

International Law on Naval Mines: Rules, Effects and Lessons from Ukraine

Oleksii Plotnikov*

**PhD in Law, Senior Lawyer, Civic Organization "The Tenth of April" (15, Heroiv Krut St., Odesa, Ukraine) <https://orcid.org/0000-0001-9814-1108>*

ABSTRACT

The Article addresses the issue of international legal regulation of the use of naval mines and its implications for Ukraine. It considers the existing legal regime based on Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines and customary international law. In order to unveil that regime, the article opens with the XIX century developments which led to the creation of the first international legal regulations restricting certain types of weapons as a result of Hague Peace conferences of 1899 and 1907. In particular, the article concentrates on the Hague Convention (VIII) and its applicability to different types of mines. One of the key questions raised in the article is whether the Hague VIII Convention applies to influence mines which are not mentioned in the text. In order to respond to this question, the article analyses scholarly writings, including the San Remo and Newport manuals, as well as state practice, including military manuals produced by different States. This analysis brings to two conclusions, namely that the Hague VIII has highly likely reached the status of customary international law, and that the rules set forth by this Convention can be extended to both contact mines and influence mines. The article then turns to the question of the implications of the international treaty and customary legal regime for Ukraine – a topic highly relevant in the light of the mine warfare in the Black Sea. The article analyses Ukraine's diplomatic practice as well as relevant military regulations in order to establish whether Ukraine is bound by the provisions of Hague VIII and whether it actually complies with the relevant international rules. It concludes that it is impossible to establish with certainty whether Ukraine has accepted legal obligations under Hague VIII; however, there are strong grounds to believe that Ukraine factually complies with the requirements of Hague VIII and related customary international law on naval mines.

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Introduction

The rules applicable to naval mines are one of the most underdeveloped and conservative elements of International Humanitarian Law (IHL). A Convention has been adopted over a century ago with no considerable further progress, except in legal writing. Compare this to the abundant international regulations on landmines, including the 1980 Protocol and the 1997 Antipersonnel Mines Convention. This, however, was in no way an outcome of absence of necessity. Balloons, the rules on which have been adopted at the same time, indeed became obsolete, but naval mines did not. They were used in both World Wars, in many conflicts of the Cold War era (including Korea and Vietnam), and in the Gulf War. They remain at high esteem now, and nothing indicates that they are going to be removed from the arsenals in the near future. To the contrary, technological advancements support their use in future conflicts (Veerabhadriah & Rao, 2016).

The armed conflict resulting from Russian aggression against Ukraine has reaffirmed the significance of naval mines. This war transpires across all domains: terrestrial, maritime, and aerial. One part is naval warfare concerning Russia's attempted blockade of Ukrainian shores and Ukraine's efforts to neutralize the Russian navy, aiming to eliminate the threat of landings and maritime attacks while also unblocking Ukrainian ports. Both parties allegedly employed underwater mines to accomplish their objectives. This raises the

question of the legality of this type of weapon and the restrictions imposed by international law on its usage in general and on the legality of their use in the armed conflict between Russia and Ukraine in particular.

The topic of the legal regime of naval mines in contemporary armed conflict receives frustratingly little attention. It is covered as side topic in doctrinal manuals, while accounts of hostilities between Russia and Ukraine in the Black Sea (some of which are going to be analysed below) are descriptive rather than analytical, and their value for understanding the applicable legal regime is limited. This paper is an attempt to fill the lacuna. It will address three consecutive questions:

Is there an international treaty or customary regime in existence, that would regulate the use of naval mines in armed conflicts?

If there is such a regime, is it limited to a specific type of naval mines, or does it apply to all types of naval mines?

If there is such a regime, what obligations does it create for Ukraine in an armed conflict with Russia and whether Ukraine complied with those obligations?

Methodology

This study employs historical methodologies to investigate the roots of the legal regime governing naval mines in international law, facilitating the identification of both the underlying rationale for their restrictions and specific norms associated with it. The former is crucial for comprehending the relevance of prohibitions to contemporary types of naval mines, which is examined through systematic analysis methods. The paper further refers to the method of cases studies using Ukraine as an example. It is argued that the example of Ukraine may be illustrative of a general tendency.

