International Law Studies—Volume 32

International Law Situations

With Solutions and Notes

U.S. Naval War College (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S.
Government, the U.S. Department of the Navy or the Naval War College.
SITUATION II

ARTIFICIAL STRUCTURES AND MARITIME JURISDICTION

States X and Y are at war. Other states are neutral.

(a) A merchant vessel of state N, the *Nagle*, is anchored in the lee of and 1,000 feet from a lighthouse of state R. The lighthouse is 14 miles off the coast of state R and is built upon a reef always submerged. A cruiser of state X, the *Xanthos*, approaches and is about to visit and search the *Nagle*, when vessels of war of states N and R appear and the *Nagle* calls upon both for protection.

(b) State R has also established a landing station for aircraft built upon a submerged reef 20 miles from any land. Would the same solution as for (a) hold in case the *Nagle* was anchored off this station.

(c) State R has also established a floating landing station for aircraft anchored to a submerged reef 20 miles from any land. Would the same solution as for (a) hold in case the *Nagle* was tied to the floating landing station?

(d) State R has filled in a strip of shallow water out from its coast a distance of 5 miles, thus making a narrow causeway to a landing station for aircraft. The station is built upon a reef which is always submerged. Would the same solution as for (a) hold in case the *Nagle* was sailing within 1 mile of the causeway but $4\frac{1}{2}$ miles from the mainland of R?

(e) How should an aircraft of Y be treated by: (1) a cruiser of X, and (2) by a military aircraft of X when not more than 3 miles from the landing station mentioned in (b), the floating landing station mentioned in (c) and the causeway mentioned in (d)?
(a) The visit and search of the neutral merchant vessel is lawful, as there is no territorial sea around the lighthouse built upon a submerged reef 14 miles from any coast. No protection other than to assure the lawful exercise of the visit and search should be given to the Nagle.

(b) The visit and search of the neutral merchant vessel is lawful, as there is no territorial sea around the landing station for aircraft built upon a submerged reef 20 miles from any land. No protection other than to assure the lawful exercise of the visit and search should be given by neutral vessels of war to the Nagle.

(c) The visit and search of the Nagle tied to an anchored landing station for aircraft of R is lawful, as there is no territorial sea around the landing station for aircraft 20 miles from any land. No protection other than to assure the lawful exercise of the visit and search should be given to the Nagle.

(d) The visit and search of the neutral merchant vessel within 1 mile of a causeway built out from shore to a landing station for aircraft is not lawful, as the merchant vessel is within territorial sea and the vessel of war of R should afford protection against any violation of the neutrality of state R, and should protect the merchant vessel against any violation of its rights within these waters.

(e) All enemy aircraft are liable to capture if non-military, or to attack if military, when not on or over the landing station mentioned in (b) or (c). Enemy aircraft may not be lawfully captured or attacked when within 3 miles of the causeway or landing station mentioned in (d) but should be interned.

NOTES

High seas.—The rights of states and of persons in regard to the high seas has been a matter of differing opinion and practice from early times. This is under-
standable when the nature of the sea and its varied uses are considered. When the sea is regarded as the barrier against invasion, the attitude would be different from that at a time when the sea is regarded as a highway between countries. There would also be the differences due to interest in the seas as a source of food supply and as the way of commerce. The theories and contentions of Grotius in Mare Liberum, 1608, made clear the demand for freedom of the sea which Selden in Mare Clausum, 1635, tried to meet by somewhat exaggerated, though ably presented, pretentions of England for a closed sea.

A survey of the material relating to the control and use of the sea shows the influence of national interests upon the views sustained which range from that of exclusive proprietary rights to the denial of any control. The claim to exclusive property in the sea was gradually abandoned, but other interests remained which could not be abandoned. It had been found that many pretensions and paper claims embodied in proclamations and decrees were not worth maintaining. There was, therefore, growing willingness to accept Bynkershoek's proposal of 1702 that the authority of the state over the sea should extend to the effective range of the cannon, which at that time was estimated to be 3 miles. The 3-mile limit became more and more conventionalized but was not universally accepted even at the Hague Codification Conference in 1930.

*Use of the sea.*—While there are differing theories as to the nature of maritime rights, there is a general agreement that innocent use of the sea is common to all. What the limits of innocent use are is debatable and has aroused controversies. Some of the controversies have been settled by the course of events without any formal abandonment of positions assumed by any party; others have resulted in treaty agreements and understandings. In general, it may be said that use, as
in navigation, is accepted as a right of all; and abuses, as by pollution, is denied as generally injurious.

In concrete instances, such as the laying of submarine cables, there is an admitted innocent use which may be supported against negligent use such as careless dragging of an anchor upon the sea bottom in a submarine cable area, or there may be an admitted abuse such as in the case of piracy, or a conventional abuse as in slave trade.

The problem of use and abuse in time of war differs materially from the same problem in time of peace, and belligerent use differs from neutral use. The limits of territorial jurisdiction are not changed by virtue of use or abuse of the sea in time of peace or in time of war though the rights of use may be modified.

Aids to navigation.—While islands as products of natural forces are generally appropriated, artificial structures have a status differing somewhat according to circumstances.

The free use of the sea by all under ordinary conditions is now admitted. Ships may sail at will on the high sea. That they may sail safely, it is essential that dangerous places be marked. That the voyage may be convenient and profitable, it is essential that routes be buoyed and lighted and that depths be known. For such purposes national agencies have been permitted to assume a degree of jurisdiction outside their maritime limits. States have built and maintained lighthouses on reefs well beyond their maritime jurisdiction and have marked channels in the high seas. They serve the general good but may specially benefit the state which has undertaken their construction and maintenance. It may be true that the locating in the high seas of some aid to navigation may modify the path of commerce and benefit one state at the cost of another, but if it is for the general good, the action of the state benefited will often be approved as setting an example to other states.
**General considerations.**—All states have a common right to use the high seas for navigation and to a share in its resources. Long and unopposed appropriation of the products of the sea by a state in a certain area may lead other states to acquiesce in the claim of exclusive use, or treaties between states may voluntarily regulate the use of the high sea or its resources so far as the states parties to the treaties are concerned.

Extension of authority beyond the territorial sea has been tolerated in certain cases as a measure of protection in such instances as in the establishing of defense areas adjacent to fortifications or for strategic reasons. The placing of lighthouses, buoys, etc., which serve all alike has become customary and the state which has constructed and placed the lighthouse or buoy has admittedly the jurisdiction over it, but it is now generally maintained that the jurisdiction of the state does not extend beyond the lighthouse itself into the surrounding high sea. Perhaps it might be affirmed that artificial structures built in the high seas do not extend the area of the territorial sea of the state placing the structure, while structures built out from the land may extend the coast line and correspondingly extend the territorial sea measured from that line. Areas appearing above the surface of the sea from natural causes have been regarded as belonging to the nearby state as in the case of the *Anna*, 1805 (5 C. Robinson 373), when the British Court held that mud islands formed at the mouth of the Mississippi River were American territory and that jurisdiction extended 3 miles from these islands. Islands discovered in the high seas at a distance from land belong to the discoverer if they are subsequently occupied or if steps are taken for effective occupation.

