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TOPIC IV.

SUBMARINE MINES.

The Hague Convention VIII, 1907, relative to the laying of automatic contact submarine mines was admitted to be tentative. In view of this fact should this convention be revised?

(a) Should the use of submarine mines be absolutely prohibited?

(b) If submarine mines are not prohibited, should unanchored automatic contact submarine mines be prohibited?

(c) Should there be a regulation as to the area within which mines may be placed?

(d) What precautions should be taken in laying anchored and unanchored contact mines?

(e) Should a neutral State be forbidden to lay mines within its territorial waters?

(f) Should article 6 be renewed?

(g) Should the use of torpedoes be further regulated?

CONCLUSION.

(a) The use of submarine mines should not be absolutely prohibited.

(b) The use of unanchored automatic contact mines should be prohibited or more definitely restricted.¹

(c) The area within which mines may be placed should be determined by regulation.

(d) When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping, including—

1. An advance notice to foreign Governments and to mariners, specifying the general limits of the mined area.

¹ Using the phraseology of the Hague convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions: It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.

2. Provision for warning peaceful vessels approaching the mined area.

3. Specification of the time during which the mines will be dangerous.

(e) The laying of mines by a neutral State should not be prohibited.

(f) Article 6 of Convention VIII should not be continued in force.

(g) The use of torpedoes should not be further but should be less regulated if any change is made in the convention.

NOTES.

Mines in the Russo-Japanese War, 1904-5.—The use of submarine mines in the Russo-Japanese War of 1904-5 particularly attracted the attention of the world to dangers of the use of these instruments of war. Mines had been used before this time, but not in such a general manner. Whether or not mines were deliberately allowed to drift out to sea, it seems probable that a large number of mines did drift about in the waters in the neighborhood of Port Arthur. The reports seem to show that many mines were found outside the immediate area of the belligerent activities. As the danger from drifting contact mines might be equally great to the party placing the mines, it is difficult to believe that mines which would not become harmless after a fixed time would be set adrift in an area of general operations, even if there were no regulation against the use of submarine mines.

The destruction of the Japanese battleship *Hatsuse* on May 15, 1904, was reported by Admiral Togo, as follows:

While the fleet was watching the enemy off Port Arthur, the *Hatsuse* struck an enemy's mine. Her rudder was damaged, and she sent a message for a ship to tow her. One was being sent, when another message brought the lamentable report that the *Hatsuse* had struck another mine and had sunk immediately after. She was then 10 knots off the Liau-tie-Shan promontory. There was no enemy in sight, and her loss must have been caused by a mine or submarine.

Later it was declared that the *Hatsuse* was sunk by a submarine mine. The destruction of the *Hatsuse* by a mine at a point 10 miles from Port Arthur caused much discussion. It was admitted that belligerents had a right

to carry on war on the high sea, but it was also contended that neutrals had a right to safe passage on the high sea when not within the area of actual active hostilities. It was contended that if a neutral vessel had passed over the same spot it would have been destroyed as was the *Hatsuse*. Later, in 1907, the Chinese delegate at the Conference at The Hague explained that many Chinese vessels had been destroyed by mines drifting about the sea, some even entering the littoral sea. The Chinese delegate reckoned the number of Chinese who had lost their lives as 500 to 600.

It was reported that the Russian vessel *Yenissei*, after laying 389 mines, was itself destroyed by the 390th. The Russian vessel *Petropavlovsk* seems to have been destroyed by a mine when near Port Arthur. It is of course impossible to determine whether these vessels were destroyed by mines laid by Russian or by Japanese forces.

During the Russo-Japanese War the area in which mine laying was carried on was remote from the usual routes of commerce. The possible effects of contact mines drifting about the English Channel as in the neighborhood of Port Arthur was pictured effectively by some writers, and attention was called to the dangers from such forms of warfare and the necessity of regulation of the use of submarine mines became evident.

Propositions at The Hague in 1907.—The British delegation at the Hague conference in 1907, following its instructions, offered the following proposition, which became the basis of much discussion:

ARTICLE 1. L'emploi de mines sous-marines automatiques de contact non mouillées est interdit.

ART. 2. Les mines sous-marines automatiques de contact, qui, en quittant leur point de mouillage, ne deviennent pas inoffensives, sont prohibées.

ART. 3. L'emploi des mines sous-marines automatiques de contact pour établir ou maintenir un blocus de commerce est interdit.

ART. 4. Les belligérants ne pourront se servir de mines sous-marines automatiques de contact que dans leurs eaux territoriales ou celles de leurs ennemis. Toutefois, devant les ports de guerre fortifiés cette zone pourra être étendue jusqu'à une distance de dix milles des canons à terre, à charge, pour le belligérant qui poserait ces mines, d'en donner

avis aux neutres, et de prendre en outre les dispositions que les circonstances lui permettront pour éviter, dans la mesure possible, que les navires de commerce qui n'auraient pu être touchés par cet avis soient exposés à être détruits.

Seuls les ports possédant au moins un grand bassin à radoub et qui seront munis d'outillage nécessaire à la construction et la réparation de vaisseaux de guerre et dans lesquels un personnel d'ouvriers payés par l'État pour effectuer la construction et la réparation de vaisseaux de guerre est entretenu en temps de paix, seront considérés comme entrant dans la catégorie de ports de guerre.

ART. 5. D'une façon générale, les précautions nécessaires seront prises pour sauvegarder les navires neutres qui se livrent à un commerce licite; et il est à désirer que, en raison des dispositions mêmes prises dans la construction des mines sous-marines automatiques de contact, ces engins cessent d'être dangereux au bout d'un délai convenable.

ART. 6. A la fin de la guerre les belligérants se communiqueront mutuellement dans la mesure possible les informations nécessaires quant à l'emplacement des mines automatiques de contact que chacun aura posées le long des côtes de l'autre, et chaque belligérant devra procéder dans le plus bref délai à l'enlèvement des mines qui se trouvent dans ces eaux territoriales. (Deuxième Conférence Internationale de la Paix, Tome III, p. 660.)

Italy proposed to limit the life of unanchored automatic contact submarine mines to one hour after they were launched and to permit the use of such anchored contact mines only as should become harmless on breaking adrift.

Japan would limit the use of unanchored mines to the immediate sphere of hostilities and make the life by construction such as to offer no danger to neutrals.

The Netherlands delegation introduced certain amendments looking particularly to the use of mines for purposes of defense by neutrals.

Brazil offered an amendment of somewhat similar purport.

Spain also made a proposition to limit the mines to territorial waters.

Germany suggested the addition of the following clause:

La pose des mines automatiques de contact sera aussi permise sur le théâtre de la guerre; sera considéré comme théâtre de la guerre l'espace de mer sur lequel se fait ou vient de se faire une opération de guerre ou sur lequel une pareille opération pourra avoir lieu par suite de la présence ou de l'approche des forces armées des deux belligérants. (Ibid, p. 663.)

The United States delegation offered an amendment as follows:

1. Unanchored automatic contact mines are prohibited.
2. Anchored automatic contact mines, which do not become innocuous on getting adrift, are prohibited.
3. If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals. (*Ibid.*, p. 664.)

Russia added the provision in regard to torpedoes and approved form of mines:

1. Les belligérants se serviront de mines automatiques de contact sous-marines amarrées construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives, lorsqu'elles auront rompu leurs amarres.
2. Leur mines flottantes automatiques seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives après un certain délai après leur lancement.
3. Les torpilles seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives lorsqu'elles auront manqué leur but.
4. Un délai suffisant sera accordé aux Gouvernements pour mettre en usage les appareils de mines perfectionnés. (*Ibid.*, p. 664.)

A synoptical arrangement of all the propositions was made and then various amendments were suggested to the new arrangement.

Several suggestions were made with view to allowing mines within the area of immediate belligerent operations or with view to making a definite limit from the coast for the employment of mines. Ten miles was frequently suggested.

The propositions in general show a drift from the idea entertained by many at the commencement of the discussion, which idea was favorable to absolute prohibition of the use of mines.

M. Hagerup, the presiding officer of the subcommittee, summarized the propositions before the committee in the following manner:

Les questions dont nous aurons à nous occuper sont les suivantes:

Première question.—Certaines espèces de mines ne doivent-elles pas être l'objet d'une interdiction absolue, qu'elles soient placées dans des eaux territoriales ou en pleine mer?

La proposition britannique interdit :

(a) Les mines sous-marines automatiques de contact non amarrées; les amendements italiens et japonais (annexes 10 et 11) font exception pour les mines qui deviennent inoffensives un certain temps après leur immersion. L'amendement italien fixe ce temps à une heure, tandis que l'amendement japonais n'indique pas de fixation.

(b) Sont en outre interdites, d'après la proposition britannique, les mines qui en quittant leur point de mouillage ne deviennent pas inoffensives. La même interdiction est, dans d'autres termes, contenue dans l'amendement italien et l'amendement espagnol. (Annexes 10 et 14.) La différence entre ce dernier amendement et les dispositifs sus-mentionnés est que l'amendement espagnol présuppose une espèce d'autorisation internationale pour le placement de mines automatiques de contact.

Seconde question.—Le placement de mines sous-marines ne doit-il pas être interdit en pleine mer?

La proposition anglaise, article 4, répond affirmativement, sous cette réserve qu'elle autorise la pose de mines en mer jusqu'à dix milles devant certains ports de guerre. La proposition contient en outre une définition de ce qu'on entend par port de guerre. L'amendement de la Délégation des Pays-Bas propose de supprimer cette définition.

Troisième question.—Dans quelles conditions les États peuvent-ils placer des mines dans leurs eaux territoriales?

