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International Law Situations

With Solutions and Notes

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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

STATUS OF ISLANDS IN PACIFIC OCEAN

What changes in status of the islands of the Pacific Ocean have occurred since 1917?

CONCLUSION

No exact interpretation of agreements relating to islands in the Pacific Ocean and entered into since 1917 has been made. The introduction of the system of mandates under article 22 of the Covenant of the League of Nations, 1919, the restrictions of fortifications by article 19 of the treaty limiting naval armament, 1922, and the other agreements, and the declaration of the Washington conference, 1922, as well as the "Kellogg-Briand pact" of 1928, have, however, greatly modified the status of the islands in the Pacific Ocean as areas of possible belligerent action.

NOTES

General.—The status of islands in the Pacific Ocean in 1917 was dependent for the most part upon their relation to individual states. Some islands had been the subject of joint or collective action of states as in the case of the Samoan Islands. In the North Pacific Ocean, Germany, prior to the World War, had control of several groups of islands, and prior to 1922 other states exercised in other groups ordinary state authority. The results of the World War introduced certain new practices in the disposition of territory of the Pacific area. The system of administration by mandatories was substituted for direct acquisition. Later by agreement the exercise of
certain rights within the North Pacific area was renounced. Both the system of mandates and the treaties in regard to insular possessions or dominions in the Pacific have received much consideration, particularly the idea—mandates and control of backward areas.

Early idea of mandates.—The idea of mandate is not new in law. In Roman law a mandate might be the method by which the Emperor made known his will to a public functionary, but it was generally used to cover a quasi agency through the person to whom the mandate was given (Mandatarius). This person really acts in his own name rather than as an agent and the responsibilities are his. The Roman law limitation was to the effect that “He who discharges a mandate may not exceed its limitation.” (Digest, XVII, 1, 3, 2.)

Later ideas of mandates.—In modern times one who accepted a mandate usually engaged to perform some service as regards the trust committed to him. It was customary to require an accounting for the service. In the mandate there was an implication of a performance of something more than simple custody, thus involving the performance of some obligation on the part of the mandatory power.

Forms of control of dependent areas.—The family of nations idea as variously understood at different periods, for example, 1648, 1776, 1856, 1899, seem to imply some collective obligation toward world welfare. The basis of membership in the family was recognition of international obligations and common principles.

The family of nations gradually assumed that it or its members might act as guardians, trustees, or assume the custody for peoples or areas outside of Europe, e. g., in Africa, Pacific islands, China, etc.

In the case of Johnson v. McIntosh, in the Supreme Court of the United States, 1823, Chief Justice Marshall said:

On the discovery of this immense continent (America) the nations of Europe were eager to appropriate to themselves so
much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the Old World found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity in exchange for unlimited independence. (8 Wheat. 543.)

This control by European nations of areas outside of Europe received various names and was not uniform in degree or character, e.g., colonies, protectorates, suzerainties, spheres of influence, spheres of interest, etc. Often there was a desire to obtain a right without assuming the corresponding obligation. There are 50 or more examples of varied control since the early part of the nineteenth century, e.g., the Ionian Islands, South African Republic, Cuba, Philippines, etc.

The Institute of International Law in 1888 (Annuaire, vol. 10, pp. 173–201) took up consideration of this matter of dependent or less advanced peoples and proposed that when other states assumed sovereignty over such areas as were occupied by aboriginal or less advanced peoples the new authority should ameliorate the moral and material condition of these people, should provide for their education, guarantee liberty of conscience, both to natives and to aliens, freedom of worship, abolish slavery, provide for the "open door," prohibit the sale of intoxicating liquors, etc.

From the above it is evident that the idea of assumption of trusteeship over backward peoples has long been well established, and that the Covenant of the League of Nations in article 22 is merely a statement in concrete form of principles somewhat differently set forth in earlier documents.

During the latter part of the nineteenth century the states which regarded themselves as civilized often indicated their desire and intention to protect and to give to less advanced regions the benefits of their civilization.
This was particularly true in regard to Africa, and frequent conventions were entered into assuming responsibilities which were sometimes termed "tutorship," "guardianship," "wardship," etc. The general act of the Brussels conference in 1890 gives as its object "the firm intention of putting an end to the crimes and devastations engendered by the traffic in African slaves, of efficiently protecting the aboriginal population of Africa, and of securing for that vast continent the benefits of peace and civilization."

**Brussels act, 1890.**—The general act for the repression of African slave trade drawn up at Brussels in 1890, modifying the general act of Berlin of 1885, and usually referred to as the Brussels act of 1890, has regard to the protection of the aboriginal population of Africa. This act presumes the exercise of sovereignty or of the authority of a protectorate, and its articles cover many of the topics embodied in the terms of the class C mandates, such as the abolition of the slave trade, regulation of the traffic in arms and in intoxicating liquors, protection of missionaries, etc. A convention revising the general act and declaration of Brussels, July 2, 1890, was drawn up at Saint-Germain-en-Laye, September 10, 1919. This convention of 1919 renews many of the provisions of the earlier conventions with view to insuring "by arrangements suitable to modern requirements the application of the general principles of civilization established by the acts of Berlin and Brussels." These and other conventions show a recognition of collective responsibility for the well-being of less advanced peoples. In the setting up of control by protectorates, suzerainties, spheres of influence, spheres of interest, there has often been an attempt to secure for the dominant, state rights without the corresponding obligations.

**American attitude.**.—The United States has from time to time assumed jurisdiction over tribes, sometimes speaking of them as "wards of the nation," or "pupils."
Liberia has been mentioned, and the United States has called itself “the next friend.”

When by article 1 of the treaty of peace with the United States, 1898, Spain renounced all claim to sovereignty over and title to Cuba, question arose as to its status. A case before the Supreme Court in 1901 stated:

While by the act of April 25, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several States to such extent as was necessary, to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the Government, by the joint resolution of April 20, 1898, expressly disclaimed any purpose to exercise sovereignty, jurisdiction, or control over Cuba “except for the pacification thereof,” and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain. * * *

It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the treaty of Paris, was to be treated as if it were conquered territory. But as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba, to whom it rightfully belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action. (Neely v. Henkel, 180 U. S. 109 (1901).)

In referring to President Roosevelt’s proposition made in 1906 in regard to the adjustment of affairs in Morocco, through the Algeciras conference, Ambassador von Sternburg, of Germany, said:

This would place the police forces entirely into their hands, and the police organization would be tantamount to a Franco-Spanish double mandate and mean a monopoly of these two countries, which would heavily curtail the political and economic positions
of the other nations. (Theodore Roosevelt and His Time, Bishop, Vol. I, p. 492.)

In the proposition made on behalf of the President annual reports by the Franco-Spanish authorities had been proposed and in the main the cost of administration was to be borne by the area, the "open door" and equal opportunity for trade was likewise to be maintained, and undue weight was not to be given to mere proximity of those to whom the "mandate" was intrusted.

_Negotiations on conquests, 1917._—There had been plans for disposal of German dependencies. The British ambassador's memorandum at Tokyo, February 16, 1917, says:

_His Majesty's Government accedes with pleasure to the request of the Japanese Government for assurance that they will support Japan's claims in regard to the disposal of Germany's rights in Shantung and possessions in islands north of the Equator on the occasion of the peace conference, it being understood that the Japanese Government will, in the eventual peace settlement, treat in the same spirit Great Britain's claims to German islands south of the Equator. (Baker, Woodrow Wilson, and the World Settlement, vol. 1, p. 61.)

In contrast with the above, Lloyd George in the House of Commons on December 20, 1917, said:

_As to the German colonies, that is a matter that must be settled by the great international peace congress._

_Other documents, earlier than this, show that the idea of "agent or mandatory" was not foreign to political adjustments. It was distinguished from condominium, which might establish a joint title, while in the mandate there might be joint administration through the responsibility of making a report._

_World War and German overseas possessions._—The defeat of Germany in the World War left several million people who were formerly under German control outside of any established government, though under the military control of the allied powers. In Africa it was
estimated that there were 13,000,000, in Oceanica a few hundred thousand, and in Turkish areas there were several million.

Article 22.—The system of mandates is, in general, based upon article 22 of Part I of the Covenant of the League of Nations in the treaty of peace with Germany of June 28, 1918. This article is repeated in other treaties and is as follows:

Art. 22. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience, or their geographical position can best undertake this responsibility and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the league.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory.

Other peoples, especially those of central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal
opportunities for the trade and commerce of other members of the league.

There are territories, such as southwest Africa and certain of the South Pacific islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the mandatory, and other circumstances, can be best administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate the mandatory shall render to the council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the league, be explicitly defined in each case by the council.

A permanent commission shall be constituted to receive and examine the annual reports of the mandatories and to advise the council on all matters relating to the observance of the mandates.

Discussions in 1918.—On January 7, 1918, Premier Lloyd George stated in an address to the trades-unions, as one of the bases for peace discussions, that—

Respecting the German colonies, they are held at the disposal of a conference whose decision must have primary regard to the wishes and interests of their native inhabitants. The governing consideration in all these cases must be that the inhabitants shall be placed under control of an administration acceptable to themselves, one of whose main purposes will be to prevent their exploitation for the benefit of European capitalists or governments.

On Thursday, January 24, 1918, the German chancellor, Count Von Hertling, commented upon the British and American propositions. In December, 1917, Russia had suggested the consideration of the terms of peace. Count Von Hertling said:

We at the time agreed to the proposal for inviting participators in the war to the negotiations, with the condition, however, that this invitation should be limited to a clearly defined period. On January 4, at 10 o'clock in the evening, this period expired. No answer had been received. The result is that we are bound no longer in any way so far as the entente is concerned; that we have a clear road in front of us for separate negotiations with
Russia, and also that, obviously, we are no longer bound in any way, as far as the entente is concerned, to the proposals for a general peace which have been submitted by the Russian delegation. Instead of the then anticipated reply which failed to come, two announcements have, as we all know, been made in the meantime by enemy statesmen—the speech by the English prime minister, Mr. Lloyd George, of January 7, and the message of President Wilson of the day after.

Speaking of President Wilson’s fifth point in regard to the disposal of the German colonies, Count Von Hertling said:

The practical carrying out of the principle laid down by Mr. Wilson will in this world of realities meet with some difficulties. In any case, I believe that for the time being it may be left to the greatest colonial empire—England—to determine as to how she will come to terms with her allies regarding this proposal. We shall have to talk about this point of the program at the time of reconstruction of the colonial possessions of the world, which has also been demanded unconditionally by us.

In President Wilson’s reply of February 11, 1918, he stated four principles which he regarded as essential for peace:

First, that each part of the final settlement must be based upon the essential justice of that particular case and upon such adjustments as are most likely to bring a peace that will be permanent;

Second, that peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game, even the great game, now forever discredited, of the balance of power; but that—

Third, every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned and not as a part of any mere adjustment or compromise of claims amongst rival states; and

Fourth, that all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world.

In his Mount Vernon address on July 14, 1918, President Wilson declared for—
The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.

President Wilson’s “Fourteen Points.”—Germany accepted the 14 points as set forth in President Wilson’s address of January 8, 1918; and subsequent pronouncements in regard to the same as a basis for the restoration of peace, and on that ground agreed to an armistice November 11, 1918. The fifth of these points was as follows:

A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

In drafting the terms of peace the disposition of the former dependencies of the German Empire was a matter of keen discussion. States that already had military possession of former German dependencies were inclined to regard these as just spoils of war. Claims to this effect were made particularly by representatives of the British Dominions and by France. Under President Wilson’s arguments, however, the mandatory system was at length adopted.

Mandatory system.—The report presented to the peace conference February 14, 1919, by President Wilson, contained as article 19 the plan for the mandates. This article in a somewhat changed form became article 22 of the Covenant of the League of Nations. In presenting this article with the report upon the League of Nations constitution on February 14, 1919, President Wilson said of the idea of the mandatory system:

Then there is a feature about this covenant which, to my mind, is one of the greatest and most satisfactory advances that has been made. We are done with annexations of helpless people,
meant, in some instances by some powers, to be used merely for exploitation. We recognize in the most solemn manner that the helpless and undeveloped peoples of the world, being in that condition, put an obligation upon us to look after their interests primarily, before we use them for our interest, and that in all cases of this sort hereafter it shall be the duty of the league to see that the nations who are assigned as tutors and advisers and directors of these peoples shall look to their interests and their development before they look to the interests and desires of the mandatory nation itself.

There has been no greater advance than this, gentlemen. If you look back upon the history of the world, you will see how helpless peoples have so often been a prey to powers that had no conscience in the matter. It has been one of the many distressing revelations of recent years that the great power which has just been, happily, defeated, put intolerable burdens and injustices upon the helpless people in some of the colonies which it annexed to itself, that its interest was rather their extermination than their development; that the desire was to possess their land for European purposes, and not to enjoy their confidence in order that mankind might be lifted in these places to the next higher level.

Now, the world, expressing its conscience in law, says there is an end to that, that our consciences shall be settled to this thing. States will be picked out which have already shown that they can exercise a conscience in this matter and under their tutelage the helpless peoples of the world will come into a new light and into a new hope.

So I think I can say of this document that it is at one and the same time a practical document and a human document. There is a pulse of sympathy in it. There is a compulsion of conscience throughout it. It is practical, and yet it is intended to purify, to rectify, to elevate.

And I want to say that, so far as my observation instructs me, this is in one sense a belated document. I believe that the conscience of the world has long been prepared to express itself in some way. We are not just now discovering our sympathy for these people and our interest in them. We are simply expressing it, for it has long been felt and in the administration of affairs of more than one of the great states represented here—so far as I know, all the great states that are represented here—that humane impulse has already expressed itself in their dealings with their colonies, whose peoples were yet at a low stage of civilization.
We have had many instances of colonies lifted into the sphere of complete self-government. This is not the discovery of a principle. It is the universal application of a principle. It is the agreement of the great nations which have tried to live by these standards in their separate administrations, to unite in seeing that their common force and their common thought and intelligence are lent to this great and humane enterprise. I think it is an occasion, therefore, for the most profound satisfaction that this humane decision should be reached in a matter for which the world has long been waiting and until a very recent period thought that it was still too early to hope.

The delegates of the other great powers expressed their approbation of the interpretation which President Wilson had put upon the Covenant.

Allocation of mandates.—After the adoption of the Covenant of the League of Nations at the plenary session of the peace conference on April 28, 1919, an organization committee was authorized.

On May 7, 1919, the day on which the treaty of Versailles was handed to the German delegates, and directly thereafter, the supreme war council, on which the United States had a member, decided on the allocation of the mandates. This allocation was somewhat modified in the following August. The Germans had made certain counter propositions in regard to article 22 after the treaty was handed to them but no changes were made.

