State K has a leased area and has constructed a canal in State L upon terms identical with those existing between the United States and Panama. States U and V are at war. States K and L have issued declarations of neutrality. The Dominion of Vinta, which has the same relationship with State V that the British Dominions have with the United Kingdom, has issued a statement to the effect that it will abstain from participation in the war. State K has declared a "protective zone," extending for a radius of 100 miles to sea from both exits of the canal, in which all naval and military craft of any state are forbidden to hover or navigate unless intending to pass directly to or from the canal.

(a) The Vera, a merchant vessel of Vinta, is attacked when 75 miles from the canal by the Union, a cruiser of State U. The Vera asks for protection from the Komlo, a cruiser of State K, which is nearby.

(b) The Vincent, a cruiser of Vinta, remains in one of the canal ports for several days. State U protests to State K that the Vincent should be treated as a belligerent vessel.

(c) The Vigo, a cruiser of State V, while on patrol duty 110 miles from the canal, sends an airplane, the V-1, to a port in the canal zone for
needed medical supplies. The \( V-1 \) takes back not only the medical supplies but also the naval attaché of the legation of State \( V \) in State \( L \) who has important information for the \( Vigo \). State \( U \) protests to State \( K \) that the latter has failed to fulfill its neutrality obligations by permitting the airplane and the attaché to depart.

(d) States, \( L \), \( U \), and \( V \) protest to State \( K \) that the "protective zone" is illegal.

What are the legal rights in each case?

SOLUTION

(a) The commander of the \( Komlo \) should act to protect the \( Vera \), thus conforming to the domestic law of his own State. The legality of the protective zone under international law depends upon its acceptance by other powers. In this instance, therefore, the protective zone is not recognized by international law and State \( U \) may attempt to hold State \( K \) internationally responsible.

(b) It is legally possible for Vinta to be a neutral State. If the Dominion of Vinta is recognized as a neutral by the belligerents, the \( Vincent \) may remain in the canal ports indefinitely.

(c) The \( V-1 \) has no right to enter neutral jurisdiction and the authorities of State \( K \) in the Canal Zone should have used the means at their disposal to prevent the departure of \( V-1 \).

(d) States \( L \), \( U \), and \( V \) are not obliged to recognize the zone and their protests are legally valid.

NOTES

CONTIGUOUS ZONES

It is generally agreed that 3 miles is the minimum limit of territorial waters. The Interna-
tional Codification Conference at The Hague in 1930 demonstrated that there is no universal agreement upon the maximum extent of the littoral state's authority. The United States regards 3 miles as the limit of American jurisdiction, but other powers have made claims for wider belts. (See Naval War College, International Law Situations, 1928, and Harvard Draft Code, Territorial Waters, American Journal of International Law, Supplement, April 1929.) Within territorial waters, whatever may be their width, it is agreed that the State exercises complete jurisdiction, but beyond the marginal seas, international law recognizes an attenuated or more limited kind of jurisdiction for special purposes. As Gidel says:

"There is a maritime area beyond the limits of territorial waters, for an unspecified distance, in which the shore state possesses a certain jurisdiction over foreign vessels, a jurisdiction rigorously limited to specific objects."

(Le Droit International Public de la Mer, p. 361.)

Fixed or exact limits for the special contiguous areas do not exist. International law has simply recognized that in certain circumstances for limited purposes littoral states may extend their jurisdiction beyond territorial waters, and the limits of these areas vary and have varied greatly. Whether a contiguous zone is to be recognized in international law depends upon the willingness of other nations to accept the claims of a state making pretentions to such long-range jurisdiction. The law of nations recognizes the contiguous zone in principle, but fixes no bounds for it and does not specify in any comprehensive fashion as to type or kind. Each claim to a zone must be examined individually, and it is a characteristic of these areas
that their legal basis rests upon the attitude of foreign states in each case. Any new claim to jurisdiction over foreign ships beyond the customary marginal limits may meet with the objection of the foreign state or states affected. If the latter refuse to accord recognition, they may legally assert that the zone has no legal standing; if they give consent, either expressly or by failure, over a period of time, to make protest, the special area may be said to have been accepted as internationally valid.

A littoral state, therefore, has full jurisdiction for at least three miles and a limited and much modified jurisdiction for an indefinite number of miles beyond that. In the past, international law has recognized contiguous zones mainly for customs and fiscal purposes and only more recently has begun to take account of special jurisdiction for defensive or neutrality purposes. There is nothing new, therefore, about the contiguous zone in principle; what is apt to be new is the attempt of a state to apply the principle over an area or in regard to certain acts which other powers may not find acceptable. The declaration of authority in a contiguous zone is therefore not necessarily binding upon other nations initially. Through acceptance, tacit or overt, it may come to be recognized in the law of nations, or through rejection it may fail to obtain legal standing.

HISTORY OF CONTIGUOUS ZONES

It was in the realm of customs and finance that special areas of jurisdiction beyond the normal limits first came to be recognized in international law. British legislation of 1718 gave revenue au-
uthorities permission to board vessels intending to enter British ports at a distance considerably beyond 3 miles. A similar law of 1784 specified 12 miles, and an act of 1805 declared a zone of 300 miles in which British ships, or vessels of certain foreign states, coming from certain countries loaded with certain goods of a certain quantity might be inspected by government agents. By legislation in 1853 and 1876 Great Britain abandoned all such efforts to control hovering and smuggling beyond the 3-mile limit, but the United States in 1790 and 1799 passed so-called hovering laws, modelled upon earlier British statutes, which permitted American revenue authorities to board foreign ships destined for an American port up to a distance of 12 miles from shore. The American Tariff Act of 1922 gave boarding rights within 12 miles even if the foreign craft had no intention of entering an American port. The treaties between the United States and other nations in 1924 granted American agents boarding rights within 1 hour's sailing distance from shore.

It must be emphasized that these rights within 12 miles or within 1 hour's sailing distance are strictly limited and do not grant the United States the complete jurisdiction which it of course possesses within the narrower band of territorial seas. It should also be stressed that the legislation just described was at first purely British or American domestic law and by no means constituted a part of international law. Through the years, however, American and British practice under these statutes was accepted by other nations which in their turn have enacted comparable legislation. In 1936 every state in the world except Great Britain, Ja-
pan, the Netherlands, Portugal, Yugoslavia, and Colombia had special customs zones. The practice and usage of nations therefore recognizes contiguous zones for customs purposes. In 1935 the United States enacted an antismuggling act (49 U. S. Stat. at Large, pt. 1, p. 517) which gave the President authority to proclaim so-called "customs enforcement areas" up to a distance 62 miles from the coast. Inasmuch as other states have not challenged the validity of this legislation it appears to have been regarded as not being incompatible with international law. This example well illustrates the point that customs areas have been accepted in principle and that each domestic alteration and extension depends upon the sufferance of other states. (For further information on contiguous zones in general and customs areas in particular see Gidel op. cit.; Harvard Draft Code on Territorial Waters, op. cit.)

