

## **The Role of International Conventions in Protecting Seaports during Armed Conflicts**

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### **Abstract**

*Seaports are one of the elements of maritime transport, and have an important role in activating and activating maritime traffic, and it also has importance in the movement of maritime transport, as seaports represent the gateway through which countries overlook the outside world, it is the station between two types of transport in order to reach the intended destination, in other words, it is the end of land routes of all kinds, The port provides loading and unloading services, receiving and departing passengers, in addition to supplying ships with their needs of fuel, food, and other services they need.*

*However, they are exposed to the risks of military attacks in times of armed conflict, which represent a threat to their safety, so the rules of international humanitarian law have provided protection for these ports, as international conventions included texts that seek to protect them, as well as the rules contained in international custom that helped provide a kind of protection for them, in addition to the general principles of international law that can be applied to the situation of armed conflicts, which provides protection for these ports. Therefore, we will deal with the protection of seaports in two sections, the first section is devoted to the definition of seaports, while the second section is devoted to the sources of international protection of seaports.*

**Keywords:** *Seaports, maritime transport, Armed Conflicts.*

### **Introduction**

Seaports are one of the elements of maritime transport, and have an important role in activating and activating maritime traffic, and it also has importance in the movement of maritime transport, as seaports represent the gateway through which countries overlook the outside world, it is the station between two types of transport in order to reach the intended destination, in other words, it is the end of land routes of all kinds, The port provides loading and unloading services, receiving and departing passengers, in addition to supplying ships with their needs of fuel, food, and other services they need.

However, they are exposed to the risks of military attacks in times of armed conflict, which represent a threat to their safety, so the rules of international humanitarian law have provided protection for these ports, as international conventions included texts that seek to protect them, as well as the rules contained in international custom that helped provide a kind of protection for them, in addition to the general principles of international law that can be applied to the situation of armed conflicts, which provides protection for these ports. Therefore, we will deal with the protection of seaports in two sections, the first section is devoted to the definition of seaports, while the second section is devoted to the sources of international protection of seaports.

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### 1. Definition of seaports:

The seaports have economic importance, as they represent one of the elements of maritime transport, as through them foreign trade is carried out, given the volume of goods transported by sea, so we will address this section in two requirements we allocate the first requirement to define seaports and their types while we allocate the second requirement to discuss the legal status of foreign ships in seaports.

There have been several definitions of seaports, whether at the level of jurisprudence or international conventions, part of the jurisprudence has defined seaports as ((facilities established by the state in certain locations of its shores to guide and receive ships, and these facilities are part of the territory of the state)) [1].

While another aspect defined it as ((a special place on the shores of the state equipped for ships to unload and ship goods and take and disembark passengers)) [2] .

There are also those who define it as ((a natural or artificial port, any facility established by the state on the shore, from which ships take shelter to unload or load goods, or to disembark or carry passengers)) [3].

It was also defined as ((facilities established by the state on its shores, equipped with devices and tools, and provides them with a cadre to operate them for the purpose of receiving ships for loading or unloading, or conducting maintenance work on them, or for any other purpose)) [4].

At the level of international conventions, the Geneva Convention on the Regime of Seaports of 1923 defined seaports in its first article as ((they are usually frequented by naval ships and prepared to serve the foreign trade of the international community)), while the Geneva Convention on the Territorial Sea and the Contiguous Area of 1958 and the Convention on the Law of the Sea of 1982 did not define the port, but these two conventions - the first in its article V and the second in its article VIII - only specified the internal waters, which consist of a total of The waters confined between the baseline from which the measurement of the territorial sea and the coast begins, and within the inland waters are ports, marinas, national bays, canals, river craters and historic waters that are also declared.

The port is a limited water area, naturally or industrially, located on the sea coast and used by ships when needed, whether to take shelter from stormy weather, or to dock for loading and unloading operations and finally to carry out the necessary repairs [5].

The marina is a marine area used although it may be offshore for docking ships that do not approach the shore [6].

The description of the marina in determining it is subject to the practices of the coastal state state in it, however, it is necessary to launch the description of the marina on a part of the availability of two conditions: the first is that the marina works as an alternative port for unloading, shipping and docking ships, and the second is that the marina is a safe and fortified area, it thus performs two functions represented in that it is a special area to facilitate control and sovereignty over the port and the establishment of quarantine areas, as well as that it is a protection area with a depth of security and strategic importance [7].

This type of berths is mostly allocated to transport oil through the pipelines that reach these marinas under water, or transport from large cargo ships that cannot reach ports near the coasts, so their cargo is unloaded in these marinas and then transported to the coasts [8].

Marinas are used to load, unload and anchor materials for ships, and they are called berths and berths within the limits of the territorial sea, which are bridges that extend into the sea water that the ship can stand near and load or unload goods [9].

