



From Military Objective to International Responsibility: An Analysis of the Attack on the Vessel Dena in Light of Hard Law and Soft Law Based on the San Remo Manual

Seyedeh Nazanin Akhavan Tabatabaei

Ph.D. Candidate in International Law, Faculty of Law, South Tehran Branch, Islamic Azad University

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ABSTRACT

The legal analysis of the attack on the vessel Dena transcends the mere description of a naval military incident; rather, it constitutes a test for assessing the relationship between hard law and soft law in the regulation of armed maritime conflicts. The central question is whether the qualification of a vessel as a "military objective" alone can serve as a basis for the lawfulness of an attack and preclude the international responsibility of the attacking State. Employing a descriptive-analytical methodology and relying on the distinction between the law governing the resort to force and the law governing conduct in armed conflict, this article demonstrates that the military character of a vessel is merely one element of assessment within the purview of international humanitarian law. It cannot substitute for the examination of the lawfulness of the resort to force per se, military necessity, proportionality, precautions in attack, respect for the rights of third States, and post-attack obligations towards the wounded and shipwrecked. The article concludes that in maritime armed conflicts, hard law and soft law do not stand in a relationship of opposition; rather, soft law particularly the San Remo Manual plays an interpretative, supplementary, and norm-generating role in the implementation of binding rules. From this perspective, even if the Dena were to be classified among military objectives, the lawfulness of the attack remains contingent upon the simultaneous satisfaction of multiple layers of legal requirements: the legality of the resort to force, compliance with the rules governing the conduct of military operations, respect for the rights of third States, and the fulfilment of humanitarian obligations following the attack. Consequently, the military status of the Dena is neither an absolute licence for attack nor, by itself, a ground precluding international responsibility; rather, it constitutes only the starting point for a multi-layered analysis under the international law of naval warfare.

Introduction

The attack on the vessel Dena not characterized merely as a naval military event; from the perspective of international law, this incident exemplifies the convergence of multiple normative regimes: the law governing the resort to force, international humanitarian law, the law of the sea, rules concerning third States, and soft law instruments governing armed maritime conflicts. For this reason, its legal analysis must transcend the descriptive level of the incident and focus on the question of when an attack on a military vessel shifts from the stage of "targetability" to that of "international responsibility" (1).

The central issue addressed in this article is that under international law, the military status of a vessel does not per se equate to the lawfulness of an attack. A warship in principle constitute a military objective; however, this proposition holds meaning only within the purview of the law governing the conduct of armed conflict and cannot answer the more fundamental question concerning the lawfulness of the resort to force in the first place. In other words, even if the Dena were deemed a valid military objective, it must still be ascertained whether the attacking State possessed the right to resort to force, whether it complied with the rules governing the conduct of operations, whether it

*Corresponding Author: Seyedeh Nazanin Akhavan Tabatabaei (n.akhavan.t@gmail.com)

infringed upon the rights of third States, and whether it fulfilled its humanitarian obligations towards survivors and the shipwrecked after the attack. Accordingly, the analysis of the *Dena* incident must be conducted at two independent yet interrelated levels: first, the level of the lawfulness of the resort to force, or *jus ad bellum*; second, the level of the rules governing the conduct of military operations, or *jus in bello* (2).

The distinction between these two levels constitutes the starting point for a scholarly analysis, for it is possible that a target may be attackable under the law of armed conflict, yet the resort to force against the flag State may be unlawful under the Charter of the United Nations. This distinction prevents legal oversimplification and forestalls the treatment of the military character of a vessel as an absolute authorization for military action (3).

Alongside these two levels, the role of soft law in naval warfare assumes particular significance. Unlike certain classical domains of humanitarian law, naval warfare still suffers from the absence of a comprehensive and up-to-date treaty. Many of its operational rules are articulated in the form of manuals, guidelines, and non-treaty interpretations. The most salient example is the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea a document which, though lacking direct treaty force, serves in practice as a critical reference for the interpretation of customary rules and for assessing the conduct of States at sea (5).

Theoretical Framework: The Relationship between Hard Law and Soft Law in Naval Warfare

Hard law in international law comprises rules that are legally binding, the violation of which may give rise to the international responsibility of States. Treaties, customary international law, and general principles of law constitute the primary sources of this category of rules. In the present context, the Charter of the United Nations, the Geneva Conventions, the customary rules of international humanitarian law, the rules of the law of the sea, and the principles governing the international responsibility of States form the framework of hard law (6).