CONTIGUOUS ZONES FOR DEFENSE AND OTHER PURPOSES

Whether international law recognizes contiguous zones in principal for other than customs purposes is more problematical, but such areas for purposes of sanitation, security, and national defense have definitely acquired some standing. As early as 1804 Chief Justice John Marshall of the United States Supreme Court in the celebrated case of Church vs. Hubbard (2 Cranch 187) declared that the power of a nation "to secure itself from injury may certainly be exercised beyond the limits of its territory." In 1864 the Government of France asked that the battle between the Alabama and the Kear-
sarge be fought at a safe distance (more than 3 miles) from the French coast, and in 1915 and 1916 the United States Government requested the British to order their warships not to hover close in to the 3-mile line. Though in each of these instances the requests were made and acceded to upon the basis of comity and not of legal right, they were indicative of a trend. (For an account of the hovering by British warships during the last war see Naval War College, International Law Situations, 1928, page 31.) By an act March 4, 1917 (39 Stat. 1194; Naval War College Situations, 1918, p. 162) the United States proclaimed certain "defensive sea areas" and on August 27, 1917, a similar sort of "defensive sea area" was proclaimed for Panama. (U. S. Off. Bull. 99, p. 8.) Though the zones included under these proclamations were not very extensive, the maximum width being only 13 miles, these "defense areas" constituted an important precedent and, having been apparently unchallenged, are of significance for the development of the principle of contiguous zones for defense purposes.

The Harvard Draft Code on Rights and Duties of Neutral States, op. cit., recognizes the principle of neutral jurisdiction for protective purposes beyond 3 miles:

**Article 18.** A belligerent shall not engage in hostile operations on, under or over the high seas so near to the territory of a neutral State as to endanger life or property therein.

**Article 19.** A belligerent shall not permit its warships or military aircraft to hover off the coasts of a neutral State in such manner as to harass the commerce or industry of that State.
The Governments of the American Republics meeting at Panamá, have solemnly ratified their neutral status in the conflict which is disrupting the peace of Europe, but the present war may lead to unexpected results which may affect the fundamental interests of America and there can be no justification for the interests of the belligerents to prevail over the rights of neutrals causing disturbances and suffering to nations which by their neutrality in the conflict and their distance from the scene of events, should not be burdened with its fatal and painful consequences.

During the World War of 1914–1918 the Governments of Argentina, Brazil, Chile, Colombia, Ecuador, and Peru advanced, or supported, individual proposals providing in principle a declaration by the American Republics that the belligerent nations must refrain from committing hostile acts within a reasonable distance from their shores.

The nature of the present conflagration, in spite of its already lamentable proportions, would not justify any obstruction to inter-American communications which, engendered by important interests, call for adequate protection. This fact requires the demarcation of a zone of security including all the normal maritime routes of communication and trade between the countries of America.

To this end it is essential as a measure of necessity to adopt immediately provisions based on the above-mentioned precedents for the safeguarding of such interests, in order to avoid a repetition of the damages and sufferings sustained by the American nations and by their citizens in the war of 1914–1918.

There is no doubt that the Governments of the American Republics must foresee those dangers and as a measure of self-protection insist that the waters to a reasonable distance from their coasts shall remain free from the commission of hostile acts or from the undertaking of belligerent activities by nations engaged in a war in which the said governments are not involved.
For these reasons the Governments of the American Republics RESOLVE AND HEREBY DECLARE:

1. As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right entitled to have those waters adjacent to the American continent, which they regard as of primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerent nation, whether such hostile act be attempted or made from land, sea or air.

Such waters shall be defined as follows. All waters comprised within the limits set forth hereafter except the territorial waters of Canada and of the undisputed colonies and possessions of European countries within these limits:

Beginning at the terminus of the United States-Canada boundary in Passamaquoddy Bay, in 44°46'36" north latitude, and 66°54'11" west longitude;

Thence due east along the parallel 44°46'36" to a point 60° west of Greenwich;

Thence due south to a point in 20° north latitude;

Thence by a rhumb line to a point in 5° north latitude, 24° west longitude;

Thence due south to a point in 20° south latitude;

Thence by a rhumb line to a point in 58° south latitude, 57° west longitude;

Thence due west to a point in 80° west longitude;

Thence by a rhumb line to a point on the equator in 97° west longitude;

Thence by a rhumb line to a point in 15° north latitude, 120° west longitude;

Thence by a rhumb line to a point in 48°29'38" north latitude, 136° west longitude;

Thence due east to the Pacific terminus of the United States-Canada boundary in the Strait of Juan de Fuca.

2. The Governments of the American Republics agree that they will endeavor, through joint representation to such belligerents as may now or in the future be engaged in hostilities, to secure the compliance by them with the provisions of this Declaration, without prejudice to the exercise of
the individual rights of each State inherent in their sovereignty.

3. The Governments of the American Republics further declare that whenever they consider it necessary they will consult together to determine upon the measures which they may individually or collectively undertake in order to secure the observance of the provisions of this Declaration.

4. The American Republics, during the existence of a state of war in which they themselves are not involved, may undertake, whenever they may determine that the need therefore exists, to patrol, either individually or collectively, as may be agreed upon by common consent, and insofar as the means and resources of each may permit, the waters adjacent to their coasts within the area above defined.

(Department of State Bulletin, Vol. 1, No. 15, October 7, 1939, pp. 331–333.)

**BRITISH ADMIRALTY STATEMENT ON THE PANAMA DECLARATION**

Several unofficial reports have been received recently of the important decisions reached at the Panama conference of the republics of America. These reports are to the effect that a neutral or safety zone of variously stated depth from the coast is to be established.

It is understood that the zone is in no way intended as an extension of territorial waters, but belligerents are to be invited to accept the limitation of their operations which would be involved by the scheme. This is clearly the wisest way of proceeding, since while belligerents, and particularly the Allies, may be anxious to assist all neutral countries in keeping war from the proximity of their coasts, it must be for them to decide whether or not to accept restrictions which would limit their enjoyment of certain well-established rights.

Neutral States are entitled and bound to demand that belligerents shall abstain from hostilities in their territorial waters and it is not a hostile act if a neutral repels even by force an attack upon his neutrality. During the great war Norway, Sweden, Spain and Holland forbade belligerent
submarines to enter their territorial waters except in case of distress.

In olden times many extravagant claims were put forward by the various nations as to the limit of their territorial waters, but since those days such claims have been drastically modified and it is now generally recognized that no country can properly claim jurisdiction over large areas of ocean nor the right to control or exclude the movements of foreign ships on the high seas this applies equally to belligerent operations though a belligerent can of course restrict his operations of his own free will if he so wishes.

