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TOPIC VIII.

It has been proposed to regulate the use of mines and similar agencies in maritime warfare. What, if any, should be the regulations?

CONCLUSION.

1. 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.

2. Anchored contact mines that do not become innocuous on getting adrift are prohibited.

3. If anchored contact mines be used within belligerent jurisdiction or within the area of immediate belligerent activities, due precaution shall be taken for the safety of neutrals.

DISCUSSION AND NOTES.

Certain questions.—The use of mines in maritime warfare gives rise to several questions.

1. There is the general question as to whether the use of mines is in any case allowable.

2. If allowable, there arise special questions as to (a) character of permitted mines, (b) area of permitted use, (c) purpose of permitted use.

1. *Use of mines in general.*—The question as to whether the use of mines is in any case allowable is one which has been discussed in a manner similar to that of the discussion of the use of torpedoes at an earlier date. The discussion resulted in the recognition of the use of torpedoes as a legitimate means of warfare so soon as this means of warfare was under reasonable control of the military

forces using it. Torpedoes are now considered legitimate means of warfare. None of the conventions and conferences have endeavored to prohibit the use of torpedoes or mines. It has been recognized that both mines and torpedoes are legitimate means of warfare in recent wars, and both agencies have been used. This, however, has been recognized only so far as the belligerents are concerned. It may be affirmed that the use of mines is a legitimate means of hostilities as between belligerents.

This position does not, however, imply that mines may be used at will without regard to those not concerned in the war. As the torpedo and certain other means of hostilities are necessarily directed and dispatched by the belligerent and are under belligerent control to this extent, the probable range of their destructive activity can be reasonably known.

Certain mines, however, are not thus under control and their probable action may not be predicted or directed. The claim seems to be reasonable that agencies so destructive as mines shall be restricted in such manner as to affect solely the belligerents concerned in the hostilities.

2. *Limitations on use of mines.*—The questions then arise as to the special restrictions upon the use of mines.

(1) Should the character of the mines be limited? In general mines may be exploded at a fixed time by a mechanical arrangement, may be exploded at any time when controlled by shore or other connections, or may be exploded by contact with a vessel passing over the mine.

Of these mines, those which are regulated to explode at a time fixed by a belligerent and those whose explosion is at the will of the belligerent operating the mine from the shore or otherwise, may be said to be open to little or no objection.

Contact mines—those which explode on coming in contact with a vessel—may, however, be anchored or free. Contact mines which are anchored are dangerous to navigation, and make it necessary that their field at all times be so guarded as not to be a menace to parties not concerned in the hostilities. This may be done in various ways, as by prohibiting the entrance of neutrals within certain

areas, piloting neutrals through the mined areas, etc. Thus anchored, contact mines may be said to be negatively under control of the belligerent locating them and little objection can be raised to their use, provided they are in fact thus controlled, and there seems to be no reason why anchored contact mines may not at all times be under this measure of negative control. Mechanical construction may be such that if an anchored mine gets adrift through action of tides, winds, or otherwise it may from that moment be rendered harmless as a mine. It may be predicted that a certain per cent of mines will, under ordinary circumstances, get adrift. This being the case, contact anchored mines should so be constructed as to render them harmless on becoming adrift. With this limitation on the use of anchored contact mines there seems to be little objection to these mines when the field is properly guarded, so far as its use by innocent vessels is concerned.

There remains the class of mines which come in the category of unanchored contact mines, i. e., mines which are carried by the currents and explode on contact with a vessel or other object. Such mines are not within the control of the party launching them, are liable to inflict damage upon any vessel coming in contact with them, may injure noncombatant, combatant, or neutral alike; may, and probably will, do injury out of proportion to any possible military advantage that can be secured by their use. Their use is not a military necessity. It may be reasonable, therefore, to conclude that unanchored contact mines should be restricted in their use.

(2) The area in which unanchored contact mines can be used has recently been discussed in the public press, particularly because during the Russo-Japanese war there were reports, which have not been substantiated, that unanchored mines were intentionally or accidentally adrift on the high seas in the neighborhood of Port Arthur.

The high seas being *res nullius*, neither belligerent has a right to render passage over the high seas unnecessarily hazardous. It is generally admitted that neutrals and non-combatants enter the field of actual hostile operations at their own risk. This field is usually evident from the pres-

ence of belligerent vessels or otherwise. The presence of unanchored contact mines is, however, not an evident but a hidden peril, and the danger consists, to a considerable extent, in the hidden nature. Mines of this character are not within control of the belligerent. The lack of control, the hidden nature of the peril to third parties, the inadequate military necessity, and the great danger from the use of these mines would be ample reasons for the prohibition of the use of unanchored and uncontrolled mines in the high seas.