1. A Universal Regime on Naval Mines: does it exist?

The early international legal regime of arms control emerged as a result of the First and Second Hague Peace Conferences of 1899 and 1907, which adopted a series of international instruments on the limitation of war in general and in particular regarding concrete types of weapons. These conferences paved the way for the comprehensive international legal regimes on arms control, including the 1907 Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines (Hague VIII), which became a sole international instrument specifically governing the use of sea mines.

This necessarily entails a question of whether that Convention is capable of forming a basis for the international legal regime governing the use of naval mines? This question has practical implications, as a response should enable determination of particular legal obligations owed by certain states towards other states in armed conflicts.

Some authors (like Noone et al., 2024) simply presume that Hague VIII is customary, without bothering themselves with much explanation. The foundations of this optimism are not quite obvious. Article 7 of the Convention establishes that its provisions “do not apply except between Contracting Powers and then only if all the belligerents are parties to the Convention”. To the best of our knowledge, neither supporter of the customary nature of Hague VIII has ever addressed the provision of Article 7. It is simply ignored, yet for us it is important to underline that the rest of the analysis below is without prejudice to the basic understanding that the Convention itself clearly and obviously rules out the possibility of becoming binding for any State except those that themselves decided to be bound by its rules.

Another powerful objection stems from the marginal membership (according to ICRC-38 signatures and 28 ratifications). These numbers can be contrasted with the Ottawa

Convention on antipersonnel mines, which has (at the time of writing) over 150 parties and which is nonetheless not considered customary. One can raise two counterarguments in this context. The first could be an obvious remark that considerably fewer states existed at the time of the adoption of Hague VIII. The second is a more legalistic reference to the specially-affected States doctrine. Let us address them in turn.

The first argument diminishes when considering the fact that several of the 38 parties joined the Convention after a lengthy period, and some did not exist at the time of its ratification. Examples encompass Ethiopia, Fiji, and Finland, with the most recent ratification occurring in the South African Republic in 1978. This clarifies that those desiring to participate might have done so, yet most States opted not to acknowledge Hague VIII.

The second argument can be justified with reference to the formula promulgated by the International Court of Justice (ICJ) in the *North Sea Continental Shelf Cases*, where it was found that for the formation of an international custom, “a very widespread and representative participation in the convention might suffice itself provided it included that of States whose interests were specially affected.” This doctrine seems especially relevant for naval armaments, since not all States have access to the sea, seashores to be protected, and navies to be operated. Therefore, for a determination of whether Hague VIII became customary, it would be logical to consider the positions of naval powers only, or, at least, only of those States whose territory is adjacent to the sea. Yet, here again, the specially affected States argument appears to be failing. Firstly, this is because some of the original signatories are States, that did not have access to the sea at the time of signing and have not obtained it ever since, like Bolivia, Luxembourg, Paraguay, and Switzerland. Secondly, some of the major States having access to the sea did not accede. The most obvious examples are Portugal, the Russian Empire (and all its subsequent iterations), and Spain. Less obvious is that, for example, Australia, India, or Vietnam did not join even after gaining independence, although the example of the SAR illustrates that joining was possible.

Furthermore, the ICJ has considered Hague Convention VIII at least twice and, notably, never ruled that it is customary in nature. In its famous *Corfu Channel* judgement, the ICJ observed that the obligations to notify the existence of a minefield in the Albanian territorial waters “are based, not on the Hague Convention of 1907, No VIII, which is applicable in time of war, but on certain general and well-recognized principles”. In *Military and Paramilitary Activities in and against Nicaragua*, the Court limited itself to mentioning that the Convention obligates the parties to notify each other about the dangers which mines can entail for peaceful navigation. Some reference can be found in the fact that the UK, USA, and Nicaragua are parties to that Convention, while Albania is not, which may hint that the Court did consider it customary in *Corfu Channel*; however, this should be taken with a grain of salt as long as the Court did not pronounce that the Convention is binding for Albania.

Thus, should the presumption of customary nature of the Hague VIII be ruled out? Not necessarily, at least because there is a compelling amount of literature arguing in favour of the existence of some customary rules on naval mines. For instance, Letts (2016) argues that “the principles regarding the use of mines during armed conflict that are derived from the Hague Convention VIII have now become part of the customary law governing the use of all types of these weapons”. Boothby (2016) forwards a similar argument, while Rothchild and Jessup (2023) assume that “while some States may not have joined Hague VIII, its provisions now have binding legal authority under customary international law”.

