

第二節 戰時法規分科會議事經過

第一項 第一回分科會 (十一月二十九日)

第一回會
出席委員

一、第一節所說ノ決定ニ基キ戰時法規分科委員會ハ十一月二十九日午後三時始メテ會合セリ出席者左ノ如シ

米 國 「ウキルソン」 (Wilson)

英 國 「マルキン」 (Malkin)

佛 國 「フロマジョー」 (Fromageot)

但シ七、八、九回ハ「ケルン」 (Captain Koeltz) 十回ハ「キョーヂェタン」 (Captain de Vaisseau Dupuy-Dutemps)

伊 國 「パリアノ」伯 (Count Paolino) (十回ハ缺席)

日 本 立作太郎博士 (但十回杉村事務官)

二、議事ニ入り先ツ米委員「ウキルソン」ヲ議長ニ推ス「ウキルソン」ヨリ戰時法規分科委員會ノ仕事ニ關シテ何等ノ訓令ヲモ受ケ居ラサル所各國ノ委員カ何カ此點ニ關シテ訓令ヲ受ケ居ルヤト問ヘルニ何レモ訓令ヲ受ケ居ラサルヲ答ヘタルヲ以テ「ウキルソン」ハ廣ク戰時法規研究ヲナシ先ツ海牙陸戰條規第二十三條カ軍備制限ト關係スル所多キカ如クナルヲ以テ之ニ關シテ研究シ更ニ進ンテハ潛航艇ニ關スル規則ノ如キモノニ及フヘシト説ク

三、佛委員「フロマジョー」ハ潛航艇ノ如キ重要ナル事項ニ關シテ此委員會ニ於テ進ンテ規則ヲ作ルハ不可能ニシテ此等ノ重大ナル問題ニ關シテハ既ニ實質ノ決定セル事項ニ付キ條文ヲ起草スルニ適スルノミ寧ロ隨時現在ノ法規ニ關シテ全權委員ノ會合ノ諮詢ヲ受クル時ニ備フル爲現在ノ法規ノ何タルヤニ關シテ研究シ先ツ海牙ノ陸戰法規ヨリ始メテ實際ニ適セサル規定ノ有無ヲ檢シ後日ノ用ニ供スヘシトス

四、立委員ハ海牙ノ陸戰條規ノ研究ノ如キハ多大ノ時日ヲ要シ且委員會ノ組織セラレタル趣意ニ合セサルヲ虞ルヲ以テ

寧ロ更ニ議題及議事進行委員會 (Committee on Program and Procedure) ニ對シ如何ナル事ヲ議スヘキヤ軍備制限ニ顯著

ノ關係アル潛水艇、飛行機等ニ關シテ先ツ議スヘキヤ否ヤ更ニ諸訓令ニ主張セルニ

五、「フロマジョー」ハ反對シテ此委員會ニ於テ潛水艇飛行機ニ關スル制限ノ如キ重要ナル事項ヲ議スルヲ得ス此等ハ國際法ノ專門ノ見地ヨリモ軍事上ノ專門ノ見地カ重キヲ爲スヘキモノナリ尙ホ今日此委員會ニ於テ何事ヲ議スヘキヤヲ全權委員ノ會合ニ問フモ全權委員モ亦之ニ答フルヲ得サルヘシ且海牙陸戰條規ヲ研究シ置クコトハ嘗ツテ倫敦ニ於テ「ウキルソン」、立委員及「フロマジョー」等カ關係シテ海戰法規ヲ研究シタルコトノ無益ナラサリシカ如カルヘシト説ケリ

六、「ウキルソン」氏ハ立委員ノ説ト「フロマジョー」ノ説トヲ折衷シテ全權委員ニ向テ先ツ特別ノ事項ヲ委員會ニテ研究スルノ註文アリヤ否ヤヲ問フヘク此間ニ對スル答ニ依リテハ議事ノ順序ヲ變更スヘキモ若特ニ註文ナケレハ「フロマジョー」氏ノ言ノ如ク先ツ海牙ノ陸戰條規ヨリ始メテ研究ヲ爲スヘク特ニ通知ナケレハ十二月一日 (木曜日) 午後三時ヨリ第二回ヲ開クヘキコトヲ決シテ散會セリ

第二項 第二回分科會 (十二月一日午後三時開會)

分科會ノ
議限ニ關
スル全權
ノ回答

一 議長「ウキルソン」ハ前回立委員カ提議セル所ニ基キ Committee on program and Procedure ニ議題ノ指ミヲ求メタル結果ヲ報告ス

(一) 會議ノ事務總長タル「バーレット」氏ハ上述ノ Committee ヲ代表シテ差當リ特ニ議題ヲ指定スル能ハス他ノ方面ノ議事ノ進行ニ伴ヒ戰時法規分科委員會ノ議ニ附スヘキ事項ヲ幾多生スヘキモ目下ハ軍備制限ヲ目的トスル會議ノ分科委員會タルニ鑑ミテ分科委員會自身ノ見所ニ依リ議題ヲ選ミテ研究スヘシト述ベ氏ハ更ニ語ヲ繼キテ自己ノ suggestion トシテ潛航艇、毒瓦斯及海戰ノ規則其他一般ノ國際法規、條約ノ缺陷 (lacuna) ニ關シテ議スルハ會議ノ趣旨ニ合スルカ如シト思惟スルモ之レ決シテ命令ニ非サルコトヲ了知セラレタシト言ヘリ「ウキルソン」ハ又「ヒュー

「フロマ
ジョー」
ノ態度

ズ」ニ面會シテ此事ヲ談シタルニ

(一)「ヒューズ」ハ會議ノ目的カ戰爭ヲ止ムルニ在ル以上ハ戰爭ニ代ル何物ヲカ求メサルヘカラス之レ法規 (Law) ニ外ナラサルヘク法規ノ支配ヲ確立スル趣意ヲ以テ國際法規ノ缺陷ニ付考量セサルヘカラスト説ケリト言フ

二、議長ノ右報告終ルヤ佛國委員「フロマジョー」ハ毒瓦斯及潛航艇ニ關スル法規ノ如キハ寧ロ軍事専門家ノ決スヘキモノニシテ自己ハ此等ノ事項ニ關シテ議スルノ權限ナキヲ唱ヘ一般論トシテ今日ノ戰爭ハ昔日ノ戰爭ト異リ國民間ノ戰爭所ヲ破壞スル爲ニ攻撃手段ヲ執ルハ止ムヲ得サル所ニシテ之カ爲ニ便役セラルル婦女ヲ殺傷スルコトモ止ムヲ得ス今日ニ於テ一般的ニ禁シ得ル所ハ直接且即時ノ結果ヲ生セサル害敵手段例ヘハ「バチルス」ヲ敵地ニ傳播スル如キ其被害ノ範圍及程度ヲ一定スル能ハサル害敵手段ニ過キスト述ヘタリ

三、立委員ハ假令直接且即時ノ結果ヲ生スルニ過キサレモノト雖人道ヨリ見テ戰爭ノ目的ヲ達スルノ效果ニ比シテ平和的人民ニ對スル慘害ノ程度カ甚シキモノハ之ヲ禁セサルヘカラスト爲シ

四、英國委員「マルキン」ハ效果ト慘害トノ程度ノ比較ハ漠然タルコトヲ指摘セルカ立委員ハコレ一般ノ原則ニシテ各場合ニ於テ議定ニ依リ禁止スル範圍ト許容スル範圍トノ間ノ線ヲ劃シ各事項毎ニ條約ヲ以テ明定スルノ必要アルヘシト説明セリ

五、「フロマジョー」ハ人道ノ考量ヲ爲スコトニ決シテ反對スルニ非スシテ其説ノ要點ハ直接且即時ノ懲敵上ノ效果ヲ生セサル手段ハ之ヲ禁スヘキヲ主張スルニ在リト辯明セリ然ルニ之ニ對シテ

六、「ウキルソン」ヨリ然ラハ「バチルス」ヲ敵地ニ散布スル如キ手段ハ之ヲ禁止スルコト全委員ノ一致セル意見ト見テ宜シキヤト述ヘタルニ

七、「フロマジョー」ハ前述ノ議論ハ一個ノ私見ニシテ「バチルス」散布禁止ト云フ如キ具體的ノ問題トナリテハ軍事專

「フロマ
ジョー」
ノ毒瓦斯
ニ關スル
出資疑
提

門家ノ意見ヲ徵セサルヘカラスト説ケリ而シテ更ニ毒瓦斯ニ付論シテ之ニ關スル法規ヲ定ムルニハ幾多ノ専門的知識ヲ要スルヲ以テ「フロマジョー」自身ノ列記セル毒瓦斯ニ關スル技術的ノ知識ニ關係アル質問ヲ提出シ之ヲ毒瓦斯ニ關スル分科委員會ニ附議シテ考量ヲ請フコトヲ提議シ

立委員ハ毒瓦斯分科委員會モ其中ノ或問題ニ關シテハ答フルコト困難ニシテ寧ロ先ノ之ニ關聯シテ戰時法規分科委員會ニ問フコトヲ求ムヘシト述ヘタルモ他ノ委員總テ「フロマジョー」ニ賛成セルヲ以テ強テ爭ハスシテ止ノ佛國委員提出ノ各質問ハ毒瓦斯分科委員會ニ送付スルコトナレリ

八、潛航艇ニ關シテモ

潛水艇ニ
關スル現
行規則

佛國委員ハ之ヲ議題トナスニ付自己ハ本國ノ海軍省ノ意見ヲ徵ヒサルヘカラス等ノ無理ナル口實ヲ設ケテ百方之ヲ議スルコトニ關シテ妨害ヲ爲セルカ

九、立委員ハ會議事務總長「バーレット」氏ノ言ノ趣意ヲ汲ミテ先ツ潛航艇ニ關スル現在ノ法規ノ何タルヤヲ此分科委員會ニ於テ研究シ置クノ必要アルヲ唱ヘ自己ノ考フル所ニテハ現在法規ヲ明白ニスルハ左程困難ナラサル如シト述ヘタルニ

議長ハ然ラハ立委員ヨリ潛航艇ニ關スル現在法規ノ何タルヤニ關シテ一個ノ意見ヲ提出シ之ニ關シテ議スヘキヲ提議シ他ノ委員賛成セルモ

十、「フロマジョー」ハ此問題ハ「デリケート」ニシテ且範圍廣汎ニシテ事商船タル潛航艇ニモ關聯シ援テハ戰時ノ公海

ニ於ケル商船ノ軍艦ヘノ變更等ノ問題ニモ關聯スル等範圍ノ廣汎ナルコト驚クヘキモノアルヲ發見スヘク到底此委員會ニテ議スルニ適セスト説キタルモ議長カ更ニ主張スル所アリシニヨリ若シ informal ニシテ tentative ノ審議トシテ之ヲ議スルナレハ強テ反對セサルヘシト讓步セリ

十一、此ニ於テ立委員ニ於テ三日月午後二時半ヨリ開クヘキ第三回ノ會合ノ議題トスル爲ニ潛航艇ニ關スル現在法規ニ付テ

出席委員
増加説

ノ個人的ノ見解ノ立案ヲ爲シテ之ヲ會議ノ議題トスルニ決セリ

十二、次ニ立委員ヨリ日本ノ「デレゲーション」ノ要求トシテ他ノ分科委員會ノ如ク委員以外ニ當該分科委員會ノ仕事ニ關係アル人一二ノ列席スルヲ求メ且決シテ別ニ議決權ヲ行使スルノ趣意ニ非サルヲ説明セルカ「フロマジョー」「マルキン」ノ兩委員ハ議事カ未タ現在ノ「informal」ニシテ「tentative」ナル狀態ニ在ル間ハ他人ヲ交ユレハ自由ナル談話出來サルコトナリ現在ノ議事ノ調子ヲ改メサルヘカヲサルヲ以テ此際ハ各國平等ノ原則ニ依リテ此五人タケニテ議事ヲ進メ度ト懇談的ニ戯語ヲ交ヘテ語ル所アリ「ウキルソン」モ決シテ排斥ヲナスノ趣意ニ非サルモ目下ノ自由ナル意見交換ノ際ニ他人ヲ容ルルコトハ避ケ度ト希望ヲ述ヘ伊國委員モ之ニ同意シタルカ「ウキルソン」ハ更ニ語ヲ繼テ特別ナル重要ノ問題カ「formally」ニ議題トナル場合ニハ日本委員ノミナラス他國委員モ「expert」又ハ「observer」ヲ伴フコトヲ得サルヘカラサレトモ目下ノ議事ノ狀態ヲ考慮シテ衆議ニ從ハレ度ト述ヘタルヲ以テ立委員ハ兎ニ角日本ノ「デレゲーション」ノ者ニ當該分科委員會ノ意向ヲ傳フヘシトテ此點ノ談話ヲ止メタリ

海牙陸戰
條規ノ新
加説

十三、次ニ海牙ノ陸戰條規ノ修正スヘキ點ニツキ研究セルモ此研究ハ極メテ不規則ニ行ハレ各準備ヲナスコトナク其場ノ思付ヲ以テ議論セルヲ以テ散漫ナル結果ヲ得タルニ過キス問題トナリシ陸戰法規慣例條約及海牙陸戰條規ノ箇條ハ左ノ如シ

一、陸戰法規慣例條約第三條

(A) 戰時法規違反ノ個人ニ關スル處罰ノ規定ヲ設クルノ可否

(B) 戰時法規違反ノ有無ニ付國際司法裁判所ヲシテ決定セシムルノ可否

(C) 戰勝國タリトモ第三條ノ制裁ヲ受クヘキヲ明記スルノ可否

二、海牙陸戰條規第一條

第二號ノ「遠方ヨリ」ノ字ヲ削ルノ可否

第三號削除又ハ字句修正ノ可否

三、同條規第二章(俘虜ニ關スル規定殊ニ其第五條第六條第十七條修正ノ必要)

四、海牙陸戰條規中ニ左ノ事項ヲ規定スルノ可否

(A) 中立國ニ依ル俘虜ノ援助

(B) 交戰國ノ利益ノ保護ヲ託セラレタル中立國政府ノ地位

五、海牙陸戰條規第二十三條「チ」號ヲ修正ノ必要ノ有無

六、同條規第二十五條「手段ノ如何ヲ問ハス」ハ空中法規ニ關係スルノ故ヲ以テ之ヲ削除スルノ可否

七、同條規第四十四條削除又ハ修正ノ可否

海牙陸戰條規ニ關シテ上述ノ如ク問題ヲ提起シ之ニ關シテ多少意見ヲ交換セルモ委員會ノ決議ヲ作レルモノニ非ス唯研究スヘキ問題ヲ試ニ提起シタルニ過キス午後六時過散會ス

第三項 第三回分科會(十二月三日午後二時半開會)

一、議長「ウキルソン」ハ毒瓦斯ニ關シテ毒瓦斯分科委員會ニ戰時法規分科委員會ノ名ヲ以テ研究ヲ依頼セル「フロマジョー」提出ノ技術上ノ問題ニ關シ毒瓦斯分科委員會ノ議長代理(acting chairman)ヨリ毒瓦斯分科委員會ハ火曜日ニ至ラサレハ開會セサル故假ニ個人的ノ試案トシテ本問題ニ對スル返答ヲ送付シ來レルヲ披露シ一讀ス

二、「フロマジョー」ハ之レ個人的ノ私案タルヲ以テ毒瓦斯分科委員會ノ之ヲ承認スルヤ否ヤヲ知ルヲ待タサレハ正式ノ返答トシテハ認メ難シト爲シ之ニ關係シテ議論ヲ爲スコトヲ猶豫センコトヲ求メ各委員ノ承認ヲ得タリ而シテ該私案ノ寫ハ次回ノ會合迄ニ之ヲ各委員ニ配布スルコトトセリ

三、「フロマジョー」カ起案シテ毒瓦斯委員會ニ附スルヲ求メタル問題ハ次ノ如シ

一 毒瓦斯ハ其ノ效力上戰闘ノ他ノ武器ト同一ト看做シ得ルヤ

「フロア」
「毒瓦斯」
「提出」
「新案」
「問題」
「書」

- 二 毒瓦斯使用ノ協定ニ依ル制限ノ根據トシテ物理的化學的又ハ生理的效果ヲ採用スルコト可能ナリヤ否ヤ
- 三 毒瓦斯ノ作用ヲ戦闘員ノミニ限定スルコトカ技術的ニ可能ナリヤ否ヤ
- 四 平時ニ毒瓦斯ノ研究又ハ製造ヲ防止スルコトカ技術的ニ可能ナリヤ否ヤ
- 五 平時ニ毒瓦斯ノ研究又ハ製造ヲ制限スルコトカ技術的ニ可能ナリヤ否ヤ
- 六 平時ニ毒瓦斯ノ研究又ハ製造ヲ制限スルコト可能ナリトセハ其ノ研究又ハ製造ヲ監督スルコト技術的ニ可能ナリヤ否ヤ

1. Do poisonous gases represent as to there effect a Weapon analogous to the other means of fighting?
2. Is it possible to take as a basis for a conventional limitation of the uses of poisonous gases their physical, chemical or physiological effects?
3. Is it technically possible or not to confine the actions of poisonous gases to combatant?
4. Is it technically possible or not to prevent the research or fabrication of poisonous gases in time of peace?
5. Is it technically possible or not to restrict the research or fabrication of poisonous gases in time of peace?
6. Assuming that it would be possible to restrict the research or fabrication of poisonous gases in time of peace, is it technically possible or not to supervise such research or fabrication?