**Suggestions as to jurisdiction.**—Various suggestions have been made from time to time as to jurisdiction over "airports in the high seas", "floating islands", "marine bases for aircraft", "sea bases for aircraft", "sea-
dromes”, or over such contrivances under some other title. In 1925 the American Institute of International Law put forth what is called a project in regard to jurisdiction, of which articles 13 and 14 were as follows:

**ARTICLE 13.**

The American Republics whose coasts are washed by the waters of the sea and which possess a navy or mercantile marine, shall have the right to occupy an extent of the high sea contiguous to their respective territorial sea necessary for the establishment of the following more or less permanent installations, provided they are in the general interest:

1. Bases for nonmilitary airships and dirigibles;
2. Wireless telegraph stations;
3. Stations for submarine cables;
4. Lighthouses;
5. Stations for scientific exploration;
6. Refuge stations for the shipwrecked.

**ARTICLE 14**

It is expressly forbidden to fortify the installations referred to in the preceding article and to use them, even indirectly, as bases of supply for warships, military airplanes and dirigibles, or for submarines. (20 American Journal International Law, Special Supplement, 1926, p. 325.)

This subject had been mentioned in Professor Schücking’s report to the League of Nations Committee on Territorial Waters. He said:

As regards islands which are artificially created by anchorage to the bed of the sea, and which have no solid connection with the bed of the sea, but which are employed for the establishment of a firm foundation, e.g., for enterprises designed to facilitate aerial navigation, we must be guided by the view that such an enterprise cannot claim that a special zone of territorial sea is constituted round such artificial island. Such fictitious islands must be assimilated to vessels voyaging on the high seas.

It has been discussed whether a zone of territorial sea should be established around artificial islands which are actually connected with the bottom, such as islands designed to carry lighthouses; there is no uniform legal doctrine as regards such islands. This is evident from the fact that two such eminent authorities
as the English judge, Lord Russell, and the jurist, M. L. Oppen­
heim, have expressed divergent views.

Lord Russell states: “If a lighthouse is built upon a rock or
upon piles driven into the sea, it becomes, as far as that ligh­
thouse is concerned, part of the territory of the nation which has
erected it.” Oppenheim says: “Il n’y pas de droits de souvr­
eraineté sur une zone de la mer que baigne les phares.” (Ibid.,
p. 87.)

After discussion no mention of this subject appeared
in the amended draft.

The circulation of aircraft in relation to the high sea
was a particular subject of discussion at the Neuvième
Congrès International de Législation Aérienne in 1930.
After several days of discussion, the following text was
adopted:

AÉROPORTS DE HAUTE MER

ARTICLE PREMIER.—Aucun aéroport de haute mer, créé pour les
besoins de la navigation aérienne, qu’il soit la propriété d’un
particulier ou d’un État, ne peut être établi en haute mer autre­
ment que sous l’autorité et la responsabilité d’un État, que ce
dernier ait un littoral maritime ou non.

ART. 2.—L’État sous l’autorité duquel se trouve place cet aéro­
port de haute mer en règle les conditions d’accès et d’exploitation.

Si l’aéroport de haute mer est ouvert à l’usage public, aucune
discrimination ne peut être faite, au point de vue de l’accès, sur
la base de la nationalité.

ART. 3.—Les États doivent porter réciproquement à leur con­
naissance leurs projets de création d’aéroports de haute mer.

Au cas où dans un délai à déterminer quelque État s’y opposait
le différend serait porté devant la Société des Nations et tranché
par elle.

Si pour une raison quelconque la Société des Nations ne pou­
vait être utilement saisie—ou si elle ne parvenait pas à régler le
différend—les parties seront tenues de recourir à la procédure de
l’arbitrage obligatoire. (9 Congrès International de Législation
Aérienne, p. 233.)

While certain propositions in regard to the treatment
of seadromes in time of war had been before the Con­
gress, no conclusions were agreed to as a result of the
deliberations.

3628—34—5
Resolutions, Budapest, 1930.—At the ninth meeting of the Comité Juridique International de l’Aviation at Budapest, October 1, 1930, certain resolutions were also, after discussion, adopted. These were as follows:

Art. 1. — Aucun aéroport flottant, créé pour les besoins de la navigation aérienne, qu’il soit la propriété d’un particu­lier ou d’un État, ne peut être établi en haute mer, autre­ment que sous l’autorité et la responsabilité d’un État, que ce dernier ait un littoral maritime ou non.

Art. 2. — L’État sous l’autorité duquel se trouve placé cet aéroport flottant en règle les conditions d’accès et d’exploitation.

Si l’aéroport flottant est ouvert à l’usage public, aucune discrimination ne peut être faite, au point de vue de l’accès, sur la base de la nationalité.

Art. 3. — Les États doivent porter réciproquement à leur con­naissance leurs projets de création d’aéroports flottants.

Au cas où dans un délai à déterminer quelque État s’y oppo­serait, le différend serait porté devant la Société des Nations et tranché par elle.

Si, pour une raison quelconque, la Société des Nations ne pouvait être utilement saisie—ou si elle ne parvenait pas à régler le différend—les parties seront tenues de recourir à la procédure de l’arbitrage obligatoire.

Art. 4. — En temps de guerre, un aéroport de haute mer ne peut être l’objet ni de capture, ni de déroutement. Toutefois, quand l’aéroport relève de l’un des belligérants, l’autre peut le faire passer sous son autorité.

En aucun cas il n’est permis à l’un des belligérants de convertir un aéroport neutre en base aéro-navale. Un tel usage engagerait, conformément aux principes généraux de la neutralité, la responsabilité de l’État qui a autorité sur l’aéroport de haute mer.

Discussion in the Institut de Droit International, 1913.—In 1913 the Institut de Droit International dis­cussed the subject of maritime jurisdiction. Sir Thomas Barclay and Prof. L. Oppenheim made the report, but they were not in entire accord. In the report of Profes­sor Oppenheim was also pointed out some questions relating to jurisdiction over lighthouses:

Ayant discuté les trois articles de l’avant-projet de Sir T. Barclay sur lesquels je ne suis point d’accord avec lui, je voudrais maintenant attirer l’attention sur un point important qui n’est
pas mentionné dans le rapport de Sir T. Barclay, c'est-à-dire, la question des phares bâtis sur des rochers ou des bancs de mer. C'est une règle fixe que la zone de la mer territoriale doit être mesurée à partir de la laisse de basse marée de la côte, que cette côte soit celle de la terre ferme ou celle d'une île située dans la zone de la mer territoriale de la terre ferme, ou la côte d'une île située dans la haute mer et occupée par un État. La question se pose donc de savoir si un phare bâti sur un rocher ou sur un banc de mer submergé, dans la haute mer ou dans la mer territoriale, doit être considéré comme si c'était une île, de sorte que l'État possesseur du phare aurait un droit de souveraineté sur une mer territoriale à l'entour de ce phare.

Ce point est de haute importance, car beaucoup de phares sont bâties sur des rochers ou sur des piles enfouies dans le lit de la mer en dehors de la mer territoriale. Par exemple, le fameux phare d'Eddystone dans la Manche est à quatorze milles de la côte du Devonshire. (26 Annuaire de l'Institut de Droit International p. 408.)

