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MANDATED TERRITORY IN TIME OF WAR

Lecture delivered by

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Mandated Territory in Time of War

Beyond the requirements of the Covenant of the League of Nations on the subject of mandates, there is very little that is authoritative as to the status of mandated territory in time of war.

In view of the above it is desirable for naval officers to know the facts about mandates, just how much may be regarded as settled, and as to the unsettled points what the arguments are for and against any particular course of action, in order that they may act intelligently should occasion arise.

There are several forms of mandates, generally known as A, B, and C, which will be taken up later. The problem of the naval officer is chiefly concerned with the C mandates, which include the Pacific islands. The degree of authority of the mandatory power varies in the three classes. It is to be understood that this paper relates in the main to the problems arising under the C mandates.

The Covenant of the League of Nations is the source of authority for the mandates. The status of the mandated territories must be derived from the Covenant. The Covenant is silent on their status in time of war.

The territories under C mandates were former German colonies that were conquered in the World War by the Allied and Associated Powers. This was a fact, prior to the treaty, and has been maintained as such by the United States. For instance, Bainbridge Colby, Secretary of State, in a letter of

21 February, 1921, to the Council of the League of Nations, on the subject of the mandates that had been assigned without the concurrence of the United States, writes:

"As one of the Principal Allied and Associated Powers, the United States has an equal concern and an inseparable interest with the other Principal Allied and Associated Powers in the overseas possessions of Germany and concededly an equal voice in their disposition". (Journal of the League of Nations, 1921, p.138)

Article 119 of the Treaty of Versailles is as follows: "Germany renounces in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions". While the United States did not ratify the treaty, her rights by conquest, as has been seen, existed prior to the treaty, and independent of it. The subsequent treaty between the United States and Germany included in its terms the above Article 119, and there were similar clauses in the treaties with Austria and with Hungary.

The provisions establishing mandates are contained in Article 22 of the Covenant of the League of Nations, which is a part of the Treaty of Versailles. The opening paragraph of this Article contains the following: "To those colonies and territories which ..... are inhabited by peoples not yet able to stand by themselves ..... , there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization ..... ".

The next paragraph states "that the tutelage of such peoples should be entrusted to advanced nations", and that it "should be exercised by them as Mandatories on behalf of the League".

Then follow the paragraphs defining "according to the stage of development of the people" what have become known as A, B, and C mandates. The last class C, as has been stated, includes the Pacific Islands. The clauses of interest in the class C mandates contain the prohibition of arms traffic, "and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory". It is stated that Class C mandates "can be best administered under the laws of the Mandatory as integral portions of its territory".

The final paragraphs require the Mandatory to render an annual report to the Council of the League, and state that the degree of authority, control or administration, if not previously agreed upon by the Members of the League, shall be explicitly defined in each case by the Council. A permanent Commission is constituted to receive and examine the annual reports and advise the Council on all matters relating to the observance of the mandates.

The above provisions are all that the treaties or the Covenant of the League have to say on the subject of the mandates. The last paragraphs place the Council of the League in

a position to settle all doubtful questions that may arise in connection with the authority, control, or administration of the mandatory. The opinions of the Council therefore carry first importance in the consideration of all such matters.

We may pause here and examine what light we have so far on the status of the mandated territories. In the first place all rights and titles to these territories were renounced in favor of the Allied and Associated Powers. These powers (except the United States), acting together in the peace treaty with their former enemies, created the League of Nations, stated that the peoples of such of the colonies and territories as were unable to stand by themselves formed a sacred trust of civilization, that their tutelage should be entrusted to advanced nations, who should exercise this tutelage as Mandatories on behalf of the League, and that the degree of authority of the Mandatory, if not agreed on by the League should be defined by the Council. The authority of the Mandatory for the B and C mandates as laid down in the Covenant was already much curtailed in such matters as fortifications, military and naval bases, and the military training of the natives, and in the requirement that an annual report should be rendered to the Council of the League. The present Mandatories were not designated by the League, but actually by the allied and associated powers, later, in most cases, concurred in by the United States.

There is much discussion of what has become of the sovereignty of these colonies and territories. It was renounced by

the central powers, as we have seen, in favor of the allied and associated powers. Some of these powers, together with the former central powers, created the League of Nations, declared that the people concerned were a trust of civilization, and that their tutelage should be exercised by mandatory powers in behalf of the League. The location of the sovereignty is thus highly confused.