In contrast, soft law refers to instruments, declarations, manuals, guidelines, interpretations, and standards which, while lacking direct treaty-based binding force in themselves, nonetheless play a role in the formation, interpretation, supplementation, or codification of binding rules. Soft law assumes importance in areas where hard law either faces lacunae or has not kept pace with technological and military developments. Naval warfare is precisely such a domain; for the technology of submarines, missiles, remote-controlled systems, and long-range operations has raised questions that classical humanitarian law texts

have not addressed in detail. The relationship between hard law and soft law is not one of substitution that is, soft law does not replace hard law. Nor can soft law be dismissed as mere ethical recommendation devoid of legal effect. The correct relationship is one of supplementation, interpretation, and gradual norm-creation. Hard law establishes the basis of obligation, while soft law assists in clarifying how that obligation is to be implemented in operational settings. For this reason, in the *Dena* case, reliance on hard law without reference to naval warfare standards renders the analysis general and abstract; conversely, reliance on soft law without linkage to binding rules weakens the basis for establishing responsibility (7,8).

The San Remo Manual occupies a distinctive position in this regard. It is neither a treaty nor merely an educational text; rather, it represents an attempt at a contemporary restatement of the applicable law governing armed conflicts at sea. Its significance lies in its systematic articulation of rules concerning maritime zones, military objectives, vessels exempt from attack, the status of neutral States, naval blockade, protection of the wounded and shipwrecked, and the limitations on naval warfare. In this sense, the San Remo Manual should be regarded as a document that mediates between the obligations of hard law and the complexities of naval operational reality (9,10).

Analysis of the Lawfulness or Unlawfulness of the Resort to Force in the *Dena* Incident

The starting point of any legal analysis concerning the attack on the vessel *Dena* is not merely the military character of the vessel, but rather the lawfulness of the resort to force against the flag State. Article 2(4) of the Charter of the United Nations prohibits States from threatening or using force against the territorial integrity or political independence of any State. This prohibition constitutes a foundational rule of the post-Second World War legal order and is regarded as one of the core elements of *jus cogens* in international law. The exceptions to this rule are limited and narrowly construed: military action must either be authorized by the Security Council, or be justifiable within the framework of individual or collective self-defense in accordance with Article 51 of the Charter.

Accordingly, the default position under international law is the prohibition of the use of force (11).

From this perspective, the attack on the *Dena* faces a serious impediment with respect to lawfulness; for if the attacking State is unable to establish the existence of a prior or imminent armed attack, the urgent necessity of action, and the absence of less harmful alternatives, the operation would fall within the purview of Article 2(4) and would constitute a violation of the prohibition on the use of force. Self-defence in international law is of an exceptional nature and cannot be transformed into a tool for

justifying punitive, expansive preventive, deterrent, or symbolic attacks against the military assets of another State. The use of force is admissible within the framework of self-defense only when it bears a clear, direct, and necessary connection to repelling an armed attack (12,13).

In the Dena case, several factors reinforce the argument for the unlawfulness of the resort to force. First, the geographical distance of the attack site from the main theatre of conflict or the alleged threat raises serious questions concerning the urgent necessity of the operation. The farther the targeted vessel is from the operational focal point or the immediate source of threat, the more difficult it becomes to establish that the attack was necessary for the repulsion of an imminent danger. Second, the operational status of the Dena at the time of the attack is of fundamental importance. If the vessel was returning from an exercise, engaged in a non-aggressive mission, conducting a maritime transit, or present indirectly in the region without immediate involvement in hostile operations, the invocation of self-defense is substantially weakened. Third, the attacking State must demonstrate that less hazardous alternatives such as interception, warning, surveillance, diplomatic notification, maritime pursuit, or non-lethal measures were insufficient to address the threat. The absence of such demonstration undermines the element of necessity (14).

The element of proportionality, at the *jus ad bellum* level, may likewise be analysed in favour of the unlawfulness of the attack. Proportionality in self-defense does not signify a numerical balance between the losses of the two parties; rather, it means that the defensive action must be limited to the extent necessary to repel the armed attack. Accordingly, the complete destruction of a warship and the infliction of extensive human casualties can be deemed proportionate only if it yields a direct, immediate, and ascertainable defensive advantage (15).