「ウキル」
「ソノ」
「毒瓦斯」
「提出」
「新案」
「問題」
「書」

四、尙「ウキルソノ」ハ毒瓦斯ニ關シテ「フロマジヨ」提出ノ問題ニ追加シテ左ノ問題ヲ毒瓦斯分科會ニ研究方依頼シ度シト提議シ「フロマジヨ」ハ先ツ自己ノ提案セル諸問題ニ關スル毒瓦斯分科委員會ノ正式ノ返答ヲ待チテ後新問題ヲ提起スルモ遅カラスト爲セルモ他ノ委員カ議長ノ意思ニ依リ執レトモ自由ニ措置スルコトヲ認メタルヲ以テ委員會モ其ノ意味ノ決定ヲ與ヘタリ「ウキルソノ」提出ノ問題ハ左ノ如シ

七 瓦斯ノ效果ニ基キテ瓦斯ノ使用ノ制限ニ關スル合意上ノ基礎ヲ定ムルコト可能ナリヤ例ヘハ都市ニ對シテ人ノ生命

ヲ奪フ可キ瓦斯ノ使用ヲ禁スルコト可能ナリヤ

(同上) 原文

7. Is it possible to establish a conventional basis for the limitation of the use of gases on the ground of the effect of the gases, e.g. prohibiting the use of lethal gases against cities?

航空分科
會ニ提出
ノ質問

五、次ニ議長ハ航空分科委員會ニ研究ヲ依頼スヘキ事項ノ有無ヲ委員會ニ問ヒ自ラ左ノ問題ノ研究ヲ依頼スルノ提議ヲ爲シタルカ「フロマジヨ」及立委員ハ始メヨリ事實カ不可能ナルコト明白ナルヲ以テ之ヲ分科委員會ノ研究ニ附スルノ價值ナキヲ説ケルモ結局ニ於テ議長ノ自由ナル處置ニ一任スルコト爲セリ「ウキルソノ」提出ノ問題ハ左ノ如シ
軍用航空機關ハ軍艦カ私船ニ對シテ行フ如ク軍用ニ屬セサル航空機關ニ對シテ臨檢搜索ヲ行フコト可能ナリヤ否ヤ
而シテ立委員ヨリ若シ右問題ヲ航空分科委員會ニ問フコトナラハ次ノ如キ問題ヲ合併セテ該分科委員會ニ問ハンコトヲ求メ全會ノ承認ヲ得タリ其問題ハ左ノ如シ

現時ノ狀態ニ於テ航空機關ヨリ放ツ彈丸又ハ其ノ放下スル爆裂物カ目標タル建物、建設物等ニ的中スルノ程度ハ陸上ノ銃ヨリ放ツ彈丸ノ目標ニ的中スルノ程度ニ比シテ如何ナル場合ヲ有スルヤ

六、航空機關ニ依ル攻撃ニ關聯シテ全然平和の人民ノ需要ニ充ツヘキ物品ヲ製造スル敵國內地ノ製造所ハ之ヲ攻撃シ得ヘキヤノ論ヲ生シ「フロマジヨ」ハ今日ノ戰爭ハ國民的戰爭ニシテ戰爭ハ國家間ノ關係ナト言フ如キ説ハ最早之ヲ認ムルヲ得スシテ他人モ亦戰爭ノ當事者タルヲ以テ敵國平和の人民ノ需要ニ充ツヘキ物資ヲ製造スル敵國內地ノ製造所モ之ヲ空中ヨリ攻撃シ得ヘシト説、本分科委員會第二回議事經過中ニ於テ記述セル所ノ同委員ノ同意ノ所説ヨリ更ニ進ミタル説ヲ爲シ戰爭ノ目的ヲ達スルニ效力ナキ慘酷ノ手段ハ不法ナルモ苟クモ戰爭ノ目的ヲ達スルニ效力アル手段タラハ其ノ平和の人民ニ害ヲ及ホス故ヲ以テ之ヲ不法ト爲スヘカラスト爲セリ

立委員ハ此點ニ關シテ第二回議事經過ニ於テ記述セル人道の考量ニ因ル害敵手段ノ制限ノ必要ニ付テハ重ネテ議論スル

ヲ選ケタルモ「フロマジョー」ノ説ノ如ク交戦者ト否トノ區別ヲ無視セントスルノ議論ハ戰時國際法ノ基本思想ヲ動カスモノニシテ我國カ日清、日露ノ戰役ニ於テ實行セル思想ト雲泥ノ差アリ此ノ如クシハ平和の人民ハ一方ニ於テ交戦者ト同シク敵ノ害敵手段ヲ受ケ而モ他方ニ於テ敵ニ對シテ害敵手段ヲ行ハントセハ交戦者ト異ナリテ戰時重罪人トシテ處罰セラル是平和人民タル非交戦者ニ却ツテ不利益ヲ與フルモノニシテ在來ノ戰時國際法ノ一ニ人道ノ思想ニ基キテ認ムルニ至レル交戦者ト非交戦者トノ根本的區別ヲ覆スモノナリ世界大戰ニ於テ獨逸人ノ行ヘル所ハ不法ノ大ナルモノナリト雖其ノ説ク所ハ佛國委員ノ説ク如ク甚シキニ至ラス彼モ猶交戦者ト否トノ區別ニ至リテハ依然之ヲ認メタリ獨逸學說ノ忌ムヘキハ其ノ所謂「*unpleasant*」ノ説ニ於テ戰爭ノ必要ヲ非常ニ廣ク認メタルニ在リ（此時「フロマジョー」氏言ヲ挿シテ余ハ戰爭ノ必要ヲ喜ハスト言ヘリ）然リ獨逸人ノ所謂戰爭必要ハ人民ノ抵抗ヲ豫メ壓抑スル目的ヲ以テ人民ヲ戰慄セシメントシテ（*intimidation*）人民ニ慘虐ヲ加フルカ如キ行為ニモ及フモノト爲セル極端ナル主張ヲ含ムヲ以テ深ク之ヲ批難セサルヘカラサルモ然モ猶其議論ニ於テハ交戦者ト非交戦者トノ區別ヲ全ク廢スルニ至ラスシテ害敵手段ノ直接ノ效果ハ原則トシテハ交戦者ニ加ヘラレ之ニ反シテ非交戦者ニ加ヘラサルヲ認ムルモノナリ唯戰爭ノ目的ノ爲ニ必要アル場合ニ於テ非交戦者ニ直接ノ效果ヲ加フルヲ認メ而シテ其所謂戰爭ノ必要ハ極メテ廣ク解セラレテ獨逸軍ノ占領地ノ人民ノ禍ヲ爲セリ「フロマジョー」氏ノ説ク所ノ如クナレハ獨逸人ノ所爲ヲ批難シ乍ラ其所爲ニ倣フコトトナルナリト論述セリ

「フロマジョー」ハ答ヘテ自分ハ誤レルヤモ知レス（*I may be wrong*）然レトモ自分ノ如キ説ハ戰爭ノ苦シキ經驗ノ結果ナリト説キテ亦此點ヲ論議セス

潛航艇問題

七、次ニ立委員ノ提出セル別紙潛航艇ニ關スル現在ノ規則（四則及其說明）ニ關シテ議セントセルニ「フロマジョー」ハ先ツ該案ノ政府ニ關係アリヤ否ヤヲ尋ネタルニ付立委員ハ全然個人的ノ私案ニ過キサルコトヲ答ヘテ後提案ノ説明ニ入レリ然ルニ提案ノ説明一應終リテ後

「ウキルソン」及「マルキン」ハ世界大戰ノ經驗ニ依リ軍艦ノ臨檢搜索ニ適用セラルヘキ規定ヲ潛航艇ニ適用スルノ實際ノ困難アルコトカ明白トナレルヲ説キタルカ立委員カ現在ノ法規ニ關スル自己ノ提案ヲ基礎トシテ先ツ潛航艇ニ關スル法規ノ出發點ヲ明カニシ而シテ其ノ實行ノ困難ナル點ニ付キ如何ナル規則ヲ新ニ定ムヘキヤヲ試ニ研究スルヲ可トスト説キタルカ「フロマジョー」ハ潛航艇ニ關スル規則ハ他ノ許多ノ國ニ取リ利害關係重大ナルニ獨リ五個國ノ委員限リニテ規則ヲ議定スルコトハ困難ナリトシ且此種ノ問題ハ當然軍備制限ノ會議ノ問題タルヘキニ非ス佛國委員ハ之ヲ *formally* ニ議スルノ權限ヲ有セストノ趣意ヲ述ヘタリ而シテ此種ノ問題ノ審議ヲ爲スニハ其議題ノ詳細ニ互リテ各國ニ於テ研究ヲ爲スヘキ時間ノ餘裕ヲ與ヘサルヘカラサルヲ附言シ且特ニ潛航艇問題ニ關シテ及フ範圍廣汎ニシテ例ヘハ立委員ノ提案ノ如ク商船破壞ノ場合ニ軍艦ノ履ムヘキ手續ヲ履ムコトトナスモ破壞ノ場合ニ軍艦ノ履ムヘキ手續ニ付猶異論アルヲ免カレサルヲ以テ詳細ニ互ツテ規則ヲ立テントスルハ一朝一夕ニ爲シ得ル所ニ非サルヘキヲ附言セリ

「ウキルソン」ハ「フロマジョー」ノ言ニ對シテ會議ニ關シ米國ヨリ發セル *agenda* 中ニモ戰時法規ヲ擧ケ且事務總長ノ言ニ依リ實際ニ於テ會議ノ五大國全權委員カ潛航艇等ノ問題ニ付キ議スルコトヲ本分科委員會ニ命シタルモノト見ルヘシト説ケリ此點ニ關シテ分科委員會第二回議事經過ニ於テ立委員ハ議長カ潛航艇、毒瓦斯、航空機關等ニ關スル規則ノ審議ハ *Committee on Program and Procedure* ノ必スシモ命令スル所ニ非サルカ如ク報告シ「フロマジョー」モ亦議長ノ第二回會議ノ際ノ報告ヲ斯ノ如ク解シ居タル如クナルモ議長ノ自記セル第二回經過報告ニ依レハ *Committee on Program and Procedure* 即チ五大國ノ首席全權委員カ輕ク命令セル所ト解シ得ヘキナリ然ルニ「フロマジョー」ハ猶前述ノ趣意ヲ以テ陳辯スル所アリ

「ウキルソン」ハ假令五大國ノミニテ決定スル能ハストスルモ後日ノ國際會議ニ於テ決定スヘキ基礎ヲ作ル爲ニ研究シ置クノ必要アルヘキヲ説ケルニ「フロマジョー」ハ第一回ノ際親ラ口ニセル同趣意ノ言ニ反對スル言ヲ爲シ倫敦會議ニ於ケル倫敦宣言ノ議定ノ如キハ無益ノ業ナリシト放言ス

「ウキルソン」ハ重ネテ潛航艇ノ行動ニ關スル規則ノ問題ハ潛航艇其ノモノノ制限ノ問題ト關係アリ或ハ制限ヲ爲スコトヲ決定スルニ當リテ先以テ潛航艇ノ行動制限ニ關スル規則ノ何タルヤヲ知ラント欲スルコトアルヘケレハナリト說ケルモ「フロマジョー」之ヲ駁シ「ウキルソン」ハ潛航艇ノ行動ニ關スル規則ハ後ニ至リ全權委員ヨリ諮詢セラルルコトアリ得ヘキヲ以テ兎ニ角委員ノ提案ヲ基礎トシテ月曜日ニ開會シテ研究ヲ續クルコトヲ提議セルモ

(七) 英、伊ノ委員ハ佛國ノ態度ニ鑑ミテ目下研究ヲ續クルコトヲ無益ト爲セルモノノ如ク且「マルキン」ハ英國政府モ大體立委員ノ趣意ノ如キ規則ヲ潛航艇ニ付行ハシメントセルモ實際行ハレサリシヲ以テ此際自己ノ考ニ依レハ寧ロ進テ潛航艇戰ヲ廢止(立委員按スルニ商船ニ對シテ何等ノ行動ヲモ爲ササルヲ言フモノニシテ全然潛航艇ニ依ル作戰行動ヲ廢止セントスルノ意ニ非サルカ如シ)スルヲ可トスルヲ說キ「ウキルソン」ノ言ニ進テ賛成スルモノナク立委員モ強テ自己ノ提案ヲ續行スルコトヲ主張セサリシヲ以テ會議ハ毒瓦斯分科委員會ノ返事ノ至ルヘキ水曜日ノ午後三時ヲ以テ更ニ開會スルコトトシテ午後五時半頃閉會セリ

別 紙

一、潛航艇ニ關スル現在ノ規則

一、潛航艇ハ敵ノ軍艦ニ對シテハ他ノ水上ニ浮フ軍艦ノ行ヒ得ルト同様ナル攻撃方法ヲ用フルヲ得ヘシ

二、潛航艇カ中立國ノ商船ニ對シテ臨檢搜索ヲ行フニ當リテハ交戰國ノ水上ノ軍艦カ中立國ノ商船ニ對シテ行フト同様ナル手續ヲ行フヲ要スヘク潛航艇ニ依ル中立國船ノ破壊モ亦水上ノ交戰國軍艦ニ依ル破壊ト同様ナル條件ノ下ニ行ハルルヲ要ス故ニ中立國ノ無警告撃沈ハ不法ナリ

三、潛航艇カ敵國商船ヲ捕獲スルニ當リテモ交戰國ノ水上ノ軍艦カ敵國ノ商船ニ對シテ行フト同様ナル手續ヲ爲スヘク又潛航艇ニ依ル敵商船ノ破壊モ亦交戰國ノ水上軍艦ニ依ル破壊ト同様ナル條件ノ下ニ行ハルルヲ要ス故ニ敵商船ノ無警告撃沈ハ不法ナリ

四、商船ハ進テ敵國ノ潛水艇ヲ攻撃スルヲ得ス但シ潛航艇カ停船ヲ命シ捕獲ヲ行ハントスル意思ヲ表示スル後ニ於テハ敵ノ水上軍艦ニ對スルト同シク抵抗ヲ行フコトヲ得抵抗ヲ行ヘハ場合ニ於テ敵ニ捕ヘラルルモ戰時重罪(war crime)トシテ處罰セラハルコト無シ

EXISTING RULES CONCERNING SUBMARINES.

1. Submarines may employ, in respect of enemy warships, means of attack similar to those employed by other floating warcraft.

2. In visiting and searching a neutral merchantman, a submarine must adopt the same procedure as is followed by a belligerent above-water warship in visiting and searching a neutral merchantman, and the destruction of a neutral ship by submarine must also be carried out under the same conditions as destruction by a belligerent above-water warship. It follows, therefore, that the sinking of a neutral ship without warning is unlawful.

3. In capturing an enemy merchantship a submarine must take the same steps as are taken by a belligerent above-water warship in capturing an enemy merchantman, and the destruction of an enemy merchantman by submarine must also be carried out under the same conditions as destruction by a belligerent above-water warship. It follows, therefore, that the sinking of an enemy merchantman without warning is unlawful.

4. A merchantman cannot take the offensive against an enemy submarine. When, however, an enemy submarine has ordered a merchantman to stop and indicated an intention of capturing her, she can offer resistance in the same way as against a hostile above-water warship. When a merchantman has been captured after offering such resistance, she shall not be punished as guilty of war crime.

