

## Belligerent warships in third states

## Internment, neutrality and non-belligerency in IRIS cases



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## OPINION

In mid-February, the frigate IRIS Dena (75), the oiler IRIS Bushehr (422) and the landing ship IRIS Lavan (514) arrived in the Bay of Bengal to attend the International Fleet Review and Exercise Milan being hosted by India. On departing Indian waters after February 25, the IRIS Dena was torpedoed by the USS Charlotte (SSN-766) in Sri Lanka's Exclusive Economic Zone (EEZ) on March 4. Sri Lanka recovered 84 bodies and rescued 32 sailors. On the same day, IRIS Bushehr and IRIS Lavan, which had requested access to Sri Lankan and Indian ports, were granted the same.

The legality of the torpedo attack and compliance with search and rescue obligations have already attracted extensive legal commentary. This post examines the legal issues surrounding the repatriation and internment of the sailors and the warships and the complex debates arising therefrom relating to neutrality and non-belligerency.

## Entry of IRIS Bushehr, IRIS Lavan into Sri Lanka, India

The Iran-USA/Israel conflict started on February 28. The very same day, Iran requested India for permission for its three ships in the region to dock at Indian ports — permission that was granted on March 1. However, none of these ships docked immediately. Following the sinking of IRIS Dena on March 4, IRIS Bushehr informed Sri Lanka that one of their engines has suffered damage and requested entry into their ports. Sri Lanka first reached an agreement with the ship's captain and Iranian embassy officials and then proceeded to intern its crew of 208 personnel at Colombo and the vessel at Trincomalee. IRIS Lavan docked in the Indian port of Kochi on March 4 as well, following engine troubles — with its crew of 183 personnel being accommodated/held at Indian Navy's accommodations.

Noting that IRIS Bushehr belonged to a "party in a war," the Sri Lankan President Anura Dissanayake specifically invoked the Hague Conventions of 1907 and asserted that Sri Lanka was a "neutral state" (notably, this was a conclusion arrived at by Switzerland as well). In contrast, the Indian External Affairs Minister Subrahmanyam Jaishankar's statement was more cryptic and ambiguous, with the minister stressing upon the humanitarian element of its actions, "other than whatever the legal issues were."

Following these developments, Sri Lanka repatriated the 84 dead bodies recovered from the sinking of the IRIS Dena. India also made the decision to repatriate up to 133 "non-essential" crew members of the IRIS Lavan. Notably, India's action occurred during the active phase of hostilities between Iran and Israel-USA. These crew members were returned from Kochi, India, by way of the very same Turkish chartered flight, which was returning the bodies of the 84 sailors from IRIS Dena. Over a month later, following the fragile cease-fire between the USA and Iran, Sri Lanka made the decision to repatriate both the survivors



A child puts a wreath of flowers around the neck of one of the nine surviving sailors of Iran's Dena Destroyer who was repatriated to the country, in Shiraz, southern Iran, on April 18, 2026.  
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from IRIS Dena and over 200 sailors from IRIS Bushehr as well back to Iran.

## Interplay of Geneva Law, Hague Law on the Question of Internment

Sri Lanka initially distinguished between the rescued personnel of the IRIS Dena and the interned personnel of the IRIS Bushehr, treating the former as governed by IHL and the latter by Hague law. However, as will shortly become evident, both routes ultimately lead to the same destination. India, by contrast, repatriated 133 "non-essential" crew members of the IRIS Lavan, during the active phase of hostilities. While there has been no public reporting on any communications between Israel-USA and India on this issue, it has been reported that the USA has conveyed to Sri Lanka that it should not repatriate either the survivors of IRIS Dena nor the crew of IRIS Bushehr.

Article 5 of Geneva Convention II (GC II) requires neutral states to apply, by analogy, the provisions of GC II to members of the armed forces of the parties to the conflict received or interned in their territory. A crucial clarification in the commentary to Article 5 is that the binding nature of this article is completely independent of whether or not a state considers or declares itself as being neutral or whether it adopts a stance of non-belligerency (para 962). So long as a state is not party to the international armed conflict, it is bound by Article 5 (para 963).

Article 12, GC II specifies that its provisions apply to the individuals specified therein who are at sea and who are wounded, sick or shipwrecked. Crucially though, once on its territory, Article 5 does not tackle (para 982) the question of whether a neutral state has to ensure that these individuals, "take no further part in operations of war...The circumstances in which this is required are exclusively regulated by the law of neutrality, not by international humanitarian law". Indeed, the commentaries clearly specify that the moment these persons cease to qualify as "wounded," "sick" or "shipwrecked," they are, "no longer protected the Second Convention, and their status in neutral territory will be regulated on the basis of the law of neutrality" (para 966).

Article 15 of GC II deals with those wounded, sick or shipwrecked persons who are taken onboard a neutral warship and Article 17 ad-

resses the same category of persons who are landed in a neutral port with the consent of the local authorities. The commentaries to these provisions also confirm the observation made above in Article 5 on the issue of ensuring that such individuals take no further part in operations of war — namely, that "the only framework considered relevant by the drafters of the Geneva Conventions was the law of neutrality" (paras 1551 and 1605 and 1612).

The law governing neutrality is found in Hague Convention (V) and the 1907 Hague Convention (XIII). Article 11 of Hague V provides that a neutral state that receives on its territory troops belonging to the belligerent armies shall intern them. Article 14, Hague V requires a neutral state to guard the wounded and sick of a Party to the conflict that it has authorized to pass over its territory, as well as those "who may be committed to its care," so as "to ensure their not taking part again in the military operations".