The treaty of peace was ratified January 10, 1920, and article 22 became operative.

Title to German overseas possessions.—Under article 119 of the treaty of Versailles—

Germany renounces in favor of the principal allied and associated powers all her rights and titles over her oversea possessions.

Opinion of Mr. Balfour, 1920.—Mr. Balfour, as Lord president of the council and as having participated in the organization of the League of Nations, explained the negotiations in regard to mandates in a speech June 17, 1920. He said:

My recollection of what occurred in Paris is this: Germany, by the terms of the peace, was required to give up all her colonies
conquered by the Allies and to hand them over, not to this or that country, and not to the League of Nations, but to the allied and associated powers. Having handed them over to the allied and associated powers those powers and the peace conference generally agreed that a system of mandates should be adopted, in the main, with the view of seeing that the populations of those countries should not be used merely as subjects, but that their true interests should be looked after, and that they should be treated, not as mere spoils and booty of war but as communities for which the civilized world had responsibilities. That great end, and I hope it will prove one of the greatest ends attained by the pact, was to be obtained by mandates, but, according to my recollection, while the terms of the mandates were to be determined by the peace conference, the superintendence of the use to which those mandates were put was left to the League of Nations. That is my view of what was intended at Paris, and I believe that view to be absolutely correct. In those circumstances I think it is much to be regretted that the mandates are not ready yet, but I do not see that that is a matter for which the League of Nations can be blamed. I do not think anybody can be blamed. Everybody knows the negotiations have taken much longer than it was hoped or anticipated they would take. The League of Nations will come in when the mandatory powers have accepted the responsibilities of carrying out the mandates and will be required to tell the whole civilized world annually how it is they are carrying out the great trust which has been conveyed to them. Then the League of Nations will come in, and I hope they will do their duty. That is the general view which I take of the situation, and I believe it to be exactly in accordance with the facts. (130 H. C. Deb. 5s., 1554.)

Statement of British Prime Minister, 1920.—Mr. Lloyd-George, June 22, 1920, in the House of Commons, spoke of the relation of the mandatory system:

Then I would like at once to challenge the claim made by my right honorable friend that the League of Nations has got to dispose of these mandates. I do not accept that. It is not the view that was taken by any of the signatories to the treaty of Versailles. It is not the view which was taken by President Wilson, who was the champion of the League, who had no interest—I do not, of course, mean personal interest—but who had no particular interest even as representative of the United States in the distribution of the German mandates. At Versailles we laid down the terms of the German treaty. We then met for the purpose of
distributing the mandates for the German territory with President Wilson there. Under the German treaty the German colonies are handed over, not to the League of Nations but to the allied and associated powers. By the very terms of the treaty it is for them to decide who are the mandatories. After all, the expense of emancipating these colonies fell upon the Allies. We took exactly the same line with regard to the Turkish treaty. Article 94 says:

"The determination of the other frontiers of the said states and the selection of the mandatories will be made by the principal allied powers."

The principal allied powers met after that document had been prepared and decided what the mandates were. I repudiate entirely the suggestion that it is for the League of Nations to determine who shall be the mandatories of those countries.

Does my right honorable friend mean to say that the League of Nations could meet and hand over the mandate for countries that cost us hundreds of millions to emancipate, like Mesopotamia and Palestine, to Germany? It would be an intolerable position, and we certainly could not accept it. No one ever contemplated it. I never heard that contention put forward by anyone until I heard it in this House, to my amazement, the other night. President Wilson certainly never put it forward. He was present at the meeting where the allied and associated powers distributed the mandates under the German treaty. I take the same view about the Turkish mandates, that the allied and associated powers should determine who should be the mandatories. The terms of the mandate will be submitted to the League of Nations. That is another matter. The way in which the mandates are carried out will be discussed by the League of Nations. That is another matter. If there is any abuse of those terms, it will be for the League of Nations to consider it. If the natives are oppressed by a mandatory, if an unfair use is made of the powers of a particular mandatory, then the League of Nations may operate; but it is for the allied and associated powers, who have emancipated these territories, to determine who the mandatory should be, and that has been done. (130 H. C. Deb. 5s., 2256.)

In a memorandum of the secretary-general of the League of Nations presented to the council on July 30, 1920, it was stated:

6. (a) A legal title to the necessary rights of authority and administration must be conferred on the respective mandatory powers by the principal allied and associated powers, in whom the
title to these territories is at present vested. (Assembly Document 161, p. 10.)

On March 1, 1921, in reply to a letter of the Secretary of State of the United States of February 21, 1921, the League of Nations Council said:

The League of Nations Council would remind your excellency that the allocation of the mandated territories is a function of the supreme council and not of the council of the league.

_Mandated areas._—Pacific islands under mandates are as follows:

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<tr>
<th>Islands</th>
<th>Mandatory</th>
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<tr>
<td>Samoa (German)</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Nauru</td>
<td>British Empire</td>
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<tr>
<td>Other former German Pacific islands south of Equator</td>
<td>Australia.</td>
</tr>
<tr>
<td>Former German Pacific islands north of Equator</td>
<td>Japan.</td>
</tr>
</tbody>
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These mandates were confirmed December 17, 1920, and are usually called class C mandates and are in accordance with article 22, paragraph 6, of the Covenant of the League of Nations.

_German overseas territory under peace treaty._—Article 118 of the treaty of Versailles, June 24, 1919, which came into effect January 10, 1920, provides:

In territory outside her European frontiers as fixed by the present treaty, Germany renounces all rights, titles, and privileges whatever in or over territory which belonged to her or to her allies, and all rights, titles, and privileges whatever their origin which she held as against the allied and associated powers.

Germany hereby undertakes to recognize and to conform to the measures which may be taken now or in the future by the principal allied and associated powers, in agreement where necessary with third powers, in order to carry the above stipulation into effect.

In particular, Germany declares her acceptance of the following articles relating to certain special subjects.

In article 119 it was said:

Germany renounces in favour of the principal allied and associated powers all her rights and titles over her oversea possessions.
Articles 120-127 enumerate special provisions, and article 120 refers to article 257, as follows:

All movable and immovable property in such territories belonging to the German Empire or to any German State shall pass to the Government exercising authority over such territories, on the terms laid down in article 257 of Part IX (financial clauses) of the present treaty. The decision of the local courts in any dispute as to the nature of such property shall be final.

In article 120 it is evident that as the treaty constituted a whole, Germany's right and title was intended to pass to the principal allied and associated powers with the purpose that some government should exercise authority over the territories under the terms of article 257, which provided that—

In the case of the former German territories, including colonies, protectorates, or dependencies, administered by a mandatory under article 22 of Part I (League of Nations) of the present treaty, neither the territory nor the mandatory power shall be charged with any portion of the debt of the German Empire or States.

All property and possessions belonging to the German Empire or to the German States situated in such territories shall be transferred with the territories to the mandatory power in its capacity as such, and no payment shall be made nor any credit given to those governments in consideration of this transfer.

For the purposes of this article the property and possessions of the German Empire and of the German States shall be deemed to include all the property of the Crown, the Empire, or the States, and the private property of the former German Emperor and other royal personages.

The mandatory power received, therefore, the German public property rights, though from an interpretation adopted by the mandates commission at its fourth session, Geneva, June 24–July 8, 1924, it was indicated that the mandatory authority was administrative.

The mandatory powers do not possess, in virtue of articles 120 and 257 (par. 2) of the treaty of Versailles, any right over any part of the territory under mandate other than that resulting from their having been intrusted with the administration of the territory. If any legislative enactment relating to land tenure
should lead to conclusions contrary to these principles, it would be desirable that the text should be modified in order not to allow of any doubt.

**By article 127:**

The native inhabitants of the former German overseas possessions shall be entitled to the diplomatic protection of the governments exercising authority over those territories.

As allegiance is the natural corollary to the right of protection, both territory and native population come under the mandatory and under limitations of the terms of the mandate, the mandatory authority succeeds to that of Germany.

Thus, as a result of the World War and the negotiations following, it became evident that certain territories formerly belonging to or under the control of Germany, could no longer be retained; they could not be ceded to any of the victors in the war; there was no inclination to establish joint jurisdiction; the League of Nations was not organized to assume jurisdiction; the welfare of the former German possessions was of general interest; and the trust idea under a mandate seemed most acceptable.

The mandate system is now a fact. Into what it may merge is problematical.

The basis for a valid mandate would seem to rest on (1) power of the grantor, i. e., allied and associated powers; (2) allocation by these powers; (3) acceptance by the mandatory; and (4) approval by the League of Nations Council.

Apparently agreement between the council and mandatory may amend or modify the terms of the mandate.

Further, a mandate of class A may terminate by the recognition of the independence of the mandate, or by entrance of the mandate into the League of Nations as a member, or by agreement by the League of Nations Council and the mandatory.

As the agreement is a bilateral one, it is questionable whether it can be terminated by one of the parties without the consent of the other.
Apparently the United States would have no legal concern with mandates of class A, as the United States was not at war with Turkey. In some of the correspondence, however, the United States has assumed rights in regard to these mandates.

Status of mandates.—Sovereignty was not granted to the mandatory power. Sovereignty or any other fundamental state attribute is never transferred except by express stipulation. The exercise of sovereign rights may be permitted without the transfer of sovereignty.

Jurisdiction, as the right to exercise state authority, is frequently granted to a state within the territory of another state, even when sovereignty is not transferred. In some instances bare sovereignty only seems to be retained by the grantor, e.g., in some leased territory. The administration of an area may be as if by a sovereign power when sovereignty does not exist in the administrator.

In case of mandated areas the hope was to avoid the award of spoils of war in the ancient sense. If sovereignty was granted to the mandatory, there would have been no reason for a mandate, and if a state was sovereign, there could be no obligation to make annual reports in regard to the administration or to act in accord with the mandate. Sovereignty implies absence of accountability to an outside authority.

In case of mandated areas mandatories have only a qualified jurisdiction which they have agreed to exercise under certain restrictions. They have received a kind of administrative trust. Mandated areas may be the source of valuable or essential war supplies. The areas are identified with the mandatory administratively and to that extent are regarded as integral parts of the mandatory's territory and therefore, in absence of other agreement, they become liable to the same treatment as the territory of the mandate in the time of war.

The German right and title to the mandated areas was transferred to the principal allied and associated powers
by article 119 and apparently remains there till lawfully transferred elsewhere.

The United States, participating in the acts of the supreme war council, agreed in allocating the mandates of 1919, but did not ratify the treaty of Versailles in article 22 of which provision was made in regard to the administration of the mandates.

The right to exercise certain specified jurisdictional powers under specified conditions has been conferred upon the mandatories. This right does not give the powers entrusted with the mandates authority to transfer the mandates, as would be the case if sovereignty had been granted, even from one subdivision to another subdivision of a state having within its entity several political unities. This may be seen in the report of the sixth committee (mandates) to the assembly of the League of Nations, September 16, 1922, in which it was said:

With regard to the Nauru mandate dealt with in Part II of the report of the permanent mandates commission, the sixth committee deems it advisable to prevent possible misinterpretation by taking note:

First, that the British Empire (the unit responsible for the Nauru mandate) consists of Great Britain together with a number of territories all owing a common allegiance but distinct in their respective powers of government, and the mandatory authority of the British Empire can therefore only be exercised by some one or more of the several Governments of the territories composing the Empire. If, for the statement in the report that the British Empire "had transferred the responsibility for the administration of the Island of Nauru to Great Britain, Australia, and New Zealand," there were substituted a statement that "the British Empire had provided for the administration of the Island of Nauru by Great Britain, Australia, and New Zealand," the position would be defined with greater precision and exactitude.

Secondly, that the statement in the report that the governments of Great Britain, Australia, and New Zealand had reserved to themselves the exclusive rights of the administration of the rich deposits of phosphates which constitute the wealth of the island is capable of misinterpretation without the explanation that the three governments acquired by direct purchase through voluntary sale on the part of the owners and not through the mandate ex-
exclusive rights granted before the war by the German Government to a private company.

Neutralization.—Neutralization of mandated areas has been proposed and neutralization of the Pacific islands was at one time considered at the Conference on the Limitation of Armament, 1921–22. Neutralization would, if observed, restrict all powers alike from any war use of the mandated areas, giving them a quasi international status. This plan has not been approved. The Pacific islands have been placed under mandates, thus giving them a qualified national status as integral parts of the territory of mandatory.

While there has been discussion as to the neutralization of mandates, the terms of some of the mandates do not seem to indicate that neutralization or even neutrality when the mandatory might be at war was contemplated. The mandate respecting Syria and Lebanon, to which by special convention of 1924 France consented, provided in article 2 that—

The mandatory may maintain its troops in the said territory for its defense. It shall further be empowered, until the entry into force of the organic law and the reestablishment of public security, to organize such local militia as may be necessary for the defense of the territory, and to employ this militia for defense and also for the maintenance of order. These local forces may only be recruited from the inhabitants of the said territory.

The said militia shall thereafter be under the local authorities, subject to the authority and the control which the mandatory shall retain over these forces. It shall not be used for purposes other than those above specified save with the consent of the mandatory.

Nothing shall preclude Syria and the Lebanon from contributing to the cost of the maintenance of the forces of the mandatory stationed in the territory.

The mandatory shall at all times possess the right to make use of the ports, railways, and means of communication of Syria and the Lebanon for the passage of its troops and of all materials, supplies and fuel. (1924 N. W. C. Int. Law Documents, 62.)

The consent of the Council of the League of Nations and the assent of the United States is required for any modification of the terms of the mandate.
From the terms of this mandate respecting Syria and Lebanon it is clear that passage of troops and the use of the territory for military purposes is permitted, which would scarcely be consistent with a status of neutrality.

The mandates for islands in the Pacific provide that—

The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of his territory. (Art. 2, 1924. N. W. C. Int. Law Documents, p. 81.)

and that—

The military training of the natives, otherwise than for purposes of international police and the local defense of the territory, shall be prohibited. Furthermore, no militia or naval bases shall be established or fortification erected in the territory. (Art. 4, ibid.)

Manifestly, this is not a neutralization agreement, nor does it establish neutrality of the mandated area if the mandatory is at war. As the mandatory may administer the mandate as an integral part of his territory, subject to the restrictions as to military training of the natives, etc., it would have the same status. Other areas in the Pacific Ocean are under restriction as to fortifications, etc., by Article XIX of the treaty limiting naval armament, but such articles are limited to their specific provisions and carry no further implications.

Terms of mandates.—The terms of the island mandates are in general similar to those shown by the mandates for islands south and north of the Equator.

[Letter from the secretary-general to the members of the League concerning the terms of C mandates]

[League of Nations Official Journal, January–February, 1921]

Geneva, January 15, 1921.

