DISARMAMENT COMMISSION
1990 substantive session
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Agenda item 7

NAVAL ARMAMENTS AND DISARMAMENT

A protocol on sea mines

Working paper submitted by Sweden

1. The 1907 Hague Convention Relative to the Laying of Automatic Submarine Contact Mines contains valuable concepts for security at sea and the protection of civilian maritime activities. The use of mines is not prohibited but is restricted through the provisions concerning neutralizing mechanisms and information regarding danger zones. However, the Convention has in various respects become outdated. The Convention does not, for example, accommodate later development such as mines relying on magnetic, acoustic or pressure effects or a combination thereof.

2. In paragraph 304 (c) of the 1985 United Nations study The Naval Arms Race, 1/ it is noted that the Hague Convention VIII of 1907 is partly obsolete. At the same time the study stresses the fact that article 1 of the Convention, on neutralizing mechanisms, and article 3, on information regarding danger zones, constitute a solid ground upon which to build a new treaty.

3. Sweden has prepared a draft protocol on the use of naval mines (see annex), now in a revised version compared to the one submitted to the Disarmament Commission in 1989. The draft Protocol is elaborated on the basis of the above-mentioned concepts already incorporated in the Hague Convention VIII and Protocol II on land-mines, annexed to the 1981 Convention on Certain Conventional Weapons. 2/

4. Sweden is convinced that a modern protocol on the use of sea-mines will serve the purpose of strengthening the rules of naval warfare and protecting peaceful shipping. Any agreement of this kind which is adhered to by the major military Powers will also have overall confidence-building effects.
Notes

1/ United Nations publication, Sales No. E.86.IX.3.

Annex

DRAFT PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF NAVAL MINES

Article 1. Material scope of application


Article 2. Definition

For the purpose of this Protocol, "mine" means an explosive device laid in the water, on the sea-bed or in the subsoil thereof, with the intention of damaging or sinking ships or deterring shipping from entering a sea area. The term does not include devices attached to the bottom of ships or to harbour installations by personnel operating under water.

Article 3. Relations with other international obligations

Nothing in this Protocol shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law applicable in armed conflict.

Article 4. Basic rule

The indiscriminate use of mines is prohibited.

Indiscriminate use is:

(a) Any detonation of controlled mines which is not directed at a military objective;

(b) Any laying of independent mines which may be expected to cause incidental loss of civilian life, injury of civilians, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Article 5. Prohibitions on the use of mines

1. It is prohibited in all circumstances to use mines specifically directed against neutral or non-belligerant shipping which is not integrated into a belligerent's war effort.
2. It is prohibited to use mines specifically directed against the following classes of vessels:

(a) Passenger vessels when engaged only in carrying civilian passengers;

(b) Vessels on humanitarian missions, namely vessels engaged in relief actions, rescue operations and those carrying goods indispensable for the survival of the civilian population;

(c) Vessels designated for and engaged in the exchange of prisoners of war and other vessels guaranteed safe conduct by prior agreement between the belligerents;

(d) Hospital ships, small craft used for coastal rescue operations and medical transports;

(e) Vessels charged with religious, non-military, scientific or philanthropic missions;

(f) Small coastal fishing vessels and small boats engaged in local coastal trade;

(g) Ships engaged in the protection of the marine environment, such as ships dealing with pollution arising from marine casualties.

Construction Rule
(Cf. Prot. II, 1981, art. 5:1:b)

3. It is prohibited to implant or emplace mines, unless an effective neutralizing mechanism is used on each mine, that is to say, a self-actuating or remote controlled mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position, or at the latest five years after such implanting or emplacement.

Drifting mines

Anchored Mines
(Hague Convention VIII 1907, art. 1:2)

4. It is prohibited to use drifting mines.

5. It is prohibited to lay anchored independent mines which do not become harmless as soon as they have broken loose from their moorings.
Article 6. Loss of protection

If a protected vessel breaks any of the conditions of its protection, it renders itself liable to capture or attack in accordance with international law.

Article 7. Precautionary measures

(Cf. Prot. II, 1981, art 5:2)

1. Effective warning, through notification of danger zones, of any use of independent mines which may affect neutral or non-belligerent shipping or vessels protected under article 5, shall be given as soon as military considerations permit.

Other Mines
(Prot. III, 1981, art. 1:5)

2. When mines are employed, all feasible precautions shall be taken for the safety of vessels and shipping protected under article 5. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 8. Recording and publication of location of naval mines

(CF. Prot. II, 1981, art. 7)

1. The parties to a conflict shall record all pre-planned zones where they have laid mines.

2. All such records shall be retained by the parties who shall:

(a) Whenever possible, by mutual agreement, provide for the release of information concerning the location of independent mines, particularly in agreements governing the cessation of hostilities;

(b) Immediately after the cessation of active hostilities take all necessary and appropriate measures, including the use of such records, to protect civilians from the effects of mines; and make available to each other and to the Secretary-General of the United Nations all information in their possession concerning the location of independent mines.

/.../
Article 9. **International co-operation**

After the cessation of active hostilities, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of information and technical and material assistance - including, in appropriate circumstances, joint operations - necessary to remove or otherwise render ineffective mines placed in position during the conflict.