Cette question n'est traitée par la proposition britannique qu'en tant qu'elle concerne les belligérants, tandis que les amendements, proposés par les Délégations des Pays-Bas et du Brésil, visent aussi les neutres. La proposition britannique dans ses articles 4-6 prescrit d'une façon générale des précautions à prendre pour sauvegarder la navigation pacifique contre les dangers des mines. Sur ce point, il y a cette différence entre la proposition britannique et l'amendement néerlandais que la première demande aux belligérants de donner aux neutres un avis spécial du placement des mines, tandis que l'amendement néerlandais se contente d'une publication générale. La proposition de la Délégation de Pays-Bas qui traite également des neutres contient d'ailleurs les mêmes prescriptions pour le placement des mines par les neutres et par les belligérants. Il est en outre à remarquer que cette proposition soumet tout placement de mines, soit par les belligérants, soit par les neutres, à la restriction que les détroits qui unissent deux mers libres ne peuvent pas être barrés. Pour le reste des dispositions proposées par les différentes délégations, il convient d'envisager séparément les différentes hypothèses suivantes :

(a) Placement de mines par un belligérant dans ses propres eaux territoriales.

(b) Placement de mines par un belligérant dans les eaux de l'adversaire. L'amendement espagnol (annexe 14) le soumet à la condition que le belligérant y exerce un pouvoir effectif. La proposition britannique (article 3) prescrit de son côté que l'emploi de mines pour établir ou maintenir un blocus est interdit.

(c) Placement de mines dans les eaux territoriales des neutres. L'amendement néerlandais assimile ce cas complètement au placement de mines par les belligérants, tandis que l'amendement brésilien (annexe 13) ne paraît admettre pour les neutres que le placement de mines explosant sous l'action d'une impulsion provoquée en connaissance de cause par des autorités d'État. Cet amendement contient du reste des prescriptions spéciales quant à l'avertissement à faire et la responsabilité pour le déplacement des mines.

La quatrième question est celle visée par l'article 7 de l'amendement néerlandais (annexe 12). Y a-t-il lieu d'établir par une convention internationale des règles pour l'indemnité en cas de dommage causé par les mines? (Ibid., p. 522.)

Preamble of the Hague convention.—The preamble of the Hague convention relative to the laying of automatic contact submarine mines shows that those who drew the convention did not regard its provisions as anything more than tentative. The form of the preamble is distinctly favorable to much more rigid regulations than those embodied in the convention itself. The preamble states that the powers:

Inspired by the principle of the freedom of sea routes, the common highway of all nations; seeing that, although in the existing state of affairs it is impossible to forbid the employment of automatic contact submarine mines, it is nevertheless desirable to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war; until such time as it is found possible to formulate rules on the subject which shall ensure to the interests involved all the guaranties desirable; have resolved to conclude a convention for this purpose, and have appointed the following as their plenipotentiaries.

Tentative character of the convention.—Not only does the preamble of the convention itself and many of the discussions show that the convention relative to the laying of automatic contact submarine mines is tentative in character, but some of the reserves made by States and the declaration of Great Britain show this. (Deuxième Conférence Internationale de la Paix, tome 1, page 281.)

Types of mines.—Mines are generally classified as anchored and unanchored or free. Anchored mines vary in construction and operation, but usually are such as are under control so that they may be discharged at the will of an operator on shore, or such as explode on contact with a vessel or other hard body. Unanchored mines also

vary in construction and operation. Some have a reasonably definite limit of effectivity, after which they sink or otherwise become harmless. Some unanchored mines seem to be effective for long periods.

Controlled anchored mines.—Naturally there has been little objection to the use of controlled anchored mines. An anchored mine which can only be discharged at the will of an operator may differ little from a shell from a gun. The shell may be aimed to strike the vessel, while the mine may be placed so that it will be struck by a vessel, but will explode only when the operator in charge determines and at other times will be harmless. Such mines do not necessarily imperil neutral or innocent shipping. As these mines are under control of the operator, it is generally held that the State placing such mines is responsible for their use. The use of such mines has not met with much opposition, but has been generally approved.

Anchored contact mines.—Anchored contact mines being such as explode on contact with a vessel, may be dangerous to any vessel, whether the vessel be hostile, neutral, or of the nationality placing the mines. From the time when these mines are placed, the force placing them has no control over them except the negative control due to the knowledge of their supposed location. Currents may change according to circumstances the location of the mines. The storms and tides of some regions make it difficult to maintain the position of mines. These mines also sometimes drift from their moorings. In storm, fog, or stress of weather such mines may be particularly dangerous, because the usual precautionary measures may be impossible, and vessels may enter a mine field inadvertently. When once adrift, a contact mine may remain a menace to shipping unless so constructed as to become harmless on breaking adrift.

It is open to question whether anchored contact mines are not so dangerous as to involve undue risk to all parties who use the sea.

There is a general agreement upon the requirement that anchored contact mines should become harmless on getting adrift.

British instructions, 1907.—The delegates of Great Britain were acting in accordance with their instructions in advocating the entire abolition of the use of automatic contact mines. These instructions were as follows:

His Majesty's Government would view with satisfaction the abandonment of the employment of automatic mines in naval warfare altogether. Failing the acceptance of such a total prohibition, they earnestly hope that the employment of these engines of war will only be sanctioned under the strictest limitations. They would advocate an arrangement by which the use of automatic mines should be limited to territorial waters, and, if possible, to such portions of territorial waters as adjoin naval bases or fortified ports. All mines thus employed should be effectively anchored, and so constructed that, in the event of their breaking adrift, they would either automatically become harmless or sink, and that in any case their active life should not exceed a limited period of, say, six months. (Correspondence Respecting the Second Peace Conference, Parliamentary Papers Misc. No. 1 (1908) (Cd., 3857).)

Discussion at The Hague, 1907.—The discussion of the subject of submarine mines at The Hague in 1907 showed that the conference considered it too early to give any definite pronouncement upon the matter. The report of the committee frankly admits this. The votes in the subcommittees were sometimes quite evenly divided.

Several States maintained that the use of mines should not be prohibited not merely because mines would be needed in time of war, but also because they would be used to protect neutrality. The Brazilian delegate supported this position.

The Netherlands delegate objected to the British proposal on the ground that it lacked any provision relating to the laying of mines during a war by neutral powers in their territorial waters in order to maintain their neutrality. (*Deuxième Conférence Internationale de la Paix, Tome III, p. 521.*) Other States ordinarily neutral also supported the proposition to allow the use of submarine mines.

The general argument was that belligerents were not yet prepared to renounce the use of a means of offensive and defensive warfare which was regarded as formidable and at the same time less costly than many other means. The States with smaller navies were particularly averse to the prohibition of mines. The general sentiment was

favorable to regulation but not to prohibition of the use of mines. Germany maintained a position less favorable to regulation than most States. Great Britain led the movement for restriction. At the time of the adoption of the convention relating to mines Sir Ernest Satow made a formal statement on behalf of the British delegation, of which a translation appeared in the London Times of October, 1907:

Having voted for the mines convention which the conference has just accepted, the British delegation desires to declare that it can not regard this arrangement as furnishing a final solution of the question, but only as marking a stage in international legislation on the subject. It does not consider that adequate account has been taken in the convention of the rights of neutrals to protection or of humanitarian sentiments which can not be neglected. The British delegation has done its best to bring the conference to share its views, but its efforts in this direction have remained without result. The high seas, gentlemen, form a great international highway. If in the present state of international laws and customs belligerents are permitted to fight out their quarrels upon the high seas, it is none the less incumbent upon them to do nothing which might, long after their departure from a particular place, render this highway dangerous for neutrals who are equally entitled to use it. We declare without hesitation that the right of the neutral to security of navigation on the high seas ought to come before the transitory right of the belligerent to employ these seas as the scene of the operations of war.

Nevertheless, the convention as adopted imposes upon the belligerent no restriction as to the placing of anchored mines, which consequently may be laid wherever the belligerent chooses, in his own waters for self-defense, in the waters of the enemy as a means of attack, or finally on the high seas, so that neutral navigation will inevitably run great risks in time of naval war and may be exposed to many a disaster. We have already on several occasions insisted upon the danger of a situation of this kind. We have endeavored to show what would be the effect produced by the loss of a great liner belonging to a neutral power. We did not fail to bring forward every argument in favor of limiting the field of action for these mines, while we called very special attention to the advantages which the civilized world would gain from this restriction, since it would be equivalent to diminishing to a certain extent the causes of warlike conflicts. It appeared to us that by acceptance of the proposal made by us at the beginning of the discussion dangers would have been obviated which in every maritime war of the future will threaten to disturb friendly relations between neutrals and belligerents. But since the conference has not shared our views it remains for us to declare in the most formal manner that these dangers exist, and that the certainty that they will make themselves felt in the future is due to the incomplete character of the present convention.

As this convention, in our opinion, constitutes only a partial and inadequate solution of the problem, it can not, as has already been pointed out, be regarded as a complete exposition of international law on this subject. Accordingly, it will not be permissible to presume the legitimacy of an action for the mere reason that this convention has not prohibited it. This is a principle which we desired to affirm, and which it will be impossible for any State to ignore, whatever its power. (See *Deuxième Conférence Internationale de la Paix*, Tome I, p. 281.)

