

**Comments on Howard S. Levie's Paper:
Submarine Warfare: With Emphasis on the
1936 London Protocol**

By
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Comments on the Conduct of Submarine Warfare 1920-1936

The story of the negotiations on submarine warfare during the inter-War years is an instructive one and I would like to single out some of the points which contain lessons for us now. I will try to confine myself to the subject of this session, and not to stray into the subject of the next, on the practice of the belligerents in World War Two.

First, I would like to say something about the circumstances of the negotiations from the British viewpoint. Howard Levie notes that Britain proposed the total abolition of submarines at the 1921 Washington Conference and the 1930 London Conference. The context in which Britain made those proposals is interesting, for behind them lay a considerable ambivalence in the British position. The most distinguished historian of British naval history during this period has concluded that Britain never entertained any serious expectation of abolition being accepted.

It is true that there was a widespread view that submarines were an unacceptable means of waging war. Admiral Wilson had described them, before the First World War, as "unfair, underhand, and damned un-British"; and it is known that King George V put strong pressure on the British Prime Minister Ramsay MacDonald, just before the 1930 London Conference, to secure the abolition of what he called "this terrible weapon". But the British Navy was less convinced. The Admiralty's reply to the King was that the Royal Navy would gladly give up submarines in conjunction with all the other nations of the world, but that the French would not agree to give them up.

That might appear to be simple prudence in the face of the impending negotiations. But it seems that the Royal Navy did not entirely share the view expressed by U.S. Admiral William V. Pratt in 1930, when he said that the importance of submarines would diminish and that they could be controlled by good air work; although it is true that the Navy believed that the development of Asdic had reduced the submarine threat very considerably. In 1929 the British Admiral Sir John Fisher had conducted a review of Britain's naval needs. He had in mind primarily the possibility of a future threat from Japan, then the largest naval power after the United States, and envisaged the creation of a major

naval base in Singapore to counter the local supremacy with which Japan had been left in the Far East after the 1922 Conference. Fisher concluded that Britain's war needs would include 60 large submarines for overseas patrol and fleet work. The Cabinet Fighting Services Committee recommended in January 1930 that 3 new submarines should be laid down in the following year. But the Treasury sought budget cuts, and also argued that it was inappropriate to include new submarines in the procurement programme when Britain was arguing for their abolition at the impending naval conference. The Treasury cut all the submarines from the plans; but in the light of the French attitude at the 1930 Conference, and in the face of opposition within the Government to the defense cuts, it was ultimately decided to restore the submarine. Britain built 3 submarines each year between 1930 and 1935, then 8 in 1936 and 7 in 1937. This compares with a total of 19 built during the 1920's.

It was, perhaps, just as well that Britain did not entirely hold back on submarine procurement during the years when it was seeking abolition and announcing its willingness to scrap its entire submarine fleet if others would follow suit. Although Germany, in common with Austria, Hungary, Bulgaria and Turkey, was bound by the Treaty of Versailles not to construct any submarines even for commercial purposes, it subsequently came to light that throughout the 1920's and 1930's German plans for the construction of modern submarines were being kept up to date at a secret office in the Hague.

In the autumn of 1933 Hitler made known that, in the words of Anthony Eden (then in the British Foreign Office), besides seeking "a certain eastward expansion in eastern Europe he also wanted some submarines". He secured British agreement to this in the Anglo-German Naval Agreement of 1935, on condition that Germany would not build a navy of more than 35% of the strength of the British fleet or more than 45% of the British submarine strength - an offer which Britain thought too good to refuse.

Under the agreement, however, Germany was to retain the right to build up to 100% of the British submarine tonnage "in the event of a situation arising which, in their opinion (i.e., Germany's opinion) makes it necessary for Germany to avail herself of her right." In fact, Germany had already been building submarines secretly in segments, ready for assembly, at various secret bases. (Germany was not alone in this practice: the US secretly shipped submarines in sections to Canada at a stage in the First World War when the US was neutral and Canada belligerent).