Since the Great War the importance of the limit of territorial waters has been brought to the notice of the public in several ways, among others by reason of the national Prohibition Act of America. Resulting from discussions with Great Britain an agreement was reached in Washington in 1924 whereby the United States was given a right to board and examine any British vessel suspected of being engaged in liquor smuggling at a distance from the coast that could be traversed by that vessel in one hour.

By the same agreement Great Britain and America declared that it was their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low-water mark, should constitute the proper limits of territorial waters. Similar agreements were subsequently entered into by America with Germany and Sweden.

Certain bays, straits and canals have from time to time been the subject of special international agreement so that when questions of jurisdiction and sovereignty arise careful reference must be made to any agreements applicable to the particular case. The width of the general belt or territorial waters is now widely accepted as being three miles. Great Britain in common with many other countries has long refused to recognize claims to a territorial belt of great width.

(New York Times, October 14, 1939.)

AMERICAN REPUBLICS' STATEMENT ON THE "GRAF VON SPEE" INCIDENT

Following the procedure of consultation provided in the Declaration of Panama, the 21 American republics have
agreed upon the following statement which the President of the Republic of Panama has transmitted in their names to the Governments of France, Great Britain, and Germany:

“The American Governments are officially informed of the naval engagement which took place on the thirteenth instant off the northeastern coast of Uruguay, between certain British naval vessels and the German vessel Graf Von Spee, which, according to reliable reports, attempted to overhaul the French merchant vessel Formose between Brazil and the port of Montevideo after having sunk other merchant vessels.

“They are also informed of the entry and scuttling of the German warship in the waters of the River Plate upon the termination of the time limit which, in accordance with the rules of international law, was granted to it by the Government of the Republic of Uruguay.

“On the other hand, the sinking or detention of German merchant vessels by British vessels in American waters is publicly known, as appears—to begin with—from the recent cases of the Dusseldorf, Ussukuma, and others.

“All these facts which affect the neutrality of American waters, compromise the aims of continental protection provided for by the Declaration of Panama of October 3, 1939, the first paragraph of which establishes:

“'As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right entitled to have those waters adjacent to the American continent, which they regard as of primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerent nation, whether such hostile act be attempted or made from land, sea, or air.'

“Therefore, in accordance with the method provided for in that instrument and with a view to avoiding the repetition of further events of the nature to which reference is made above, the American nations resolve to lodge a protest with the belligerent countries and to initiate the necessary consultation in order to strengthen the system of protection in common through the adoption of adequate rules, among them those which would prevent belligerent vessels from
supplying themselves and repairing damages in American ports, when the said vessels have committed warlike acts within the zone of security established in the Declaration of Panama."

(Department of State Bulletin, Vol. 1, No. 26, December 23, 1939, p. 723.)

**BELLIGERENTS’ REPLY TO NEUTRALITY ZONE PROTEST**

*Great Britain:*

1. His Majesty’s Government of the United Kingdom have devoted most careful consideration to the communication agreed upon unanimously by the twenty-one American republics, the text of which was telegraphed to His Majesty the King by the Acting President of Panama on Dec. 23 last.

In that communication reference was made among other matters to the recent naval action between British and German warships in the South Atlantic and to the maritime security zone described in the declaration at Panama on Oct. 3, 1939.

2. His Majesty’s Government, who themselves for so long strove to prevent war, fully appreciate the desire of the American republics to keep war away from shores of the American Continent. It was, therefore, not merely with interest but with understanding that His Majesty’s Government learned of the maritime security zone proposal.

His Majesty’s Government noted with satisfaction from the Declaration of Panama itself that an attempt would be made to base observance of its provisions upon the consent of the belligerents. This fresh expression of adherence to the idea of solving international difficulties by mutual discussion, which always has been upheld by the American Republics, confirmed His Majesty’s Government’s belief that these powers would not attempt to enforce observance of the zone by unilateral action and encouraged their hope that it would be possible to give effect, by means of negotiation, to the intentions which inspired it.

3. It was in this spirit that His Majesty’s Government were examining the proposal of the conference of Panama at the time when the communication of Dec. 23 was received. In
view of this communication, His Majesty’s Government desire to draw attention of the American Republics to the following considerations:

4. It will be apparent, in the first place, that the proposal, involving as it does abandonment by belligerents of certain legitimate belligerent rights, is not one which, on any basis of international law, can be imposed upon them by unilateral actions and that its adoption requires their specific assent.

5. Acceptance by His Majesty’s government of the suggestion that belligerents should forego their rights in the zone must clearly be dependent upon their being satisfied that adoption of the zone proposal would not provide German warships and supply ships with vast sanctuary from which they could emerge to attack Allied and neutral shipping, to which they could return to avoid being brought into action and in which acts of unneutral service might be performed by German ships, for example, by using wireless communications.

It would also be necessary to insure that German warships and supply ships would not be enabled to pass with impunity from one ocean to another through the zone, or German merchantships to take part in inter-American trade and earn foreign exchange which might be used in attempts to promote subversion and sabotage abroad and procure supplies for prolongation of the war, thus depriving the Allies of the fruits of their superiority at sea.

6. Moreover, acceptance of the zone proposals would have to be on the basis that it should not constitute a precedent for far-reaching alteration of existing laws on maritime neutrality.

7. Unless these points are adequately safeguarded, the zone proposals might only lead to accumulation of belligerent ships in the zone. This, in turn, might well bring the risk of war nearer the American States and lead to friction between, on the one hand, the Allies, pursuing their legitimate belligerent activities, and, on the other, the American republics endeavoring to make this new policy prevail.

8. The risk of such friction, which His Majesty’s Government would be the first to deplore, would be increased by the
application of sanctions. His Majesty’s Government must emphatically repudiate any suggestion that His Majesty’s ships have acted or would act in any way that would justify adoption by neutrals of punitive measures which do not spring from accepted canons of neutral rights and obligations.

If, therefore, the American States were to adopt a scheme of sanctions for enforcement of the zone proposal they would, in effect, be offering sanctuary to German warships within which His Majesty’s ships would be confronted with the invidious choice of having either to refrain from engaging their enemy or of laying themselves open to penalties in American ports and waters.

9. Up to the present it does not appear that means have been found by which disadvantages of the zone proposals could be eliminated. That this is the case was shown by operation in the zone of the warship Admiral Graf Spee and the supply ship Tacoma. With regard to specific incidents, of which mention was made in communications under reply, His Majesty’s Government must observe that legitimate activities of His Majesty’s ships can in no way imperil but must rather contribute to the security of the American Continent, protection of which was the object of the framers of the Declaration of Panama.

His Majesty’s Government cannot admit that there is any foundation for the claim that such activities have in any way exposed them to justifiable reproach, seeing that the zone proposal had not been made effective and belligerent assent had not yet been given to its operation.