There also appeared in the *Times* a translation of the declaration of Baron Marschall von Bieberstein, of the German delegation, made immediately after the English statement, as follows:

That a belligerent who lays mines assumes a very heavy responsibility toward neutrals and toward peaceful shipping is a point on which we are all agreed. No one will resort to this instrument of warfare unless for military reasons of an absolutely urgent character. But military acts are not solely governed by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guaranty against abuses. The officers of the German Navy, I loudly proclaim it (*je le dis à haute voix*), will always fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization. I have no need to tell you that I entirely recognize the importance of the codification of rules to be followed in war. But it would be a great mistake to issue rules the strict observation of which might be rendered impossible by the law of facts. It is of the first importance that the international maritime law which we desire to create should only contain clauses the execution of which is possible from a military point of view—is possible even in exceptional circumstances. Otherwise the respect for law would be lessened and its authority undermined. It would also seem to us to be preferable to maintain at present a certain reserve, in the expectation that seven years hence it will be easier to find a solution which will be acceptable to the whole world. As to the humanitarian sentiments of which the British delegate has spoken, I can not admit that there is any country in the world which is superior to my country or my Government in the sentiment of humanity. (*Ibid.*)

With such diversity of opinion among large States the prohibition of mines is not immediately possible.

The action of States since the Hague Conference of 1907 has shown that mines were not to be immediately set aside as engines of war. Opinion and usage, therefore, seem at present unfavorable to the entire prohibition of the use of submarine mines.

Opinion of Dupuis.—After speaking of the discussion at The Hague in 1907, Prof. Charles Dupuis, writing in 1911, says:

Il semble que ces constatations devraient suffire pour faire condamner, même en dehors de tout accord conventionnel, l'usage d'engins aussi dangereux pour la navigation pacifique que pour les vaisseaux de guerre belligérants. Parce que la haute mer n'est soumise à aucune souveraineté, il est loisible aux belligérants de s'y battre; il est admis que les bâtiments neutres qui se risquent sur le théâtre des opérations le font à leurs risques et périls; ces bâtiments pourraient se tenir à l'écart ou fuir à l'approche des navires de combat; s'ils ne le font pas, ils s'exposent sciemment à un danger qu'ils pourraient éviter; ils ne peuvent se plaindre des effets de leur propre imprudence. Mais si, de ce que la mer n'est à personne, il résulte que les belligérants ont liberté de s'y battre, il résulte aussi que les neutres, que les pacifiques ont liberté de s'y mouvoir et droit d'user de cette liberté sans courir des périls qu'ils ne peuvent ni prévoir, ni éviter. Il est possible de prévoir et d'éviter le théâtre d'un combat; il est impossible de prévoir et d'éviter les mines invisibles qui flottent à la dérive, à des distances incalculables des opérations de guerre, et qui conservent leur puissance de destruction pendant des mois et des années après le jour où elles ont été immergées. Il est donc inadmissible que les belligérants menacent et détruisent la liberté de la mer, en semant des engins aveugles et inévitables, qui portent au loin, pour un temps illimité, contre tous les navires, les périls qu'ils n'ont le droit de susciter que contre leurs seuls ennemis.

On pourrait, sans doute, admettre que les eaux territoriales des belligérants fussent, pendant la guerre, rendues inaccessibles par des mines, à la condition que les neutres, prévenus du danger, aient la faculté de s'y soustraire, mais encore faudrait-il que les mines immergées dans les eaux territoriales fussent mises dans l'impossibilité d'aller, en pleine mer, repandre le péril qu'elles ne doivent créer que dans la zone soumise à la juridiction des États riverains. (Le Droit de la Guerre Maritime, No. 332, p. 547.)

As a general principle, mines may be used when under control or within an area under the exclusive control of the belligerent within which peaceful shipping may not enter. Therefore, mines may be used within the area of and during actual belligerent action, as peaceful shipping is excluded from this area or enters it at the risk of injury.

Conclusion.—The use of submarine mines should not be absolutely prohibited.

Unanchored mines.—The Russo-Japanese War of 1904–5 caused many complaints upon the use of mines. The Chinese contended that their nationals had been sacrificed by the careless use of mines by the belliger-

erents. It was maintained that the seas had been strewn with floating mines. Whether there was any justification for this supposition may be doubted and the injury to innocent vessels may have been caused altogether by mines which had broken adrift from their moorings. If this was the case, these mines were evidently not so constructed as to become harmless when getting free of their moorings, for they became in effect floating contact mines which were carried by the currents in many directions.

The mine being in any case a particularly dangerous engine because hidden, becomes even more dangerous when floating freely, the knowledge of its location being unknown and its effective life indefinite in duration. The unrestrained use of unanchored mines is therefore generally condemned as securing to the belligerent no advantage commensurate with the risk involved.

The question then arises as to the use of unanchored contact mines for special purposes. A vessel may be pursued by another. It may fire a shell or discharge a torpedo at the pursuing vessel. May it not then drop a mine in the path of the pursuer? Evidently the principle is nearly the same as to the different measures so far as concerns the two belligerents. The shell will if it misses its mark sink to the bottom of the sea and may become immediately harmless. The torpedo will also usually become harmless when it has completed its relatively short run. The essential difference in the mine is that unless specially constructed it may remain a danger to any vessel for an indefinite period. The Naval War College in 1905 therefore proposed the following:

Unanchored contact mines are prohibited, except those that by construction are rendered innocuous after a limited time, certainly before passing outside the area of immediate belligerent operations. (International Law Topics, 1905, p. 147.)

The Hague Conference of 1907 adopted a somewhat different formula, making the time of effectivity definite, saying it is forbidden—

to lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them.

It may be observed that this fixing of one hour as the time of active life of an unanchored automatic contact mine may permit the mine to pass entirely outside the area of immediate operations. If the operations should be in or near an ocean highway of commerce, the period of one hour as the life of an unanchored mine might be long enough to place many neutral vessels in danger. The belligerent vessel which had thrown over the mine at the beginning of the hour might be many miles distant before the end of the hour, and if a vessel or fleet were pursuing the same might be true of the pursuers.

From the drafting of the present rule also there is no reason why unanchored automatic contact mines might not be used even when the object might not be to escape pursuit, but to endanger an enemy who was expected later to pass through the area. The only restriction is that the mine shall become harmless after one hour at most, otherwise there is no formal limitation, even the requirement (art. 3) that "every possible precaution must be taken for the security of peaceful shipping" is applied specifically to "anchored automatic contact mines." The Hague regulation in regard to unanchored mines is manifestly unsatisfactory, and if unanchored mines are not altogether prohibited this clause should be revised.

Attitude of United States at The Hague, 1907.—The United States at The Hague in 1907 proposed the prohibition of unanchored mines. The course of discussion is shown in the report of the committee:

Pourtant, la proposition d'une interdiction absolue de toute mine automatique de contact non amarrée fut reprise par la Délégation des Etats-Unis d'Amérique (annexe 17). Elle ne put rallier la majorité des voix dans le comité d'examen, qui la rejeta par 11 voix contre 4 et 2 abstentions et se prononça ensuite unanimement en faveur de la limitation, dans le sens sus-indiqué, du temps pendant lequel la mine non amarrée serait dangereuse. Mais, bien que d'accord sur ce dernier principe, les membres du comité n'étaient pas unanimes à vouloir aussi fixer d'une manière déterminée le laps de temps dans lequel les mines non-amarrées devraient devenir inoffensives. On a soutenu qu'il y a des cas où une limitation fixée d'avance est impossible; on devrait se contenter d'une formule plus générale qui statuerait, sans fixer un laps de temps "que les mines automatiques de contact non amarrées doivent devenir inoffensives après un temps limité de manière à n'offrir aucun danger aux navires neutres." "Si une force navale," a dit le Contre-

Amiral Siegel, "se voit poursuivie et veut lancer des mines non amarées pour empêcher son adversaire de l'atteindre, une limite déterminée, avant tout la limite d'une heure, rendrait l'emploi de cette arme très souvent inefficace et inutile, étant donné que celui qui poursuit sera en mesure, soit par ses éclaireurs, soit par d'autres moyens, de connaître que son adversaire a jeté des mines; ce dernier trouverait donc des moyens pour éviter tout danger, soit en faisant un petit détour, soit en attendant une heure avant de passer sur le lieu dangereux, après quoi il sera en toute sécurité. Un autre cas se présente, si un ennemi bloque l'embouchure d'un fleuve. Si le défenseur veut employer des mines flottantes contre son ennemi en les envoyant en aval, le temps de leur efficacité doit être en rapport avec la longueur du chemin à parcourir et ne peut pas être fixé d'avance."

Malgré ces considérations, la majorité du comité, désirant assurer une efficacité réelle au principe adopté, se prononça en faveur d'une limite de temps fixée d'avance (9 voix contre 2 et 5 abstentions), après quoi le comité, appelé à choisir entre la limite d'une heure et celle de deux heures (la dernière proposée à titre transactionnel par S. Exc. M. de Hammarskjöld) se prononça en faveur de la limite d'une heure, à la majorité de 8 voix, contre 1 et 7 abstentions." (Deuxième Conférence Internationale de la Paix, Tome III, p. 403.)

Precautions as to unanchored mines.—If mines are to be used they are evidently engines of such nature as should be used with some care that they do no injury to parties not concerned in the war.

An innocent private vessel of the enemy may not be sunk unless under "exceptional necessity," and those on board must be placed in safety before the destruction of the vessel, though when such a vessel deliberately comes within range in time of actual battle, it must take the consequences. The existence of an actual battle is a fact evident to the vessel.

This condition is somewhat parallel to that of a floating unanchored mine thrown over by one belligerent vessel while another is pursuing. It would seem that to make the situation more nearly parallel the range of the mine should be that of a shell or of a torpedo or the actual limit of immediate operations. At the present time it is probable that the guns of any ship of war have not a range greater than the distance which could be made by a fast vessel in one-half hour. One hour would therefore seem a long life to allow to unanchored contact mines, because if not exploded they might continue for a half hour to be a danger to innocent shipping which might presume

the sea to be safe after the pursued and pursuer had passed. If a long life is allowed to unanchored mines there is the correspondingly increased risk that these mines may drift in unexpected directions and to a greater distance from the point of launching. If allowed a life of one hour the vessel may be before the end of the hour beyond the distance within which an approaching neutral or other innocent vessel can be notified of the danger from the mine.

