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The Legitimacy of Using Naval Mines Technology during Peacetime in the Light of Developments in International Law of the Seas

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Abstract:
Naval mining technology is one of the tools that have a dual function. And an effective tool in times of peace and crisis as well as during the war that the eighth convention of The Hague in 1907 has regulated the use of contact mines during the armed naval conflict. Nevertheless, pouring sea mines during peace time is a legal choice for governments in the waters and their territorial sea, and even in their international territories. But, dumping at sea in times of peace and in crisis situations is a danger, and in fact, in each of the maritime territories, it is in contrast to freedom and the right to transit, as well as peaceful freedom of movement, which is extremism and the issue in this regard could be a threat to international peace and security. Nevertheless, new mine technologies can somewhat prevent the risks and the obligations of governments, depending on the type of mine, also vary. Therefore, this paper discusses the legitimacy of the use of sea mine technology in peacetime in the light of developments in the international law of the seas and the opinions of the International Court of Justice. And proves the relationship of this kind of technology to ensure the security of the coastal state and pre-crisis will be timely and valuable; this type of strategy and technology within the framework of legal constraints, international law is justifiable. Research method of this paper is analytical-compilation method and data collection method is library-documentary method.
Key Words: naval mines, International Law of the Seas, new technologies, peace

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1. Introduction

The fundamental role of naval powers and naval forces from ancient times has been around the two axes of reaching the marine realms and preventing enemy access to marine territories (Jonson, 2008: 9). This is why the sea is always the place of the struggle between the players of this part of the earth (Beigezadeh, 1392: 36). In today's world, seas, especially international waters, play a very important role in supplying Global security and power, and the presence and domination of international waters is one of the most important concerns of powerful countries. As each country in the world chooses a sphere for its influence, it assesses its national security. Seafaring, by contrast, is one of the most important uses of the sea; and the ship is also the most important means of transporting goods in long distances, and 95% of the total world trade is in terms of weight by sea (Churchill, Leo, 2011: 312). In addition, during the history, there were two very important functions for humanity: first, as a communication medium, and the second as a large treasury of living and non-living resources. Both of these functions have led to the emergence and development of a number of legal rules (Malcolm, 2016: 23). Therefore, the rights of the seas influenced the territorial sphere of the exercise of the sovereignty and jurisdiction of the states in the range of the seas and oceans, and thereby also requiring the revision of traditional rights (Zamani, 1996: 42).

Internationally, in addition to observing new players and legal developments, new weapons' technologies have also increased significantly (Pocar, 2011: 11). Innovation and continuous advancement in the field of technology have blown up a new spirit in this field, and the development and use of this kind of equipment in various fields, and their use as weapons such as military robots, unmanned aerial vehicles (UAV), cyber-technologies and naval mines ... has led to serious concerns and many controversial issues in the field of ethics and law (Moreno, 2011: 16).

Naval mining technology is one of the tools that have a dual function. And an effective tool in times of peace and crisis as well as during the war that the eighth convention of The Hague in 1907 has regulated the use of contact mines during the armed naval conflict. Sea mines have been known as a relatively inexpensive, valuable tactical, operational and strategic weapon. Indeed, pouring sea mines during peace time is a legal choice for

governments in the waters and their territorial sea, and even in their international territories, based on this legal right, the government can take measures in compliance with mining rules, such as giving explicit and effective warning to seamen (Truver, 2012: 36). Nevertheless, concordant ever-increasing growth of off-shore technology, maritime areas under the sovereignty of the coastal state have been developed largely across the sea, and not only has the sea-coastal increased by 12 nautical miles, but also the number of international congestions found to be coherent to the territorial sea, and the new concept of archipelagic waters, the exclusive economic zone and the continental shelf, also by the law of the seas are identified. "Therefore, when countries engage in military actions in the maritime areas between the territorial sea and the free seas, they are required to comply with the relevant rules of the law of the coastal government and other international commitments in these areas (Ashley, 2002: 371). In the meantime, customary international law, as stated in the 1982 Convention on the Law of the Seas, accords to foreign ships, in accordance with maritime jurisdictions, the rights and competencies, such as military activities, the right to cross the border, passage transit, free shipping, and etc., which has caused a variety of legal differences and interpretations. Clearly, dumping at sea in times of peace and in crisis situations is a danger, and in fact, in each of the maritime territories, it is in contrast to freedom and the right to transit, as well as peaceful freedom of movement, which is extremism and the issue in this regard could be a threat to international peace and security. A very important point is that modern technology can somewhat prevent conflicts and reciprocities. It minimizes the risks of this tool and, depending on the type of each mine, the obligations of governments will be different. In this regard, applying them to sea operations and missions requires considering the legal status of their application. "However, the use of prior and past legal rules for new technologies create questions about whether these rules are sufficient to clarify the features of certain and, possibly unpredictable, technologies" (Kellenberger, 2011: 24). Of course, the lack of compliance with existing legal norms is not necessarily limited to military systems (Miasnikov, 2011: 105). Therefore, this paper discusses the legitimacy of the use of sea mine technology in peacetime in the light of developments in the international law of the seas and the opinions of the International Court of

Justice. The research method of this paper is analytical-compilation method and data collection method is library-documentary method.