As Howard Levie has noted, the successive failures of attempts to ban the submarine were followed by attempts to constrain the manner in which they might be used. This familiar shift in policy was, I think, one of the saddest and most bewildering episodes in arms limitation. Article 4 of the 1922 Washington Treaty strikes me as a statement of real pathos. It is difficult now to imagine how hard-bitten men who had seen the horrors of World War I could agree to a

clause saying that “The signatory powers recognize the practical impossibility of using submarines as commerce destroyers without, violating . . . the requirements universally accepted by civilized nations”, and then go on to pledge themselves not to use submarines as commerce destroyers. It seems utopian to agree to forego the very role for which submarines had shown themselves best suited – it should be recalled that while not a single life was lost to submarine attack among the troops transported during World War I (excepting those on hospital ships), 20,000 civilian lives and 12 million tons of shipping were lost through attacks on merchant ships which threatened to bring Britain to its knees before the United States intervened in the War – and it is hard to see how the drafters of the Washington Treaty could have expected that act of self-denial to be adhered to in later conflicts.

What are the lessons of this episode? It is tempting to conclude that arms abolition or limitation agreements can never withstand situations where the survival of the State appears to depend upon their violation. Indeed, there is something to be said for this view. But it is, perhaps, too crude. The first lesson I derive from these events is that arms limitation agreements exercise their primary influence in time of peace, not war. This may be a commonplace, but I think that the truth is an important one.

It is evident that British thinking throughout the 1920's was powerfully influenced by the existence of the bans included in the peace treaties which followed World War I, on the construction of submarines by Germany. The paper agreement was too insubstantial to prevent Germany building submarines, but influential enough to blinker British perceptions of the kind of naval threat which the Royal Navy might have to meet. In that decade, naval thinking was, quite simply, not directed towards what turned out to be the first major threat faced by the Navy. It was not until 1934 that the British Chiefs of Staff came to consider Germany to be both a greater and a more immediate threat than Japan, and not until 1939 that Britain adopted a “two fleet” policy, preparing independent fleets in Europe and the Far East to meet the German and Japanese threats of that time.

The peculiar magic of the treaty wrought other constraints. I have noted the manner in which the Treasury, keen as ever to make economies, used British proposals for the abolition of submarines as an argument for not building them. The logic of the Treasury argument is impeccable. Fortunately, British procurement policy did not follow logical lines.

The abjuration of certain uses of the submarine made it politically impossible to train naval personnel in the inter-war years in the task of attacking merchant ships, and I suspect that little training was given in the defense of merchant ships against submarine attacks. Training for proscribed activities seemed unnecessary and improper, and as a result when World War II broke out the wartime role of submarines bore little relation to their peacetime tactical training.

Furthermore, the effects upon morale in the submarine service of fifteen years of attempts to secure its abolition and of repeated assertions of the inhumanity of the submarine should not be underestimated. Stephen Roskill, the leading historian of British naval policy in this period, has observed that submarine officers in this period conducted themselves too much in the spirit and guise of a "private navy" whose arcane mysteries were not for communication to outsiders – a problem exacerbated by the small number of submarine specialists on the Naval Staff proper and the failure to integrate their weapons into the fleet's strategy and tactics as a whole.

In all these ways, the Treaty negotiations and agreements exercised a powerful influence on the Navy's preparedness for submarine warfare. But as we know, they exercised little influence on the actual use of submarines during World War II.

Perhaps a more cautious inference is therefore legitimate: that arms negotiators should have their eyes set as much, if not more, on the peacetime implications of their work as on the effect which their agreements might have on the conduct of hostilities. Perhaps, too, we should deduce that no arms limitation agreement should be expected to survive the historical context in which it was negotiated. The world in 1935 was a rather different place from the world in 1920 or 1922; and in retrospect it was a clear mistake for the British at the time of Fisher's 1929 review and of the 1935 Anglo-German Naval Agreement to have their eyes set on the Treaty of Versailles and the Washington Treaty, rather than on the likely course of the events unfolding in Europe in the 1930's.

The world has changed much more since that time. Two developments seem to me to be of particular importance. The first is the drafting of the UN Charter. As you know, the Charter builds on the prohibition on the waging of aggressive war set out in the Kellogg-Briand Pact and forbids the unilateral threat or use of force in international relations except in self defense.

Although the point may seem rather abstract, I believe that this has a significant effect upon thinking. Since all unilateral uses of force under the Charter appear to require justification in terms of self defense, it seems to me to be that much harder to draw lines between legitimate and illegitimate weapons and between lawful and unlawful tactics. Since all force is now claimed to be force used in self defense, there is an apparent inbuilt moral bias in favour of the use of force and the purposes for which it is used. When war was permitted, it made sense to ask if the war was right or wrong. It is harder to ask if it is right to use force in self defense. This inevitably influences attempts to prohibit the use of force in general, and of particular weapons, such as submarines, and tactics.

