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INTERNATIONAL LAW: RESERVATIONS TO MULTILATERAL AGREEMENTS

MARCELLUS R. MEEK

ONE of the means by which States as subjects of international law acquire rights from, and undertake obligations toward, other subjects of international law is the formal conclusion of treaties.¹ A treaty is a source of international law, and, as such, governs to a substantial degree the relations existing between the independent States of the world.

Although treaties have from time to time² been referred to as contracts or compacts between States, it was early agreed that international transactions, whatever their descriptive designation, were of a higher order and distinguishable in principle from private contracts.³ But, it has been said, in solving the problems to which the practice of attaching reservations to the signature or ratification of treaties gives rise, the analogy between international treaties and the contracts of private law has been found useful.⁴

In an effort to make this statement more readily comprehensible, it might be well at this point to digress for a moment to consider by way of preliminary examination what is meant by the term "reservation." The authorities are not in accord, but, in recent times, the most wide-

¹ Schwarzenberger, *A Manual of International Law* 62 (3d ed., 1952). Distinctions have been made by text writers between the terms "treaty" and "convention," signifying varying degrees of formality or importance. The writer has accorded the terms synonymy for the purposes of this article, and they will be used interchangeably to denote any formal contractual engagement between States.

² Crandall, *Treaties, Their Making and Enforcement* 3 (2d ed., 1916); Wilson, *Handbook of International Law* 199 (3d ed., 1939); *The Fourteen Diamond Rings*, 183 U.S. 176 (1901).

³ Grotius, *De Jure Belli ac Pacis*, Universal Classics Library 166 (1901); Harvard Research in International Law, *Draft Convention on the Law of Treaties*, art. 1(a), 29 A.J.I.L. Supp. 686-698 (1935).

⁴ McNair, *The Law of Treaties* 105 (1938).

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ly accepted definition of the term is that propounded by the Harvard Research in its Draft Convention on the Law of Treaties, which is as follows:

[A "reservation" is a] formal declaration by which a State, when signing, ratifying or acceding to a treaty, specifies as a condition of its willingness to become a party to the treaty certain terms which will limit the effect of the treaty in so far as it may apply in the relations of that State with the other State or States which may be parties to the treaty.⁵

It should be noted, however, that this definition restricts the use of the term "reservation" to those declarations which "limit the effect" of the treaty as between the reserving State and the other party or parties to the treaty,⁶ and excludes those declarations which have for their purpose the amendment⁷ of the treaty, or are merely "understandings" or "interpretations." Other definitions have not thus limited the term as a precise word of art, and contemplate as a reservation any formal written declaration relating to the terms of the agreement which is communicated to the other interested parties.⁸ Notwithstanding the fact that there is little basis upon which to justify the juridical status of treaty reservations, it is submitted that agreement can be reached on the proposition that a reservation is any declaration made by a State, as part of its signature or ratification of, or accession to, a treaty, irrespective of the nomenclature employed, the effect of which is to work a change in the rights or obligations devolving upon any of the interested States. This is not to say that every declaration is a reservation, but, rather, only those declarations which involve a diminution of the rights and obligations accruing under the treaty.

The significance of a clearly delineated construction of the terms may be readily observed when it is seen that, as a universal principle, reservations must be submitted to the other States for expression by

⁵ Art. 13, 29 A.J.I.L. Supp. 843 (1935).

⁶ Comment, *ibid.*, at 857.

⁷ Amendments before ratification have been distinguished from reservations by reason of their involving textual changes, and thus altering the treaty for *all* the parties in their relations *inter se*. A reservation, on the other hand, limits the effect of the treaty only as it applies between the State making the reservation and the other contracting parties, and does not involve a textual alteration. For an illuminating discussion regarding these distinctions, see Washburn, Treaty Amendments and Reservations, 5 Cornell L.Q. 247 (1919); and Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 865 (1935).

⁸ Miller, Reservations to Treaties 76 (1919); see letter of Mr. Charles Evans Hughes to Senator Hale, July 24, 1919, concerning proposed reservations to the Covenant of the League of Nations: Cong. Rec., vol. 58, pt. 4, p. 3302; and Borchard, The Multilateral Treaty for the Renunciation of War, 23 A.J.I.L. 116 (1929).

them of any objections which they might have.⁹ Such is not the case with declarations which are merely understandings or interpretations.¹⁰ These do not require acceptance by the other interested States, and are merely expressions, as a domestic matter, of the meaning to be attached to a particular provision of a given treaty.¹¹

Taken in this light, the analogy between treaties and private contracts is more easily appreciated, especially in its application to the subject of reservations. It has frequently been said that a reservation constitutes a counteroffer, requiring assent by the other States,¹² but there is no unanimity in the views of the international jurists and governments with respect to the legal effect of a State objecting to a reservation. It is, of course, only where such an objection has been registered that the full implication of the practice of making reservations reflects itself. It is for this reason that we are not here concerned with reservations to bilateral, or bipartite, agreements, since the occasion of an objection to such reservations presents few mechanical difficulties of a serious nature.

Any alterations in the terms or effect of a two-party treaty must take form either at the moment of signature or of ratification, at which time a certificate or protocol or *proces-verbal* of signature, or ratification as the case may be, is signed in duplicate by the representatives of the governments.¹³ Hence, in either case, the other contracting State is fully apprised of the modification, and may, at the time of the formal signature or exchange of ratifications, either assent or object as it sees fit.¹⁴ In a memorandum dated April 18, 1921, the Solicitor for the Department of State wrote:

⁹ Miller, *Reservations to Treaties* 160 (1919); 5 Hackworth, *Digest of International Law* 130 (1943); 2 Hyde, *International Law* 45 (1922); Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 142 (1926).

¹⁰ 5 Hackworth, *Digest of International Law* 144 (1943).

¹¹ Harvard Research in International Law, *Draft Convention on the Law of Treaties*, 29 *A.J.I.L. Supp.* 857 (1935); see letter of Secretary Hull, July 22, 1936, concerning the 1929 Convention for the Safety of Life at Sea, quoted in 5 Hackworth, *Digest of International Law* 148 (1943).

¹² 5 Hackworth, *Digest of International Law* 113 (1943); 2 Hyde, *International Law* 45 (1922); Brierly, *The Law of Nations* 233 (4th ed., 1949); Schwarzenberger, *Manual of International Law* 65 (3d ed., 1952).

¹³ 1 Miller, *Treaties, etc.* 18 (1931).

¹⁴ Where the reservation is first made upon ratification, it has been the custom of the United States Senate to require an exchange of notes to ascertain whether the proposed reservations will be acceptable to the other signatory. Owen, *Reservations to Multilateral Treaties*, 38 *Yale L.J.* 1086, 1090 (1929); see also Washburn, *Treaty Amendments and Reservations*, 5 *Cornell L.Q.* 247 (1919).