2. Legitimacy of the use of maritime technology in the light of international laws

Basically, naval mine warfare is used as one of the legitimate methods in sea battles to prevent entering a coastal zone, port, and to deal with submarines and ships. Mines are legal weapons, but their irreparable destructions and destructive effects have led global communities to adopt special rules for their implementation and development. The excessive and uncontrolled use of sea mines by the conflict parties in the 1904-1905 war in Japan and Russia caused severe and irreparable damage to commercial and neutral ships, during and after the war. Long time after the war, the contractual provisions were laid down, resulting in "the most important international treaty stating the status of sea mines, the eighth place of The Hague 1907" (Ziaei Bigdeli, 1994: 201). According to the convention, if "mine fields are developed rationally, regardless of whether they pursue operational or strategic objectives, they will be in accordance with the law of the seas only if they provide maritime safety" (Von Heinegg, 2009: 374). The eighth Hague Convention has regulated the use of automatic marine contact mines, which seriously threaten both surface warships and commercial ships. This action was a response to the current technology in those situations; it is still a significant asymmetric threat to each navy (Stephens, Fitzpatrick, 1999: 559). Of course, the rules that were adopted in The Hague in 1907 were not rules that could go along with technology. Unaware of that during the time, mines' operational technology has progressed and their working system may require some newer control rules (U.S. Navy NWP 114M, 2007, Para,9.2.).

However, it should always remind that technological change is not an automatic and independent process, but a tool that has been made available to mankind. It is therefore clear that the development and application of new technologies in the light of their direct dependence on human decisions are explained and defined (Moreno, 2011: 16). As a result, when the issue of new weapon technology is analyzed, it is necessary to consider considerations such as definitions and obligations, which need to be clarified (Shalaby, 2011: 78-79). Sea mines are defined as an explosive device spilled in water, in the bed or under water, intended to hit a ship or to drown a ship or to prevent shipping and the arrival of a ship to a

maritime area (International Security Department, 2014: 3).

Over the past few years, sea mines were floating and were floating deep in the depths of the water and were freely displaced by the flow of water and waves. But during the time, mines were finally restrained and could be steady wherever it was intended, and be prepared to explode under water at a certain depth, provided that they have direct contact with the body of the target ships. Because they needed direct contact with a specific target, they covered a small radius, resulting in a mines field requiring a large number of mines to achieve an effective result. Which was not cost-effective. But today, with the advancement of technology, modern naval mines have become multiuse and multi-purpose weapons. Essentially, mines are now divided into mines which are armed by control and mines independently armed. "Controlled mines can be activated or deactivated after being cast through the code" (Cashman, 1994: 12-13). But independent mines depend on fire sensors. Armed mines are those that are either deployed at the bottom of the ocean or float at the surface of the water, waiting for collision with a ship and exploding (Schmitt, 1997: 20).

In fact, the technical developments following The Hague Convention of 1907 led to the invention of radio mines, which are considered as intelligent mines. These mines are exploded without a physical crash and are known for deep mines. In the structure of these devices, hybrid sensors are used to increase efficiency in choosing their targets so that they can be activated for such purposes as selecting a ship with specific characteristics after passing a certain number of specific ships, after a certain time passing ships or transmitting specific voice codes, detonating them delicately and, after a certain period of time, reaching out or deactivating by certain voice transmissions (Bennet, 1998: 2).

2-1. Rules governing mine dumping during armed conflict

The eighth convention of the 1907 Hague is based on the distinction between two submarine mines that is exploded due to collision. Article 1, paragraph 1, of this Convention stipulates that the installing and use of automatic floating point mines is prohibited unless otherwise are embedded within a maximum of one hour after the control has been discontinued by the installer. Article 2, paragraph 1, of the Eighth Convention also states that the principle of the legality of use of automatic contact mines is fixed unless the mine has not been neutralized immediately after the cutting of the anchor blocking rope. Article 2 of The Hague Convention prohibits

governments from "pouring out automatic contact mines on the coast and ports of the enemy solely for the purpose of interrupting commercial shipping." On the other hand, Article 3 of the eighth Hague Convention obliges both parties to abide by all precautionary considerations in order to maintain maritime safety for non-hostile states (The 1907 Hague Convention VIII, art.1-2-3.). According to Article 5, war agreements always require the recaptured country to collect their mines (Russo, 1990: 272). But operations must be carried out by a government that it has been commissioning, and can also be carried out by non-combatants (Gatry, 1995: 447)." It goes without saying that mines are used only for legitimate military purposes, including the closure of seaways to the enemy, and mining operations in the internal waters, the territorial sea, or the archipelagic waters of the hostile country at the onset should allow the departure of neutral ships" (Zamani, 1996: 49). On the other hand, non-hostile or neutral countries in the war can seize their coasts, provided that they are informed of other countries from the areas (1907 Hague Convention VIII, art.4.). "Consequently, the placement of fixed mines in a given region and within the framework of supportive objectives does not conflict with the rules of the naval warfare and is consistent with legitimate defense" (Zamani, 1996: 49).

However, most of the provisions of The Hague Conventions are still in place, as compared to other international conventions. However, in 1987, the San Remo International Institute of Human Rights and in collaboration with the World Red Cross in 1994 created San Remo instructions based on international law that apply to armed conflicts at sea (Kalshoven, 2011: 27), and in it is a contemporary review of international law applicable to armed hostilities in the sea, generally accepting international customary law in armed naval conflicts. Its provisions are also found in the national military pamphlets of various governments, such as the United States Military Booklet for offshore operations (Klein, 2011: 286). The provisions of the San Remo Guidelines for the Naval Forces have been heavily influenced by The Hague Convention and the composition of the provisions of this Convention and are based on specific national procedural views and related to judiciary and general principles, such as those contained in the additional protocol, the first is insert (Stephens, Fitzpatrick, 1999: 580).

