectives merely because customary law of naval warfare is said to treat them as such.

Rather, the relevance of the “nature, location, purpose or use” criteria lies in their functional expression of how military objectives are identified in practice.

75 Wolff Heintschel von Heinegg, “Naval Blockade”, in Michael N. Schmitt and Wolff Heintschel von Heinegg (eds), *The Conduct of Hostilities in International Humanitarian Law*, Vol. 1, Routledge, London, 2023, pp. 211–212; Phillip Drew, *The Law of Maritime Blockade: Past, Present, and Future*, Oxford University Press, Oxford, 2017, pp. 54–55.

76 The distinction of military objectives by reference to their nature, location, purpose or use originates in Additional Protocol I to the Geneva Conventions: see Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 52(2). While Article 49(3) of AP I places limits on the direct application of these rules to naval warfare, the same definition was adopted in the San Remo Manual: see San Remo Manual, above note 3, para. 40. See also 2025 Newport Manual, above note 3, § 8.5, pp. 147–148. On the drafting background and progressive character of this adoption, see San Remo Manual, above note 3, pp. 114–117.

Even certain States that do not accept Article 52(2) as reflecting customary international law continue to assess military objectives by reference to these same functional criteria – namely, whether an object, by its nature, location, purpose or use, effectively contributes to the adversary’s military action.⁷⁷ The principal point of divergence lies not in the method of assessment but in its scope: in particular, the United States extends this analysis to objects contributing to an adversary’s war-fighting, war-supporting or war-sustaining capability.⁷⁸

This functional mode of assessment is especially significant in the case of auxiliary vessels. Unlike warships, auxiliaries lack a settled legal status under the law of naval warfare, and their classification therefore cannot rest on formal designation or on an abstract appeal to customary law alone. Absent an objective assessment of their purpose or use, it would be impossible to determine when auxiliary vessels qualify as military objectives, particularly given the absence of a universally accepted definition of such vessels in international law. Treating auxiliaries as military objectives solely by reference to “customary law of naval warfare”, without an objective assessment of their nature, purpose or use, provides little analytical guidance for determining their status as military objectives.

Applying the functional approach to auxiliary vessels

Against that analytical backdrop, the remainder of this section examines how modern restatements and selected State manuals articulate and apply the criteria of “nature” and “purpose or use” in relation to auxiliary vessels.

Modern restatements adopt different formulations, but the Newport Manual is explicit in treating auxiliary vessels as military objectives by nature. The Newport Manual addresses auxiliary vessels directly within the law of targeting and categorizes them as military objectives as such.⁷⁹ The San Remo Manual reaches a substantively similar result, albeit through a different doctrinal structure: while it does not expressly label auxiliary vessels as military objectives “by nature”, it groups them together with warships and military aircraft for the purposes of targeting,⁸⁰ subject only to limited exceptions such as hospital ships and other specially protected vessels. In effect, auxiliary vessels are treated as military objectives by nature through their inclusion within the category of lawful objects of attack.

Some State manuals adopt a broadly consistent, though less explicit, approach. Manuals such as those of the United States, the United Kingdom, Australia and Germany do not formally characterize auxiliary vessels as military objectives by nature, but nevertheless treat them as falling within the category of lawful

⁷⁷ For example, the United States applies this functional approach: see US Commander’s Handbook, above note 9, § 8.2.

⁷⁸ Nevertheless, the United States continues to assess military objectives by reference to these same functional criteria – namely, whether an object, by its nature, location, purpose or use, makes an effective contribution to military action. See US Commander’s Handbook, above note 9, § 8.2.

⁷⁹ 2025 Newport Manual, above note 3, § 8.5.1, p. 149, and § 8.6, p. 154.

⁸⁰ San Remo Manual, above note 3, para. 65.

military objectives,⁸¹ often without clearly specifying whether this status is attributed by nature or is contingent on use or function. Where manuals do not specify the basis on which auxiliary vessels qualify as military objectives, the only default plausible interpretation is that such status is attributed by nature rather than by use or purpose. This follows from the fact that auxiliary vessels are treated as military objectives as a matter of status, without any requirement that they be engaged in a particular operation or employed in a specific military function at the relevant time. They cannot be regarded as military objectives by use or purpose in the ordinary sense, since their classification does not depend on their actual employment in hostilities, nor on a concrete military function being carried out at the time. Nor can their status plausibly be explained by reference to location. Rather, their treatment as military objectives rests on their inherent character as vessels integrated into naval operations, which points to a classification by nature.

The German approach illustrates a more contingent understanding: its definition depends on whether the vessel is performing “auxiliary services”.⁸² Under this model, a government-owned vessel with civilian crew becomes an auxiliary vessel only while performing auxiliary functions; once it ceases to perform such functions, it reverts to a government ship not subject to attack.⁸³ This functional approach implies that auxiliary status is not permanent but contingent.

The underlying difficulty is that auxiliary vessels lack a universally accepted legal status. Warships and military aircraft are, as a rule, military objectives by nature, with a fixed and permanent status. Merchant vessels are presumptively civilian objects unless their use turns them into military objectives. Auxiliary vessels, however, occupy an uncertain space between these two categories. If they are treated as military objectives by nature merely because they are owned or controlled by the armed forces, the distinction between auxiliaries and warships becomes exceedingly thin. If, conversely, they are regarded as military objectives only by purpose or use, their position becomes nearly identical to merchant vessels that temporarily assume auxiliary roles.