Where only two nations are negotiating, such matters have at times been rather easily adjusted between them. It has occasionally been possible for this Government when concluding a bilateral treaty to get the other government's consent to the Senate's alteration of the treaty.¹⁵

Our discussion, therefore, will be confined to reservations to multilateral agreements, although similarities may be found in the conduct of negotiations in conformity with established international treaty-practice, since multilateral conventions, no less than bilateral treaties, may be spoken of as a form of contract.¹⁶

Generally speaking, reservations to multilateral treaties, as well as to bilateral treaties, may be introduced at any point in the process of their conclusion. Because differing legal consequences flow from the manner in which a reservation is formulated, the time of its introduction becomes important.¹⁷ Judge Arnold McNair, in his notable and often cited work, *The Law of Treaties*, states by way of summary:

A State, which, while wishing to become a party to a treaty, considers that it can only do so if it can exclude the application to itself of one or more of its particular provisions, can achieve this object in one of the following ways:

(1) By inducing the other party or parties to insert an express term to this effect; for instance, Article 287 of the Treaty of Versailles or Article 98 of the Treaty of Lausanne; this is not really a reservation at all, but it is the best way of doing what at a later stage can only be done by means of a reservation;

(2) By a reservation attached to the signature of a Treaty by its representatives and duly recorded in a *proces-verbal* or protocol of signature;

(3) By a reservation attached to the ratification and duly recorded;

(4) In the case of a treaty left open for accession by other States, by a reservation attached to its accession and duly recorded.¹⁸

¹⁵ Memorandum of the Solicitor for the Department of State (Nielsen), Apr. 18, 1921, MS. Department of State, file 711.62119/117. Quoted from 5 Hackworth, *Digest of International Law* 113 (1943), where he continues, "Where several nations negotiate, the difficulties are obvious, since the final act of ratification consists of the deposit of the ratification with one of the negotiating governments as the depositary after the general negotiations among all the contracting parties have ceased."

¹⁶ See Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 142 (1926), where the consideration for the acceptance of the contract by any one party is its acceptance by the other.

¹⁷ "A reservation may take the form of a statement endorsed upon the original treaty itself. . . . Or a reservation may be included in the instrument of ratification or accession of a State. . . . Or, finally, a reservation may be recorded in a separate formal instrument collateral to the treaty, such as a protocol or a *proces-verbal* of signature, a *proces-verbal* of the exchange or deposit of ratifications, a protocol of accession, etc. Conditions or interpretations recorded in some way other than those above described do *not* constitute "formal declarations" and hence will not acquire the technical status of reservations unless expressly maintained elsewhere in some one of the formal records discussed above." Harvard Research in International Law, *Draft Convention on the Law of Treaties*, Comment, 29 *A.J.I.L. Supp.* 847-849 (1935). See also Miller, *Reservations to Treaties* 78-79 (1919).

¹⁸ McNair, *The Law of Treaties*, 105-106 (1938). For substantially the same wording, see 2 Oppenheim, *International Law* 821-822 (Lauterpack ed., 6th ed., 1947).

Since only the last three methods described above are said to be true reservations, we will direct our attention exclusively to an analysis of their respective properties without further concerning ourselves with the first example given. We find, then, that reservations may be formulated at the signature or ratification of, or accession to, a treaty; and that at the time of their formulation, they must be communicated to the other States for an expression of assent or objection. The means by which the fact of consent may be established will be found to vary according to the chronological moment at which the reservation is given expression.¹⁹

RESERVATIONS MADE AT SIGNATURE

With respect to the formulation of reservations at the time of signature, it can be said generally that these are conveniently recorded by means of a protocol, signed with the treaty, in which full recitation is made of any and all reservations advanced by signatory governments.²⁰ Or, in the absence of a protocol, a written declaration may be signed and formally filed by the plenipotentiary of the government making the reservations, in which it may be stated that the treaty is signed subject to the reservation contained in the declaration. The plenipotentiary may sign the treaty subject to the reservation or reservations made in the protocol or declaration, and a certified copy of the protocol or declaration may accompany the copy of the treaty which is customarily sent to each signatory government.²¹

Where, in point of time, a reservation is introduced prior to, or simultaneously with, the signature of the other States, few problems of consent arise, since States which sign subsequently, without protest, may be deemed to have impliedly consented to the reservation.²² A more complex problem is presented, however, where the signature of a State, subject to a reservation, does not take place until after other States have already signed, as where the treaty is left open for signature for a specified length of time. The fact of consent may still be implied in such a case, nevertheless, where the reserving State signs the

¹⁹ Owen, *Reservations to Multilateral Treaties*, 38 *Yale L.J.* 1095-1096 (1929).

²⁰ Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 159 (1926).

²¹ Telegram of Secretary of State (Colby) to Ambassador to France (Wallace), no. 441, Apr. 21, 1920, MS. Department of State, file 579.6D1/52. Quoted in 5 Hackworth, *Digest of International Law* 107 (1943).

²² Harvard Research in International Law, *Draft Convention on the Law of Treaties*, 29 *A.J.I.L. Supp.* 885-886 (1935).

treaty subject to a reservation which it had previously introduced and has had recorded in the proceedings of the conference at which the prior signatories were present.²³ This has often been the practice, and it has, on occasion, been the subject of specific provision in the treaty.²⁴ In either case, such a reservation previously recorded in the proceedings of the conference is not to be treated as new matter, the consent of the prior signatories having been implied,²⁵ so long as no objection was raised during the conference, or at signature. Where, however, the reserving State desires to append to its signature a reservation which has not been previously agreed to, consent of the prior signatories should be given expressly.²⁶

Again, where a treaty is left open for signature until a certain date, there is the possibility that a reservation may be appended to the signature of a State that did not participate in the conferences resulting in the convention. Concerning the legal consequences that might result in such a case, there are divergent views. Such a State may be restricted in its signature to that which was agreed upon by the negotiating parties, as was the practice of the League of Nations,²⁷ or it might be held that such a State should not be precluded from recording such a signature, since the reservation might well have been accepted, if given expression in time.²⁸ But, it has been declared, in the latter cases before effect can be given to the reservation, it is essential that the consent of the other signatories should be obtained.²⁹

Following an analogy to implied consent, it will be seen that in every case where a reservation is made at the time of signature, the ratification of the treaty without objection by any other signatory, whether it is signed prior to the reservation or not, automatically works an acceptance of the reservations made at the time of signature.³⁰

²³ Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 156-159 (1926).

²⁴ Article 67, *International Sanitary Convention for Aerial Navigation*, 4 *Treaties*, etc. 5489 (Trenwith, 1938).

²⁵ See *Harvard Research in International Law, Draft Convention on the Law of Treaties*, 29 *A.J.I.L. Supp.* 885-886 (1935).

²⁶ But see Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 157 (1926).

²⁷ *League of Nations Documents* (1927) c. 357, M. 130, V.

²⁸ Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 160-161 (1926).

²⁹ *Ibid.*, at 160.

³⁰ Miller, *Reservations to Treaties* 94 (1919); and see *Harvard Research in International Law, Draft Convention on the Law of Treaties*, 29 *A.J.I.L. Supp.* 889 (1935).

Where the reservation is introduced for the first time upon ratification, more difficult problems arise, since the ratification of a treaty by a State is the act by which the provisions of the treaty are formally confirmed and approved,³¹ and there is doubt as to what constitutes consent to a reservation once that final act is performed. Thus, where a reservation is contained in a ratification made after other States have ratified without reservation, the fact of consent is not as conveniently established. On the other hand, acceptance of a reservation may be implied from the failure to object on the part of signatories whose ratifications are deposited subsequent to the receipt by them of notice of the ratification with reservations.³²

RESERVATIONS MADE UPON RATIFICATION

When we referred above to ratification as the act by which a treaty is finally approved, we might have more precisely spoken of the exchange, or deposit, of the ratifications as that act which seeks to bring the treaty into force.³³ With specific reference to multilateral agreements, Hackworth writes:

In the case of multilateral treaties, ratifications are usually not exchanged; rather, they are deposited with a government or an organization such as the League of Nations or the Pan American Union.