一、潜水艇ハ攻撃ノ手段トシテ水上ニ浮フ軍艦ノ行ヒ得ル總テノ自由ヲ有スルト同時ニ其以上ノ自由ヲ有スルヲ得ス其ノ攻撃ノ手段トシテ弱點ヲ有スルノ故ヲ以テ特別ノ利益ヲ主張スルヲ得ス

二、中立國船ハ潜水艇ナル新ナル交戦國ノ戦闘力カ發明サレ而シテ該戦闘力自身カ弱點ヲ有スルノ故ヲ以テ海洋ニ於ケル交戦國戦闘力トノ關係ニ於テ既ニ確立セル舊來ノ規則ニ依リ確メラレタル權利利益ヲ減殺セラルルノ理由ナケレハナリ中立國船ノ破壊ニ關スル倫敦宣言第四章ノ規定ハ特ニ潛航艇ニ關シテ之ヲ適用スルヲ得ストスルノ理由ニ乏シト言ハサルヘカラス

三、敵國商船ニ對スル關係ニ於テ潜水艇ナル新奇ノ攻撃手段ノ發明サレ而シテ該新奇ノ手段カ攻撃者ニ取リテ弱點ヲ有スルノ故ヲ以テ對手國カ當然ニ在來ノ條約上又ハ慣例上ノ戰時法規ニ依リ認メラルル以上ノ不利益ヲ受クルニ至ルコトヲ想像シ得ス一ノ新奇ナル攻撃手段カ發明サルルニ當リ特ニ新奇ナル手段ニ對シテ不利益ナル新ナル規則カ新ナル條約ノ締結又ハ新ナル國際慣例ノ確立ヲ俟タスシテ當然ニ發生スルコトナキカ如 又特ニ新奇ナル手段ニ對シテ利益ナル規則カ當然ニ發生スルコト無キナリ 潛航艇カ發明サレタル後モ若シ特ニ條約ノ締結ニ依リ又ハ遵守セサルヘカラストノ legal conviction ニ依リ作ハレタル國際慣例ノ確立ニ依リ潛航艇ニ利益ニシテ敵商船ニ不利益ナル規則カ新ニ成ルニ非サレハ海洋戦闘力ノ自由ニ關スル在來ノ規則カ潛航艇ニモ當然適用サルヘキモノナリト言フヘシ

四、但シ敵カ一般ニ潛航艇ニ依ル無警告攻撃ヲ行フノ aggravating submarine warfare ヲ行フ場合ニハ自己ニ對シテ襲撃ヲ行フノ虞アル地位ニ在ル潛航艇ヲ攻撃スルモ自衛上ノ一手段トナリ不法タラサルニ至ル

第四項 第四回分科會(十二月七日午後三時開會)

一、議長「ウキルソン」ハ五國首席全權ヨリ成ル所謂 Big Five 力軍備制限關係ノ既設ノ三分科委員會ノ經過ニ付不満足ニシテ特ニ「ヒューズ」カ最モ不滿ノ意ヲ表セルコトヲ談リ又本分科委員會ノ見ル所ニ依リ戰時法規ニ關スル案ヲ作成シテ探否ヲ Big Five ニ求ムヘキコトヲ期待サレ居ル旨ヲ談リ毒瓦斯ノ使用及航空機ニ依ル作戰ニ關シテモ潛航艇ニ關シテ立

毒瓦斯、
潜水艇ニ
關スル分
科會報告
問題

委員ノ試ミタルト同様ナル個人的ノ案ヲ提出シテ informal ナル審議ヲ行ヒ以テ何等カ結果アル報告ヲ Big Five ニ致度シトノ意ノ言ヲ爲セルニ

佛國委員「フロマジヨ」ハ informal ナリトモ航空機關、毒瓦斯、潛航艇ニ關スル如キ重要ノ問題ニ付審議スルコトニ關シ自分ハ權限ヲ有セスト説キ純粹ナル學會ノ審議ト異ナリテ現在ノ如キ國際會議ニ於テ關係國ノ委員トシテ是等ノ政治的トモ稱スヘキ重要問題ニ關シテ意見ヲ陳フルコトハ自分ノ出來サル所ナリト談レリ

立委員ハ議長ニ對シテ毒瓦斯ニ關スル現在ノ法規ノ何タルヤヲ議長ニ於テ調査セラレ informal ナル審議ノ基礎ト爲シテハ如何ト説ケルニ「ウキルソン」ハ若シ委員カ承諾セハ立委員カ潛航艇ニ付提案セル如キモノヲ毒瓦斯ニ付テ出シテ informal ナル審議ノ基礎ト爲スモ可ナリトシ又航空機關ノ行動ニ關テシモ已ニ自身ヨリ提案セント考フル所アリト告ケタリ

「マルキン」及「バリアノ」伯ハ之ヲ是認セルモ「フロマジヨ」ハ假令現在ノ法規ニ關スル見解タリトモ潛航艇ニ付立委員ノ提出セル如キ法律上ノ見解ヲ含ム案ハ informal タリトモ之ヲ議スルヲ得スト爲シ議長ヨリ更ニ分科委員會ノレレ趣意ニ關シテ説ク所アリタル後

「フロマジヨ」モ潛航艇ノ場合ニ於テハ成分の規定全ク存セサルカ毒瓦斯ノ場合ニハ成文の規定アルヲ以テ單ニ之等ノ規定ニ關スル法律上ノ地位ニ關シテ Big Five ニ報告スルノ程度ヲ出テサル案ナレハ毒瓦斯ニ付テハ之ヲ審議作成スルモ可ナルヲ認メ

「マルキン」ハ毒瓦斯ニ關シテ海牙ノ宣言、千九百十八年三月二十三日萬國赤十字總會ノ毒瓦斯不使用ノ勸告ニ對スル聯合國(英、佛、伊、白、葡ノ外米國ヲ含ムモ日本ヲ含マス)ノ返答「ヴェルサイユ」條約第百七十一條ノ規定ノ三ノ國際的文書アルヲ指摘セルカ「フロマジヨ」ハ千九百十八年三月二十三日ノ聯合國ノ返答ニハ米國カ加ハレルモ此文書ハ條約ニ非サルヲ以テ米國ハ毒瓦斯ニ關シテ國際的ノ拘束ヲ有セス他ノ四國ハ國際的ノ拘束ヲ有スルノ地位ニアリト爲シ

而シテ千九百十二年ノ返答ニ米國カ加ハリテ毒瓦斯ノ使用ヲ不法ト明言セルモ之レ其ノ當時ニ行ハレタル法規ノ何タルヤヲ明言セルニ過キスシテ現在ニ於テハ毒瓦斯ノ使用ニ關シテ實際上順適スル所ヲ知ラサルカ如キ言ヲ爲シ

「ウキルソン」ハ海牙陸戰條規第二十三條「ホ」號ニ於テ「不必要ノ苦痛ヲ與フヘキ兵器、投射物其他ノ物質ヲ使用スルコト」ヲ禁シタルハ毒瓦斯中ノ或種類ノモノヲ含ムト解シ得ヘク而シテ米國ハ海牙陸戰條規ニ加ハレルヲ以テ米國カ毒瓦斯ニ關シテ國際上全然無拘束ナリト云フヘカラサルコトヲ認メタルニ

「フロマジヨ」ハ毒瓦斯禁止ニ關スル海牙宣言ニハ「マハン」大佐カ明白ナル反對ヲ爲シ居リ特別禁止事項ハ一般禁止事項ヨリモ解釋上強カルヘキヲ以テ米國カ陸戰條規ノ一般的规定ニ基キテ毒瓦斯ニ關シテ國際的拘束ヲ負フノ由ナキヲ説ケリ

「マルキン」ハ條約ノ如何ニ拘ラス毒瓦斯ニ關スル分科委員會ニ於テ技術上又ハ實際上平時毒瓦斯ノ研究製造ヲ防止又ハ禁止スルヲ得ス又之ヲ監督シ得ストセハ實際ニ於テ戰時ニ至リ之カ使用ヲ防ク能ハストノ説ヲ爲セルモ兎ニ角議長「ウキルソン」ニ於テ毒瓦斯ニ關スル現在ノ法律上ノ地位ヲ明確ニスヘキ案ヲ出スコトニ賛成スルノ言ヲ爲シ「フロマジヨ」モ強テ反對セサルヲ以テ金曜日午後三時ヨリ開クヘキ第五回會議ニ於テ毒瓦斯ニ關スル現在法規ノ地位ニ關シテ審議ヲ爲スヘキヲ決シ且議長ヨリ審議ノ基礎ヲ提出スヘキヲ決セリ

二、「ウキルソン」ノ草セル前回ノ議事經過報告中ニ於テ立委員ノ提出セル潛航艇ノ現在規則ニ關スル議論ニツキ明言セル所ナキヲ以テ此點ニ關シ修正ヲ求メ議長ハ陳謝ノ辭ヲ爲シテ修正ヲ爲シ委員長ハ此修正ヲ加ヘテ議長ノ作成ノ前回ノ議事經過ヲ承認セリ

議長カ前回ニ於テ航空分科委員會ニ問合方ヲ發議セル問題ニ付實質及字句ノ修正ヲ爲シテ該分科委員會ニ問合ハスコトヲ求メ承認ヲ得タリ其ノ趣意ハ左ノ如シ

航空機關カ(A)他ノ航空機關(B)船舶(C)潛航艇ニ對シテ臨檢拿捕ノ利ヲ行フコト可能ナリヤ否ヤ若可能ナリトセハ

如何ナル手續ニ依ルヘキヤ

Is it possible for aircraft to exercise the right of visit and search, and under what conditions on

(a) other aircraft

(b) surface craft

(c) craft?

三、午後四時二十分頃閉會シ次回ハ十二月九日午後二時ヨリ開會シ「ウキルソン」カ毒瓦斯ノ現在ノ法建上ノ地位ニ關シ提出スヘキ案ヲ審議スルコトナレリ

第五項 第五回分科會(十二月九日午後三時)

一、本分科委員會ニ其意見ヲ問フヘク前回決定(實ハ佛國委員「フロマジヨ」カ前回終ニ大統領謁見ノ爲早ク委員會ヲ去レル後ニ於テ實質ノ一部ヲ追加シ且字句ヲ定メタルモノ)セル「航空機關カ(A)他ノ航空機關(B)船舶(C)潛航艇ニ對シテ臨檢搜索ノ權利ヲ行フコト可能ナリヤ否ヤ若可能ナリトセハ如何ナル手續ニ依ルヘキヤ」ノ問題ニ關シ「フロマジヨ」ハ更ニ其不可能ナルコト明白ニシテ之ヲ航空分科委員會ニ送附スルノ必要ナシト説キタルカ英國委員「マルキン」仲裁的ノ言ヲナシ兎ニ角航空分科委員會ニ對シテ意見ヲ問フコトナレリ

立委員ハ第三回ノ分科委員會ニ於テ若シ「ウキルソン」カ提出セル前述質問ヲ航空分科委員會ニ問フコトナラハ次ノ如キ問題ヲ合併セテ該分科委員會ニ問ハンコトヲ求メ置キシカ(第三回議事經過參照)「マルキン」ハ此質問ニ關シテ陸上ハ兎ニ角海上ノ軍艦ヨリ放ツ彈丸ト航空機關ヨリ放下スル彈丸又ハ爆裂物ト此點ニ於テ區別スル所ナキコト明白ナルヲ説キ且立委員モ我全權隨員中航空機關ニ關係アル人々ヨリ同様ノ説明ヲ聞キ居タルヲ以テ強テ此問題ヲ航空分科會ニ提出スルヲ求メスシテ止メタリ其ノ問題ハ左ノ如シ

現時ノ狀態ニ於テ航空機關ヨリ放ツ彈丸又ハ其ノ放下スル爆裂物カ目標ナル建設物等ニ的中スルノ程度ハ陸上ノ銃

ヨリ放ツ彈丸ノ目標ニ的中スルノ程度ニ比シテ如何ナル割合ヲ有スルヤ

二、議長カ前同ノ委員會決議ニ基キテ作製セル毒瓦斯ニ關スル現在法規上ノ地位ノ覺書（本分科會ニテ修正ノ上本議事經過附屬丙號トナレルモノノ原案）ニ付審議シ「グエルサイエ」條約第七十一條ニ關スル合衆國ノ地位カ最初ノ問題トナル此點ニ關シテ立委員ハ合衆國及獨逸國間ノ講和條約第二條ノ明文ヲ指示シテ合衆國モ亦毒瓦斯使用ノ不法ナルヲ明認シ百七十一條ノ明文ノ效力ヲ認メタルヲ以テ合衆國モ毒瓦斯使用禁止ニ關シ國際法上全然無拘束ナリト言フヲ得サルコトヲ説キ「マルキン」モ亦此説ヲ支持セルカ「ウエルソン」ハ合衆國及獨逸國間ノ講和條約第二條ニ於テ「グエルサイエ」條約第五章ノ效力ヲ認メタルハ該章ニ規定セル經過ノ軍備制限ノ大體ヲ合衆國ヨリ見テ利益トシテ之カ效力ヲ合衆國ト獨逸國トノ間ニ認メタルニ過キスシテ單ニ毒瓦斯禁止ニ關スル海牙ノ宣言ノ存スル事實ヲ確認スルニ過キスト認ムヘキ百七十一條ノ首文ニ依リテ合衆國カ毒瓦斯禁止ニ關スル國際法上ノ拘束ヲ受クルニ至レリト解シ能ハスト主張シ「フロマジヨ」モ本分科委員會ヨリ委員會ニ提出スヘキ毒瓦斯ニ關スル現在法規ノ地位ノ覺書中ニ於テ合衆國ト獨逸國トノ間ノ講和條約第二條ニ關シテ何等カノ言明ヲ爲スコトハ法律上ノ地位カ明確ナラサルヲ以テ危險ナリト主張シ米獨逸ノ講和條約ニ依レハ米獨逸ハ「グエルサイエ」條約ニ關スル國際的ノ拘束ハ少シモ負ハスシテ單ニ「グエルサイエ」條約ニ關スル米獨逸ノ利益ノミヲ主張スルモノノ如クナレハ之ニ基キテ間接ナル規定ヲ援用シテ米獨逸ノ國際的拘束ヲ説クハ妥當ヲ缺クトナセリ「マルキン」ハ自説ヲ深ク主張セス立委員モ米獨逸間ノ條約ノ當事國タル米獨逸ノ委員會タル議長ノ強テ自説ヲ主張スルニ鑑ミ且之ヲ強ク主張スルノ實益ナキヲ顧ミ強テ議長ノ原案ノ修正ヲ主張セシメテ止メタリ

三、次ニ立委員ヨリ米獨逸國際法上拘束セラルル海牙ノ陸戰條約第二十三條（A）號ニ於テ毒又ハ毒ヲ施シタル兵器ヲ使用スルコトヲ禁止シタルハ毒ノ固形ナルト流動體ナルト將又瓦斯體ナルトヲ問ハサルモノナルヲ以テ毒瓦斯ニモ適用アルヘキヲ主張シ此點ニ關シテ「マルキン」ハ米獨逸間ノ聯合側ノ諸國カ亦十字委員會毒瓦斯不使用ノ勸告ニ對シテ答ヘタル千九百十八年三月二十六日ノ返答中ニ於テ毒ノ使用ノ禁止セラルルコトヲ明言セルハ海牙ノ陸戰條約第二十三條規（A）

關係アルヘキヲ指摘シ立委員モ同意見ヲ有スルコトヲ言明シ全會ノ一致ヲ得テ議長ノ草セル原案ニ於テハ單ニ海牙陸戰條約第二十三條（E）號ヲ擧ケ居ルヲ訂正シテ（A）號ヲモ明記スルコトト爲シ之ニ依リ米獨逸モ亦國際法上毒瓦斯ニ關シ全然無拘束ニ非サルコトヲ明認セシメタリ（註）