A decision of Chief Justice Innes of the Supreme Court of the South African Union in the case of Rex v. Christian, 1923, is sometimes quoted in this connection.

"The legal position of South-West Africa, and its Government, under the Treaty of Versailles must now be briefly examined. By Article 119, Germany renounced in favor of the Principal Allied and Associated Powers ..... all rights and titles over her overseas possessions". (Here follows an argument as to the difference between "renounce in favor of" and "cede to", which are quite different). "They were not by Article 119 ceded to any of the Principal Powers, ... the signatories must have intended that such possessions should be dealt with as provided by Part I of the Treaty; they were placed at the disposal of the Principal Powers merely that the latter might take all necessary steps for their administration on a mandatory basis. ..... The position in which the Principal Powers, the League and the Mandatory stand to one another is most vaguely stated. The main features are these: There was no cession of the German possessions to the Principal Powers: there was merely a renunciation in their favor in order that such possessions

might be dealt with in accordance with the terms of the Covenant. And the Principal Powers became bound, as signatories to the treaty, to do everything necessary on their part to give effect to the arrangement". (British Year Book of International Law, 1925, pp.213-4).

The drift of this argument is that by the same treaty Germany renounced in favor of, but did not cede, and the Principal Powers by signing the treaty, passed over to the League and the various mandatory powers all the rights renounced by Germany. The Principal Powers thus ceased to be interested. But the United States, one of the Principal Powers, did not ratify the treaty, and yet her rights still remain. The rights of the Principal Powers in fact existed before the treaty was signed; and those of them that signed it, as also the former central powers, by the terms of the treaty merely passed over the administration of these territories to the League and the Mandatories. The argument is thus not convincing.

The Council of the League in 1920 approved the following: "Article 119 of the Treaty of Versailles transfers the sovereignty over the former German overseas possessions to the Principal Allied and Associated Powers", (Journal of the League, September, 1920, p.336). This action of the Council may be taken to settle the original disposition of the sovereignty.

The relation of the mandatory powers to the mandated territory came up before the Permanent Mandates Commission, June 10, 1926. General Smuts in the South African Parliament in July, 1925, had stated, "We therefore have the power to govern South-

West Africa actually as an integral portion of the Union". To this the Mandates Commission took exception, as follows: "The Mandates Commission had always interpreted paragraph 6 of Article 22 of the Covenant in the sense that the mandated territory should be administered as if it were an integral portion of the territory of the Mandatory. According to the interpretation, however, given by General Smuts to this passage, South-West Africa constituted a part of the Union of South Africa". (Minutes of the Permanent Mandates Commission, Ninth Session, 1926, pp.32,33).

Another phase of the matter came up in 1927. The Mandates Commission reported an agreement on the boundary between the mandated territory of South-West Africa and Angola (Portugal), the preamble to which contained the following: "And whereas under a mandate issued by the Council of the League of Nations in pursuance of Article 22 of the Treaty of Versailles, the Government of the Union of South Africa, subject to the terms of the said mandate, possess sovereignty over the Territory of South-West Africa (herein referred to as the Territory) lately under the sovereignty of Germany".

On this the Mandates Commission commented as follows: "Having regard to the terms of the Covenant, the Commission doubts whether such an expression, even when limited by the phrase 'subject to the terms of the said mandate' as in this case, can be held to define correctly the relations existing between the mandatory Power and the territory placed under its mandate".

The report of the Mandates Commission was adopted by the Council, 7 March, 1927, and directed to be forwarded for the information of the Mandatory Power. (Journal of the League of Nations, April, 1927, pp.347, 423, 426; October, 1927, p.1119).

The Prime Minister of the Union of South Africa expressed himself to the same effect in the Union Parliament, 11 March, 1927:

"I would refer the honorable member to the decision of the Supreme Court of South Africa (Appellate Division) in the case of Rex v. Christian, A.D. 1924, at page 122, wherein it was laid down that 'the majestas or sovereignty over South-West Africa resides neither in the Principal Allied and Associated Powers, nor in the League of Nations, nor in the British Empire, but in the Government of the Union of South Africa, which has full powers of administration and legislation (only limited in certain respects by the Mandate)'. The Government of the Union entirely adheres to this decision".