In spite of the development of mine offshore technology, the practice of governments in global wars and after them indicates the use of different types of offshore mines at different times. For example, in the First World

War, hostile parties and some unobstructed states began to land in the sea, estimated at least 250,000 mines, which led to the destruction of hundreds of ships. It has been estimated that between World War II there were between 600,000 and 1,000,000 mines, and about 3,000-3,500 ships were drowned by collisions with mines (Mundis, 2008: 228).

2-2 Legitimacy of the use of naval mines technology in peacetime

The Third Conference on the Law of the Seas has made it clearer on a number of issues related to the military uses of the sea than the 1958 conference, and under this convention the right to free passage of war ships from the territorial sea has been approved. But it should be noted that the conventions on the rights of the seas and the regulations governing it did not apply to the merits of military use of the seas and its various aspects, and raised the issue marginally. Therefore, it is natural that the laws of the seas conventions do not have a regulated and non-regulated regulation of the use of military offshore and offshore platforms to contemplate restrictions on this use. It is remarkable that the 1982 convention on the law of the seas ignores the issue of military use of seas, irrespective of some ambiguous provisions on the preservation of the seas for peaceful purposes (Arashpour, 2001: 5)((UNCLOS), 1982: Art 88-301). Perhaps the main reason for not tackling military issues in the seas convention is the result of a secret agreement on the military considerations of the great naval powers, in which "countries with a large naval fleet will do their utmost in the convention, the issue of military use of the seas will not be raised " (Agaei, 1987: 146). It is clear that if the countries with maritime power had strategic interests in the world beyond the so-called vital interests that they were always pretentious for their presence, today the fate of the Convention on the law of the seas could be made differently and the transit of passports and privileges, it was not a result of the New York agreement in the convention.

Nevertheless, the use of peaceful seas in articles 88 and 301 is somewhat misleading. However, military aspects of seas are of great sensitivity, but the 1982 Convention does not provide any criterion to determine which types of military use are permitted from the sea and may be subject to the above. Given that military affairs are not generally forbidden and no proposals have been approved, it can be concluded that military action has been accepted (Agaei, 1987: 158). Principally, the implementation of

military operations in the seas, regardless of the activity of ships and warplanes, the placement or disposition of weapons, the deployment of rocket bases or satellites that are placed to monitor and obtain information in the ocean. As a general rule, there are no specific provisions regarding the conduct of military activities in the law of the seas conventions, and the rules governing such activities are often based on customary international law or a set of international treaties that have limited realm and is always subject to interpretation (Arashpour, 2003 and 2004: 7).

The 1982 Convention on the Rights of the Sea does not explicitly refer to the issue or the right to recognize the right of nations to carry out anti-personnel operations. Nevertheless, the Convention on the Law of the Seas is the most appropriate treaty to determine the conditions under which a state may legitimately pursue peacetime. However, the general rule is that the government, in any way, dismantle mine, "must" apply before or after the armed conflict begins, apply the principles of mine clearance during an armed conflict in accordance with the eighth Hague Convention, including the matter of notification effective monitoring, risk control and warning, and in particular, must take into account the feasible precautionary measures regarding the safety of maritime navigation"(The Manual of Germany, 1992: section: 1041).

Today, the use of sea mines in times of peace and critical situations before the conflict has been accepted as a rule and also internationally accepted (Seyfi, et.al, 2018: 54). Basically, supportive landing is permitted even under critical conditions, provided that the right to pass unimportant foreign ships in the territorial waters is respected. If it is avoided to protect the safety and if the ships are properly warned, the coastal government can temporarily prohibit the passage of unencumbered parts of its territorial waters. In the case of the international navigation gaps, there is no right to provide supportive measures in critical situations (Van Heinegg, 2008: 593). In fact, each country can, at the peace time, if necessary and in its sole discretion, sanction its own security interests, domestic waters, territorial waters and archipelago, in which case it must be recorded the exact position of their location, in a universal way, informs every one of their existence (properly and publicly), and then they must be cleaned and cleaned up promptly or disposed of (NWP 114M, 2007, Para 9.2 .2.). However, it seems that the aforementioned commitments are different

depending on the type of mine technology. As long as controlled mines are used, it seems that the rules are not applicable until there is proper control over the mines.

The division of sea mines into controlled and independent, when applied to each of them, also changes the obligations of governments, in other words, they can usually be commensurate with maritime areas is in operation and their application is affected by marine areas. It is clear that the use of contact and floating mines in peacetime and in each of the maritime areas is a potential threat to unproductive and peaceful shipping. While controlled mines can be put in place at peacetime, and the biggest advantage is controlling major shipping routes in critical situations (Pateraki, 2015: 4). These mines are laid out with specific tools and in complete safety and will explode once the parameters have been set. Controlled mines do not have any destructive effect; unless they are activated as an "armed mines" in accordance with the orders they have received before and in effect require effective action for arming (US Navy NWP 114M, 2007, Para 9.2.1;)(Schmitt, 1997: 20). Because controlled mines do not pose a risk to navigation, and, as a result of their application, international notification is not required (Department of Defense Law War Manual, 2015: 893).