The use of uncontrolled, unanchored contact mines should be prohibited. The reasons for prohibiting unanchored, uncontrolled mines are many. Among the reasons would be the extreme danger to all who follow the sea as compared with the slight chance that the enemy against whom the mine is launched will be injured. These mines should be clearly distinguished from the controlled, unanchored contact mines, the range of action of which is determined by the belligerent who launched the mine.

A belligerent at the present time has no right to complain of the use of mines against his vessels of war. It is true that the mine is a hidden means of attack, but the submarine boat may also be a hidden means of attack, and there is no prohibition of the use of hidden or secret measures provided no perfidy is involved. The innocent vessels of the enemy are generally exempt from attack though they may be taken as prize. Small coast fishing vessels and small boats engaged in local trade are, when innocently employed, by convention, exempt from capture even. The obligation of the belligerent to guard such vessels against injury from mines would therefore be as imperative as to guard them against injury from cannon fire. The only way in which this can be done is by control of the life of the mine.

As a life of one hour seems an unduly long time for an uncontrolled, unanchored mine and involves undue risks, it would seem best to further limit the maximum time, and as in many cases the maximum time should not be granted, there should be another basis for determination of the life depending upon the area of immediate hostilities. A combination of these would seem to give the

necessary and reasonable guaranty for safety of innocent vessels, particularly when an engagement might take place in the neighborhood of the highways of maritime commerce, as may be the case. The proposition of the Naval War College in 1905 was that—

Unanchored, contact mines are prohibited except those that by construction are rendered innocuous after a limited time, certainly before passing outside the area of immediate belligerent activities.

The Hague convention of 1907 provided that it is forbidden—

to lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them.

It may be advantageous to combine these propositions, as the single limit of time proposed at The Hague does not seem to be sufficient. The War College proposition of 1905 contained a reference to time which was not made specific. There would probably be a little objection to making the time limit specific provided it were not too long. One hour seems too long. One-half hour seems ample from a belligerent point of view, and from the neutral point of view the shorter the time the more satisfactory, because the risk would be correspondingly lessened.

Conclusion.—The use of unanchored automatic contact mines should be prohibited or more definitely restricted. Using the phraseology of the Hague convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions:

It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.

General statement as to area.—It is generally admitted that one belligerent must at all times when outside of neutral jurisdiction be on guard against attack which may legitimately be made by the other belligerent. This attack may be made upon the high seas or within belligerent waters. The attack may be sudden under cover of night, of fog, or of ruse not involving perfidy.

When a neutral vessel enters the area of actual legitimate hostilities the vessel enters at its own risk. If the opposing belligerents are engaged in firing upon each other a neutral vessel comes within range at its peril. Certain areas in the neighborhood of fortifications or other points of military importance are sometimes set apart as strategic areas and vessels are notified or warned not to enter. Such action has been generally approved. Blockaded areas are universally recognized as closed to free communication. Blockaded and strategic areas are examples of areas from which the innocent vessel is warned by public proclamation or notification. The liability of the neutral is based upon his action when knowledge of conditions based on proclamation or notification may be presumed. In case of an actual battle, knowledge is presumed because of the evident facts. It is proper that a neutral should bear the consequences of disregard of knowledge which he reasonably may be presumed to have.

The risk from mines is or may be such as can not be presumed to be known to the innocent vessel. In case of bombardment the commander of the attacking force is under obligation to do his utmost to warn the authorities. Other provisions are in the direction of safeguarding not only neutrals but also noncombatants. Many regulations are aimed to safeguard those not engaged in warfare from hidden dangers.

The right of innocent use of the high sea has long been recognized as paramount to any right of a belligerent to exclude innocent vessels from a given area, except for immediate military reasons. Even a blockade to be binding must be effective. It is, of course, possible that a battle may be waged in any part of the high sea; this contingency does not, however, give a belligerent the right to exclude innocent shipping from any area in which he is not actually operating or maintaining a force.

A belligerent has the right to place mines in certain areas for military purposes. These military purposes are supposed to be immediate and not remote or contingent. The propriety of placing of mines for the defense of a military port is widely admitted, though there is difference of opinion upon the distance from the

port at which mines may be laid. The laying of mines in the high sea is not admitted by all to be allowable, but all demand proper precautions for innocent parties.

The discussion as to mines in the high-sea areas shows less accord in reference to unanchored contact mines than in reference to anchored mines.

Speaking of the mines in the seas of the Far East, during the Russo Japanese war (whether they might have been anchored and have broken loose, or whether they might have been unanchored, the results would have been the same), Prof. Westlake said:

Now, the right of a State in the waters subject to its sovereignty can certainly not rank higher than that of a private owner in the land or water which is his property. Still less, if possible, can the right of a State in the open sea, which is free to the use of all, rank higher than that of property. But no principle is more firmly established in the science of law than that which says to an owner *sic utere tuo ut alienum non laedas*. The right of sovereignty, therefore, does not extend to employing anywhere what may be foreseen to be engines of slaughter and damage to unoffending foreigners. The foreign government whose subjects suffer from such engines does not need to inquire whether their use is prohibited by any positive rule of international law, whether resting on recognized custom or an agreement. They are indefensible in themselves, and the foreign government concerned will be justified not only in taking up the cause of its injured subjects. It will not have exceeded its rights if it interferes in order to stop the offending methods of war. (International Law, Part II, War, p. 322.)

The contention of Prof. Westlake that the right of sovereignty does not extend to unregulated employment of mines is so generally supported at the present time as to scarcely need discussion. It may therefore be stated in a general way that mines may not be used except within certain defined areas. What these areas shall be is, however, a question upon which there still exists differences of opinion.

Propositions as to area, The Hague, 1907.—The British proposition at the Second Hague Conference, 1907, in article 4 limited the use of automatic contact submarine mines to the territorial waters of the belligerents and to an area extending 10 miles from fortified places or military ports.

The Netherlands delegation would also prevent the mining of straits which unite open seas. (*Deuxième Conférence Internationale de la Paix, Tome III, p. 661.*)

The Spanish delegation wished to limit the placing of mines by one belligerent in the territorial waters of the other belligerent to the area over which the belligerent placing the mines was in effective control.

Germany added an important suggestion:

La pose des mines automatiques de contact sera aussi permise sur le théâtre de la guerre; sera considéré comme théâtre de la guerre l'espace de mer sur lequel se fait ou vient de se faire une opération de guerre ou sur lequel une pareille opération pourra avoir lieu par suite de la présence ou de l'approche des forces armées des deux belligérants (Ibid., p. 663.)

Later a somewhat modified suggestion was made by the German delegation:

La pose des mines automatiques de contact amarrées sera aussi permise dans l'emplacement de l'activité immédiate des belligérants, pourvu que les précautions soient prises pour la sûreté à laquelle les neutres ont droit. (Ibid., p. 668.)

A somewhat similar amendment was offered by the Netherlands delegation.

The various propositions were put in definite form as basis for consideration by the comité d'examen, as follows:

ARTICLE 2. Il est interdit de placer des mines automatiques de contact amarrées de là d'une distance de trois milles marins à partir de la laisse de basse mer, ou le long de toute l'étendue des côtes, ainsi que des îles et des bancs qui en dépendent.

Pour les baies, le rayon de trois milles marins sera mesuré à partir d'une ligne droite, tirée en travers de la baie dans la partie la plus rapprochée de l'entrée au premier point où l'ouverture n'excèdera pas dix milles.

ART. 3. Devant les ports de guerre, la limite pour le placement des mines est portée à une distance de dix milles marins.

Sont considérés comme ports de guerre les ports, qui sont décrétés comme tels par l'Etat auquel ils appartiennent et ceux où existent des chantiers navals de construction.

ART. 4. Dans les limites indiquées aux deux articles précédents, les belligérants ont le droit de placer des mines automatiques de contact amarrées dans les eaux de leurs adversaires.

Toutefois il est interdit d'y placer des mines automatiques de contact dans le seul but d'intercepter la navigation de commerce.

ART. 5. Dans la sphère de leur activité immédiate, les belligérants ont de même le droit de placer des mines automatiques de contact en dehors des limites fixées par les articles 2-4 du présent règlement.

Les mines employées en dehors des limites fixées par les article 2-4 doivent être construites de façon qu'elles soient rendues inoffensives dans un délai maximum de deux heures après que le poseur les a abandonnées.

ART. 6 (réservé). La communication entre deux mers libres ne peut être barrée entièrement par des mines automatiques de contact. Mais le passage pourra y être soumis à des conditions qui seront décrétées par les autorités compétentes.

La disposition de l'alinéa 1^{er} ne porte aucune atteinte aux règles établies par les traités et conventions existants, ni aux droits de la souveraineté territoriale. (Ibid., p. 671.)

With the exception of article 6 above the projet presented to the third committee closely resembled that before the comité d'examen.

Later the Colombian delegation proposed to make certain changes and to introduce as article 2—

L'emploi des mines automatiques de contact amarrées est absolument interdit excepté comme moyen de défense.

Les belligérantes ne pourront se servir desdites mines que pour la protection de leurs propres côtes et seulement jusqu'à la distance de la portée maxime des canons.