There is no full copy of this decision available. It was made by Judge de Villiers, at a later period than the one by Chief Justice Innes, already partially quoted, and which will be more fully quoted later in explanation of majestas ("In Roman Law, the supreme authority of the state or prince". Law Dictionary). At present, it may be noted that Chief Justice Innes, in the part of his opinion to be quoted later states: "It cannot be said that the Government of South-West Africa is possessed of majestas in the full sense of that term; in other

words, it is not a sovereign and independent state". Of course it will be noticed that Judge de Villiers refers to the Union of South Africa as the sovereign, and not the government of South-West Africa; but the Union of South Africa is also the government of South-West Africa.

The Mandates Commission commented on the views of the Prime Minister of South Africa on the same lines as before, referring to the provisions of the Covenant and the Treaty, and previous decisions of the Council. "As regards territories under C mandate, the Commission desired further information concerning the views of the Government of the Union of South Africa on the question of its legal relationship to the mandated territory of South-West Africa".

The report of the Mandates Commission was adopted by the Council 8 September, 1927. (Journal of the League of Nations, October, 1927, pp. 1119-21, 1261-2).

In the publications of the League of Nations so far received, the information desired from the Government of the Union of South Africa as above has not been furnished.

Professor Quincy Wright, in the American Journal of International Law, 1923, writes:

"The elementary rule of treaty interpretation is that the meaning intended by the parties prevails. Consequently if the makers of the Treaty of Versailles, in drafting Article XXII of the League of Nations Covenant, and if the Principal Allied and Associated Powers in assigning the ceded territory as mandates under the terms of that article expressed or implied

no intention of giving sovereignty to anyone, none was legally given". (American Journal of International Law, 1923, p.694).

"It would seem that in law the mandated territories are not under the sovereignty of the mandatory, although some critics have viewed the system as a thin disguise for annexation". (Ditto, p.695). As will be seen, this view seems to be at the bottom of most of the confusion as to the status of mandated territories.

"The present writer believes that there will be a close approach to truth in ascribing sovereignty of mandated territory to the mandatory acting with the consent of the Council of the League". (Ditto, p.698). Here is another source of confusion. If he had said "the exercise of sovereignty", the meaning would have been clearer.

Again, the following year he writes:

"Recent decisions seem to make it clear (1) that the mandated territories are not under the sovereignty of the mandatories, and (2) that the inhabitants of these territories are not nationals of the mandatories". (Ditto, 1924, p.306).

Dr. Lindley - Backward Territory, 1926, states:

"In short it would appear that, in all cases except that of Iraq, the whole of the existing sovereignty, de jure as well as de facto, is in the Mandatory State, but that that sovereignty is limited by the conditions laid down in the respective mandates". (Lindley - Backward Territory, 1926, p.266) If sovereignty is limited, where is the part not limited?

Dr. Lauterpacht's conclusion is that the League of Nations possesses the sovereignty. "The main difficulty lies in the fact that the writers and statesmen do not always take the trouble to distinguish between legal sovereignty proper, and the exercise of sovereignty. The first rests with the League, the second with the mandatory, subject to supervision on the part of the League." (Lauterpacht - Private Law and International Law, 1927, p,199.)

One of the clearest statements on the degree of sovereignty exercised by the mandatory powers is contained in the judgment of Chief Justice Innes in the Supreme Court of SOuth Africa in 1923 in the case of Rex v. Christian, already quoted in part.

This was a case of treason against the Union of South Africa in the territory of the former South-West Africa. The defense held that South Africa, as a mandatory power, did not possess sovereignty, and hence there could be no treason.

The decision of the Supreme Court on appeal was that for purposes of internal administration the mandatory power had full majestas and the appeal was denied.

The court held that, "it is well to bear in mind that majestas is exercised in two directions and has a dual aspect, internally it relates to the power of making and enforcing laws, externally to freedom from outside control." Again, "in considering the question of treason it is the internal aspect of sovereignty which must be regarded."

The court proceeded to examine the degree of sovereignty

under these two aspects, and found that it was complete internally. though more or less curtailed and limited externally. "It cannot be said that the Government of South-West Africa is possessed of majestas in the full sense of that term; in other words, it is not a sovereign and independent state. But majestas operating internally may by our law be sufficient to found a charge of high treason, in spite of the fact that its external operation is considerably curtailed . ..... In my opinion the Government of the territory of South-West Africa, notwithstanding the curtailing provisions of the treaty and the mandate, is possessed of majestas within its own territory, and a charge of high treason will therefore lie in respect of an attack made upon it by an inhabitant with hostile intent. ..... I think the question of law reserved for our opinion must be answered in favour of the Crown, and that the appeal fails." (British Year Book of International Law, 1925, pp. 211-16.)