Yet even this “purpose or use” approach requires an objective assessment of a vessel’s future use. The intent of the operating State should be reasonably clear. For instance, when in peacetime a State designates certain ships as auxiliary vessels

81 For the United States, see US Department of Defense, *Law of War Manual*, Office of General Counsel, Washington, DC, June 2015 (updated July 2023), § 13.4, p. 902; for the United Kingdom, see UK Manual, above note 12, para. 12.39; for Australia, see Australian Manual, above note 10, para. 6.38; and for Germany, see German Manual, above note 15, para. 1004. These States likewise assess military objectives by reference to their nature, location, purpose or use. See, respectively, US Commander’s Handbook, above note 9, § 8.2; UK Manual, above note 12, para. 13.26; Australian Manual, above note 10, para. 6.37; German Manual, above note 15, para. 407, p. 54.

82 German Manual, above note 15, para. 1004, p. 141.

83 The commentary/explanation to paragraph 13(i) of the San Remo Manual notes that the round-table discussions agreed that all vessels which are neither warships nor auxiliary vessels, nor hospital ships, coastal rescue craft or other medical transports, are to be regarded as merchant ships. See San Remo Manual, above note 3, p. 91. Accordingly, under the San Remo Manual, German government vessels not under the control of the armed forces – and which have ceased performing auxiliary services – should be considered merchant ships. As such, they may no longer be treated as military objectives and may not be attacked.

(through a distinctive prefix, clear integration into a naval organization, or a defined non-commercial military-support function), their future role is identifiable: i.e., providing direct support/auxiliary function during naval warfare. In such a case, these ships qualify as military objectives because of their purpose, even before they undertake actual auxiliary missions.⁸⁴

The assessment is more complex when States do not pre-designate auxiliaries in peacetime but instead convert merchant ships into auxiliary vessels during armed conflict – a process for which international law imposes no formal requirements. In these circumstances, only vessels refitted or configured for single, exclusively military-support purposes should qualify as military objectives by purpose. A vessel equipped for mine clearance operations, or a replenishment ship fitted with dedicated replenishment/refuelling at sea (RAS) equipment such as replenishment rigs, winches, hoses, cryptographic devices and related fittings, clearly signals a future military-support role, distinguishing the vessel from ordinary tankers.

Historical practice reinforces this distinction. During the Second World War, RMS *Queen Elizabeth* underwent substantial modifications before being used as a troop transport.⁸⁵ Even prior to embarking troops, the modifications indicated a clear and exclusive military purpose,⁸⁶ making the *Queen Elizabeth* a military objective on that basis.

By contrast, vessels that retain dual-use functionality – such as ordinary tankers without RAS capability, unmodified passenger ships, ferries, or other commercial vessels – should not be considered military objectives by purpose unless and until they are actually employed in direct support of military operations. Where a belligerent has not clearly designated such vessels as auxiliaries, and their commercial function remains intact, they should not be treated as military objectives solely because they *could* be used for auxiliary functions.

This ambiguity complicates targeting decisions, proportionality analyses and the allocation of prisoner of war status upon capture. It also creates incentives for States to manipulate vessel status, designating ships as auxiliaries when convenient and denying that designation when politically expedient.

Categories of actions in naval warfare and their implications for auxiliary vessels

If auxiliary vessels are to be treated as having a distinct legal status that is separate from both warships and merchant ships – or in other words, if the premise adopted in several modern manuals that auxiliaries are military objectives “by nature”, rather

84 Accordingly, it is not strictly necessary to classify auxiliary vessels as military objectives by their nature.

85 Maureen Duffus, “The 70th Anniversary of the Secret Visit of the Queen Elizabeth to Esquimalt BC”, *The Nauticapedia*, 2012, available at: www.nauticapedia.ca/Articles/Queen_Elizabeth.php.

86 For example, the modifications included the installation of defensive armaments, the addition of numerous extra berths, and the strengthening of sea valves to resist the pressure effects generated by underwater detonations. Moreover, with the activation of the STUFT requisition programme, the vessel may be regarded as a military objective by virtue of its purpose, insofar as it was assigned to and used for military support functions. See *ibid*.

than by use or purpose, is accepted – then a clearer analytical framework becomes necessary. On this premise, it is the author's view that there should be three categories of actions for the purposes of the law of naval warfare, each reflecting a different degree of contribution to military operations. Distinguishing between these categories helps to clarify when vessels may lawfully perform certain tasks, when they become military objectives, and when their crew's conduct risks amounting to unlawful belligerency.

General war effort

The first category consists of actions that contribute to the general war effort but do not amount to the exclusive rights of warships during armed conflict, nor to acts of "direct support" (that is, auxiliary functions). These actions may lawfully be conducted by all vessels of a belligerent State, including merchant ships, auxiliary vessels and warships (and military aircraft). Merchant ships conducting such general support actions remain civilian objects that may not be attacked on sight; they are subject only to visit and search, and, where appropriate, condemnation as prize.⁸⁷ Warships performing these actions remain military objectives by nature.