10. In view of the difficulties described above, it appears to His Majesty’s Government that the only method of achieving the American object of preventing belligerent acts within the zone would be: firstly, to ensure that the German Government would send no more warships into it; secondly, there are obvious difficulties in applying the zone proposal at this stage of the war when so much German shipping already has taken refuge in American waters.

If the Allies are asked to forego the opportunity of capturing these vessels it would also seem to be necessary that
they should be laid up under Pan-American control for the duration of the war.

11. In the view of His Majesty's Government, it would only be by means such as those indicated that the wish of American governments to keep war away from their coasts could be realized in a truly effective and equitable manner. Until His Majesty's Government are able to feel assured that the scheme will operate satisfactorily they must, anxiously as they are for fulfillments of American hopes, necessarily reserve their full belligerent rights in order to fight the menace presented by German action of policy and to defend that conception of law and that way of life which they believe to be as dear to the people's governments of America as they are to the people's governments in the British Commonwealth of Nations.

(Department of State Bulletin, Vol. 11, No. 35, February 24, 1940, pp. 199-201.)

France:

The French Government has attentively examined the Panama President's communication of Dec. 23, following the unanimous accord of the twenty-one American republics. The communication referred to the naval action occurring between British and German men-of-war after the [German pocket battleship] Admiral Graf Spee attempted to reach the French freighter Formose in order to destroy it.

2. This communication refers to the desire manifested by the American republics in their declaration of Panama to see war excluded from the shores of the American continents. The French Government, which for a long time has sought to avoid war, fully appreciates the American republics' desire and has examined in the most sympathetic spirit their proposal tending to the creation of a maritime security zone.

The French Government interprets the demarches made in behalf of the American governments, including that of Dec. 23 as well as the previous communication of the Declaration of Panama, as implying in the minds of the American governments that the constitution of such a zone, involving renunciation by belligerent states of the exercise in vast territories of rights well established by international custom, could only result from an accord between all the interested states.
3. Recent facts discussed in the communication addressed to the French Government in behalf of the twenty-one American republics clearly illustrate the situation which is to be regulated. These facts proceed from the Admiral Graf Spee's attempt to attack and destroy in the maritime security zone the French cargoship Formose. It is clear that under the present circumstances of war such attempts by German vessels can have no effect upon the outcome of the war.

It is no less clear, however, that if such acts are committed or attempted, France and Great Britain are strictly entitled to carry out counter-attacks in useful time and that they cannot be asked to renounce that right. It follows that if the security zone is to materialize as desired by the American governments, it is indispensable that the latter give the French Government satisfactory assurance that the German Government will not send warships or supply ships into the zone.

The incontestable superiority France and Great Britain have over Germany in the Atlantic and the Pacific has had the result that many German cargo ships have been able to escape legitimate exercise of the prize law only by taking refuge in American ports. The institution of a security zone ought not to have the effect of liberating them, thus depriving the Allies of advantages following from their naval superiority over Germany. Hence it ought to entail effective measures taken by each American government calculated to keep German ships in ports where they have taken refuge.

5. The American governments do not appear to envisage or assume responsibility to ensure in the vast spaces constituting their neutrality zone repression of acts of hostile assistance or un-neutral service. The possibility of such acts is so great, especially in view of radio communication, that the French naval forces should not be deprived of the right of preventing them and repressing them by all means within the limits of international law.

6. It is on this basis, if the American governments obtain its acceptance by all belligerents, that realization of the aim desired by the American governments ought to be sought, in the opinion of the French Government.

7. The French Government realizes that in view of the novelty of methods and extension of the zone, divergence of
views may arise in concrete cases. These might, at least, be easily treated by diplomatic channels if one chooses to apply the method of frank discussion and mutual accord regarding principle as well as application. On the contrary, regrettable friction might be provoked if unilateral procedure were adopted, abandoning the habitual practice of nations.

These frictions would be particularly grave if they arose from punitive measures against ships not guilty of any infraction of international law. Refusal in such cases to grant refuge or refueling possibilities to a warship would constitute an unpleasant contrast with the line of conduct that the Uruguayan Government adopted with regard to the Admiral Graf Spee.

8. The French Government hopes by this exposition of views to have contributed to realization of the aims inspiring the twenty-one American republics. At the same time it expects that the latter will admit that as long as no accord is reached on the above basis the French Government retains full exercise of a belligerent's rights based upon international law, which must enable it to safeguard the principles of right and the conception of life which it shares with the American governments and peoples.

(Ibid. pp. 201–203.)

**Germany:**

(1) The German Government welcomes the intention of the American Republics, expressed in the Declaration of Panama, to maintain strict neutrality during the present conflict, and fully understands that they wish, as far as possible, to take precautionary action against the effects of the present war on their countries and peoples.

(2) The German Government believes itself to be in agreement with the American Governments that the regulations contained in the Declaration of Panama would mean a change in existing international law and infers from the telegram of October 4th of last year that it is desired to settle this question in harmony with the belligerents. The German Government does not take the stand that the hitherto recognized rules of international law were bound to be regarded as a rigid and forever immutable order. It is rather of the opinion that these rules are capable of and
require adaptation to progressive development and newly arising conditions. In this spirit, it is also ready to take up the consideration of the proposal of the neutral American Governments. However, it must point out that for the German naval vessels which have been in the proposed security zone so far, only the rules of law now in effect could, of course, be effective. The German naval vessels have held most strictly to these rules of law during their operations. Therefore in so far as the protest submitted by the American Governments is directed against the action of German warships, it cannot be recognized by the German Government as well grounded. It has already expressed to the Government of Uruguay its divergent interpretation of the law also in the special case mentioned in the telegram of the Acting President of the Republic of Panama of December 24th. Besides, the German Government cannot recognize the right of the Governments of the American Republics to decide unilaterally upon measures in a manner deviating from the rules hitherto in effect, such as are to be taken under consideration by the American Governments against the ships of the belligerent countries which have committed acts of war within the waters of the projected security zone, according to the telegram of December 24th of last year.

(3) Upon considering the questions connected with the plan for the establishment of the security zone, there arises first of all one important point which causes the situation of Germany and the other belligerent powers to appear disparate with respect to this: that is, while Germany has never pursued territorial aims on the American continent, Great Britain and France have, however, during the course of the last few centuries, established important possessions and bases on this continent and the islands offshore, the practical importance of which also with respect to the questions under consideration here does not require any further explanation. By these exceptions to the Monroe Doctrine in favor of Great Britain and France the effect of the security zone desired by the neutral American Governments is fundamentally and decisively impaired to start with. The inequality in the situation of Germany and her adversaries that is produced hereby might perhaps be eliminated to
a certain extent if Great Britain and France would pledge themselves, under the guaranty of the American States, not to make the possessions and islands mentioned the starting points or bases for military operations; even if that should come about the fact would still remain that one belligerent state, Canada, not only directly adjoins the zone mentioned in the west and the east, but that portions of Canadian territory are actually surrounded by the zone.