Professor Oppenheim then refers to the position of Sir Charles Russell in the Bering Sea Arbitration which is not entirely clear and says—

Si cette assertion de Sir Charles Russell était juste, il serait nécessaire d'accorder à tout État qui a bâti un tel phare un droit de souveraineté sur la mer territoriale entourant ce phare; mais, à mon sens, cette assertion n'est pas justifiée. Je crois que l'assimilation des phares aux îles est de nature à induire en erreur, et qu'il vaudrait mieux traiter les phares sur le même pied que les bateaux-phares amarrés. De même qu'un État n'a pas le pouvoir de reclamer souveraineté sur une mer territoriale à l'entour d'un bateau-phare amarré, de même il n'a pas le pouvoir de reclamer cette souveraineté sur une zone maritime à l'entour d'un phare dans la mer.

Pour cette raison, je proposerais d'ajouter à l'article 1er de l'avant-projet l'alinéa 3 qui suit: "Il n'y a pas de droit de souveraineté sur une zone de la mer qui baigne les phares." (Ibid., p. 410.)

Acquisition of island jurisdiction.—Where an island is discovered and occupied, it is commonly considered as being under the jurisdiction of the state of the flag of the discoverer and occupier if it is outside the maritime limits of any other state. Even if an island should be thrown up by volcanic or other force, the state of the
discoverer would have valid claim to jurisdiction. This practice of appropriation by the discoverer and occupier has long been recognized.

*What is an island?*—It is generally admitted that territorial sea may be claimed around an island to be measured as from the mainland.

In the general observations submitted by governments which became the bases of discussion for the League of Nations Conference for the Codification of International Law, there were replies to the question, what is meant by an island in considering its relation to territorial waters?

The reply of Great Britain, with which other states of the British Commonwealth of Nations generally agreed, was as follows:

An island is a piece of territory surrounded by water and in normal circumstances permanently above high water. It does not include a piece of territory not capable of effective occupation and use.

His Majesty's Government consider that there is no ground for claiming that a belt of territorial waters exists round rocks and banks not constituting islands as defined above, and would view with favour an international agreement to this effect in order that there may be no doubt as to the status of the waters round such rocks and banks and round artificial structures raised upon them. (Conference for the Codification of Int. Law. League of Nations. C. 74 M. 39, 1929, V., vol. II, p. 53.)

This British view would not merely deny territorial waters for artificial structures but also certain rocks and banks.

The German reply gave a different point of view:

The German Government considers that the geographical notion of an "island", which is taken as the basis in the preparation of maritime charts, covers all the characteristics of a *natural island*; any land which emerges from the sea and is dry at the level adopted in the chart must therefore be regarded as a natural island. *The claim occasionally advanced that anchored buoys, and in particular lightships, should be regarded as "islands" would seem to be indefensible. It should therefore be laid down that artificial islands (artificial constructions)*
should be assimilated to natural islands, provided that they rest on the sea bottom and have human inhabitants. (Ibid., p. 52.)

The German reply accordingly assimilates inhabited artificial constructions resting on the sea bottom to natural islands.

Denmark introduces certain conditions as to the extension of jurisdiction by artificial structures.

In determining the extent of the territorial waters around the coast, account is also taken of islands and reefs, as has been stated in paragraph IV(a). The same rule applies to artificial islands, lighthouses, etc., when determining the breadth of the territorial belt towards the open sea.

Where the territorial waters of two states are in contact, neither of them would be entitled to modify the existing delimitation to the prejudice of the other, by the construction of artificial islands, lighthouses, etc. (Ibid., p. 52.)

The Netherlands proposed the following:

an island should be understood to be any natural or artificial elevation of the sea bottom above the surface of the sea at low tide. (Ibid., p. 53.)

This point of view does not distinguish between natural and artificial elevations provided that they are exposed at low tide.

Rumania went further in its inclusive categories, saying,

by an island should be understood a land surface, rocky or otherwise, covered or not covered by water, connected or unconnected with the continent, over which it is impossible to navigate. (Ibid., p. 53.)

The Committee in preparing the Basis for Discussion, in view of the replies, made no reference as to artificial structures but formulated the following:

In order that an island may have its own territorial waters, it is necessary that it should be permanently above the level of high tide.

In order that an island lying within the territorial waters of another island or of the mainland may be taken into account in determining the belt of such territorial waters, it is sufficient for the island to be above water at low tide. (Ibid., p. 54.)
The result of the consideration by the Second Commission of the Conference of 1930 was:

Every island has its own territorial sea. An island is an area of land, surrounded by water, which is permanently above high-water mark.

**Observations.**

The definition of the term "island" does not exclude artificial islands, provided these are true portions of the territory and not merely floating works, anchored buoys, etc. The case of an artificial island erected near to the line of demarcation between the territorial waters of two countries is reserved. (League of Nations Documents, C. 230. M. 117. 1930. V., p. 13.)

This statement does not make clear what would be the attitude upon artificial islands in general, but merely makes somewhat indefinite references to islands, "true portions of the territory."

*Lighthouses, 1893.*—In the Argument of the United States in the Fur Seal Arbitration, 1893, a question was incidentally raised in regard to lighthouses.

If a light-house were erected by a nation in waters outside of the three-mile line, for the benefit of its own commerce and that of the world, if some pursuit for gain on the adjacent high sea should be discovered which would obscure the light or endanger the light-house or the lives of its inmates, would that Government be defenseless? (9 Fur Seal Arbitration, Argument of the United States, p. 176.)

Sir Charles Russell referring to this and to questions raised as he discussed the point in his oral argument said:

Well, it is a very difficult case to realize what is really meant by that. For instance, I cannot quite realize how a pursuit of fishing on the high sea could, except by some stretch of imagination of which I am not capable, require the obscurity of the light of a light-house, or endanger the light-house or the lives of its inmates; but I wish to point out that I think my friend has, for the moment forgotten, that if a light-house is built upon a rock or upon piles driven into the bed of the sea, it becomes, as far as that light-house is concerned, part of the territory of the nation which has erected it, and, as part of the territory of the nation which has erected it, it has, incident to it, all the rights that belong to the protection of territory—no more and no less.

Mr. Phelps. If it should be five miles out,
Sir CHARLES RUSSELL. Certainly, undoubtedly. The most important light houses in the world are outside the 3 mile limit.

Lord HANNEN. The great Eddystone Light-house, 14 miles off the land, is built on the bed of a rock.

Sir CHARLES RUSSELL. That point has never been doubted; and if it were there is ample authority to support it. The right to acquire by the construction of a light-house on a rock in mid-ocean a territorial right in respect of the space so occupied is undoubtedly; and therefore I answer my friend’s case by saying that ordinary territorial law would apply to it—there is no reason why any different territorial law should apply.

Then my friend proceeds:

"Lord Chief Justice Cockburn answers this inquiry in the case of Queen v. Keyn above cited (p. 198) when he declares that such encroachments upon the high sea would form a part of the defence of a country, and ‘come within the principle that a nation may do what is necessary for the protection of its own territory.’"

The passage which I conceive my friend was referring to, is a passage which, like that from Azuni, requires, in order to understand it, the whole passage to be read. I am reading now from page 58 of a printed report of the Judgment of Lord Chief Justice Cockburn.