Clearly, in the past, controllable mines were considered controversial technologies and potential risks to commercial shipping. But today, with the use of advanced sensors, this concern has been reduced sufficiently. In particular, that the permit for the deployment of mines in certain areas prior to the occurrence of conflicts has been given, which does not require advance notification or marking of sea lines until mines are activated. The relationship of this type of technology to future conflicts is extremely on time and valuable, especially when there is little or no time to warn of conflicts. This kind of strategy and technology within the framework of legal restrictions, international law can be justified (Cashman, 1994: 60). In contrast to controlled mines, armed contact mines are designed to be unassimilated weapons that are capable of producing massive destruction for both military and third-party purposes. Therefore, the use of such mines has been regulated by international conventions. Although their rules are more related to an armed naval conflict, but due to their customary nature, their deployment in peacetime also requires information about them and

their location to the international community (1907 Hague Convention VIII, Art 3-4)(Corfu Channel case, 1949: Reports 4, 18-22). If, however, the floating contact mines are wandering, they are immediately required to be exposed after being detached from their anchor or within the base one hour after the control of the enemy are lost (San Remo Manual, 1994: Para 82)(1907 Hague Convention VIII, art 1-2.). However, in order to ensure peace of transport and freedom of transit, any government that deploys armed mines is obliged to register their location in order to provide appropriate information to seafarers and when their deployment for a period of time, they are required to accumulate control of the enemy are lost (San Remo Manual, 1994: Para 84-89)(1907 Hague Convention VIII, art 5).

The use of sea mines in armed conflicts has been regulated by The Hague Convention and the International Law on the International law of the seas. This does not mean that these rules are just as applicable in peacetime. The continuation of the relationship between the friendly states is governed by the rules of the peacetime and in accordance with any specific rules that apply to the hostile countries, while the peacetime obligations of the hostile parties and international countries will also continue to be governed by specific human rights and neutral laws (International Security Department, 2014: 5). In the Corfu Canal case, and in the quasi-military and military activities of Nicaragua, the court argued that governments were committed to reminding the ships of the existence and danger of minefields during peacetime, while the duty to do so during the armed conflict was in accordance with the eighth convention of The Hague in 1907 (Mundis, 2008: 125). In the case of Nicaragua against the United States, the Court referred to the provisions of Articles 3 and 4 of The Hague Convention, and stated that the obligation to notify peace-keeping vessels was the most important factor in determining the legitimacy of mine action ((Nicar. V US) 1986 I.C.J. 14 (27 June), Para 215).

2.2.1 Mining in the territorial sea, inland waterways and archipelagic waters of another government

Obviously, prior to the start of an international armed conflict, the landing of mines of any kind in the territorial waters, inland waters, or archipelagic waters of a foreign government is prohibited. Obliged rights of governments of the countries before the conflict are subject to the norms of peace law (Van Heinegg, 2008: 593). In fact, pouring mine in peace time is a violation of the territorial integrity of the coastal government and the use

of force, unless the landing has been carried out with the consent of that state((Nicar. V US) 1986 I.C.J. 14 (27 June), Para 213-215)(NWP 1-14M, 2007: Para 9.2.2).

2.2.2 Mining in waters under the sovereignty of the state

Inland waters, in contrast to the security and safety of citizens, it can be done by any country in its internal waters at any time without any notification or declaration of both types of mine. And pouring armed or controlled mines in their internal waters at any time without informing others (Naval Mine Warfare, 2001: 22). It is clear that governments are committed to ensuring that maritime safety is passed through domestic waters, whether they intend to enter or leave, and that they must take the necessary measures in this regard.

The territorial sea and archipelagic waters: Basically, during the peacetime, the coastal government is authorized to seize its territorial sea and its archipelago. However, the ships of all states enjoy the right to pass without harm to the territorial sea and archipelagic waters, thus giving the coastal government the right to dispose of armed mines in its waters under its sovereignty due to the commitment to non-disturbance in the proper and unhindered passage of foreign ships. This rule derives from both international treaty law (UNCLOS, 1982: Article 25) and customary (Corfu Canal, 1949 I.C.J. 4 (9 April): Para 22). The coastal state, based on Article 25, has the right to suspend the transit through the country in order to provide national security during armed forces exercises, however, under such conditions, the suspension should be temporary and only in certain areas of the territorial sea. In other words, the right to do so is an exceptional right. If a coastal country puts a mines weapon in its territorial waters, and fails to provide any kind of warning or notification to vessels of other states that have the right of access or passage, violate the contractual and customary international law obligations ((Nicar. V US) 1986 I.C.J. 14 (27 June) Para 292, and Para 215-16). Therefore, when the security threat ends, armed mines must be dismantled or rendered inoperative and dismantled for floating or one hour after any conditions they have been laid down (1907 Hague Convention VIII, art. 1.). It seems, of course, "the use of controlled mines does not entail notification or aggregation issues in the territorial sea and archipelagic waters of the coastal state, since they do not affect the passage"(International Security Department, 2014: 4)(NWP:

2007; 1997; 1989, Para 9 9.2.2.).
The International Court of Justice in Nicaragua case affirmed that "a state shall, in any manner, in waters licensed or authorized to be used by ships of other states, and in giving notice or contrary to shipping in violation of international law and humanitarian law, the Government has violated international law which is the basis of certain provisions of the eighth 1907 Convention of The Hague" ((Nicar. V US) 1986 I.C.J. 14 (27 June) Para 215). Therefore, if mines in the territorial sea threaten to carry a peaceful craft, they must be warned effectively. Accordingly, land-based mining by the government itself is permitted only if it does not affect peaceful shipping or requires essential security considerations. Therefore, if governments such as Sweden deal with controlled mines in territorial waters under peaceful conditions, they are neither obliged to notify nor commit to issue a warning. Only when the mines are activated, the temporary suspension of the non-hazardous pass-through suspends the obligation to issue a previous warning (Van Heinegg, 2008: 594). However, if the coastal government has armed mines in the archipelagic waters and its territorial sea, it is required to provide internationally appropriate information on the existence and location of such mines. And as soon as armed mines are considered a security threat they must be aggregated or endangered and their application will be terminated immediately (Naval Mine Warfare, 2001: 59). Of course, according to the provisions of paragraphs 1 and 2 of Article 15 of the 1958 Territorial Sea Convention, as well as the provisions of Article 24, paragraph 2, of the law of the seas Convention, the coastal government undertakes to inform that it is aware of any danger to the sea in its territorial sea and it can be widely disseminated and informed.