Equivalent and other domain specific provisions in Hague XIII are found in Articles 12–20 which contain restrictions on a belligerent's stay in or engagement in certain activities in neutral ports. Articles 24–25 also outline the obligations of a neutral state in this respect. Articles 24 and 25 clarify that if a belligerent ship does not leave a port where it is not entitled to remain, then a neutral state is "bound" to take such measures as are necessary (including detention and internment) to prevent the violation of these provisions.

What these provisions make clear is that once accepted into a neutral state's jurisdiction, such individuals must, at a minimum, be disarmed. The next question is whether the detention (this term is employed in Article 40, GC II) of such individuals necessitates depriving them of their liberty by way of internment. Internment refers to the "non-criminal, non-punitive detention for security reasons in situations of armed conflict". Alternatives internment may include requesting regular appearances before a police station or confining the personnel to a living facility under electronic surveillance (paras 1558 and 1559).

Sri Lanka explicitly invoked the status of neutrality but also returned the detained sailors prior to there having been anything resembling a general close of military operations. Consequently, its actions give rise to two inter-

esting questions which can be flagged though not resolved here. First, whether the requirement of internment under the law of neutrality may be discharged upon the conclusion of a cease-fire, or does it endure until there is a more definitive cessation of hostilities? Second, while Sri Lanka has repatriated the sailors, IRIS Bushehr is still interned. Is it permissible to disaggregate the logic of Hague XIII between a naval vessel and its crew in this manner?

## Locating Indian actions amidst wider churn of neutrality law

Sri Lanka's conduct initially appeared closer to the classical model of ordinary/strict neutrality, even if questions remain about whether repatriating sailors during a cease-fire was permitted under its Hague obligations. India's actions, however, are more difficult to assess because the issue is not simply whether or not it is neutral. Had India claimed the status of ordinary/strict neutrality, its repatriation of Iranian personnel during the active phase of hostilities would have been very difficult to reconcile with the classical law of neutrality. However, the difficulty is that neutrality law is itself in a state of flux (pp.65–66). The first prong of the fiercely raging debate on this issue is whether the status of neutrality is automatic or optional. If it is optional, then there exists a third status other than a belligerent or a neutral — that of a non-belligerency.

However, if neutrality is mandatory, there remains an ongoing debate concerning the doctrine of qualified neutrality, which purports to allow a third state to militarily support a belligerent, based on the assessment of who is the aggressor and who is the victim. While this doctrine preserves the binary distinction of a neutral or a belligerent status, it does so at the cost of permitting a state to derogate from the core duties of neutrality (abstention and impartiality). Notwithstanding the traction that it has gained in the ongoing Russo-Ukrainian conflict, it represents a very slippery slope.

Had there been a UN determination of Israel and USA aggression, and had India expressly claimed qualified neutrality, then its repatriation of the Iranian sailors during active hostilities could have been defensible. However, India has not explicitly invoked the law of ordinary/strict neutrality, nor made any references to qualified



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neutrality. This leaves us with the difficult category of non-belligerency. As noted by Kolb (p.217), the modern tendency of states is not to be fully neutral. Rather, they tend to depart from neutrality, with varying degrees of assistance for one belligerent. Some acts, such as sending one's own troops to participate in combat, clearly establish a state of belligerency. However, other acts, like providing funding, weapons, or logistical support, do not by themselves establish a state of belligerency.

Where, then, within this spectrum, does the return of interned combatants to a belligerent during an ongoing conflict fall? Particularly in a situation characterized not by a clear pattern of support to a single belligerent, but one in which the putative non-belligerent maintains a substantial defence relationship with the opposing side as well. This is precisely the position of India. This episode thus represents a particularly instructive illustration of what have been alluded to as "hard cases" for purposes of determining when a certain form of conduct represents a state becoming a party to a conflict.

The law of neutrality distinguishes between violations of neutrality obligations and the termination of neutral status. How, if at all, does this framework apply to non-belligerency? Can non-belligerency sustain a gradation between violation and termination? Or is this limiting function mediated, in practice, by the jus ad bellum framework? Existing treatments exploring this dynamic have tended to conceptualize the belligerent-third party relationship in a manner that foregrounds the belligerent-neutral binary, resulting in the sidelining of intermediate positions and effectively collapsing non-belligerency into an undifferentiated category of third parties. As a result, intermediate forms of support risk being either assimilated into neutrality, thereby understating their legal significance, or treated as indicative of participation in the conflict, thereby overstating it.

On the issue of warship and crew internment, all roads lead to the Hague law governing neutrality. However, the contrasting approaches adopted by Sri Lanka and India have drawn attention to the limitations of the classical structure erected on the belligerent-neutral binary and the reality of most states today choosing the intermediate status of non-belligerency. While not without issues, Sri Lanka's conduct reflects the possible role that can still be played by the classical framework of neutrality law, whereas India's position reveals the strain placed on that framework by contemporary patterns of state behaviour. These incidents illustrate that challenges in international law are not always about simply ensuring compliance with settled rules. In many areas, the challenge is one of conceptual adequacy. In the present case, the challenge is whether legal frameworks are capable of accommodating evolving patterns of state conduct without collapsing into over simplified binaries that obscure the complexity of contemporary state practice.

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