"It does not appear to me that the argument for the prosecution is advanced by reference to encroachments on the sea, in the way of harbours, piers, break-waters, light houses, and the like, even when projected into the open sea, or of forts erected in it, as is the case in the Solent. Where the sea, or the bed on which it rests, can be physically occupied permanently, it may be made subject to occupation in the same manner as unoccupied territory. In point of fact, such encroachments are generally made for the benefit of the navigation; and are therefore readily acquiesced in. Or they are for the purposes of defence, and come within the principle that a nation may do what is necessary for the protection of its own territory. Whether if an encroachment on the sea were such as to obstruct the navigation, to the ships of other nations, it would not amount to a just cause of complaint, as inconsistent with international rights, might, if the case arose, be deserving of serious consideration. That such encroachments are occasionally made seems to me to fall very far short of establishing such an exclusive property in the littoral sea as that, in the absence of legislation, it can be treated, to all intents and purposes, as part of the realm."

In other words, it defends and justifies the taking possession of a certain part of the sea, and permanently occupying it for the purpose of erecting light-houses. (13 Fur Seal Arbitration, Proceedings, p. 337.)
Discussion of 1893 attitude.—The statement of Sir Charles Russell has been held by some to support a claim to the extension of maritime jurisdiction by the erection of a lighthouse or other structure in the high sea. Sir Charles was probably not giving special attention to this aspect of the question, but his remarks strictly construed, and any statement in regard to fundamental rights must be strictly construed, would scarcely warrant such construction. What Sir Charles said was that,

it (the lighthouse) becomes, as far as that lighthouse is concerned, part of the territory of the nation which has erected it, and, as part of the territory of the nation which has erected it, it has, incident to it, all the rights that belongs to the protection of territory—no more and no less.

and later he says, in reply to a question—

I answer my friend’s case by saying that ordinary territorial law would apply to it—there is no reason why any different territorial law should apply.

This seems merely to affirm that the lighthouse itself is under the territorial jurisdiction and not to imply an extension of maritime jurisdiction.

Westlake’s opinion.—Referring to this statement of Sir Charles Russell in his discussion of territorial waters, Professor Westlake said:

The area of the land on which a strip of littoral sea is dependent is of no consequence in principle. Guns might be planted on a small island, and we presume that even in practice an island, without reference to its actual means of control over the neighbouring water, carries the sovereignty over the same width of the latter all round it as a piece of mainland belonging to the same state would carry. But an extreme case may be put of something which can scarcely be called an island. “If,” Sir Charles Russell said when arguing in the Behring sea arbitration, “a lighthouse is built upon a rock or upon piles driven into the bed of the sea, it becomes as far as that lighthouse is concerned part of the territory of the nation which has erected it, and, as part of the territory of the nation which has erected it, it has incident to it all the rights that belong to the protection of territory—no more and no less.” It is doubtful from the context whether the eminent
advocate meant by this to claim more for the lighthouse in its territorial character than immunity from violation and injury, of course together with the exclusive authority and jurisdiction of its state. It would be difficult to admit that a mere rock and building, incapable of being so armed as really to control the neighbouring sea, could be made the source of a presumed occupation of it converting a large tract into territorial water. It might however be fair to claim an exclusive right of fishing so near the spot that, without the light, fishing there would have been too dangerous to be practicable. (International Law, part I, p. 186.)

Professor Westlake's doubt as to the exclusive right to fishing may be arguable, but if the lighthouse has been constructed for the purpose of security to local fisheries, claims might be made accordingly, even though such a contention of exclusive right does not seem to have been made in case of lightships.

Later opinion.—While in the last edition of Oppenheim's International Law as revised by himself there is no comment upon Sir Charles Russell's statement, there is in the Roxburgh (third edition) edition of 1920 a reference to this statement, which is somewhat abbreviated in the edition of 1928 prepared by Dr. McNair, as follows:

Since the most important lighthouses are built outside the maritime belt of the littoral States, the question arises whether a State can claim a maritime belt around its lighthouses in the open sea—a question which Sir Charles Russell, the British Attorney-General, in the Behring Sea Seal Fisheries case answered in the affirmative. It is tempting to compare such lighthouses with islands, and argue in favour of a maritime belt around them; but I believe that such an identification is misleading, and that lighthouses must be treated on the same lines as anchored lightships. Just as a State may not claim sovereignty over a maritime belt around an anchored lightship, so it may not make such a claim in the case of a lighthouse in the open sea. (1 International Law, 4th ed., p. 403.)

Dr. M. F. Lindley, writing in 1925 and also referring to Sir Charles Russell's remarks, says:

Now, considering first the question of sovereignty over the surrounding water, although we agree with Westlake's conclusion on
this point, it appears to us to rest upon other grounds. A control sufficient to render the occupation effective could, apparently, be exercised by placing an armed vessel upon the part of the sea in question, so that the fact that it may be impossible to fortify the lighthouse would not, by itself, be sufficient to render the surrounding water inappropriable. The principle underlying this case appears to be the same as that governing the one we have just considered, and if a rock or barren island is not occupied for its own sake, but merely to facilitate fishing and navigation in the surrounding ocean, it does not appear that this would be a sufficient justification for extending the sovereignty of the occupying State over those waters.

Secondly, in regard to the exclusive right of fishing, it is difficult to see how the mere building of the lighthouse, which is not sufficient to render the surrounding waters territorial, takes this case out of the operation of the principle underlying the decision in the Behring Sea Arbitration. Although the fishing off the Seven Stones at the mouth of the Bristol Channel would be dangerous without the lightship which Trinity House maintains there, no exclusive right in the fishing is claimed for British fishermen, and there appears to be no difference in principle between establishing a lightship upon a barren rock or upon piles driven into the sea bottom. The case appears to be one to be dealt with by Convention between the States interested, for which precedents are not lacking. (Acquisition and Government of Backward Territory in International Law, p. 67.)

Beacons.—Beacons, buoys, and markers of various types are now common in parts of the sea where there are dangerous reefs and shoals, but it would not be claimed that these extend the coastline of the state which may place these aids to navigation. Indeed they are not infrequently changed in location, usually with notice to mariners without any contention that the jurisdiction of the state making the change has relocated its territorial waters jurisdiction. Changing currents, shoals, etc., may make necessary the marking of new channels, but not the extension or modification of the jurisdiction of the state undertaking the marking of the channel. It may be affirmed that the placing of beacons, buoys, etc., on submerged locations does not extend the marginal sea jurisdiction but the jurisdiction over the marker itself
is in the state or states locating and caring for its upkeep.

*Case of United States v. Henning, 1925.*—The question as to whether a beacon built upon a submerged reef would be the point from which the coastline should be measured was raised in the case of the *United States v. Henning et al.* in 1925. In the decision it was said:

The point where the *Frances E.* was anchored was 12 miles west of Sea Horse Reef beacon on the west coast of Florida and about 16 miles west of the coast of Florida. This beacon is a structure built on a shallow reef, and projecting up out of the water, but the reef is wholly under water.

It is contended by the government that this beacon is under the terms of section 3 of article 2 of this treaty (43 Stat. 176), to be treated as the point from which the one hour's time is to be estimated. I cannot concede this construction. The language is: "The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions, than can be traversed in one hour."

The beacon certainly is a possession of the United States, but these words properly mean and must be held to mean as if written the distance "from the coast of the United States, the coast of its territories, or the coast of its possessions", for it was from the coast the time was to be measured. The words undoubtedly had reference to such territories or possessions as Porto Rico and Hawaii. It certainly had no reference to marine structures erected in the water and having no coast. (*United States v. Henning et al.*, (1925), 7 F. (2d) 488, 489.)