(4) Despite the circumstances set forth above, the German Government, on its side, would be entirely ready to enter into a further exchange of ideas with the Governments of the American Republics regarding the putting into effect of the Declaration of Panama. However, the German Government must assume from the reply of the British and French Governments, recently published by press and radio, that those two governments are not willing to take up seriously the idea of the security zone. The mere fact of the setting up of demands according to which entrance into the zone mentioned is not to be permitted to German warships, while the warships of the adversaries are officially to retain the right to enter the zone without restriction, shows such a lack of respect for the most elementary ideas of international law and imputes to the governments of the American states such a flagrant violation of neutrality that the German Government can see therein only the desire of the British and French Governments to do away with the basic idea of the security zone, first of all.

(5) Although the German Government is entirely ready to enter into the proposals and suggestions of the American states in this field, the German Government can feel certain of a success of the continuation of the plan of the security zone only when the British and French position that has been made known is fundamentally revised.

(Ibid. pp. 203–205.)

INTERNATIONAL LAW AND THE DECLARATION OF PANAMA

As previously indicated, there is evidence in the practice of nations to support the assertion that, in principle, neutral states may exercise their au-
thority over foreign ships beyond the territorial limits with the aim of protecting their shores from the effects of belligerent operations. How far may neutrals exercise their authority over the vessels of warring powers? No definite answer can be given to this query. It must be remembered that the neutrals' jurisdiction is one strictly limited to the ends of national defense; the neutral may not exercise general authority over belligerent warships outside of the area of territorial waters, but has a right to adopt only those measures which clearly are required to safeguard neutral life and property. Upon the high seas, by immemorial right, the belligerent may visit and search neutral craft, may capture enemy merchant ships, and may attack enemy warships. The neutral claims as to defense may thus come into direct conflict with a belligerent's rights upon the high seas. Neutral defense jurisdiction must thus be narrowly circumscribed and must not exceed the genuine requirements of domestic safety. The principle of contiguous zones for neutrals is probably crystallizing, but there is certainly no law concerning the extent of such areas. Belligerents have the legal right to challenge each specific assertion of jurisdiction, and a neutrality zone cannot be said to have been accepted into international law as long as other nations withhold their assent. The ability of the neutral to patrol the area involved and to exercise the jurisdiction claimed is also an important factor. Belligerents naturally would be reluctant to refrain from hostility in wide areas in which a neutral could not possibly maintain any reasonable degree of authority. Some fairly close correspondence
must exist between the claims to authority and the ability to exercise authority.

The Declaration of Panama is not a part of international law. Neutral jurisdiction for defense purposes over a part of the ocean extending 300 miles from the coast is without precedent and has not been generally accepted. There is agreement probably upon the principle but not upon its application to such a tremendously wide belt. Great Britain, France, and Germany were acting within their legal rights when they refused to recognize the binding nature of the Panama Declaration. Only the status of that Declaration in international law is being discussed here; its feasibility politically or otherwise is an entirely separate problem.

APPLICATION TO THE PRESENT CASE

Though the protective zone proclaimed by State K is of doubtful standing in international law, the commander of the cruiser Komlo must obey the orders of his home government and should use force if necessary to protect the Vera from attack by the Union. State U, however, may protest to State K and may claim that it has been deprived of one of its legitimate belligerent rights. State K cannot make international law unilaterally. Its protective zone is not necessarily binding upon belligerents, and if these latter refuse to accord recognition to the zone, State K may well be held liable for an infringement upon the rights of the states at war. In this instance, however, a zone extending 100 miles from the exits of a canal, that is, a zone proclaimed within a fairly limited area and having a close relation to the canal’s defense requirements,
seems to have a much better chance of obtaining universal acceptance than the far more extensive claims put forth in the Declaration of Panama. The fact that State K could doubtless patrol such an area in reasonably effective fashion makes the project a rather feasible one. Therefore in time State K might persuade other nations to accord it recognition, but, at the moment, the belligerent powers are under no obligation to look upon it as law.

NEUTRALITY OF THE BRITISH DOMINIONS

Prior to the outbreak of war in September 1939, there was considerable discussion concerning the legal authority of the British Dominions to be neutral in any war in which Great Britain was a belligerent. Common ties with the Crown, common British citizenship, and special military and naval rights of Great Britain within Dominion territories were among the factors which seemed to preclude the possibility that some parts of the British Commonwealth of Nations could remain aloof from a conflict in which other portions of the Commonwealth were engaged. The Union of South Africa, however, made provision in its Constitution in 1926 that the Union never could be at war without the consent of its own Parliament, and Article 28 of the Irish Free State Constitution, which went into effect on December 29, 1937, likewise provided that the Free State could not be involved in war save by its own will. (Constitution of Ireland, Article 28, section 3, subsection 1. H. M. Stationery Office, Constitutions of All Countries, Vol. I: The British Empire, p. 206.) By the Treaty of
April 25, 1938, between Great Britain and the Irish Free State (Eire, Treaty Series, 1938, No. 1) the former surrendered to the latter all authority over the naval bases of Berehaven, Cobh, and Lough Swilly, ports which the British had kept within their jurisdiction in the Articles of Agreement of December 6, 1921, between the Free State and Great Britain. As a result of these constitutional provisions and treaty arrangements, the legal obstacles in the way of adoption of neutrality by the Free State and the Union of South Africa had been largely removed, though the obligations of the latter in regard to the naval base at Simonstown still continued to complicate matters for the Union Government. The other Dominions, Canada, Australia, and New Zealand, lacked legislation on the subject of neutrality. It was thought in some quarters that a Dominion might adopt a position of "passive" neutrality, a status with implications of much ambiguity for international law.

In the main, however, the neutrality of the Dominions depends upon the facts in any given situation. If a Dominion declares that it is neutral and if the belligerents recognize it as neutral, then it is neutral. It is a question of actuality not theory, as was demonstrated by the events of September 1939. On September 2, the Dail Eireann approved Prime Minister de Valera's policy of neutrality, and on September 3, the German Minister to Dublin, Dr. Eduard Hempel, informed the President that the German Government would respect Eire's neutrality provided that neutrality was adhered to. Ireland's neutrality thus became a reality on the day on which hostilities were declared. (The London Times, September 4, 1939.)
A subject which arose for consideration shortly after the commencement of the war was merchant shipping registration. Since Ireland had declared neutrality and since this status had been immediately accepted by all belligerents, it appeared at first that ships having Irish registry would probably welcome the right to use the Irish flag since this should be respected as a neutral flag in accord with the provisions of international law. Indeed it would have been thought that Ireland would have been confronted with the problem of British ships seeking registry, a matter which would ordinarily present no problem, but which might draw sharp German protest if permitted after the outbreak of war.