The functions of a depositary of a treaty and its ratifications are: (1) to take custody of the original document; (2) to furnish certified copies thereof to all the parties; (3) to receive the instruments of ratifications of the parties, including reservations; (4) to advise all the other parties regarding the deposit of each ratification together with any reservations made; (5) to receive the replies of the other parties either accepting or rejecting the reservations; and (6) to inform all the other parties to the treaty regarding each such reply.³⁴

Where all the ratifications are deposited with a government or an organization simultaneously there is almost invariably a *proces-verbal* of deposit drawn up, recording the receipt of each ratification, and it is generally the practice to record any reservations in that document.³⁵ However, the procedure with respect to deposit will vary according to the terms of the treaty; it may be provided that the instruments of ratification are to be deposited at different times, and the treaty may

³¹ *Ibid.*, art. 6 (a), 739; and see Owen, Reservations to Multilateral Treaties, 38 Yale L.J. 1113 (1929).

³² 5 Hackworth, Digest of International Law 130 (1943).

³³ 2 Hyde, International Law 47 (1922).

³⁴ 5 Hackworth, Digest of International Law 72 (1943).

³⁵ Jones, Full Powers and Ratification 122-123 (1946); and see Malkin, Reservations to Multilateral Conventions, 7 Brit. Y.B. Int. L. 160 (1926).

go into force only when all or a certain number of ratifications have been deposited, or when certain States that are named in the ratification clause of the treaty deposit their ratifications; when the terms of the treaty have been complied with, a *proces-verbal* is drawn up and the treaty comes into force.³⁶

The significance of the *proces-verbal* gains stature when it is seen that by participation therein, each State consents to all reservations previously made, whether at signature or ratification, because the instruments of ratification are found to be "in good and due form." In practice, the depositary government or organization will not accept as final the deposit of a ratification with reservations, until the views of the other States³⁷ with respect to its acceptance or rejection has been established. Thus, the treaty will not come into force, nor will the *proces-verbal* be drawn, until the consent of such States as the treaty may designate shall have been established. It may well be that ratification by all the parties is required, in which case the *proces-verbal* is not drawn up until the ratification of the last party is deposited.³⁸ As in the case of reservations made at signature, consent of the other States may be implied.

Where reservations are made upon ratification, therefore, we are once again directed to a consideration of the point of time relationship created between the introduction of the reservation and other ratifications. Since subsequent ratification of the treaty by another State, made with notice of a reservation, and without protest, may be deemed an implied acceptance of the reservation, we will be primarily concerned with the legal effect of reservations with respect to States which have already ratified unconditionally, and with respect to States which have not yet ratified, but which are signatories. On both questions there is little agreement to be found in the views of the international jurists and governments.

Concerning the legal effect of the reservation with respect to States which have already ratified the treaty, some authorities have stated that the reservation should be expressly consented to,³⁹ while others

³⁶ Miller, *Reservations to Treaties* 93 (1919); Jones, *Full Powers and Ratification* 122 (1946); Camara, *The Ratification of International Treaties* 147 (1949).

³⁷ Whether this means "Signatories" or "States which have already ratified" will be discussed *infra*, at 48.

³⁸ Camara, *The Ratification of International Treaties* 148 (1949).

³⁹ Hackworth states that the better rule would seem to be that, in the absence of some positive act, mere failure to object does not constitute acceptance of the reservation. 5 Hackworth, *Digest of International Law* 130 (1943); this seems also to have been the view held by Professor Hyde. 2 Hyde, *International Law* 45 (1922).

argue that, unless an objection is expressed within a reasonable time, the States which previously ratified will be deemed to have impliedly accepted the reservation.⁴⁰ It is not clear under the Pan American practice whether any action short of an affirmative protest will constitute an effective objection,⁴¹ or whether silence alone will constitute an acceptance of the reservation. The Harvard Research in International Law supports the view that a State is bound by a reservation made subsequent to its own ratification, unless it expressly objects to the reservation.⁴² The doctrine of consent implied from silence in the case of reservations made at signature seems to have established similar rules applicable to reservations made upon ratification. The weight of authority seems to uphold the view that a reservation, whether made upon signature or ratification, is effective unless an express objection is registered.⁴³ This would appear to be the better rule, but, of course, it is presumed that the other ratifying States, prior or subsequent to the reservation, have notice of the deposit of the reservation, and, therefore, their silence amounts to an acquiescence in its effect.

The second question causing difficulty is whether the consent of States which are merely signatories to a treaty is required to give effect to a reservation made upon ratification. Or, stated negatively, whether a State which is a signatory, but which has not ratified, may object to the reservation proposed. The significance of this question will be more fully appreciated as an implication of the so-called "unanimity rule," under which it is argued that the consent of all the parties to a treaty is required to give effect to a reservation, as distinct from a rule that allows a reserving State to participate in the treaty, although the treaty will not be in force between the reserving State and any State that objects to the reservation.⁴⁴ The Harvard Research in International Law proposed, in its Draft Convention on the Law of Treaties, that the consent of all other States which are likely to be

⁴⁰ McNair, *The Law of Treaties* 106 (1938); Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 148 (1926).

⁴¹ Article VI of the Convention on Treaties of the Havana Conference of 1928 is in part as follows: ". . . In case the ratifying State makes reservations to the treaty, it shall become effective when the other contracting party informed of the reservations either expressly accepts them, or having failed to reject them formally should perform actions implying its acceptance."

⁴² 29 *A.J.I.L. Supp.* 901 (1935).

⁴³ Authorities cited *supra* notes 40 and 42.

⁴⁴ The requirement of unanimous consent to reservations will be more fully discussed *infra*, at 59.

affected by a reservation⁴⁵ must give their consent to the reservation.⁴⁶ This includes signatories, and, under the rule requiring unanimous consent, it is conceivable that a signatory State, though it may never ratify the treaty itself, might exclude from participation a State that wishes to ratify the treaty subject to reservations that are acceptable to all the other States that have already ratified or intend to do so. In spite of this significant possibility, other authorities have adverted to the same views.⁴⁷ Conversely, however, it is the expressed policy of the Secretary-General of the United Nations, as depositary of conventions concluded under the auspices of the United Nations, to consider as having legal force only those objections received from States which have ratified or acceded to the convention, although the text of the reservation is circulated to all interested States.⁴⁸ This was also the policy of the Secretariat of the League of Nations, and, like the practice under the United Nations, it is justified in the interests of efficiency to keep at a minimum the number of States required to give unanimous consent to a reservation.⁴⁹ While it is true that the practice requiring the consent of all signatories does present certain practical advantages, such as providing a means of immediate objection by a State, which, for constitutional reasons, is unable to deposit its ratification until after the convention has entered into force, it would seem desirable to find a middle ground. In the interests of greater participation in multilateral agreements and the progressive development of international law, agreement might be reached upon a rule providing for the lapse of a reasonable time after which a signatory State which has not ratified the treaty may no longer register its objection to the reservation. A similar solution is considered by Manley O. Hudson in commenting upon the provision in the Convention for the Prevention and Punishment of Terrorism, which limited ob-

⁴⁵ "Those other States are the States which have already become parties to the treaty or which, as signatories, are likely to become parties." Comment, 29 A.J.I.L. Supp. 890 (1935).