Permanent port facilities that fall within the port system are part of the coast of the State, while industrial facilities are not considered permanent establishments, and fixed facilities mean those permanent facilities established by countries and permanently connected to the seabed, while industrial facilities are floating facilities on the surface of seawater, i.e. not fixed on the seabed, which are facilities that can be moved from one area to another, and thus the baseline measurement starts from permanent facilities, as for the berths that are used to carry and unload ships. They are considered within the territorial sea and this is stipulated in Article 12 of the Convention on the Law of the Sea [10].

We can distinguish between the port and the port, where the port means the sea surface deep enough to receive ships, and protected either natural (in the lap of the coast), or artificial by extending an artificial tongue from the ground towards the sea, and the waters of the port are characterized by calm that ensures the entry and departure of ships in complete safety, in addition to avoiding the possibility of repeated impact with the wall of the quay on which they dock while they are in the port [11].

The concept of the port is more comprehensive, as it consists of the scope that embraces the port and includes all the facilities that are used in the transport process from facilities such as piers, loading and unloading equipment, various warehouses and marine services associated with the port, meaning that any port in the world must include a port, whether natural or artificial, and it is necessary that the ports be within the territorial waters of the state, It is also equipped with a great deal of port services such as at least a pier [12].

Seaports and marinas are considered part of the territory of the State and are subject to its sovereignty, as referred to in Article 11 of the 1982 Convention on the Law of the Sea: "Part of the coast shall be considered the farthest permanent port installations that form an integral part of the port system..."

Therefore, ports, marinas and marine basins are sites on the coastal shores of the State specially prepared to receive ships and equipped with modern means to unload them or to ship their cargo from them, and they are therefore within the territory of the State and part of its public property.

Types of seaports:

There are many criteria that are followed in the classification of ports, which include geographical location, importance, volume of operation, and function - but the last criterion - function has a major role in determining the characteristics of the port and its general specifications that show its size, role and importance, knowing that the function of the port originally contributes to determining its geographical location, and the extent of its breadth and weight demographic and economic, which means that the function of the port represents the product of mutual interaction between the characteristics of the port site and its various specifications and equipment.

Accordingly, we will adopt the function criterion in classifying ports into commercial ports and war ports.

#### 1- Commercial ports:

They are the ports destined to carry out all the operations of boarding and disembarking people, goods and live animals moving from maritime transport to land transport and vice versa, as well as all operations related to maritime navigation in the best economic and security conditions, and since ships frequent them regularly and habitually, whether for loading or unloading, these ports must be on the maritime navigation routes that ships pass through, in addition to that they must be characterized by sound and renewable infrastructure and divergent lines of communication, In addition, it is necessary to have storage yards and sheds, and other activities related to national defense, fishing and excursion can be practiced at the level of a commercial port, on a secondary basis, [13].

There are what are known as free ports, which are ports organized in a way that makes them in the rule of the region, which has no sovereignty in terms of customs, and has called for the adoption of this system economic considerations in the countries that take customs protection [14].

## 2- Military ports

These ports are usually a haven or naval bases of war, and in some cases a small number of berths are used in commercial ports for this purpose, such as cases of repair and supply, and the ports of war are subject to strategic advantages when choosing the site in that these are easy to access, and wide water spaces, and with several ports, and easy to maneuver, as well as be immune from within and from their skies against any possible aggression, and to be connected to the interior by railways for supply operations [15].

The state's obligation to open its ports to foreign ships goes to commercial ports, while the state's warports may close them temporarily or permanently and allow or not allow foreign electric ships to visit them, as the general rule regarding these ports is that they are subject only to the authority of the coastal state [16].

It goes without saying that the State may absolutely prevent the entry of foreign ships into its ports if it is compelled to do so by accidents related to its safety or vital interests, provided that such prohibition shall be temporary and shall cease as soon as the reason for which it led has ceased to exist. The State may also prevent a foreign ship from entering the port, specifically for reasons of public health, security, or in implementation of United Nations resolutions or the like. Ports are national waters that are subject to the sovereignty of a State just like any other part of its territory, and this applies absolutely to ships flying its flag, whatever their capacity [17].

### Legal status of ships in seaports:

It is a well-established principle in international law that inland waters are part of the territory of the coastal state, as the bottom and subsoil of these waters and the atmosphere above them are subject to its full and absolute sovereignty, as the coastal state undertakes, in its own ways, its jurisdiction and administrative, legislative and judicial control over its internal waters [18].

The coastal state is the owner of its ports and the facilities built on them, and accordingly, it can and even take the necessary measures for the entry of foreign ships to it, subject it to its health and customs regulations, and impose the necessary fees on it in exchange for benefiting from the services provided to it [19].