The use of unanchored contact mines within the three-mile limit has received some consideration. The objections raised against the unanchored contact mine on the high seas prevail in large measure against similar mines within the maritime jurisdiction of the belligerent. It is considered that the advantage to be gained from the use of such uncertain means of warfare is in no sense commensurate with the possible and probable danger to third parties. The mines are also ordinarily beyond control when launched and subject to action of tide and winds. They may pass beyond the maritime jurisdiction and easily become a menace to maritime commerce in general. It would therefore seem advisable that the restriction upon the use of unanchored contact mines be made general, and that a proposition prohibiting the use of uncontrolled, unanchored contact mines be adopted.

Certain contact mines, though unanchored, may to some extent be controlled, as are those regulated by clockwork to sink or to become innocuous after a fixed number of minutes, after the manner of certain torpedoes. There seems little valid objection to the use of such mines within the field of active belligerent operations. In such a case the mines must be so controlled as to make the period of effectiveness so short that the mines will not during this period drift into contact with neutral vessels or come within the path of neutral vessels. Such mines would be directed toward a specific object—e. g., checking the pursuit of an enemy—and would cease to be a hidden peril before they would come in contact with a neutral vessel or pass beyond the immediate field of hostile operations.

Their use would be analogous to the use of certain torpedoes.

Of the use of mines and torpedoes Commander Von Uslar, of the German navy, has recently said:

A further restriction of the instruments of war now admissible by international law is, for the immediate future, not necessary. It is another question whether the instruments should be employed everywhere. The safety of neutral shipping demands that on the high seas instruments of war which are a hidden danger to shipping shall be avoided. As long as this demand does not run counter to the belligerent's object—viz, to overcome his opponent quickly—it must be acceded to.

Mines, stationary and drifting, as well as torpedoes without sinking appliances, are therefore to be regarded as admissible only in the territorial waters of the belligerents and in the actual operation area of the fleets. There is, however, no justification for the demand that mines shall be used to close harbors only in the case of an effective blockade. The belligerents must be permitted to employ this measure against all harbors that the adversary will possibly use as a base for his operations, on condition that they notify the neutral governments in good time. (181 North American Review, 1905, p. 184.)

When the use of unanchored contact mines is prohibited many of the main objections to the use of mines are removed. It has been suggested that the use of fire rafts or rafts or vessels loaded with explosives should be also prohibited. It has usually been held that these are not hidden dangers against which it is not possible for the neutral to guard, and that within the maritime jurisdiction of the belligerent and within the area of hostilities the neutral must take such risks as those to which the belligerent's own peaceful commerce is exposed. It might be advisable, however, to make the prohibition general, so far as rafts or vessels loaded with explosives are concerned.

A prohibition to the following effect would be desirable in each case:

The use of uncontrolled, unanchored contact mines or other similar uncontrolled agencies is prohibited.

(3) If uncontrolled, unanchored contact mines are prohibited, the next question arises as to the purpose for which other mines may be used.

Some have objected to the use of controlled mines at points outside of belligerent jurisdiction for the purpose

of preventing entrance to a belligerent territory, whether as a measure of defense or offense. Others have maintained that even a blockade of an enemy port can thus be established.

In regard to the establishment of a practical blockade by the location of fixed contact mines or other mines, it may be said that in general neutrals have a right to carry on ordinary commerce with belligerents in time of war. The risk that the blockade runner incurs is that of confiscation of ship and cargo. The officers and men are not regarded as enemies or treated as such for the simple offense of attempting to violate blockade. A blockade by mines of which a neutral has not proper warning would introduce the unallowable risk of entire destruction of ship and crew by the explosion of a hidden mine. Through the use of anchored contact mines it is conceivable that the whole coast of a country could be practically blockaded, while the blockading belligerent forces might retire and incur no risk of hostile attack. As the neutral has the right of innocent passage over the seas, the placing of fixed mines in an area not under effective control of the belligerent or not in the field of hostile operations of which a neutral would be duly advised would not be allowable. It may be even further asserted that no uncontrolled contact mines should be placed on the high seas, for it is uncertain how long such mines may be within the field of operations of the belligerent who, alone, may know their location. The regulation should therefore properly prohibit the use of uncontrolled contact mines on the high seas for the purpose of blockade or for other offensive or defensive purposes.

It is generally admitted that the belligerent jurisdiction is the proper area for hostilities. Within this area therefore there may be a greater freedom of use of mines. The sole restriction here should be that the mines should be under control positively or negatively; i. e., the belligerent should be able to control the mines in such a way that they should not imperil the neutral or the belligerent might keep the neutral from or guide him through the mined area. In other words, the use of mines should be

confined strictly to military operations and areas and the perils should not extend to innocent neutrals. Mines that are absolutely within the control of the belligerent and may be exploded or remain innocent at his will or are of such construction as not to imperil neutrals are proper means of war in the same manner as cannons or torpedoes.

Conclusion.—The general conclusion in regard to mines might be summarized as follows:

1. 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.

2. Anchored contact mines that do not become innocuous on getting adrift are prohibited.

3. If anchored contact mines be used within belligerent jurisdiction or within the area of belligerent activities, due precaution shall be taken for the safety of neutrals.