Mr. H.A. Grimshaw, Member of the Mandates Commission, in a lecture before the Geneva Institute of International Relations, August, 1927, said:

"The important practical point to be noted is that there appears to be general agreement at the present time both in the Permanent Commission, the Council, and amongst the Mandatory Powers themselves that, wherever sovereignty over the areas under mandates may lie, it does not lie with the Mandatory Powers." (Problems of Peace, Second Series, 1928, p.154.)

This does not contradict Chief Justice Innes above, who said

that the government of the territory did not possess full majestas. in other words, it was "not a sovereign and independent state."

From the above quotations it is seen that there is much difference of opinion as to where the sovereignty over the mandated territories now lies. It would be less if the writers were always careful to distinguish between "sovereignty" and the "exercise of sovereignty", as has already been noted. This difference of opinion, apparent or real, applies to all of these territories, but for the purpose of the present discussion, the question may as well be limited to the C mandates, which, as has been stated, are the only ones that will be of much interest to naval officers in time of war.

The sovereignty, by conquest and by the treaties, evidently passed originally to the Principal Allied and Associated Powers. Has it since passed elsewhere? Did it pass to the League of Nations? The previous quotation from Professor Quincy Wright (International Law Journal 1923, p.694) is a simple and clear answer to these questions. There was no intent, expressed or implied, to give this sovereignty to anyone. The League is not a state in international law, it has no political organization, and it possesses no territory. Some of the generally recognized attributes of sovereignty are: a people organized into a political community, occupying a fixed territory, a government supreme in its own territory, in control of its own finances and national defense. the right to wage war. The League

of Nations has none of these attributes. It is in effect an association of sovereign states. It is true that the Treaty of Versailles, in Article 35 (a) of the Annex to Section IV, Part III, provides in certain contingencies after a period of fifteen years for the sovereignty of the Saar Basin to pass to the League of Nations. The present sovereignty lies with Germany. It did not pass to the Allied and Associated Powers, and is different in that respect from the former German overseas possessions. Should the sovereignty pass to the League of Nations the Saar Basin would be the territory of the League. The nationality of its inhabitants, by Article 27 of the Annex, would remain unaffected. Article 30 prohibits military service or foritfications. The League would be sovereign, the Saar Basin would be its territory, but it could not be fortified, and the inhabitants would be nationals of another sovereignty. This does not throw much light on the question of whether the sovereignty of the mandated islands passed to the League of Nations.

There is also sufficient unanimity of authoritative opinion that the sovereignty does not lie in the mandatories. They administer the C territories as if they were a part of their own territory, as a sacred trust of civilization, on behalf of the League of Nations, the Council of which determines the degree of authority to be exercised by the mandatory, where not specifically prescribed by the Covenant, which itself limits very materially the authority of the mandatory in the matter of prepa-

ration for war.

It will be interesting to consider for a moment the probable source of so much confusion of opinion as to the status of the C mandates. There were two opposing parties at the peace treaty, the out-and-out annexationists, and another party who were in favor of a method of administration short of annexation. The powers in actual military possession of the former German dependencies were inclined to regard them as just spoils of war. For instance, England and Japan in 1917, had agreed to support at the peace settlement each other's claims to the German possessions in the Pacific. (Baker's Woodrow Wilson, Vol.I, p.61.) However, President Wilson's arguments prevailed, and the mandate system was the result. There is reason to believe that the annexationists concluded that the effect would be the same, and that they would administer the territories in the same way in either case. This view is supported in a way by the attitude of the Union of South Africa, as already quoted.

If the authorities would confine themselves to one or the other of these views there would be less confusion. The tendency however, at least with regard to the C mandates, seems to be to accept the mandates, and then to act in the main as if the territories had been annexed.

The discussion so far has been mainly in regard to the location of the sovereignty of the mandated territories. Sovereignty is naturally the starting point, but that alone does not determine

the treatment to which these territories may be subjected in time of war. If the sovereign is exercising complete jurisdiction, internally and externally, none of the exercise of sovereignty having been delegated elsewhere, then there is no difficulty. The laws of war and neutrality apply as they do in all other completely sovereign territories. If the exercise of sovereignty has been delegated, in whole or in part, or if the sovereignty has been violated by one of the belligerents to the extent of occupying the territory for war purposes, such facts introduce new elements, which will have to be examined in their relation to the treatment to which the territories may be legally subjected by either belligerent.

