

SECTION 9. EUROPEAN UNION LAW. INTERNATIONAL LAW AND COMPARATIVE LAW

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INTERNATIONAL CUSTOM AS THE BASIS OF THE LAW OF NAVAL WARFARE

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Naval wars have been waged for over 32 centuries, counting from the first "recorded" naval battle in the history of warfare in 1186 BC, when the Egyptian fleet of Ramses III confronted the ships of the "sea tribes" [1].

One of Britain's most influential military historians, Professor Sir Michael Howard, concluded in the preface to his study "War in European History" (1976) that "there is literally no branch of human activity which is not to a greater or lesser extent relevant" to the war [2]. At the same time, "war at sea (on rivers and lakes) from the outset demanded significantly greater expenditure than war on land" [3].

At the start of the twentieth century the law of the sea was almost entirely customary international law [4]. Modern law of naval warfare combines traditional international customs, treaties and modern national laws.

Blockades, sea trophies and prizes, the right to visit and search, bombardment from the sea, the use of fire ships, etc. are international customs that have become part of the law of naval warfare. Let us take a closer look at sea blockades, sea trophies and prizes.

Elements of a naval blockade were used as early as the Battle of Salamis in 480 BC – a decisive phase of the Greco-Persian Wars, when Greek ships won a resounding victory over the forces of the mighty Persian fleet despite the blockade of the strait between the island of Salamis and the mainland by part of Xerxes' fleet [5]. According to the Great Ukrainian Encyclopaedia, **a naval blockade** is "the blocking by the naval forces of the warring states of access from the sea to the coasts under the control of the enemy or a non-belligerent state assisting it" [6].

Under contemporary international law, the imposition of a blockade is lawful in two cases expressly provided in the UN Charter: a decision of the

UN Security Council (Article 42) and the exercise of the right to self-defence (Article 51) [7].

In the Hague Treaty of 1689 on the blockade of France (*Traité anglo-néerlandais sur le blocus contre la France*) England and Holland formulated rules for the notification of blockades [8]. International legal issues of naval blockades were also defined by Declaration Respecting Maritime Law (Paris, 16 April 1856) [9], the signed but not ratified Declaration concerning the Laws of Naval War (London, 26 February 1909) [10], the Hague Conventions (1907) and a number of other agreements.

According to Article 4 of **Declaration Respecting Maritime Law** (Paris, 16 April 1856): "Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy" [9].

Article 2 of the **London Declaration concerning the Laws of Naval War**, with reference to the Paris Declaration Respecting Maritime Law of 1856, states: "**a blockade, in order to be binding, must be effective** – that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coastline" [10]. According to Article 8 of **the London Declaration**, "a blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16" [10], and under Article 9, "A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name. It specifies: (1) The date when the blockade begins; (2) the geographical limits of the coastline under blockade; (3) the period within which neutral vessels may come out" [10].

The concept of the right to **trophies (prizes)** arose in international customary law in connection with the capture at sea of enemy property, including ships and cargoes, during international armed conflicts.

Trophy ships are mentioned in the "Parker Chronicle" (manuscript A of the Anglo-Saxon Chronicle), when King Alfred captured Danish ships in 882 AD [11].

Property located on a beach, river or lake may also be considered as a trophy, if it is connected to the sea. Particularly, oil stored in tanks but previously pumped from a ship onto the shore may be considered as a trophy. Furthermore, seizures made on land by naval forces may be considered lawful prize [12].

The recognised code of norms of valid customary law of the sea with prize rules (**visit/search; smuggling; blockades; adjudication of prizes**) is **San Remo Manual on International Law Applicable to Armed Conflicts at Sea** (12 June 1994) [13].

The immunity of certain types of ships and goods from capture as trophies is confirmed both in customary law ("for coast fishing vessels" in

"The Paquete Habana", 1900 [14]), and in **Declaration Respecting Maritime Law** (Paris, 16 April 1856), where, according to Article 3: "Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag" [9]; in the Hague Conventions (1907); in San Remo Manual (1994) [13].

In the landmark case of "The Paquete Habana", the US Supreme Court ruled that **the seizure of fishing vessels as military spoils violated customary international law**, which is an integral part of US law and, as such, is binding: "At the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity... and of the mutual convenience of belligerent states, **that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war**" [14].

According to the Hague Convention XI of 1907 [15], the postal correspondence of neutrals or belligerents (Article 1), vessels used exclusively for fishing, along the coast (Article 3), and vessels charged with religious, scientific, or philanthropic missions (Article 4) **are inviolable**; and according to Article 46 of the Hague Convention IV of 1907, private property **cannot be confiscated** [16].

Overall, international customs remain a key source of the law of naval warfare, ensuring historical continuity and legal predictability in armed conflicts at sea. The examples provided clearly demonstrate that customary law can adapt flexibly herewith remaining relevant.

Therefore, considered modern realities, the actuality of international custom in regulating naval armed conflicts is enlarging and requires deeper study and harmonisation with the new challenges of international law.

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INTERNATIONAL LEGAL STANDARDS OF PROBATION IN THE AFRICAN REGIONAL HUMAN RIGHTS PROTECTION SYSTEM

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International legal standards of probation are reflected both at the universal and regional levels within human rights protection systems (notably in the European, American, and African systems). Among these, the African regional human rights protection system remains the least explored from a legal standpoint, despite containing provisions relevant to the penal enforcement system, including the application of probation measures.

General provisions can be found in the **African Charter on Human and Peoples’ Rights (the Banjul Charter, 1981)**, which stipulates that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of their legal status. It is worth noting that in 1998, the **African Court on Human and Peoples’ Rights** was established in Addis Ababa by a Protocol of the OAU Council of Ministers, providing a judicial avenue for addressing violations of the aforementioned fundamental human rights.

The African regional system pays particular attention to the legal regulation of the rights and freedoms of youth and women. The **African Youth Charter (2006)** requires State Parties to ensure, inter alia: the separation of accused juveniles from convicted persons and the provision of treatment appropriate to their status; the establishment of rehabilitation centers for accused minors and incarcerated youth; and the implementation