As the right of maritime navigation and fishing in inland waters is limited to the coastal state and its nationals only, foreign ships, whether commercial or military, do not have the right of navigation in the internal waters of any of the countries, and therefore the coastal state can prevent foreign ships from entering its internal waters, and this is according to what was stated in the commentary of the International Law Commission on Article 26, paragraph (2) of the draft submitted to the Geneva Conference in 1958, the foreign state does not have the right to claim with the rights of its ships or nationals in the internal waters of a State [20].

The coastal State cannot by virtue of its absolute sovereignty over its ports deprive foreign ships of their use, except for legitimate reasons, as the ports remain open in peacetime to receive such ships, in order not to leave free rein for the coastal State to close them whenever it wants because of the damage that this entails to international trade, and the consequent through the principle of freedom of maritime navigation [21].

Article 11 of the 1982 Convention on the Law of the Sea, which corresponds to Article VIII of the Geneva Convention on the Territorial Sea of 1958, sets the rule with regard to the determination of the baseline from which the measurement of the territorial sea vis-à-vis ports begins, as it decided (for the purposes of determining the boundaries of the

territorial sea, part of the coast shall be considered the farthest permanent port installations that constitute an integral part of the port system, and installations established at sea and artificial islands shall not be considered permanent port installations).

Professor Columbus summarizes the general principles that can be attached to ports and marinas as follows [22]:

1. Commercial ports shall be opened in peacetime to international traffic, and the free entry of foreign ships into ports shall include their right to disembark and load goods and disembark and board persons.
- 2- It is absolutely not possible to close the port to a ship aiming to enter it due to force majeure or distress.
- 3- Warports may be closed to foreign warships or merchant ships for the purpose of precaution and for security reasons.
4. The entry of warships into ports, even commercial ones, may be subject to certain restrictions relating to the number or duration of stay.
5. Each State shall have the right to establish laws aimed at controlling navigation in its national waters, and the State may regulate the entry of foreign ships into its internal waters in a reasonable manner that does not lead to obstruction of international navigation or discrimination between different States.

However, there are many indicators in jurisprudence and in international behavior that indicate that there is no possibility of allowing foreign ships to enter the ports of the coastal state without obtaining prior permission from the port state, because the latter may see the presence of warships in its ports as a violation of its security, and it alone has the discretionary authority to grant or prevent permission for foreign warships to enter its ports, and warships do not have the right to enter the ports of other countries except in cases. However, there are precedents that indicate that the state can prevent warships belonging to other countries from entering its ports even in force majeure [23].

The obligation of the coastal state to open its ports to foreign ships goes to commercial ports, while military ports, it is the right of a state to close them to all foreign ships, commercial and war, to preserve its interests and military secrets, as well as for the state for special reasons justifying this to close some of its commercial ports to foreign ships, as long as they open others to them [24].

As for the legal status of foreign ships located in the ports of the coastal State, a distinction must be made between commercial or private ships, and public government ships such as warships and government ships used for non-commercial purposes as follows:

First: The legal status of private ships in international coastal ports: The rules governing foreign private ships in the ports of the coastal state are the obligation after violating the laws and regulations set by the coastal state with the aim of regulating navigation, customs, health and police in order to maintain its safety, as for the jurisdiction of the coastal state over ships located in its ports, the coastal state is competent to consider civil disputes if the dispute concerns a person other than the ship's crew members. The general rule is that the coastal State shall have jurisdiction over any crime committed in its inland waters [25].

Second: The legal status of public ships in the ports of the coastal state: The coastal state may regulate or prevent the entry of public ships, especially warships, except in cases where the warship faces certain circumstances of destruction as a result of a malfunction of injury or force majeure, and in the event that warships are allowed to enter the internal waters of the coastal state, such ships enjoy complete immunity against search, seizure

and litigation procedures before the courts of the coastal state, that is, against any action that constitutes an attack on those The wisdom of this is that the public ship represents the public authority of the state flying its flag and therefore attacking it is a violation of the sovereignty of that state [26].

## 2. Protection under international port conventions during armed conflict:

The international humanitarian law conventions are the main source in providing legal protection for maritime transport during armed conflicts, the protection guaranteed by international humanitarian law for the activity of maritime transport with the elements of ships and ports during the period of armed conflicts, is represented in the provisions of those conventions, whether explicitly from the protection of maritime transport during armed conflicts, or through what some conventions referred to from prohibiting or restricting the use of certain means and methods of combat during those conflicts, to In addition, what is stated in these agreements of the need to take the necessary measures and precautions with regard to objects and installations, including shipping ships, it is we will deal with the international protection of maritime transport under international conventions in three sections, in the first section we show international protection under the Hague Conventions, while the second section deals with international protection of maritime transport under the Geneva Conventions, while the third section is devoted to international protection under the San Remo Guide.