A careful look at the writings of these authors indicates a subtle nuance: is the Hague VIII customary, or is it reflective of already existing customary norms? Note that Letts (2016) speaks of “the principles regarding the use of mines in armed conflicts”. The summary of the

2014 International Security Department Workshop discussion elaborates on the “Hague VIII and customary international humanitarian law”. It follows that Hague VIII is one thing, while customary international law on mines is another thing. And this second thing, as argued by Letts, is based on the principles of the law of armed conflict.

What are the principles at hand? No doubt that these are the basic IHL principles, like distinction and precautions. This becomes clear after reading the treaty’s text. The preamble of the treaty indicates that its purpose is to ensure the security of peaceful navigation for merchant shipping, which relates to the principle of distinction. The applicable provisions serve to concretize that purpose. Thus, Article 1 prohibits mines and torpedoes that do not become harmless once control over them is lost. Article 2 prohibits the use of mines with the sole purpose of disrupting peaceful shipping. Article 3 requires taking precautions to ensure the security of peaceful shipping. Article 5 requires speedy removal of mines after the end of hostilities.

Each and every rule here is indicative of IHL principles that apply regardless to all armed conflicts in all domains of the effect of Hague VIII and of whether it has attained a customary status or not. Therefore, even though we cannot conclude that the Hague Convention VIII is itself customary, we must still find that it is reflective of fundamental principles of the law of war, which are, without doubt, customary. These principles form the basis for what can be called a customary international legal regime of naval mines.

2. What Mines: Does the International Legal Regime Cover New Types of Naval Weapons?

The presumption that the Hague Convention of 1907 may be reflective of customary law necessarily engenders a question of whether these rules are capable of regulating all types of naval mines and, more broadly, of new technologies similar to mines and torpedoes, like the unmanned naval systems (UNS). The question evidently stems from the formulations of Hague VIII, that refer specifically and exclusively to submarine contact mines. For instance, Haines (2014) explains that “by dealing very specifically with contact mines and excluding other mines that then existed, however, the Convention is arguably non extendable to other, subsequent mines utilising newer technologies” and concludes that a new convention rather than a manual is necessary to alter this provision. He does, however, mention that “While the rules contained in the 1907 Convention are regarded as having attained customary status in relation to automatic contact mines alone, they have also, when combined with other elements of customary law, led to the devising of the rules contained in the San Remo Manual. They apply to all forms of sea mines.”

Yet Haines’s arguments cast some doubt on the question of applicability that can be resolved with reference to recent interpretations and State practice.

One should begin by referring to the authoritative San Remo manual prepared by the International Humanitarian Law Institute as a codification of customary international law applicable to armed conflicts at sea. The Manual largely restates the Hague VIII provisions, however, without reference to the exact type of naval mines (i.e., it does not use the terms “automatic” and “contact”), thus seemingly covering all types of naval mines. At that, while there is apparently little discussion about the customary nature of *some* provisions of the San Remo Manual, there remains a dispute about whether *all* of its provisions are customary. With specific regard to naval mines, this doubt is, to a certain extent, supported by the recent Newport Manual prepared by a group of prominent experts as “restatement of the law of naval warfare as currently reflected in treaties, customary international law, and other sources of international law” (Kraska et al., 2023). The Manual does categorise mines into contact

and influence ones; however, it merely restates the provision of Hague VIII without going deeper into the question of whether its regime extends to influence mines.

As for State practice, a remarkable example is the UK Joint Service Manual of the Law of Armed Conflict, published in 2004. It contains extensive borrowings and direct references to the San Remo Manual, including non-distinction between contact and influence mines. The US Department of Defense Law of War Manual cites the Hague VIII on multiple occasions, but avoids mentioning the San Remo Manual. Nevertheless, it uses the wording similar to San Remo and does not distinguish between contact mines and influence mines. Germany's Law of Armed Conflict Manual does not touch upon the question of types of mines, concentrating primarily on their tactical employment. The French Manual on the Law of Military Operations is somehow ambiguous as it refers to the provisions of Hague VIII, including on automatic contact mines, but avoids explaining whether these limitations apply to influence mines. The language of the Canadian and Australian manuals is ungenerous, as they briefly explain basic rules applying to all naval mines with reference to Hague VIII. The Manual of New Zealand refers to the San Remo Manual and expressly describes sea mines as any mine "laid or released at sea". A similar approach is exercised in the Norwegian Manual.