（註）立委員ノ私見ニ依レハ二十三條（A）號ノ毒ノ使用ヲ禁シアルハ元來井水ニ毒ヲ投スル如キ不信義的ナル毒ノ使用ヲ禁スルモノニシテ毒瓦斯ト雖之ニ類似ナル方法ニ依リ不信義的ナル使用ヲ爲スコトハ二十三條（A）號ニ依リ禁セラルルト雖モ公然タル毒瓦斯使用カ二十三條（A）號ノ禁止ニ入ラサルコトヲ論スルノ説ハ其ノ理論ニ於テ有力ト言ハサルヘカラス特ニ海牙ノ陸戰條約同時ニ議定サレタル毒瓦斯ニ關スル海牙宣言ニ關シテ當時ノ第一海牙平和會議ノ米獨逸委員タル「マハン」大佐カ毒瓦斯使用ノ禁止ニ對シテ反對ヲ明言シタルコトハ少クトモ合衆國カ海牙ノ陸戰條約第二十三條（A）號ヲ以テ總テ毒瓦斯使用ノ禁止ヲ含ムコトヲ認メサリシコトヲ示スト論スルモ理由無シトセス唯千九百十八年三月二十六日ノ聯合國側ヨリ亦十字委員會ニ致シタル返答ノ文書ニ於テハ海牙ノ陸戰條約第二十三條（A）號カ總テ毒瓦斯ノ使用ノ禁止ヲ含ムト爲スノ見解ヲ含ムモノト解シ得サルニモ非ス

猶立委員ノ私見ニ依レハ「グエルサイエ」條約第七十一條ノ條文ハ必スシモ海牙ノ宣言ノ存在ヲ確認スルニ過キスト認ムヘカラスシテ何國ヲモ拘束スヘキ國際的慣習法ノ存在ヲ確認スルト認ムルヲ得ヘキコトハ之ト對應スル「サンジェルマン」條約ノ特ニ成文法上ノ根據ナキ投烟（Lance-Hammer）ヲ加ヘタルコト及「グエルサイエ」條約ニ於テ毒瓦斯ニ關シテ「サンジェルマン」條約ト同シク單ニ海牙宣言ノ文句ヲ援用スルニ止マラスシテ廣ク「窒息性、毒性其他ノ瓦斯及之ニ類似スル一切ノ液體材料又ハ考案ハ其ノ使用ヲ禁止セラレアルニ因リ」ト記スコトノ二ノ理由ニ基キテ主張シ得ヘキコトト信スルモ本分科委員會ニ於テハ全體ノ空氣カ此ノ如キ微細ノ論點ヲ避クルニ在リタルヲ以テ強テ説カサリシ所ナリ唯後日ノ參考ノ爲メニ之ヲ附記スルモノトス

四、伊太利委員「バリアノ」伯ハ議長ノ作成セル毒瓦斯ニ關スル現在法規ノ報告書原案終尾ニ於テ次ノ如キ文句アルハ妥當

ヲ缺クト爲シ創除ヲ主張シタルカ兎ニ角毒瓦斯分科委員會ノ所見如何ヲ研究スヘシト爲セリ

During the world war gases were widely used. The Committee on Gases is of the opinion that gases will be used in other Wars.

毒瓦斯分
科委員會
答ヨリノ
同

五、次ニ毒瓦斯分科委員會カ本分科委員會ノ提出セル七ノ問題（第二回議事經過及第三回議事經過參照）ニ對シテ答ヘタル點ヲ議長ヨリ口頭ニテ披露セルカ毒瓦斯分科委員會ニ於ケル我帝國委員ヨリ得タル材料ニ依レハ此點ニ關スル同委員會審議ノ結果ハ次ノ如シ

一、毒瓦斯ハ其ノ效果ニ於テ他ノ害敵手段ト同様ナル武器ナリヤ（肯定三（佛、英、米）否定二（日、佛））

二、毒瓦斯使用制限協定ニ際シ其ノ物理的化學的又ハ生理的效果ヲ基礎トスルコトヲ得ルカ

委員會ハ全會一致基礎トナスコトヲ得スト

三、毒瓦斯ノ威力ヲ單ニ交戰者ノミニ及ホサシムル事ハ技術上可能ナリヤ

委員會ハ全會一致モトヨリ之ハ可能ナルモ高度爆發物ノ場合ニ於ケルヨリ以上ノ困難アルヲ認ム

四、平時ニ於テ毒瓦斯ノ研究及製造ヲ防止スルコトハ技術上可能ナリヤ

各國之ヲ否定ス（但シ日本ハ技術上可能ナルモ實際上不可能トナス）

五、平時ニ於テ毒瓦斯ノ研究又ハ製造ヲ制限スルコトハ技術上可能ナリヤ

伊國委員ノ要求ニ依リ問題ヲ分チテ二トナス

（A）平時ニ於テ毒瓦斯ノ研究ヲ制限スルハ技術上可能ナリヤ委員會ハ之ヲ否定セリ、伊國委員ハ之ヲ道義ニ任スヘシトセリ

（B）平時ニ於テ毒瓦斯ノ製造ヲ制限スルハ可能ナリヤ

（米ハ否定シ日英ハ技術上可能而モ實際上不可能トシ伊、佛ハ製造量ノ制限ハ可能ナルモ製造瓦斯ノ種類ノ制限ハ

不可能トナス）

六、假ニ平時ニ於テ毒瓦斯ノ研究又ハ製造ヲ制限スルコト可能ナリトスルモ斯ル研究又ハ製造ヲ監督スルコト可能ナリヤ

英米ハ否定ス日本ハ技術上可能而モ實際上否トス伊、佛ハ研究監督ハ不可能ナルモ瓦斯製造量及型ノ製造ニ關スル監督ハ必シモ不可能ニ非ストナス

七、瓦斯ノ效果ニツキテ瓦斯ノ使用ノ制限ニ關スル合意上ノ基礎ヲ定ムルコト可能ナリヤ例ヘハ都市ニ對シテ人ノ生命ヲ奪フ可キ瓦斯ノ使用ヲ禁スルコト可能ナリヤ

委員會ハ瓦斯ノ生理的效果ヲ使用制限ノ基礎トスルコトハ不可能ナリトセリ

六、次ニ毒瓦斯分科委員會ノ一般的ノ報告書ニ付キ本分科委員會關係事項ヲ研究セリ右報告書ハ第二節第四款ニ之ヲ掲ゲタリ

右ニツキ「フロマジョー」ハ右報告書劈頭（イ）ニ於テ方々物理學上化學上又ハ生理上ノ性質ヲ基礎トシテ有害毒瓦斯ヲ制限スルコト不可能ナルコト認メラレタル以上ハ最早條約ニ依リ毒瓦斯使用ノ部分的ノ制限ヲ作リテ例ヘハ人ノ生命ヲ奪フヘキ瓦斯ノ使用又ハ不必要ノ苦痛ヲ與フヘキ瓦斯ノ使用ヲ禁スルト云フ如キ規則ヲ作ルヲ得サルヘキヲ指摘シ「ウキルソン」ハ之ニ關シテ爭フ所アリシモ議論ハ結局ニ於テ要領ヲ得スシテ終レリ

「フニマジョー」ハ上述ノ毒瓦斯分科委員會報告（イ）及（ハ）ニハテ所謂國際法上重キ處罰（Severe penalties under international law）ノ何ヲ指サヤ明ナリ述ヘタル「ウキルソン」ハ瓦斯使用者ヲ戰年中又ハ戰争後嚴刑ニ處スルコト及ヒ中立國ニ於テ毒瓦斯使用國ニ對シテ壓力ヲ加フルコトヲ舉ケタルモ「フロマジョー」ハ此等ノ事項ノ實行シ得サルヲ説キ而シテ進ンテ現在ノ國際法規上毒瓦斯ノ使用ヲ不法ト認ムルモ實際上寸效ナカルヘキハ世界大戰ノ實驗ニ徴シテ明白ナリト論ス

「ウキルソン」及立委員ハ今回ノ世界大戰ノ如キ稀有ノ場合ニハ毒瓦斯使用ヲ禁スルノ法規ノ如キハ中立國ノ勢力微弱ナルカ爲實際ニ行ハレサルコトヲ認メサルヘカラサルモ二三國間ノ戰爭ニ於テハ毒瓦斯使用ヲ不法トスル法規ヲ守ラサル國アレハ中立國ノ直接間接ノ壓迫ヲ蒙ルヘク毒瓦斯使用ヲ不法トスル法規ヲ設クルコト國際法上ノ制裁ノ不完全ナル在來ノ狀態ニ於テモ決シテ無用ノ業ニ非スト説ケリ

航空機ノ
使用制限ノ

七、次ニ航空機ノ作戦行動ノ制限ニ關シテ議スル所アリシカ「フロマジヨ」ハ又々五箇國ノミニテ議スルノ不可能ナルコト及軍備制限會議ノ委員トシテ此種ノ戰爭法規ニ關シテ議スル權限ナキコトヲ説キ「ウキルソン」ハ再ヒ米國ノ假議題ニ於テ之ニ言及セルヲ指摘セルカ「フロマジヨ」ハ議題ニハ戰闘ノ新タナル方法ヲ審議スルコトヲ擧ケタルモ規則ヲ定ムルコトヲ明言セス等ノ言ヲナシ結局ニ於テ要領ヲ得サルニ終リ「ウキルソン」ヨリ他國ヲ加ヘテ會議ヲ開キ戰闘ノ新方法ニ付規定ヲ設クルコトヲ分科委員會ヨリ提議スヘキヤノ議ヲ發セシモ此議モ自然ニ消滅シ「ウキルソン」ハ又毒瓦斯ニ關シテ之ヲ軍艦ニ對シテ用フルヲ禁止スル旨ヲ發議セルニ「フロマジヨ」ハ平和的人民ニ對シテ用フコトヲ認メテ軍艦ニ附シテ用フルヲ禁スル如キハ不合理ナリト反對シ此議モ自然ニ消滅セルカ兎モ角「ウキルソン」ノ提議ニ依リ航空分科委員會ニ提出スル質問(本議事經過歐文參照)ニ對スル航空分科委員會ノ返答ヲ研究シ其他航空機關ニ關スル委員ノ思ヒ付クヘキ事項ヲ審議スル爲十二月十二日午後三時ヨリ更ニ開會スルコトナレリ

毒瓦斯ノ
現在法規
ニ上ノ地
位覺書

八、會合ノ終ニ臨ミ立委員ヨリ議長作成ノ毒瓦斯ノ現在法規ニ關スル覺書ニツキ「バリアノ」伯ノ終尾ノ一節削除ノ議出タルヲ注意シ(本議事經過前文參照)且立委員モ全然「バリアノ」伯ト所見ヲ同フスルコトヲ説ケルニ「バリアノ」伯ハ更ニ他ノ分科委員會ノ所説ヲ本分科委員會ノ覺書中ニ掲クルノ妥當ヲ缺クコト現在ノ法規關係ニ關スル覺書ニ於テ過去又ハ將來ノ事實ニ關スル記述ヲ爲スノ妥當ヲ缺クコトヲ説キ終ニ覺書ノ終尾ノ文句(本議事經過上文參照)ヲ削除スルニ決シ本分科委員會ヨリ軍備制限委員會ニ提出スヘキ覺書ハ別紙ノ如ク定メタリ
次同ハ十二月十二日午後三時ヨリ開クコトシテ午後五時頃散會ス

MEMORANDUM

USES OF GAS IN WAR.

Several states, including Belgium, France, Great Britain, Italy, Netherlands and Portugal, signed the Declaration of St. Petersburg, 29 November 11 December, 1868, in which it was stated.

“Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

“That the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy;

“That for this purpose it is sufficient to disable the greatest possible number or men;

“That this object would be exceeded by the employment of arms which needlessly aggravate the sufferings of disabled men, or render their death inevitable;

“That the employment of such arms would, therefore, be contrary to the laws of humanity;

“That Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes: which is either explosive or charged with fulminating or inflammable substances.”

I About 14 ounces avoirdupois.

Declaration II, The Hague, 29 July, 1899, provided—

“The Contracting Powers agree to abstain from the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases.”

The United States has not signed this Declaration. The other States represented at the Conference on the Limitation of Armament have either signed or acceded to this Declaration.

All the States represented at the Conference on the Limitation of Armament signed or acceded to the Convention II.

Concerning the Laws and Customs of War on Land, The Hague, 29 July, 1899, Article 23 of this Convention provides that it is especially forbidden—

- (a) to employ poison or poisoned weapons and
- (b) to employ arms, projectiles, or materials calculated to cause unnecessary suffering.

The corresponding section of Article 23 of the Hague Convention IV, Laws and Customs of War on Land, 18 October, 1907, is identical.

On the 26 of March, 1918, representatives of the military authorities of the United States, Belgium, Great Britain, France, Italy and Portugal, in reply to the Committee of the Red Cross, stated that they considered that the use of poisonous and asphyxiating gases fell under the prohibition forbidding the use of poison and of arms, projectiles or means of war calculated to cause unnecessary suffering.

The Treaty of Peace with Germany, June 28, 1919, provided—

“Art. 171.—the use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany.

“The same applies to materials especially intended for the manufacture, strage, and use of the said products or devices.

“The manufacture and the importation into Germany of armoured cars, tanks and all similar constructions suit-

able for use in war are also prohibited.

“Art. 172.—Within a period of three months from the coming into force of the present Treaty, the German Government will disclose to the Governments of the Principal Allied and Associated Powers the nature and made of manufacture of all explosives, toxic substances or other like chemical preparations used by them in the war or prepared by them for the purpose of being so used.”

第六項 第六分科會(十二月十二日午後三時開會)

一、議長ハ本分科委員會ノ質問ニ對スル航空分科委員會ノ回答ヲ未タ接手セサル旨報シ更ニ軍備制限委員會ニ對シ毒瓦斯ニ關スル報告ヲ本分科委員會ヨリ提出スルヲ可トスヘク該報告ニハ前回議定セル「毒瓦斯ノ現在法規上ノ地位」ニ關スル覺書(第五回議事經過參照)ヲ掲ケ又更ニ毒瓦斯分科委員會ノ本分科委員會ニ對スル回答竝ニ米國全權諮問委員會(Advisory Committee)ノ採用セル新式武器ニ關スル報告(後掲)ヲ研究シテ本委員會ノ意見ヲ之ニ附記シ以テ委員會ニ報告スルヲ可ナリト思惟スルモ本分科會ニ於テ如何ナル意見ヲ有スル旨記スヘキヤ或ハ「フロマジョー」氏ノ屢說ケル趣意ニ依リ本會議ハ代表サレタル國少數ナルヲ以テ關係國ノ多數ナル會議ニ於テ毒瓦斯ニ關スル規則ヲ議定スルヲ可ナリト認ムル旨ヲ本分科會ノ意見トシテ記スヘキヤ否ヤトテ分科委員會ニ諮ル所アリ

米國全權諮問委員會ノ新式武器ニ關スル報告

(新式武器審查委員會力提出シ顧問委員會ノ議決セルモノ)

新式武器委員會ハ數回ノ會合ニ於テ且ツ其中一回ハ陸軍委員會ト連合シテ本問題ヲ慎重ニ審議シタリ瓦斯使用戰科學的名稱ヲ以テ云ヘハ化學戰ハ世界戰爭中最モ重要ニシテ且顯著ナル狀態ニ達セリ「イーブル」ニ於ケル英軍ニ對スル最初ノ毒瓦斯奇襲ハ文明世界ヲ震撼セシメンカ其ノ軍事の效力ノ大ナルニ顧ミ聯合國政府ハ直ニ之ニ對スル防禦ノミナラス毒瓦斯ニ依ル攻撃ヲモ採用スルニ至レリ其ノ結果戰爭ノ終期ニハ一般ニ只ニ一時的ノ損害ヲ與フルノミナラス有害ノ性質ヲ有ス

ル瓦斯ヲ採用スルニ到レリ

委員會ハ專門家ト諮リ且ツ本問題ノ科學的研究ノ結果毒瓦斯使用ヲ獎勵スル議論ニモ考慮ヲ必要トスルモノアルヲ發見セリ瓦斯ニ依ル死者ノ比率ハ瓦斯カ毒性ナラサルトキハ他ノ武器ノ使用ニ依ルモノヨリモ遙ニ低シ然レトモ委員會ハ此ノ新武器ニシテ如何ナル様式ノ下ニ於テセヨ其ノ使用ヲ許サルルトキハ實際上之カ使用ヲ制限スルコト能ハサルモノナリト感セリ飛行機ヨリ都市ニ有毒瓦斯ヲ落下セル時ノ恐怖スヘキ結果ハ想像以外ナリ大戰中屢々行ハレシ專ラ住民ノ精神ヲ腐亂セシムル以外ニ目的ナキ無防禦ノ都市村落ニ對スル爆彈投下ノ如キハ如何ナル軍事上ノ必要ヲ以テスルモ之ヲ許スヘキニ非ス若シ此ノ爆彈ニ致死瓦斯ヲ使用シタリトセハ物質的損害ノミナラス過去數世紀間ノ努力ヲ絶滅セサル迄モ其絶滅ヲ怖レシムル程度ニ國ノ大部分ヲ荒廢ニ歸セシメシナルヘシ

委員會ハ米國人ノ良心ハ建設ノ爲メナラテ寧ロ破壞ノ爲メニ科學的發見ヲ野蠻的ニ利用セシコトニ依リ深ク衝動セシメラレタリトノ意見ヲ有ス華府ニ於ケル軍備制限會議ハ本問題ニ關シ凡ユル意見ヲ交換スヘク絶好ノ機會ヲ與ヘタリ專門家ノ議論ノ如何ニ係ラス若シ米國代表者ニシテ陸軍タルト海軍タルト又戰闘員ニ對スルト非戰闘員ニ對スルトヲ問ハス化學戰ノ廢棄ヲ主張スルニ非レハ米國人ノ良心ヲ發表スル義務ヲ盡ササルモノナリ北米合衆國カ此ノ見地ヲ取ルハ敢テ弱點アルカ爲ニ非ス宏量ナルカ爲ノミ恐ラク米國程專門家ノ科學的智識ニ於テ又其ノ資源ニ於テ化學戰ヲ有效ニ行フ用意アルモノハアラサルヘシ故ニ本委員會ハ次ノ決議案諮問委員會ノ議ニ附シ且之ヲ軍備制限會議ニ於ケル米國代表者ニ通報セラレンコトヲ欲ス

決 議

化學戰ハ有毒或ハ無毒ナル瓦斯ノ使用ト併セテ國際協定ニ依リ之ヲ禁止セサルヘカラス且之ヲ以テ毒物ヲ井戸ニ投シ病毒菌ヲ播布スルカ如キ不公正ナル手段其ノ他近世ノ戰爭ニ於テ批議セララル方法ト同視スヘキモノトス

REPORT ON NEW AGENCIES OF WARFARE.