The Hague Conventions include a set of conventions related to naval warfare, and then can be relied upon to protect sea ports, and the protection of ports during armed conflicts is embodied on the occasion of prohibiting and restricting the use of a certain type of weapon, including what was stated in the Hague Convention on the laying of self-sea contact mines in 1907, which placed obligations on countries regarding the prohibition and restriction of the use of sea mines, as Article II of the Convention prohibited the laying of mines off the coasts Or discount ports with the aim of hindering commercial navigation.

Although this article stipulates a prohibition on the use of naval mines, it is vague as it does not indicate the distance at which the placement of mines is prohibited, as well as it prohibits the use of mines that prevent commercial navigation, but it does not clarify what is meant by peaceful navigation.

As for the third article of the same agreement, it mentioned peaceful navigation, as it stipulated that ((all possible precautions must be taken for the security of peaceful navigation in the event of the use of self-anchored touch mines)) [27], and therefore commercial navigation requires that it be peaceful, and this means that the ships of the belligerent states, as well as neutral ships that accompany the fleet of warships, and ships that do not operate in a war fleet but are loaded with military equipment, are out of the scope of navigation. Commercial and therefore not protected.

As for the restrictions on the use of sea mines, it is stated in the preamble to the Convention that if it is not possible in the present case to prohibit the use of self-seated sea contact mines, it is necessary to limit and regulate the use in order to mitigate the effects resulting from them, and to give peaceful navigation the security to which it aspires despite the existence of a state of war. At that time, States sought to restrict the use of autonomous and non-anchored mines.

The laying of automatic contact mines off the coast and ports of the enemy has also been prohibited, with the sole purpose of intercepting commercial ships, and the Convention also imposed the need to take all possible precautions for the security of peaceful shipping when using proven automatic contact mines, and that combatants undertake to do their utmost to conceal these mines within a limited period of time, with notification to ships and governments of the places where such mines will be laid as soon as military requirements allow, through notice addressed to shipowners. It should also be sent to

governments through diplomatic channels. Neutral States that lay automatic contact mines off their coast must abide by the same rules and take the same precautions as are imposed on belligerents, and the neutral authority must inform shipowners, by prior notice, of the place where automatic contact mines are laid at the end of the war. Belligerents off the coast of the other side, the country that laid it must notify the other party of its positions, and each state must proceed to the clearance of mines in the shortest possible time from its waters [28].

The Hague Convention VIII remains the only convention governing naval mines, and although the Hague Convention has gained the status of customary international law, making it binding on all states, the treaty only concerns the use of mines with automatic contact, but due to the continued widespread use of these mines by states, the treaty remains relevant to current naval operations, and the most technologically advanced naval mines are not governed by the treaty, but their use is regulated by the treaty. Rules and principles of customary international humanitarian law [29].

As for the use of mines in non-international armed conflicts, despite the relative scarcity and lack of rules relating to naval warfare and non-international armed conflicts, there are clear laws applicable to the use of naval mines during non-international armed conflicts, especially with regard to the way in which these weapons are deployed. For example, the use of mines to impose a siege in circumstances where the sole purpose of the siege was to starve the civilian population is not permitted, since starvation is not permitted as a method of warfare in international armed conflicts (IAC) or non-international armed conflicts (NIAC). Obviously, not all the rules applied in the IAC will be directly applied in the NIAC, at least in part due to the fact that there will always be at least one non-state party involved in the NIAC, another distinction between the IAC and the NIAC is that the state in question, assuming it has succeeded in eliminating the rebels, will likely want to impose criminal sanctions against those who participated in the conflict, and therefore some of the obligations that fall States in international humanitarian law simply cannot be met by at least one of the parties to non-international armed conflicts, moreover, states in non-international armed conflicts may see that they derive some advantages from the relative scarcity of rules that apply directly and clearly during non-international armed conflicts. A method not expressly prohibited by international law [30].

Combatants are also prohibited from laying mines in the inland waters or territorial sea or archipelagic waters of neutral States, in addition, neutral States may, to maintain their neutrality, deploy sea mines in their internal waters, territorial sea or archipelagic waters as a means of deterring belligerents from conducting their operations in those areas, taking into account the right of innocent passage enjoyed by ships of other States in the territorial sea and archipelagic waters, while notifying commercial ships of the presence of mines. Navy in these waters [31].

The question arises about the geographical scope of the use of mines in maritime armed conflicts?