⁴⁶ *Ibid.*, at 890.

⁴⁷ 1 Hudson, *International Legislation* 1 (1931); and see Malkin, *Reservations to Multilateral Conventions*, 7 *Brit. Y.B. Int. L.* 148-149 (1926), where, for instance, when the British ratification of the International Sanitary Convention of 1903 was deposited with certain reservations, the French Government, as Headquarter Government, insisted on these reservations being communicated to the signatory Powers and agreed to by them before the ratification could be accepted, despite the fact that the reservations contained therein had been announced during the conferences.

⁴⁸ U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950), at 11.

⁴⁹ *Ibid.*, at 18-19.

jections to reservations by a signatory State, that had not ratified, to three years after the convention entered into force, where he said:

This provision represents an innovation in setting two time limits: (1) a time limit of three years from the date of the instrument within which signatories which have not proceeded to ratification are nevertheless to be consulted as to proposed reservations; and (2) a time limit of six months within which a negative reply to any consultation may be made. It recognizes the possible interest of signatories which have not proceeded to ratification in the reservations offered by other signatories, and thus clarifies a point on which there has been doubt. It also establishes that when reservations other than those agreed to at the time of signature are proposed, the alternatives are absence of objection from any State consulted, on the one hand, and abstention from proceeding to deposit of a ratification or accession on the other hand.⁵⁰

While it has often been advocated that specific provisions be contained in a given treaty with respect to these and other matters, but the lapse of a stated period of time would not necessarily be more appropriately a subject for specific provision in a particular convention. It might easily be formulated as a rule of customary international law suitable for codification and binding on all States. Similarly, the lapse of a reasonable time would certainly afford a signatory State sufficient opportunity to accept the responsibilities of the convention before objecting to the proposed reservations of any other ratifying States. And what constitutes a reasonable time, although never a matter of simple determination, would not present an insurmountable task, if examined in the light of actual practice.

This problem has received current importance in connection with the recent Convention on the Prevention and Punishment of the Crime of Genocide. As a result of the consideration of the matter by the Sixth Committee of the General Assembly of the United Nations, the following specific question was one of those asked of the International Court of Justice in the request of the General Assembly for an advisory opinion:

- III. What would be the legal effect . . . if an objection to a reservation is made:
- (a) By a signatory which has not yet ratified?
 - (b) By a State entitled to sign or accede but which has not yet done so?⁵¹

In its opinion, rendered on May 28, 1951,⁵² the Court pointed out that the questions placed before it were expressly limited to the Genocide

⁵⁰ Hudson, *Reservations to Multipartite International Instruments* 32 A.J.I.L. 335 (1938).

⁵¹ U.N. General Assembly, Fifth Sess., Doc. A/1517, Nov. 16, 1950.

⁵² I.C.J. Reports, 1951, p. 15. The decision was reached by seven votes to five.

Convention, in spite of the fact that they were abstract in character. With specific reference to question III quoted above, the Court stated:

(a) that an objection to a reservation made by a signatory State which has not ratified the Convention can have the legal effect indicated in the reply to Question I [i.e., to exclude the reserving State, if the reservation is not compatible with the object and purpose of the Convention] only upon ratification. Until that moment it merely serves as a notice to the other State of the eventual attitude of the Signatory State.⁵³

Thus, the Court, while recognizing that a signatory should not be allowed to exclude from participation another State until it has itself ratified the Convention, conferred upon the signatories a provisional status pending ratification, during which time they might formulate objections as a precautionary measure.

The resolution of the General Assembly, by which the advisory opinion of the Court was requested, also contained an invitation to the International Law Commission to study the question of reservations to multilateral conventions in a more general way and a report was made to the General Assembly by the Commission on August 23, 1951, in which it disagreed with the view held by the majority of the International Court of Justice. On the precise point under discussion, it stated:

(b) A State which tenders a ratification or acceptance with a reservation may become a party to the convention only in the absence of objection by another State which, at the time the tender is made, has signed, or ratified or otherwise accepted the convention; when the convention is open to signature during a limited fixed period, also in the absence of objection by any State which signs, ratifies, or otherwise accepts the convention after the tender is made but before the expiration of this period; provided, however, that an objection by a State which has merely signed the convention should seek to have the effect of excluding the reserving State from becoming a party, if within a period of twelve months from the time of the making of its objection, the objecting State has not ratified or otherwise accepted the convention.⁵⁴

It is readily observed that the proposals made by the International Law Commission are not without merit. It is seen that a State which is a signatory to a convention, and which, because it has not completed the time-consuming constitutional processes prerequisite to ratification, has not itself ratified the convention, may nevertheless express its objection to a proposed reservation of another State. At the same time, a safeguard is provided against allowing a State which does not become

⁵³ *Ibid.*, at 30.

⁵⁴ General Assembly, 6th Sess., Official Records, Supp. No. 9 (a/1858), pp. 7-8 (1951).

a party to a convention to exclude the participation of other States. The twelve-month period is reasonable and contemplates little difficulty for application in practice.⁵⁵

The difficulty may very often arise as a result of the delay encountered by a State in complying with its own constitutional processes necessary for ratification. In such a case, the State has in good faith entered into the negotiation of the treaty, and having signed it, finds that after its signature, but, before it has had time to ratify the instrument, another State has introduced a reservation which so alters the treaty as to deprive it of the value contemplated. What reservations or modifications are formulated during the interval between signature and ratification can be of great concern to any signatory State, and confers upon it a real interest sufficient to support a right of objection, provided there are limits where the "unanimity rule" is practiced.

In passing, it might be of interest to note that were it not possible for a State to formulate reservations for the first time upon ratification, the question would not arise of whether signatory States might object to them, as distinguished from States which have already ratified the treaty. Further, where ratification of a treaty is required,⁵⁶ if the formulation of reservations were restricted to any point up to the time of signature, there would be far less mechanical difficulties, since in no wise could the reservation postdate the act of another State by which it has put the final symbol of its approval upon the treaty. But, however advantageous or desirable it may be, such a restriction upon the time of making reservations does not exist, and is given expression in no principle of international law or treaty-making practice. On the contrary, it is almost universally agreed that reservations may be formulated at any time—signature, ratification, or accession.⁵⁷

It is nonetheless true, however, that many writers have not favored

⁵⁵ It should be pointed out that the report of the International Law Commission was not adopted by the General Assembly, but it is felt that the formulation of this principle will go far in reaching a solution to the problems at hand.

⁵⁶ Ratification is generally recognized as necessary in present day treaties, especially in the case of multilateral treaties. See Jones, *Full Powers and Ratification* 158-159 (1946); and Camara, *The Ratification of International Treaties* 46 (1949), who states, "in the present stage of development of International Law, ratification, as a general rule, is an essential formality for the validity of treaties. . . . *ibid.*; see also Harvard Research in International Law, *Draft Convention on the Law of Treaties*, 29 *A.J.I.L.* (Supp.) 763-769 (1935).