There is a further aspect of this problem, deriving less from the Charter itself than from the significance which we attach to it. It is no secret that during the recent Gulf war, as during the 1982 Falklands conflict, Britain regarded not only

the rights of the combatants, but also the right of the Royal Navy to use force as being limited by article 51 of the U.N. Charter. The United States took a markedly different view, apparently regarding the conflict as falling for analysis within the traditional categories of belligerent and neutral rights and duties. On the latter view, for instance, belligerent rights of visit and search are significantly wider than on the view that each instance of visit and search must be justified under article 51. I suspect that this lack of accord over the nature of the conflict was one factor which made it difficult to agree to joint rules for all the western fleets operating in the Gulf. It would similarly impede attempts to agree upon rules for the operation of submarines.

The second development is that submarines are no longer a homogeneous class, if indeed they ever were. The roles of attack submarines and submarines carrying the nuclear deterrent are very different, as are the threats which each presents. The kind of action which might be justifiable by foreign naval or merchant ships in defense against the threat which one type of submarine is perceived to present is by no means necessarily the same as the kind of action which might be justified against the other. I hope that we will be able to pick up these points later on.

But let me return to the specific question of the pre-War attempts to regulate the use of submarines. The difficulty of the submarine was not unique. The submarine was designed as a weapon system which could not be used optimally without violating pre-existent rules of law. The same is true of nuclear weapons. And, I might add, the development of weapons such as the stealth bomber seems to me to erode the practicality of persisting with the established rules on self defense: I wonder how much sense it makes to adhere to the view that self defense exists only in the face of an imminent attack at the same time that we seek to develop weapons systems which minimize or eliminate all warning of an attack. But it is plain that the submarine was not itself the entire problem. What caused the difficulty was the mismatch between one of its prime natural targets - the merchant ship - and the inevitable operational constraints of the submarine itself. Submarines are good at sinking merchant ships. Often they cannot take survivors on board. Often, they cannot function effectively as weapons systems without violating the traditional laws of war.

Perhaps we should have approached that problem in the 1920's not by looking at the submarine, but by concentrating harder upon the merchant ship. Some attention was given to the problem of arming merchant ships; but States were reluctant to see them armed, and would doubtless have rejected any legal presumption that they were armed and therefore hostile. That view has some force as long as there are merchant ships which have occasion to exercise their freedom of the seas without making a contribution to the war effort of the belligerent in doing so. It makes sense while there is a clear distinction between

contraband and non-contraband goods. And it makes sense in circumstances where the distinction between combatants and non-combatants is clear.

If it had been accepted that merchant ships were legitimate targets, more attention might have been paid to the question of how they could best be defended. That would, of course, have had implications for the design and construction both of merchant ships and warships, and for the kind of tactical training in which the Navy engaged.

The question I am raising can be put simply. Does it make sense to distinguish between enemy warships and enemy merchant ships in the context of all-out conflict, such as occurred in World War II and, more recently, in the Gulf war? Are not both integral parts of the war effort? Are not both legitimate targets? And if so, are the lives of civilian crews to be given a greater degree of protection than is afforded to civilians living near the targets of aerial bombardment?

I express no opinion on the morality of this view, although I believe that to be a crucial question to which the closest consideration must be given. I seek only to draw attention to what strikes me as an inconsistency in the reasoning which seeks to distinguish between the two cases.

Finally, let me make two points. The first is that the comments I have made already are directed primarily at situations of all-out war. The position in more limited hostilities - and particularly in hostilities more limited in duration, where continuity of supplies may be relatively less important - may well be very different.

The last, and related point, is that I agree with all Howard Levie's conclusions, including the conclusion that the operation of exclusion zones may render the limitations on the actions of submarines irrelevant or inoperable. In the context of all-out conflict I agree for the reasons which I have stated. In more limited conflicts the reasoning is rather different.

Briefly, I think that with modern weapons systems the difficulties of determining hostility on the part of vessels encountered by warships (whether they be other warships or merchant ships which might use limited armaments or ramming to damage or destroy a submarine) are practically insuperable. Zones of reasonable extent in which hostile intent is presumed on the part of all ships transiting without notice or permission seem the best device we have come up with so far for meeting this problem. If such zones operate, in conjunction with a system of permits for transit of the zone on particular routes at particular times and for particular ships, as an extension of the old navicert system, then many of the problems concerning limitations on the operation of submarines are overcome, or at least rendered irrelevant.

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