Very few authorities apparently have taken up the status of the mandated territories in time of war. The Covenant of the League, as we have seen, is silent. The main object of the League of Nations was to prevent war. If all, or most of the nations, were members, and if the provisions of the Covenant were observed, it is possible that wars could be averted. So, even if it occurred to the framers, it was apparently not thought necessary to include in the Covenant any requirements as to the treatment of these territories in the event of war.

Professor George H. Blakeslee, writing in Foreign Affairs on "The Mandates of the Pacific", states:

"Should a Mandatory Power, however, be engaged in war, there is apparently no reason why its Mandated islands should not be attacked." No arguments are given in support of this opinion,

nor is there any other mention of the subject. He does say, however, on the same page:

"The introduction of the Mandate principle into the Pacific is an experiment which will be watched with interest. It means the administration of backward areas primarily for the benefit of the native inhabitants, the partial neutralization of such areas by the prohibition of fortifications and naval bases, and a genuine supervision of the work of the Mandatory by the League of Nations." (Foreign Affairs, September, 1922, p.114.)

This last quotation introduces an idea that will have to be considered in its place later, the partial neutralization of the mandated areas. The quotation is in effect an argument opposed to an attack on the mandated islands simply because the mandatory power may be at war, thus bringing the inhabitants of these islands into a war in which they may have no interest or concern.

In Lawrence, International Law, occurs the following:

"A puzzling question is where state sovereignty resides with respect to territories under mandate. Is it in the League of Nations, or the mandatory authority, or the territory under the mandate; or is it shared by all or any two of these? A practical turn would be given to the problem if the mandatory authority (or, where such is the fact, one of several states constituting it) were at war with another state. Must the territory under the mandate be deemed hostile or neutral? This could not be answered without determining the point as to sovereignty, and

it is suggested that the best line of solution is to consider in each particular case under which of the above classes, (A), (B), or (C), the territory falls, and the exact terms of the mandate." (Lawrence - International Law, 7th Edition, 1923, pp. 81-2.)

In the statement in this quotation as to determining the sovereignty, it is not so much a question of where the sovereignty lies, as in the degree of sovereignty exercised by the mandatory power for war purposes, or the jurisdiction for such purposes, as it is usually called. One of the clearest statements on this matter is the opinion of Chief Justice Innes previously quoted. He holds that the mandatory power exercises complete sovereignty internally, but that externally the exercise is considerably curtailed and limited. This is what Professor Blakeslee calls "partial neutralization". This matter, as has been stated, will be taken up later.

In the new edition of Oppenheim-McNair occurs the following:

"The difficult question whether a mandated area automatically falls within the region of war when its mandatory is at war must probably be answered not in general terms but with reference to the actual degree of control exercised over the mandated area in each case. It is arguable that to involve a mandated area in its mandatory's wars is so contrary to the whole intention of Article 22 of the Covenant that no belligerent who is bound by that article could insist upon treating the mandated area as within the region of war; but such a course would carry with it

an undertaking on the part of the mandatory not to make use of his mandated area for warlike purposes, which some of the mandates permit him to do - ." (Oppenheim-McNair - International Law, I, 4th Edition, 1928, p.204, foot note 4.) The continuation of the quotation relates to the clauses in some of the A and B mandates permitting the mandatory power to move its forces and war material through the territory at all times. These clauses do not occur in the C mandates.

So there are two situations that may arise involving war. In the first the contention may be over the mandated territory itself, in the second it may concern only the mandatory. The first situation seems to be anticipated by Article 22. Troops may be raised and trained for defense. However, fortifications and naval and military bases are not allowed. These two provisions seem at variance. If troops may be raised for defense, why may not fortifications be erected? The answer may be surmised. If the mandated territories are fortified, the mandatory may be tempted to use them in its own wars that do not concern such territories. The Sub-Committee of the League of Nations on Mandates reported on 15 December, 1920: "In the first place, they feel that the Mandatory should not be allowed to make use of its position in order to increase its military strength." (Assembly of the League of Nations, 1920; Minutes of the Sixth Committee, p. 349.)

Thus, the consequence of the restrictions of the Covenant on the military power of the mandatory is what Professor Blakes-

lee calls partial neutralization, though it is not so stated in words, either in Article 22, or in the mandates as issued.