While the decision in this case was reversed in 1926 (13 F. (2d) 74), probably the same position as to the nature of jurisdiction as dependent upon the beacon would be maintained.

*Status of air.*—The Convention of 1919 relating to air navigation which is generally accepted provides in its first article that "the contracting states recognize that every state has complete and exclusive sovereignty in the air space above its territory and territorial waters”, and this principle has been embodied in other conventions.

There has been some debate as to whether the air over the high seas is *res nullius* or *res communis*. The air
above the sea would follow the nature of the sea. Practice and opinion seems to favor the *res communis* doctrine under which the high sea may be used for navigation, but may not be exclusively appropriated. There arises the question as to whether states having no seacoast may have a right to use the sea equally with states having seacoast. A considerable degree of equality has been admitted in the right of states having no seacoast to issue documents and certificates to vessels under their flags "in conformity with the general practice observed in the principal maritime states." (Art. 273. Treaty of Peace with Germany, June 28, 1919; see also Barcelona Declaration, April 20, 1921, 1924 Naval War College, Int. Law Documents, p. 83; 7 League of Nations Treaty Series, 1921, p. 74.) It is argued that if such states have a right to fly their flags on vessels, then they must have rights of coast states in the air above the high seas, which seems difficult to deny.

**Liability for use.**—While a part of the field of international law of aviation was covered in the Convention on the Regulation of Aerial Navigation, October 13, 1919, the field of private law did not receive corresponding attention as regards foreign aircraft. In 1925 the French Government took steps toward calling a conference for considering the private international law of aviation and the *Comité International Technique d'Experts Juridiques Aériens* came into existence in 1927. This Committee has drawn up conventions for consideration by international conferences.

In the proposed conventions the fact that the subjacent area with its population and property does not voluntarily come into relation to an aircraft is generally recognized and the responsibility for damage is placed upon the aircraft. This liability is affirmed in the latest proposed convention even though there was no intentional culpability on the part of the aircraft. Of course damage due to a fault of the injured party is excepted.
e.g., if a person is trespassing on a landing field reserved for aircraft.

It is evident that while there may be analogies between air and marine navigation, and air and land transportation, yet there are many aspects which are not analogous. It is true that there may be analogies between craft lighter than water and craft lighter than air, but the analogies are limited in scope. Wheel vehicles responsive to the force of gravity are only in small measure comparable to winged or motor-driven vehicles countering some of the forces to which the wheeled vehicles respond.

*International significance.*—The international significance of aerial navigation is evident in the growing network of treaties and conventions particularly since 1919. The proposition of France to the Disarmament Conference in 1932 as to the internationalization of civil aviation emphasized another aspect and other possibilities of aviation. Whether the French proposition would result as prophesied is doubted by some. Certainly the consequences are not as simple as some seem to believe.

*Definitions.*—In laws and conventions definitions have been adopted but these are not yet entirely uniform. In general, the term “aircraft” includes any contrivance capable of aerial flight and would cover flying machines, balloons, gliders, etc., constructed for flight but not such contrivances as parachutes and projectiles.

The term “air space” is usually held to be the space above any specified area and national air space is that above the area over which a state exercises jurisdiction.

Detailed regulations as to rules of the road, signals, markings, landing procedure, personnel, etc., are already common. International conventions on these matters are now numerous and usually aim to facilitate communication. Within the United States it has been necessary that many Federal regulations should be made as to aerial navigation as a part of interstate commerce, even to the
modification of State regulations which might hamper interstate flying. The recognition of the principle which has thus been applied in American interstate aviation may similarly be essential in international aviation.

Rules for air navigation.—Thus far detailed rules for air navigation have been largely national, though some conventional agreements have been made both bilateral and multilateral.

Some of the national legislation has been detailed in specifications and regulations. Nearly all contain some definitions of which the Chilean Decree of May 15, 1931, is a type. This decree defines "aerodrome" as "any area of land or water specially arranged for the accommodation, departure, or landing of aircraft." (Int. Commission for Air Navigation, Bulletin of Information, no. 526, art. 34, p. 7.)

Portuguese decree, October 25, 1930.—In 1930 Portugal issued a decree promulgating detailed rules in regard to aerial navigation. These rules which are full and classified defined aircraft. By "aerodrome" the rules (article 7) understand any land or water surface set apart for the taking off or arrival of aircraft. At an airport, as distinguished from an "aerodrome," there would be also additional facilities for revenue and other formalities as in a maritime port.

Conventional regulation.—Early projects in regard to regulation and control of aerial flight looked to uniform international regulation. No such hope has been realized. More than 30 bilateral conventions have, however, embodied differing rules, but as yet these are not so unlike that they cannot be reconciled.

Most of the conventions recognize the sovereignty of the state in the air above its jurisdiction, which includes its territorial sea. At the same time there is an attempt to maintain freedom of innocent passage though not all aircraft are granted passage even in time of peace. In general, equality of rights is conceded to all states. Reg-
istration, etc., is to a large degree standardized. Frequent conferences are aiming at greater uniformity as air lines spread over more extended areas.

Treaties upon aviation.—In recent years many treaties relating to air navigation have been concluded. These vary in their provisions but are usually reciprocal in granting privilege of flight in time of peace for private aircraft of the parties.

An air-navigation arrangement between the United States and the Netherlands, of which notes of agreement were exchanged, November 16, 1932, contains the following:

**Article 1**

For the purpose of the present arrangement (a) the term “territory” shall be understood to mean the United States of America, the Netherlands and likewise possessions, territories, and colonies over which they respectively exercise jurisdiction, including territory over sea and territorial waters; and (b) the term “aircraft” shall be understood to embrace private aircraft and commercial aircraft including state aircraft used exclusively for commercial purposes.

**Article 2**

(1) Each of the Parties to this arrangement undertakes in time of peace to grant liberty of innocent passage above its territory to the aircraft of the other party, provided that the conditions set forth in the present arrangement are observed.

(2) It is, however, agreed that the establishment and operation of regular air routes by an air transport company of one of the Parties within the territory of the other Party or across the said territory, with or without intermediary landing, shall be subject to the prior consent of the other Party given on condition of reciprocity and at the request of the Party whose nationality the air transport company possesses.

(3) Each Party to this arrangement agrees that its consent for operations over its territory by air transport companies of the other Party may not be refused on unreasonable or arbitrary grounds. The consent can be made subject to special regulations relating to aerial safety and public order.

(4) Each of the Parties to this arrangement may reserve to its own aircraft, air commerce between any two points neither of
which is in a foreign country. Each Party may also reserve to its own aircraft pleasure or touring flights starting from an aerodrome in its territory and returning to the same aerodrome for which a transportation charge would be made. (Department of State, Press Releases, Publication No. 409, Dec. 17, 1932, p. 434.)

Regulation of air service.—With more than 100,000 miles of air lines in regular operation, and as some of these make easily accessible points formerly difficult of access, states have been constrained to adapt their laws to these new conditions. This has been done in part by domestic legislation and in part by international agreement. For the carriage of foreign mail, international arrangements have become necessary. The results of national surveys, meteorological data, and other information has been supplied by one state to others as well as much other data which might be of value in planning air service. The use of the radio has added much to the efficiency and safety of this service.