2.2.3 International Straits and Archipelagic sea lanes

The mounting of sea mines in international congestions and offshore pipelines is unacceptable, as some prohibition the dumping of mines in international straits and archipelagic sea lanes have been agreed (Schmitt, 1997: 22). The prohibition of the dumping of mines of war in international straits stems from the principle that all ships have the right to freely transit through international congestions. This principle has been strengthened with the commitment of coastal states to the lack of transit passage and to provide adequate declarations for any kind of hazard to shipping harmless in international congestions. In addition to this, unlike unpaved transit, transit cannot be suspended. These commitments also apply to archipelagic

waters (International Security Department, 2014: 5). The archipelagic Consortium, which has been designated by the intercontinental routes, is governed by the Convention on Arbitration (UNCLOS, 1982: Art 52-54). In this type of passage, warships and airplanes can navigate according to the rules, and the archipelagic country is not allowed to suspend the right to cross. The rules of crossing the archipelagic waters are more or less similar to the transit of international straits, and the coastal state is required to determine the maritime and aeronautical transit routes by coordinating and cooperating with internationally relevant organizations (Kazemi, 1987: 176). In the Corfu Canal case, the International Court of Justice ruled that, apart from the legitimate rights enshrined in international treaties, the coastal government has no right to ban or suspend such a transit through straits during peacetime (Van Heinegg, 2008: 595). But it seems that you have to differentiate between types of armed or controlled mines.

Therefore, given the type of mine, no doubt the use of armed mines in peacetime, since there are many dangers for peaceful shipping, cannot be found in international straits or archipelagic sea lanes (Naval Mine Warfare, 2001: 59). But since the controlled mines have no effect on transit, there is no reason to deny them the right to use them by the coastal government in international straits. It will be applied to the archipelago's shipping lines with necessary modifications (Van Heinegg, 2008: 595).

2.2.4 International waters

Basically, marine waters are generally divided into national and international waters; in the national waters, only coastal government has the sovereignty and jurisdiction, and other states can only take measures in the national water with the permission of the coastal government. Therefore, international waters are the exclusive economic zone, to some extent the continental shelf and the open sea.

Exclusive Economic Zone: Essentially, in relation to the navigational freedoms of the EEZ, Article 58 (1) adopts the same regime as employed on the high seas (Macfarlane, 2017: 114). According to the first paragraph of Article 58 of the Convention on the Rights of the Sea, the permission for military operations, including the right to combat warships in demonstration operations and weapons training in the exclusive economic zone, is inferred, where it states, beyond freedom navigation, flying over

high seas and putting sub-marine cables (UNCLOS, 1982: 56 Art 87) all countries benefit from this region.

In contrast this type of license, article 58, paragraph 3, requires other states that, when exercising their rights, they consider in the exclusive economic zone the rights of the coastal state and apply the regulations of the coastal government which, in accordance with the provisions of this Convention and other regulations International law is enforced. Also, Article 301 of the Convention on the law of the seas calls upon all States to refrain from resorting to force or threats that are contrary to the principles set forth in the United Nations Charter when using seas and, in turn, accepting the consent of the coastal government for carrying out the military activities in the exclusive economic zone has not been approved, but by considering purely peaceful uses of the sea and non-resort to any action contrary to the principles set forth in the Charter of the United Nations has practically limited such activities to peaceful purposes in the area (Arashpour, 2003 and 2004: 12).

Continental Shelf: According to the widely accepted view of the continental shelf regime of the 1958 Convention, military installations can be created on the seabed adjacent to the coastal or foreign government, provided that they are entitled to extraction and exploration of natural resources does not interfere. This principle is supported by Article 1 of the 1958 Convention (N., 1988: 26).

High Seas: Under Article 89 of the law of the sea Convention, the high Seas include all waters where no coastal government can enforce the rights. In general, in accordance with article 2 of the Geneva Convention on the Free Army of 1958, the high Seas has opened to all coastal and non-coastal states, and no state can claim a legitimate claim to rule its part. Also, in accordance with Article 59 of the 1982 Convention, any government, whether coastal or non-coastal, has the right to fly ships flying the high Seas in the flag of that state. In accordance with this article, shipping is an absolute right of all countries (Mahmoudi, Afkham, 2018: 284). Today, there must be a general agreement that Articles 88 and 301 of the Seas Convention constitute a barrier to the military uses, which long time has been the subject of part of the customary freedoms of the high Seas (Von Heinegg, 2005: 152). An example of this is the military activities of many countries, including Southeast Asia, the United States, India, France, and others in the South China Sea to protest the claims of China's sovereignty over the various territories of the South China Sea.