It appears from the available State practice described in the military manuals that States either tend to extend the prohibitions on contact submarine mines to influence mines or avoid this question. However, there is no evidence of any contrary practice. This is to say, States do not deny that rules on naval mines expand to all types of mines, whether contact or influence.

That conclusion appears to be in line with the presumption, that the international legal regime of naval mines is determined by principles more than by treaty law. The applicability of the principles enables extrapolation of the existing interpretations (like the manuals discussed above and State practice) on the new types of naval weapons with effects similar to those of mines.

Such weapons may include maritime drones also known as unmanned naval systems – a recent technology with a disputable legal status. Some authors like Schmitt & Goddard (2016) draw a parallel with warships, others (Liu, 2024) assume that their characteristics are more consistent with those of mines and torpedoes. In our paper we do not attempt to provide a legal definition of an UNS, but for the sake of argument we presume that they may be considered mines, or may sometimes function as mines, especially if equipped with artificial intelligence providing them with autonomy. What would be the legal conclusions from such presumption?

First and foremost, it would in no way undermine the principles behind international legal regulation of naval mines. Distinction and precautions (as well as other IHL principles) would remain a paramount requirement for the use of UNS, regardless of whether they are thought to be mines or not. This implies that, for example, the use of maritime drones with the sole purpose of intercepting commercial shipping would be illegal both under Article 2 of the Hague VIII and in accordance with the principle of distinction (a drone is incapable of inspecting a commercial vessel, therefore its use for purposes like combatting contraband is hardly imaginable, at least at the existing stage of technical development).

What would be of more relevance are the particular rules applicable to mines that concretize the principles. Their applicability vastly depends on the technical characteristics of a concrete maritime drone and the context of its use, yet there is nothing impossible about such an application. Imagine a drone that is placed near the enemy coast and equipped with artificial intelligence programmed to attack a vessel with specific characteristics corresponding to an enemy warship. This scenario is anything but an abstract speculation,

as such technologies are already being discussed in open publications (Zhao et al. 2024), albeit for peaceful purposes. Then imagine that a conflict that triggered the use of such anchored drones has come to an end. In that case, such drones (even if not intended for interruption of commercial shipping) will remain a threat, and it should be presumed that the state that installed them must take care about their removal. Here, the closest analogy is Article 5 of Hague VIII, which obligates the parties to remove mines that they have laid at the close of the war. Furthermore, there exists no similar obligation in other international agreements, while the relevant parts of the San Remo Manual clearly rely on the abovementioned norm. Thus, at least before a more suitable set of legal norms is developed, some rules of Hague VIII can be considered an embodiment and concretization of the general IHL principles applicable to armaments similar to mines.

3. Naval Mines in the Armed Conflict between Russia and Ukraine

The armed conflict between Russia and Ukraine presents a contemporary example of the active deployment of naval mines by both parties. This conflict exemplifies key elements pertinent to the study of the existing international legal rules governing naval mines. Firstly, it constitutes an interstate armed conflict, which distinctly clarifies the presence or lack of responsibilities owed by a State, unlike armed confrontations between States and non-state actors, where the applicability of international regulations may be problematic. Secondly, the protracted nature of the conflict allows for the examination of not only individual acts of war but also the behavioural patterns of the belligerents. Thirdly, the armed conflict unfolds in all domains, including maritime areas, unlike several actual conflicts that lack a naval component, with the international armed conflict between Israel and Iran serving as a recent example.

Allegedly, both parties use naval mines in the Black Sea at least since the beginning of a Russian full-scale invasion of Ukraine on February 24, 2022. At that, it is not always easy to attribute particular mines or even minefields to either of the parties, especially in the light of the fact that Russia (at least as Stated by the Ministry of Foreign Affairs of Ukraine (2022) has seized some Ukrainian naval mines after occupation of Crimea in 2014. Another aspect is that some unidentified (and, in the light of the foregoing, hardly identifiable) anchored mines from time to time go adrift and create navigational hazards (Rothchild & Jessup, 2023).

A complete account of mining in the Black Sea since 2022 will (if ever) be written after the end of the conflict, since, for obvious reasons, both parties are reluctant to disclose the details of their military operations. Therefore, in obtaining factual evidence, we have to limit ourselves to terse official notifications and reported accidents.