The more difficult question is how this applies to auxiliary vessels. If an auxiliary vessel performs only general support functions (for example, delivering non-military materials and providing no effective contribution to enemy military action), should it still be attacked on sight solely because it carries "auxiliary vessel" status? This raises a further question of temporality: does the phrase "for the time being",⁸⁸ which appears in several definitions of auxiliary vessels, imply that auxiliary status is contingent on the ongoing performance of auxiliary functions and is lost once those functions cease? In this context, "general support functions" refers to activities that do not amount to auxiliary functions in the legal sense, rather than merely a different category of auxiliary activity. As discussed, unlike warships, auxiliaries have no belligerency rights.⁸⁹ This makes it necessary to reassess whether auxiliaries should be regarded as military objectives by nature or instead by purpose. For example, if a USNS during wartime carries only non-military materials, can it be attacked solely because of its auxiliary status? If auxiliaries are accepted as military objectives by nature, the answer would be yes.⁹⁰ Conversely, consider German

87 Yet, as noted in the 2025 Newport Manual, above note 3, § 8.5.1, pp. 150–151, the United States during the Pacific War attacked Japanese merchant vessels without regard to their precise function. States remain divided on this question: the prevailing view is that "war-sustaining" activities do not, by themselves, convert civilians or civilian objects into military objectives, but the United States adopts a contrary position, treating such activities as sufficient to confer military-objective status and thus permit attack on sight. See US Commander's Handbook, above note 9, §§ 5.3.4, 7.4.

88 See San Remo Manual, above note 3, para. 13(h); Australian Manual, above note 10, para. 6.6; US Commander's Handbook, above note 9, § 2.3.1.

89 Also, it must be admitted that this approach creates a doctrinal tension: auxiliary vessels are treated as targetable military objectives, yet – unlike warships – are said to remain prohibited from exercising belligerent rights or conducting offensive operations.

90 These vessels are still owned or operated by the armed forces – or by the government, if one follows the definition in the German Manual. See German Manual, above note 15, para. 1004, p. 141.

government vessels which, after performing auxiliary functions, are later used to transport non-military goods. Under the German Manual, such vessels would no longer qualify as auxiliaries and therefore should not be targeted on sight. Hence, if it is accepted that auxiliaries are military objectives by their nature,⁹¹ then the category of “auxiliary functions” or “direct support” must be clearly defined, the underlying definition must be uniformly applied,⁹² and there must be clarity as to whether once a ship becomes an auxiliary, it remains so until the end of the conflict.

Otherwise, if auxiliaries are treated as military objectives not by their nature but rather by their purpose or use, then a functional approach is more appropriate. Where a belligerent formally designates certain ships as auxiliary vessels in peacetime (using distinctive prefixes and assigning non-commercial military-support roles), their future use is clear: they are intended to directly support military action. In such a case, treating these vessels as military objectives because of their purpose is more coherent than treating them as military objectives by nature. By contrast, where a State chooses not to designate auxiliaries in advance but instead converts merchant ships during armed conflict (bearing in mind that international law imposes no requirements for such conversion), a further assessment is needed. Only vessels modified for single, exclusively military-support functions – such as mine clearance ships or replenishment ships fitted with RAS equipment – should qualify as military objectives by purpose; ordinary tankers, ferries or passenger ships that retain dual-use functions should not qualify on this basis.

Belligerent rights

The second category consists of actions that constitute an exercise of belligerency rights and may only be conducted by warships (i.e., exclusive rights of warships during armed conflict), as discussed in the above section on “Exclusive Rights of Warships”. If such actions are carried out by auxiliary vessels, the vessel violates the law of naval warfare and the crew may be prosecuted for unlawful belligerency. If merchant ships attempt such acts, they likewise become military objectives, and their crews may be held criminally responsible for unlawful belligerency. However, auxiliary vessels and merchant ships retain the inherent right of self-defence and the right to resist capture.⁹³ Acts carried out solely in the exercise of self-defence or in resisting capture cannot be regarded as unlawful belligerency, even if force is used, because such conduct does not amount to the exercise of exclusive rights of warships.

91 Meaning that they may be attacked on sight at any time. See 2025 Newport Manual, above note 3, § 8.5.1, p. 149, and § 8.6, p. 154; San Remo Manual, above note 3, para. 65.

92 As outlined in the above section “Definition of Auxiliary Vessels or Naval Auxiliaries”, definitions of auxiliary vessels diverge; the above section “Practices of Naval Auxiliaries by States in the Modern Era” demonstrates that State practice is similarly inconsistent. No common understanding exists as to the composition of auxiliary vessels’ crews, the status of their masters, their ownership, or the authorities to which they should be subordinated.

93 When auxiliary vessels or merchant ships employ force in self-defence or to resist capture, these acts do not amount to unlawful belligerency. This will be addressed in the sections that follow.

Auxiliary functions or direct support

The third category consists of actions that constitute “auxiliary functions” or “direct support”⁹⁴ – that is, tasks that make an effective contribution to enemy military action, as distinct from activities that merely sustain the general war effort, while still remaining outside the scope of exclusive rights of warships. These functions may be conducted by warships⁹⁵ (and military aircraft) and by auxiliary vessels. If such functions are carried out by merchant ships, those ships become military objectives by virtue of their use, and may be attacked on sight for the duration of that use.⁹⁶ This is distinct from vessels with pre-assigned auxiliary status, which – from the outset – are intended to perform auxiliary functions and therefore may be attacked on sight throughout the conflict regardless of whether they are performing an auxiliary function at a given moment.

In practice, however, visual distinction between designated auxiliary vessels and merchant ships performing auxiliary functions may be minimal or non-existent, creating significant risks of misidentification. Determining what constitutes an auxiliary function also presents difficulties, particularly where vessels retain dual-use capabilities. These uncertainties reinforce the need for a more coherent framework for auxiliary vessels, especially given the lack of belligerency rights, the absence of uniform practice across States, and the challenges of ensuring compliance with targeting rules during naval operations.