The regulations thus far adopted and those proposed show conclusively that the rules for navigation at sea do not and cannot apply to any great extent to aviation. It is unfortunate for that reason that so many maritime terms have crept into the language of aviation, for analogies in fact are often remote.

A new set of problems may arise in regard to hydroplanes, if their range of flight is confined to the air above the sea. Questions have been raised as to whether these are not in all respects to be treated as maritime vessels as respects belligerent and as respects neutral rights. Questions have also been raised as to whether when on the water maritime law should apply and when in the air aerial law should apply. Hydroplanes are, however, except for the place of coming to a stop, so nearly identical to aircraft which alights on land that there is no reason entitling them to different treatment.

Report on air armaments, 1932.—In determining the treatment of aircraft in the Disarmament Conference in
1932, it was necessary to have a definite idea as to the aid and service which the different types might render. In a resolution of April 22, 1932, the Air Commission was asked by the General Commission the following questions:

What are the air armaments:
(a) Whose character is the most specifically offensive;
(b) Which are the most efficacious against national defence;
(c) Which are the most threatening to civilians?

Although it was made clear in the discussions in the Air Commission that the offensiveness of the air armaments, their efficacy against national defence, and the threat that they represent to civilians vary considerably on account of the wide differences in the geographical position of different countries, the location of their vital centres, and the state of their anti-aircraft defences, and that any qualitative question in connection with air armaments is closely bound up with quantitative considerations, the Commission found it possible to set down certain general conclusions, which form Part I of this report. The Commission also undertook a technical study of the efficacy and the use of air armaments. The results of this study form Part II of the present report. Part III contains several comments in regard to Parts I and II, and Part IV contains statements by various delegations, with an introduction.

PART I.

These conclusions are as follows:

I. (a) All air armaments can be used to some extent for offensive purposes, without prejudice to the question of their defensive uses.

If used in time of peace for a sudden and unprovoked attack, air armaments assume a particularly offensive character. In effect, before the State victim of the aggression can take the defensive measures demanded by the situation, or before the League of Nations or States not involved in the conflict could undertake preventive or mediatory action, the aggressor State might in certain cases be able rapidly to obtain military or psychological results, such as would render difficult either the cessation of hostilities or the re-establishment of peace.

(b) Civil aircraft, to the extent that they might be incorporated into the armed force of a State, could in varying degrees subserve military ends.

(c) Independently of the offensive character which air armaments may derive from their use, their capacity for offensive action depends on certain of their constructional characteristics.
The possibilities of offensive action of aeroplanes carried by aircraft-carriers or warships equipped with landing-platforms (or landing-decks) must be regarded as being increased by the mobility of the vessels which carry them.

The capacity for offensive action of air armaments resulting from such constructional characteristics should first be considered from the point of view of the efficacy of such armaments against national defence, and secondly from the point of view of the threat offered thereby to the civilian population.

**Efficacy Against National Defence**

II. (a) The aircraft forming a part of the air armaments of a country that may be regarded as most efficacious against national defence are those which are capable of the most effective direct action by the dropping or launching of means of warfare of any kind.

(b) The efficacy against national defence of an aircraft forming part of such armaments, and considered individually, depends upon its useful load and its capability of arriving at its objective.

(c) The efficacy against national defence of means of warfare of every kind launched from the air depends upon the material effect which they are capable of producing.

**Threat to Civil Population**

III. (a) The aircraft forming part of the air armaments of a country which can be regarded as the most threatening to the civil population are those which are capable of the most effective direct action by the dropping or launching of means of warfare of any kind; this efficacy depends primarily upon the nature of the means of warfare employed and the manner in which they are employed.

(b) The degree of threat to the civil population represented by an aircraft forming part of those armaments, and considered individually, is in proportion to its useful load and its capability of arriving at its objective.

(c) The means of warfare, intended to be dropped from the air, which are the most threatening to the civil population are those which, considered individually, produce the most extended action, the greatest moral or material effect; that is to say, those which are the most capable of killing, wounding and immobilising the inhabitants of centres of civil population or of demoralising them. so far as concerns immediate consequences, and so far as concerns future consequences, of impairing the vitality of human
beings. Among these means the Commission specially mentions poisonous gases, bacteria and incendiary and explosive appliances.

IV. The useful load of aircraft and their capability of arriving at their objective are determined by a large number of variable factors. Where useful load is concerned, the Air Commission has noted among these variable factors, for purposes of examination, the unladen weight, the horsepower and the wing area for aeroplanes, the volume and the horsepower for dirigibles. (League of Nations Documents. Series IX, Disarmament, IX, 48. No. Conf. D. 123, p. 1.)

In part II the technical study showed that the "offensive character of air armaments can not be determined arbitrarily", "depends upon the objectives", etc.

Part III contained comments upon the conclusions embodied in part I.

The United States with Portugal cast votes against part I, conclusion I (d). There were 16 affirmative votes. The delegation of the United States made the following declaration:

The delegation of the United States considers that the statement in Paragraph I (d) as to the increased possibility of offensive action of ship-based aircraft is inappropriate for inclusion in a report which deals with aircraft generally and which does not otherwise discuss specific types of aircraft of the influence of the base of action upon their offensive capabilities.

"One of the tests already contained in the report is that of capability of arriving at an objective. Thus the mobility feature of ship-based aircraft if already taken into account and any further reference in the report which might give the impression that individual ship-based aircraft are more specifically offensive than individual aircraft taking off from bases close to land frontiers is misleading."

The Portuguese delegation associated itself with this declaration, and the United Kingdom delegation stated that it shared the views therein expressed. (Ibid., p. 6.)

Part IV, which set forth national opinions, gave evidence of wide differences of view ranging from that of states which had no air forces to that of states maintaining large air forces.

Terminology.—The terminology to designate a landing place for aircraft on the high sea has been discussed from
time to time and various terms have been proposed. The following have been among the many suggestions: "floating island", "marine airport", "airport in the high sea", "marine aerodrome", etc., but the term "seadrome", while not ideal, has the advantage of being a single word of which the parts are associated with the location and with the use.

Need of marine aerodromes.—There has been a growing recognition that aerodromes would be needed at sea to a degree somewhat comparable to the need on land if transoceanic aviation is to develop rapidly. The transoceanic flights have in their early attempts generally been of a spectacular character. For many reasons such flights have involved great risk and expense. Non-stop flights are at present regarded as noneconomic undertakings. If transoceanic aviation is to become common it seems essential that seadromes be located.

Importance of seadromes.—The proposals for locating seadromes have been primarily based on arguments for securing and increasing oversea aviation. It has been estimated that even a moderate number of seadromes in the Atlantic Ocean would increase trans-Atlantic aviation 100 percent. These seadromes, presumably equipped for landing, taking off, refueling, or repairing, might likewise be of great service to submarines and other vessels.

The location of seadromes would be a matter of concern to all states if these are to be under national control as the strategic conditions of maritime states may be greatly changed by such stations. It is entirely possible that commercial routes would indicate one location while strategic reasons would indicate another. Manifestly also the high seas may not be appropriated to the exclusive use of any state or corporation.