On February 24, 2022, Russia announced the closure of the northwestern section of the Black Sea near Ukraine's shores for commercial navigation, subsequently attacking several neutral commercial vessels in the vicinity. While not officially verified, it is plausible to infer that both parties may have engaged in naval mining at that time: Russia to establish a blockade and Ukraine for defensive purposes (Sutton, 2025). Possibly the first victim was the Estonian cargo ship "Helt", that sunk near Odesa on March 3, 2022, allegedly after being hit by a free-floating Russian naval mine (the vessel was anchored at the moment of explosion) (The Maritime Executive, 2022). More accidents followed, including the damaging of a Romanian mine-sweeper near its own shores on September 8, 2022, allegedly by a mine which has broken free from its mooring, and explosions (allegedly caused by mines) damaging at least three neutral commercial vessels in autumn 2023 (for a full timeline see: Sutton, 2025). In short, anchored mines, which have allegedly broken loose from their moorings, remained a serious navigational hazard until the Russian has

been forced to flee Crimea in 2024, effectively ending the Russian blockade of the Ukrainian coasts. This enabled demining and recovery of commercial navigation in the northwestern portion of the Black Sea (Denisova, 2024).

Since the beginning of the Russian full-scale invasion, both parties accused each other of mining. Thus, on 21 March 2022, the Russian Federal Security Service (FSB) exclaimed that hundreds of Ukrainian mines drifted into the Black Sea breaking off from cables near Ukrainian ports, where they have, allegedly, been used for defensive mining (Reuters, 2022). On March 30, 2022, the Ukrainian Foreign Ministry claimed that Russia was using the naval mines as “uncontrolled drifting ammunition” threatening the coasts of neutral States to “provoke and discredit” Ukraine in the eyes of international partners. On the same day, Ukraine informed the IMO about the danger allegedly posed by the Russian mines. Russia responded on April 5, describing the accidents allegedly related to naval mining by Ukraine (IMO Circular Letter 4546, 2022). In addition, on March 18, 2022, the authorities of the Russian port of Sochi issued a warning to ship owners and seafarers on alleged “detonation of the Ukrainian navy mines drifting in the Black Sea” (Monitoring Group of BlackSeaNews, 2022). By Circular Letter No. 4573 of May 24, 2022, the IMO issued a warning of “free floating sea mines in the Black Sea region, including off the coasts of Romania and Turkey, resulting from the ongoing armed conflict in Ukraine”. The warning did not name a party responsible for mining.

For the sake of the reader’s time and patience, we shall not cite every further claim, allegation, and accusation generously promulgated by both parties. Suffice to say that anchored mines appeared in the Black Sea during armed conflict and obviously in connection with that conflict, which therefore means that they were used by either Russia or Ukraine or both. It is impossible to establish the method of their use and whether such mines were originally tied to their moorings and were broken loose by storms or they were indeed intentionally allowed to flow freely to chaotically disrupt navigation. And even though more or less credible reports surfaced later confirming that Ukraine resorts to offensive mining of military havens in the occupied Crimea (Kushnikov, 2024; 2025), neither Ukraine nor Russia has ever officially confirmed their involvement in mining, or notified other governments of the danger zones.

4. Status Unknown: What Rules on Naval Mines Apply to Ukraine and Does Ukraine Comply?

Could the failure to recognize or notify of own mining be due to the fact that Russia and Ukraine simply do not consider themselves bound by Hague VIII? And if so, what rules do they believe to be binding? For Russia, we can confine ourselves to mentioning that there are no grounds to believe that it is a party (it is not mentioned on the ICRC website as a party, and its 2001 IHL instruction approved by the Ministry of Defense, does not mention Hague VIII as a treaty binding for Russia). Furthermore, it is useless to ask whether Russia considers itself bound by any rules, as evidenced by the aggression and an ever-expanding record of IHL and human rights violations over the course of the conflict. Yet this is more complicated for Ukraine.

To begin with, some facts indicate that Ukraine may be a party to Hague VIII, or at least recognise obligations concerning naval mines which arise from that instrument, even though the country is not mentioned as a party at the ICRC website. Since independence in 1991, Ukraine has never produced a document of ratification, accession, or any other form of joining the Hague VIII. Yet Ukraine is, at least partially, a legal successor of the Ukrainian Soviet Socialist Republic and of the Union of the Soviet Socialist Republic, which, in turn, is, at least partly,

a legal successor of the Russian Empire. The latter joined only 10 out of 13 1907 Conventions, not including the Hague VIII.