In the second situation, the war concerning the mandatory only, and not the territories under mandate, if the mandates are really a trust, why should the mandated territory be involved? It is not a part of the mandatory's territory, and the inhabitants are not citizens of the mandatory state. (Decision of the Council of the League, 23 April, 1923: "The native inhabitants of a mandated territory are not invested with the nationality of the mandatory power by reason of the protection afforded to them." (Journal of the League of Nations, May, 1925, p.737.))

The answer that is apt to be given to this question is perhaps unconsciously influenced by the tendency to regard mandated territory as practically annexed, a phase of the question already referred to. The usual answer is that the mandatory power has jurisdiction and that jurisdiction determines the status of a territory in war.

Jurisdiction may be regarded as the exercise of sovereign powers. Such exercise may be complete or partial. The sovereign may exercise such powers himself, or delegate them to others, or such powers may be forcibly seized. Whoever for the time being exercises such powers, partial or complete, exercises jurisdiction, partial or complete.

The jurisdiction legally exercised by the mandatory power

is to be derived from the mandate, from the Covenant, and from the decisions of the Council arrived at conformably to the terms of the Covenant. It is evidently complete in so far as is necessary to carry out the intent of Article 22, and subject to the limitations therein imposed. For purposes of administration and legislation the powers conferred are complete. For war purposes the powers conferred are limited to training for local defense. The use of the mandated territory for offensive war, or for defensive war in other territory (not local), is not granted. As a result, it would appear that until the mandated territory is threatened or attacked, its own forces cannot be used in war. For war purposes, therefore, the jurisdiction is not complete. It is to be observed that the word "local" in connection with "local defense" does not appear in Article 22 of the Covenant in relation to B and C mandates. It does appear however in the C mandates prepared by the Council of the League under the authority conferred on the Council by Article 22, and also in the treaty between the United States and Japan relating to the Pacific mandates north of the equator.

The South African decision of Chief Justice Innes, previously quoted, is sometimes cited to indicate that the mandatory power has jurisdiction, if not sovereignty, and that consequently the war status of the mandated territory is the same as that of any other territory over which the mandatory power has jurisdiction.

But the decision, as has been seen, was based entirely on internal jurisdiction, the external jurisdiction not being con-

sidered to have any bearing on the case before the Court. But the status of a territory in war depends on external jurisdiction, which seems to make the decision inapplicable, other than in the conclusion of the Court that the jurisdiction of a mandatory power in its external relations is very much curtailed and limited.

It is thus seen that quite a new element has been injected into the conception of jurisdiction by the creation of mandates, in which the sovereignty does not lie in the mandatory power. Some of the sovereign power has been delegated to the mandatory, the exercise of which thus constitutes a partial jurisdiction. The rest of the sovereign power and corresponding jurisdiction remain with the sovereign. The exercise of this power is seen in the provisions of Article 22 of the Covenant limiting the war power of the mandatory. For the exercise of the sovereign power not delegated to the mandatory, it would appear that we must look to the source of such power, and not to the mandatory, to whom it has not been delegated. An attack on a mandated territory is thus an act of aggression against the sovereign powers delegated to the mandatory, and also against the sovereign powers not so delegated. And it would seem to be to these latter powers that we must look for the protection of the territory the adequate defense of which has been prohibited by them.

In the old days, before the advent of mandates, there was no confusion in the use of the term jurisdiction. And there is none now in territories not under mandate. The Russians and Japanese both fought in Manchuria during the Russo-Japanese War.

The sovereign was China but each of the belligerents had jurisdiction in the territory which he had seized and occupied for war purposes.

Another illustration is the Canal Zone. Here the sovereignty lies with Panama. The exercise of sovereignty, or jurisdiction, lies with the United States, and is complete, without restriction. Hence the canal may be attacked in war by an enemy of the United States. There is sometimes confusion as between Suez and Panama as to war time restrictions. The original Suez treaty was made by Great Britain, Germany, Austria, Spain, France, Italy, Holland, Russia and Turkey. Article I states: "The Suez 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." Other provisions prohibit all rights of war or war acts or the permanent fortifications of the canal. Other powers are invited to accede to the treaty. The canal is thus completely neutralized under the canal treaty.