Submitted by the Sub-Committee on New Agencies of warfare and Adopted by the
ADVISORY COMMITTEE.

December 1, 1921.

The Committee on New Agencies of warfare having had a number of meetings, are conjointly with the Committee on Land Armaments, has the honor to report that it has given careful consideration to the subject referred to it. Chemical warfare, which is the scientific term to cover use of gases in all of their forms, reached very important and significant phases during the world war. The surprise of the first gas attack on the British forces at Ypres shocked the civilised world, but its military effectiveness caused the Allied Governments at once to take measures not only of protection against gas attacks, but also offensive action. In consequence, at the close of the war, the use of poison gases, not only temporarily injurious but of a toxic character became universal.

The Committee has found on consultation with experts and reference to scientific study of the subject that there are arguments in favor of the use of gas which ought to be considered.

The proportion of deaths from their use when not of a toxic character is much less than from the use of other weapons of warfare. On the other hand, the committee feels that there can be no actual restraint of the use by combatants of this new agency of warfare, if it is permitted in any guise. The frightful consequences of the use of toxic gases if dropped from airplanes on cities stagger the imagination. No military necessity can excuse or extenuate such events as were of frequent occurrence during the recent war when bombs were dropped on undefended and thickly populated cities, towns and villages for no other purpose apparently than to demoralise the population. If lethal gases were used in such bombs

it might well be that such permanent and serious damage would be done, not only of a material character, but in the depopulation of large sections of the country as to threaten, if not destroy all that has been gained during the painful centuries of the past.

The committee is of opinion that the conscience of the American people has been profoundly shocked by the savage use of scientific discoveries for destruction rather than for construction.

The meeting of the Conference on the Limitation of Armament in the city of Washington affords a peculiarly advantageous opportunity for comparison of views on all questions bearing on the subject. Whatever may be the arguments of technical experts, the committee feels that the American representatives would not be doing their duty in expressing the conscience of the American people were they to fail in insisting upon the total abolition of chemical warfare, whether in the Army or Navy, whether against combatant or non-combatant. Should the United States assume this position, it would be no evidence of weakness, but of magnanimity. Probably no nation is better equipped by reason of scientific knowledge among its technicians and by means of its material resources to use chemical warfare effectively. This committee, therefore, submits the following resolution for adoption by the Advisory Board and to be communicated to the American Delegates to the Conference on the Limitation of Armaments.

RESOLVED, that Chemical Warfare, including the use of gases, whether toxic or non-toxic, should be prohibited by international agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease and other methods that are abhorrent in modern warfare.

「フロマジョー」ハ毒瓦斯ニ關シテノミ報告ヲ爲スノ必要無シ使用ヲ不法トスル條約ヲ無視スルカ如キ言ヲ爲スコトモ危険ナルト同時ニ毒瓦斯ノ使用禁止ヲ絶對的ナラシムルコトモ實際上ノ困難ニ鑑ミテ危険ナリト要スルニ毒瓦斯ニ關シテハ何

事ヲモ明言セサルヲ可トスト説キ「マルキン」ハ報告書中ニ於テ毒瓦斯ノ使用ヲ不法トスル條約ノ效力ヲ疑フ趣意ヲ存スルカ如ク解シ得ル言ヲ爲スコトノ危険ヲ力説シ毒瓦斯ニ關シ現在ノ法律上ノ地位ヲ明ニスル以上ノ言明ヲ爲スハ不可ナリトイフ

「バリアノ」伯ハ全權委員會ヘノ報告ハ之ヲ延期スヘシト稱エタルカ若シ「フロマジョー」ノ所説ノ如ク毒瓦斯ニ關シテ何等ノ言明ヲ爲サスコトトセハ折角前同ニ於テ議定セル毒瓦斯ノ現在法律上ノ地位ニ關スル覺書モ之ヲ委員會ニ提出スルヲ得サルコトトナルヘク（但該覺書ヲ分科會ノ minute 中ニ掲ケテ會議ノ事務總長ニ提出スヘキハ言ヲ須タス）而シテ「フロマジョー」カ其ノ意見ヲ固持スルコト堅キカ爲ニ本會議ニ於テ上述ノ覺書ヲ含ム報告書ノ作成ヲ議決スルコト不可能ナルヲ見テ立委員モ已ムヲ得ス報告延期説ニ贊成シ茲ニ於テ本分科委員會ハ委員會ヘノ報告ヲ延期スルコトニ決シ且議長ノ召集ヲ待チテ更ニ開會スルコトトナシテ四時半頃閉會ス

第七項 第七回分科會（一月十七日午後三時開會）

一、航空分科委員會議長ヨリ本分科會ノ質問（本分科委員會第四回議事經過參照）ニ對シテ假ノ返答案ヲ送附シ來タレリトテ議長力カ之ヲ披露セルカ航空分科會委員會ノ確定的ノ議定ヲ待チテ後更ニ研究スルコトト爲ス

二、次ニ議長ハ米國全權諮問委員會ノ起草セル所トシテ別紙ノ案ヲ提出シ之ヲ審議ノ基礎トシテ航空ニ關スル國際法規ヲ審議セムコトヲ求メタルニ

米國全權
委員會
航空起
草委員
會
機ニ關
スル時
法
規

「マルキン」ハ其國全權ノ認許ナクシテ此ノ如キ規則ヲ議スルヲ得ストナシ又

「バリアノ」伯ハ五國ノノミニテ此種ノ法規ヲ議スルノ不可ナルコト及伊國全權ハ戰時法規ノ改正殊ニ作戰ノ新規ナル方法ノ制限ニ關シテ本會議ニ於テ準備ヲナシタル上ニテ別ニ許多ノ國ノ代表者ヲ召集スル國際會議ヲ開キテ之ヲ議スルヲ可トスルノ意見ヲ有スルヲ以テ（附記參照）特ニ航空ノミニ關シテ實質ヲ議スルコトヲ不可トスルコトノ二ツノ理由ニ依リ之ヲ議スルコトニ反對セルカ立委員ハ「informal」ニシテ tentative ナル審議ヲ爲シ提案ノ豫備的研究ヲナスハ毫モ不

可ナキヲ説キ遂ニ一應提案ノ研究ヲ爲スニ至レルカ許多ノ點ニ於テ提案ノ法律上不完全ナルヲ發見シ「ウキルソン」モ假令採用サルルトスルモ修正ヲ爲スノ必要アルヘキヲ認ム 午後四時半閉會

航空機ニ關スル戰時法規

第一章 定義、國籍、記號

- 一、航空機トハ航空ノ爲ニ使用セラルル總テノ考案物ヲ云フ軍艦ニ永久的ニ附屬シ通常之ト同伴スル航空機ハ軍艦ト物理的接觸ヲ保持スル限り軍艦ノ一部ト看做スコトヲ得
- 二、航空機中國家又ハ官憲ニ所屬シ又ハ其ノ管理ニ屬スルモノヲ官有航空機トシ私人ノ監督ノ下ニ在リ又ハ其ノ管理ニ屬スルモノヲ私有航空機トナス
- 三、如何ナル航空機ト雖モ二ヶ以上ノ國籍ヲ有スルヲ得ス總テ私有航空機ハ各所屬國ノ法律ニ從ヒ國籍及ヒ登録記章ヲ附シ且所有者ノ氏名及ヒ住所ヲ記載スヘシ公有航空機ハ國籍ヲ表示スル爲明白ナル記章ヲ施シ乗組員ハ制服ヲ着シ且ソノ國家ノ公務ニ從事スルコトヲ證スルニ適當ナル證書ヲ具備スヘシ國籍記章ハ何レノ方面ヨリモ見分ケ得ルコトヲ要ス
- 四、交戰國航空機ハ中立國航空機特別識別記章ヲ嚴ニ使用スルヲ得ス之ニ違反スル航空機及其ノ乗組員ハ本法ニ依ル保證ヲ失フ
- 五、「ジコネーヴ」條約ハ關係交戰國ノ特別協定ニ依リテノミ之ヲ擴張シ航空機ニ及シ得ルモノトス

第二章 一般の空中管轄權

- 六、國家ハソノ領土及領海ノ上空ニ於テ完全且絶對的管轄權ヲ有ス
- 七、戰時ニ於テハ交戰國タルト中立國タルト問ハス何レノ國モソノ管轄區域内ニ航空機ノ進入スルヲ禁止シ又ハ其ノ進入移動若ハ滯留ヲ制限スルコトヲ得
- 八、海戰又ハ陸戰ノ交戰動作ニ近接セル地域ニ於テハ其ノ中立地域以外ナル限り交戰國指揮官ハ如何ナル種類ノ航空機ノ

通過ヲモ禁止シ又ハ其ノ進入ノ條件ヲ定ムルコトヲ得

- 九、航空機ノ戰時法規侵害ハ戰爭ノ存在ヲ實際ニ知リ又ハ之ヲ推定シ得ル場合ニ於テ始メテ其責任ヲ發生スルモノトス
- 一〇、戰時特別ノ定メナキ限り一國ノ管轄區域内ニ於テ官有航空機ハ公船ト同一ナル規定ニ從ヒ私有航空機ハ商船ト同一ノ規定ニ從フ

第三章 中立國管轄

- 一一、中立國政府ハ交戰國國籍ヲ有スル航空機ニ對シ公私私ヲ問ハス豫メ同意ヲ得ルコトナクシテソノ管轄區域内ニ進入ルコトヲ禁止スルコトヲ得但シ已ムヲ得シテ着陸セル場合ニハ直チニ右着陸ノ原因ヲ報告スヘシ中立國ハ特別ノ許可ナクシテソノ管轄區域ニ着陸セル交戰國航空機ヲ抑留スルコトヲ得
- 一二、交戰國航空機ハ中立國ノ權利ヲ尊重シ中立國管轄區域内ニ於テ中立國力之ヲ知リテ許容セル場合ニハ其ノ中立義務不履行ヲ構成スルカ如キ一切ノ行爲ヲ避ケサル可カラス
- 一三、中立國政府ハソノ法規ニ從ハサル交戰國航空機及ヒ其ノ乗組員ヲ抑留スルコトヲ得
- 一四、中立國力航空機ニヨリ中立侵害ヲ防止セル爲自ラ有スル各種ノ手段ヲ取ルニヨリナセル行爲ハ之ヲ對敵行爲ト認ムルコトヲ得ス中立國ハ之カ爲交戰國航空機及ヒソノ人員ニツキ生シタル損害ニ對シソノ責任ニ任セス
- 一五、中立國ハソノ管轄區域内ニ於テ交戰國ノ一方ニ對シテ使用スルモノナリト認メラルヘキ理由アル航空機ノ襲撃ヲ防止シ又全部又ハ一部ヲ其ノ管轄内ニ於テ襲撃シ上述ノ用途ニ供セントスル航空機ノ出發ヲ防止スル爲メ自ラ有スル手段ヲ取ルコトヲ要ス嘗ツテ組立タルモノニアラサレハ航空機ノ各部分ノ積荷ハ中立義務不履行ト認メス

第四章 中立國航空機

- 一六、交戰國管轄内又ハ交戰動作ニ近接セル區域内ニアル中立國ノ官有航空機ハ交戰國ノ命令ヲ尊重スヘシ
- 一七、禁止ノ規定ニ違反シテ交戰國ノ管轄内又ハ海陸作戰動作ニ近接セル區域内ニ於テ發見セラレタル中立國私有航空機

ハ交戦國ノ與フル如何ナル命令ニモ從フコトヲ要スモシ從ハサル時ハ必要ナル武力ノ行使ヲウクヘシソノ進入カ不可抗カニヨル場合又ハ禁止ヲ知ラサリシ場合ノ外航空機ハ沒收セラレソノ乗組員ハ俘虜トシテ待遇スヘシ

一八、中立國私有航空機カ敵國ノ管轄區域内ニ於テ交戦國ニヨリ發見セラレタル時ハ之ヲ徵發スルコトヲ得

一九、中立國私有航空機ハ左ノ場合ニハ一般ニ拿捕スルコトヲ得

(A) 交戦國ノ權利行使ヲ避ケント試ミタル時

(B) 不完全不規則且不當ナル證書ヲ有スル時

(C) 禁制品ヲ有スル時

(D) 封鎖地域ニ進入シ又ハ進入セント試ミタル時

(E) 非中立行為ニ從事シ又ハ現ニ從事スル時

(F) 近ク敵國又ハ敵國人ヨリ讓受ケタルモノナル時

(G) 交戦地域内ニアリ且明ニソノ證書ニヨリ許容セラレタル地域外ニアル時

逃亡セント試ミタル中立國私有航空機ハ必要ナル武力ノ行使ヲ免ルルヲ得ス但シ出來得ル限り上陸ノ機會ヲ與フヘシ

第五章 交戦國航空機

二〇 敵國官有航空機ハ戰爭開始ニ際シ又ハ開始後捕獲又ハ沒收スルコトヲ得

二一 敵國私有航空機ニシテ戰爭ノ開始ニ際シ交戦國管轄區域内ニアルモノハ猶豫ノ期日ヲ與ヘス抑留又ハ徵發スルコトヲ得

二二、敵國私有航空機ニシテ中立區域外ニアルモノハ戰爭行為ニ參加セリト看做サルヘキ行為ヲナササル場合ト雖モ拿捕スルコトヲ得

二三、敵國私有航空機ニシテ敵對交戦國ノ管轄區域内又ハソノ視界ニアルトキ又ハソノ對敵交戦國ノ作戰區域内又ハソノ

視界ニアルモノハ警告ナクシテ之ヲ軍用航空機トシテ取扱フコトヲ得敵國私有航空機ノソノ所屬國家ノ管轄區域内ニアルモノ亦豫告ナクシテ軍用航空機トシテ之ヲ取扱フコトヲ得

二四、交戦國軍航空機ニシテ若シ中立國管轄内ニ入ルコトヲ許サレタル時ハソノ所屬國ニ歸航スルニ足ル丈ケノ燃料及食料ノミヲ積入ルル事ヲ得

二五、交戦國私有航空機ノ一敵國ヨリ中立國ニ對スル移轉ハ之カ戰爭前三十日以内ニ行ハレタル場合ハ無効ト推察セラレ反證ノ責任ハ所有者ニ存ス戰爭ノ開始前三十日以上爲サレタル移轉ハ拿捕權ノ關スル限り無効ナリ