On the other hand, accepting the argument that "because the Dena was a military vessel, the attack upon it was lawful" would lead to a structural erosion of the prohibition on the use of force. If any State could, merely by invoking the military character of a unit belonging to another State, attack it at any point at sea, the Charter's prohibition would be effectively emptied of its content. In such a scenario, the fundamental distinction between *jus ad bellum* and *jus in bello* would collapse, and humanitarian law rules which were established to limit the effects of war would be erroneously transformed into instruments for justifying the initiation or expansion of war. This outcome is incompatible with the logic of the United Nations Charter and the philosophy underlying the restriction of the use of force (16,17).

Accordingly, if the resort to force lacks a valid basis, the attack on the Dena even assuming compliance with certain operational rules of naval warfare may nonetheless give rise to the international responsibility of the attacking State on account of its violation of the United Nations Charter.

On this basis, the conclusion of this section is that the attack on the Dena, in the absence of an established prior or imminent armed attack, the lack of urgent necessity, the failure to demonstrate the unavailability of less harmful alternatives, and serious ambiguity concerning the proportionality of the military action, lacks lawfulness with respect to the resort to force. The military status of the Dena cannot remedy this absence of lawfulness; for being a military objective is a condition pertaining to the law of armed conflict, not a licence for the use of force.

Assessment of the Attack on the Dena at the Level of the Law Governing Conduct in Armed Conflict: Military Objective as a Necessary, but Not Sufficient, Condition

At the level of the law governing conduct in armed conflict, the central question is not the lawfulness of the resort to force *per se*, but rather the lawfulness of military conduct during the conflict. By its nature, a warship, owing to its organic affiliation with the armed forces, its combat function, and its capacity to participate in military operations, falls generally within the category of military objectives. In this respect, the Dena differs from a merchant vessel, a relief ship, a hospital ship, or a civilian vessel. However, the qualification of a vessel as a military objective does not signify an absolute authorization to attack; rather, it merely establishes the preliminary threshold of targetability.

International humanitarian law is not premised upon the logic that whatever is military may be destroyed at any time, in any place, and under any circumstances. Even with respect to military objectives, limitations exist, the purpose of which is to prevent the transformation of military necessity into an unfettered licence for the application of violence. From this perspective, the attack on the Dena must be assessed not solely on the basis of the vessel's character, but also according to its objective status at the time of the attack, its current mission, the degree of threat it posed, its geographical location, its incidental effects, and the possibility of adopting less harmful means (18,19).

From the standpoint of military necessity, given that the vessel Dena was returning from an exercise, engaged in maritime transit, undertaking a non-aggressive mission, or lacking immediate participation in hostile operations, the military necessity of the attack is subject to serious doubt. Within this framework, the legal analysis must distinguish between "potential military capability" and "concrete and direct military advantage." If the

advantage derived from attacking the Dena consisted merely of a general weakening of Iran's naval capability, the dispatch of a deterrent message, or the creation of psychological and political effects, such an advantage cannot readily substitute for the criterion of a concrete and direct military advantage. Naval warfare is likewise subject to the rule of limitation, and military operations should not be reduced to punitive action or the demonstration of power (20).

From the standpoint of proportionality, it must be examined that proportionality in naval warfare is not limited solely to direct civilian casualties. In maritime operations, collateral damage may encompass risks to third-party vessels, harm to the marine environment, threats to the security of the coastal State, disruption of shipping lanes, impediments to rescue operations, and the creation of humanitarian emergencies for survivors. Accordingly, an attack on a warship in proximity to the coasts or within the maritime interests of a third State, even if directed against a military objective, must also be assessed in terms of its surrounding effects. If the attack on the Dena in the vicinity of Sri Lanka resulted in that State's direct involvement in rescue operations, the bearing of relief costs, environmental hazards, political pressure, or threats to maritime security, such effects are not insignificant in the assessment of precaution and proportionality. The attacking State cannot, by relying on the military character of the target, disregard the foreseeable consequences of its operation for third States and the marine environment. From the standpoint of the principle of precaution in attack, in the Dena case, the principle of precaution required that the attacking State, to the extent possible, assess the vessel's operational status, geographical position, distance from third States, the potential presence of civilian vessels, weather conditions, the feasibility of survivor rescue, and the environmental consequences of the attack. The farther the attack site is from the main theatre of hostilities and the closer it is to the sphere of interests of a third State, the greater the burden of precaution incumbent upon the attacking State; for the risks arising from the attack no longer remain confined solely to the parties to the conflict, but may generate more extensive transboundary or humanitarian ramifications (21).