Sir: I have the honour to inform you that the Council of the League of Nations, at its meeting at Geneva on December 17, under the presidency of His Excellency M. Hymans, settled the terms of the following mandates in conformity with article 22, paragraph 6, of the covenant:
The mandates in question are the British mandates in respect of the following territories:

(1) The mandate for German Southwest Africa, which is conferred upon His Britannic Majesty, to be exercised on his behalf by the Government of the Union of South Africa.¹

(2) The mandate for German Samoa, which is conferred upon His Britannic Majesty, to be exercised on his behalf by the Government of the Dominion of New Zealand.¹

(3) The mandate for the Island of Nauru, which is conferred upon His Britannic Majesty.¹

(4) The mandate for the German possessions, other than German Samoa and Nauru, situated in the Pacific Ocean to the south of the Equator, which is conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia; and the Japanese mandate in respect of the German possessions to the north of the Equator, which is conferred upon His Majesty the Emperor of Japan.

I have the honor to transmit the attached text of these mandates, together with a declaration by the Japanese Government.

I am, sir, your most obedient servant,

ERIC DRUMMOND,
Secretary-General.

MANDATE FOR THE GERMAN POSSESSIONS IN THE PACIFIC OCEAN SITUATED SOUTH OF THE EQUATOR, OTHER THAN GERMAN SAMOA AND NAURU

The Council of the League of Nations:

Whereas by article 119 of the treaty of peace with Germany signed at Versailles on June 28, 1919, Germany renounced in favor of the principal allied and associated powers all her rights over her overseas possessions, including therein German New Guinea and the groups of islands in the Pacific Ocean lying south of the Equator other than German Samoa and Nauru; and

Whereas the principal allied and associated powers agreed that in accordance with article 22, Part I (Covenant of the League of Nations) of the said treaty, a mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia to administer New Guinea and the said islands, and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty, for and on behalf of the Government of the Commonwealth of Australia, has agreed to accept the mandate in respect of the said territory and has under-

¹ Not printed.
taken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas by the aforementioned article 22, paragraph 8, it is provided that the degree of authority, control, or administration to be exercised by the mandatory not having been previously agreed upon by the members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

ARTICLE 1

The territory over which a mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Commonwealth of Australia (hereinafter called the mandatory) comprises the former German colony of New Guinea and the former German islands of the Pacific Ocean and lying south of the Equator, other than the islands of the Samoan Group and the island of Nauru.

ARTICLE 2

The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Commonwealth of Australia, and may apply the laws of the Commonwealth of Australia to the territory, subject to such local modifications as circumstances may require.

The mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate.

ARTICLE 3

The mandatory shall see that the slave trade is prohibited and that no forced labor is permitted, except for essential public works and services, and then only for adequate remuneration.

The mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the convention relating to the control of the arms traffic signed on September 10, 1919, or in any convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4

The military training of the natives, otherwise than for purposes of internal police and the local defense of the territory,
shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the mandatory shall insure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any state member of the League of Nations, to enter into, travel, and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6

The mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the council containing full information with regard to the territory and indicating the measures taken to carry out the obligations assumed under articles 2, 3, 4, and 5.

ARTICLE 7

The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The mandatory agrees that if any dispute whatever should arise between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate such dispute, if it can not be settled by negotiations, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the Covenant of the League of Nations.

The present declarations shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the secretary-general of the League of Nations to all powers signatories of the treaty of peace with Germany.

Certified true copy.

SECRETARY-GENERAL.

Made at Geneva the 17th day of December, 1920.

MANDATE FOR THE FORMER GERMAN POSSESSIONS IN THE PACIFIC OCEAN LYING NORTH OF THE EQUATOR

The Council of the League of Nations:

Whereas by article 119 of the treaty of peace with Germany signed at Versailles on June 28, 1919, Germany renounced in
favor of the principal allied and associated powers all her rights
over her oversea possessions, including therein the groups of
islands in the Pacific Ocean lying north of the Equator; and

Whereas the principal allied and associated powers agreed that
in accordance with article 22, Part I (Covenant of the League of
Nations) of the said treaty a mandate should be conferred upon
His Majesty the Emperor of Japan to administer the said islands,
and have proposed that the mandate should be formulated in the
following terms; and

Whereas His Majesty the Emperor of Japan has agreed to
accept the mandate in respect of the said islands and has under­
taken to exercise it on behalf of the League of Nations in accord­
ance with the following provisions; and

Whereas by the aforementioned article 22, paragraph 8, it is
provided that the degree of authority, control, or administration
to be exercised by the mandatory, not having been previously
agreed upon by the members of the League, shall be explicitly
defined by the Council of the League of Nations.

Confirming the said mandate, defines its terms as follows:

ARTICLE 1

The islands over which a mandate is conferred upon His
Majesty the Emperor of Japan (hereinafter called the manda­
tory) comprise all the former German islands situated in the
Pacific Ocean and lying north of the Equator.

ARTICLE 2

The mandatory shall have full power of administration and
legislation over the territory subject to the present mandate as
an integral portion of the Empire of Japan, and may apply the
laws of the Empire of Japan to the territory, subject to such local
modifications as circumstances may require.

The mandatory shall promote to the utmost the material and
moral well-being and the social progress of the inhabitants of
the territory subject to the present mandate.

ARTICLE 3

The mandatory shall see that the slave trade is prohibited and
that no forced labor is permitted, except for essential public works
and services, and then only for adequate remuneration.

The mandatory shall also see that the traffic in arms and
ammunition is controlled in accordance with principles analogous
to those laid down in the convention relating to the control of
the arms traffic, signed on September 10, 1919, or in any convention amending same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4

The military training of the natives, otherwise than for purposes of internal police and the local defense of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the mandatory shall insure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any state member of the League of Nations, to enter into, travel, and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6

The mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the council, containing full information with regard to the territory, and indicating measures taken to carry out the obligations assumed under articles 2, 3, 4, and 5.

ARTICLE 7

The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The mandatory agrees that if any dispute whatever should arise between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it can not be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the covenant of the League of Nations.

The present declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the secretary-general of the League of Nations to all powers signatories of the treaty of peace with Germany.

Made at Geneva the 17th of December, 1920.

Exactly what control the League of Nations may have in every instance is left somewhat in doubt through the
difficulty of interpreting the clause of article 22, which provides:

The degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the council.

In any case, however, the council is to be advised "on all matters relating to observance of the mandate," and is to receive an annual report in reference to the territory committed to the mandatory.

Period of mandate.—On concluding a chapter on League of Nations mandates, M. F. Lindley says:

We have seen that there appears to exist no power to revoke a mandate against the will of the mandatory. Nor, it would seem, can a mandatory relinquish its mandate without the consent of the Council of the League. A mandatory which, without such consent, laid down its task, or which failed to carry out its mandate according to the terms thereof, would thereby commit a breach of the undertaking it has given to the other members of the League, and would be in the position of a treaty-breaking or law-breaking state. * * *

But while the consensus of the council and the mandatory would appear to be sufficient to terminate a particular mandate, it does not necessarily follow that such a consensus would be sufficient to release a country under mandate from the mandatory system altogether. * * *

In the case of A mandate countries, "Their existence as independent nations" is "provisionally recognized" in Article 22 of the covenant, "subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone"; and it may be that, in those cases, not only a particular mandate, but the application of the mandatory system altogether, could be terminated by agreement between the council and the mandatory; or by the admission of the mandated country to the League, with the assent of the mandatory, as is contemplated in the case of Iraq. And even without the assent of the mandatory, a two-thirds vote of the assembly admitting an A mandate country to membership of the league under Section I of the covenant would appear to amount to a declaration that, in the opinion of the majority of the assembly, the mandated country had reached a condition in which it was "able to stand alone," and therefore might claim to dispense with the administrative advice and assistance of the mandatory.
In the case of B mandate and C mandate territory, however, article 22 does not appear to contemplate the termination of the status of "territory under mandate." Any change in that status would thus probably require to be made in the manner laid down in article 26 for making amendments to the covenant, and perhaps also with the consent of the United States. (The Acquisition and Government of Backward Territory in International Law, M. F. Lindley, 268.)

**Source of authority.**—Some have maintained that article 119 of the treaty of Versailles by which "Germany renounces in favor of the principal allied and associated powers all her rights and titles over her overseas possessions," did not relinquish sovereignty over these possessions. This would seem not to need much discussion as regards mandated areas because these are according to article 22 of the treaty "those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them," and of their inhabitants this article provides "that the well-being and development of such peoples form a sacred trust of civilization." The best method of giving practical effect to this principle is that tutelage of such peoples should be intrusted to advanced nations. This allocation of the trust could be made only by the principal allied and associated powers, and article 22 further provides that for the states willing to accept it, "this tutelage should be exercised by them as mandates on behalf of the League."

The introduction of the principle of mandates as is evident from the discussions in drawing up article 22 was to do away as regards these areas with the earlier practice of annexations by victors of territories of their enemies. It was considered, nevertheless, that some of these could "be best administered under the laws of the mandatory as integral portions of its territory," and annual reports of the administration were to be made as might be required in other trusts.

In subsequent interpretations it was shown that the natives of mandated territories did not acquire the na-
tionality of the mandatory but might by individual act acquire such nationality in accord with the law of the mandatory. Frontiers and boundaries were fixed and terms of administrative control were determined.

From article 22 it is clear that the territories allocated to the mandatories "have ceased to be under the sovereignty of the states which formerly governed them." It is equally clear that the mandatories are exercising only a tutelage on behalf of the League. The allocation was made by the powers to which the territories had passed by articles 118 and 119. The C mandates do not become a part of but may be administered as "integral portions of" the territory of a mandatory.

General observations.—While mandates of class A and class B might be considered important, those of class C have particularly given rise to many questions as to status. The class C mandates are those portions of the former German possessions which in Southwest Africa and in the Pacific area passed to the principal allied and associated powers by article 119 of the treaty of Versailles of June 28, 1919. The institution of the mandates system was an attempt to put an end to the distribution of territory among the victors as spoils of war. The peoples of the mandated regions were regarded as "not yet able to stand by themselves under the strenuous conditions of the modern world." It was hoped that through a period of tutelage these peoples would develop capacity for government. In order that there might be assured to these peoples approved care, annual reports were to be made to the Council of the League of Nations.

Claims have been made for several persons as originators of the mandate system. The idea antedates 1919 and the proposition that there should be collective responsibility for the care of the backward races was not new. The establishment of the permanent mandates commission brought about a degree of centralized supervision over the mandates and more important than the
supervision, a source from which information as to the administration of backward areas might be gained. The mandates commission early realized that the tendering of advice rather than criticism would be sound policy in promoting the well being of the mandates.

As the years have passed, it has become more and more evident that the grant of a mandate is not a veiled annexation as was anticipated by some. It must be admitted, however, that the exact legal status of a mandated territory is not easily placed under preexisting categories and that there are wide differences of opinion as to the category under which the exercise of authority by the mandatory should be considered. Some even maintain that the mandatory relationship is a new international category.

One of the striking features of the mandatory systems is the fact that mandated areas were granted to political entities previously having no colonial dependencies in the technical sense as in the case of the grant of southwest Africa to the Union of South Africa.

The terms of the class C mandates are fairly uniform usually prescribing more care for the natives of the mandatory area than seems to have been anticipated in the Covenant of the League of Nations.

*General mandate plan.*—Article 22 recognizes in class A certain "communities" in Turkey, in class B "peoples" in central Africa, in class C "territories" in southwest Africa and in the Pacific islands.

In this article 22 there is no stated intention to revoke or terminate a mandate.

There have been various queries as to whether permanent retention would be implied even at a cost to the power intrusted with the mandate. The mandates commission has promised that the mandates may be made to bear the cost of their administration only. In case there is a surplus income from the mandate, this surplus is supposed to be used for the benefit of the mandate.
The principle of the open door has been generally asserted for all mandates, and consequently the special advantages for holding mandates are correspondingly fewer.

International control in some form was necessary in order to meet the expectations that had been aroused by the statement of high ideals and unselfish motives made by leaders during the war.

The plan for some form of trusteeship for dependent peoples had been discussed, and met with favor from many quarters. General Smuts had elaborated plans along this line. The establishment of such trusteeship would make unnecessary the usual contentions for colonies in after-war settlement.

Japanese attitude.—Declaration by the Japanese Government relating to C mandates.
[Read by Viscount Ishii at the meeting of the council, December 17, 1920]

From the fundamental spirit of the League of Nations and as the question of interpretation of the covenant, His Imperial Japanese Majesty's Government have a firm conviction of the justice of the claim they have hitherto made for the inclusion of a clause concerning the assurance of equal opportunities for trade and commerce in C mandates. But from the spirit of conciliation and cooperation and their reluctance to see the question unsettled any longer, they have decided to agree to the issue of the mandate in its present form. That decision, however, should not be considered as an acquiescence on the part of His Imperial Majesty’s Japanese Government in the submission of Japanese subjects to a discriminatory and disadvantageous treatment in the mandated territories; nor have they thereby discarded their claim that the rights and interests enjoyed by Japanese subjects in these territories in the past should be fully respected.

Opinion of Keith.—Keith (War Government of the British Dominions, 1921), referring to the islands in the Southern Pacific under British mandate, said of New Guinea:

The chief point on which a commission of three, including the Lieutenant Governor of Papua, set up to advise as to the forms of administration, differed was whether the territory should be
administered as a part of or in subordination to Papua, as recommended by the lieutenant governor, or as an independent unit, on the same basis as Papua.

The final form of the legislation determined upon by the Government and presented to Parliament in August, 1920, adopts the plan of treating the German territories surrendered by the treaty of peace as a single unit, to be known as the territory of New Guinea, and the act gives power to the Governor General to accept the mandate for these territories when issued under the Covenant of the League of Nations (pp. 182-183).

And Keith further said:

The provisions thus enacted represent precisely the existing state of the law respecting Papua, save in so far as the necessity of a report to the league is concerned, and demonstrate how little difficulty there was in applying the system of the covenant to the new territory.