Types of proposals.—Manifestly high sea aerodromes, if established, must be under responsible control. That such aids to aviation should be subject to the vagaries
of private control, operation, and competition, must be considered undesirable. That it should be permitted to any state to establish a seadrome off the coast of another state for the purpose of carrying on hostilities against it would seem unreasonable. These and other reasons have led to propositions varying in nature. It has been proposed that seadromes should be assimilated to islands but the better opinion seems to be that seadromes are not to be assimilated to islands. Some have wished the complete control to be vested in the state of the constructor. Such a proposition has been denied as impracticable by others. Representatives of nonmaritime states have claimed the same right to construct seadromes as states having seacoast. This has been denied by some on the ground that an inland state would have no right of access to the sea, except by convention or grace, of coast states. It has been suggested that the League of Nations be entrusted with the administration of the system of seadromes but representatives of nonmembers have raised objections. In general, proposals have been met with counter proposals and objections but progress has been made in clarification of ideas.

At the Disarmament Conference at Geneva, in 1932, the proposals ranged from that of complete abolition of all military aviation and internationalization of all civil aviation to a gradual reduction of air forces with the establishing of rules for their control and operation. The proposal to transform air forces into an international police was favored by some states.

The international action of civil aviation received much attention at the Disarmament Conference. The Preparatory Commission of the League of Nations in the Draft Convention had introduced the following articles:

Art. 25. The number and total horse-power of the aeroplanes, capable of use in war, in commission and in immediate reserve in the land, sea and air armed forces of each of the High Con-
tracting Parties shall not exceed the figures laid down for such Party in the corresponding columns of Table I annexed to this Chapter.

The number and total horse-power of the aeroplanes, capable of use in war, in commission and in immediate reserve in the land, sea and air formations organised on a military basis of each of the High Contracting Parties shall not exceed the figures laid down for such Party in the corresponding columns of Table II annexed to this Chapter.

Art. 26. The number, total horse-power and total volume of dirigibles, capable of use in war, in commission in the land, sea and air armed forces of each of the High Contracting Parties shall not exceed the figures laid down for such Party in the corresponding columns of Table II annexed to this Chapter.

The number, total horse-power and total volume of dirigibles capable of use in war, in commission in the land, sea and air formations organised on a military basis of each of the High Contracting Parties shall not exceed the figures laid down for such Party in the corresponding columns of Table IV annexed to this Chapter.

Art. 27. Horse-power shall be measured according to the following rules * * *

The volume of dirigibles shall be expressed in cubic metres.

Art. 28.

1. The High Contracting Parties shall refrain from prescribing the embodiment of military features in the construction of civil aviation material, so that this material may be constructed for purely civil purposes, more particularly with a view to providing the greatest possible measure of security and the most economic return. No preparations shall be made in civil aircraft in time of peace for the installation of warlike armaments for the purpose of converting such aircraft into military aircraft.

2. The High Contracting Parties undertake not to require civil aviation enterprises to employ personnel specially trained for military purposes. They undertake to authorise only as a provisional and temporary measure the seconding of personnel to, and the employment of military aviation material in, civil aviation undertakings. Any such personnel or military material which may thus be employed in civil aviation of whatever nature shall be included in the limitation applicable to the High Contracting Party concerned in virtue of Part I, or Articles 25 and 26, of the present Convention, as the case may be.

3. The High Contracting Parties undertake not to subsidise, directly or indirectly, air lines principally established for military
purposes instead of being established for economic, administrative or social purposes.

4. The High Contracting Parties undertake to encourage as far as possible the conclusion of economic agreements between civil aviation undertakings in the different countries and to confer together to this end. (League of Nations Publication IX. Disarmament, 1930. IX. 8. No. C. 687 M. 288., p. 14.)

Evident desiderata.—It is evident that high-sea aerodromes will be essential to convenient and safe trans-oceanic aviation. These should have a degree of uniform character and administration. They should, when under neutral flags, not increase the war risk of states. High-sea aerodromes should be open to all aircraft on equal terms. The threat of or existence of hostilities should not affect the service of the aerodromes. These should not be fortified or adapted for war use. Exclusive control should not be in any one state though a degree of national control may be essential in order to secure the necessary investment of public or of private capital. It may be easier starting de novo to obtain satisfactory agreements for the construction and maintenance of high-sea aerodromes than would be possible if many such structures were already in existence. The analogy is closer to the status of a lightship than to that of an island.

Seadromes not ships.—If a seadrome could be put in the category of ships or vessels, the law applicable would be fairly well defined. It is true there may be certain analogies to a ship used as an aircraft carrier, but the aircraft carrier is by its very nature constructed for the purpose of navigation which is a common criterion in distinguishing ships from other structures. The prime value of a seadrome would be permanence of location in order that aircraft could plan their voyages with reference to its location. In the case of Cope v. Vallette Dry Dock Company, 1887, which involved a suit for salvage of a dry dock, Mr. Justice Bradley, who ren-
dered the decision in the Supreme Court of the United States, said:

We have no hesitation in saying that the decree of the Circuit Court was right. A fixed structure, such as this drydock is, not used for the purpose of navigation, is not a subject of salvage service, any more than is a wharf or a warehouse when projecting into or upon the water. The fact that it floats on the water does not make it a ship or vessel, and no structure that is not a ship or vessel is a subject of salvage. A ferry bridge is generally a floating structure, hinged or chained to a wharf. This might be the subject of salvage as well as a drydock. A sailor's floating bethel, or meeting house, moored to a wharf, and kept in place by a paling of surrounding piles, is in the same category. It can hardly be contended that such a structure is susceptible of salvage service (119 U.S. 625, 627.)

Some have suggested that seadromes be treated as ships and be assimilated to aircraft carriers.

In the case of *Evansville Co. v. Chero Cola Co.*, 1926, the court considered whether a wharf boat, not capable of use as a means of transportation could be a vessel and said,

The only question presented is whether appellant's wharfboat was a "vessel" at the time it sank. It was an aid to river traffic, but it was not used to carry freight from one place to another. It was not practically capable of being used as a means of transportation. It served at Evansville as an office warehouse and wharf, and was not taken from place to place. The connections with the water, electric light and telephone systems of the city evidence a permanent location. It performed no function that might not have been performed as well by an appropriate structure on the land and by a floating stage or platform permanently attached to the land. (271 U.S. 19, 22.)

From these and other cases, it is evident that a seadrome even when located in the high sea would not fall into the category of ships which would, if neutral, be liable to visit and search and to presentation before a prize court.

*Seadromes in time of war.—* The peace-time status of seadromes on the high sea seems, in the opinion of the majority of those who have given serious consideration
to the matter, to be one in which the jurisdiction in the thing itself is in the state to which the seadrome belongs, or in the state whose subject established the seadrome.

Questions may be raised as to the right of a state or of a citizen to establish a seadrome on the high sea. It has been proposed by some that this question be left to the League of Nations, by others that it be settled by some sort of an international conference or committee, and by others that there be no regulation. Plans for neutralization have met with the criticism that neutralization gives no guarantee in the time of war in which the neutralizing powers are engaged and by the further criticism that neutralization might provide only for a time of war which might never occur.

Internationalization proposals have met with more support as visualizing the time of peace as well as of war and as based upon general rather than special considerations. The argument may be put forward that, the high sea being res communis, any use of the high sea other than that sanctioned by generally accepted practice should be by international authorization and under international control. This may be supported by the fact that seadromes may be a risk to navigation, that seadromes may modify the conditions of established commercial and other relations, that seadromes may be of capital importance in determining strategic plans.