Basically, the dismantling of warfare mines in the international waters is in violation of the principle of freedom of movement as well as the obligation of countries to respect the peaceful uses of the free Seas, as identified in the Seas Convention (UNCLOS, 1982: Art 58-87). Therefore, states should respect the freedom of navigation across their territorial sea and the use of the Free Sea (as well as the exclusive economic zone) for peaceful purposes. Obviously, violations of these obligations by mines may be justified under Article 51 of the United Nations Charter. But this requires an attack and involves an armed conflict. The issue is whether mine clearance in the offshore areas beyond the boundaries of the territorial sea is prohibited? (Van Heinegg, 2005: 595). The fact is that the rules governing the dumping of mines in international waters during peacetime and the government's obligation to take appropriate measures against the rights of other states are unclear (UNCLOS, 1982: Art 56-58-87). Of course, legal perspectives and military instructions have not been the same in this regard. Wolf Heintschel believes that "Mining in international waters, whether with armed or control mines, is against international law" (Van Heinegg, 2005: 594). But it seems that depending on the type of mines used, the rules for mines are different in the international waters, but their application depends on the circumstances and the situation.

About armed mines, some believe, at the peace time, a state cannot place armed mines in international waters, unless it is in a state of legitimate individual or collective defense (Schmitt, 1997: 20) (Department of Defense Law War Manual, 2015: 894)(NWP 1-14M, 2007: Para 9.2 .2). Of course, some countries, including the United States, have reserved the right to dispose of armed mines in international waters before an armed conflict has arisen based on individual or collective legitimate defenses)(NWP 1-14M, 2007: Para 9.2 .2). Therefore, according to this view, the deployment of armed mines in international waters should be carried out under certain conditions, prior notification of their location, and a government that has placed armed mines must be present with its effective presence. In the area, they will provide and guarantee appropriate warnings for ships approaching the danger zone, and, once the imminent danger is resolved, they will be collected or collided immediately (International Security Department, 2014: 4).

In the case of controlled mines, there are also different perspectives, some of which suggest that controlled mines can be disposed of without warning

and notification in international waters; in particular, they do not interfere with other legal uses of the seas (Schmitt, 1997: 22). But, according to the United States Armed Forces, "controlled mines can be placed in international waters beyond territorial waters, with the proviso that they are unjustifiably waters, with the proviso that they are unjustifiably interfering with other legitimate uses of the oceans does not create ". What constitutes a reasonable intervention involves the equilibrium of some factors, including the cause of mines (legitimate defense), the range and the mine-bound area, the probable (other) risks to other legitimate methods of using the ocean and the duration of mine dumping (International Security Department, 2014: 5). Ultimately, because internationally controlled mines do not pose a risk to navigation, international notification is not necessary.
But even though there are legal references in the literature, there are supporters in support of the United States position, in particular by those who recognize the right to pre-emptive defense, the rules of the US military regulation, which are covered by international law, does not exist. Before the beginning of the international armed conflict, the rights and duties of the state are exclusively governed by the rules of peace. Therefore, freedom of shipping and navigation as well as commitment to the peaceful use of high seas must be respected.

Violation of these rules and principles is only possible when an armed attack is justified. According to the plan, the scope of legitimate defense is wider. However, the fact that the most severe individual or collective self-defense is still under the rule of peace is doubtful (Van Heinegg, 2005: 594). Therefore, not all countries share this view, and there are a number of views that, during peacetime, it is not possible to put views that, during peacetime, it is not possible to put any armed mines and controlled mines in international waters (International Security Department, 2014: 5). It is mostly cleared; the US perspective is based on preventive defenses, contrary to the clear mandate of the United Nations Charter. Essentially, "resorting to force must be appropriate to the use of force and with the goal of legitimate defense. In fact, legitimate defense allows a state to justify a degree of force that is reasonably necessary to achieve legitimate ends. By accepting this paradigm, this rule applies only to the use of force in "legitimate defense," and no legal justification for any use of force. Similarly, although the International Court of Justice in Nicaragua case stated that force was justified as legitimate defense, the Tribunal stated that a state would be allowed, in the event of being attacked or resorting to

Forced action, resorts to "proportional measures", US actions have not had sufficient justification as legitimate defense (Stephens, Fitzpatrick, 1999: 570).

3. International Responsibility of Mining Government: An Analysis of the Opinions of the International Court of Justice

Regardless of these differences, if the illegal dumping by a government leads to harm (loss, damage) into shipping, that State shall, in accordance with international law, be liable for its international offence. This action may be the basis for future liability in the legal process, or the right to a damaged government to take action in accordance with the doctrine. Of course, depending on the scale and damage caused by mines, it may even be considered that mining government is an "armed attack" that has the power to use force as a legitimate defense to the state or governments that directly based on this attack has been detrimental to them (International Security Department, 2014: 5).

Generally mining is illegal, which, in principle, leads to violations of international law of the seas and the threat of peaceful shipping, appropriate countermeasures are certainly permitted. However, the nature and quality of such countermeasures is undoubtedly controversial. This balance between seas freedom and the right to self-defense has long time been one of the main features of the use of mines. Judicial opinions of the International Court of Justice in the Corfu and Nicaragua channels generally accept the right to freedom of navigation in situations where there is less than armed conflict. However, as a result, it is clear that even the use of sea mines in certain circumstances necessary for state security is likely to be considered as a substitute for the right to freedom of navigation (Stephens, Fitzpatrick, 1999: 571).