On the contrary, one ship was transferred from Irish to British registry while at sea and was sunk by a German submarine when allegedly flying the Irish flag, possibly innocently, since it might not have been informed of the change of registry. In addition, other ships were transferred and in some instances the transfers appear to have been made at the insistence of the crews, who were reported to have expressed a preference for sailing under the British flag.

"In the dispatch of the 15th it was reported that three British and Irish Steam Packet Company mail ships had transferred from Irish to British registry, while on the 19th a similar transfer of three L.M.S. ships was announced and the probable transfer of other ships of the same line, then registered in Dublin, was predicted. In the case of the L.M.S. ships, the reason given for transfer was the refusal of the crews to sail, since otherwise they feared that, if sunk, their dependents would not be compensated for injury or loss of life."

(The London Times, September 19, 1939.)
By the end of September, according to a report made to Dail Eireann by Mr. MacEntee, Minister of Commerce and Industry, 18 ships had been withdrawn from Irish and transferred to British registry. These ships, all owned by two companies, incorporated in Great Britain, accounted for a large portion of the shipping tonnage which had been under Irish registry under the Merchant Shipping Act, 1894. (Eire, Dail Eireann, Parliamentary Debates, *Official Report*, September 27, 1939, col. 220–221.)

The Parliament of the Union of South Africa on September 5, 1939, rejected the proposal of Prime Minister Hertzog that relations with the belligerent countries remain unchanged by a vote of 80 to 66, and the Union entered the war on the side of Great Britain under the leadership of a new cabinet headed by General Smuts. (New York Times, September 6, 1939.) The Prime Ministers of Australia and New Zealand announced on September 3 that their Dominions were at war with Germany (New York Times, September 4, 1939), and also at Ottawa on September 3, 1939, it was announced by the Government that Canada was at war with Germany according to the principle that “when Britain is at war, Canada is at war.” (New York Times, September 4, 1939.) However, this governmental statement was not followed by any formal declaration of war, Canada was not included as a belligerent in President Roosevelt’s first neutrality proclamation on September 5, and it was not until September 10, 1939, that Canada by Parliamentary action formally became a belligerent. What the exact status of Canada was from September 3 to September 10 is something for lawyers
to investigate, but the fact remains that Canada, along with three other Dominions, was not neutral at any time, and that the Irish Free State succeeded in its attempt to follow the line of neutrality.

In Situation II, therefore, if the Dominion of Vinta is the Irish Free State, the Vincent is a cruiser of a neutral power and may remain indefinitely in the canal port. If Vinta, however, happens to be Canada, New Zealand, Australia, or the Union of South Africa, the Vincent should be treated as a belligerent warship and should be subject to all the neutrality regulations as to length of stay, repairs, supplies, etc.

**AIRPLANES IN NEUTRAL TERRITORY**

It can now be said to be international law that belligerent war planes have no right to fly into or through neutral jurisdiction. The subjacent neutral state has complete jurisdiction over the air, and the practice of neutrals in the last war and the provisions of codes and conventions since that time established the fact that the military planes of belligerents are barred from flight in neutral air. Naval airplanes attached to a warship are considered to be a part of the ship as long as they are in contact with the vessel. Such planes, therefore, if actually on board a warship, may enter a neutral harbor, but they may not leave the war vessel to fly over the neutral's domain. (See Spaight, "Air Power and War Rights" pp. 421–433.) From 1914 to 1918 The Netherlands, Switzerland, and other neutrals barred belligerent military planes from their superadjacent air and enforced their prohibitions by gunfire. (See Naval War College, International Law Situations, 1936, pp.
The United States proclaimed in 1915 that:

Aircraft of a belligerent power, public or private, are forbidden to descend or arise with the jurisdiction of the United States at the Canal Zone or to pass through the air spaces above the lands and waters within said jurisdiction. (Naval War College, International Law Situations, 1915, p. 14; see also Proclamation of May 23, 1917. Naval War College, International Law Situations, 1917, p. 245.)

The Commission of Jurists report of 1923 stipulates that:

Article 40: Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral state.

Article 41: Aircraft on board vessels of war, including aircraft carriers, shall be regarded as part of such vessels.

Article 42: A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

Harvard Draft Code, Rights and Duties of Neutral States in Naval and Aerial War, op. cit. declares:

Article 94: A neutral State shall require a belligerent military aircraft which is in its territory at the time of outbreak of war, to depart therefrom within twelve hours. The neutral State shall use the means at its disposal to intern belligerent military aircraft found in its territory after the expiration of this period.

Article 95: A neutral State shall use the means at its disposal:

(a) To prevent belligerent military aircraft from entering its territory; and

(b) to compel them to alight if they have entered, and
(c) To intern them after they have alighted, whether the landing be voluntary or forced, together with persons and property on board.

The Havana Convention on Maritime Neutrality, 1928, (Hudson International Legislation Vol. IV, p. 2401), states in Article 14 that:

The airships of belligerents shall not fly above the territory or the territorial waters of neutrals if it is not in conformity with the regulations of the latter.

From the Danish rules on neutrality, Article 8, of 1938 (Scandinavian Rules of Neutrality, American Journal of International Law, October 1938, Official Documents, p. 145) comes again a similar statement declaratory of international law on this subject:

Military aircraft of the belligerents, with the exception of aerial ambulances and aerial transports on board warships, shall not be admitted into Danish territory, except when regulations to the contrary apply or may become applicable so far as certain spaces are concerned conformable to the general principles of international law.

In his proclamation prescribing regulations concerning neutrality in the Canal Zone, September 5, 1939, (See the appendix of this volume for the complete proclamation) the President stated that:

No belligerent aircraft shall be navigated into, within, or through the air spaces above the territory or waters of the Canal Zone.

**NEUTRAL TERRITORY AS A BASE**

One of the rules fundamental to the entire legal edifice of neutrality is that which specifies that neutral territory shall not be used as a base of military or naval operations, and neutral powers are required to use the means at their disposal to prevent
such employment on the behalf of one of the belligerents. Expeditions are not to set forth from or sail from neutral jurisdiction, and neutrals must endeavor to prevent a belligerent fleet from using neutral territory as a base of supplies or as a source of military information and guidance. For these reasons belligerents may not erect or operate radio stations on neutral soil and must not attempt to obtain information by means of special signals or messengers coming from neutral jurisdiction. A neutral state is not bound to prevent the transmission of information by means of cable, coastal communication or telecommunication other than radio. The distinction between radio, messengers and mechanical signal devices on the one hand, and cables, mail and telecommunications on the other, is based upon the fact that the former can be so easily employed for the relaying of important information to a belligerent fleet or force outside of neutral jurisdiction, and also to the fact that such methods of communication are almost impossible for the other belligerent to intercept or prevent, whereas cables and the postal services can scarcely be used to direct belligerent operations from neutral territory and also may be cut or intercepted by the opposing belligerent.