Dans le cas des bras de mer ou des passages maritimes navigables conduisant exclusivement aux côtes d'une seule Puissance, cette Puissance pourra barrer leur entrée, pour sa protection, en plaçant des mines automatiques de contact amarrées.

Il est absolument interdit aux belligérants de placer des mines automatiques de contact amarrées en pleine mer ou dans les eaux de l'ennemi. (Ibid., p. 680.)

Circumstances determining use of mines.—Some consideration must be given to the purposes for which mines are used. While there are those who would prohibit the use of mines altogether, these do not seem to be in the majority at the present time. Admitting that mines will for a time continue to be used, their use may be limited so that circumstances would condition the legality. Mines may be prohibited except for purposes of defense. There always arises in such a case a difference of opinion upon what constitutes defense, and it is not always possible to determine whether mines in a given region are placed for defense or offense. This difference of opinion appeared at the conference at The Hague in 1907. Many States in favor of limiting the use of mines could not be convinced that this method of restriction would realize that end. The Colombian proposition that

the use of anchored automatic contact mines should be absolutely prohibited except for purposes of defense was voted upon, receiving 16 affirmative and 15 negative votes, while 6 abstained from voting and 7 were absent. As this did not give an absolute majority, further consideration of this proposition was abandoned. (*Ibid.*, Tome I, p. 292.)

Another proposition was made by the Netherlands delegation looking to special regulation of the use of mines in straits. This also did not receive sufficient support to make it a part of the proposed convention.

Use of mines for intercepting commerce.—It was definitely proposed at the Hague Conference to prohibit the use of mines for intercepting commerce. This proposition was not sufficiently supported, and the question came upon the form of restriction. The British delegation proposed to allow mines only before such ports as are considered "military ports."

The second draft of the report of the committee was as follows:

It is forbidden to lay automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping.

The German delegate declared that he reserved his vote upon this form, as it introduced a subjective element in the determination of the character of the act which in application would give rise to difficulties.

The British delegate remarked that the British proposition was advanced with the idea of avoiding the German objection. When the second draft was put to vote, 33 voted yes, 3 abstained, 7 were absent, and Germany reserved its vote, and the convention provided that mines for "the sole object of intercepting commercial shipping" were prohibited.

The recognized method of intercepting commerce with a belligerent is by blockade. The penalty for attempting to violate blockade may be condemnation of ship and cargo, but there is no penalty imposed upon the crew, as would be the case if mines were used to destroy the ship.

Naval War College discussion, 1913.—The conclusions drawn from the discussions at the Naval War College in 1913 were in accord with the general opinion of naval

men and of writers. This opinion shows a tendency toward more definite restriction upon the use of mines, both as regards character of the mines and as regards area within which they may be placed. The subject was, however, considered only as one part of the general topic of means of injuring the enemy. The conclusion as to torpedoes and mines was as follows:

Torpedoes and mines:

(a) It is forbidden to use torpedoes which do not become harmless when they have completed their run.

(b) It is forbidden to lay mines in the high seas except within the immediate area of belligerent operations.

(c) It is forbidden in the high seas and in marginal waters of the belligerent (1) to lay unanchored automatic contact mines except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them; (2) to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

(d) A belligerent is forbidden to lay mines off the coast or before the ports of the enemy except for strictly military or naval purposes.

It is forbidden to lay mines in order to establish or to maintain a commercial blockade.

(e) When mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

(f) At the close of the war the belligerent States undertake to do their utmost to remove the mines which they have laid, each State removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the State which laid them, and each State must proceed with the least possible delay to remove the mines in its own waters.

The belligerent States upon which the obligation to remove the mines falls after the end of the war should as soon as possible give notice that the mines have so far as possible been removed. (*International Law Topics and Discussions*, 1913, p. 147.)

Institute of International Law, 1910-1913.—The Naval War College, *International Law Topics*, 1913, pages 143-146, show that with slight modification in regard to the provision for removal of the mines after the war the rules of the Institute, approved in 1910, were approved in 1913.

These rules of the Institute follow closely the Hague convention relative to the laying of automatic contact submarine mines except as to the area. The Institute rule provides:

It is forbidden to lay in the open sea automatic contact mines, whether or not anchored.

At earlier sessions there had been proposed the following:

It is forbidden to lay fixed or floating mines in the open sea.

The main point upon which emphasis may be placed is the prohibition of mines in the open sea in distinction from marginal waters, and the report of 1910 shows that it was the intention of the Institute that this prohibition should be absolute. (23 *Annuaire de l'Institut de Droit International*, pp. 179, 429.)

Discussion as to area, The Hague, 1907.—The question as to limitation of area within which mines might be laid received much discussion and the propositions of the comité d'examen in respect to limitation of area were much reduced.

Admiral Siegel, speaking for the German delegation, assumed a hypothetical case to illustrate the ground of opposition to certain restrictions:

Aussi, la Délégation allemande doit-elle faire des réserves sur les articles dont les dispositions peuvent causer des malentendus et qui d'autre part interdiraient l'emploi des mines en beaucoup des cas, où cet emploi est indispensable. Il sera cité un seul exemple. Si une flotte X bloque la côte d'un pays Y, elle le fait pour lui couper toute communication par mer. Elle veut faire mourir le pays d'une lente inanition en le privant de ses moyens d'existence. Le pays Y fera tout son possible pour éviter un pareil sort et cherchera à tenir les navires de la flotte X à une distance aussi grande que possible de ses rivages. Dans le cas où les forces maritimes ne suffisent pas à atteindre ce but, l'État Y trouve dans les mines un auxiliaire précieux. Mais pour les mettre en activité, il faut les porter dans la proximité de l'ennemi. Or, la flotte X ne s'arrêtera pas toujours près de la côte, elle stationnera peut-être à une distance de 20 milles ou plus. Comme l'article 3 interdit l'emploi des mines à une distance au-delà de 3 milles, et en quelques cas de 10 milles de la côte, le défenseur se verrait privé du seul moyen qui pût forcer la flotte ennemie à s'éloigner de ces côtes. Cet état de choses serait absolument inadmissible. Mais ce n'est pas tout. L'article 5 interdit toutes les mines qui ne deviennent pas inoffensives deux heures après qu'elles ont été

abandonnées par celui qui les a posées. Si donc, dans le cas mentionné, le défenseur y a posé des mines devant ses navires dans l'espérance de pouvoir rester sur place pendant un certain temps, et s'il est attaqué par la flotte X beaucoup plus forte que lui et qui l'oblige à se retirer précipitamment, comment serait-il en mesure de trouver les moyens pour garantir que les mines qu'il a posées deviennent inoffensives dans les deux heures? Il est évident que c'est impossible, cet exemple qui reste parfaitement dans le cadre de ce qui peut arriver dans chaque guerre démontre jusqu'à l'évidence que les dispositions des articles 3 et 5 sont inacceptables au point de vue militaire. Il convient en outre de faire observer que dans le cas qui vient d'être cité on ne saurait dire que les intérêts de la navigation pacifique soient en jeu. Entre une côte bloquée et la flotte bloquante aucune navigation de commerce ne peut exister. Pourquoi alors ces restrictions inacceptables? (Deuxième Conférence Internationale de la Paix, Tome III, p. 378.)

Sir Ernest Satow, of the British delegation, set forth the reasons why the general public should be deeply interested in the regulation of the use of submarine mines and the dangers of any considerable freedom in the use of mines. In one part of the somewhat extended discussion Sir Ernest Satow remarks:

Nous sommes d'avis que la pose de mines amarrées en dehors des eaux territoriales des belligérants et au-delà d'une limite de dix milles marins devant les ports de guerre, arsenaux militaires, ou établissements de constructions navales ou de radoub, doit être interdite aux belligérants. Le droit qu'accorde le projet de poser des mines amarrées en pleine mer dans la "sphère d'activité immédiate donne aux belligérants la faculté de semer ces engins dans toutes les mers peu profondes. Ainsi elles pourraient être posées dans une grande partie de la Baltique, dans la Mer du Nord, la Manche, sur les côtes de la Méditerranée, pour ne pas parler du Détroit de Malacca, des parages des Indes Néerlandaises, du Golfe du Tonkin et de la Mer Jaune. Il est vrai qu'il est stipulé au 2^e alinéa de l'article 5 que les mines amarrées en pleine mer devront être construites de façon à devenir inoffensives dans un délai maximum de deux heures après qu'elles auront été abandonnées par le belligérant poseur, mais comment cette stipulation pourra-t-elle être mise à exécution? Sauf dans le cas de la mine électro-mécanique, la mine une fois posée ne peut être rendue inoffensive que par l'action d'une contre mine qui, elle, agit instantanément. Nous ne croyons pas que l'on puisse inventer une mine qui devienne inoffensive deux heures après que le belligérant poseur aura quitté les lieux, peut-être à la hâte pour échapper à la poursuite de l'ennemi; la stipulation nous paraît donc demander l'impossible et il nous paraît préférable de supprimer l'article 5 en entier ce qui aura pour résultat de faire disparaître aussi l'alinéa 2 de l'article 9.

L'article 4, alinéa 3, déclare qu'il "est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire dans le seul but d'intercepter la navigation de commerce." C'est là une clause qui laisse au belligérant une échappatoire bien dangereuse. On avait proposé dans le comité de ne permettre la pose de mines devant un port de commerce qu'à la condition qu'il y eût dans ce port au moins une grande unité de combat, mais la proposition fut vivement combattue et dut, par conséquent, être retirée. Cependant il serait, à notre avis, tout à fait contraire à l'esprit et à la lettre de la Déclaration de Paris de permettre qu'un blocus fût maintenu, totalement ou en partie, à l'aide de mines. Je me permets de vous rappeler le texte même du passage qui a trait à cette question: "Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi." Il est clair qu'il s'agit ici d'une force suffisante composée de navires de guerre, et que l'on ne peut comprendre dans cette catégorie des mines sous-marines qui ne sont sujettes à aucun contrôle et qui ne contiennent en elles aucune preuve évidente de l'intention de fermer accès du port bloqué. Il serait par conséquent bon de tirer ce point au clair afin de ne laisser subsister aucun équivoque, et c'est pourquoi nous avons l'honneur de proposer le texte suivant à la place de celui que nous avons sous les yeux:

"Il est interdit de poser des mines automatiques de contact devant les ports de l'adversaire autres que ceux qui sont considérés comme ports de guerre." (Ibid., p. 380.)