The Corfu Canal case included the assessment of the passage of a number of British warships in 1946 through the Corfu Canal (located along the coast of Albania and Greece). In 1946, the Albanian coastal batteries opened fire on two British warships. As a result of these attacks, British naval authorities dispatched a task group (consisting of four warships). In October 1946, two ready warships collided with sea mines, causing the death of 45 British officers and ship crew and injuring 42 others. The mines were made in Germany and were apparently dumped by unknown people. However, the Tribunal did not acknowledge that the mines were Albanians

(Corfu Channel, 1949 I.C.J., pare 22). After the explosions of October 22, Britain announced in a note that it plans to dump mines the Corfu canal in a short time. In response, Albanian authorities stated that they did not agree with this unless they were outside the waters of Albania and any mines in these waters would violate Albanian sovereignty. From November 12 to 13, 1946, Britain dumped mines in the Albanian territories and was discovered22 mine as a result of these operations (Corfu Channel, 1949 I.C.J., pare 32-33).

The Tribunal stated that there was no direct evidence of the connection of Albania to the deployment of such mines, and the Court still did not conclude that mine deployment was "carried out without the knowledge of the Albanian government". In fact, mining without Albania's knowledge were not possible. Therefore, evidence suggests a failure by the Albanian government (Corfu Channel, 1949 I.C.J., pare 22). The Tribunal then discovered that Albania had committed to inform all ships about mines in the canal, and Albania had failed to comply with such an undertaking. Because such commitments are not based on The Hague Convention of the eighth 1907, which is applicable during wartime, but also on the basis of general principles and well-known principles, such as: the fundamental principle of humanitarian considerations, which are even considerably contingent on post-war peace, the principle of the freedom of maritime communications; and the commitment of each state to it, does not allow the state to deliberately act on its territory for acts contrary to the rights of other states. In fact, there has been no Albanian effort to prevent disaster and this Albanian action is the responsibility of Albanian government. In this case, the Court has argued that the coastal State should not impede access to the right of unimpeded access to foreign ships, thereby threatening the ships is unacceptable. Of course, there is such an assignment in the 2nd part of the 15th paragraph of Geneva contract in the context of the territorial sea and the monitoring area.

In the Corfu canal case, the Court acknowledged the right to "freedom of maritime communications" and the right to unconditionally unpunished movement through the strait. It was preferred to any right that Albania claimed to have prevented the crossing of the Strait by virtue of its sovereignty. Announcing such an attitude, it is worth noting that the Court of Justice condemned the third British transit that had cleared the Strait. Some suggest that if the right to freedom of maritime communications is meaningful, then such self-help measures would certainly have been

justified. However, the Court insisted that such actions were not justified, and in fact, concluded that the third transit had led to an illegal intervention in the sovereignty of Albania (Stephens, Fitzpatrick, 1999: 572-573). And carrying out mine clearance operations without the consent of the Albanian government has been a violation of its sovereignty (JAMES, 2015: 22). Obviously, the Court's view of the third transit was heavily influenced by the British lawsuits on the Corfu canal. Where, the British government acknowledged that mine dumping action was an intervention, but under certain circumstances it was negligible (Stephens, Fitzpatrick, 1999: 572), and the reason for this was the application of intervention theory to in order to facilitate the international court's role, the intervener has been used as a method of self-help (Abbasi, Sadat Midani, 2013: 113). The adoption of such a position is due to the fact that the Court has avoided creating a new exception to the principle of non-intervention. In the viewpoint of the Court, this right is claimed to be a violation of international law. In relation to the concept of self-help, the Court has considered the respect for territorial sovereignty is the principle of international relations among independent states (Abbasi, Sadat Midani, 2013: 113). Undoubtedly, considering that one of the main duties of the International Court of Justice is to protect international law, in spite of Albania's failure to perform its duties, in order to ensure respect for international law and the contradiction between British action and reasoning with the rules of conduct such as the prohibition of resorting to force and noninterference, British action was considered a violation of Albanian sovereignty. Indeed, in response to British claim, regardless of benevolent motivation, the Court considered the government's action to be in violation of the sovereignty of the Albanian government, it considered that its move was prohibited as a result of arbitrary and unilateral action by the government against other states, it is a manifestation of force politics that has been legally out dated and has no place in international law (Zamani, 2007: 68-69).

Nicaragua's facts indicate US support for the Contra Rebellion in the early 1980's. In particular, the Court ruled in paragraph 8 that the United States was responsible for the dumping of Nicaraguan ports, which were secretly carried out by US agents without notice or warning to the international shipping community. And by doing this, it violated international obligations. And it is therefore responsible for compensating for the damage that has been inflicted on Nicaragua (Ziaei Bigdeli, 1994: 203).

4. Anti-mine action operations

Anti-mine operations can be divided into two broad categories of tasks: mine- discovery and minesweeping. The mine discovery is effective in almost all types of mines, and includes five stages: discovery, classification, concentration at a specific point, identification and neutralization. This process can be done with a regular minesweeper ship. Mining involves the spreading of nets in water, using "mechanical" or "penetration" systems to detect or destroy any type of mine. Mechanical mines include cutting the hinged balls of an anchor or their physical destruction by cutting off control wires, which causes of destroying or securing the mines (Truver, 2015: 36-37).

At the peace time, international law has authorized each state to collect mines in the free sea to be harmful to sailing. This obligation may include of collecting or neutralizing. This commitment also implies that mine producing states have registered mine-clearing sites. The underlying principle is that the government can only collect mines in the territorial waters of its former enemy with the consent of that state, since otherwise it will violate the territorial sovereignty of that state (International Security Department, 2014: 8).