⁵⁷ The question of reservations made at the time of a State's accession to a treaty will be discussed *infra*, at 55.

the practice of making reservations upon ratification, even up to the present day.⁵⁸ Oppenheim seems to have held this view when he said:

It follows from the nature of ratification, as a necessary confirmation of a treaty already concluded, that ratification must be either given or refused, no conditional or partial ratification being possible.⁵⁹

In justification of this position, it was said that a ratification which contains a modification of the terms of the treaty is a refusal to ratify, coupled with a fresh offer, which may or may not be accepted.⁶⁰ However sagacious or relevant these arguments may appear, it would seem that what has been made is no more than a statement which is generally held to be applicable to all reservations, that is, that the change in the terms of the treaty must be agreed to by the other parties.

It is true, of course, that the introduction of reservations prior to, or at the time of signature provides a greater degree of notice to the other parties, but any argument insisting upon such notice of proposed reservations prior to ratification fails to take into account the absolute impossibility of such a procedure for countries such as the United States, in which Senate approval is required as a constitutional limitation upon the treaty-making power.⁶¹ It has been said that the negotiation of international treaties is a generally recognized function of the Executive,⁶² but that is not strictly true, since, for example, the Constitution of the United States specifically provides that the President shall have the power to make treaties only "by and with the advice and consent of the Senate," and "provided two-thirds of the Senators present concur."⁶³ While the President need not seek the advice and consent of the Senate prior to the negotiation or signature of the treaty,⁶⁴ it is a matter of absolute necessity that the treaty be submitted to the Senate for approval before it is ratified.⁶⁵ This is done by means of a

⁵⁸ Camara, *The Ratification of International Treaties* 149-150 (1946); also see Malkin, *Reservations to Multilateral Convention*, 7 *Brit. Y.B. Int. L.* 159-160 (1926); and Oppenheim, *International Law* (6th ed., Lauterpact ed.) 820 (1947).

⁵⁹ *International Law* (6th ed., Lauterpact ed.) 820 (1947).

⁶⁰ *Ibid.*

⁶¹ For a complete analysis of the function of the United States Senate, see Butler, *The Treaty-making Power of the United States* (1902), and Crandall, *Treaties, Their Making and Enforcement* (2d ed., 1916).

⁶² Camara, *The Ratification of International Treaties* 150 (1949).

⁶³ Art. II, Sec. 2.

⁶⁴ 5 Moore, *International Law Digest* 197 (1906); Miller, *Reservations to Treaties* 1 (1919).

⁶⁵ 5 Moore, *International Law Digest* 191 (1906); Miller, *Reservations to Treaties* 1 (1919); 2 Hyde, *International Law* 41 (1922).

Senate resolution which authorizes the President to make the ratification, if he is so disposed.⁶⁶ And it was early established that the Senate had the right under the Constitution to reject the treaty entirely, as it did the Treaty of Versailles of 1919, or to make its approval subject to reservations, as in the case of the Algeciras Convention of 1906⁶⁷ and the Hague Convention of 1907 for the settlement of International Disputes.⁶⁸ It is not to be presumed, however, that the formulation of reservations upon ratification is limited to States having a separation of treaty-making powers. Many examples, too numerous to mention, testify clearly that such is not the case.

Where such domestic limitations upon the treaty-making power of a State do exist, however, we might wonder what effect their existence has upon the relations of that State with other nations. It has been said that "there is assumed to be a rule of customary international law that constitutional requirements must be satisfied."⁶⁹ Thus, there is recognition, at least, of the necessity for compliance with constitutional provisions, and it would seem to be a necessary corollary that reservations formulated upon ratification be given like recognition. It is a natural consequence of a separation of the treaty-making power that reservations will be given expression for the first time in the form of a reservation made at the time of ratification. When Senate approval is sought, other points of view are called into play, which found no direct expression in the negotiation and signature of the treaty.⁷⁰

In many cases, even though the negotiations are closed and the treaty is signed, the other parties to the treaty may find no objection to the proposed reservation, and, as we have seen, consent may be implied from acquiescence or subsequent ratification by the other signatories after notice. The real difficulty arises when an objection to the proposed reservation is expressed by one or more of the other parties to the treaty.

Before dealing with the effect of objections to a proposed reservation, it would be well to discuss the formulation of reservations upon accession.

⁶⁶ The President need not make the ratification, however, and may withdraw the treaty from the Senate at his discretion, or withhold from the Senate a treaty already signed. 2 Hyde, *International Law* 44 (1922).

⁶⁷ 2 Malloy's *Treaties* 2183.

⁶⁸ *Ibid.*, at 2247.

⁶⁹ Jones, *Full Powers and Ratification* 141 (1946).

⁷⁰ Owen, *Reservations to Multilateral Treaties*, 38 *Yale L.J.* 1090 (1929).

RESERVATIONS MADE UPON ACCESSION

The technique by which non-signatory States become parties to a treaty has been variously described as accession, adhesion or adherence; and the practice has been developed largely as a result of the conclusion in increased numbers of multilateral treaties. These are often referred to as "law-making" or "legislative" in character, and, as the Harvard Research found, they

frequently envisage a process by which States which did not participate in the negotiation thereof, or which did not affix their signatures thereto, and which cannot therefore, normally at least, proceed to ratification, can become parties to them on a status exactly the same as that enjoyed by those States which negotiated, signed, and ratified them in the normal way.⁷¹

Whether a State is non-signatory because it did not participate in the negotiation of the treaty, or because it chose not to sign it within the period during which it was open for signature, is not significant.⁷² The three terms in common practice are employed interchangeably, but attempts have been made to distinguish them by confining the term "accession" to those situations where a non-signatory State accepts the whole treaty, with all the rights and obligations arising under it,⁷³ and restricting the term adhesion to those situations where there is only a partial acceptance of the treaty. These distinctions, however, are unsupported by the practice of States, and there have been instances where both terms were used to refer to the same process in a single instrument.⁷⁴ The United States Department of State, for instance, favors the term "adherence,"⁷⁵ while in British practice "accession" is more often employed, and in French, the term "adhesion" means either adhesion, accession or adherence.⁷⁶

In recent times, the practice has evolved whereby a State accedes to a treaty, *subject to ratification*, and, because deposit of the instrument

⁷¹ Comment, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 812 (1935).

⁷² 1 Hudson, International Legislation xlvii, n. 1 (1931). "Instances are rare in which a signatory State desires to adhere to an instrument instead of ratifying it."

⁷³ See 1 Oppenheim, International Law (6th ed., Lauterpact ed.) 743 (1947).

⁷⁴ Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 814 citing Protocol of Signature of the Statute of the Permanent Court of International Justice.

⁷⁵ On this point, consult 5 Hackworth, Digest of International Law 75 (1943), where he quotes excerpt from memorandum of Second Assistant Secretary of State (Adee): ". . . Mr. Bacon and I have, in a philological spirit, discussed the word 'adhesion' and on the authority of the Century Dictionary we lean to *adherence*. Adhesion smacks of the gum-bottle." Ibid.