For New Zealand the Samoan mandate involved much more serious difficulties. The power of the Dominion to legislate for Samoa without imperial authority was held to be doubtful, and in accordance with this view the issue of an imperial order in council was procured on March 11, 1920, authorizing the Dominion Parliament to legislate for Samoa, and pending such legislation, conferring authority on the Dominion Government to legislate, subject to the terms of the treaty of peace. In the meantime the New Zealand Parliament had passed an act in 1919 to provide for the acceptance of the mandate for Samoa and the approval of the issue of orders in council by the Government respecting the administration of the islands. It was then explained in the House of Representatives on October 17, 1919, that it had been desired to lay before the legislature a bill defining precisely the government of the islands, but this was rendered impossible by the delay in the issue of the mandate, whose terms could not definitely be defined before the ratification of the peace with Germany, and the constitution would, therefore, be determined later by order in council. There was a marked divergence between the act of 1919 and the imperial order in council regarding the source whence the mandate would be derived; the former measure treated the mandate as conferred on the King in right of his Dominion of New Zealand by the League of Nations; the latter, conforming precisely to the terms of the treaty of peace, recognized that while the mandate was granted according to the covenant of the League of Nations, it was accorded by the principal allied and associated powers, to which, and not to the league, the German territories were surrendered by the peace treaty. (Art. 119.)
The actual constitution for the islands of western Samoa is laid down in the Samoa constitution order, 1920, which is based on the authority given by the Dominion act of 1919 and the imperial order in council of 1920. By it the government of Samoa is vested in the King, as if the territory were part of his dominions, and is to be carried on, subject to the control of the Minister of External Affairs of New Zealand, by an administrator. (pp. 184–185.)

* * * * *

Mention was made by Sir Francis Bell in the Legislative Council of the fact that the terms of the proposed mandate contained an arrangement for the incorporation of the islands in New Zealand if at any time the natives showed a desire to be annexed to the Dominion and the allied and associated powers considered this desire to be deliberate and well founded. No such clause, however, appears in the mandate as approved by the council of the league on December 17, 1920 (p. 187).

In the case of the Nauru Island mandate, question has been raised both within Great Britain and outside as to the maintenance of the open door since the exploitation of the phosphate of the island by the United Kingdom and the Pacific commonwealths. The agreement on this matter was confirmed by Parliament July 29, 1920, “subject to article 22 of the covenant of the League of Nations.”

Central Africa.—The mandates for central Africa declared that—

The mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the mandatory as an integral part of his territory and subject to the above provisions.

The mandatory shall, therefore, be at liberty to apply his laws to the territory subject to the mandate, with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal, or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate. (Art. 9.)

Article 3 of the French mandates provided:

The mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any
native military force except for local police purposes and for the defense of the territory.

It is understood, however, that the troops thus raised may in the event of general war be utilized to repel an attack or for the defense of the territory outside that subject to the mandate.

Article 4 of the Belgian mandate provided:

The mandatory shall not establish any military or naval bases, nor erect any fortifications, nor organize any native military force in the territory except for local police purposes and for the defense of the territory.

Article 3 of the British mandate provided:

The mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local police purposes and for the defense of the territory.

Status of mandates.—At the first meeting of the permanent mandates commission, October, 1921, the director of the mandates section, Mr. Rappard, made a statement as to the territories handed over to the victorious allied and associated powers:

The mandatory system formed a kind of compromise between the proposition advanced by the advocates of annexation, and the proposition put forward by those who wished to intrust the colonial territories to an international administration.

From these facts certain general principles might already be deduced.

The mandatory powers had assumed a responsibility similar to that of a guardian with respect to his ward. The interests of the natives were therefore of primary importance, and the rights of all the members of the league must always be respected. It was in order to complete the League of Nations by a work of pacification that these colonies were intrusted to certain powers, subject to their securing equal opportunities for the trade and commerce of all the members of the league, and subject, also, to their being responsible to the league. Great moderation was exercised in this respect; the mandatory powers were only obliged to submit to the council a single annual report on their administration.

M. Rappard then proceeded to analyze article 22, and noted that the fourth paragraph dealt with former
Turkish territories, the fifth with the former German territories in central Africa, and the sixth with southwest Africa and certain Pacific islands.

The treatment to be applied to the populations of these territories varied according to the degree of their civilization. The Arab populations had been considered to have reached a sufficiently high degree of civilization to be recognized as independent nations, provided that their administration was guided by a mandatory until they were able to govern themselves. The populations of Central Africa were placed under a system of guardianship which was intended to protect them from well-known abuses; in territories of this class all the members of the League of Nations enjoyed the same economic rights. In this matter alone did they differ from the territories under class C, which were administered as an integral part of the territory of the mandatory power.

What then had been done since the covenant had entered into force? A question of principle had been settled regarding the competence of the supreme council and of the council of the league, respectively. The former German possessions had not been handed over—in virtue of the treaties—to the League of Nations, but to the principal allied and associated powers. As to the former Turkish possessions, the treaty of Sèvres, which had not yet been ratified, laid down that these should be ceded to the principal allied powers. It was the supreme council, therefore, which had disposed of these territories and which had divided them between the so-called mandatory powers. This took place at Versailles and at San Remo. The British Empire, which had received 9 mandates out of 14, was intrusted with part of Togoland and the Cameroons, with the greater part of East Africa and the island of Nauru in the Pacific, the administration of which it shared with Australia and New Zealand. To the British Empire were also allotted Mesopotamia and Palestine. The Southwest African was intrusted to South Africa. As regards the Pacific, Australia received New Guinea, New Zealand received Samoa, and the islands north of the Equator, including the island of Yap, were allotted to Japan. France was intrusted with Syria and the greater part of the Cameroons and Togoland; Belgium received a part of German East Africa bordering on the Belgian Congo. (Minutes, Permanent Mandates Commission, p. 4. C. 416. M., 296. 1921., VI.)

Mr. Rappard also said:

Mandates implied relations between a mandatory and the authority which conferred the mandate. The powers exercised their
mandates on behalf of the League of Nations, and the only official link between the mandatories and the league, in whose name they exercised their powers, was the mandatory's annual report. Now, the covenant laid down that it was the permanent mandates commission which should examine this report. Therefore, if there were no permanent commission, it might be said that the mandates would exist only on paper and this would, in a measure, justify the opinion of the skeptics who saw in the mandates nothing but a veiled annexation. (Ibid., p. 6.)

Discussion in mandates commission.—In 1922 the chairman and representatives of the permanent mandates commission as a subcommittee made a tour of investigation as to the nationality of inhabitants of B and C mandates.

The British Government said:

As regards B mandates it is submitted that—

(a) The mandate does not in itself affect the nationality of the inhabitants of the territory mandated.

(b) The special conditions relating to administration as an integral part of the mandatory's territory, where they occur, should not affect the nationality of European inhabitants of the mandated territory.

(c) The nationality of the native inhabitants also of such territory remains unaffected by the special conditions referred to above. In this connection it may be pointed out that under article 127 of the treaty of Versailles, such natives are entitled to diplomatic protection by the mandatory power and that under the foreign office consular instructions, natives of territories under British mandates are already being treated as British-protected persons. The treatment of these natives as British-protected persons does not, of course, confer upon them British nationality. (3 League of Nations Official Journal, June, 1922, 595.)

Mr. Rappard, director of the mandates section, League of Nations Secretariat, on November 26, 1921, said, in discussing Belgian B mandates:

Were the mandatory states really sovereign with regard to the mandated territory? He thought they must reply in the negative. Germany, the State which possessed sovereign rights over the territory in question before and during the war, had ceded those rights; under the terms of the treaty she had left the fate of her colonies to be decided by the five principal allied powers and the League of Nations. The mandatory powers only derived their rights from these five great powers. Perhaps they might reply
that in these circumstances they were sovereign. But, interesting as the question might be from a legal point of view, it appeared to him yet more interesting from a political point of view. They must, he suggested, discuss a system which would fully satisfy all the interests concerned. It would then be the task of the jurists to give it a name and to set up a legal framework.

What were these interests?

First, there were the interests of the mandatory powers. It was quite natural that they should be inclined to give these interests precedence over the others. He would be the last to dispute it, or to venture on a discussion of Belgian interests with the representatives of Belgium. Might he, however, take the liberty of asking them, with all respect, if they considered that it was really in the interests of Belgium to confer her nationality on the peoples of the mandated territories? In any case it could not be, so far as military matters were concerned.

For even if, as seemed doubtful, the mandatory state was sovereign; even if it was master of its new nationals, it could not employ them for its army. In fact, the covenant laid down that these populations could only be armed for local defense. Again, in the economic sphere the covenant restricted proprietary rights over mandated territories.

There was one other point which he ventured to suggest to their Belgian friends: Would there not be serious political disadvantages for Belgium in administering the peoples of her mandated territory as if they were her own subjects? The inhabitants of this territory had an indisputable right to the protection of the League of Nations and might have recourse to it. Supposing that Belgium's other colonial subjects demanded the same right, how could they refuse it to them? They would claim, with apparent logic, that it was impossible to submit the subjects of one and the same country to different régimes.

The interests of the inhabitants.—It seemed to him beyond dispute that it was to the advantage of the inhabitants that they should be in close touch with the League of Nations; that is to say, that they should benefit by the protection which the League of Nations gave them under the terms of the covenant. Anything that tended to assimilate the inhabitants of the mandated territories to the inhabitants of ordinary colonies tended at the same time to limit the benefit that these inhabitants might derive from the special position of the League of Nations.

Lastly, there were the interests of the League of Nations. He thought there was no doubt that if they gave the inhabitants of mandated territories the nationality of the mandatory states, those who had always maintained that mandates were only a
disguised form of annexation would be confirmed in their opinion by such a decision; the persons who were neither enemies nor friends of the League of Nations would find it difficult to believe in the reality of mandates. He ventured to submit this point for the consideration of the Belgian Government. (3 League of Nations Journal, June, 1922, 603.)

The permanent mandates commission of the League of Nations considered for two years the status of inhabitants of B and C mandates. After its report was submitted to a drafting committee the council of the league adopted April 23, 1923, the following resolution, Japan abstaining:

The Council of the League of Nations,
Having considered the report of the permanent mandates commission on the national status of the inhabitants of territories under B and C mandates,
In accordance with the principles laid down in article 22 of the covenant:
Resolves as follows:
(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the mandatory power and can not be identified therewith by any process having general application.
(2) The native inhabitants of a mandated territory are not vested with the nationality of the mandatory power by reason of the protection extended to them.
(3) It is not inconsistent with (1) and (2) above that individual inhabitants of the mandated territory should voluntarily obtain naturalization from the mandatory power in accordance with arrangements which it is open to such powers to make, with this object, under its own law.
(4) It is desirable that native inhabitants who receive the protection of the mandatory power should in each case be designated by some form of descriptive title which will specify their status under the mandate. (4 League of Nations Official Journal, June, 1923, 604.)

The case of Jacobus Christian v. Rex.—In 1923 in the Supreme Court of South Africa the question was raised as to whether an inhabitant of Southwest Africa, a mandate under the Union of South Africa, was guilty of high treason against King George V on account of hostilities against the mandatory. In this case it was held that an
attack made upon the Government of the Union of South Africa, the "majestas operating internally," with hostile intent by an inhabitant of the mandatory would "be sufficient to found a charge of high treason." The court also gives an interpretation of the provisions of the treaty of Versailles:

The legal position of Southwest Africa and its government under the treaty of Versailles must now be briefly examined. By article 119 Germany renounced in favor of the principal allied and associated powers—that is, in favor of the United States, the British Empire, France, Italy, and Japan—all rights and titles over her overseas possessions. The expression "renounce in favor of" is sometimes used in the treaty as equivalent to "cede to." By articles 83 and 87, for instance, Germany renounced in favor of Czechoslovakia and of Poland, respectively, all right and title over territory within certain boundaries separately specified. That was, in effect, a cession in each case of the territory indicated; it ceased to form portion of Germany, and it became portion of the new state. Not so with the overseas possessions, or, at any rate, with such of them as fell within the operation of article 22. They were not by article 119 ceded to all or any of the principal powers any more than the city of Danzig was ceded to them under article 100. The animus essential to a legal cession was not present on either side. For the signatories must have intended that such possessions should be dealt with as provided by Part I of the treaty; they were placed at the disposal of the principal powers merely that the latter might take all necessary steps for their administration on a mandatory basis. * * *

The position in which the principal powers, the league, and the mandatory stand to one another is most vaguely stated. The main features are these: There was no cession of the German possessions to the principal powers; there was merely a renunciation in their favor in order that such possessions might be dealt with in accordance with the terms of the covenant. And the principal powers became bound as signatories to the treaty to do everything necessary on their part to give effect to the arrangement. This they did by selecting a mandatory as contemplated by article 118, and thereby conferring a mandate upon him. The matter then passed under the cognizance of the league, and it became the duty of the council to settle the terms of the mandate in conformity with the provisions of the covenant. The mandate having been accepted, the mandatory became obliged to report annually to the council. No limit was placed on the duration of
the mandate and no sanction was provided for a breach of its terms. It was probably considered that the force of public opinion, and in case of dispute the authority of the Court of International Justice would insure the due observance of the mandate. It is not necessary to inquire whether the mandate once given could be canceled either by the council, which did not appoint the mandatory, or by the principal powers, which having made the appointment passed the matter on to the council. (Juta, the South African Law Reports, 1924, Appellate Division, p. 101.)

*Attitude of mandates commission.*—In referring to class B mandates, the Cameroons and Togoland, which for administrative and fiscal purposes had been incorporated with Nigeria and the Gold Coast, the mandates commission said in 1924:

The administrative union between these two mandated territories and the neighboring colonies of the mandatory power leads the commission to make a further observation.

Under the terms of the mandates the mandatory power has the right to administer the countries concerned "as integral portions of its territory." This does not mean that the countries concerned have become integral portions of the neighboring colonies, as the wording of certain passages in the reports on Togoland and the Cameroons would appear to suggest.

While the commission desires to bring this matter to the notice of the council, it does not exaggerate its importance. As, however, the passages referred to might lead to annexationist aims being attributed quite erroneously to the mandatory powers, it appears to the commission that their own interest, no less than that of the League of Nations, requires that in future any formula should be avoided which might give rise to doubts on the subject in the minds of ill-informed or ill-intentioned readers. (Minutes, Permanent Mandates Commission. p. 190. C. 617, M. 216, 1924, VI.)

*United States and mandates.*—In 1920 the United States and Great Britain had correspondence in regard to mandates particularly in the Near East. In this correspondence the United States welcomed the assurances of Great Britain that it would preserve the natural resources of the mandated territory for the native peoples and that equal treatment in commerce and trade
should be maintained for all. The United States did not admit that the terms of the mandates could be discussed only in the Council of the League of Nations and declared itself “one of the powers directly interested in the terms of the mandates.” (American Secretary of State to British Secretary of State for Foreign Affairs, November 20, 1920.)

In a note to the president and members of the Council of the League of Nations on February 21, 1921, the Secretary of State of the United States stated that the approval of the United States as one of the allied and associated powers was “essential to the validity of any determinations which may be reached.” In this same note, referring to mandates relating to islands in the northern Pacific Ocean, it was said:

This Government is also in receipt of information that the Council of the League of Nations, at its meeting at Geneva on December 17 last, approved among other mandates a mandate to Japan embracing “all the former German islands situated in the Pacific Ocean and lying north of the Equator.” The text of this mandate to Japan which was received by this Government and which, according to available information, was approved by the council, contains the following statement:

“Whereas the principal allied and associated powers agreed that in accordance with Article XXII, Part I (Covenant of the League of Nations), of the said treaty, a mandate should be conferred upon His Majesty the Emperor of Japan to administer the said islands, and have proposed that the mandate should be formulated in the following terms,” etc.