Furthermore, under international humanitarian law, the lawfulness of targeting at the moment of attack does not absolve the attacking State from post-attack obligations. Following the sinking of a vessel, the status of those on board undergoes a transformation. Combatants who are wounded, drowning, defenseless, or incapable of continuing hostilities fall within the category of persons hors de combat or shipwrecked and are entitled to protection. Accordingly, even if the initial attack on

the Dena were to be assumed justifiable from the standpoint of military targeting, the conduct of the attacking State after the attack particularly concerning notification, coordination of rescue efforts, refraining from renewed attack on survivors, and facilitating relief operations is of critical importance. In the Dena incident, however, the attacking State did not refrain from launching a further attack on the vessel, but rather, in violation of the principles of international law, struck the vessel a second time, resulting in its sinking and the deaths of many survivors of the first attack. This point assumes particular significance in naval warfare, for the destruction of a vessel often gives rise to a humanitarian emergency at sea. The attacking State, within the limits of operational and security feasibility, must take steps to mitigate the human consequences of the attack. If direct rescue is not possible, the minimum obligation may include reporting the position of the incident, notifying the nearest search and rescue centre, refraining from obstructing relief efforts undertaken by third States, and abstaining from hostile conduct towards the shipwrecked. Thus, the principle of precaution is not confined to the period before an attack, but is also linked to positive humanitarian obligations in the post-attack phase. On this basis, even at the level of the law governing conduct in armed conflict, the lawfulness of the attack cannot be presumed merely by invoking the military character of the Dena.

Analysis of the Rights of Third States and the Status of Maritime Zones in the Assessment of International Responsibility of States

One of the determining dimensions in the legal assessment of the attack on the Dena is the location of the operation and its relationship to the rights of third States. The significance of this issue lies in the fact that a maritime armed conflict, even when conducted outside the territorial jurisdiction of the parties, is not devoid of legal effects with respect to non-party States. In other words, the sea does not become a lawless space during armed conflict, and the freedom of military operations therein is neither absolute nor unlimited. Under the law of the sea, each maritime zone carries distinct legal consequences. An attack occurring within the territorial sea of a third State raises, in principle, the question of a violation of that State's sovereignty, for the territorial sea is regarded as an extension of the coastal State's sovereign territory. Conversely, if the attack occurs within the exclusive economic zone (EEZ) or on the high seas, there exists no absolute prohibition on military operations; however, this does not signify complete freedom for the belligerent States to disregard the rights of the coastal State or non-party States. The coastal State, within its EEZ, possesses sovereign rights and specific competences with respect to resources, marine environmental protection, and certain related

activities, and military operations must not unjustifiably interfere with these rights.

In the Dena case, the proximity of the incident to Sri Lanka brings the role of the third State to the forefront of the legal analysis. Sri Lanka's involvement in rescue operations, the treatment of survivors, and the management of the humanitarian consequences of the incident demonstrate that the effects of the attack were not confined to the relationship between the attacking State and the flag State. When a military operation compels a non-party State to become involved in relief processes, humanitarian consequence management, or the handling of political and security ramifications, the attacking State cannot remain indifferent to these effects. In this framework, the obligations of the attacking State are not limited to refraining from a direct violation of the third State's sovereignty. Such obligations may include the exercise of precaution in the selection of the attack site, avoidance of creating unnecessary risks for the coastal State, effective post-attack notification, facilitation of rescue and relief operations, non-obstruction of humanitarian measures, and abstention from exerting undue pressure on the third State in its dealings with survivors (22,23).

The San Remo Manual also follows this same logic. The significance of this document lies in the fact that, by distinguishing between different maritime zones and taking into account the status of neutral States, it demonstrates that military operations at sea are subject to legal limitations. Although this Manual is not a binding treaty, as a reflection of part of customary law and accepted standards of naval warfare, it can play an important role in interpreting the obligations of an attacking State toward non-party States. Accordingly, in the Dena incident, even if it is assumed that the attack occurred outside Sri Lanka's territorial sea, this is not sufficient to eliminate considerations relating to the rights of a third State. The proximity of the operation to Sri Lanka's territory and maritime interests, that country's participation in the rescue of survivors, and the potential impact of the attack on maritime security and the environment all entail that the conduct of the attacking State constitutes a violation of international law and gives rise to its international responsibility.