In fact, neither the traditional law of mine warfare nor the customary practice of states has been able to provide clear guidelines regarding the geographical limits of mine use, the only well-established principles being that in the three-mile territorial sea age, it was legal for a combatant to use mines in his territorial sea, inland waters, territorial sea and internal waters of his enemy, and that it was illegal to place them in the territorial sea and internal waters of a neutral state [32].

Through the foregoing, it is clear that the Hague Convention on Naval Mines has prohibited the use of mines for non-military purposes, but it did not indicate the maritime field in which it is forbidden to place mines, and this is what makes the prohibition ambiguous, in addition to that, the Convention was characterized by shortcomings as it prohibits one type of mine, however, it provided protection for maritime transport, as according to its preventive nature, it aims to protect maritime transport before the

outbreak of hostilities by prohibiting planting this type of mines that would impede maritime navigation, as they pose a danger to maritime traffic as a result of the explosion that they are exposed to if they come into contact with these mines.

The Hague Convention IX on Bombardments by Naval Forces during War also contained restrictions on the use of this right, i.e. allowing the bombing of fortified cities, including what is stated in the preamble to the Convention that the contracting parties ... Therefore, it is important that the bombing operations carried out by the navy be subject to general rules that protect the rights of civilians and civilian ships by applying the principles and rules of 1899 relating to the laws and customs of war on land to this war operation as much as possible [33], and the same convention obliges the commander of the attacking naval forces to do everything possible to warn the authorities before embarking on the bombing if the military situation permits, as it states that the commander of the attacking naval forces must do everything possible to warn the authorities before embarking on the bombardment, if the military situation permits, stating that the commander of the attacking units before the bombing begins to do their utmost to warn the authorities of cases of forcible attack [34].

The prohibition contained in this Convention, which dealt with the impact of bombing by naval forces, provides protection for maritime transport during military operations, the first article of which stipulates the prohibition of striking ports, cities, villages, dwellings or buildings not defended by bombs by naval forces, as well as the prohibition of striking a specific place with bombs simply because mines touched freely have been placed in front of its port, because the presence of mines touched freely in a port. It does not authorize bombing [35].

However, the Convention permits the initiation of the bombardment of ports, towns, villages, dwellings or protected buildings, after due notice, if, after a formal summons, the local authorities refuse to comply with requests for supplies or supplies necessary for the immediate use of the naval force, provided that such requests are proportionate to the resources of the place, and they are required only in the name of the commander of the said naval force, and they shall be paid in cash as far as possible. If not, they must be proved through receipts [36].

The Convention also obliges in the event of bombing by naval forces, the commander must take all necessary measures to spare as much as possible sacred monuments, buildings used for artistic, scientific or charitable purposes, historical monuments, hospitals, places where the sick or wounded are located, unless they are intended for military purposes, and obliges the commander of the attacking naval force before proceeding with the bombing to do his utmost to warn the authorities [37].

Protection under the Geneva Conventions:

The Geneva Conventions of 1949 and their protocols have included rules through which ports can be protected during military operations, and this protection of which came directly and indirectly, the protection contained in the four Geneva Conventions of 1949, is indirect protection, because these conventions aim to protect victims of war, Article (53) of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 stipulates that ((The occupying power is prohibited Destroy any immovable or movable private property belonging to individuals, groups, the State, public authorities, or social or negligent organizations, unless such destruction is strictly required by military operations. As well as the text of Article (147) of the same Convention made the destruction and seizure of property in a manner not justified by military necessity and on a large scale by illegal and arbitrary means a grave violation and a war crime, in addition to that, Article (20) of the First Geneva Convention stipulated that ((It is not permissible to attack from land on hospital ships that must be protected under the Geneva Convention for the improvement of the condition of the wounded, sick



and shipwrecked armed forces at sea)), this article provided protection for hospital ships from Attack it by land .

As for the first Additional Protocol attached to the Geneva Conventions, it stipulated in Article (35/1) of it ((The right of the parties to any armed conflict to choose methods and means of warfare is not a right that does not restrict restrictions)), in connection with the determination of methods and means of warfare, as this protocol restricted the right of the parties to the conflict to choose methods and means of warfare, as well as Article (52/1) of the Protocol, which stipulated that ((civilian objects shall not be the object of attack or deterrence attacks, and civilian objects are all Objects that are not military objectives as specified in the second paragraph), so commercial ships and seaports are considered civilian targets, as they do not constitute a military objective, because their complete or partial destruction, seizure or disruption does not achieve any military advantage.