二六、戰爭中交戦國私有航空機ノ中立國人ニ對スル移轉ハ敵對交戦國ニ對シテハ無効ノ行為トス

第六章 航空機乗組員

二七、被拿捕交戦國航空機ノ乗組員ハ俘虜トシテ取扱ハルルノ權利ヲ有ス

二八、被拿捕中立國航空機ノ中立乗組員ハ中立違犯行為ヲ犯ササル限り之ヲ放免スヘシ

二九、中立國航空機ノ乗組員ニシテ秘密ニ又ハ虛妄ノ口實ヲ構ヘテ行動シ交戦國ノ法域又ハ其ノ陸海軍管轄區域内若ハソノ上空又ハ同區域ノ近接區域内ニ於テ情報ヲ收集シ又ハ收集セントスルトキハ間諜ノ罪ヲ犯シタルモノトス

三〇、公私ヲ問ハス正當ニ記章ヲ施セル敵國航空機ニアル乗組員ハ空中ニアル間ハ間諜ト認ムルコトヲ得ス

三一、公私ヲ問ハス虛偽ノ記章ヲ施セル交戦般航空機ノ乗組員ハ間諜ヲ行ヒタルモノトシテ取扱フコトヲ得

三二、交戦國航空機カ中立國ニ依リテ抑留セラレタルトキハソノ乗組員モ同様ニ抑留セラルヘシ

第七章 砲撃

三三、航空機ニヨリ警備セサル都市、村落、住宅、建物ノ砲撃ハ之ヲ禁止ス

三四、交通中心點通線、海陸軍建造物、武器及軍用材料貯藏所現ニ軍用材料ノ製造ニ使用セラルル作業場設備及工場ハ何處ニアルトモ其ノ砲撃ヲ禁セス

三五、港灣、都市、村落、住宅、及建物ハ取立金ヲ支拂ハサルヲ理由トシテ航空機ニヨリ之ヲ砲撃スルコトヲ得ス必要且相當ナル時期ニ於テスル材料及軍需品ノ徵發ハ之ヲ拒絶シタル場合ニ於テハ空中砲撃ヲ以テ強制スルコトヲ得

三六、航空機ヲ以テ砲撃スルニ當リテハ指揮官ハ公ノ禮拜技藝學術若ハ慈善ノ用ニ供セラルル建物歴史上ノ紀念物、病院船、病院及病者傷者ノ收容所ハ同時ニ軍事上ノ目的ニ使用セラレサル限り之ヲシテ可成損害ヲ免レシムルカ爲必要ナル一切ノ手續ヲ執ルヘキモノトス

住民ハ上方ヨリ看易キ徽章ヲ以テ右紀念建造物、建物又ハ場所ヲ表示スルノ義務ヲ負フ右徽章ハ方形ノ大板ニシテ對角線ノ一方ヲ以テ黑色及白色ノ兩三角形ニ區劃シタルモノナルヘシ

第八章 臨檢搜索

三七、中立區外ニ在リテハ等戰國軍用航空機ハ臨檢及搜索ノ權利ヲ有ス事情ニヨリ臨檢搜索ヲ實行シ得ヘカラサルトキハ交戰國軍用航空機ハ中立私船ニ對シシテノ潜水艦ナルト水上艦ナルト航空機ナルト問ハス指命ニ遵ヒ護送ノ下ニ進行スルコトヲ命スルコトヲ得

RULES FOR AIRCRAFT IN WAR.

December 16, 1921.

- I. Definition, Nationality, Marking, Art. 1—5.
- II. General Aerial Jurisdiction, Art. 6—10.
- III. Neutral Jurisdiction, Art. 11—15.
- IV. Neutral Aircraft, Art. 16—19.
- V. Belligerent Aircraft, Art. 20—26.
- VI. Personnel of Aircraft, Art. 27—32.

VII. Bombardment, Art. 33—36.

VIII. Visit and Search, Art. 37.

1. Definition, Nationality, Marking.

1. An aircraft is any contrivance which can be used for aerial navigation. An aircraft permanently assigned to a vessel of war and usually accompanying the vessel may be regarded as a part of the vessel as long as it remains in physical contact therewith.
2. Aircraft may be public aircraft, belonging to or under the control of the state of its officers; control of private persons.
3. No aircraft may possess more than one nationality. Every private aircraft shall bear the nationality and registration mark and the name and residence of the owner, in accordance with the laws of its own nation. A public aircraft shall be unmistakably marked to show nationality and its personnel shall be in uniform and provided with proper papers to prove that they are in the public service. Nationality marks shall be visible from all sides.
4. The use of the special identification marks of a neutral aircraft by a belligerent aircraft is strictly forbidden and puts the aircraft and its personnel outside the protection of the law.
5. The Geneva Convention may be extended to include aircraft only by special agreement of the belligerents concerned.

II. General Aerial Jurisdiction.

6. A state has complete and exclusive jurisdiction in the air space above its territory and above its jurisdictional waters.

7. In time of war, any state, neutral or belligerent, may forbid the entrance or regulate the entrance, movement, or sojourn of aircraft within its jurisdiction.
8. Within the immediate vicinity of naval or military operations but outside of neutral jurisdiction a belligerent commanding officer may forbid the passage of aircraft of any kind or prescribe the conditions of entrance.
9. The liability of an aircraft for violation of the laws of war is contingent upon her actual or constructive knowledge of the existence of the war.

10. In time of war, in absence of special stipulations, public aircraft within the jurisdiction of a state are subject to the same regulations as public vessels, and private aircraft are subject to the same regulations as private vessels.

III. *Neutral Jurisdiction.*

11. Neutral governments may forbid aircraft, public or private, of belligerent nationality to enter neutral jurisdiction without previous consent except in case of a forced landing, in which case they must immediately report the cause of their landing. A neutral may intern belligerent aircraft alighting without specific permission within its jurisdiction.

12. Belligerent aircraft are bound to respect the rights of neutral powers and to abstain within neutral jurisdiction from all acts which, if knowingly permitted by a neutral power, would constitute a nonfulfilment of its neutrality.

13. A neutral government may intern any aircraft of belligerent nationality and its personnel not conforming to its regulations.

14. The action of a neutral power in using the means at its disposal to prevent the violation of its neutrality by aircraft cannot be regarded as hostile, and a neutral power is not responsible for resulting injuries to belligerent aircraft and their personnel.

15. A neutral is bound to use the means at its disposal to prevent the fitting out within its jurisdiction of aircraft which it has reason to believe are to be used against either belligerent; and also to prevent the departure of any aircraft intended for such use which has in whole or in part been so fitted out within its jurisdiction. Shipment of parts of an aircraft not previously assembled is not a nonfulfilment of neutrality.

IV. *Neutral Aircraft.*

16. A neutral public aircraft within belligerent jurisdiction or in the neighbourhood of belligerent operations must respect belligerent instructions.

17. A neutral private aircraft found in a belligerent's own jurisdiction or in the immediate vicinity of naval or military operations, contrary to prohibitions, must obey any order given to it by the belligerent. If it does not obey, it is liable to the use of necessary force. It is liable to confiscation and its personnel to treatment as prisoners of war unless its entrance was due to *force majeure* or was made in ignorance of the prohibitions.

18. Neutral private aircraft found by a belligerent in the jurisdiction of the enemy may be requisitioned.

19. A neutral private aircraft is in general liable to capture if it:

- (a) Attempt to avoid the exercise of belligerent rights.
- (b) Has in insufficient, irregular or improper papers.
- (c) Carries contraband.
- (d) Has entered or attempted to enter a blockaded area.
- (e) Has engaged or is engaged in un-neutral service.
- (f) Has recently been transferred from enemy ownership.

(g) Is within the war area and unmanifestly out of the area justified by its papers.

Neutral private aircraft attempting to escape are liable to the use of necessary force, but, if practicable, should be given an opportunity to land.

V. *Belligerent Aircraft.*

20. Public enemy aircraft are, on and after the outbreak of war, liable to seizure and confiscation.

21. Private enemy aircraft found within the jurisdiction of a belligerent on the outbreak of war are not allowed days of grace but may be retained or requisitioned.

22. Private enemy aircraft outside of neutral jurisdiction are liable to capture, even though innocent of any act involving participation in the war.

23. Private enemy aircraft within or in sight of the jurisdiction of an opposing belligerent, or within or in sight of the area of operations of an opposing belligerent, may be dealt with without warning as aircraft of war. Private enemy aircraft within their own national jurisdiction may be dealt with without warning as aircraft of war.

24. Belligerent aircraft of war, if admitted to neutral jurisdiction, may take only such fuel supplies as will enable them to reach their own country.

25. Transfer of belligerent private aircraft from an enemy to a neutral, if made within 30 days before the war, is presumed invalid and proof to the contrary rests upon the owner; transfer made more than 30 days before the outbreak of war presumed valid and proof to the contrary rests upon the captor. Transfer during the war is invalid so far as the right to capture is concerned.

26. The transfer of belligerent private aircraft to a neutral nationality during war is not, as regards the oppos-

ing belligerent, a valid act.

VI. *Personnel of Aircraft.*

27. The personnel of captured belligerent aircraft have a right to be treated as prisoners of war.

28. The neutral personnel of a captured neutral aircraft, if not guilty of unneutral acts, shall be released.

29. The personnel of neutral aircraft are guilty of espionage if, acting clandestinely or under false pretences, they obtain or seek to obtain information within, above, or in the immediate vicinity of the civil, naval or military jurisdiction of a belligerent.

30. The personnel of correctly marked enemy aircraft, public or private, cannot be guilty of espionage while in the air.

31. The personnel of falsely marked belligerent aircraft, public or private, may be treated as guilty of espionage.

32. If belligerent aircraft are interned by a neutral state, their personnel shall likewise be interned.

VII. *Bombardment.*

33. The bombardment by aircraft of undefended towns, villages, dwellings or buildings is forbidden.

34. The bombardment of communication centers, lines of communication, military or naval establishments, depots of arms for war material, workshops, plants and factories actually used for the manufacture of war material wherever situated is not prohibited.

35. Ports, towns, villages, dwellings or buildings may not be bombarded by aircraft on account of failure to pay money contributions. A requisition for material and supplies at the time necessary and reasonable may, in case of refusal, be enforced by aerial bombardment.

36. In bombardment by aircraft, all necessary steps must be taken, by the commander, to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided they are not at the time used for military purposes. It is the duty of inhabitants to indicate such monuments, edifices, or places by signs visible from above, which shall consist of large rectangular panels divided diagonally into two painted triangular portions, one black and the other white.

VIII. Visit and Search.

37. Outside of neutral jurisdiction, belligerent aircraft of war have the right of visit and search. If circumstances make visit and search impracticable, a belligerent aircraft of war may order a neutral private craft, sub-surface, surface or air, to proceed under escort at directed.

伊國委員
ニ國際法
ノ提議案
ヲ提議スル

附記 伊國委員「バリアノ」伯ヨリ十四日及十五日朝ノ二回立委員ニ懇談ヲ求メ來リ伊國全權「シャントエー」ノ命ニ依ル所トシテ別紙甲號ノ如キ提案ヲ軍備制限ノ Committee on Program and Procedure ニ向テ提出スルノ意思アルニ付豫メ之ニ關スル立委員ノ意見竝日本ノ「デレゲーシヨ」ノ人々ノ意嚮ヲ知ランコトヲ求メタリ（別紙乙號ハ甲號ノ伊國提案ノ草稿ノ説明トシテ「バリアノ」伯ノ起草セルモノ）右ハ戰時法規改正ノ爲ニ特ニ國際會議ヲ開催スルコトシ華府會議ノ本分科委員會ニ於テ之カ準備ニ着手セントスル提案ニ關シテ立委員ハ先ツ個人トシテハ大ニ賛成ナル旨ヲ答ヘ次ニ日本ノ「デレゲーシヨ」ノ人々ハ大體ニ於テ反對ナカルヘキモ準備ノ爲ニ各國政府ノ改正ニ關スル提議ヲ草案スル如キハ非常ノ時日ヲ要シ本會議ノ分科委員會トシテ實行シ難キヲ説ク人アリ又許多ノ國ヲ召集スルコトナレハ此種ノ國際法規傳來ノ立法機關タル第三回平和會議ヲ無視シ得スト考フル人アルト告ケタリ「バリアノ」伯ハ十七日ノ第七回分科委員會ノ席ニテ立委員ノ述ヘタル點ノ有理ナルヲ認ムルコトヲ述ヘタリ

乙號 伊國提案（抄譯）

戰爭法規改正ハ軍備縮少ニ對應シテ必要ニシテ又一度右動議起レル上ハ放棄スヘキニ非ス且改正ハ廣汎ニシテ包容的ナルヲ要スルヲ以テ各國ノ協商ニ待ツ事大ナリ故ニ左ノ通り決議ス

「既成委員會ハ戰時法規ノ改正ノ爲ソノ内容及手續ニツキ正確ナル草案ヲ準備シ出來得ル限り近ク開催セラルル會議ニ於テ現行法規ヲ改正又ハ完成スル新規則ノ採決ニ資スヘシ該委員會ハ科學ノ發達及今次ノ戰爭中各國ノ經驗ヨリ得タル所ヲ利用スヘシ」

Whereas, the initiative for a revision of the laws of war is the necessary complement of the initiative for a limitation of armaments, and these two initiatives from the two essentials of the conception which inspired Conference, viz. to make armed conflicts always more infrequent and always less inhuman.

Whereas, the initiative for a revision of the laws of war cannot and must not be abandoned, once it is set in motion.

Whereas, such work of revision requires, above all, a preparation which must be, as far as possible, broad and comprehensive;

Whereas, it is considered desirable to have such work accomplished not only with the intervention of all the States, which already have taken part in agreements concerning the matter, but also the co-operation of the largest possible number of States.

THEREFORE.

Be it resolved, that the Committee already organised prepare an accurate program, having in view the procedure and the substance of it thereof, for the revision of the laws of war, so that in another Conference to be held as soon as possible, it may be feasible to arrive at the adoption of new rules, correcting or completing those already in force

and to this end, the said Committee make use of the suggestions of the science as well as those derived from the experience of the different countries during the last war.

The formulation of new international rules concerning the laws of war, whether these rules are amendments or rules already existing and accepted by the conventions, or new rules affecting relations not as yet codified, cannot be but the result of an agreement among the greatest number of states.

To this end, are necessary ;

(1) A sufficient preparation ;

(2) A high political authority, which should take the initiative of such a complicated undertaking.

(1) The Preparation. For the purpose body of revising existing rules, and of filling existing lacunae, careful preparation is necessary and this preparation can be supplied ;

(a) To a certain, not indifferent extent, by the science of international law.

(b) In a less scientific, but more practical form, by the various nations, a wealth of experience greatly increased by the last war.

This preparation ought to be the first period of the greater work required by the discussion, formulation and adoption of the principles to come.

Our committee could undertake such work, on one hand directly preparing a program of reforms, on the other hand gathering and working out the proposals of the different governments on the subject of such reforms.

On the recent occasion of the Conference of Barcelona for International Transports and Communications (March—April 1921), it was possible easily to arrive at the conclusion of contentions and agreements, thanks to such preliminary

work of accurate preparation, which was undertaken by a Committee working on its own initiative and on the basis of proposals from various states.

This Committee, at the opening of the Conference, presented an abundant and almost complete documentation.

In our case, one could invite by telegraph or cable all government to prepare their concrete proposals on the subjects and to forward them.

The Committee, as soon such material is at hand, could compile its own working and shape a program, which would at the same time ;

(a) Single out points to be modified or regulated ;

(b) Give suggestion pro and con, the various reforms under consideration.

(2) Authority. One does not need to prove the necessity of reform ; but in order to accomplish such reforms, a high world authority like the United States, is needed to take the initiative.

The Conference of the Hague could convene in 1899 and 1907, because they were called by the head of the greatest monarchy in the world.

The League of Nations, whatever its value, could be organised in 1919, only because it was sponsored by the official, who stated he was speaking in the name of the most powerful nation of the world.

It will be possible to achieve the formal disciplining of the laws of war which with disarmament makes up the two elements of the fundamental humanitarian conception of the Washington. if the necessity for it, is proclaimed by a high international authority, like the United States.

This work has already begun. It must not remain a vain attempt. It would, therefore, be advisable to proceed

without unnecessary delay.

- (1) To the preparation of a complete program of revision.
- (2) To the announcement of the firm intention of carrying out, within a short time and with the cooperation of all parties, the work of revision.