Summary

In sum, while most contemporary manuals classify auxiliary vessels as military objectives *by their nature*, such a position is doctrinally and operationally problematic. This article argues that it would be more accurate to regard auxiliary vessels as military objectives *by their purpose or use* rather than by inherent status. Treating auxiliaries as military objectives by nature risks collapsing the distinction between warships and non-warships unless their functions and duration of status are precisely defined and uniformly applied. Conversely, a functional approach based on purpose or use provides greater flexibility but also introduces operational uncertainty, particularly when States fail to clearly designate auxiliaries in advance. A coherent

94 Comparable terminologies are found in other sources. The German Manual, above note 15, para. 1004, p. 141, refers to vessels “performing auxiliary services”; meanwhile, the San Remo Manual, above note 3, para. 60(b), employs the expression “acting as an auxiliary”. Although the latter formulation is used in the context of merchant vessels, it nevertheless illustrates the functional approach adopted in identifying activities amounting to direct support of military operations.

95 Examples of warships performing auxiliary functions are abundant. Many such vessels – often referred to as “auxiliary warships” – serve primarily in support roles and possess little or no offensive capability. For instance, HMAS *Supply* of the Royal Australian Navy and KRI *Arun* of the Indonesian Navy are both warships by status but function as replenishment ships, usually carrying only minimal armaments. See A. Pape, above note 28, pp. 40, 367.

96 See San Remo Manual, above note 3, para. 60(b), which mentions “acting as an auxiliary to an enemy’s armed forces, e.g., carrying troops or replenishing warships”.

and predictable framework therefore requires consensus on what constitutes “auxiliary functions” or “direct support”, and on whether auxiliary status, once conferred, endures until the end of the conflict or ceases when such functions are no longer performed. Until such clarity emerges, the legal position of auxiliary vessels will remain ambiguous, occupying a grey zone between the immunity of merchant ships and the targetability of warships.

Problems with naval auxiliaries as a ship status treated as military objectives by nature

The conceptual and operational difficulties discussed in the previous section form the basis of the problems examined in the following section, particularly the temporal nature of auxiliary status, the absence of any obligation to announce conversions, and the challenges arising from distinguishing auxiliaries from merchant vessels in real-time targeting situations.

The absence of an announcement regime and the uncertain duration of auxiliary status

While the conversion of warships must be announced under Hague Convention VII,⁹⁷ no equivalent requirement exists for auxiliary vessels. The absence of an announcement mechanism means that auxiliary status may be created, altered or withdrawn without any external visibility. Since, in general, auxiliary vessels functionally and visually resemble ordinary merchant ships,⁹⁸ belligerents will – absent intelligence – struggle to distinguish them. Conversely, where reliable intelligence indicates that a ship has auxiliary status, it may be presumed to be a military objective – however, visit and search should still be carried out to verify its status, as the vessel may have ceased to function as an auxiliary and reverted to an ordinary merchant ship. This undermines the idea that auxiliary vessels may be attacked on sight simply because of their “nature”.

A useful illustration appears in the Falklands/Malvinas conflict, where the Royal Navy requisitioned several merchant ships as troop transports under the STUFT (Ships Taken Up from Trade) scheme, such as RMS *Queen Elizabeth 2*.⁹⁹ Although these vessels were internally treated as auxiliaries under British domestic arrangements, there was no notification given to the opposing belligerent.¹⁰⁰

97 Hague Convention VII, above note 2, Art. 6. However, it is important to consider the customary status of this obligation. See K. Buntoro and P. R. A. Yoga, above note 20.

98 There is no obligation for auxiliary vessels to have distinctive external marks. This is different from the requirement for warships: see Hague Convention VII, above note 2, Art. 2.

99 Elizabeth Chadwick, “Merchant Ship Conversion in Warfare, the Falklands (Malvinas) Conflict and the Requisition of the QE2”, *Journal of the History of International Law*, Vol. 12, No. 1, 2010.

100 *Ibid.* Although these vessels were internally treated as auxiliaries under British domestic arrangements, no formal announcement of their conversion, as contemplated in Article 6 of Hague Convention VII, was made.

International law imposes no obligation to announce the conversion of merchant ships into auxiliary vessels, and the silence of the process created a clear operational advantage: Argentina had no certainty as to whether these vessels were auxiliary vessels or merchant ships performing auxiliary functions, and as a result, their status was ambiguous and would depend on which definition of auxiliary vessels one applied (San Remo Manual, Newport Manual or German Manual).¹⁰¹ For this reason, it is difficult to classify these ships as military objectives “by nature”; rather, they were military objectives because of their purpose or use as troop transports. In this context, the transport of troops constitutes direct support to military operations, not merely general war support. Accordingly, the classification of these vessels as military objectives turns on their concrete military function at the relevant time, rather than on their formal designation as auxiliaries.