In 1955, the Government of the Netherlands, acting as a depository of the Hague Conventions, requested the Government of the USSR whether it deems itself bound by the Hague Conventions of 1899 and 1907, previously ratified by Russia. The Soviet Foreign Ministry responded that "the Government of the Union of the Soviet Socialist Republics recognises the Hague Conventions and Declarations of 1899 and 1907". The text of the relevant diplomatic note contained a notice listing the international treaties, which included the Convention on Automatic Submarine Contact Mines.

In 1991, Ukraine became independent and passed a Law "On Legal Succession of Ukraine". According to its Article 7, "Ukraine is a legal successor of the rights and obligations under the international treaties of the Union SSR, which do not contravene the Constitution and the interests of the Republic". Accordingly, Ukraine inherited the ambiguity surrounding membership in Hague VIII. By a diplomatic note of 29 May 2015, Ukraine has confirmed the effectiveness for Ukraine in the order of legal succession of the Hague Conventions and Declarations of 1899 and 1907, the effectiveness of which has been confirmed by the former USSR to the extent recognised in the diplomatic note of 7 March 1955. The 2015 note did not contain a list of the instruments recognised as effective, thus adding little to understanding of the scope of Ukraine's obligations.

Two more legal instruments add controversy. The 2004 Manual on the application of the norms of International Humanitarian Law in the Armed Forces of Ukraine includes an Annex containing a "List of primary multilateral international treaties, laws, and other normative legal acts of Ukraine on International Humanitarian Law (as of 1 July 2004)". The list contains the Hague VIII, although without reference to any ratification documents. The document itself essentially repeats the provisions of Hague VIII; however, it does not mention the "automatic" or "contact" features of naval mines, which leads to a conclusion that restrictions apply to all types of mines.

A more recent Instruction on compliance with International Humanitarian Law in the Armed Forces of Ukraine approved in 2017 contains an Annex entitled "Information on the approximate list of primary multilateral international treaties, laws, and other normative legal acts of Ukraine on International Humanitarian Law". The Annex includes Hague VIII, yet again without any information on its ratification or accession. The Instruction contains provisions on naval mines similar to Hague VIII and San Remo manual, without reference to any particular type of mines.

Remarkably, the first instrument has been prepared by the General Staff of the Armed Forces of Ukraine, and the second one has been prepared by the experts from the National University of Defence of Ukraine. This demonstrates that Hague VIII was confirmed to be a part of Ukrainian law by both institutions.

Colonel Leonid Zaliubovsky, Head of the Legal Branch of The Ukrainian Navy Command, holds an alternative view. He assumes that Ukraine is not a party to the Hague VIII; however, he asserts that Ukraine actually complied with either treaty or customary norms of IHL on naval mines by not laying such mines in neutral waters, not blocking ships in neutral waters from assessing international waters, and, most importantly, by notifying Russia about the laying of mines in Ukrainian territorial waters (Rably & Zaliubovsky, 2022). Zaliubovsky also cites the San Remo manual, implicitly recognising its customary nature. In addition, he mentions the Russian claim that some of Ukraine's mines might have become detached and floated freely in the Black Sea but denies it as "almost impossible", since "only with actual facts, rather than Russian assertions, can the legality of the claim be accurately asserted".

In this fashion, a Ukrainian lawyer, presumed to possess the most extensive expertise in the legal regulation of naval warfare, including the deployment of naval mines, asserts that Ukraine is not a party to Hague VIII. This stance is justifiable as long as it is impossible to trace a legal history of ratification documents. A diplomatic letter rarely attains the status of such an instrument, and an internal ministerial order cannot establish international obligations. It is impossible to ascertain definitively whether the documents validating membership were due to a mere error or if Ukraine intends to implement the regulations of Hague VIII, at least at the departmental level. Nonetheless, neither of these alternatives obligates Ukraine to a treaty it has neither signed nor ratified.

Another important point made by Zaliubovsky is that Ukraine factually used naval mines in compliance with international law since:

Ukraine used anchored mines "in areas around key port cities" (i.e., in its own territorial waters), which is entirely legal under Hague VIII and any applicable customary rules;

Ukraine did not use free-floating mines;

Ukraine notified Russia of the laying of these mines (which corresponds to the rule of Article 3 of Hague VIII);

Ukraine did not use mines in neutral waters or in a manner that would block ships in neutral waters from entering international waters.