第八項 第八回分科會(十二月二十一日午後三時)

一、議長ヨリ佛國委員「ケルツ」大尉カ英語ノ議論ヲ充分了解セスト申出ラタルニ基キ會議ノ事務局ヨリ通譯者一人ヲ每會出スコト爲セリトテ分科委員會ノ了解ヲ求メ向後右通譯者一名ヲ出席セシムルコトナレリ

航空分科會ノ回答

二、本分科委員會ヨリ航空分科委員會ニ提出シタル質問(本分科委員會第四回議事經過末文參照)ニ對スル正式ノ返答ヲ送付シ來レリトテ議長之ヲ披露シ立委員ハ其(6)ニ關シ中立船ノ破壞ニ關スル法規上ノ見解ヲ含メルモ之レ千九百九年ノ倫敦宣言ノ規定ト一致セサルコトニ注意ヲ促セリ航空分科委員會ノ返答ハ別紙ノ如シ

航空分科會ノ回答

航空分科委員會ハ戰時法規委員會提出ニカカル左ノ諸問題「航空機カ (A) 他ノ航空機關 (C) 船舶 (B) 潛航艇ニ對シテ臨檢搜索ノ權ヲ行フ事可能ナリヤ若シ可能ナリトセハ如何ナル手續ニ依ルヘキヤ」ヲ考慮シタル結果左ノ結論ニ達シタリ

(A) 現在ノ狀態ニ於テハ空中ニ於テ航空機カ他ノ航空機關ヲ臨檢搜索スルコトヲ得ス

小型航空機ハ特別構造ヲ有スル航空船ニ降下スルコトヲ得ヘキモ航空機カ他機ニ降下スルコトハ暫時タリトモ之ヲ行フヲ得ス(以下一、二及三參照)又航空機乗組員ヲシテソノ機ヨリ去ラシムル事能ハス但シ中立航空機ヲ檢閲ノ爲命令地ニ着陸セシメ且之ヲ拿捕スルコトハ論理上可能ナレトモ困難ヲ伴フ事ハ免レス

(B) 船舶

一、中立國領海以外何處ニ於テモ適法ニ權限アル巡洋艦ニヨル臨檢及搜索ハ許サレタル所ナリ

二、抵抗ナキ場合ニ於ケル通常ノ手續ハ臨檢士官ヲ送リ證類ヲ檢シ一應拿捕セシム事由アルヤヲ決セシム

三、拿捕スヘキモノト認メタルトキハ通常捕獲乗組員ヲ乗組マシテ之ヲ占有ス被拿捕船乗組員ヲ強制シ其ノ船舶ヲ運セシムルコトヲ得ス

以上ヲ臨檢搜索ノ權利ナリトセハ航空機ハ好適ナル天候ノ際ニハ右權利ヲ行使シ得ヘク之ニハ二ツノ水上飛行機ヲ必要トシ一ハ空中ニアリテ船舶ノ叛逆的攻撃ヲ防止シ一ハ臨檢スル爲ニ必要ナリ天候ハ水上飛行機ノ降下飛揚ニ適スルコトヲ必要トシ又被拿捕乗員ヲ強制シテ服從セシメサルヘカラス

四、但シ最近ノ事情ニ迫ラレ各國ハ商船ニ乗組員ヲ送ラスシテ審檢港ヘ回航セシムル權利ノ承認ヲ要求スルニ至レリ近世ノ積荷ハ大ニシテ海上ニ於テ搜索スルヲ得ス且海上ニ停船スルコトハ潛水艇ノ攻撃ヲ招クノ惧アリ故ニ今次ノ戰爭ニ於テハ中立船舶ニ搜索軍艦ニ從ヒ港灣ヘ回航方ヲ要求スルコトヲ慣例トセリ右權利カ法律的二認メラルルニ至ラハ其ノ根據地(飛行場又ハ船舶)ヲ中心トシテ一定作戰動作區域内ニ於テ行動スル航空機ニ依リ此權利ハ行使セラルヘシ

五、尙一定ノ船舶例ヘハ公然ニ非中立行為又ハ敵國ノ輸送ニ從事スルモノハ明ニ搜索ナクシテ拿捕スルコトヲ得從來右ノ如キ船舶ハ何等臨檢者ヲ送ルコトナクシテ之ヲ拿捕セリ即チ被拿捕船ニ相當ノ強力ヲ加ヘテ其ノ旗ヲ却シ命令ニ從ヒテ回航セシムルナリ右權利ハ上掲四ニ於ケル如ク航空機ニヨリ行フ事ヲ得

六、場合ニ依リ軍艦ハ更ニ進ンテ其作業或ハ他ノ事情例ヘハ捕獲船ヲ港マテ回航スル燃料力不足セル等ノ事情ニ依リ捕獲船ヲ拿捕スル事實行不能ナル場合ニハ乗組員ノ安全ヲ確保スル手續ヲナシタル後之ヲ沈没セシムル事ヲ得故ニ天候良好ニシテ中立國又ハ敵國港カ近キ場合ニハ乗組員ヲシテ船ヲ去ラシメ船舶ヲ擊沈スル事ヲ得

(C) 潛水船

潜水船へ重要ナル戦闘用ノ軍艦ナルヲ以テ若シ平和關係ニアル國ノモノナルコトカ明ニセラレサル限り直チニ之ヲ撃沈スルコト許サルヘキモノナルヘシ故ニ潜水船搜索ノ爲メ之ニ合圖シ又ハ停船セシムルカ如キコトハ實際上ナキ所ナリ蓋シ捕獲セラルルヨリモ潜水シテ爆彈投下ノ危険ヲ冒スヲ以テ勝レリトスヘケレハナリ然レトモ海上靜穩ニシテ且ツ絶エス空中ヨリ威嚇ヲ加フルニ足ル丈ケノ航空機ノ小隊ヲ有スル場合ニハ浮ヘル潜水船ニ臨檢ヲ行ヒ船腹口ヲ閉鎖シテ港灣ヘ引入ルル迄潜水シ得サラシメ得ヘシ從ヒテ實際上潜水船搜索ハ可能ナルモカカル機會ハ少ナカルヘシ

The Committee on Aircraft having considered the following questions submitted by the Committee on Rules of Warfare:

"Is it possible for aircraft to exercise the right of visit and search, and under what conditions on

- (a) Other aircraft
- (b) Surface craft
- (c) Sub-surface craft"

Is of opinion that

In the present state of things, an aircraft would not be able to visit and search another aircraft in the air.

It will be impossible for some time for aircraft to board other aircraft (as in 1, 2, and 3 below), though small aircraft will undoubtedly be able to "alight on" specially fitted *airships*. Nor is it yet reasonable to compel the crew of an aircraft to "abandon ship". But the diversion of neutral aircraft to alight for examination where ordered and the capture of aircraft liable to the same is theoretically possible but may present difficulties.

1. The right of visit and search by lawfully commissioned cruisers anywhere outside neutral territorial waters is admitted.

2. The usual practice, where no resistance was offered, was to send a boarding officer to examine papers and decide whether there was a *prima facie* case for capture.

3. If there appears a case for capture, possession is usually assumed by sending a prize crew on board, the captured crew cannot be compelled by violence to navigate their own vessel.

If the above were all that is recognized as the right of visit and search, then aircraft can obey exercise this right under favorable conditions. Two seaplanes would normally be required—one to remain in the air to discourage treacherous attack by the ship, one the examination seaplane. Weather conditions must be good to enable seaplanes to alight and fly off again, and the captured crew must be amenable to pressure.

4. But modern conditions have compelled nations to demand recognition of their right to divert merchant shipping (without boarding) to a port for examination. Modern cargoes are too large to be capable of being searched at sea, and to stop on the surface is to incur the risk of submarine action. It was customary, therefore, in the late war to require neutral shipping to follow the searching vessel to port. *Should this right be legally established* it can be exercised by aircraft working in reliefs up to the limit of their radius of action from their base (which may be an air station or a ship).

5. Moreover, certain vessels are definitely liable to capture without search; e.g., neutrals engaged openly in international actions or enemy merchant shipping.

Many captures of such vessels have been made where no man has been put on board, but the captured vessel has been compelled by the use of any amount of necessary force to haul down her flag and navigate according to order.

This right can be exercised by aircraft as in 4 above.

6. Under certain conditions, warships can go to even greater lengths. If the nature of their work or other con-

tions such as, lack of fuel to convey a prize to a friendly port—make it impracticable to take the prize in, she may be sunk after all arrangements have been made for the safety of the crew.

Thus; in fair weather and in easy reach of (neutral or enemy) ports, a crew may be compelled to abandon ship and the ship thereafter bombed and sunk by the aircraft.

Sub-surface craft are so essentially war craft that it will be for long permissible to attack them on sight provided that they are not identified as friendly. Challenging or stopping to search a sub-surface craft will thus normally be impracticable, as she will prefer to take the risks of a bomb when submerged to certain capture.

But assuming favorable conditions of sea and a small formation of aircraft to enable a constant threat to be maintained, it is conceivable that the sub-surface craft found on the surface might be boarded from an aircraft and her hull openings fixed so that she could not dive while being escorted to port.

Therefore, it is practical to exercise the right of search on sub-surface craft, but very unlikely that an opportunity will present itself for so doing.

米國海軍
委員會起
草航空機
戰時法規
覺書ノ審
議

三、次ニ議長ハ米國全權諮問委員會カ起草シ本分科會ノ審議ヲ求メ來レル航空ニ關スル國際法規案(第七回議事經過参照)ニ付キ審議ヲ求メタルニ

「ケルツ」ハ航空機關ニ關スル規定ハ戰闘ニ關スル國際法規ノ一部ニシテ他ノ規定ト關係アルモノナルニ單ニ航空機關スル規定ノミヲ取り離シテ此會議ニ於テ審議スルヲ得ストシ「バリアン」伯モ之ニ賛成シ寧ろ別ノ國際會議ヲ開キテ他ノ諸國ヲモ召集シテ一般の戰時法規ヲ議スルヲ可トスヘク此會議ニ於テハ次ニ開クヘキ會議ノ議題ヲ定ムルヲ以テ足レリト云ヒ(第七回議事經過附記參照)而シテ戰時法規ニ關シテ將來會議ヲ開催スルコトニ付テ幹部委員會ニ上申スヘシト主張セリ

「マルキン」ハ航空分科委員會ニ於テ已ニ「アメリカ」ノ「デレゲーション」ノ航空ニ關スル國際法規案ノ審議ヲ行ハサル以上ハ獨リ本分科委員會ニ於テ之ヲ行フコト困難ナリト説キ

立委員ハ航空ニ關スル國際法規案ハ國際法規ノ種々ノ點就中立法法規ニ關係シ一朝一夕ニ之ヲ議定スルヲ得サルヲ以テ之ヲ充分ナル準備ヲ要シ此會議ニ於テ之ヲ決定スルヲ得サルヘシト説ケルニ

議長ハ立委員ハ本委員會カ何等カノ結果ヲ擧ケサルヘカラストノ意向ヲ有スルト聞ケルニ今ノ如ク答ヘラルルハ聊カ其ノ意ヲ得スト述ヘ

立委員ハ當該議案ハ航空分科委員會ニテ之ヲ議セサルコトニ決シタル由ナルヲ以テ日本ノ「デレゲーション」ヲ如何ナル方法ニテモ Commit スル如キ方法ニア此案ニ關シテ審議スルコトハ吾輩ノ地位ノ許ササル所也但シ眞ニ「アカデミック」ナル研究ヲ爲スコトハ敢テ辭スル所ニアラスト附言セリ議長ハ若シ諸君ノ意向ノ如クナレハ本分科委員會ハ何等ノ仕事ヲモ爲サスシテ止ムヘク是遺憾ノ至リナリト説キ

「マルキン」ハ航空又ハ毒瓦斯ニ關スル分科委員會ニテ何事ヲモ爲サルカ爲メ本分科委員會モ何事ヲモ爲シ得サルニ至レルモノニシテ本分科委員會ノ何事ヲモ爲シ得サル原因ハ他ノ分科委員會ニ在リト半ハ戲談のニ述ヘ更ニ語ヲ續ケテ Big Five カ若シ航空ニ關スル本議案及其他ノ議案ノ大綱ニツキ承認ヲ爲シテ其細目ヲ議スルヲ本分科委員會ニ命スルトキハ固ヨリ之ニ關シテ議セサルヘカラサルコト勿論ナルモ其時迄ハ之ヲ審議スルコト困難ナルヲ覺ユ航空分科委員會ノ態度ニ鑑ミテ益々困難ノ度ヲ加フト説ケリ

一般戰爭
法規覺書

四、議長ハ更ニ戰時法規一般ニ關スル別紙ヲ配附シテ次會ニ於テ之ニ關シテ意見ヲ述ヘンコトヲ求ム來ル二十八日午後三時次會ヲ開クコトトシテ午後四時過閉會ス

MEMORANDUM.

RULES FOR WARFARE.

Rules for war and for neutrality have been formulated :

1. To embody accepted or customary practice.
2. To cover undisputed matters.
3. As conventional bases for action by the contracting parties.
4. In hope of restraining unprincipled belligerents.
5. To anticipate the use of new or undeveloped agencies of war.
6. To show the aspirations of peace-time codifiers.

The rules have often failed to secure the hoped for results because of the introduction of new and unexpected factors in war, or because of the lack of effective sanctions. At the present time the relation of rules of warfare to the limitation of armament is closely dependent upon the development of the sanction for the observance of the rules.

If the sanction is public opinion only, the effectiveness of the sanction depends upon the skill of one or the other belligerent in propaganda methods.

If the sanction is merely one of moral obligation, the standard of morality will be the determining factor.

A judicial decision will be of great value, if practicable, as determining the guilt or innocence of the accused, and as pronouncing outlawry or criminality. The possibility of reference to a Court for decision as to guilt has proven an effective sanction in other than international relations.

A potential physical sanction behind the judicial decision may compel respect for the decision and would not be a threat or danger to the innocent party.

A provision for an International Court of Justice has already been made and the organization is about to be per

fect. Resort to such a Court before the difference had led to war would often avoid war, while an agreement to resort to the Court for matters involving controversies as to violations of laws relating to the conduct of war would give a degree of sanction to such laws.

Premature agreement in regard to agencies of war may provoke controversy, and if an International Court is set up, many questions may be left to the Court to determine, thus avoiding premature agreements and making possible settlement under conditions which may exist at the time of controversy. The general principles upon which the Court should decide may, however, be agreed to in a prior convention.

The sanction upon which reliance has ordinarily been placed for the observance of neutrality rights has been fear that the neutral would become party to the war. The sanction upon which reliance has ordinarily been placed as to the observance of belligerent rights has been the fear of retaliation by the opposing belligerent.

These sanctions rest upon force or the fear of the use of force. The one, if applied, extends the area of the war, while the other may extend the methods.

The Committee on Rules of warfare, at its early meetings, gave consideration to the Laws and Customs of war on Land, IV Hague Convention, 1907. These rules were found, in some respects defective because since their adoption new means of warfare, as well as the use of old means in new ways, have become common. Article 3 of this Convention provides that if a belligerent party violates the regulation it shall.

"If the case demand, be liable to make compensation. It shall be responsible for all acts committed by persons forming a part of its armed forces."

This provision has not proved a sufficient sanction. In this Convention questions have also been raised as to the

rights and duties of representatives of neutral powers charged with the interests of belligerent powers, in relation to nationals of the powers whose interests they have in charge, with special reference to (1) prisoners of war, (2) interned civilians.

Other articles were found defective, insufficient, originally adapted to present requirement. Article 23 offers an illustration in point, particularly Article 23-b, in regard to which there has been much difference of opinion. This section of Article 25 should be so worded as to make clear whether it applies only to action by the armed forces of a belligerent in occupation of any new territory.

In other conventions and agreements, there are many matters which are not covered.

For the most part, the use of gases, aircraft and submarines is not yet under the rules.

Rules and agreements have aimed to limit the causes, period, extent, method or means of war.

Some international agreements, aiming to limit the causes of war, have provided other procedure for settling controversies. Such agreements have suggested mediation, commissions of inquiry, arbitration and judicial settlement. In some cases specified controversies have been excluded from the grounds of war. Convention II, The Hague, 1907, provides that except for certain cases:—

“Art. I: The Contracting Powers agree not to have recourses to armed force for the recovering of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.”

Attempts to limit the period of war have also been made, but have met with little success. Convention III, the Hague 1907, provides;—

“Art. I: The Contracting Powers recognize that hostilities between them must not commence without a previous

and unequivocal warning, which shall take the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war.”

