

NAVAL MINES AND SELF DEFENCE

The US State Department issued a paper on 13 April 1984, "Use of Naval Mines in the Exercise of Self Defence". The text of that paper was supplied by the US Embassy, Canberra.

THE RIGHT OF INDIVIDUAL OR COLLECTIVE SELF-DEFENSE AGAINST ARMED ATTACK IS EXPLICITLY RECOGNIZED IN ARTICLE 51 OF THE U.N. CHARTER, AS WELL AS ARTICLE 3 OF THE RIO TREATY AND ARTICLE 21 OF THE OAS CHARTER.

UNDER THIS PRINCIPLE, A STATE MAY USE FORCE IN SELF-DEFENSE AGAINST ARMED ATTACK, WHETHER THAT ATTACK TAKES THE FORM OF OPEN MILITARY OPERATIONS OR COVERT ASSISTANCE TO INSURGENT FORCES, AND THE STATE WHICH IS THE VICTIM OF SUCH AN ATTACK MAY SEEK AND RECEIVE ARMED ASSISTANCE FROM FRIENDLY THIRD STATES IN CARRYING OUT ITS DEFENSE. ACTIONS TAKEN IN SELF-DEFENSE MAY TAKE THE FORM EITHER OF OVERT MILITARY MEASURES OR COVERT ACTIONS. SUCH ACTIONS MUST BE LIMITED TO THAT WHICH IS NECESSARY TO DEAL WITH THE ATTACKS AND MUST BE PROPORTIONATE TO THE ATTACKER'S ACTIONS. IN THE CASE OF A STATE WHICH IS THE OBJECT OF ATTEMPTS BY OTHER STATES TO INFILTRATE ARMS AND SUPPLIES TO INSURGENT GROUPS IN ITS TERRITORY, OR TO DIRECT AND SUPPORT SUCH GROUPS, THE RIGHT OF SELF-DEFENSE COULD INCLUDE PROPORTIONATE ACTIONS IN THE TERRITORY OF THE ATTACKER TO INTERRUPT THE FLOW OF ARMS AND TO DISRUPT THE ATTACKER'S MEANS OF CARRYING OUT SUCH INFILTRATION AND SUPPORT.

THE USE OF NAVAL MINES IS ONE LEGITIMATE MEANS OF EXERCISING THIS RIGHT OF INDIVIDUAL AND COLLECTIVE SELF-DEFENSE IN APPROPRIATE CIRCUMSTANCES. FOR EXAMPLE, THE PROPORTIONATE USE OF NAVAL MINES CAN BE A LEGITIMATE MEANS OF INTERRUPTING A FLOW OF ARMS DESTINED FOR INFILTRATION INTO THE TERRITORY OF THE VICTIM, OR TO DISRUPT THE FLOW OF MILITARY AND OTHER MATERIALS ESSENTIAL TO THE ATTACKER'S OVERALL AGGRESSIVE EFFORT.

THE USE OF SUCH MINES IS SUBJECT TO VARIOUS INTERNATIONAL RULES DESIGNED, INSOFAR AS POSSIBLE, TO MINIMIZE COLLATERAL INJURY TO THE CIVILIAN POPULATION, AND TO AVOID UNDUE RISK TO THIRD-COUNTRY VESSELS NOT BOUND TO OR FROM THE PORTS OF THE ATTACKER. (THESE RULES ARE APPLIED BOTH IN OVERT MILITARY CAMPAIGNS AND IN COVERT USES OF FORCE AGAINST ANOTHER STATE.) FOR EXAMPLE, MINES MAY NOT BE USED TO CLOSE INTERNATIONAL STRAITS THAT ARE ESSENTIAL TO TRANSIT OF THIRD-COUNTRY SHIPPING, TO CLOSE THIRD-COUNTRY PORTS, OR TO INTERRUPT THIRD-COUNTRY SHIPPING ON THE HIGH SEAS NOT BOUND FOR THE ATTACKER'S PORTS. UNANCHORED AUTOMATIC CONTACT MINES MAY NOT BE USED UNLESS THEY ARE SO CONSTRUCTED AS TO BECOME HARMLESS NO MORE THAN ONE HOUR AFTER CONTROL OVER THEM IS LOST, AND ANCHORED AUTOMATIC CONTACT MINES MUST BECOME IMMEDIATELY HARMLESS IF THEY BREAK LOOSE FROM THEIR MOORINGS. APPROPRIATE NOTICE SHOULD BE GIVEN FOR THIRD-STATE VESSELS TO ENABLE THEM TO AVOID MINED AREAS.

SUBJECT TO THESE RESTRICTIONS, NAVAL MINES CAN BE A LEGITIMATE MEANS OF SELF-DEFENSE AND HAVE LONG BEEN ACCEPTED AS SUCH BY THE INTERNATIONAL COMMUNITY.