The latter point may indirectly hint that Ukraine avoided placing mines in the waters of neutral States like Romania (neutral waters) but did place mines in international waters so as not to interrupt commercial navigation. Such mining is not prohibited under the rules of Hague VIII or customary rules expressed in the San Remo Manual (which Zaliubovsky clearly had in mind, as he literally cites its clauses 86 and 87).

It can be concluded that Ukraine has an understanding of the law of naval mines on the level of legal verification of operational planning and, at the very least, aims to comply with that law. There remains, of course, some lacuna in the knowledge of facts, which may be relevant for the legal evaluation. This includes:

the type of mines used and whether they become harmless after they break loose from their moorings (including whether they were originally equipped with self-deactivation or self-destruction functions, or such a function was added during installation);

which exactly mines hit commercial vessels or were found on the beaches of neutral States (here, three options exist: a. lost Ukrainian mines; b. lost Russian mines; c. Ukrainian mines seized by Russia and deliberately used in a false flag operation, as was claimed by the Ukrainian Foreign Ministry).

These questions may be vital for damage recovery, but an investigation will likely only be possible after the conflict ends.

Finally, one can ask whether Ukraine complied with the notification requirement. Article 3 of Hague VIII specifies that a notification of danger zones must be addressed to ship owners and to the Governments through the diplomatic channel. Ukraine never issued such a notification specifying concrete danger zones created by its own mines. Therefore, it appears that if Ukraine were a party to Hague VIII, it would be in breach. However, a relevant obligation in customary law emerges in far less rigid terms. Thus, under clause 83 of the San Remo manual, the laying of mines "must be notified". The Manual is silent about the concrete modalities of such a notification. The Newport Manual mentions that such a notification "may be through diplomatic channels, communications to the International Maritime Organization, Notice to Mariners, or public announcements".

Thus, compliance with the notification requirement is basically left at the discretion of the States. Furthermore, from the IHL point of view, the notification of naval mines is nothing more

but a precautionary measure. For instance, Additional Protocol I to the Geneva Conventions foresees that an “effective advance warning shall be given of attacks which may affect civilian population, unless circumstances do not permit”.

Did Ukraine comply with those requirements? At the very least, it issued warnings about dangers in its territorial waters, not expressly mentioning defensive mining by its own. Thus, on February 24, 2022, the IMO issued a circular letter No 4518, citing Ukraine’s warning that “in connection with the military aggression of the Russian Federation against Ukraine... starting from February 25, 2022, for the duration of martial law of Ukraine... the ports of Ukraine are closed for entry and exit”. On 20 April 2022, the secretary general of the IMO Kim Kitack echoed this warning by stating that “sea mines have been laid in port approaches and some port exits are blocked by sunken barges and cranes” (Corbett, 2022).

These scarce communications highlight the problem with many unknowns, primarily because it is unknown where Ukraine used mines (and, in the absence of any official notifications, whether it actually did). It can be reasonably presumed that some of them could be used to protect certain areas from Russian landing, but a landing area does not equate to a merchant sea route. What is, however, known, is that not a single commercial vessel was ever hit by a Ukrainian mine in the Ukrainian waters. This confirms that even if Ukraine did resort to defensive mining in its territorial waters or even international waters, this mining did not result in attacks against civilian objects. It cannot be excluded that some mines could have broken loose from their moorings, but in the absence of precise facts, this remains nothing but a speculation.

Conclusions

The international legal rules on naval mines are not as abundant as those governing land mines, but they are not absent. The 1907 Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines survived the challenges for more than a century and remains a valid legal instrument. Furthermore, its provisions are reflective of general principles of law applicable to mining in warfare, and such principles are customary. At least to some extent, Hague VIII can be seen as clarifying customary rules. This is especially important in the light of the fact that the Convention applies, strictly speaking, to contact mines only. Nonetheless, if considered to be a reflection of customary rules, the Convention may be applied to a broader category of all naval mines. Although a renewed convention may be needed, as confirmed by doctrinal studies reflected in the San Remo and Newport Manuals, old rules are not completely obsolete. To the contrary, they are capable of acquiring new meanings and effectively regulating the use of all types of contemporary naval mines.

The armed conflict between Russia and Ukraine shows that the matter of naval mines remains an outstanding issue for legal regulation. It is especially illustrative since neither of the parties is a member to Hague VIII, and there emerges a question of what rules for naval mines would apply in an armed conflict between non-parties?