⁷⁶ See 1 Hudson, International Legislation xlvii, n. 2 (1931).

of accession is generally held sufficient, the practice has received a good deal of attention. A thorough discussion of that question, however, is beyond the scope of this article, and it must suffice to say that the practice is not favored, though it is apparently recognized as permissible in the absence of a provision in the treaty to the contrary.⁷⁷

Another problem is frequently raised in connection with the process of accession, and that is whether a non-signatory State may accede to a treaty before it has come into force. The consensus of juridical opinion seems to indicate a negative reply. Hudson, for example, states, "It would seem, also, that until an instrument has come into force, it cannot be adhered to by non-signatory States. . . ."⁷⁸ This view is expressed by the Harvard Research group in Article 12 (b) of their Draft Convention, "Unless otherwise provided in the treaty itself, a State may accede to a treaty only after the treaty has come into force. . . ."⁷⁹

It is generally agreed, therefore, that any instruments of accession received by a depositary must remain without effect until the treaty comes into force.⁸⁰

The most basic concept inherent in the nature of accession is the notion that the process is predicated upon the consent of the parties to the treaty. Hudson writes:

Non-signatory States may not adhere to an instrument without an invitation or permission to do so, given by the signatory States; such an invitation will usually be contained in a provision in the instrument itself, and such provisions are common in recent multipartite instruments.⁸¹

⁷⁷ Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 820 (1935). Compare Article 19 of the Convention on Treaties adopted by the Sixth International Conference of American States (1928), ". . . The adherence shall be deemed final unless made with express reservation of ratification"; and Resolution of the League of Nations Assembly, Sept. 23, 1927, "The Procedure of accession to international agreements given subject to ratification is an admissible one which the League should neither discourage nor encourage;" Official Journal, Spec. Supp. No. 53, at 10. See also 1 Hudson, International Legislation xlviii (1931).

⁷⁸ *Ibid.*, at xlviii.

⁷⁹ 29 A.J.I.L. Supp. 822 (1935).

⁸⁰ See Jones, Full Powers and Ratification 129-131 (1946), for a discussion of this question, upon which, he states, "doubts have arisen." Often cited for the proposition that the effective date of a premature accession is the date the treaty enters into force is the *Treaty for the Renunciation of War* of 1928, where a number of accessions were deposited before the last required ratification brought the treaty into force. The accessions were held ineffective until the treaty came into force between the signatory States. U.S. Treaty Series, No. 796, at 6.

⁸¹ 1 Hudson, International Legislation xlvii-xlviii (1931).

The privilege of accession, furthermore, may be granted to certain States only, or it may be extended to all non-signatory States wishing to adhere to the terms of the treaty.⁸² The latter is accomplished by means of an "open accession clause" and if there is no provision in the instrument for accession by any other States, it is said to be a "closed convention."⁸³

Dependent as it is upon the absolute consent of the signatory States, we may wonder whether an instrument of accession may contain a reservation which will limit the effect of the treaty as it relates to the acceding State. We have seen that the weight of authority would dictate an affirmative answer, but in this case also, as in the case of a ratification made subject to a reservation, the text of the instrument of accession with the reservation must be communicated to the other parties.⁸⁴

Similarly, the consent necessary to give effect to the reservation may properly be implied from failure to object after notification is adequately given.⁸⁵ Here again, acquiescence, not mere silence, is required, and express consent by means of a protocol, or *proces-verbal*, is to be desired.⁸⁶ The generally accepted practice of States with respect to reservations made at the time of accession to a multilateral treaty is apparently very similar to that regarding reservations made at the time of ratification. They must be communicated to all parties for an expression of assent or objection, and consent is the primary factor to be given consideration.

It becomes obvious, from what has been said, therefore, that in reservations forming a part of an instrument of accession, as in the case of

⁸² Consult for a good analysis, Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 828-9 (1935).

⁸³ There is, however, an apparently contrary view expressed in Article 19 of the Havana Convention on Treaties, which is in part as follows: "A State not participating in the making of a treaty may adhere to the same if none of the other of the contracting parties be opposed. . ." 4 Hudson, International Legislation 2378 (1931).

⁸⁴ This includes, in view of the Harvard Research group, both the signatory States, whether they have ratified or not, and all States which have previously acceded to the treaty. Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 905-11 (1935); but the Secretary General would, of course, limit the consent required to only those Signatory States which have ratified, and non-signatory States which have already acceded. U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950) at 19-20.

⁸⁵ Miller, Reservations to Treaties 148-154 (1919).

⁸⁶ Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 911 (1935).

ratification, or signature, the most difficult problems are presented when an actual objection is expressed by one or more of the parties to the treaty.

OBJECTIONS TO RESERVATIONS

It is felt that any inquiry into the legal consequences which emanate from an expressed refusal of one of the parties to accept a reservation, whether proposed at the time of signature, ratification or accession, must concern itself with an analysis of the opposing views which prevail regarding the juridical relationship existing between the parties to the treaty. It is considered, therefore, that the discussion resolves itself into a question of whether one State, which was a party to the negotiation of a treaty, or has bound itself to the terms thereof, has by such action acquired the right to exclude from participation in the treaty another State which has proposed a reservation found to be objectionable. This is summarized by Fenwick, who states, after explaining that the difficulty arises when, out of a large number of signatories, certain States are unwilling to accept the proposed reservation:

In such cases there is a choice of two distinct procedures, either to exclude the state proposing the reservation from participation in the treaty, or to permit it to participate with the large majority who are willing to accept its reservation, leaving the treaty without effect in relation to the States unwilling to accept the reservation.⁸⁷

The first of these procedures was adopted by the League of Nations, and is now the recognized policy of the Secretary-General of the United Nations.⁸⁸ The second procedure is followed by the Pan American Union in discharging its function as depositary in connection with inter-American treaties. Because of the great diversity of opinion which exists concerning the effect to be given an objection to proposed reservations, specific reference to practices that have been followed in particular treaties can serve no other purpose than to illucidate the dychotomy which the practices themselves reflect. They cannot be deemed authority for one or the other positions maintained.

The primary purpose of this article is to determine which of the two procedures deserves juristic preference, in the light of the present stage of development of international law.

⁸⁷ Fenwick, *Reservations to Multilateral Treaties*, 45 A.J.I.L. 145 (1951).

⁸⁸ U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950) at 4.

PRACTICE OF THE LEAGUE OF NATIONS

Let us consider first the so-called "unanimity rule" as promulgated and practiced in the League of Nations.

The practice of the League of Nations adhered to the concept of consent which is embodied in the so-called "unanimity rule." Reservations must have been consented to by at least *all* of the other parties to the treaty to be effective, and this principle was given expression by the League Assembly by its adoption in 1927 of the report of a Committee of Experts for the Progressive Codification of International Law, prepared on the "Admissibility of Reservations to General Conventions."⁸⁹ This report followed the British objection to reservations made by Austria to the Convention on Traffic in Opium and Drugs of February 19, 1925,⁹⁰ and provided, in part, as follows:

In order that any reservation whatever may be validly made in regard to a clause of the treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations. If not, the reservation, like the signature to which it is attached, is null and void.⁹¹

This rule was adhered to in connection with the Protocol for the Revision of the Permanent Court of International Justice of September 14, 1929, when Cuba ratified with certain reservations which were objected to by other States that had ratified the Protocol previously. Cuba, upon the advent of these objections, withdrew its reservations and deposited a new ratification without reservations on March 14, 1932.⁹²

The Assembly stated at that time that it considered it to be the rule that "a reservation can only be made at the moment of ratification if all the other signatory States agree or if such a reservation has been provided for in the text of the convention."⁹³

⁸⁹ League of Nations Official Journal 800 (1927).