The temporal dimension further complicates matters. Hague Convention VII does not clarify whether a converted warship may be reconverted into a merchant vessel during hostilities, and the issue was deliberately left unresolved after debate at the 1907 Hague Conference.¹⁰² If reconversion is already contentious for warships, which are subject to formal criteria, then it is even more problematic for auxiliaries, which lack any formal regime. For instance, during the Falklands/Malvinas conflict, once the RMS *Queen Elizabeth 2* was requisitioned by the Royal Navy, it arguably became a military objective by nature for the duration of the conflict, if one adopts the view reflected in several modern manuals that auxiliaries are military objectives by their nature. Consequently, Argentina could have lawfully targeted it at any time,¹⁰³ without regard to the proportionality principle concerning the civilians on board – including during its return voyage to the United Kingdom after completing its troop transport mission and carrying some 700 survivors.¹⁰⁴

In modern conditions, where communications between naval headquarters and vessels are instantaneous, a State may designate merchant vessels as auxiliaries at any moment and revoke such designation just as quickly. If auxiliary status can be created and dissolved at will and without notification, then treating auxiliaries as military objectives by nature becomes practically impossible. A belligerent cannot be expected to act on the basis of an unobservable and potentially transient status.

Indeed, without a visit and search, a belligerent cannot reasonably ascertain whether a vessel is in fact an auxiliary vessel or an ordinary merchant ship. This erodes the rationale for “attack on sight” and collapses auxiliary vessels back into the default rule for merchant shipping: visit and search unless the vessel is operating in

101 Although later manuals post-date the Falklands/Malvinas conflict, the episode remains useful as an illustration of the structural problem created by the absence of any announcement regime for auxiliary status.

102 A. P. Higgins, above note 5.

103 Naval auxiliaries may be subject to attack irrespective of the composition of their crew or any passengers carried on board. This position is reflected in the Newport Manual, which treats the status of the vessel, rather than the status of persons on board, as determinative for targeting purposes. See 2025 Newport Manual, above note 3, § 8.6.1, p. 154. The San Remo Manual adopts a related, though not identical, approach: see San Remo Manual, above note 3, paras 65–66.

104 E. Chadwick, above note 99, pp. 25, 71.

direct attendance on the enemy's fleet.¹⁰⁵ The episode of British adherence (at least initially) to the 1936 London Protocol's rule on ships "in direct attendance" illustrates how, in practice, positive identification remains essential.¹⁰⁶

Distinguishing warships from auxiliaries: The problem of silent warships

A related issue stems from vessels that meet all the criteria of warships under Hague Convention VII but have not been formally announced as such. Some ADVs provide a useful illustration of this. Some are commanded by officers while some are crewed by personnel under military discipline, and they display national markings, including the Australian national flag, thus satisfying the treaty criteria – yet the State does not commission them as warships.¹⁰⁷ The question then arises: should such vessels be treated as warships or auxiliaries?

If warship status depends on formal announcement, then vessels that meet the Hague Convention VII criteria but are not announced remain auxiliaries. If, conversely, status depends on functional compliance with Hague Convention VII, then such vessels should be considered warships even without formal designation. The problem becomes more acute for States not party to Hague Convention VII. It is unclear whether Article 6's announcement requirement is customary law; if it is not, those States are not bound to declare their warships at all.¹⁰⁸

The result is a conceptual instability: the category of "warship" becomes under-inclusive if announcement is required, while the category of "auxiliary vessel" becomes over-inclusive if announcement is disregarded. This ambiguity poses risks during hostilities, since a belligerent may misidentify a vessel's rights and obligations depending on which interpretive approach it adopts.

The meaning of "exclusive control" and the problem of *ad hoc* auxiliary functions

Under the San Remo Manual's definition,¹⁰⁹ auxiliary vessels must be owned by or under the exclusive control of a State's armed forces. In practice, this criterion is difficult to apply, as many vessels performing auxiliary roles fall within a grey

¹⁰⁵ San Remo Manual, above note 3, para. 60(d).

¹⁰⁶ See Marjorie M. Whiteman, *Digest of International Law*, Vol. 10, US Department of State, Washington, DC, 1968, p. 669.

¹⁰⁷ As discussed in the above section "Australia", several Australian ADVs meet the criteria of warships under Article 29 of UNCLOS and Hague Convention VII, pending formal announcement or designation by the State. For examples showing that some ADVs are commanded by commissioned naval officers, see Sea Power Centre – Australia, "ADV Cape Inscription", available at: <https://seapower.navy.gov.au/history/units/adv-cape-inscription>; Sea Power Centre – Australia, "ADV Cape Otway", available at: <https://seapower.navy.gov.au/history/units/adv-cape-otway>.

¹⁰⁸ Indeed, Article 43(3) of AP I requires belligerents to notify the incorporation of paramilitary or law enforcement agencies into their armed forces. However, it remains uncertain whether this obligation extends to announcing the list of warships. Moreover, in light of States not party to the Protocol, the customary status of this provision remains open to further debate.

¹⁰⁹ As well as many States' manuals.

area between armed forces control, general State control and private operation. For example, the German Manual defines auxiliary vessels as those owned or operated by the State, not necessarily by its armed forces.¹¹⁰ This broader approach allows for auxiliary vessels to be controlled by other State organs. Such variations in approach are reflected in contemporary practice. China's maritime militia provides a clear illustration: some vessels are directly owned by State entities while others are privately owned but subsidized, mobilized, or tasked with supporting military operations on a contingency basis.¹¹¹

If "exclusive control of the armed forces" is interpreted strictly, then only vessels directly subordinated to the armed forces qualify as auxiliary vessels. If the concept is interpreted loosely, then *ad hoc* operational control – even temporary or partial – might suffice. Either interpretation has consequences: a strict approach excludes many vessels that perform auxiliary functions, while a flexible approach converts large swathes of civilian shipping into auxiliary vessels whenever they perform support roles.