Post-Attack Humanitarian Obligations; Legal Analysis of the Legal Status of the Crew

One of the most important aspects of the Dena analysis is the legal status of the crew after the sinking of the vessel. As long as the crew members are participating in hostilities, they may be targeted as members of the enemy's armed forces. However, after the sinking of the ship and their effective removal from combat capacity, their legal status changes. Wounded, sick, or shipwrecked persons

who are unable to continue fighting enjoy special protection under international humanitarian law.

The Second Geneva Convention of 1949 concerning the amelioration of the condition of wounded, sick, and shipwrecked members of the armed forces at sea provides the binding framework for this protection. Article 12 of the Convention stipulates that the wounded, sick, and shipwrecked shall be respected and protected. Article 18 also requires the Parties to the conflict, after each engagement, to take all possible measures, without delay and to the fullest extent practicable, to search for and collect the shipwrecked, wounded, sick, and dead. Here, the legal criterion is "all possible measures." This criterion neither creates an absolute obligation to rescue under all circumstances nor permits indifference. If the attacking State does not have the direct capacity to rescue, it must be examined whether it provided the necessary information to the coastal State or maritime rescue centers, whether it refrained from re-attacking the survivors, whether it facilitated the provision of assistance, and whether it created any obstacle to humanitarian operations. Customary Rule 111 of the International Committee of the Red Cross also emphasizes the necessity of taking all possible measures to protect the wounded, sick, and shipwrecked. In the Dena incident, however, none of these rules and principles whether soft or hard law were observed by the attacking State. The disregard for the survivors constitutes an independent violation of international humanitarian law (24,25).

Conclusion

The analysis of the attack on the Dena demonstrates that the concept of "military objective" is not the end point of the discussion, but rather its starting point. In the law of naval warfare, a vessel being a military objective merely means that, assuming the existence of hostilities and compliance with other conditions, it may be subject to attack. However, from this proposition one cannot conclude that any attack on that vessel at any time, in any place, and with any consequence is lawful. From the perspective of hard law, four categories of rules are activated in the Dena case: the rules prohibiting the use of force, the rules of international humanitarian law, the rules protecting the shipwrecked, and the rules of State responsibility for internationally wrongful acts. From the perspective of soft law, the San Remo Manual and the standards of naval warfare clarify how these rules are to be applied in the specific maritime environment. Thus, soft law and hard law are not in opposition in this case; rather, soft law gives hard law operational and interpretive capability. If only hard law is considered, the analysis may be confined to the general provisions of the Charter and the Geneva Conventions, neglecting the specifics of naval warfare. If only soft law is considered, there is a risk that the binding

basis of obligations may be undermined. The solution is an integrated analysis: the Charter and the Conventions provide the binding foundation; the San Remo Manual and other soft law instruments elaborate the specialized criteria for implementation and assessment. The attack on the Dena constitutes a clear example, from the perspective of international law, of the necessity for a multi-layered analysis of naval military operations. The most important conclusion of this article is that the military nature of a vessel, although significant in determining its targetability, is not sufficient for the full lawfulness of the operation. Being a military objective is a necessary condition within the realm of *jus in bello*, but not a sufficient condition for the legal lawfulness of the attack. At the first level, the attack lacked Security Council authorization or conditions of self-defense; the very operation violates international law, even if the target vessel was military. At the second level, the attack was not consistent with the principles of military necessity, proportionality, and precaution. At the third level, after the sinking of the vessel, the protection of survivors and the shipwrecked becomes an independent obligation. International humanitarian law extends protection to persons who have fallen out of the combat zone and requires the Parties to the conflict to take all possible measures to search for, collect, and care for them. At the fourth level, the proximity of the incident to Sri Lanka and that country's participation in rescue operations demonstrate that the rights of third States and considerations relating to maritime security, neutrality, the environment, and relief operations are also important from the perspective of international law; naval warfare, even in international waters, does not take place in a lawless area. Ultimately, the article has shown that soft law, particularly the San Remo Manual, plays a subsidiary but decisive role in the Dena case. This document does not replace the United Nations Charter, the Geneva Conventions, or customary international law; however, because it reflects customary rules and sets out specialized standards for naval warfare, it is significant in the interpretation and implementation of hard law. In light of the legal rules concerning the lawfulness of the initial resort to force, the military objective status of the vessel, compliance with the rules governing the conduct of hostilities, the fulfillment of humanitarian obligations after the attack, the attacking State bears international responsibility; and the mere military character of the Dena is not sufficient to relieve it of that international responsibility.

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