Even though a labyrinthine diplomatic history gives some ground to believe that Ukraine may have recognised the obligations under Hague VIII, yet there can be strong arguments to the contrary. Nevertheless, regardless of the recognition, Ukraine is bound by customary rules on naval mines based on that Convention.

Regardless of formal recognition, Ukraine appears to adhere (or, at least, declare adherence) to international norms on naval mines in its military instructions on International Humanitarian Law. Reports indicate that Ukraine uses naval mines in the armed conflict with the Russian Federation, and it is aware of its obligations. Available information is insufficient to establish with any certainty that Ukraine complies or fails to comply with these obligations in their

entirety. Further research might be necessary to establish the scope of Ukraine's obligations and compliance, and further legislative and diplomatic work might be necessary to assuage doubts surrounding Ukraine's duties with regards to naval mines.

There are grounds to believe that Ukraine implements international rules on mines in its operational planning and execution of military operations, relying on the recent doctrinal codifications of customs like the San Remo manual. Furthermore, a statement by the Ministry of Foreign Affairs of Ukraine demonstrates that Ukraine deems rules on naval mines to be applicable in the armed conflict. Some tentative conclusions that can be made from the experience of the armed conflict are the following.

Firstly, the law of naval mines requires rethinking. A century-old, underrecognized convention is incapable of regulating this important issue, the same as doctrinal manuals. Practical opportunities for the development of a new treaty or amendment of existing treaties should be investigated. For instance, discussions can be initiated within the mechanism of the Conventional Weapons Convention of 1980. Secondly, it would be preferable to have a new and generally agreed-on definition of a naval mine, and that definition must include influence mines and, if necessary, other types of naval weapons with effects similar to mines. The definition must also be sufficiently clear to understand what is not considered to be a naval mine. Thirdly, the modalities of execution of certain customary duties with respect to naval mines require clarification. This covers the precautions in attack, including the matter of notification about an attack with naval mines.

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Плотніков О. Міжнародне право щодо морських мін: правила, наслідки та уроки з України. – Стаття.

У статті розглядається питання міжнародно-правового регулювання використання морських мін та його впливу на Україну. Досліджується існуючий правовий режим, що ґрунтується на Гаазькій конвенції VIII про встановлення підводних мін, що автоматично вибухають від доторку, та міжнародного звичаєвого права. Для розкриття цього режиму, стаття починається з опису подій XIX ст., що призвели до створення перших міжнародно-правових норм, що обмежують певні види зброї внаслідок Гаазьких конференцій миру 1899 та 1907 років. Зокрема, стаття концентрується на Гаазькій конвенції (VIII) та її застосовності до різних типів мін. Одним з ключових питань, що розглядаються у статті, є питання про те, чи застосовується Гаазька конвенція (VIII) до мін, що вибухають від неконтактного впливу, які не згадуються в її тексті. Аби відповісти на це питання, у статті аналізуються наукові публікації, в тому числі, Довідник Сан Ремо та Ньюпортський довідник, а також практика держав, у т. ч. керівництва з міжнародного гуманітарного права, що були створені у різних державах. Цей аналіз призводить до двох висновків, а саме, що Гаазька конвенція (VIII), з високою імовірністю, набула статусу міжнародного звичаєвого права, і що викладені у ній положення можуть бути поширені як на контактні, так і на неконтактні міни. Після цього автор звертається до питання впливів міжнародного договірного та звичаєвого режиму щодо морських мін на Україну – теми, що є високо актуальною у світлі мінної війни у Чорному морі. У статті розглядається дипломатична практика України та відповідні підзаконні акти у військовій сфері, за допомогою чого встановлюється чи пов'язана Україна нормами Гаазької конвенції (VIII) та чи вона фактично дотримується відповідних міжнародних норм. У статті робиться висновок, що неможливо упевнено встановити, чи Україна прийняла на себе міжнародно-правові зобов'язання за Гаазькою конвенцією (VIII). Однак, існують достатні підстави вважати, що Україна фактично дотримується вимог Гаазької конвенції (VIII) та пов'язаних з нею норм міжнародного звичаєвого права щодо морських мін.

Ключові слова: міжнародне гуманітарне право, Гаазькі конвенції, морські міни, морська війна, дотримання Україною міжнародного права, збройний конфлікт.