⁹⁰ League of Nations Official Journal 612 (1926); 3 Hudson, International Legislation 1589 (1931); and see Hudson, Reservations to Multipartite International Agreements, 32 A.J.I.L. 33 (1938).

⁹¹ League of Nations Official Journal 881 (1927).

⁹² See, for complete analysis, Hudson, The Cuban Reservation and the Revision of the Statute of the Permanent Court of International Justice, 26 A.J.I.L. 590 (1932); League of Nations Official Journal, Records of the Twelfth Assembly, Plenary 139 (1931).

⁹³ Resolution adopted on September 25, 1931, League of Nations Official Journal, Records of the Twelfth Assembly, Plenary 139 (1931).

Thus, a ratification or accession⁹⁴ containing reservations was not considered as definitively deposited until the Secretary-General made it known to the other governments concerned, and an acceptance thereof could be implied or was expressed. If an objection was received, the reserving State would be informed of such fact and would be requested to decide whether it wished to ratify or accede without reservation or, as its only alternative, refrain from participation in the treaty altogether.

This practice was in principle justified by the use of a theory which presupposes that a multilateral treaty is "an agreement in which each party finds compensation for the obligations [it has] contracted in the engagements entered into by the others."⁹⁵ Or, stated another way, "the consideration for the acceptance of the contract by any one party is its acceptance by the others."⁹⁶ In this way it is argued that a multilateral agreement is one whole and single offer, which must be accepted unanimously by all the parties without qualification.

Whether or not treaties of a multipartite nature are susceptible of such a construction or whether only certain classes of treaties are in essence properly so defined will be discussed below.⁹⁷ Such an interpretation, however, formed the basis of the League of Nations practice and still exists as the underlying principle in support of the continuing practice of the Secretariat of the United Nations.

PRACTICE OF THE PAN AMERICAN UNION

The dissimilarities existing between the practice of the League and that of the Pan American Union are of a fundamental character. While under the Pan American view, sometimes referred to as the "liberal rule," the consent to a reservation by all the parties must be sought, as under the "unanimity rule," the non-acceptance of the reservation by any State creates entirely different legal consequences re-

⁹⁴ The United States and Hungary acceded to the Slavery Convention of September 25, 1926, with reservations which were received by the Secretariat of the League of Nations subject to acceptance by the States which had signed or acceded to the treaty, and the reservations were communicated to these States for their acceptance or rejection. League of Nations Document A.17.1930.VI., p. 2; and see Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 910 (1935).

⁹⁵ League of Nations Document A.10.1930.V., p. 2.

⁹⁶ Malkin, Reservations to Multilateral Conventions, 7 Brit. Y.B. Int. L. 142 (1926).

⁹⁷ See page 69 *infra*.

garding the status of the treaty as it relates to the reserving and objecting States.

The preparation of treaties under the auspices of the Pan American Union has been governed to a large extent by the Convention on Treaties adopted at the Sixth International Conference of American States held at Havana from January 16 to February 20, 1928.⁹⁸ It contained the following provision:

In International treaties celebrated between different States, a reservation made by one of them in the act of ratification affects only the application of the clause in question in the relation of the other contracting States with the State making the reservation.⁹⁹

Subsequently, the Governing Board of the Pan American Union adopted a resolution formulating rules to govern the procedure to be followed by it in the exercise of its functions as a depositary for treaties.¹⁰⁰ The resolution provided for the receipt by the Pan American Union of ratifications including reservations, the communication of the deposit of such instruments of ratification and reservations to the other States, the receipt of replies either accepting or objecting the reservations, and the communication of such replies to all the signatory States. The resolution further provided, however, with respect to the juridical status of treaties ratified with a reservation to which objection had been made, that the Governing Board understands:

1. The treaty shall be in force, in the form in which it was signed, as between those countries which ratify it without reservations, in the terms in which it was originally drafted and signed.

2. It shall be in force as between the Governments which ratify it with reservations and the Signatory States which accept the reservations in the form in which the treaty may be modified by said reservations.

3. It shall not be in force between a Government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations.¹⁰¹

A few years later, at Lima, another resolution adopted by the Governing Board of the Union supplemented the treaty procedure, and it provides:

2. In the event of adherence or ratification with reservations, the adhering or ratifying State shall transmit to the Pan American Union, prior to the deposit of the respective instrument, the text of the reservation which it proposes to

⁹⁸ 4 Hudson, *International Legislation* 2378 (1931).

⁹⁹ *Ibid.*, at 2381.

¹⁰⁰ Resolution adopted May 4, 1932.

¹⁰¹ Eighth International Conference of American States, *Special Handbook for the Use of Delegates, Pan American Union* 57-58 (1938).

formulate, so that the Pan American Union may inform the signatory States thereof and ascertain whether they accept it or not. The State which proposes to adhere to or ratify the Treaty, may do it or not, taking into account the observations which may be made with regard to its reservations by the signatory States.¹⁰²

The effect of the Lima Resolution, it is seen, is merely to give the reserving State an opportunity to determine, before completing its ratification through deposit, the objections which the other signatory States might have to its reservation. The reserving State may still, however, after obtaining any observations or objections, proceed to ratification. Should there be any objection to its reservation, the treaty will not be in force and effect as between the reserving State and the objecting State.¹⁰³

The basic factor underlying the Pan American practice, as it has developed, is wider participation, even though limited as to some States. No State, however, is forced to be bound by a treaty in its relation to any party which has made a reservation to which it objects.

It is felt that the advantages of the practice are immediately apparent when viewed in the light of the desirability of permitting a maximum number of States to become parties to a convention, despite the fact that some of them have undertaken "to apply only a portion of the text and exchange that undertaking with only a portion of the parties."¹⁰⁴

PRACTICE OF THE UNITED NATIONS

The procedure followed by the Secretary-General of the United Nations with respect to treaties of which it is a depositary conforms rigidly to the principles enunciated by the League of Nations.¹⁰⁵ Numerous instances of this are cited by the Secretary-General in a report concerning reservations to multilateral conventions dated September 20, 1950. For example, in connection with the entry into force of the Constitution of the International Refugee Organization, the reservations made by several States were circulated to all parties and a date specified within which they were to make their observations or objec-

¹⁰² Final Act of the Eighth International Conference of American States 48 (1938).

¹⁰³ For an illuminating discussion regarding the addition of the requirement of the Lima resolution, see Sanders, *Reservations to Multilateral Treaties Made in the Act of Ratification or Adherence*, 33 A.J.I.L. 488 (1939).

¹⁰⁴ U.N. Doc. A/1372 Report of Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950).

¹⁰⁵ *Ibid.*, at 3-4.

tions. The Constitution was not considered as having entered into force until that date had passed.¹⁰⁶

Similarly, the ratification of the World Health Organization by the United States containing reservations was not considered by the Secretary-General to have been effectively deposited until it was unanimously accepted by the World Health Assembly.

It should be stated that the procedure followed by both the League of Nations and the Secretariat of the United Nations is in accord with the view of the majority of international jurists and publicists. Although this is not to say that by reason of such authority it is felt that the "unanimity rule" is to be preferred, the position of the Secretariat can on this basis be justified.