The same problem arises with merchant ships that voluntarily undertake auxiliary tasks without armed forces' direction. Such ships clearly do not fall under the armed forces' "exclusive control", yet their conduct may amount to auxiliary "use" that renders them military objectives for the duration of their service. Once they cease such use, protection is restored, again highlighting the distinction between status and function.

These disparities suggest that auxiliary vessels are better understood as military objectives by purpose or use rather than by nature. Where auxiliary status is treated as permanent and independent of actual use, the category becomes both over-inclusive and under-protective.

Naval auxiliaries and self-defence

It is widely accepted in customary international law that auxiliary vessels, despite having no belligerent rights, possess a right of self-defence. This right applies in both peacetime and wartime,¹¹² although its scope and content differ substantially from that of warships. The difficulty lies in determining the limits of this self-defence, particularly because international law imposes no restriction on the sophistication or quantity of weapons mounted on auxiliary vessels. The issue becomes even more

¹¹⁰ See the above section "Germany".

¹¹¹ C. M. Kennedy and A. S. Erickson, above note 46.

¹¹² It bears emphasizing that in many situations in armed conflicts, the legal assessment of the use of force at sea will often be governed primarily by law of armed conflict (LOAC) targeting rules, with "self-defence" operating – at most – as a subsidiary justificatory label. Certain conduct may be lawful not because it is characterized as self-defence but because the LOAC treats it in a value-neutral manner by regulating its consequences (including the resulting targetability of the vessel). Making this relationship explicit helps avoid over-reliance on self-defence as a doctrinal shortcut in situations where the operative legal framework is the law of naval warfare.

complex today, as it is increasingly accepted that auxiliaries constitute a distinct category of ships that are military objectives by their nature. The result is a potentially unstable relationship between auxiliaries' lack of belligerent rights and their capacity to use force in self-defence; this becomes especially problematic in modern naval warfare, where engagements frequently occur at long range.

Naval auxiliaries' right to carry armaments, protections and other potential capabilities

International law does not prohibit auxiliaries from being armed. The only treaty that attempts to regulate armaments of auxiliary vessels, the Montreux Convention, does so solely within the context of passage through the Straits (the Bosphorus and the Dardanelles). Beyond that, States remain free to equip auxiliaries with defensive systems, sensors and other capabilities as they see fit. As a result, an auxiliary vessel may, in practice, possess advanced weapons indistinguishable from those found on non-frontline warships, so long as those weapons are not employed offensively.

The traditional justification for permitting auxiliaries to carry arms is that self-defence is permissible for all vessels¹¹³ – yet the boundary between defensive and offensive armament is increasingly blurred. Even historically, conduct framed as defensive could in practice inflict significant harm on enemy forces, demonstrating the instability of the defence–offence distinction at sea. When applied to modern auxiliaries – many of which may be fitted with capabilities far beyond those of historical merchantmen – the difficulty of maintaining a meaningful distinction between defensive armament and offensive action becomes even more pronounced.

If auxiliary vessels are indeed treated as military objectives “by nature”, there is little incentive for belligerents to limit the armament mounted on them. As long as the auxiliary does not initiate offensive action, States may argue that even highly capable weapons systems remain defensive in character. In modern conditions, this ambiguity becomes more acute. As noted above, contemporary naval warfare is conducted predominantly at long range, unlike earlier eras, when engagements occurred within visual contact range. On this basis, auxiliaries could plausibly justify the possession of long-range sensors and weapons systems for self-defence. If auxiliaries may themselves be lawfully attacked from afar without warning – and without the preliminary safeguard of visit and search – then equipping them with comparable long-range defensive capabilities appears not only logical but necessary for their survival.

¹¹³ Including merchant ships. When belligerents arm their merchant vessels so that they are capable of inflicting damage on warships or military aircraft, such arming may render those vessels military objectives (with the exception of light individual weapons and purely defensive protection systems). See San Remo Manual, above note 3, para. 60(f).

Self-defence for auxiliary vessels in wartime: Individual self-defence or merely resisting seizure?

If one accepts that auxiliary vessels constitute a distinct legal category or status (neither warships nor merchant ships), then their protective regime cannot simply mirror that of merchant vessels – a separate analytical framework is required. Merchant ships, as presumptively civilian objects, logically hold only the right to resist capture once a warship's intention to board or seize them becomes clear. Auxiliary vessels, however, are military objectives by virtue of their status and may be lawfully attacked at long range without warning. If auxiliaries are to survive in contemporary naval environments characterized by beyond-visual-range engagements, their protective entitlement must extend beyond mere resistance to capture and include a genuine right of self-defence against long-range threats. Keeping these two categories distinct is essential to prevent the collapse of long-standing distinctions in the law of naval warfare.

As noted above, if auxiliaries are regarded as military objectives by nature, then enemy warships or military aircraft may lawfully attack them from afar without warning. Merchant vessels, by contrast, are not military objectives unless certain conditions are met,¹¹⁴ thus, enemy warships must first attempt visit and search. This asymmetry suggests that self-defence for merchant vessels is primarily directed at resisting capture, whereas self-defence for auxiliaries must logically include the right to defend against long-range attack.