The Government of the United States takes this opportunity, respectfully and in the most friendly spirit, to submit to the president and members of the council of the league that the statement above quoted is incorrect and is not an accurate recital of the facts. On the contrary, the United States, which is distinctly included in the very definite and constantly used descriptive phrase “The principal allied and associated powers,” has not agreed to the terms or provisions of the mandate which is embodied in this text, nor has it agreed that a mandate should be conferred upon Japan covering all the former German islands situated in the Pacific Ocean and lying north of the Equator.
The United States has never given its consent to the inclusion of the island of Yap in any proposed mandate to Japan, but, on the other hand, at the time of the discussion of a mandate covering the former German islands in the Pacific north of the Equator, and in the course of said discussion, President Wilson, acting on behalf of this Government, was particular to stipulate that the question of the disposition of the island of Yap should be reserved for future consideration. Subsequently, this Government was informed that certain of "the principal allied and associated powers" were under the impression that the reported decision of the supreme council, sometimes described as the council of four, taken at its meeting on May 7, 1919, included or inserted the island of Yap in the proposed mandate to Japan. This Government in notes addressed to the Governments of Great Britain, France, Italy, and Japan, has set forth at length its contention that Yap had in fact been excepted from this proposed mandate and was not to be included therein. Furthermore, by direction of President Wilson, the respective Governments above mentioned, were informed that the Government of the United States could not concur in the reported decision of May 7, 1919, of the supreme council. The information was further conveyed that the reservations which had previously been made by this Government regarding the island of Yap were based on the view that the island of Yap necessarily constitutes an indispensable part of any scheme or practicable arrangement of cable communication in the Pacific, and that its free and unhampered use should not be limited or controlled by any one power.

While this Government has never assented to the inclusion of the island of Yap in the proposed mandate to Japan, it may be pointed out that even if one or more of the other principal allied and associated powers were under a misapprehension as to the inclusion of this island in the reported decision of May 7, 1919, nevertheless the notes above mentioned of the United States make clear the position of this Government in the matter. At the time when the several notes were addressed to the respective Governments above mentioned, a final agreement had not been reached as to the terms and allocation of mandates covering the former German islands in the Pacific. Therefore, the position taken in the matter by the President on behalf of this Government and clearly set forth in the notes referred to, necessarily had the result of effectively withdrawing any suggestion or implication of assent, mistakenly imputed to this Government, long before December 17, 1920, the date of the council's meeting at Geneva.

As one of "The principal allied and associated powers," the United States has an equal concern and an inseparable interest
with the other principal allied and associated powers in the overseas possessions of Germany, and concededly an equal voice in their disposition, which it is respectfully submitted can not be undertaken or effectuated without its assent. The Government of the United States therefore respectfully states that it can not regard itself as bound by the terms and provisions of said mandate and desires to record its protest against the reported decision of December 17, last, of the Council of the League of Nations in relation thereto, and at the same time to request that the council, having obviously acted under a misapprehension of the facts, should reopen the question for the further consideration, which the proper settlement of it clearly requires.

In a very friendly note of March 1, 1921, the Council of the League of Nations expressed its desire for the cooperation of the United States, but also said:

The League of Nations Council would remind your excellency that the allocation of all the mandated territories is a function of the supreme council and not of the council of the league. The league is concerned not with the allocation but with the administration of these territories. Having been notified in the name of the allied and associated powers that all the islands north of the Equator had been allocated to Japan the council of the league merely fulfilled its responsibility of defining the terms of the mandate.

*The North Pacific islands.—* There had been communications between the United States and Japan. A telegram from the American Secretary of State to the chargé d'affaires in Tokyo on November 9, 1920, was as follows:

During the recent sessions of the communications conference some question has arisen in regard to the disposition of the island of Yap by the supreme council. It has been contended that this island was included in the islands north of the Equator, which were offered by action of the supreme council of May 7, 1919, under mandate to Japan. It was the clear understanding of this Government that for reasons vitally affecting international communications the supreme council, at the previous request of President Wilson, reserved for future consideration the final disposition of the island of Yap in the hope that some agreement might be reached by the allied and associated Governments to place the island under international control and thus render it available as an international cable station. For this reason it is the understanding of the Government that the island of Yap
was not included in the action of the supreme council on May 7, 1919.

In order to avoid misunderstanding on this point, you are instructed to read the foregoing to the minister of foreign affairs and to leave a copy with him.

The Japanese Foreign Office replied on November 19, 1920:

The Department of Foreign Affairs of Japan has the honor to acknowledge the receipt of a memorandum of the United States Embassy under date of the 12th instant relative to the status of the island of Yap.

According to the definite understanding of the Japanese Government the supreme council of May 7, 1919, came to a final decision to place under the mandate of Japan the whole of the German islands north of the Equator. The decision involves no reservation whatever in regard to the island of Yap.

For the above-mentioned reasons the Department of Foreign Affairs begs to inform the United States embassy that the Japanese Government would not be able to consent to any proposition which, reversing the decision of the supreme council, would exclude the island of Yap from the territory committed to their charge.

In a note of December 6, 1920, to the American chargé d'affaires after a long argument, the Acting Secretary of State says:

I am directed by the President to inform you that the Government of the United States can not agree that the island of Yap was included in the decision of May 7 or in any other agreement of the supreme council. And in addition that, as the island of Yap must form an indispensable part of the international communications, it is essential that its free and unhampered use for such purposes should not be limited or controlled by any one power, even on the assumption that the island of Yap should be included among the islands held under mandate by Japan, it is not conceivable that other powers should not have free and unhampered access to and use of the island for the landing and operation of cables. This is a right which the United States would be disposed to grant upon any of its unfortified islands which may be essential for such purposes.

The Government of the United States expresses the hope that the above statements of fact will convince the Japanese Government of the correctness of the position of the United States with
respect to the mandate over the island of Yap and also that the Japanese Government will concur in the view of the United States that even if Yap should be assigned under mandate to Japan all other powers should have free and unhampered access to the island for the landing and operation of cables.

A similar long note from the Japanese Foreign Office on February 26, 1921, said:

In the concluding part of the note under reply it is observed that even on the assumption that the Island of Yap should be included among the islands held under the mandate by Japan, it is not conceivable that other powers should not have free and unhampered access to and use of the island for the landing and operation of cables. If this observation is put forth irrespective of the fact that the island is within the mandatory territory, then the question seems to be one which should be freely settled by the nation which has the charge of the place, namely, Japan. If this meaning be, however, that owing to the nature of the mandate the island should have its doors kept open, the Imperial Government would draw attention to the extract of the meeting of the commission on mandates held on July 8, 1919. Colonel House opposed Viscount Chiná’s claim that the same equal opportunities for commerce and trade should be guaranteed in territories belonging to the C class as in those belonging to the B class. In view of the position thus taken by the American delegate the Imperial Government feel obliged to state that in their opinion the American Government can not with justice contend for the open door in the C class territories at least as against Japan and to inform the United States Government at the same time that they can not consider themselves bound in any way to recognize the freedom of other nations in the manner insisted upon by the American Government in regard to the landing and the operation of cables even in places where the principle of the open door is to be guaranteed.

In a further communication of April 2, 1921, the United States expressed itself as unable to agree with the contention of the Japanese Government and concludes after reviewing previous arguments:

In particular, as no treaty has ever been concluded with the United States relating to the island of Yap, and as no one has ever been authorized to cede or surrender the right or interest of the United States in the island, this Government must insist that it has not lost its right or interest as it existed prior to any
action of the supreme council or of the League of Nations, and can not recognize the allocation of the island or the validity of the mandate to Japan.

In this view, this Government deems it to be unnecessary at this time to consider the terms of the so-called C mandates, or the discussion with respect thereto.

This Government, as has been clearly stated in previous communications, seeks no exclusive interest in the island of Yap and has no desire to secure any privileges without having similar privileges accorded to other powers, including, of course, Japan, and relying upon the sense of justice of the Government of Japan and of the governments of the other allied and associated powers, this Government looks with confidence to a disposition of the matter whereby the just interests of all may be properly conserved.

Similar notes were also sent to Great Britain, France, and Italy.

The difference of opinion was at length adjusted at the Washington conference in the treaty of February 11, 1922.

_Treaty of August 25, 1921._—In the treaty between the United States and Germany of August 25, 1921, article 2, paragraph 2, it is provided:

_ART. 2._ With a view to defining more particularly the obligations of Germany under the foregoing article with respect to certain provisions in the treaty of Versailles, it is understood and agreed between the high contracting parties:

1. That the rights and advantages stipulated in that treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in section 1 of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV. The United States, in availing itself of the rights and advantages stipulated in the provisions of that treaty mentioned in this paragraph, will do so in a manner consistent with the rights accorded to Germany under such provisions.

2. That the United States shall not be bound by the provisions of Part I of that treaty nor by any provisions of that treaty, including those mentioned in paragraph 1 of this article, which relate to the covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations or by the council or by the assembly thereof, unless the the United States shall expressly give its assent to such action.
As mandates in the South Pacific and elsewhere are in part intrusted to political unities with which the United States has at present no direct diplomatic relations, as in the case of Australia and New Zealand, the problem of negotiating agreements similar to those with France and Belgium arises, but an arrangement may not be difficult.

_Treaty of February 11, 1922._—As regards some powers, the agreements relating to mandates are in part conditioned upon the convention between the United States and Japan of February 11, 1922, and the notes exchanged in reference thereto.

**BY THE PRESIDENT OF THE UNITED STATES OF AMERICA**

**A PROCLAMATION**

Whereas a convention between the United States of America and Japan with regard to the rights of the two Governments and their respective nationals in the former German islands in the Pacific Ocean, lying north of the Equator, in particular the island of Yap, was concluded and signed by their respective plenipotentiaries at Washington, on the 11th of February, 1922, the original of which convention is word for word as follows:

The United States of America and Japan;

Considering that by article 119 of the treaty of Versailles, signed on June 28, 1919, Germany renounced in favor of the powers described in that treaty as the principal allied and associated powers, to wit, the United States of America, the British Empire, France, Italy, and Japan, all her rights and titles over her oversea possessions;

Considering that the benefits accruing to the United States under the aforesaid article 119 of the treaty of Versailles were confirmed by the treaty between the United States and Germany, signed on August 25, 1921, to restore friendly relations between the two nations;

Considering that the said four powers, to wit, the British Empire, France, Italy, and Japan, have agreed to confer upon His Majesty the Emperor of Japan a mandate, pursuant to the treaty of Versailles, to administer the groups of the former German
islands in the Pacific Ocean lying north of the Equator, in accordance with the following provisions:

"ARTICLE 1. The islands over which a mandate is conferred upon His Majesty the Emperor of Japan (hereinafter called the mandatory) comprise all the former German islands situated in the Pacific Ocean and lying north of the Equator.

"ART. 2. The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Empire of Japan, and may apply the laws of the Empire of Japan to the territory, subject to such local modifications as circumstances may require."

The mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate.

"ART. 3. The mandatory shall see that the slave trade is prohibited and that no forced labor is permitted, except for essential public works and services, and then only for adequate remuneration."

The mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the convention relating to the control of the arms traffic, signed on September 10, 1919, or in any convention amending same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

"ART. 4. The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

"ART. 5. Subject to the provisions of any local law for the maintenance of public order and public morals, the mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any state member of the League of Nations, to enter into, travel, and reside in the territory for the purpose of prosecuting their calling.

"ART. 6. The mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under articles 2, 3, 4, and 5.

"ART. 7. The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate."

The mandatory agrees that if any dispute whatever should arise between the mandatory and another member of the League of
Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it can not be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the covenant of the League of Nations;

Considering that the United States did not ratify the treaty of Versailles and did not participate in the agreement respecting the aforesaid mandate;

Desiring to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid islands, and in particular the island of Yap, have resolved to conclude a convention for that purpose and to that end have named as their plenipotentiaries:

The President of the United States of America: Charles Evans Hughes, Secretary of State of the United States; and

His Majesty the Emperor of Japan: Baron Kijuro Shidehara, His Majesty's ambassador extraordinary and plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

Subject to the provisions of the present convention, the United States consents to the administration by Japan, pursuant to the aforesaid mandate, of all the former German islands in the Pacific Ocean lying north of the Equator.

ARTICLE II

The United States and its nationals shall receive all the benefits of the engagements of Japan, defined in articles 3, 4, and 5 of the aforesaid mandate, notwithstanding the fact that the United States is not a member of the League of Nations.

It is further agreed between the high contracting parties as follows:

(1) Japan shall insure in the islands complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; American missionaries of all such religions shall be free to enter the islands and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the islands; it being understood, however, that Japan shall have the right to exercise such control as may be necessary for the main-
tenance of public order and good government and to take all measures required for such control.

(2) Vested American property rights in the mandated islands shall be respected and in no way impaired.

(3) Existing treaties between the United States and Japan shall be applicable to the mandated islands.

(4) Japan will address to the United States a duplicate of the annual report on the administration of the mandate to be made by Japan to the Council of the League of Nations.

(5) Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited in the convention, unless such modification shall have been expressly assented to by the United States.

ARTICLE III

The United States and its nationals shall have free access to the island of Yap on a footing of entire equality with Japan or any other nation and their respective nationals in all that relates to the landing and operation of the existing Yap-Guam cable or of any cable which may hereafter be laid or operated by the United States or by its nationals connecting with the island of Yap.

The rights and privileges embraced by the preceding paragraph shall also be accorded to the Government of the United States and its nationals with respect to radiotelegraphic communication; provided, however, that so long as the Government of Japan shall maintain on the island of Yap an adequate radiotelegraphic station, cooperating effectively with the cables and with other radio stations on ships or on shore, without discriminatory exactions or preferences, the exercise of the right to establish radiotelegraphic stations on the island by the United States or its nationals shall be suspended.

ARTICLE IV

In connection with the rights embraced by Article III, specific rights, privileges, and exemptions, in so far as they relate to electrical communications, shall be enjoyed in the island of Yap by the United States and its nationals in terms as follows:

(1) Nationals of the United States shall have the unrestricted right to reside in the island, and the United States and its nationals shall have the right to acquire and hold on a footing of entire equality with Japan or any other nation or their respective nationals all kinds of property and interests, both personal and real, including lands, buildings, residences, offices, works, and appurtenances,
(2) Nationals of the United States shall not be obliged to obtain any permit or license in order to be entitled to land and operate cables on the island, or to establish radiotelegraphic service, subject to the provisions of Article III, or to enjoy any of the rights and privileges embraced by this article and by Article III.