Gen. Porter, of the American delegation, speaking on the proposed convention, says of the clauses particularly relating to area in which mines may be placed:

Il est évident que la détermination de la limite de trois milles serait souvent extrêmement difficile sur une côte bordée d'îles et de bancs partiellement ou totalement submergés, et qui peut-être ne seraient même pas relevés; mais l'objection capitale à cet article est que la portée des canons de vaisseaux de guerre modernes étant de 15,000 yards, la distance de trois milles ou 6,000 yards est moindre que la moitié de leur portée; ainsi des vaisseaux pourraient attaquer les côtes avec impunité malgré la défense au moyen de mines.

Il est vrai que la superficie de la pose des mines a été étendue par un vote du comité à la "sphère d'activité immédiate," et tel est le but du 1^{er} alinéa de l'article 5, mais le 2^e alinéa de cet article stipule que les mines ainsi placées en dehors de la limite de trois milles deviendront inoffensives deux heures après qu'elles auront été abandonnées. Il est clair que ceci est impossible, étant donné qu'une mine aussi intelligente n'a jamais été imaginée. Si le navire faisant la patrouille du champ des mines est forcé de rentrer par suite de l'approche de l'ennemi toute communication physique avec les mines est nécessairement rompue, et l'ennemi se fiant à la bonne foi et à l'habileté technique avec lesquelles les stipulations d'une convention ont

été exécutées par l'adversaire peut prendre une base de tir commode après que deux heures se sont écoulées, et procéder à la destruction de routes, ponts, viaducs, tunnels, docks et autres établissements de manufactures et de constructions de navires qui se trouvent en deçà de trois milles de la laisse de basse-mer, malgré toute défense de mine.

Évidemment les stipulations de l'article 5, alinéa 2, sont prohibitives, et ceci étant tacitement admis, une disposition fut introduite dans l'article 3, en vue de permettre l'usage de mines amarrées à dix milles en avant des ports de guerre, vraisemblablement déjà fortement fortifiés, disposition qui ne subit aucune restriction par le 2^e paragraphe de l'article 5, tandis que, par contre, le même droit est refusé à des ports sans défense. Il est vrai que le 2^e alinéa de l'article 3 permet pratiquement de déclarer tout port, port de guerre, mais le droit légitime de défense ne devrait pas être subordonné à l'interprétation d'une stipulation intentionnellement vague.

L'article 3 permet à la défense de placer des mines jusqu'à la limite de 10 milles devant tout port que l'on peut déclarer port de guerre. L'article 4, alinéa 2, permet seulement à la force attaquante de placer des mines en dehors de la limite de trois milles à partir de la laisse de basse-mer de la côte de son adversaire, quand les établissements de construction de navires ou autres sont la propriété de l'État; inégalité qui a été proposée à la session de l'Institut de Droit International et rejetée, ainsi que cela est signalé dans le rapport très compétent actuellement soumis à la commission.

Les articles 2 et 3 ne sont pas acceptés par la Délégation des États-Unis. Ils portent une atteinte sérieuse aux droits existants et nécessaires à la défense; ils sont vagues et complexes au point de constituer une menace de sérieux malentendus s'ils étaient acceptés.

Les 1^{er} et 2^e alinéas de l'article 4 ne sont pas acceptés par nous en raison de l'inégalité de leurs dispositions et aussi de l'incertitude de leur application. (Ibid., p. 386.)

Admiral Sperry, also of the American delegation, had said in the comité d'examen:

L'omission, dans la proposition de la Délégation des États-Unis d'Amérique relativement aux mines sous-marines, d'une limitation définie des emplacements dans lesquels elles peuvent être placées, n'est pas due à une sympathie quelconque pour l'usage général des mines au-delà des eaux territoriales, méthode que, en commun avec tout le monde civilisé, elle condamne, mais bien à d'autres considérations (annexe 17).

Le terme "eaux territoriales" n'est peut-être pas plus certain dans son application que les limites mesurées; mais le délégué naval des États-Unis n'est pas préparé à dire qu'une limitation d'une manière ou d'une autre ne porterait pas atteinte au droit de défendre les 4,000 milles de la côte continentale des États-Unis, à certains points qui doivent être approchés par un chenal tortueux entre des récifs submergés, loin du rivage, où quelques mines empêcheraient absolument

d'avoir accès. Dans une île, environnée de récifs, des Philippines, il y a une grande baie entourée de tous côtés par la terre, qui abriterait la flotte de la plus grande Puissance.

Les Puissances, qui sont représentées ici, ont de vastes et riches possessions dans l'Océan Pacifique et l'Océan Indien, où les ports et les îles sont abrités par des barrières de récifs de corail, avec seulement ici et là un passage qui peut être ou non en deçà de dix, ou en deçà de cent milles de la terre ferme.

Les récifs peuvent être découverts ou non à marée basse. Où est la limite de la marée basse? A-t-il été décidé que toutes les eaux en dedans de récifs sont des eaux territoriales? Les trois milles seront-ils mesurés des récifs et au-delà? La côte (Lasteric) d'Australie est abritée pendant plus de mille milles par le Grand Banc de Récifs à une distance de vingt à cent cinquante milles du rivage. En dedans de ce récif, où il n'y a que de loin en loin des passages, il existe un labyrinthe de récifs moindres et d'îlots, mais dans les mille milles les plus gros vaisseaux peuvent naviguer en sûreté sous la charge d'un pilote. Il n'est pas nécessaire pour un navire n'allant pas à un port australien de passer en dedans, et les eaux intérieures ne peuvent guère être considérées comme faisant partie de la haute mer. Il n'est pas à la connaissance du Délégué des États-Unis si elles sont considérées ainsi; mais il semble douteux que les nationaux de cette grande et riche communauté abandonnent volontiers ce qui serait presque une défense parfaite des points importants.

Il y a beaucoup de Puissances représentées ici, dont les côtes de leurs vastes empires coloniaux sont protégées par des remparts presque parfaits de corail, comme tous les officiers de marine le savent, et il serait bon de considérer avec soin les effets qui pourraient résulter de toute provision conventionnelle, sur laquelle nous pourrions nous mettre d'accord, et qui une fois faite, sera difficile à dénoncer. (Ibid., p. 408.)

When the articles of the proposed convention relating to areas in which mines might be placed were brought before the full committee, opinion was not sufficiently favorable to warrant presenting articles 2-5 of the report of the comité d'examen to the full conference. The suppression of these articles necessarily led to certain amendments in articles which were related.

The suppression of reference to the limitation of area within which mines might be used was not regarded as giving an unlimited right to belligerent or to neutral to use mines indiscriminately in any area. It was recognized that a very heavy responsibility rested upon the one who placed a mine to see that it did not injure neutrals.

The area of the use of mines was broadly left to "the conscience, the good sense, and the consciousness of the obligations imposed by the principles of humanity." (Ibid., Tome I, p. 289.)

Conclusion.—From the discussion there was evident widely divergent opinion as to the proper regulations in regard to area. From the votes there was no decisive conclusion. While much can be left to the sense of international obligation, it would seem that certain general rules might be established without unduly impairing the rights of innocent parties while securing reasonable freedom of action for belligerents.

Removal of mines.—As belligerents may not only place mines within their own waters and on the high seas, but also within the waters of one another under present regulations, it is necessary that some provision be made for the removal of the mines at the close of the war. Naturally also a state would not desire that a foreign vessel should enter its waters for the purpose of removing mines even in time of peace. Of course, there may be, as the delegate of the United States pointed out, complications and difficulties in the removal of mines. Though the party who placed the mines is under obligation to notify the other of the situation of the mines, the difficulties of exact statement of these facts may be great, mines may have drifted, or may have broken loose so that it is impossible to give accurate information. The placing of mines off an enemy coast would usually be undertaken at considerable risk, would usually be hastily performed, and accurate locations would be correspondingly lacking.

The mines laid by a state within its own waters would naturally be removed by that state, but it may be well for the safety of navigation in general that this removal be made obligatory.

The mines laid in the high seas, if this practice is allowed, might constitute the greatest danger. The difficulty in picking up these mines would be great.

Article 5 of the Hague convention relative to the laying of automatic contact submarine mines seems to be generally approved, though it may be questioned whether

it will accomplish in fact what is hoped. The article is as follows:

At the close of the war, the contracting powers undertake to do their utmost to remove the mines which they have laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the power which laid them, and each power must proceed with the least possible delay to remove the mines in its own waters.

Precautions as to anchored mines.—The Naval War College discussion in 1905 and the discussion at The Hague in 1907 as well as the discussion of the Institute of International Law through several years, show agreement upon the point that anchored contact mines should be so constructed as to become harmless when breaking adrift.

Article 3 of The Hague Convention of 1907 is:

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Government through the diplomatic channel.

Manifestly this article is very general in its terms. Such terms as "every possible precaution" seem to guarantee ample care for the peaceful shipping.