There is a degree of sanction in this convention in Article 2 which states—

“Art. 2: The state of war should be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may even be made by telegraph. Nevertheless, neutral Powers cannot plead the absence of notification if it be established beyond doubt that they were in fact aware of the state of war.”

Under this Convention a period is determined from which the commencement of hostilities dates. More than 20 conventions, to which the United States is a party, provide for delay in order that there may be investigation before hostilities begin.

Many treaties and conventions have aimed to limit the area of hostilities. Such conventions are some of those in regard to neutrality, and in regard to neutralization of certain areas, as well as some of the conventions relating to warfare, such as these of bombardments, etc.

Under the earliest customs and rules of warfare, certain methods of warfare were discontinued such as trenchery, breach of faith, etc.

The means of warfare also have been limited both by custom and by agreement as in the prohibition of the use of poison, and causing unnecessary suffering.

International agreements which limit the causes, period extent, method or means of warfare make more practicable the limitation of armament.

Many of the existing rules for warfare are embodied in international agreements to which many states are parties. The revision of such rules would involve these states, and could properly be undertaken by a conference in which these states have been invited to participate.

As to rules for the use of new agencies in warfare, the Conference on the Limitation of Armament may prepare provisional rules to serve as a *modus vivendi* among themselves pending the consideration of these rules by a general conference of states to which the proposed rules may be submitted as a basis of discussion, such a general conference of states would accord with the recommendation of the Commission of Jurists which met in the summer of 1920 to draft a code for the Permanent Court of International Justice. These recommendations were as follows:

"That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes:

"1. To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

"2. To formulate and agree upon the amendments and additions if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

"3. To endeavour to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

"4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted."

第九項 第九回分科會(十二月二十九日午後五時半開會)

一、十二月二十八日午後三時第八回會議決定ニ從ヒ汎米會館ニ參集セルモ伊國委員「バリアノ」伯カ他ノ委員會ニ列席ノ必要アル故ヲ以テ缺席二十九日ニ延期開會ス

二、潛水艦ニ關スル軍備制限委員會カ潛航艇ニ關スル法規ノ問題ヲ本戰時法規分科委員會ニ諮問セサルノ狀況ニ鑑ミテ議長以外ノ委員ハ此ノ際本分科委員會トシテ會議ヲ繼續スルコト必要ナシトナシ議長モ已ムヲ得ス之ヲ認メ議長ノ前同ニ於テ提出セル戰時法規一般ニ關スル議案(第八回議事經過參照)モ議セサルコトト爲セルカ
唯右ノ案文中左ノ如キ文字アルハ不穩當ナリトシテ

For the most part, the use of gases, aircraft and submarines is not yet under the rule.

「バリアノ」伯及立委員ヨリ之ヲ指摘セリ

三、次ニ立委員ハ潛水艦ニ關スル法規カ當然之ヲ議スヘキ本文科委員會ニ諮詢サレサル狀態ニ鑑ミ會議ノ諸全權ニ對シテ本文科委員會ノ存在ヲ思ヒ出サシムル必要アルヲ以テ本文科委員會ニ於テ已ニ議定セル唯一ノ決議タル毒瓦斯ノ現在法規ニ關スル決議ヲ此ノ際軍備制限委員會ニ報告スルコトヲ提議セルモ唯ソレノミヲ此ノ際報告スルハ不可ナリトノ説多數ナリシヨリ追テ分科委員會ヨリ何等カノ報告ヲ提出スル場合ニハ之ヲ併セテ報告スヘキコトトナシ而シテ他ニ報告中ニ記入スヘキ事項ノ思ヒ付アルハ委員各自力之ヲ申出ツヘキコトトナシ而シテ議長ノ裁量ニ依リ次回ノ開會日ヲ定ムヘキコトヲ認メテ午後六時半閉會セリ

REPORT OF SUB-COMMITTEE

ON

LAWS OF WARFARE.

The sub-Committee on the Laws of Warfare of the Conference on the Limitation of Armament met and organized

on November 29, 1921, and has held ten meetings.

The sub-Committee on the Laws of Warfare herewith submits its report.

Present Statutes of Laws of War.

The laws of war relating both to neutrals and to belligerents are at present inadequate and defective. The character of existing and proposed laws for warfare and for the maintenance of neutrality varies. Laws for war and for neutrality have been formulated with different ends in view:

1. To embody accepted or customary practice;
2. To cover undisputed matters;
3. To establish conventional bases for action by the contracting parties;
4. In hope of restraining unprincipled belligerents;
5. To anticipate the use of new or undeveloped agencies of war;
6. To show the aspirations of peace-time confidiers.

Problem of Sanction.

The rules have often failed to secure the hoped-for results because of the introduction of new and unexpected factors in war, or because of the lack of effective sanctions. At the present time the relation of rules of warfare to the limitation of armament is closely dependent upon the development of the sanction for the observance of the rules.

If the sanction is public opinion only, the effectiveness of the sanction depends upon the skill of one or the other belligerent in propaganda methods.

If the sanction is merely one of moral obligation, the standard of morality will be the determining factor.

A potential physical sanction behind judicial decisions may compel respect for the decisions and presumably would not be a threat or danger to the innocent party.

Judicial Sanction.

A judicial decision, if practicable, will be of great value, as determining the guilt or innocence of the accused, and as pronouncing outlawry or criminality. The possibility of reference to a court for decision as to guilt has proved an effective sanction in other than international relations.

A provision for an International Court of Justice has already been made and the organization is about to be perfected. Resort to such a Court before the difference had led to war would often avoid war, while an agreement to resort to the Court for matters involving controversies as to violations of laws relating to the conduct of war would give a degree of sanction to such laws.

An attempt to reach a premature agreement in regard to agencies of war may later provoke controversy. If an International Court is set up, many specific questions may be left to the Court to determine, thus rendering premature agreements unnecessary, and making possible settlement under conditions which may exist at the time at which the controversy may arise. The general principles upon which the Court should decide are usually not subject to differences of opinion, and may be agreed to in a convention.

Sanctions by Use of Force.

The sanction upon which reliance has ordinarily been placed for the observance of neutrality rights has been fear that the neutral would become party to the war. The sanction upon which reliance has ordinarily been placed as to the observance of belligerent rights has been the fear of retaliation by the opposing belligerent.

These sanctions rest upon force or the fear of the use of force. The one, if applied, extends the areas of the war, while the other may extend the methods of war by new means in retaliatory acts.

Laws of War on Land.

The Committee on Laws of Warfare, at its early meetings, gave consideration to the Laws and Customs of war on Land, IV Hague Convention, 1907. These rules were found, in some respects, defective because since their adoption new means of warfare, as well as the use of old means in new ways, have become common. Article 3 of this Convention provides that if a belligerent party violates the regulation it shall,

“If the case demand, be liable to make compensation. It shall be responsible for all acts committed by persons forming a part of its armed forces.”

This provision has not proved a sufficient sanction. Questions have also been raised as to the rights and duties of representatives of neutral powers¹ charged in this Convention with the interests of belligerent powers, in relation to nationals of the powers whose interests they have in charge, especially with reference to prisoners of war and interned civilians.

Other articles have been found defective, insufficient, or ill adapted to present requirements. Articles 23 offers an illustration in point, particularly Article 23-h, in regard to which there has been much difference of opinion. This section of Article 23 should be so worded as to make clear whether it applies solely to action by the armed forces of a belligerent in occupation of enemy territory.

Uncovered Field.

There are many matters which are not covered in any convention or agreement.

For the most part, the use of gases, aircraft and submarines had not before the meeting of this Conference been

regulated.

Attempts to Limit Warfare.

Rules and agreements have aimed to limit the causes, period, extent, method, or means of war.

Some international agreement, aiming to anticipate the development of the causes of war, have provided other procedure for settling controversies. Such agreements have outlined plans for mediation, commissions of inquiry, arbitration, and judicial settlement. In some cases named controversies have been excluded from the ground of war. Convention 11, The Hague, 1907, provides, that except under certain circumstances.

“The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.” (Art. 1)

Attempts to limit the period of war have also been made, but have met with little success. Convention III, The Hague, 1907 provides,

“The Contracting Powers recognize that hostilities between them must not commence without a previous and unequivocal warning, which shall take the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war.” (Art. 1)

There is a degree of sanction in this Convention in Article 2 which states,

“The state of war should be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may even be made by telegraph. Nevertheless, neutral Powers cannot plead the absence of notification if it be established beyond doubt that they were in fact aware of the state of war.”

Art. (2)

Under this Convention a period is determined from which the commencement of hostilities dates. More than 20 conventions, to which the United States and other states represented at the Conference on the Limitation of Armament are parties, provide for delay in order that there may be investigation before hostilities begin.

May treaties and conventions have aimed to limit the area of hostilities. Such are some of those in regard to neutrality, and in regard to neutralization of certain areas, as well as some of the conventions relating to warfare, such as those relating to bombardments, etc.

Under the earliest rules of warfare, certain methods of warfare were discontinued such as treachery, breach of faith, etc. In the field of method much in the way of regulation remains to be accomplished.

The means of warfare also have, to some extent, been limited both by custom and by agreement as in the prohibition of the use of poison, and of means causing unnecessary suffering.

International agreements which limit the causes, period, extent, method or means of warfare make more practicable the effective limitation of armament.

Laws for Naval warfare.

Conventional and other rules have, at previous conferences, been formulated and agreed upon by certain Powers. These cover such topics as the status of enemy merchant vessels at the outbreak of hostilities, the conversion of merchant vessels into vessels of war, the laying of submarines mines, bombardment by naval forces, the adaptation of the Geneva Convention to maritime war, the exercise of the right of capture in maritime war, the rights and duties of neutral powers in maritime war, and other matters such as embodied in the Declaration of Paris of 1856. In early 1914, this Declaration was considered as generally accepted law. Many other rules, possibly satisfactory when drawn or ratified, are

now defective or insufficient. Such a convention as that relating to the conversion of merchant vessels into vessels of war is in many respects defective, and would fail to provide for the conditions which would probably involve the greatest difficulties in time of war. In short, the field of naval warfare in general is not satisfactorily covered by regulations.

Laws for aerial warfare.

The use of aircraft in war has made necessary new rules to regulate war in the air and at the same time shows the need of modification of the rules for war on land and sea to meet new conditions consequent upon aerial warfare.

In the report of the Conference sub-Committee on Aircraft, that Committee came to the following conclusions:

"The Committee is of the opinion that it is not practicable to impose any effective limitations upon the numbers or characteristics of aircraft, either commercial or military, excepting in the single case of lighter-than-aircraft.

"The committee is of the opinion that the use of aircraft in war should be governed by the rules of warfare as adapted to aircraft by a further Conference which should be held at a later date."

The sub-Committee on aircraft also stated that the representatives certain of the powers were not at this time prepared to discuss the rules for the use of aircraft from a technical point of view, and "that the time between the receipt of the agenda for the Conference and their date of sailing has not permitted that exhaustive discussion of the subject that would enable them to advance a national view-point on a matter which affects so many and varied interests."

Some of the delegates to the Conference also expressed doubt as to whether the rules of warfare were within the list of subjects which they were authorized to discuss. All seemed to be of the opinion that to open the whole subjects of the rules of warfare would involve prolonged study and discussion for which the present Conference is not prepared.

第十項 第十回分科會（二月二日午後八時半開會）
各委員最終報告書ヲ論議シ次ノ如ク可決ス

The Committee on the Limitation of Armament, at its meeting of January 9, 1922, passed the following resolution :

“The Committee is of the opinion that it is not at present practicable to impose any effective limitations upon the numbers or characteristics of air-craft, either commercial or military.”

While there seemed to be an accord as to the opinion that aircraft should observe the general rules already laid down for bombardment, nevertheless, it seemed to be essential that further and extended consideration, probably at a subsequent conference, should be given to the technical and legal aspects of a many possible uses of aircraft in time of war.

Resolution on Use of Submarines.

The introduction of new agencies of warfare such as the submarine has further enlarged the field of war not adequately covered by regulations.

At the fifteenth and sixteenth meetings of the Committee on Limitation of Armament, January 5 and 6, 1922, the following resolutions regarding submarines, presented by Mr. Root, Chairman of the sub-Committee for Drafting, were, after discussion and amendment, unanimously adopted :

I.

“The Signatory Powers desiring to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and non-combatants at sea in time of war, declare that among those rules the following are to be deemed as established part of international law :

1. A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

2. Belligerent submarines are not under any circumstances exempt from the universal rules above stated, and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

II.

The Signatory Powers invite all other civilized Powers to express their assent to the foregoing statement of established law so that there may be a clear public understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents.

III.

The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of these rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

IV.

The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations, they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto.

Use of Gases.

The Committee on the Limitation of Armament, at its meeting on January 7, 1922, after considering the report of the sub-Committee on Poisonous Gases, unanimously adopted the following resolutions:

"The use in war of asphyxiating, poisonous and other gases and all analogous liquids, materials or devices having been justly condemned by the general opinion of the civilized world and the prohibition of such use having been declared in treaties to which the majority of the civilized powers are parties:

"Now to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, the Signatory Powers declare their assent to such prohibition, agree to be bound thereby between themselves and invite all other civilized nations to adhere thereto."

On January 7, 1922, Mr. Balfour, referring to the use of gases at a meeting of the Committee on the Limitation of Armament said:

"That a mere affirmation of the law without adding any sanctions to it, would not relieve the nations of the world from taking precautions against those who were prepared to break the law and who, if they were allowed to do so

with impunity, might dominate the world by the mere indifference they showed to the laws which the world had endeavored to lay down."

Conclusion.

Any survey of the field of the laws of war would show confused, unsatisfactory and very imperfect provisions to meet conditions under which definite, satisfactory and complete agreements should prevail. There is also a general lack of prescribed sanction for laws of war.

Action of the Committee on Limitation of Armament.

The Committee on the Limitation of Armament, taking cognizance of the existing condition of laws of war, adopted at its nineteenth meeting, January 27, 1922, the following resolution:

The United States of America, the British Empire, France, Italy and Japan, have agreed:—

1. That a Commission composed of not more than two members representing each of the above-mentioned Powers shall be constituted to consider the following questions:

(a) Do existing rules of International Law adequately cover new methods of attack or defense resulting from the introduction or development, since the Hague Conference of 1907, of new agencies of warfare?

(b) If not so, what changes in the existing rules ought to be adopted in consequence thereof as a part of the law of nations?

II. That notices of appointment of the members of the Commission shall be transmitted to the Government of the United States of America, within three months after the adjournment of the present Conference, which, after consultation with the Powers concerned, will fix the day and place for the meeting of the Commission.

III. That the Commission shall be at liberty to request assistance and advice from experts in International law and in land, naval and aerial warfare.

IV. That the Commission shall report its conclusions to each of the Powers represented in its membership. Those Powers shall thereupon confer as to the acceptance of the report and the course to be followed to secure the consideration of its recommendations by the other civilized Powers.

第三節 毒瓦斯分科會議事經過

第一項 第一回分科會

一、十一月三十日午後四時汎米會館ニ於テ開催各國列席委員左ノ通

出席委員

原口陸軍少將	
小島海軍々醫大佐	日本
建川騎兵中佐	
スミス教授	Prof. Edgar F. Smith
フリリス少將	米國
ズネチー中佐	Brig. Gen. Anne A. Fries
バーソロミュー大佐	英 國
ムーラー教授	Col. W.H. Bartholomew
マイエー教授	佛 國
Prof. Mayor	
ベンテマリー中佐	伊 國
Nata Pentimalli	

「フリリス」少將ノ發議ニ依リ「スミス」教授ヲ議長ニ「ズネチー」中佐ヲ「セクレター」ニ推薦ス

二、議長ハ米國委員ハ何等訓令ヲ受ケ居ラス各國委員中全權ヨリ訓令ヲ受ケタル者アリヤト問ヘルニ對シ一同訓令ヲ受ケ居ラスト答フ「ムーラー」教授ハ吾等ハ先ツ委員會ノ目的ヲ知ルヲ要ス吾等ハ法律ヲ解スル者ニ非サレハ單ニ諮詢事項ニ對シ解答スルノミナルヘシト述ヘ「マイエー」教授ハ戰爭法規委員會ハ法律家ヨリ成ル者ナレハ毒瓦斯其物ニ就テハ了解ナカルヘク此委員會ノ意見ヲ徴シテ後決スヘキモノト思惟スル旨ヲ述フ

委員會ノ
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