Neutrals are now under the obligation to prevent the fitting out and arming of planes and the departure of such military airplanes from their territory, a rule comparable to that evolved in regard to surface vessels at the time of the Alabama Claims Arbitration in the last century. "An expedition may consist of a single airplane if manned and equipped in a manner which would enable it to
take part in hostilities." (From the comment on Article 46 of the Committee of Jurists Report, 1923, op. cit.) The Government of the United States was confronted with the problem of preventing the departure of airplanes equipped and ready for military operations after the repeal of the so-called Arms Embargo on November 4, 1939. (Statement, in Appendix, on flights of military aircraft, December 7, 1939.) An airplane in a condition to make a hostile attack could not legally be permitted to leave American jurisdiction, and certainly the United States could not permit the departure of a military or naval belligerent plane carrying a messenger to a cruiser of a belligerent power. The rules in regard to the flight of belligerent military planes over neutral territory and those forbidding the use of neutral territory as a base would be violated if such an event were permitted to occur.

NEUTRALITY LAW RESTRICTIONS ON USE OF AMERICAN PORTS: NOVEMBER 4, 1939

Sec. 10 (a)—Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port or from the jurisdiction of the United States, fuel, men, arms, ammunition, implements of war, supplies, dispatches, or information to any warship, tender, or supply ship of a State named in a proclamation issued under the authority of Section 1 (a), but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by Section 1, Title V, Chapter 30, of the act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 Edition, Title 18, Sec. 31), and if, in the President’s judgment, such action will serve to maintain peace between the United States and foreign States, or to
protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port or from the jurisdiction of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any fuel, supplies, dispatches, information, or any part of the cargo, to any warship, tender, or supply ship of a State named in a proclamation issued under the authority of Section 1 (a).

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States has previously departed from a port or from the jurisdiction of the United States during such war and delivered men, fuel, supplies, dispatches, information or any part of its cargo to a warship, tender or supply ship of a State named in a proclamation issued under the authority of Section 1 (a) he may prohibit the departure of such vessel during the duration of the war.

(c) Whenever the President shall have issued a proclamation under Section 1 (a) he may, while such proclamation is in effect, require the owner, master or person in command of any vessel, foreign or domestic, before departing from the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that no alien seaman who arrived on such vessel shall remain in the United States for a longer period than that permitted under the regulations, as amended from time to time, issued pursuant to Section 33 of the Immigration Act of Feb. 5, 1917 (U. S. C., Title 8, Sec. 168). Notwithstanding the provisions of said section, he may issue regulations with respect to the landing of such seamen as he deems necessary to insure their departure either on such vessel or another vessel at the expense of such owner, master or person in command.

(Public resolution No. 54, 76th Cong., 2d sess.)
PRESIDENT'S PROCLAMATION SEPTEMBER 5, 1939

Among the acts forbidden by proclamation of the President on September 5, 1939, were the following:

11. Knowingly beginning or setting on foot or providing or preparing a means for or furnishing the money for, or taking part in, any military or naval expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territory or dominion of a belligerent.

12. Dispatching from the United States, or any place subject to the jurisdiction thereof, any vessel, domestic or foreign, which is about to carry to a warship, tender or supply ship of a belligerent any fuel, arms, ammunition, men, supplies, dispatches or information shipped or received on board within the jurisdiction of the United States.

(4 Federal Register, p. 3809.)

CODES AND CONVENTIONS ON USE OF NEUTRAL TERRITORY

Article 3 of Hague Convention V of 1907 and article 5 of Hague Convention XIII, 1907, contain provisions which forbid belligerents to erect wireless telegraphy stations on neutral soil or to employ neutral ports and waters as a base of naval operations. Article 3 of the Havana Convention on Maritime Neutrality, op. cit., contains a like prohibition. Article 46 of the previously cited Jurists Report deals with the subject of departure of belligerent airplanes, and in section 2 of the same article provides that the neutral is bound “to prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent power.” Relevant articles from the
Harvard Draft Code on Neutrality, op. cit., are as follows:

Article 9: (1) a neutral State shall use the means at its disposal to prevent:

(a) the erection or operation of any radio station within its jurisdiction by a belligerent; and

(b) the transmission from its jurisdiction of military information destined for a belligerent by radio or by mechanical means of communication.

(2) A neutral State is not bound to use the means at its disposal to prevent the transmission from its territory of military information destined for a belligerent by means of postal communication, telecommunications other than radio, messengers or other means of communication not provided for in section (1) of this article.

Article 99: A neutral state shall use the means at its disposal:

(a) To prevent the fitting out or arming within its territory of an aircraft which is intended to engage in hostile operations against a belligerent;

(b) To prevent, subject to Article 94, the flight from its territory of any aircraft which is intended to engage in hostile operations against a belligerent or which is intended to perform services of a military character for a belligerent.

UNITED STATES TREATY WITH PANAMA

On July 26, 1939, a general treaty between the United States and Panama, signed at Washington on March 2, 1936, was proclaimed by the President and went into effect on that day. This treaty provided for a revision in certain particulars of the United States-Panama Treaty of 1903 (Treaty Series No. 431) and also contained provisions supplementary to the earlier agreement. A summary of the articles of the treaty, as printed in the Department of State Bulletin (Vol. I, No. 5, July 29, 1939, pp. 83–85) is as follows:
Article I establishes a basis of friendship and cooperation between Panama and the United States.

Article II. The compliance of Panama with the provisions of article II of the convention of November 18, 1903, in turning over to the United States additional lands and waters beyond those specifically mentioned there is recognized. The requirement of further lands and waters is considered improbable by both Governments, but they nevertheless recognize their joint obligation to insure the continuous operation of the Canal and agree to reach the necessary understanding should additional lands and waters be in fact necessary for this purpose.

Article III contains various provisions restricting the commercial activities of the United States in the Canal Zone in order that Panama may take advantage of the commercial opportunities inherent in its geographical situation. In this article are listed the classes of persons who may reside in the Canal Zone and the persons who are entitled to make purchases in the Canal Zone commissaries.

Article IV provides for the free entry of merchandise entering Panama destined for agencies of the United States Government and provides that no taxes shall be imposed upon persons in the service of the United States entering Panama or upon residents of Panama entering the Canal Zone.

Article V provides that port facilities other than those owned by the Panama Railroad Co. in the ports of Panamá and Colón may be operated only by Panama; exempts from Panamanian taxation vessels using the Canal which do not touch at ports under Panamanian jurisdiction; and provides for the establishment of Panamanian customhouses within the Canal Zone. The United States undertakes to adopt such administrative regulations as may be necessary to assist Panama in controlling immigration into that country.

