CHAPTER II.

Consequences of the Sovereignty Theory.

Section I. Limited Sovereignty.

The theory extending the authority of the sovereign state to the airspace above the territory, involves as a first consequence that, where the surface of the globe is without a sovereign master, the airspace overhead has no sovereign either. Thus, above the open sea and above land as yet unoccupied the space is free. Thus far there is no difficulty in applying the principle that the airspace belongs to the land beneath it. But there are many other cases where the application may be less simple, we mean those cases where the sovereignty of the groundstate is more or less limited. There the question may arise as to whether such limitations include the air-domain or not. We should say that as a rule it all depends on the meaning of the stipulations, though some general indications may be given on the matter.

§ 1. States Partly Dependent on Other States.

Among the states with limited sovereignty are, first of all, to be classed the partly dependent states, that are conventionally obliged to suffer foreign interference in their affairs on some points. Generally such restrictions of sovereignty will concern the airspace as well as the land, as far as they can have a practical effect in the air. For as the air-domain forms a part of the state, it shares as a matter of course all restrictions regarding the state as a whole, such as foreign influence.
over its councils, its finances, the right of military occupation and so on 1).

There is no difficulty until we get to restrictions viewing special parts or points of the land, or special situations. In such cases it may be difficult to know whether the meaning of the restriction makes it desirable to include the air-domain. At any rate one must be very careful not to conclude hastily to a large interpretation, not to extend to the air restrictions which have been obviously meant for situations on the ground, and the more so because the limitations are concessions of the dependent state under reservation of all its other rights.

Thus the right of military occupation can, for instance, in some cases give rise to difficulties of interpretation. If the right is given in very general terms, so as to regard the whole state domain, it includes the air-domain as part of the state. If, on the contrary, the stipulation is not general, we must distinguish between the different cases. In case the right has been given in respect of a special region, a province, the airspace above will as a rule have to share the restriction, being an appurtenance of that part of the territory. But if the right concerns the occupation of a certain point having a special strategic value, such as a mountain-pass, or a bridge, or a fortification, the treaty does not mean to allow the occupation of a part of the state, but it only gives a right for a very special purpose. This purpose being in most cases connected with acts on the ground excludes extension into the air. We say in most cases, for the contrary, too, is possible. For instance, the right of occupying some fortifications along a part of the frontier is obviously given to guard the state there against foreign invasion and this certainly cannot be effective unless it implies the right of control in the air as well.

A restriction one can call in a sense the reverse of the right of occupation is the interdiction of maintaining military forces. Of this we find a striking example in the case of Montenegro. Art. 29 of the Berlin Treaty of July 13th 1878 says that Montenegro must abstain from the possession of a naval force

---

1) See for instance the treaties between France and Annam (6th June 1884) and between France and Tunis (12th May 1881; 8th June 1883).