Some consider that, as international law has authorized the collection of mines in the high Seas to any state, international laws also grant this permission to any government for mine sweeping and sweeping armed mines from the archipelagos and international straits. Such an operation of anti-mine action can justify the existence of active mines preventing the right to transit to a peaceful transit vessel and violating international and customary law (International Security Department, 2014: 9). From this point of view, the difference between sea mines cannot be considered correctly, since there are essentially uncertainties about the transit. The Convention on the law of the seas, in addition to the restrictions on the transit, has also considered security considerations for the rulers of the Straits. Undoubtedly, part of the waters of many straits is located in the territory of the territorial sea of the coastal state, where the rules governing it are similar to those governing the territorial sea, and this cannot be done without the consent of the coastal state. On the other hand, as already mentioned, the use of controlled mines in the international straits will not interfere with the passage of transit, and merely obliges the mining government to take measures that do not threaten peaceful shipping. Nevertheless, these rules are ambiguous about the mine-sweeping operation. In the 1949 ruling, the International Court of Justice, in the

Corfu canal case, acknowledged Albania's responsibility for the damage caused by the warships, which had the right to go unpunished. However, the Tribunal voted against the illegality of mine sweeping operations and clearance by the British, because Britain had launched a minesweeping operation in the Albanian coastal sea without the consent of that government. However, this vote is somewhat discretionary, with the second part of the sentence, with the adoption of the 1982 Convention on the Rights of the Sea, and the identification of the regime governing the transit seems somewhat contemplative. As noted above, under Articles 38 and 44 of the 1982 Convention, Governments cannot prohibit or suspend transit through international straits if there are no safe alternative routes. In such a situation, if armed mines are placed on the route of the traffic lanes, it could be an effective reason for the government to carry out anti-mine operations in international straits overlapping the sovereignty of government. It seems, of course, that any action in this regard should be carried out within the framework of the United Nations Charter, as well as with the consent of the government that is affiliated with the Strait, or that appropriate information is provided to the Government and the International Committees to take place. However, if controlled mines are installed, they cannot be mined because they are not interfering with transit rights. Also, if alternative safe routes are available, it would not be possible to exclude international constraints as to the violation of international law. Only the mining government is committed to providing the necessary information on the dangers of active mines, which are harmful for sailing.

Generally, if the harm caused to an unlawful shipping vessel is caused by an illegal mining by a state, the government is responsible for its offending conduct in accordance with international law; in addition, the victim government is generally entitled to full compensation for damage caused by mines. But from other legal processes against that government, international law has authorized the affected State to take any action that otherwise would be contrary to its international obligations, of course, a measure that fits in the illegal mining. As the International Law Commission declares in its interpretation of the State responsibility plan, "countermeasures are a feature of a decentralized system in which a victim government can seek to defend its rights and to establish a legal relationship with the responsible government that committed this breach by virtue of its international violation. Mutual actions may only be taken

against a government that has been responsible for internationally violated actions (illegal), and it merely requires the government to comply with its obligations. However, a government that resorts to counter-measures should not resort to threats and use of force to reinforce that government to comply with its obligations" (International Security Department, 2014: 9).

5- Conclusion

Technology has rapidly transformed human life and has challenged almost every day legal assumptions. The rapid growth of technology in the military arena has always been a challenge to the prevailing rules and has created ambiguity; eventually it has been linked to decision-making or solutions to resolve the ambiguity or formulation and development of the rules. It is obvious that the use of automatic submersible mines and floating mines are controversial technologies and potential risks for peaceful and commercial shipping. In the case of naval mines, apart from part of the eighth 1907 Hague Convention, there are no treaties regulating international law of the seas, but the provisions of the Convention are also more relevant to law of the seas. But since most of its provisions are customary, it also has the ability to exercise in peacetime.

Undoubtedly, the customary international law and the rules of the Convention on the Law of the Seas provide the ground for mining in different maritime areas and is partly influenced by the modern seaweed technologies, some of which are regulated by these modifications. As the permit for the deployment of mines in certain areas has been issued even before conflicts, which it is not necessary advance notification or marking of its sea lanes until the mines are activated. The relationship of this kind of technology to ensure the security of the coastal state and pre-crisis will be timely and valuable; this type of strategy and technology within the framework of legal constraints, international law is justifiable. But it seems that the lack of specific rules in most cases will lead to significant issues. However, the adoption of peace norms - and the regime of wartime treaties, along with developments in customary international law, means developments in customary international law, applicable to deploy mines has significantly expanded over the last century.

In the case of mine sweeping states, when they are faced with illegal mining and their actions to carry out anti-mine operations, they typically justify two legal bases: on the one hand, to enforce the freedom to sail against activity mining government, and, on the other hand, the right to self-defense. Since it is likely that the conduct of anti-mine operations

could be interfered with in the internal affairs of the country, mine operations should be undertaken simply and exclusively to support peaceful shipping in the framework of the United Nations Charter and the Convention of the Seas will be taken in such a way that it does not conflict with the principle of non-intervention and violation of the sovereignty of the state.

The developments of the sovereignty of states in the maritime areas contained in the 1958 and 1982 law of the seas conventions and the spread of humanitarian considerations in the international community and the ever-increasing development of maritime arsenals, including submersible mines, coincided with the need to establish the rules governing their use in peacetime, new rules for the rights of the seas are required. Nevertheless, the developments of the sea and the tendency towards military activities and the widespread use of sea-based weapons, the growing participation of governments need for greater attention of the international community to this part of the law.

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