(3) No censorship or supervision shall be exercised over cable or radio messages or operations.

(4) Nationals of the United States shall have complete freedom of entry and exit in the island for their persons and property.

(5) No taxes, port, harbor, or landing charges or exactions of any nature whatsoever shall be levied either with respect to the operation of cables or radio stations or with respect to property, persons, or vessels.

(6) No discriminatory police regulations shall be enforced.

(7) The Government of Japan will exercise its power of expropriation in the island to secure to the United States or its nationals needed property and facilities for the purpose of electrical communications if such property or facilities cannot otherwise be obtained.

It is understood that the location and the area of land so to be expropriated shall be arranged between the two Governments according to the requirements of each case. Property of the United States or of its nationals and facilities for the purpose of electrical communication in the island shall not be subject to expropriation.

ARTICLE V

The present convention shall be ratified by the high contracting parties in accordance with their respective constitutions. The ratifications of this convention shall be exchanged in Washington as soon as practicable, and it shall take effect on the date of the exchange of the ratifications.

In witness whereof the respective plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate at the city of Washington this 11th day of February, 1922.

Charles Evans Hughes. [Seal.]

K. Shidehara. [Seal.]

And whereas the said convention has been duly ratified on both parts and the ratifications of the two Governments were exchanged in the city of Washington, on the 13th day of July, 1922;

Now, therefore, be it known that I, Warren G. Harding, President of the United States of America, have caused the said convention to be made public, to the end that the same and every
article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 13th day of July, in the year of our Lord 1922, and of the independence of the United States the one hundred and forty-seventh.

[seal.]

WARREN G. HARDING.

By the President:

CHARLES E. HUGHES,
Secretary of State.

[Exchanges of notes]

[The Japanese Ambassador to the Secretary of State]

JAPANESE EMBASSY,
Washington, February 11, 1922.

SIR: In proceeding this day to the signature of the convention between Japan and the United States with respect to the islands, under Japan's mandate, situated in the Pacific Ocean and lying north of the Equator, I have the honor to assure you, under authorization of my Government, that the usual comity will be extended to nationals and vessels of the United States in visiting the harbors and waters of those islands.

Accept, sir, the renewed assurances of my highest consideration.

K. SHIDEHARA.

[The Secretary of State to the Japanese Ambassador]

HON. CHARLES E. HUGHES,
Secretary of State.

DEPARTMENT OF STATE,
Washington, February 11, 1922.

EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's note under date of February 11, 1922, stating that the Japanese Government are quite willing to extend to American nationals and vessels the usual comity in visiting the harbors and waters of the Japanese mandated islands.

Accept, excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES.

His Excellency BARON KIJURO SHIDEHARA,
Ambassador of Japan.
[The Secretary of State to the Japanese Ambassador]

DEPARTMENT OF STATE,
Washington, February 11, 1922.

EXCELLENCY: In proceeding this day to the signature of the convention between the United States and Japan with respect to former German possessions under a mandate to Japan, I have the honor to state that if in the future the Government of the United States should have occasion to make any commercial treaties applicable to Australia and New Zealand, it will seek to obtain an extension of such treaties to the mandated islands south of the Equator, now under the administration of those Dominions. I should add that the Government of the United States has not yet entered into a convention for the giving of its consent to the mandate with respect to these islands.

I have the honor further to state that it is the intention of the Government of the United States, in making conventions, relating to former German territories under mandate, to request that the governments holding mandates should address to the United States, as one of the principal allied and associated powers, duplicates of the annual reports of the administration of their mandates.

Accept, excellency, the renewed assurance of my highest consideration.

CHARLES E. HUGHES.

His Excellency BARON KIJURO SHIDEHARA,
Ambassador of Japan.

[The Japanese Ambassador to the Secretary of State]

JAPANESE EMBASSY,
Washington, February 11, 1922.

SIR: I have the honor to acknowledge the receipt of your note of this date, stating that if in the future the Government of the United States should have occasion to make any commercial treaties applicable to Australia and New Zealand, it will seek to obtain an extension of such treaties to the islands south of the Equator, under the mandate of Australia and New Zealand, and further that it is the intention of the Government of the United States, in making hereafter conventions relating to former German territories under mandate, to request that the mandatories should address to the United States, as one of the principal allied and associated powers, duplicates of the annual reports on the administration of such mandated territories.
In taking note of your communication under acknowledgment, I beg you, Sir, to accept the renewed assurances of my highest consideration.

K. SHIDEHARA.

HON. CHARLES E. HUGHES,
Secretary of State.

Japan in the Pacific.—In the second annual report on Japan’s mandated territory there is an outline of general administration which states:

When the German Pacific islands north of the Equator were occupied by the Japanese expeditionary squadron in October, 1914, the commander of the squadron immediately established military administration on the islands. On December 28, 1914, a provisional naval garrison was established to take over the defense and administration of the islands from the expeditionary squadron.

The headquarters of the provisional naval garrison was established on Truk, the islands being divided into six administrative jurisdictions—those of Saipan, Palau, Yap, Truk, Ponape, and Jaluit—and guards were stationed in the respective jurisdictions. The chiefs of these guards were instructed to discharge their administrative functions in conformity, in so far as was compatible with military requirements, with the rules and customs which were in force before the Japanese occupation; and also specially to respect the various powers which were possessed by native chieftains over their tribesmen, with a view to gradually fostering the spirit of self-government among the natives.

It was due to unavoidable military requirements that the chiefs of guards were put in direct charge of administrative affairs on the islands. Subsequently, however, the last vestige of the German squadron in the Pacific having disappeared, a civil administration department, under the control of the commander of the naval garrison, was established on July 1, 1918, together with a civil administration station in each of the six administrative jurisdictions. The staffs of these offices were all composed of civil officials, who took over the charge of general administrative affairs from the guards which thereafter devoted themselves exclusively to local policing.

The mandate for the German Pacific islands north of the Equator being assigned to Japan by the League of Nations Council on December 17, 1920, the Japanese Government have taken various steps to fulfil the terms of the mandate. The withdrawal of guards from the islands was commenced in 1921, and by March, 1922, all the troops will be withdrawn from the entire region. At the same time the provisional naval garrison will be abolished,
while a south seas bureau, under the supervision of the prime minister, will be brought into existence to take charge of general administrative affairs in the mandated territory (p. 1.)

Later, in the same report, it is explained that—

The principles set down in the mandate for the German Pacific islands north of the Equator are similar to those followed by Japan ever since the islands came under her control in 1914—so much so that when the assignment of the mandate to Japan was decided upon in 1920 there was scarcely any need of modifying our administrative principles. However, since some of the laws and regulations promulgated during the war remain unrevised, and since some basic investigations relating to general administrative affairs have not yet been completed owing to the very low standard of human development among the islanders and also because of the defective system of communication between the various islands, some inadequacy is still felt in regard to the existing institutions, and the Japanese Government are doing their best to remove these drawbacks characteristic of a transition period (p. 3).

All naval units were reported by Japan to have been withdrawn in April, 1922, and the maintenance of peace and order to have been placed in the hands of an organized police force.

*Mandate and mandatory.*—In the discussion in the permanent mandates commission of the League of Nations June 10, 1926, the matter of relation of the mandate to the mandatory arose.

**RELATION BETWEEN SOUTH AFRICA, AS MANDATORY, AND THE MANDATED TERRITORY OF SOUTHWEST AFRICA**

M. Van Rees said he would ask the commission before considering the report to note a declaration which had been made by General Smuts in the South African Parliament during a debate which had taken place from July 13 to July 27 of last year. General Smuts, referring to the Union of South Africa and the mandated territory, had expressed himself as follows:

"I should have preferred the two countries more closely linked up at this stage. When I urge this it may be said that I am working in favor of the annexation of Southwest Africa to the Union; but I am not. I do not think it is necessary for us to annex Southwest to the Union. The mandate for me is enough, and it
should be enough for the Union. It gives the Union such complete power of sovereignty not only administrative but legislative that we need not ask for anything more. When the covenant of the League of Nations and subsequently the mandate gave to us the right to administer that country as an integral portion of the Union, everything was given to us. I remember at the peace conference one of the great powers tried to modify the position, and instead of saying 'as an integral portion' an amendment was made to introduce the word 'if' so that it should read 'as if an integral portion of the mandatory power.' But after consideration the 'if' was struck out. We therefore have the power to govern Southwest Africa actually as an integral portion of the Union. Under these circumstances I maintain—and I have always maintained—that it will never be necessary for us, as far as I can see, to annex Southwest. We can always continue to fulfill the conditions imposed on us by the mandate, and we can always render annual reports to the League of Nations in respect of the mandate."

The mandates commission had always interpreted paragraph 6 of article 22 of the covenant in the sense that the mandated territory should be administered as if it were an integral portion of the territory of the mandatory. According to the interpretation, however, given by General Smuts to this passage, Southwest Africa constituted a part of the Union of South Africa, for he rejected the interpretation according to which this position only rested on a supposition. In this case, however, nothing would remain but a territory which was incorporated politically and in actual fact in the Union, and consequently there would be no longer a territory under mandate. It was for this reason that M. Van Rees thought that the commission could not pass over in silence the declaration of General Smuts.

Sir F. Lugard did not think that the insertion or omission of the word "if" made any real difference in practice. The point of substance was that a mandatory power was bound to carry out the terms of the mandate, to present an annual report to the League of Nations, and that the right of petition was recognized as belonging to the inhabitants. So long as these points of substance were admitted, a mandated territory was in practice in quite a different position from that of a colony.

M. Orts did not think that what had been said during the discussions preceding the adoption of the covenant could be used as an argument. No minutes had been kept of the conferences at the Hotel Crillon, which meant that as far as the Covenant of the
League of Nations was concerned this ordinary source of interpretation was completely lacking.

In order to interpret the covenant, the permanent mandates commission could not take into account the personal recollections of the statesmen who had taken part in those conferences. It could not be influenced by the arguments put forward by General Smuts with regard to a first draft of article 22, of which no trace remained, any more than there remained any trace of the considerations which had caused that draft to be modified.

M. Rappard agreed with M. Orts. The views of General Smuts on mandates were well known. He had indeed stated several years previously that in his eyes the institution of such mandates was equivalent, in all but name, to annexation or something very like it. M. Rappard observed, with regard to the point raised by M. Orts, that article 22 of the covenant had not even been discussed by the committee on the League of Nations at the peace conference, but had been drafted by the supreme council. The conversations between the statesmen assembled at Paris which had taken place with regard to this matter could not be regarded as binding on members of the League of Nations.

He did not think that a matter of principle was actually affected by the declaration of General Smuts. The covenant, by the terms of which mandated territories were administered in the name of the League of Nations, remained untouched. General Smuts was perfectly free to state that an integral part of the territory of South Africa was administered in the name of the League of Nations, although, in the view of M. Rappard, it would appear more logical to say that it was administered in the name of the League of Nations as if it formed an integral part of the territory. (Minutes 9th Session, Permanent Mandates Commission, C. 405, M. 144, 1926, VI, p. 33-34.)

Belgian attitude, 1924.—In a note annexed to a letter to the secretary-general of the League of Nations, June 7, 1924, the following view was expressed by Belgium:

All acts of administration regularly performed on behalf of the mandated territory by its accredited representative have the same force as those performed by a power capable of governing itself. As in the case of a trusteeship, properly speaking, such acts—the legal relations which they created with third parties, the engagements which they undertook, and the guaranties which they established—subsisted, whatever, might be the ultimate changes made in the régime of the territories to which assistance was given. (Minutes, 5th Session, Permanent Mandates Commission, C. 617, M. 216, 1924, VI, p. 154.)
Powers of mandatory.—The powers of a mandatory state may be seen from article 2 of the mandate for the Pacific islands north of the Equator, which were allocated to Japan:

The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Empire of Japan, and may apply the laws of the Empire of Japan to the territories, subject to such local modification as circumstances may require.

The mandatory must give heed to the welfare of the natives, etc., and, “furthermore, no military or naval bases shall be established or fortifications erected in the territory.”

The mandatory must also make “an annual report to the satisfaction of the council” concerning its administration, and by the Yap agreement must also address a duplicate of this report to the United States.

On December 16, 1920, a report of the subcommittee of the League of Nations on mandates said:

In the first place, they feel that the mandatory should not be allowed to make use of its position in order to increase its military strength.

Administered as integral portions.—Manifestly if states are to be intrusted with mandated areas, the states must have authority to administer these territories. Article 22 of the covenant of the league foresees that these “can be best administered under the laws of the mandatory as integral portions of its territory.” There is thus visualized possible unity of administration, but, by virtue of the specific provision, the unification is thereby limited and incorporation is not implied.

The list of questions suggested by the permanent mandates commission in 1926 had for its object to obtain from the mandatories in their annual reports data of a character that would be more helpful. The earlier questionnaire had not proven entirely satisfactory. The questions proposed in 1926 involved information in regard to military forces maintained, expenditure upon police
and military forces, nature of control of arms, etc. The British and other Governments objected to the detailed nature of these 236 questions as well as to the idea that representatives of the mandated populations might appear before the mandates commission. Great Britain consulted the Dominion Governments and in a communication of November 8, 1926, said:

3. In order properly to appreciate the issues at stake it seems to these Governments necessary to examine shortly the theory and purpose of mandates and to form a clear idea of the mandatory principle.

4. The purpose of the mandatory system and the duties thereby devolving respectively upon the mandatory Governments and the league are set forth in article 22 of the covenant. It is there stated that the well-being and development of inhabitants of mandated territories are a sacred trust of civilization, and that the best method of achieving this object is “that the tutelage of such peoples should be intrusted to advanced nation who, by reason of their resources, their experience, or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the league.”

5. After laying down this general principle, the covenant proceeds to distinguish between the three different classes of territories which have been allotted under A, B, and C mandates, respectively. In regard to B mandates the covenant says (par. 5 of art. 22) that “the mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion,” subject to certain considerations. Territories under C mandates “can best be administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned.” (Par. 6 of art. 22.)

6. Finally, “the mandatory shall render to the council an annual report in reference to the territory committed to its charge,” and “a permanent commission shall be constituted to receive and examine the annual reports of the mandatories and to advise the council on all matters relating to the observance of the mandates.”