In addition, Article (54) of the Protocol has provided protection for ports during military operations, by providing for the protection of objects and materials indispensable for the survival of the civilian population, as it prohibits starvation of civilians as a method of warfare, as well as prohibits attacking, destroying, transporting or disabling objects that are indispensable for the survival of the civilian population, such as foodstuffs, agricultural crops and water facilities, due to the vital value enjoyed by these objects that The aim of attacking them by the parties to the conflict is to starve civilians [38], and the question can be asked here about the extent to which the ports are protected through the text of the above article? To what extent is the provision for the prohibition of starvation of civilians and attacks on civilian objects related to the provision of protection for naval vessels and ports?

We have already shown that naval ships and ports are civilian objects, so they are protected under the protocol from military attacks, as for the relationship between the prohibition of starvation of civilians and the protection of ships and ports, it is represented in the fact that attacking commercial ships and seaports through their seizure or bombardment, entails starvation of civilians, because preventing and targeting these ships entails preventing the arrival of humanitarian and medical aid as well as commercial goods necessary for the survival of the civilian population, and this is what happened. In the case of armed conflict in Yemen, according to Human Rights Watch, the coalition forces have imposed a naval and air blockade on Yemen since the outbreak of the conflict in March 2015, tightening restrictions on the entry of goods necessary for the survival of the civilian population in violation of the rules of international humanitarian law. Where the coalition stopped all flights and sea shipments loaded with humanitarian aid and oil derivatives ships to Yemen in the areas controlled by the Houthi forces, which caused a shortage in fuel supplies, and a shortage of food, and this was reflected in hospitals for the lack of fuel necessary to provide them with electricity, and starving civilians as Yemen depends on food, medicine and imported fuel to meet 80 to 90 percent of the needs of the population approximately, as the forces refused The coalition allowed any ships to enter the ports controlled by the Houthi group, although these ships are loaded with wheat and fuel, and the coalition forces have been destroyed through air raids carried out by the port of Hodeidah, which caused damage to the basic infrastructure of the port, and the coalition refused to allow the repair of the destroyed infrastructure of the port or the import of spare parts necessary for its repair, as well as the destruction of the port of Ras Isa for storage and unloading, which led to the closure of Part of the facility [39] . This is confirmed by Additional Protocol II in Article 14 thereof on the protection of objects indispensable to the survival of the civilian population [40].

It should be noted that the provisions of Articles (52) and (54) of Additional Protocol I, and Article (14) of Additional Protocol II, have stipulated the same rules, as they mentioned objects and materials that are indispensable for the survival of the population, and then showed what is considered civilian objects, of foodstuffs, agricultural crops and drinking water facilities, but this does not mean that the objects are limited to what was

mentioned only, because the text of the article was mentioned for example. For example, but not limited to examples of what is considered civilian objects, and therefore naval ships and ports are considered civilian objects protected during armed conflicts.

The first Additional Protocol also provides for preventive measures, through precautions during the attack mentioned in Article (57) thereof, which military commanders must take into account when conducting military operations, as the said article indicated the need to exert continuous care in the management of military operations, in order to avoid civilians and civilian objects, as well as to take precautions with regard to the attack, by exerting what is in the power of the military commander when verifying that the objectives are military or Civil, as well as taking precautions when choosing methods and means of attack in order to avoid harm to civilians and civilian objects, in addition to refraining from deciding to launch any attack if it is expected to cause incidental loss of civilian life or damage to civilian objects. In addition, each of the parties to the conflict should take all reasonable precautions when conducting military operations at sea or in the air, as stipulated in international humanitarian law, to avoid causing loss of civilian life or loss of civilian property, and the article also added that no provision contained in this article may be interpreted as authorizing any attack against the civilian population, civilians or civilian objects [41]. As for the precautions against the effects of attack, they are stipulated in Article (58) of the Protocol, which indicated that there is an obligation on the parties to the conflict to strive to remove the civilian population and naval vessels under their control to civilian ports far from the vicinity of military objectives to ensure their protection and not to be attacked [42].

Article 49 of Additional Protocol I also affirms that the provisions of this section shall apply to any military operation, whether on land, air or sea, that may affect civilians or civilian objects, and shall also apply to all attacks directed from the sea or air against targets on land, but shall not affect the rules of international law applicable to armed conflicts at sea or in the air [43].

As for Article (48), it stipulates that ((The parties to the conflict shall distinguish between the civilian population and combatants and between civilian objects and military objectives, and then direct their operations against military objectives only, in order to ensure respect and protection of the civilian population and civilian objects)), so the protection of ships and civil ports through this article is the application of the principle of distinction between ships and civilian ports, and between ships and warports, and therefore must adhere to not targeting ships and ports. civilian, and limited to directing bombing against ships and warports.