The Panama treaty, on the other hand, was made in the first place between the United States and Great Britain, after which a separate treaty was made between the United States and Panama. The main difference between the Suez treaty and the Panama treaty with Great Britain was that other nations were not invited to accede, but "The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules", and fortifications were not prohibited. The Suez rules were otherwise

adopted by the United States "as the basis of neutralization"; but this was not a real neutralization, as only the United States, Great Britain and Panama were concerned in the treaties, the privilege of using the canal under the rules was merely extended to other powers, and the "neutralization" clause was adopted by the United States alone. In subsequent diplomatic correspondence it has been made clear that the term referred to a neutralization of rights only, and not otherwise; and Great Britain admitted that now that the United States had become the practical sovereign of the canal it did not question the title of the United States to exercise belligerent rights for the protection of the canal. (Sir Edward Gray to Lord Bryce, 14 November, 1912.) By Article XXIII of the treaty with Panama the United States is given the specific right to fortify. Also by Article III Panama gives to the United States all the rights it "would possess and exercise if it were the sovereign." (Diplomatic History of the Panama Canal, Washington, 1914, pp. 87,89, 292, 296, 302.)

Thus the United States exercises full sovereignty, otherwise has full jurisdiction, in the Canal Zone. In time of war the Canal Zone may be treated like any other territory over which the United States has full jurisdiction.

We now have further light on the expression of Professor Blakeslee previously quoted, "the partial neutralization of such areas", and the quotation from Lawrence, "Must the territory under the mandate be deemed hostile or neutral?" The limitations on

preparation for war in the C mandates bear a certain resemblance to the prohibitions of the Suez treaty, though the latter are far more complete. There is no mention of "neutralization" in either the Suez treaty or the provisions of the Covenant on mandates. But there is no question of the complete neutralization of the Suez Canal as long as the treaty remains in force. Would the same reasoning apply to the partial neutralization of the territories under C mandate? The Suez Canal treaty was signed by most of the nations likely to be interested in its provisions, as was the treaty of Versailles, and other nations have since adhered, or concurred in the C mandates; so in the respects now under consideration, an international agreement would appear to have been reached.

It is to be noticed however that in the Suez treaty acts of war were positively prohibited in the vicinity of the canal, whereas there is no such prohibition in regard to the mandated territories. All that has been done with regard to them is to limit their power to make war on others, and to a lesser extent, by prohibiting fortification and military and naval bases, even to defend themselves. While they are thus largely demilitarized, this is not the same as neutralized.

It is to be noted that there is considerable difference between "neutralization" and "neutrality". The former term is properly applied to certain states or areas that have been neutralized by international agreement. The term itself may not

be used in the agreement, as in the case of the Suez Canal, though the provisions of the agreement actually constitute neutralization. Switzerland has been a neutralized state for many years, since the Congress of Vienna in 1815. The powers signing the treaty recognized its perpetual neutrality and guaranteed the inviolability of its territory. Belgium and Luxemburg were neutralized by similar treaties, but their neutralization came to an end as a result of the treaty of Versailles.

As has been stated, there is no mention of neutralization of the territories under mandate in the Covenant of the League, and there is no guaranty by the signatory powers. The only question is how far do the provisions that forbid offensive war, or adequate preparation for war, on the part of these territories, constitute partial neutralization? That is, the treaty forbids these territories to make war, or to prepare completely for war, but does not forbid other states to make war on them, and there are no sanctions beyond those applicable in general to an aggressor nation. The status as to neutralization is thus not legally established. The above reasoning refers to war on the mandated territory itself, not on the question of whether war on the mandatory involves also war on its mandated territory, which it does not own, but over which it exercises jurisdiction for administrative purposes on behalf of the League of Nations, but only partial jurisdiction for war purposes. As has been explained, war on the mandatory involves war on such partial

jurisdiction as it exercises over the mandated territory; and also, in the case of war on the territory, war on the sovereign jurisdiction not delegated to the mandatory.