7. In his report to the council in August, 1920, the Belgian delegate (M. Hymans), who acted as rapporteur, suggested that, in the case of B mandates, “the mandatory power will enjoy, in my judgment, a full exercise of sovereignty, in so far as such exercise is consistent with the carrying out of the obligations im-
TROOPS IN MANDATE 87

posed by paragraphs 5 and 6 (of art. 22 of the covenant). In paragraph 6, which deals with C mandates, the scope of these obligations is perhaps narrower than in paragraph 5, thus allowing the mandatory power 'more nearly to assimilate the mandated territory to its own'.” (British Parliamentary Papers, Miscellaneous No. 10 (1926). Permanent Mandates Commission, Cmd. 2767, p. 14.)

Later the Council of the League of Nations expressed itself as unfavorable to permitting representatives of mandated populations to appear before the mandates commission though maintaining the right of petition. The tendency has been for the mandates commission to favor constructive measures in the direction of improving the condition of the mandated territories while refraining from unnecessary interference with methods and policies of the mandatory powers.

_Mr. Miller on troops in mandates._—Mr. David Hunter Miller, who was technical adviser to the American commission at the Paris Peace Conference, writing of the discussion at the conference in regard to native troops in mandated areas, said:

Furthermore, there is no doubt that the French contention regarding recruiting of troops in their mandated territories in Africa was accepted at the afternoon meeting of the Council of Ten of January 30. The language of Clemenceau could hardly have been more explicit; in the original unrevised text of the minutes the rather long discussion ended thus:

"Mr. Lloyd-George said that there was nothing in the clause under review to prevent that. The words used there were 'for other than police purposes and the defense of territory.' He really thought that those words would cover the case of France. There was nothing in the document which would prevent their doing exactly the same thing as they had done before. What it did prevent was the kind of thing the Germans were likely to do, namely, organize great black armies in Africa, which they could use for the purpose of clearing everybody else out of that country. That was their proclaimed policy; and if that was encouraged amongst the other nations, even though they might not have wars in Europe, they would have the sort of thing that happened in the seventeenth and eighteenth centuries in India, when France and Great Britain were at war in India, whilst being
fairly good friends in Europe. Then they were always raising
great native armies against each other. That must now be
stopped. There was nothing in this document which prevented
France doing what she did before. The defense of the territory
was provided for.

"M. Clemenceau said that if he could raise troops, that was all
he wanted.

"Mr. Lloyd-George replied that he had exactly the same power
as previously. It only prevented any country drilling the natives
and raising great armies.

"M. Clemenceau said that he did not want to do that. All
that he wished was that the matter should be made quite plain,
and he did not want anybody to come and tell him afterwards
that he had broken away from the agreement. If this clause
meant that he had a right of raising troops in case of general
war, he was satisfied.

"Mr. Lloyd-George said that so long as M. Clemenceau did not
train big nigger armies for the purposes of aggression; that was all
the clause was intended to guard against.

"M. Clemenceau said that he did not want to do that. He
therefore understood that Mr. Lloyd-George's interpretation was
adopted.

"President Wilson said that Mr. Lloyd-George's interpretation
was consistent with the phraseology.

"M. Clemenceau said that he was quite satisfied." (The
Origin of the Mandate System, 6 Foreign Affairs, January, 1928,
p. 288.)

Recomming of inhabitants of mandates.—In June, 1926,
the Council of the League of Nations reaffirmed the views
of the permanent mandates commission:

Military recruiting.—With regard to the question of recruiting,
the permanent mandates commission, at its third session (1923),
expressed the opinion that—

"The spirit, if not the letter, of the mandate would be violated
if the mandatory enlists the natives of the mandated territory
(wherever they may present themselves for engagement) for serv­
ces in any military corps or body of constabulary which is not
permanently quartered in the territory and used solely for its
defense or the preservation of order within it." (Monthly Sum­
mary, VI, 6, p. 148.)

The question of recruiting was discussed in the meet­
ings of the commission. On June 26, 1925, the records
state:
M. Van Rees wished to put three questions of a general nature to the commissioner of the French Republic.

In regard to the military organization in the French mandated territories, he recalled that last year the secretary had distributed to the commission certain documents containing extracts from various Swedish and other newspapers which were agitated by an official report presented to the French Chamber of Deputies on the subject of the sources of recruitment of natives in the French colonies. This document referred not only to the colonies but also to the mandated territories. It was stated in particular that "the future international situation of this possession (the Cameroons) should enable France to draw on it for military obligations demanded from the French possessions in Africa." Further, "the colonies should supply France with a native army methodically recruited, minutely organized, and specially trained. In a future conflict France should, contrary to what occurred in 1914, have this weapon ready to hand, etc."

He wished to know whether the suggestions made in this report had had any practical result and added that he had in mind the special clauses in the mandates for Togoland and the Cameroons regarding military recruitment.

M. Duchêne thanked M. Van Rees for raising this question, which dealt with an observation he had himself desired to make to the commission. As mentioned by M. Van Rees, the mandates for Togoland and the French Cameroons contained a special clause permitting France to utilize in a general war the public forces recruited in the Cameroons or Togoland. By reason of these provisions, the French military authorities had considered that they should maintain the public forces of French West or equatorial Africa, and the two mandated territories under the same command, with the formal reservation that in peace time the soldiers recruited in Togoland and the Cameroons should be exclusively employed in these two territories. This conclusion, which was only an apparent one, between the military organization of the French African colonies and the two mandated territories having attracted some attention, the French Government wished to remove any misunderstanding.

By virtue of a measure which applied from January 1 of this year and which in consequence did not appear in the report of 1924, a complete distinction had been made between the native soldiers who might be recruited in Togoland and the Cameroons to be employed there in peace time and French native troops recruited elsewhere. Since that date these forces were not only no longer shown on the French budget but they constituted a sepa-
rate militia absolutely distinct from the French native colonial army. In Togoland the commissioner of the French Republic had gone still further and considered that this public force might be dispensed with. This removed all confusion, both apparent and real, between the forces recruited in the Cameroons and in Togoland and the French colonial army in general. * * *

M. Bonnecarrère added further details to the explanations given by M. Duchêne, and stated that in 1923 one of the two companies that then existed in Togoland had been sent to Dahomi, but, in order scrupulously to observe the clauses of the mandate, the soldiers of this company that were natives of Togoland were withdrawn from the troop and attached to the company stationed in the north of the territory.

Further, as had been stated by the accredited representative of the French Government, the last company that existed in Togoland had been disbanded thanks to the state of security existing in the territory. There were at the present moment no military forces in Togoland. There existed only a police force which was in no way intended for military purposes, but was employed exclusively for civil duties and the maintenance of the internal security of the territory and so on. (Minutes, Permanent Mandates Commission, C. 386, M. 132, 1925, VI, p. 15.)

*Mandates and war.—The question of sovereignty of mandated areas is not involved because areas become liable in time of war not by virtue of sovereignty over the area but by virtue of authority exercised within the area. In an area under belligerent occupation the sovereignty may reside in the belligerent on the offensive, in the belligerent on the defensive, or even in a neutral as in the Russo-Japanese War, yet, if occupied by one belligerent, the nonoccupying belligerent may treat the territory as hostile area for purposes of the war.

The status of class C mandates in time of war has been much discussed. Manifestly an area merely a mandate could not issue a proclamation of neutrality or a declaration of war for the mandate is to be administered under the mandatory’s laws as an integral portion of the mandatory. It is difficult to conceive how if the mandatory by law declares war or proclaims neutrality this applies only to a part of the area under its administrative control and over which no other state has control. There
may be restrictions accepted by the mandatory on taking over the control and these should be strictly construed. The islands under class C mandates were to a degree demilitarized, but they were not neutralized. This is evident from the terms of the mandate which permit training of the natives for local defense. In a treaty specific clauses prevail against general.

The "Sudmark."—On August 15, 1914, the German steamship Sudmark was captured by a British vessel of war in the Red Sea. The Sudmark was brought through the Suez Canal to Alexandria in Egypt. In the judgment of the judicial committee of the privy council, it was said:

Seizures as prize are made by executive officers of the Crown in the exercise of the Crown’s belligerent rights. The duties of these executive officers toward the owners of the property seized are the duties of the sovereign, and fall to be determined by international law. On the other hand, the duties of these executive officers toward the Crown must be determined by municipal law. (1917 A. C., p. 620.)

Prize court jurisdiction was conferred upon the British court in Egypt by an act of Parliament of September 18, 1914, and by an order in council of September 30, 1914. Great Britain proclaimed Egypt a protectorate December 18, 1914.

In the case of the Sudmark, question was raised in regard to bringing the ship to a proper port and the judgment stated:

The convenience of the port to which a prize is brought in for adjudication must be determined by all the circumstances of the case. Neutral ports are not convenient ports, for it is arguable that a neutral power could not allow a prize to remain in its ports—except temporarily, and then only by reason of special circumstances such as stress of weather or want of provisions—without committing a breach of neutrality; and, further, it might be difficult to execute the order of the prize court of the captors over vessels in a neutral port. Other things being equal, the nearest available port should be preferred. A ship captured in the English Channel ought not as a rule to be taken to Gibraltar. It would be unreasonable to subject her to the risk of so long a voyage. But, as between various home ports, it would be quite
proper to select the least congested port, or the port the voyage to which, although longer, would involve less danger from the risks incident to war. A convenient port must be such that the property can remain there in safety without being exposed to special risk from wind or tide. It should be capable of accommodating vessels of the draft of the captured ship. The real point to be considered is the safety of the prize and the distance of the place where the prize court holds its sittings from the port selected is immaterial.

To the question whether Alexandria was a convenient port to which the *Sundmark* might properly be brought after her capture, their lordships, without hesitation, return an affirmative answer. (Ibid.)

*Doubtful status.*—There have arisen from time to time controversies in regard to areas where a belligerent state exercised authority even though not sovereign. It would seem difficult to reconcile claims sometimes made that would imply that an area might at the same time have a belligerent and a neutral status. Such claims have been made for areas in southeastern Europe as in regard to the island of Cyprus.

During the World War the question arose in the case of the *Gutenfels* as to whether Egypt, because of its relation to Great Britain, would be regarded as belligerent or neutral. This question in 1916 came before the judicial committee of the privy council, which said:

Secondly, the question has been argued whether Port Said was, within the meaning of The Hague convention, an “enemy port,” that is, a port enemy to Germany. Having regard to the relations between Great Britain and Egypt, to the anomalous position of Turkey, and to the military occupation of Egypt by Great Britain, their lordships do not doubt that it was. In Hall's International Law (6th ed., p. 505) the learned author writes:

“When a place is militarily occupied by an enemy the fact that it is under his control, and that he consequently can use it for the purposes of his war, outweighs all considerations founded on the bare legal ownership of the soil.”

Their lordships think this to be right. (1916, 2 A. C. 113.)

Hall further says:

In like manner, but with stronger reason, where sovereignty is double or ambiguous a belligerent must be permitted to fix
his attention upon the crude fact of the exercise of power. He must be allowed to deal his enemy blows wherever he finds him in actual military possession, unless that possession has been given him for a specific purpose, such as that of securing internal tranquillity, which does not carry with it a right to use the territory for his military objects. On the other hand, where a scintilla of sovereignty is possessed by a belligerent state over territory where it has no real control an enemy of the state, still fixing his attention on facts, must respect the neutrality with which the territory is practically invested. (International Law, 8th ed., p. 607.)

United States and mandates.—There has been much diplomatic correspondence in regard to the relation of the United States to mandates. The United States has concluded treaties in regard to mandates with powers holding mandated areas in Africa, Asia Minor, and the Pacific.

In Article I of the treaty of February 11, 1921, the United States consented to the administration by Japan of mandates. The United States has in this treaty obtained some special privileges in this mandated area, implying (as the treaty was made in the presence of the three other principal allied and associated powers) Japan's competence to grant this exceptional footing. As there are no treaty provisions for change of status in time of war, the right of jurisdiction and administration in peace and in war is involved and the mandated area has become assimilated with the status of the mandatory. Even the right of eminent domain is recognized, as in Japan, so far as the area of Yap is concerned.

The treaty of February 6, 1922, supplementary to the four-power treaty of December 13, 1921, specifically extends the provisions of the four-power treaty to areas under Japanese sovereignty, as Formosa, and provides a like status as regards the treaty for the mandated islands. The four-power treaty itself relates by its terms to "insular possessions and insular dominions in the region of the Pacific Ocean."

Sovereignty over an area under a mandate is not necessary for the determination of its neutrality as the status
of an area is based upon jurisdictional control whether in time of peace or in time of war, as in the case of military occupation. In the terms of the mandate there is a restriction on the establishing of naval bases and fortifications but probably this would not be presumed to extend to a time of war when this might be necessary for the defense of the islands and the existence therein of the rights which the mandatory has agreed to maintain. In the treaty of 1922 limiting naval armaments there are provisions (Art. XIX) in regard to fortifications and naval bases in nonmandated areas.

The United States does not receive its rights with regard to the mandated areas under the same conditions as the powers members of the League of Nations, but the rights of the United States are defined by the treaties as to Yap. Japan has with the knowledge of the other powers independently negotiated with the United States a treaty as to the mandates north of the Equator. In the declaration accompanying the four-power treaty it is specifically provided that the making of the treaty "shall not be deemed to be an assent on the part of the United States of America to the mandates and shall not preclude agreements between the United States of America and the mandatory powers, respectively, in relation to the mandated islands."

In the case of differences as to the islands of the Pacific, the parties under the four-power treaty have agreed to a joint conference "to which the whole subject will be referred for consideration and adjustment."

While the status of islands under mandates is not clearly defined, it is clear that it is not the same as at the time of the World War under the sole control of the individual states. There were other changes in status and relations introduced by the Washington treaties of 1922.

Area under Article XIX.—By the terms of the treaty limiting naval armament of 1922 the islands forming a chain beyond the Hawaiian group to and including the
Philippines were to maintain the status quo as naval bases. These islands between the Hawaiian Islands and the Philippines have an area of a little more than 800 square miles. The number of these islands is about 1,400, many being merely exposed rocks, and they dot an area extending east and west about 2,500 miles. As regards the Pacific, some of these are strategically located if they may lawfully be used for war. So far as those islands which formerly belonged to Germany, they are under mandates of the type of class C to be "administered under the laws of the mandatory as integral portions of its territory" and the mandatory is Japan.

Fortifications in the Pacific.—In discussion of the 5–5–3 ratio for the limitation of armament in 1921–22 it was realized that the limitation of ships was related to the limitation of bases. In the report of the American delegation submitted to the President, February 9, 1922, it was stated:

Before assenting to this ratio the Japanese Government desired assurances with regard to the increase of fortifications and naval bases in the Pacific Ocean. It was insisted that while the capital-ship ratio proposed by the American Government might be acceptable under existing conditions it could not be regarded as acceptable by the Japanese Government if the Government of the United States should fortify or establish additional naval bases in the Pacific Ocean.