From the foregoing, we conclude that the protection of ports during military operations, has been mentioned in the four Geneva Conventions as well as their protocols, but this protection was not directly, as the conventions and their protocols did not refer to naval ships or ports, but that this protection can be deduced through their texts, as the conventions and protocols attached to them only mentioned the phrase civilian objects to indicate everything that is not a military objective, so that this formula includes everything that It is considered civilian, as it sought to expand the scope of protection to include as many objects as possible, including ships and ports.

Protection under the San Remo Guide:

The texts of the San Remo Guide are directly indicative of the protection of ports during armed conflicts, as the guide dealt with many provisions for the protection of ports, Article (38) of it restricted the right of the parties to the conflict to choose the means and methods of warfare [44].

Article (39) of the Guide stipulates the obligation of the parties to the conflict to distinguish between civilians and combatants, and between civilian objects and military objectives [45], Article (41) stipulates that ((Attacks must be limited to the meaning of

military objectives, knowing that commercial ships and civil aircraft are objects of a civilian nature unless the principles and rules mentioned in this instrument declare them as military objectives)), so this guide has expressly stated that commercial ships are civilian objects, thus providing protection to civilian ships and aircraft directly during armed conflicts.

Article (46) of the manual also included the precautionary measures to be taken in the event of an attack, as Article (46) of it states that whoever plans, decides or carries out an attack must take possible precautionary measures to collect information that helps him to know whether objects that do not represent military objectives are located or not located in the area of attack [46].

As for the methods and means of warfare, the guide prohibited the use of some of them, in order to protect civilian ships, as it prohibited the use of torpedoes that do not sink, or that do not become otherwise harmless after completing their course [47], and also prohibited the use of mines except for legitimate military purposes, to prevent the enemy from reaching maritime areas [48], and Article (86) of the guide prohibited the emission of mines in neutral waters, and Article (88) obligated the countries that broadcast mines to pay due attention to the legitimate uses of the high seas, through the preparation of alternative and safe routes for commercial ships of neutral countries in particular, in addition to that, Article (89) prohibits the prohibition of transit in international straits and archipelagic sea lanes, unless alternative routes are safe and practical.

The provisions related to mines in this guide came to determine the geographical scope of mine laying during maritime armed conflicts, through the text of Article (85) of the manual, which stated that the emission of mines in the internal waters or the territorial sea or archipelagic waters of the belligerent state, must allow merchant ships belonging to neutrals to leave these waters freely when the mines are broadcast for the first time, in addition, Article (88) of the manual stipulates that ((States that broadcast gamma shall pay due attention to the legitimate uses of the high seas by preparing alternative and safe routes for merchant ships of neutral States in particular.

Through the above text, we conclude that the high seas area can be within the geographical scope of mine emplacement, and this is contrary to what is the case in the Hague Convention VIII, which is silent about the geographical scope, and only specifies the places that may not be mined, namely the internal waters and the territorial sea of neutral countries, however. Since the law does not prohibit the laying of mines in the national waters of the warring parties, nor indeed in international waters, there is often disagreement about the appropriate balance to be achieved between the interests of the belligerents and the right of passage of neutral countries, the rules that have evolved seek to find a reasonable compromise between competing interests. Sometimes the existence of international armed conflicts, in which hostilities take place at sea necessarily affects the freedom of navigation of neutrals. However, the assumption that mining the territorial waters of belligerents and on the high seas is legitimate does not mean that the right of the parties to the conflict to lay mines is unlimited, not least because mines may only be laid for legitimate military purposes. Combatants may not lay mines for the sole purpose of interdicting commercial shipment. If a belligerent decides to lay mines or arm mines already planted in international waters, he must take into account the "legitimate interests of neutral states"; for example, this may entail the provision of safe alternative routes [49].

In light of the above, the protection contained in the San Remo Guide to Ports during Armed Conflicts represents direct protection, as it dealt with the protection of ports explicitly, as it mentioned many provisions that imposed restrictions on the parties to the conflict in the management of military operations, obliging them to act according to specific conditions towards civilian ships and ports that harbor them and the like that do not participate in hostilities, and also sets many precautionary measures that can reduce

aggressions. On such ships and ports during military operations, whether such operations are within the ports of the conflicting countries or within their territorial waters or on the high seas, thus filling the deficiencies in the Geneva Conventions and their protocols.

### **Epilogue:**

After completing the study of the subject of the role of international conventions in the protection of seaports during armed conflicts, and through the study that took place on various aspects of the subject, we have reached a set of conclusions, as well as the proposals that we recommend to be taken, which are as follows:

#### First: Conclusions:

1- The Geneva Convention on the Territorial Sea and the Contiguous Area of 1958 and the 1982 Convention on the Law of the Sea did not define the port, but these two conventions - the first in its article V and the second in its article VIII - only define the internal waters, which consist of the sum of the waters confined between the baseline from which the measurement of the territorial sea and the coast begins, and include within the internal waters ports, marinas, national bays, channels, river craters and historical waters that are also declared.

