

EGYPT - MINING OF THE SUEZ CANAL AND ITS APPROACHES

A recent mine sweeping operation conducted by Egypt and other powers at the invitation of the Egyptian Government resulted in the finding by the Royal Navy of one mine believed to have been recently laid. Prior to the mine sweeping operations there had been other explosions of mines.

According to information provided by the Embassy of the Arab Republic of Egypt in Canberra, President Mubarak stated on 10 August 1984 that:

"The Egyptian regional waters were clear of mines, and Egypt would undoubtedly stick to its right against any country proved to be responsible for planting mines, by preventing their ships from crossing the canal according to the Tenth Article of Constantinople Agreement."

The Constantinople Agreement referred to is the Convention signed at Constantinople on 29 October 1888: 3 AJIL Supp. 123(1909). This was made between "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain and in his name the Queen Regent of the Kingdom; the President of the French Republic; His Majesty the King of Italy; His Majesty the King of the Netherlands, Grand Duke of Luxemburg, etc.; His Majesty the Emperor of All the Russias; and His Majesty the Emperor of the Ottomans." The purpose of the Convention was expressed to be to establish, by a Conventional Act, a definite system destined to guarantee at all times, and for all the powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this canal has been placed by the Firman of His Imperial Majesty the Sultan, dated the 22nd February, 1866 (2 Zilkádé, 1282). "

The relevant articles of the Convention appear to be articles 1, 9 and 10. These provide:

ARTICLE 1. The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the high contracting parties agree not in any way to interfere with the free use of the canal, in time of war as in time of peace.

The canal shall never be subjected to the exercise of the right of blockade.

ARTICLE 9. The Egyptian government shall, within the limits of the powers resulting from the Firmans, and under the conditions provided for in the present treaty, take the necessary measures for insuring the execution of the said treaty.

In case, the Egyptian government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman government, which shall take the necessary measures to respond to such appeal; shall give notice thereof to the signatory powers of the Declaration of London of the 17th March, 1885; and shall, if necessary, concert with them on the subject.

The provisions of articles 4, 5, 7, and 8 shall not interfere with the measures which shall be taken in virtue of the present article.

ARTICLE 10. Similarly, the provisions of articles 4, 5, 7, and 8, shall not interfere with the measures which His Majesty the Sultan and His Majesty the Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

At the time of the nationalisation of the Suez Canal in 1956 it was stated on behalf of Egypt that:

"it remains the unaltered policy and firm purpose of the Government of Egypt to respect the terms and spirit of the Constantinople Convention of 1888 and the rights and obligations arising therefrom" (3 Whiteman 1102).

D.F.