The next clause provides that the mines "shall become harmless within a limited time," but no limit is named. The limit may, therefore, be hours, days, weeks, months, or perhaps years. The notice of mines not under surveillance must be given "as soon as military exigencies permit." The belligerent must, of course, be the judge in most cases of "military exigencies."

As Capt. Behr of the Russian delegation said, uncontrolled mines should in principle become harmless as soon as possible. "La difficulté ne commence que lorsqu'on veut realiser ce principe." It is necessary to consider the technique of mine construction and the possibility of meeting the proposed requirements. Capt. Behr further maintained that a satisfactory solution

would require time and experiment, but some regulation would then be valuable in calling attention to the matter of the necessity of further regulation at a later date. The discussion at The Hague in 1907 is summarized in the report as follows:

Malgré le caractère plus ou moins vague des différentes obligations, énoncées dans l'article 6, on a été d'accord sur leur efficacité, attendu que tout état se fera certes un devoir de les observer rigoureusement, en procédant notamment le plus tôt possible aux notifications décrétées, dès que les exigences militaires lui permettront de le faire. Quant aux conditions de construction, dont parle l'alinéa 2 de l'article et "au laps de temps limité" qui y est prévu, tout en étant unanime, que la fixation de ce délai appartient à l'état, qui a posé des mines amarrées, afin que ces mines ne continuent pas à être dangereuses longtemps après la fin des hostilités, on a longuement discuté la possibilité, au point de vue technique, de suffire à ces obligations. Le Capitaine de Vaisseau Ottley rappela à ce propos "que les lois de l'action électro-galvanique entre deux métaux dissemblables, en immersion, prêtent un moyen facile et non coûteux de changer même les coques des mines existantes, afin de satisfaire à la condition de l'article 6; il suffirait de percer un trou d'une grandeur de quelques centimètres dans la coque d'une mine et de fermer le trou par un bouchon en métal, tel que le zinc; en variant le caractère métallique du disque et en modifiant son épaisseur, on pourra régler plus ou moins la période, pendant laquelle la mine restera flottante et active; plus le disque sera mince, plus la vie active de la mine sera courte."

Ces constatations, présentées par la Délégation britannique dans une des dernières séances du comité, ne rencontrèrent pas d'objections de la part des autres délégués techniques présents; néanmoins, on ne crut pas pouvoir accepter la proposition, renouvelée par la Délégation britannique, de supprimer les mots "dans la mesure du possible" qui avaient été adoptés auparavant. (Deuxième Conférence Internationale de la Paix, Tome III, p. 418.)

There are some who maintain that the anchored contact mine may be and is more dangerous than the unanchored contact mine, saying:

The unrestricted use of anchored contact mines in open shallow seas will prove such a menace to all vessels which traverse such waters, that their entire prohibition seems imperative for the safety of neutrals. Free distribution of anchored contact mines will deny navigation of such waters to all commerce during the period of hostilities and for an unlimited time after hostilities have ceased. The very fact that such mines will have to be laid in open shallow waters under cover of darkness or fog precludes accurate location of them, precludes accurate information of such mine dangers to innocent commercial vessels, and precludes removal of all such mines at the close of the war. Inaccurately located mine fields present a greater danger to shipping than a

poorly charted reef, because a mine field laid quickly at night some distance from fixed observation marks would be a worse menace to navigation than a reef surveyed under similar adverse conditions.

The loose uncontrolled buoyant contact mine is a terrible menace to human life and to neutral commerce—and such drifting buoyant mines will remain a danger to shipping throughout vast areas of the sea for a long time after peace has been declared.

Unanchored contact mines (“floating” mines) being of a buoyant type can be designed with a positive limitation of operative life that is, they can be made to become harmless by sinking after being in the water for a fixed period of time. Thus the “floating” or unanchored contact mine would not be a lasting menace to neutral shipping as would be the case with drifting mines of the anchored contact type. Nor would floating mines present as much danger to neutrals as securely anchored contact mines, for the reason that the former (owing to their limited operative life) would be laid in the immediate area of hostilities, which in itself would be sufficient warning of danger to neutral vessels, while on the other hand the hidden anchored mine fields might be laid anywhere on soundings, be very poorly charted, and probably without timely warning to neutrals. It would not be difficult to warn neutral vessels away from areas where “two-hour” floating mines have been strewn, but would a belligerent divulge to neutrals the location of fixed mined areas and thus run the risk of this information finding its way to the enemy?

While the above position seems extreme to some, it is nevertheless necessary to observe the fact that during the Russo-Japanese war, the drifting mines caused great damage even in a maritime area where there was comparatively little shipping. If a like situation should arise in the vicinity of a great sea route, the results are serious to contemplate. Whatever the view in regard to the matter of anchored contact mines if they are not to be entirely prohibited, the regulations as to their use should be clear and comprehensive.

There are conditions for which it seems difficult to provide adequate safeguards. Such would be the case when a vessel approaches a mined area in a fog. The vessel on guard to warn innocent vessels may not discover the approaching vessel or may be in doubt as to its identity. The same condition may arise in a storm or in darkness.

The notification by public announcement of the general area of mining operations may be of little service to the neutral or innocent vessel unless it is of a nature to give such information to the opposing belligerent as to make the mining operations of little use to the belligerent plac-

ing the mines. For if sufficiently definite information for safe navigation is given in the notification this information will equally serve the other belligerent. It would seem therefore that the notification would necessarily be such as to define in general terms the mined area, the conditions of entrance, etc., and until this information can be presumed to be known to innocent shipping there should be a vessel or vessels stationed in the neighborhood to warn approaching shipping.

From the discussion it is evident that the regulations in regard to precautions for the safety of peaceful shipping should be more specific in order that the innocent shipping may be properly protected and in order that the belligerent may know when he has conformed to requirements.

Conclusion.—The following regulation may be proposed for safeguarding peaceful shipping against the dangers of mined areas:

When anchored automatic contact mines are employed every possible precaution must be taken for the security of peaceful shipping including—

1. An advance notice to foreign governments and to mariners specifying the general limits of the mined area.
2. Provision for warning peaceful vessels approaching the mined area.
3. Specification of the time during which the mines will be dangerous.

The same precautions should be taken in the use of mines by neutrals.

Use of mines by neutrals.—The demand for the use of mines by neutrals was particularly emphasized by the Brazilian and by the Netherlands delegates at The Hague in 1907. The Brazilian delegate advocated the use of mines by neutrals for the guaranteeing of respect for their neutrality. The Netherlands delegate directed attention not merely to the preservation of neutrality, but also to the fulfillment of neutral obligations. The report contains a résumé of the points of view:

L'idée fondamentale contenue dans ces deux propositions était la même; la proposition brésilienne limitait seulement davantage, quant à leur espèce, les mines que les neutres pourraient employer.

S. Exc. le Vice-Amiral Röell attira l'attention de la sous-commission sur la nécessité de réglementer cette matière et cela à un double point de vue; d'un côté, pour reconnaître expressément la faculté des neutres de poser des mines, en vue de préserver leur neutralité, tout en leur permettant en même temps de se conformer aux devoirs, qui leur incombent vis-à-vis des deux belligérants, de l'autre côté pour leur imposer, quant à l'usage des mines, les mêmes obligations qui seraient imposées aux belligérants, dans l'intérêt de la navigation pacifique. Le Capitaine de Frégate Burlamaqui expliqua à son tour la nécessité de compléter dans ce sens le projet britannique, qui ne paraissait avoir en vue que les belligérants; il insista, en même temps, sur la nécessité d'une notification par les neutres, générale ou spéciale, selon les circonstances du moment, des régions dans lesquelles ils auraient placé des mines. Il invoqua, à l'appui de ces considérations, les décisions prises par l'Institut de Droit International dans la session de Gand et les opinions de plusieurs auteurs, connus en matière du droit des gens; il conclut en faveur de la faculté, pour les États neutres, de poser des mines en vue de leur droit primordial de conservation. (Deuxième Conférence Internationale de la Paix, Tome III, p. 419.)

Discussion on other important points is summarized in the report:

Mais on se demanda, si l'assimilation des neutres aux belligérants devait aussi s'étendre quant aux lieux où des mines sous-marines pourraient être mouillées et si les précautions à prendre par les neutres ne devaient pas être plus précises et plus rigoureuses que celles prévues pour les belligérants. Le Contre-Amiral Arago exposa que, quant à ce qui concerne les neutres, il faudrait se contenter de leur permettre la pose de mines seulement dans la zone de trois milles; il serait encore nécessaire de les obliger à donner avis préalable à la navigation des lieux, où ils voudraient poser des mines, et de notifier cet avis d'urgence aux autres Gouvernements; les raisons militaires, dit-il, qui donnent plus de latitude aux belligérants, ne peuvent pas être invoquées pour les neutres; la zone de dix milles a été accordée aux belligérants surtout en vue du danger de voir leurs ports bombardés par les forces navales ennemies; ce danger n'existe pas pour les neutres. La latitude accordée aux belligérants, quant à la notification, répond à des exigences de guerre impérieuses; le neutre ne se trouve pas dans pareille situation; il peut toujours notifier et il doit le faire d'avance, parce que ses eaux sont censées être ouvertes au libre passage des navires pacifiques.

Aux objections, tirées du droit des neutres de se défendre dans la même mesure que les belligérants et de la possibilité qui devrait être accordée aux neutres en vue de se préparer éventuellement à la guerre, il fut répondu que les neutres n'ont pas à se défendre, ils n'ont qu'à défendre leur neutralité, ce qui n'implique pas une égalité de droits avec les belligérants. Quant aux préparatifs pour une guerre éventuelle il serait évident que ces préparatifs ne sont pas visés par les dispositions restreignant les neutres à poser des mines dans une zone de trois milles. (Ibid, p. 420.)