There remains the question of neutrality in a war, the state not being neutralized. A state not engaged in a war is a neutral, and as such has certain rights and obligations. A neutral state under these circumstances usually makes known the fact by a proclamation of neutrality. May such procedure be applied to mandated territory? For example, the mandatory is at war. The causes have no reference to or interest for the mandated territory. In theory the mandatory does not derive any advantage, military or otherwise, from the exercise of his mandate. Should he be subjected to any disadvantage or obligation on that account? Should the mandated territory itself be involved in a war in which it has no interest simply because its mandatory, a power of different nationality from its own, is at war, and happens also to be the administrator of its territory? Under the circumstances consider that the mandated territory, through its administrator, proclaims its neutrality in the war. If the territory is completely under the jurisdiction of the mandatory, such course would be futile. If not under his jurisdiction for war purposes, it is possible that the proclamation might be respected. It would involve not using the territory for war purposes in any way, either by the mandatory or by the inhabitants themselves. If both belligerents observe the proclamation it

will have accomplished its purpose. If either of them fails to observe it, the other belligerent is released, and the conditions are the same as if no proclamation had been issued.

Another matter is sometimes advanced as having a bearing on the Pacific mandates, that is the declaration and the supplementary treaty to the four-power treaty of the Washington Conference in regard to the insular possessions and insular dominions, in which the treaty is made to apply to the mandated islands in the Pacific, and Japan's mandated islands are included in the above possessions and dominions. Does this change in any way the status of the islands under the Covenant of the League of Nations? Obviously not. That status could not be changed except by the League of Nations itself. What it does is to apply during the life of the treaty (ten years) the following:
Article II. "If the said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation."

There is sometimes a question as to whether Article XIX of the treaty limiting naval armament, which preserves the status quo and prohibits new fortifications, applies to the mandated islands under the four-power treaty. If it does, the prohibition extends only to 1936, whereas the prohibition under

the Covenant of the League of Nations is permanent. But there is no evidence that Article XIV is applicable, for the treaty of which it is a part does not include mandated islands, and the declaration and supplementary treaty on the subject of mandates apply only to the four-power treaty. Hence the Arms Conference treaties do not change in any way the status of the Pacific mandates.

Most of the nations that would be interested in the mandated islands are members of the League of Nations, or signatories of the Arms Conference treaties, or both, or have confirmed the mandates by separate treaty. If relations between any of these nations are strained, involving war, both the Covenant of the League and the four-power treaty of the Arms Conference prescribe the method to be followed to avoid war. (Articles 10, 12, 13, 16, 17 of the Covenant, Articles I and II of the Four Power Treaty.)

Should war nevertheless ensue, in spite of the efforts of the League of Nations to prevent it (all the mandatory powers being members of the League), it will still be a problem what further action will be taken by the League to intervene.

As between the belligerents themselves, if the mandatory power is using the mandated territory in any way for war purposes, as for military or naval bases, for sending radio messages, for obtaining supplies of any sort aiding him in the prosecution of the war, the other belligerent is released from all obligation

to respect the mandated territory. The converse is true if the other belligerent makes use of, or attempts to make use of, the mandated territory for any purpose connected with the war.

If the mandatory power is not using the mandated territory for any of the above purposes, may the other belligerent legally attack it? This question remains unsettled. The arguments have been given pro and con as fully as they are at present known. The differences seem to lie in the fundamental conception of the relationship existing between the mandatory power and the mandated territory. If the latter is in reality a part of the former, or amounts to the same thing in effect, we have one set of conclusions. On the other hand if the mandatory power has only partial jurisdiction for war purposes, the conclusions will be different.

One conclusion seems to be definite: A mandated territory could not be captured and held after the war. Its disposition would depend on the League of Nations or the Allied and Associated Powers, or both. If forced to occupy such territory the belligerent other than the mandatory power could announce that he was taking over temporarily such jurisdiction as was exercised by the mandatory, with a view to a final settlement after the war.

In conclusion, the territories at present under C mandates passed to the Principal Allied and Associated Powers. These powers by the treaty or by subsequent concurrence adopted the mandate form of administration, designated the mandatories, and

left to the League of Nations the determination of the degree of sovereignty to be exercised by the mandatory powers, which was therewith made effective in the provisions laid down in the Covenant of the League. The degree of sovereignty to be exercised by the mandatory powers, or jurisdiction as it is commonly described, to be exercised as a trust on behalf of the League of Nations, was complete as to the internal administration of the mandated territories, but was incomplete for war purposes. The territories were not thereby neutralized, but were partly demilitarized. The different treaties, the Covenant of the League, and the decisions of the Council are silent on the status of the territories in time of war. In case war results, notwithstanding the procedure adopted by the Covenant of the League and the Washington Arms Conference treaties in the effort to avert war, the decision is thus left to the belligerents themselves, in arriving at which they will be guided by such arguments as shall seem to them to apply.

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