2- Sea mines pose a threat to the safety of ports, and although the Hague Convention VIII has regulated the provisions on sea mines, it governs the use of one type of mine that is old and limited in its application, so it requires a review of the Hague Convention VIII so that it has a contemporary link at the present time.

3- The four Geneva Conventions, as well as their protocols, provided protection for seaports were not directly, as the conventions and their protocols did not refer to ports, but that this protection can be deduced through their texts, as the conventions and protocols attached to them only mentioned the phrase civilian objects to indicate everything that is not a military objective, in order for this formula to include everything that is considered civilian, as it sought to expand the scope of protection to include the largest possible number of objects, which Including ships and ports.

4- The San Remo Guide is only a guideline, as it is not binding on States, which calls for the need to intensify international efforts to develop its provisions, and to give it a binding character by transforming its provisions into a binding international convention.

#### Second: Proposals:

1- Concluding international agreements that provide adequate protection for ports during armed conflicts, by stipulating in their clauses the prohibition of targeting commercial ports, whether belonging to the enemy or neutrals, and preventing their obstruction in order to ensure the safety of maritime transport.

2- Given that mines are weapons that are unable to distinguish between military and civilian targets, as they are relatively inexpensive and can be easily deployed from any ship with minimal training and without the need for special platforms, their use must be restricted due to their danger to ports, with an indication of the geographical scope of their placement, as the only convention governing naval mines is the Hague Convention VIII of 1907, which governs one type of them, which is contact mines, Their types have evolved since that time, so it is necessary to reconsider the conclusion of a new agreement commensurate with the development witnessed by these mines.

3- The San Remo Guide contributed to clarifying the law applicable to maritime armed conflicts, but it nevertheless represents a contemporary reformulation of customary rules and principles, through the provisions it stipulates, which seek to balance the interests of combatants and neutrals, and with the technological development that the world is witnessing at the present time, and the reflection of this on the conduct of military

hostilities, which made the San Remo Guide an old guide, which does not apply to modern conflicts. Therefore, it needs to be reconsidered, in order to be compatible with the development of weapons and combat operations.

Footnotes:

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17. Essam al-Attayah, *op. cit.*, p. 199.
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27. Article (3) of the Hague Convention VIII Maritime Petition Self in 1907.
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29. International Security Department Workshop Summary, *op.cit*, p.5-6.
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31. *Ibid*, P.562.
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33. Preamble to the Convention (IX) of the Hague Convention on the Bombing of Naval Forces in Time of War, 1907.
34. Article (6) of the Preamble to the Convention (IX) of the Hague Conventions relating to the Bombing of Naval Forces in Time of War of 1907.
35. Article (1) Convention (IX) of the Hague Conventions concerning the Bombing of Naval Forces in Time of War of 1907.
36. Article (3) of the Convention (IX) of the Hague Convention on the Bombing of Naval Forces in Time of War of 1907.
37. Articles (5 and 6) of the Convention (IX) of the Hague Conventions concerning the Bombing of Naval Forces in Time of War of 1907.
38. Article 54 of Additional Protocol I stipulates that (1- starvation of civilians as a method of warfare is prohibited, 2- It is prohibited to attack, destroy, transport or disable objects and materials indispensable for the survival of the civilian population, such as foodstuffs, agricultural areas producing them, crops, livestock, drinking water facilities and networks, and irrigation works, if the intention is determined to prevent them from the civilian population or the adversary of their vital value, whatever the motive, whether with the intention of starving civilians or induce them to displacement or any other motive).
39. Article published on the Internet at the link: <https://www.hrw.org/ar/news/2017/12/07/312213>

40. Article 14 of the Second Additional Protocol to the Geneva Conventions of 1977 stipulates that "starvation of civilians as a method of warfare is prohibited and therefore it is prohibited to attack, destroy, transport or disable objects and materials indispensable for the survival of the civilian population, such as foodstuffs, agricultural areas producing them, crops, livestock, drinking water facilities and networks, and irrigation works."
41. The text of Article (57) of the First Additional Protocol to the Geneva Conventions of 1977.
42. Text of Article (58/A) of Additional Protocol I to the Geneva Conventions of 1977.
43. Text of Article (49/3) of Additional Protocol I to the Geneva Conventions of 1977.
44. Article 38 of the San Remo Manual stipulates that "in any armed conflict, the right of the parties to the conflict to choose the means or methods of warfare shall not be unlimited."
45. Article 39 of the Manual stipulates that "the Parties to the conflict shall distinguish at all times between civilians or other protected persons and combatants, as well as between objects of a civilian nature or safe from attacks and military objectives."
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