The American Government took the position that it could not entertain any question as to the fortification of its own coasts or of the Hawaiian Islands, with respect to which it must remain entirely unrestricted. Despite the fact that the American Government did not entertain any aggressive purpose whatever, it was recognized that the fortification of other insular possession in the Pacific might be regarded from the Japanese standpoint as creating a new naval situation, and as constituting a menace to Japan, and hence the American delegation expressed itself as willing to maintain the status quo as to fortifications and naval bases in its insular possessions in the Pacific, except as above stated, if Japan and the British Empire would do the like. It was recognized that no limitation should be made with respect to the insular possessions adjacent to the coast of the
United States, including Alaska and the Panama Canal Zone or the Hawaiian Islands. The case of the Aleutian Islands, stretching out toward Japan, was a special one and had its counterpart in that of the Kurile Islands belonging to Japan and reaching out to the northeast toward the Aleutians. It was finally agreed that the status quo should be maintained as to both these groups. (1921, N. W. C., Int. Law Documents, p. 265.)

Washington treaties and nonsignatories.—The treaties drawn up at the Washington Conference on the Limitation of Armament in 1921–22 were, as are other treaties after ratification, binding upon the signatories. At the meeting of the committee on limitation of armament, January 31, 1922, the so-called submarine treaty was under discussion.

Mr. Balfour said that he was much embarrassed about this. He agreed, of course, to the substance of all the chairman had read. There was a question, however, that he would like to ask Mr. Root. He asked if that would be in order and was assured that it would.

Continuing, Mr. Balfour said the question had been raised that morning at a meeting of the British Empire delegation, and the point was this: The proposed treaty seemed to be perfectly clear and satisfactory as between the powers represented at this table. The difficulty was as follows: He was afraid it was very easy to conceive a case in which, for instance, one of the five powers represented around this table might be at war with another signatory power having as an ally some nation not agreeing to the treaty. An ambiguous and difficult situation would result. He would like Mr. Root’s opinion upon a point which seemed, at least to some of his friends, not to be without difficulty and embarrassment. The apparent difficulty would be almost unthinkable. It would mean one of these countries represented at this table being at war with another power at the table, who had an ally not represented at the table. He did not mean to press the matter, but he was given to understand that that was a point that was in the minds of many. He did not think it had received much consideration, and as the treaty would have to run the gauntlet of many severe criticisms, like other treaties, he would like to know what Mr. Root’s advice on the point was.

Mr. Root said he thought that was one of the things which it was quite impossible to provide for in the treaty. No agreement could be made in the application of which questions would not
arise in the future. If the members of the committee were to try to guard against all conceivable situations, to which this agreement between them was to be applied, they would make a treaty as long as the moral law. Now, they were making this treaty between themselves and they must assume that it would be carried out in good faith. If another power that was not bound by the treaty should come along and create a situation to which the treaty did not apply, then it would not apply; but that would have to be determined by the conditions and the facts as they arose. He could not believe that there would be any real embarrassment.

Mr. Balfour said that he would not press the matter.

Senator Schanzer stated that the Italian delegation shared the anxieties to which Mr. Balfour referred, and he thought that he had raised very opportune the question concerning the execution of the treaty in the case of war with a power which had neither signed nor adhered to the treaty itself. If one of the five great signatory powers should find itself at war with another of the five signatory powers and the latter should be allied with a nonsignatory or nonadherent power, it was clear that the first-mentioned power could not afford to find itself bound by the duties imposed by the treaty. In effect, the nonsignatory or nonadherent power would be free to make unlimited use of submarines, poisonous gases, etc., and would do it not only in its own interest, but also in the interest of the great powers to which it was allied. He wished to repeat that, in these conditions, it was clear that the execution of the provisions of the treaty would cease to be effective. He could agree with Mr. Root that it was not absolutely indispensable to provide for this case by a special stipulation in the treaty, but it was nevertheless desirable that the interpretation given that day should be registered in the minutes of the committee. (Conference on the Limitation of Armament, p. 840.)

Interpretation of Washington treaties of 1921–22.—It is a general principle that treaties be interpreted in the sense in which they are made and when different words are used in the same treaty or in the same negotiation the presumption is that a different meaning is intended.

By article 119 of the treaty of Versailles, June 29, 1919, Germany renounced in favor of the principal allied and associated powers all her rights and titles over her oversea possessions.
In the treaty between the United States and Japan signed February 11, 1922, and relating to the former German islands in the Pacific there is the statement:

Considering that the benefits accruing to the United States under the aforesaid article 119 of the treaty of Versailles were confirmed by the treaty between the United States and Germany, signed on August 25, 1921, to restore friendly relations between the two nations;

Considering that the said four powers, to wit, the British Empire, France, Italy, and Japan, have agreed to confer upon His Majesty the Emperor of Japan a mandate, pursuant to the treaty of Versailles, to administer the groups of the former German islands in the Pacific Ocean lying north of the Equator in accordance with the following provisions: (Here follow the articles of the mandate.)

Considering that the United States did not ratify the treaty of Versailles and did not participate in the agreement respecting the aforesaid mandate;

Desiring to reach a definite understanding with regard to the rights of the two Governments and their respective nationals in the aforesaid islands, and in particular the island of Yap, have resolved to conclude a convention for that purpose and to that end have named as their plenipotentiaries: (Here follows names of plenipotentiaries.)

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

Subject to the provisions of the present convention, the United States consents to the administration by Japan, pursuant to the aforesaid mandate, of all the former German islands in the Pacific Ocean lying north of the Equator.

ARTICLE II

The United States and its nationals shall receive all the benefits of the engagements of Japan, defined in articles 3, 4, and 5 of the aforesaid mandate, notwithstanding the fact that the United States is not a member of the League of Nations.

It is further agreed between the high contracting parties as follows:

(1) Japan shall insure in the islands complete freedom of conscience and the free exercise of all forms of worship which
are consonant with public order and morality; American missionaries of all such religions shall be free to enter the islands and to travel and reside therein, to acquire and possess property, to erect religious buildings, and to open schools throughout the islands; it being understood, however, that Japan shall have the right to exercise such control as may be necessary for the maintenance of public order and good government and to take all measures required for such control.

(2) Vested American property rights in the mandated islands shall be respected and in no way impaired.

(3) Existing treaties between the United States and Japan shall be applicable to the mandated islands.

(4) Japan will address to the United States a duplicate of the annual report on the administration of the mandate to be made by Japan to the Council of the League of Nations.

(5) Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited in the convention, unless such modification shall have been expressly assented to by the United States. (42 U. S. Stat., pt. 2, p. 2149.)

By Article II (3) "existing treaties between the United States and Japan shall be applicable to the mandated islands." Ratifications of this treaty were exchanged July 13, 1922, and the treaty was proclaimed the same day. The ratifications of the treaty on limitation of naval armament were deposited August 17, 1923, and this treaty was proclaimed August 21, 1923, but the effect of Article XIX in regard to the maintenance of the status quo was by the terms of the article to be effective from the signing not from the ratification and proclamation of the treaty.

While the treaties were not for various reasons ratified at the same time, it was not because they were unrelated. The American delegation in submitting the treaties for ratification said:

To estimate correctly the character and value of these several treaties, resolutions, and formal declarations they should be considered as a whole. Each one contributes its part in combination with the others toward the establishment of conditions in which peaceful security will take the place of competitive preparation for war.
The declared object was, in its naval aspect, to stop the race of competitive building of warships which was in process and which was so distressingly like the competition that immediately preceded the war of 1914. Competitive armament, however, is the result of a state of mind in which a national expectation of attack by some other country causes preparation to meet the attack. To stop competition it is necessary to deal with the state of mind from which it results. A belief in the pacific intentions of other powers must be substituted for suspicion and apprehension.

The negotiations which led to the four-power treaty were the process of attaining that new state of mind, and the four-power treaty itself was the expression of that new state of mind. It terminated the Anglo-Japanese alliance and substituted friendly conference in place of war as the first reaction from any controversies which might arise in the region of the Pacific; it would not have been possible except as part of a plan including a limitation and a reduction of naval armaments, but that limitation and reduction would not have been possible without the new relations established by the four-power treaty or something equivalent to it. (Conference on the Limitation of Armament, Senate Doc. No. 126, 67th Cong., 2d sess., p. 865.)

Military organization in mandates.—A report upon military organization in mandates was made to the permanent mandates commission at its ninth session in 1926 by M. Freire d'Andrade, of which the conclusions were as follows:

I. The mandatory can not establish any naval or military base or erect any fortifications in the mandated territory.

II. The mandatory may not train or organize any native forces except such as are necessary for police purposes and for the local defence of the territory.

III. It is the duty of the permanent mandates commission to consider the conditions of military training and organization introduced by the mandatory and, if it considers such training or organization inadequate or excessive, to inform the council.

IV. The mandatory has the right to employ the native military forces thus organized for the purpose of defending the mandated territory at a distance in the case of B mandates, but it can not do so in the case of C mandates. (Minutes, Permanent Mandates Commission, ninth session, C. 405, M. 144, 1926, VI, p. 194.)

The discussion of this report showed in the commission some differences of opinion and an unwillingness to com-
mit in advance the commission to any interpretation, but to await a case which might involve the question. (Ibid, pp. 130-134.)

Insular possessions in the Pacific.—The United States, the British Empire, France, and Japan at the Washington conference, December 13, 1921, reached an agreement as to their insular possessions in the Pacific, which was embodied in a treaty, which states:

I. The high contracting parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.

If there should develop between any of the high contracting parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other high contracting parties to a joint conference, to which the whole subject will be referred for consideration and adjustment.

II. If the said rights are threatened by the aggressive action of any other power, the high contracting parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation. (43-2 U. S. Stat., pt. 2, pp. 1646, 1648.)

In signing this treaty it was declared to be the understanding and intent—

1. That the treaty shall apply to the mandated islands in the Pacific Ocean: Provided, however, That the making of the treaty shall not be deemed to be an assent on the part of the United States of America to the mandates and shall not preclude agreements between the United States of America and the mandatory powers, respectively, in relation to the mandated islands.

2. That the controversies to which the second paragraph of Article I refers shall not be taken to embrace questions which according to principles of international law lie exclusively within the domestic jurisdiction of the respective powers. (Ibid. 1650.)

Insular possessions and insular dominions.—By the treaty signed by the United States, the British Empire, France, and Japan, on February 6, 1922, the same day upon which the treaty limiting naval armament was
signed, a definition of "insular possessions and insular dominions" was given:

The term "insular possessions and insular dominions" used in the aforesaid treaty shall, in its application to Japan, include only Karafuto (or the southern portion of the island of Sakhalin), Formosa, and the Pescadores, and the islands under the mandate of Japan.

While this treaty was supplementary to the 4-power treaty of December 13, 1921, it may be presumed that these words used in other treaties negotiated at the Washington conference by the same powers had the similar meaning. In Article XIX of the treaty limiting naval armament the words used were "insular territories and possessions" instead of "insular possessions and insular dominions," and these are enumerated:

(3) The following insular territories and possessions of Japan in the Pacific Ocean, to wit, the Kurile Islands, the Bonin Islands, Amami-Oshima, the Loochoo Islands, Formosa, and the Pescadores, and any insular territories or possessions in the Pacific Ocean which Japan may hereafter acquire.

The enumeration above is specific with the addition of subsequent acquisitions. The enumeration in the 4-power treaty is also specific with the addition of "the islands under the mandate of Japan." It would seem to be clear, therefore, that the islands under mandatory of Japan are not necessarily included under Article XIX of the limitation of naval armament treaty.

**Insular territories, possessions, dominions.**—In Article XIX of the treaty limiting naval armament the term "insular possessions" is used in regard to the area within which the American and British Governments respectively agree to maintain the status quo. The term "insular territories and possessions" is used specifically in regard to the Japanese areas in the same treaty. The article also mentions Australia "and its territories," but in the four-power treaty of February 6, 1922, the term "insular possessions" seems to be applied as in the limitation of armament treaty to Formosa and the
Pescadores, while "insular dominions" applies to "islands under the mandate of Japan."

_Kellogg-Briand Pact, 1928._—While the preamble of the treaty for the renunciation of war signed with much formality at Paris, August 27, 1928, is not contractual, it does state the object of the treaty. It is as follows:

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

In transmitting the treaty the United States had indicated that it did not impair (1) the right of self-defense, (2) the league covenant, (3) the Locarno pact, (4) neutralization treaties; that it implied (5) termination of relations with treaty-breaking states, (6) general acceptance. In the reply of the French Government it was said of the interpretations given by the Government of the United States:

These interpretations may be resumed as follows:

Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense. Each nation in this respect will always remain free to defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defense.

Secondly, none of the provisions of the new treaty is in opposition to the provisions of the covenant of the League of Nations nor with those of the Locarno treaties or the treaties of neutrality.
Moreover, any violation of the new treaty by one of the contracting parties would automatically release the other contracting powers from their obligations to the treaty-breaking state.

Finally, the signature which the Government of the United States has now offered to all the signatory powers of the treaties concluded at Locarno and which it is disposed to offer to all powers parties to treaties of neutrality as well as the adherence made possible to other powers is of a nature to give the new treaty, in as full measure as can practically be desired, the character of generality which accords with the views of the Government of the Republic.

The contractual articles of the treaty are as follows:

**Article 1.** The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

**Art. 2.** The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be which may arise among them shall never be sought except by pacific means.

**Art. 3.** The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

In discussing self-defense the Government of the United States said in the note of June 23, 1928:

There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense, since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.
The treaty was considered at different times in the Senate of the United States, which on January 15, 1929, advised and consented to the ratification of the treaty. In submitting the treaty to the Senate the Committee on Foreign Relations said:

The treaty in brief pledges the nations bound by the same not to resort to war in the settlement of their international controversies save in bona fide self-defense and never to seek settlement of such controversies except through pacific means. It is hoped and believed that the treaty will serve to bring about a sincere effort upon the part of the nations to put aside war and to employ peaceful methods in their dealing with each other.

The committee reports the above treaty with the understanding that the right of self-defense is in no way curtailed or impaired by the terms or conditions of the treaty. Each nation is free at all times and regardless of the treaty provisions to defend itself, and is the sole judge of what constitutes the right of self-defense and the necessity and extent of the same. (70 Cong. Record, p. 1730.)

CONCLUSION

No exact interpretation of agreements relating to islands in the Pacific Ocean and entered into since 1917 has been made. The introduction of the system of mandates under article 22 of the covenant of the League of Nations, 1919, the restrictions of fortifications by article 19 of the treaty limiting naval armament, 1922, and the other agreements, and the declaration of the Washington conference, 1922, as well as the Kellogg-Briand pact of 1928, have, however, greatly modified the status of the islands in the Pacific Ocean as areas of possible belligerent action.