The arguments for internationalization of seadromes seem most convincing, particularly as the further use of the high sea should be for the general international good. If the principle of internationalization be accepted, the seadrome should not be open to any war use during hostilities.

If internationalization is not adopted as a principle and seadromes are nationalized, neutral seadromes should be closed to war use and the treatment of belligerent seadromes should be made known in advance by proclamations in order that neutral aircraft may not be subject to unknown peril.
National control introduces many problems as to responsibility and liability in the use of seadromes. As the seadromes are in the high sea, the states of the world may claim an interest above that in ordinary national property as the locating of the seadrome may be regarded as tolerated by grace on account of its general service, which service may not be abandoned or made impossible by national exigencies. Whether a neutral seadrome on the high sea may be visited and searched, and then treated according to what the visit and search seemed to disclose, is to restore a type of quarter-deck court that has been usually viewed with disfavor by courts and also by military officers concerned as being foreign to their duties and profession. If neutral seadromes might be seized and occupied by belligerents on the ground of assumed nonfulfillment of the laws of neutrality, many abuses may arise which might involve serious legal and other complications.

While there has been considerable attention given to the status of landing stations for aircraft at sea in time of peace, there has been comparatively little attention given to their status in time of war. Some European conferences upon aviation laws have given incidental consideration to certain aspects of this matter. In recent years many have thrown aside the laws of war as being negligible on the premise that there would be no more war, but, however desired this may be, a warless world is not yet assured, and under these circumstances war, if it comes, should be regulated to attain its ends with the least possible loss of life and property. So long as there is risk of war, it is evident that seadromes may be exceptionally exposed to its risks whether the seadrome be under a belligerent or under a neutral flag.

If the seadrome be under a belligerent flag in absence of special regulations to the contrary, it would be liable to treatment as enemy property at sea. During the Spanish-American War lighthouses were not regarded as in-
violable, and during the World War, 1914–18, lighthouses and lights were under national control. Belligerents extinguished both their own and opponent's lights, though not aiming attacks against opponent's lights as such. Neutrals also gave notice of special regulations. Buoys and buoy markings were also sometimes changed. It is not to be expected that a state would maintain aids to facilitate the movements against itself by its enemy forces, and a neutral state may wish to take measures to avoid violations of its neutrality.

The direct risk from the existence of seadromes might be much greater than from lighthouses or lightships. If a state can assume full and unregulated jurisdiction over a seadrome which it or its subjects has constructed in the high seas, then the seadrome may be treated as belligerent or neutral, according as the state is belligerent or neutral. Indeed the construction and locating of seadromes might under such national control become a matter of strategic planning for states and under the present tendency to permit states which have no seacoast to locate airports on the high sea, might introduce novel problems of offense and defense.

Artificial extensions of land.—The extension of territory by construction of wharves, dykes, breakwaters, etc., along a river is permissible so long as it works no damage to other riparian states. If the boundary line is already established by convention, it remains the same; and if the boundary has been regarded as the thalweg, it similarly remains unchanged.

Artificial extensions of land into the high sea without causing damage to another state have been regarded as legitimate use of the sea. So far as the sea belongs to no state, there is no party that can claim to be damaged.

Indeed, it may be maintained that with few exceptions, extensions of the land into the high sea are of advantage to other states, because the purpose would ordinarily be with view to greater convenience or safety in the use of
the sea by all. Even extensions like sea walls for the purpose of prevention of the washing away of land would be a relatively economic advantage, as thereby the land would be preserved for possible use of man. It would rarely be the case that the extension of land into the high sea would be solely to the advantage of the state primarily concerned.

These extensions of land area at the same time extend territorial and maritime jurisdiction, but of course not to an extent to impair the rights of other states. If a breakwater or other land is extended outward from the shore beyond the original 3-mile limit, the maritime jurisdiction is extended similarly. In general this gives rise to no complications; but if the breakwater were extended into a relatively narrow strait between two states, the state upon the opposite side might have ground for objection.

Résumé.—Whether seadromes will be essential to the further development of transoceanic flight, or whether the perfection of aircraft will make seadromes unnecessary, has been argued. It has usually been admitted that even if aircraft become much more fully perfected, there may be need for some seadromes in the high seas for special purposes.

Transoceanic flights will ordinarily be between states of different nationality and some international regulations and understandings will be needed. Such regulations and understandings are to a limited extent in existence and others are under consideration.

As the doctrine of the freedom of the seas has after centuries of struggle been generally recognized, there is reluctance to concede to any state in absence of specific agreement any extension of the maritime jurisdiction. National jurisdiction over lightships on the high seas and lighthouses built in the high seas upon submerged foundations has been tacitly admitted in time of peace, but later opinion limits jurisdiction to the lightship or
lighthouse itself, and maintains that the placing of either in the high sea does not automatically extend the jurisdiction of the state placing the lighthouse 3 miles out in all directions.

The filling in of the marginal sea outward from the coast has, however, been regarded as correspondingly extending the maritime jurisdiction outward in the sea provided this does not involve an impairing of the jurisdiction of any other state. While the filling in of an area about a lighthouse built in the high sea may be permitted so far as may be reasonably convenient and needful for the maintenance of the light, the jurisdiction of the state over the lighthouse is limited to this area. It would seem to be essential also that this national jurisdiction extend for the safe custody of the light both below and above this area.

Opinion seems to support the view that if national seadromes are permitted in the high seas, the national jurisdiction shall be limited to the seadrome and the space above and below and not to adjacent waters. Further, as the seadrome is permitted in the high sea as an aid to navigation in the time of peace, its use in time of war shall be limited to that purpose. If it is under neutral state jurisdiction, its function is restricted solely to the purpose for which it was placed and neutral protection in adjacent waters does not extend even to vessels which for purposes other than the upkeep of the seadrome are secured to the seadrome itself.

Solution

(a) The visit and search of the neutral merchant vessel is lawful, as there is no territorial sea around the lighthouse built upon a submerged reef 14 miles from any coast. No protection, other than to assure the lawful exercise of the visit and search, should be given to the Nagle.
(b) The visit and search of the neutral merchant vessel is lawful, as there is no territorial sea around the landing station for aircraft built upon a submerged reef 20 miles from any land. No protection, other than to assure the lawful exercise of the visit and search, should be given by neutral vessels of war to the Nagle.

(c) The visit and search of the Nagle tied to an anchored landing station for aircraft of R is lawful, as there is no territorial sea around the landing station for aircraft 20 miles from any land. No protection, other than to assure the lawful exercise of the visit and search should be given to the Nagle.

(d) The visit and search of the neutral merchant vessel within 1 mile of a causeway built out from shore to a landing station for aircraft is not lawful, as the merchant vessel is within territorial sea and the vessel of war of R should afford protection against any violation of the neutrality of state R, and should protect the merchant vessel against any violation of its rights within these waters.

(e) All enemy aircraft are liable to capture if non-military, or to attack if military, when not on or over the landing station mentioned in (b) or (c). Enemy aircraft may not be lawfully captured or attacked when within 3 miles of the causeway or landing station mentioned in (d) but should be interned.