Article VI revises article VII of the convention of November 18, 1903, in that the United States renounces the right to acquire, by the exercise of the right of eminent domain, lands or properties in or near the cities of Panamá and Colón, although retaining the right to purchase necessary lands or properties. The third paragraph of the said
article VII, granting the United States the right to intervene in the cities of Panamá and Colón and the territory adjacent thereto for the purpose of maintaining order, is abrogated.

Article VII provides that beginning with the 1934 annuity payment the annual amounts of these payments shall be four hundred thirty thousand balboas (B/430,000.00) or the equivalent thereof. In a supplementary exchange of notes the balboa is defined as having a gold content equal to that of the present United States dollar.

Article VIII provides for a corridor under Panamanian jurisdiction to connect the city of Colón with other territory of Panama.

Article IX establishes a similar corridor under American jurisdiction to connect the Madden Dam area with the Canal Zone proper.

Article X provides that in case of emergency both Governments will take such measures of prevention and defense as they may consider necessary for the protection of their common interests.

Article XI reserves to each country all rights enjoyed by virtue of treaties now in force between the two countries, and preserves all obligations therein established, with the exception of those rights and obligations specifically revised by the present treaty. The juridical status of the Canal Zone, as defined in article III of the 1903 convention, thereby remains unaltered.

Article XII provides that the treaty shall take effect immediately on the exchange of ratifications in Washington.

There were 16 exchanges of notes signed on March 2, 1936, and 1 signed on February 1, 1939, interpreting and defining certain provisions of the General Treaty. These notes will be printed in Treaty Series No. 945.

On the occasion of the exchange of ratifications of the General Treaty Between the United States and Panama, signed March 2, 1936, the Secretary of State made the following remarks:

"The present occasion marks an important milestone in our relations with the Republic of Panama. It will be recalled that the convention of 1903 was drafted at a time when the
Panama Canal was only a dream and that consequently it was impossible to foresee and to provide for the many varied phases of our relations with Panama which would spring from the continuous operation of the Canal and its attendant works and establishments.

“Dissatisfaction on the part of the Republic of Panama with certain of the provisions of the convention of 1903 arose early, and various attempts were made, many of them successful, to solve certain specific problems either informally or by agreement. The present General Treaty is the result of many painstaking hours of negotiation and preparation. It is a document which we hope responds to the genuine and legitimate aspirations of the Government and people of Panama yet which not only continues existing safeguards and provisions for the operation, maintenance, sanitation, and protection of the Canal from our point of view, but by associating the Republic of Panama in this work, accords even greater security and efficiency to the Canal, either in its present form or should it become necessary, in an expanded form.”

(Treaty Series, No. 945.)

APPLICATION TO THE PRESENT CASE

Inasmuch as State K has the same rights in the Canal Zone leased from State L as those possessed by the United States in the Panama Canal Zone, State K, though not possessing title to the zone, has all the authority which it would have if it were the true sovereign. State K as a neutral is therefore responsible for what transpires in the zone and must uphold the obligations of a neutral under international law. The Vigo, a belligerent cruiser, had no right to send the airplane V-1, a military craft, into neutral territory and the V-1 should have been interned by State K authorities. Not only was the initial entry of the V-1 a violation of the neutrality of State K, but also its departure was an illegal act which State K should have used
the means at its disposal to prevent. The V–1, equipped for war and capable of engaging in hostile action, constituted an expedition. Transportation of the naval attaché of the legation of the belligerent State V who had important information to transmit to the commander of the Vigo, rendered the action all the more culpable. The territory of State K was being used as a base both by the departure of a plane ready for war use and by the sending of a special messenger conveying military communications to the commander of a belligerent warship at sea.

It is true that the attaché enjoys full diplomatic immunities and it is also true that State K is under no obligation to prevent couriers from carrying messages to a foreign government, but this last statement refers to regular diplomatic correspondence and not to directing operations of ships at sea. The attaché is not permitted under international law to engage in activities which involve violations of the neutrality of the state to which he is accredited. Had the Vigo come into a canal port, the attaché could legally have gone on board if he had so desired, but flying out to a warship of his nation is an entirely different matter and one that very definitely turns the territory of the zone into a belligerent base of operations. If the Vigo had been in distress, it could have come into port itself or else it could have radioed to those on shore for help and needed supplies. The authorities of neutral State K are bound to succor and relieve the distress, if genuine, of vessels at sea and might have sent out one of their own planes or ships to render aid. Officials of State K, however, must in no way implement the fighting capacity of the Vigo
and must draw the line very carefully between aid to a ship in distress and permitting a belligerent warship to increase its fighting ability. In this situation, therefore, State K must not countenance the flight of a belligerent naval airplane into its jurisdiction and is under an obligation to prevent such craft and important messages from being transmitted to a belligerent fleet off its coast. The tactics of the Vigo, the V-1 and the naval attaché are gravely suspect. The needed medical supplies could have been obtained in ways which did not involve the neutrality rights and obligations of State K in the Canal Zone.

RÉSUMÉ

The principle of contiguous zones appears to have been established in international law, but no consensus exists as to what the widths of such areas, especially those for defense purposes, ought to be. The Declaration of Panama which asserted jurisdiction for purposes of neutrality patrol over parts of the sea to a distance 300 miles from the shore is not binding in international law, though the proclamation may well have been justified for political or other reasons. In regard to the status of the British Dominions, an era of academic questionings came to an end when the Irish Free State declared its neutrality on September 3, 1939, and was regarded as a neutral by all the belligerents. It has been proved that the British Dominions can be neutral because one of them actually has been neutral. Concerning other aspects of neutrality the introduction of the airplane has resulted in the making of some new rules and in the adaptation of
some of the former ones to a new instrument of warfare. Belligerent military airplanes, unlike belligerent surface craft, are barred entirely from neutral jurisdiction. The actual practice of states in the last war led to the creation of this new prohibition. When it come to the departure of planes from neutral jurisdiction, the rules in regard to "fitting out and arming" have been taken over and applied to aircraft. Neutrals must use the means at their disposal to keep planes from leaving which are in a condition to take part in a military operation.

SOLUTION

(a) The commander of the Komlo should act to protect the Vera, thus conforming to the domestic law of his own state. The legality of the protective zone under international law depends upon its acceptance by other powers. In this instance, therefore, the protective zone is not recognized by international law and State U may attempt to hold State K internationally responsible.

(b) It is legally possible for Vinta to be a neutral state. If the Dominion of Vinta is recognized as a neutral by the belligerents, the Vincent may remain in the canal ports indefinitely.

(c) The V–1 has no right to enter neutral jurisdiction and the authorities of State K in the Canal Zone should have used the means at their disposal to prevent the departure of V–1.

(d) States L, U, and V are not obliged to recognize the zone and their protests are legally valid.