In the author's view, self-defence and the right to resist capture should be treated as two distinct categories of conduct.¹¹⁵ This distinction was already apparent – though contested – in earlier naval practice. During the Great War, for example, British merchant ships rammed German U-boats. One interpretation viewed ramming as self-defence, since a visit – or even an attempt to visit – could be perceived as the initial step toward capture.¹¹⁶ The opposing view held that ramming was offensive rather than defensive, because visit and search were lawful prize-law measures and not an unlawful use of force.¹¹⁷ The danger posed by ramming to submarines made the line between defence and offence particularly contentious, a debate reflected during the Oxford Naval Manual discussions of 1913.¹¹⁸

The difference between resisting capture and self-defence becomes even more significant in contemporary long-range naval warfare. If these two categories are blurred, then merchant ships might claim a right to employ long-range force against enemy warships. Nothing in international law prohibits merchant ships from being armed; the only persistent objector historically was the Netherlands, which

114 San Remo Manual, above note 3, paras. 60, 67.

115 Unfortunately, the Oxford Naval Manual does not distinguish between the right of self-defence for private vessels and that for public vessels which are not warships. See Oxford Naval Manual, above note 22, Art. 12.

116 James Brown Scott, "The Execution of Captain Fryatt", *American Journal of International Law*, Vol. 10, 1916, pp. 867–876.

117 *Ibid.*, pp. 867–876.

118 *Ibid.*, pp. 868–870.

refused entry to armed merchantmen during the Great War.¹¹⁹ In modern conditions, an armed merchant ship equipped with sensors and guided weapons could detect and attack an enemy warship from considerable distance. Since the right of self-defence does not require a vessel to absorb an initial blow, recognition of a broad self-defence right for merchant ships could produce dramatic and destabilizing consequences.

For these reasons, maintaining a strict doctrinal separation between the two categories is crucial. Merchant ships retain the right to resist capture, but only once it is clear that an enemy warship intends to board or seize them. Because merchant ships are not considered military objectives by their status alone, but only when their use or purpose so warrants, they are not subject to lawful long-range attack; enemy warships must attempt visit and search rather than attack on sight. There is therefore no functional necessity for a broader right of long-range self-defence for merchant vessels. Auxiliary vessels, by contrast, are military objectives by their status alone, and thus may be lawfully attacked at long range without prior warning.¹²⁰ It follows that auxiliaries logically possess not only the right to resist capture but also a genuine right of self-defence in the sense of defending against imminent or ongoing long-range attack.

This leads to difficult questions about anticipatory or pre-emptive self-defence. The *Caroline* formulation permits pre-emptive force where the threat is “instant, overwhelming, and leaving no choice of means and no moment for deliberation”.¹²¹ If auxiliary vessels may be lawfully targeted without warning, the threshold of imminence is inherently lower than for merchant ships. Auxiliaries equipped with advanced sensors may detect an approaching enemy force before being detected themselves, but does this justify pre-emptive – or even interceptive – self-defence?

The risk is obvious: if auxiliaries are allowed to strike first under an expansive reading of anticipatory self-defence, the already thin line between self-defence and belligerency nearly disappears, and auxiliary vessels would effectively operate as *de facto* warships without meeting the Hague Convention VII criteria.¹²² On the other hand, denying auxiliaries a meaningful right of anticipatory self-defence may leave them unable to survive in modern combat conditions. International law provides no guidance on how to reconcile this tension.

119 Edwin Borchard, “Armed Merchantmen”, *American Journal of International Law*, Vol. 34, 1940, p. 109.

120 This is because auxiliary vessels may be attacked on sight as military objectives by virtue of their nature – once detected and within range, no further inquiry is required. By contrast, merchant vessels are not military objectives by nature; an enemy must first conduct visit and search, and they only become liable to attack if their use places them in direct support of military operations.

121 That is, where the threat is real and not just a latent threat. See correspondence between Daniel Webster and Lord Ashburton concerning the *Caroline* incident, reproduced in UK Foreign Office, *British and Foreign State Papers*, Vol. 30: 1841–1842, James Ridgway and Sons, London, 1858, available at: <https://ia801304.us.archive.org/8/items/correspondencebe01unit/correspondencebe01unit.pdf>.

122 For example, if the auxiliary vessels of a major power possess more advanced weapons, sensors and surveillance systems than the warships of a smaller or less developed adversary (as in a hypothetical conflict between the United States and Iraq), the auxiliaries may be able to detect and identify those warships long before being detected themselves. In such circumstances, auxiliaries could exercise pre-emptive or even “interceptive” self-defence before enemy warships attack them on sight.

The core of the problem is that self-defence as traditionally conceived – particularly individual or unit-level self-defence – evolved in a context where combatants could visually identify hostile action. In an environment where a lawful attack may arrive from dozens of miles away, and where an auxiliary vessel's sensors may detect a threat long before it materializes, the doctrine of self-defence becomes detached from its original logic.

Unit self-defence¹²³

Unit self-defence is generally understood as the authority of military forces to defend themselves and their unit against attack or imminent attack.¹²⁴ Whether auxiliary vessels enjoy the same right depends on whether they are considered part of the armed forces¹²⁵ and, more importantly, whether the exercise of such defence remains within the scope of permissible uses of force for non-warship platforms.

Analytically, unit self-defence is distinct from the right of self-defence of the State under Article 51 of the UN Charter. In the naval context, it operates primarily at the operational level, where the ability of individual vessels to defend themselves is exercised through the domestic law of the flag State, including applicable operational rules and command authorities. International law may therefore play a permissive or enabling role, rather than defining the substantive content of such defensive action. Framed in this way, unit self-defence reflects prevailing operational practice at sea and aligns with the jurisdictional position of vessels, particularly the primacy of flag State jurisdiction.¹²⁶

In many cases, auxiliary vessels are commanded and crewed by personnel under military discipline.¹²⁷ If unit self-defence applies to them, then an auxiliary vessel in convoy with warships may lawfully return fire to protect the unit. In some interpretations, it may even strike enemy forces threatening other vessels in the formation. This would allow auxiliaries to perform roles that closely resemble combat, even where their status formally prevents them from engaging in hostilities.