The result of the vote showed practically no difference of opinion upon the main points, and the conference adopted a general regulation embodied in article 4:

Any neutral power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents. The neutral power must inform mariners by a notice issued in advance where automatic contact mines will be laid. This notice must be communicated at once to the Governments through the diplomatic channel.

Conclusion.—The laying of mines by a neutral State should not be prohibited.

Provision for exemption from rules as to mines.—While the rules of the Hague convention relative to the laying of automatic contact submarine mines were not very strict, there were some States whose delegates were not prepared to accept even these regulations. To meet the demands of these States, article 6 was adopted:

The contracting powers which do not at present own perfected mines of the type contemplated in the present convention, and which consequently could not at present carry out the rules laid down in articles 1 and 3, undertake to convert the matériel of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

The statement of the position in support of this article was more fully made by the Austrian delegation in presenting the amendment upon which the article is based:

La marine austro-hongroise ne dispose pas, à l'heure qu'il est, de mines automatiques de contact amarrées remplissant la condition prévue par l'article 1^{er}, 2^e alinéa, du texte arrêté sur la base des délibérations du comité d'examen, à savoir de devenir inoffensives dès qu'elles auront rompu leurs amarres. Pour se conformer à la clause dont il s'agit, la marine austro-hongroise se trouve donc dans la nécessité de procéder à une transformation de son matériel de mines. Pour cette transformation la Délégation d'Autriche-Hongrie ne saurait, cependant, accepter ni le délai de trois ans proposé, ni tout autre délai fixé à l'avance, une mesure de ce genre contenant, indépendamment de la volonté personnelle, un élément d'incertitude qui, tant qu'il subsiste, s'oppose évidemment à prendre à ce sujet un engagement formel que l'on ne serait, peut-être, pas à même de remplir.

Dans tout perfectionnement en matière technique, l'époque où l'on parviendra à trouver une solution satisfaisante à un problème que l'on se propose de résoudre ne saurait guère être indiquée à l'avance. Même si le principe scientifique sur lequel repose l'invention à faire était,

au point de vue théorique, des plus simples, des obstacles absolument imprévus et qu'il est bien souvent difficile de vaincre peuvent, à tout bout de champ, venir entraver la réalisation pratique de l'idée.

Aussi ne faut-il pas perdre de vue que dans le cas qui nous occupe, il ne serait point suffisant de construire un appareil de fonctionnement exact, au moyen duquel une mine ayant rompu son amarre fût automatiquement rendue inoffensive; il s'agit également, et ceci ne me semble pas de moindre importance, de donner à l'appareil en question une construction telle que les autres parties mécaniques de la mine n'en soient point altérées au préjudice de sa valeur militaire, que la mine reste simple et non dangereuse à manier et qu'elle ne cesse de fonctionner d'une manière sûre et efficace. Ce n'est qu'après avoir éprouvé, à ces différents points de vue, l'appareil à construire, ce qui selon toute probabilité nécessitera une série de longues expériences, que l'on pourra se mettre à la transformation du matériel de mines et indiquer alors approximativement l'époque à laquelle cette opération pourra être terminée.

Or, si, telles que les choses se présentent, nous voulions fixer, dès maintenant, par voie conventionnelle, un terme pour la mise en usage des mines perfectionnées, et si à l'expiration du délai la transformation en question n'était pas encore exécutée par une des Puissances contractantes, cette dernière se trouverait en présence d'une situation des plus embarrassantes. Car elle devrait, si une guerre venait à éclater dans l'intervalle, ou renoncer à l'emploi des mines qui n'ont pas encore été soumises à la transformation, ou bien manquer à l'engagement conventionnel. L'une et l'autre de ces éventualités doivent nécessairement être écartées. Il nous semble donc que si l'on prend au sérieux l'engagement qu'il s'agit de contracter, on ne saurait accepter, dans l'espèce, un délai fixé à l'avance.

Dans cet ordre d'idées la Délégation d'Autriche-Hongrie se permet de proposer les amendements suivants:

Article premier.—Ajouter à l'alinéa 2 la disposition suivante:

Les Puissances maritimes qui ne disposent pas encore de ces mines perfectionnées et qui, par conséquent, ne sauraient actuellement s'associer à cette interdiction, s'engagent à transformer, aussitôt que possible, leur matériel de mines afin que ces dernières répondent à la condition susmentionnée.

ARTICLE 9.—Supprimer cet article.

Le fait que la transformation des mines s'impose non seulement par des considérations humanitaires, mais aussi par l'intérêt même des Puissances, offre une garantie suffisante que l'engagement formulé dans la proposition ci-dessus soit fidèlement exécuté. De cette façon le but humanitaire auquel on aspire sera réalisé dès qu'il y aura moyen de le faire. Agir autrement et accepter dès maintenant un délai déterminé pour la transformation des mines, ce serait, de l'avis de la Délégation d'Autriche-Hongrie, prendre un engagement avec une restriction mentale, ce qui évidemment ne serait guère en harmonie avec l'obligation absolue découlant d'une stipulation conventionnelle.

Quant aux mines non-amarrées dont il est question au premier alinéa de l'article 1^{er} de la Délégation d'Autriche-Hongrie, s'associant entièrement aux observations présentées à ce sujet par le Délégué naval de Grande-Bretagne, estime que l'on pourrait bien se passer d'une disposition analogue à celle dont il vient d'être parlé ou de toute autre disposition contenant la fixation d'un terme.

En ce qui concerne la disposition de 2^e alinéa de l'article 5, la Délégation d'Autriche-Hongrie s'abstient de toute proposition, la clause en question lui paraissant, en principe, inacceptable. (Ibid., p. 673.)

There were propositions to fix a limit of time for transformation of mines not meeting the requirements of the proposed regulations as one year for unanchored mines and three years for anchored mines or one year for all mines.

It is plain that as most powers did not disclose the type of mines which they possessed almost any power might contend that it had not had time for conversion of its mines. The expression, "as soon as possible," which should determine the limit of the period for conversion to the prescribed type might allow, as some parties assumed it would, an indefinite period. In fact this clause in most respects renders the convention of little use except as a statement of what may be desired and as a project which may become the basis of further discussion. However, there would be a just ground for maintaining that seven years would be sufficient time for any State intending to act "as soon as possible" to carry out the conversion of mines into the type required in the convention.

Conclusion.—Article 6 of Convention VIII should not be continued in force.

Use of torpedoes.—The Russian delegation proposed an amendment to the original project submitted by Great Britain to the effect that—

Les torpilles seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives, lorsqu'elles auront manqué leur but.

The words "en tant que cela est possible" were not acceptable, but the idea embodied in the remaining part of the clause was introduced with little discussion into

the first article of the convention. The report of the committee says of this subject:

Quant aux mines automatiques de contact amarrées et aux torpilles automatiques, l'entente fut, en ce qui concerne leur construction, plus facile à établir. La proposition russe sur les torpilles automatiques (annexe 18) fut adoptée à l'unanimité avec suppression des mots "autant que possible" qui figuraient dans l'interdiction proposée par la Délégation Impériale, concernant l'emploi de pareilles torpilles, qui ne deviennent pas inoffensives lorsqu'elles auront manqué leur but." (Deuxième Conférence Internationale de la Paix, Tome III, p. 404.)

Recently there has been objection to the restriction imposed upon the use of torpedoes. Some regard these as propelled mines and under a measure of control, because their speed, direction, and time of sinking may be regulated with much greater degree of certainty than in the case of unanchored mines. Unanchored mines are usually of simple and inexpensive construction as compared with the elaborate and expensive torpedo. Unanchored mines are much more at the mercy of the current and may drift in any direction. The torpedo may be directed for a considerable time and its mechanical construction is such that it can be made to sink at a fixed time with a great degree of certainty that there will be no mistake. The proposition has accordingly been made to allow to the torpedo a period equivalent to that allowed to the unanchored mine on the following grounds: that from its nature the torpedo is more under control than the unanchored mine, that the present regulation is not a practicable one as there is no way by which the belligerent at which the torpedo is aimed can tell whether the torpedo has failed to hit its mark in most instances, and that it is inexpedient to discriminate in favor of the cheap and dangerous unanchored mine against the carefully constructed and controlled torpedo.

Conclusion.—The use of torpedoes should not be further, but should be less, regulated if any change is made in the convention.

General.—The Hague Convention VIII, 1907, relative to the laying of automatic contact submarine mines was admitted to be tentative. There was much difference of opinion in the conference which adopted the convention.

The interests of the powers were not identical. The actual value of mines in maritime warfare was a matter of difference of opinion. The coupling of the idea of submarine mine with the idea of the torpedo was not altogether logical without further distinction, as torpedoes would in general be more completely under control than would some forms of mines. Uncontrolled and hidden perils like unanchored submarine mines or torpedoes of similar character should be prohibited outside the area of immediate belligerent operations. At present it seems possible to draw certain conclusions of a general character.

Conclusion.—(a) The use of submarine mines should not be absolutely prohibited.

(b) The use of unanchored automatic contact mines should be prohibited or more definitely restricted.¹

(c) The area within which mines may be placed should be determined by regulation.

(d) When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping, including—

1. An advance notice to foreign governments and to mariners specifying the general limits of the mined area.

2. Provision for warning peaceful vessels approaching the mined area.

3. Specification of the time during which the mines will be dangerous.

(e) The laying of mines by a neutral State should not be prohibited.

(f) Article 6 of Convention VIII should not be continued in force.

(g) The use of torpedoes should not be further but should be less regulated if any change is made in the convention.

¹ Using the phraseology of The Hague Convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions: It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.