123 What this article means by “unit” in the context of “unit self-defence” in this section is not a ship as a single unit but rather a convoy or task unit as a single unit.

124 See Charles P. Trumbull IV, “The Basis of Unit Self-Defense and Implications for the Use of Force”, *Duke Journal of Comparative and International Law*, Vol. 23, No. 1, 2012, p. 121.

125 Unit self-defence might only apply to military forces. See Dale Stephens, “Rules of Engagement and the Concept of Unit Self-Defense”, *Naval Law Review*, Vol. 45, 1998, p. 135; M. C. Bourloynnis-Vrailas, “The Convention on the Safety of United Nations and Associated Personnel”, *International and Comparative Law Quarterly*, Vol. 44, No. 3, 1995, p. 586. Auxiliary vessels are generally treated as part of a State's military forces, but an exception appears in the German Manual, which allows auxiliaries to be owned or operated by State organs other than the armed forces, provided they perform auxiliary functions. See the above section “Germany”.

126 On unit self-defence in the maritime context, see C. P. Trumbull IV, above note 124; James Farrant, “Modern Maritime Neutrality Law”, *International Law Studies*, Vol. 90, 2014, p. 283.

127 Except for the definitions of auxiliary vessels in the 2023 and 2025 Newport Manuals and the German Manual, as has been discussed in the above sections “Definition of Auxiliary Vessels or Naval Auxiliaries” and “Germany”.

In peacetime, this logic is relatively straightforward: auxiliary vessels may defend themselves or nearby friendly forces from unlawful attacks, an entitlement widely regarded as deriving from the State's inherent right of self-defence in customary international law. In wartime, however, unit self-defence risks transforming auxiliaries into functional combatants. The concept of "unit"¹²⁸ may be defined broadly by States, potentially encompassing multiple vessels operating across wide areas. If an auxiliary vessel may use force to defend any element of a broadly defined unit, it may end up engaging in force that is indistinguishable from belligerency.

These ambiguities arise because the right of self-defence for auxiliaries sits uncomfortably alongside the prohibition against their participation in hostilities. Without clearer doctrinal limits, the distinction between warships and auxiliaries risks being eroded in operational practice.

Conclusion

The legal position of auxiliary vessels remains one of the least developed areas of the law of naval warfare. Their growing operational significance stands in sharp contrast to the absence of a treaty definition, the divergence among modern restatements, and the inconsistent approaches adopted in State practice. The traditional dichotomy between warships and merchant vessels – around which much of the classical law of naval warfare was built – no longer maps neatly onto the realities of contemporary naval operations. Auxiliary vessels now occupy a substantial and increasingly central part of naval force structures, yet the law has not kept pace.

The most persistent difficulty lies in the tension between status and function. Restatements tend to treat auxiliary vessels as military objectives by nature merely because they are owned or controlled by a State's armed forces, but State practice does not uniformly support this view, and the absence of an announcement regime or any obligation to distinguish auxiliaries visually makes it practically impossible to rely on status alone. Once the temporal dimension is introduced – auxiliary functions performed "for the time being" – the category becomes even more fluid. Auxiliaries can emerge and disappear without notice, and merchant ships may temporarily assume auxiliary roles without ever being formally designated as such.

The consequences are significant. If auxiliary vessels may be attacked on sight, the protections afforded to merchant shipping shrink, and the line between warships and non-warships becomes blurred. If, instead, auxiliaries are treated as military objectives only by virtue of their purpose or use, then the auxiliary category becomes redundant, collapsing into the more familiar framework of merchant vessels that lose protection because of their contribution to military action. Neither approach is fully satisfactory.

128 A naval task unit usually consists of three to five ships, but there is no exact definition, let alone legal definition, of "unit". For definitions of "unit" in various military branches, see "Military Unit", *Encyclopaedia Britannica*, 2020, available at: www.britannica.com/topic/military-unit.

Further, the absence of clear limits on the permissible support functions of auxiliary vessels and the uncertain boundaries of their self-defence rights creates a legal space in which States may, deliberately or otherwise, exploit ambiguity. Auxiliary vessels may provide indispensable operational support without meeting the requirements of Hague Convention VII, yet their crew – military or civilian – operate under legal conditions that are far less clearly articulated than those applicable to warships.

These uncertainties underscore the need for greater clarity. Whether through more detailed restatements, interpretive guidance, or informal understandings among States, there is value in developing a more coherent framework for determining when a vessel is an auxiliary vessel, what consequences follow from that classification, and how auxiliary vessels may be employed in contemporary naval operations without undermining the broader logic of the law of naval warfare. As States rely increasingly on mixed fleets of warships, auxiliaries, government vessels, and civilian shipping capable of performing military functions, the assumptions of earlier eras become progressively harder to sustain.

A clearer articulation of auxiliary vessel status will not resolve all operational problems, but it would provide a more stable framework for balancing military necessity with the protections afforded by international humanitarian law. Without such clarification, auxiliary vessels will continue to occupy a legally marginal position – highly significant in practice, but normatively under-examined – at a time when their role is only becoming more central to naval warfare.