It would seem that the view which is expounded by the Harvard Research in International Law, and which forms a basic part of that portion of its Draft Convention on the Law of Treaties relating to reservations, lends support to the view of the League and United Nations. It is commented on, in part, as follows:

When a State proposes to make a reservation to a multipartite treaty, whether at signature, ratification, or accession, it seeks in effect to write into the treaty at that time "certain terms which will limit the effect of the treaty in so far as it may apply in the relations of that State with the other State or States" which are or which become parties to the treaty. It proposes, in effect, to insert in the treaty a provision which will operate to exempt it from certain of the consequences which would otherwise devolve upon it from the treaty, while leaving the other States which are or which become parties to the treaty fully subject to those consequences in their relations *inter se* and possibly even in their relations *vis-à-vis* the State making the reservation. It seems clear that a State should be permitted to do this only with the consent of all other States which are parties, or which, as signatories, are likely to become parties to the treaty, and this because, as has been said, States are willing in general to assume obligations under a multipartite treaty only "on the understanding that the other participating Powers are prepared to act in the same way and that general benefit will thus result." A multipartite treaty is "an agreement in which each party finds a compensation for the obligations contracted in the engagements entered into by the others."¹⁰⁷

It should be noted, however, that the authors of that work merely adopted the rule formulated by the Committee of Experts for the Progressive Codification of International Law mentioned above;¹⁰⁸ and

¹⁰⁶ *Ibid.*, at 5.

¹⁰⁷ Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 A.J.I.L. Supp. 870 (1935).

¹⁰⁸ See page 59 *supra*.

relied upon the "single offer" theory of multilateral treaties.¹⁰⁹ But other jurists, as well, had subscribed to the rule of unanimity. Sir Henry Malkin in 1926 had this to say:

If, however, any party is entitled, without the consent of the other signatories, to pick out of the convention any provisions to which it objects and exclude them by means of a reservation from the obligations which it accepts, it is obvious, not only that the object of the convention might be largely defeated, but that the consideration indicated above is impaired or even destroyed; the other signatories are not in fact getting what they bargained for.¹¹⁰

And Judge Arnold McNair supports the view above when he states that ". . . it is essential that all other parties to the treaty should assent to the making of the reservation. If they do not, the signature or ratification or accession which the reservation purports to qualify is a nullity."¹¹¹

It would seem that the rule of unanimity expressed by the authorities cited is little more than an example of wide acceptance being given English International Law. In contrast, it has been stated that the Russian view favors unanimous consent,¹¹² but it should be pointed out that, in answer to an objection by Chile to a reservation made by the Soviet Union in connection with its adherence to the International Convention for Facilitating the International Circulation of Films of an Education Character of 1933, the Government of the Soviet Union proposed that the convention should not bind Chile in relation to the Union of Soviet Socialist Republics, but would apply as between the Soviet Union and the States which had accepted the reservation.¹¹³

Green Hackworth, Legal Adviser of the Department of State of the United States, apparently contrary to the British view, admits that a departure from the rule of unanimity may be possible. He states:

Whether a multilateral treaty may be regarded as in force as between a country making a reservation and countries accepting such reservation, but not in

¹⁰⁹ This theory is discussed more fully *infra* at page 69, and is to be distinguished from the view which contemplates a multipartite agreement as an aggregate of bilateral obligations.

¹¹⁰ Malkin, *Reservations to Multilateral Convention*, 7 *Brit. Y.B. Int. L.* 142 (1926).

¹¹¹ McNair, *The Law of Treaties* 106 (1938).

¹¹² U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950) at 8-9, quoting from *Institut Prave Akademii Nauk SSSR, Mezhdunarodnoe Pravo* (Moscow, 1947) at 388.

¹¹³ 155 *League of Nations Treaty Series* 332 (1933); Department of State, 90 *Treaty Information Bulletin* 14 (1937).

force as regards countries not accepting the reservation, depends upon whether the treaty as signed is susceptible of application to the smaller group of signatories.¹¹⁴

David Hunter Miller also takes this more liberal view when he declares:

The conclusion reached on the subject is that reservations to a treaty, of whatever nature, require the assent of the other signatory Power or Powers, and that in the absence of such assent, the treaty is not in force as between the declarant and Powers which have not so assented; for the reservations made by the declarant is a *part* of the agreement of that Power and acceptance of the *whole* agreement by the other Party or Parties thereto is essential.¹¹⁵

It is needless to say that there is now, as there always has been, a wide divergence in the opinions of the international jurists and governments; and it is readily apparent that the coexistence of the two practices, that of the Pan American Union to which the United States of America is a party, and of the League of Nations to which it was not, has provided little aid in the solution of the problems attending reservations to multilateral conventions. The United States is now a member of the United Nations, as are many other members of the Pan American Union, and each of these States, like the other members, are determined:

to establish conditions under which justice and respect for the obligations arising from treaties . . . can be maintained, and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. . . .¹¹⁶

It is the purpose of the United Nations to be a center for harmonizing the actions of nations in the attainment of those ends.

It was the uncertainty which presently exists with respect to the propriety of following one or the other of the variations in depositary procedures which persuaded the Secretary-General of the United Nations to place before the General Assembly the question of the effect to be given an objection to a proposed reservation, as well as the question previously discussed concerning the effect to be given an objection made by a signatory State which had not yet ratified the convention. He said:

2. While it is universally recognized that the consent of the other Governments concerned must be sought before they can be bound by the terms of a

¹¹⁴ 5 Hackworth, *Digest of International Law* 130 (1943).

¹¹⁵ Miller, *Reservations to Treaties* 160 (1919).

¹¹⁶ Preamble to the Charter of the United Nations; Article 1, para. 2.

reservation, there has not been unanimity either as to the procedure to be followed by a depositary in obtaining the necessary consent or as to the legal effect of a State objecting to a reservation.

. . . The Secretary-General has felt it his duty to place clearly before the General Assembly, for its approval and advice, the principles which he has considered necessary to follow in the interests both of efficient performance of depositary functions and of the maximum usefulness of multilateral conventions in the development of international law.¹¹⁷

This request arose out of the recent Convention on the Prevention and Punishment of the Crime of Genocide to which a number of States had made reservations either at the time of signature, ratification or accession.¹¹⁸ The Soviet Union, Bulgaria, Czechoslovakia and Byelorussia proposed similar reservations seeking to avoid reference of disputes to the International Court of Justice without the consent of all parties, and to extend the provisions of the convention to non-self-governing territories. A Philippine reservation sought, *inter alia*, to insure for its Head of State the same immunity guaranteed by its Constitution.

Objections to some or all of these reservations were expressed by Australia, Ecuador and Guatemala, which States had previously ratified the Convention without reservation.¹¹⁹ While the Convention entered into force as a result of the deposit of twenty-two ratifications, and a *proces-verbal* was drawn up on October 14, 1950, with effect from January 12, 1951, the question still remained as to the procedure to follow in counting instruments of ratification toward those required by the Convention to bring it into force.

In response to the Secretary-General's report, the Sixth Committee recommended that the General Assembly refer to the International Court of Justice for an advisory opinion the question of the effect of reservations specifically to the Genocide Convention, and, by a resolution adopted in its fifth session, this was done.¹²⁰ In addition, the General Assembly referred to the International Law Commission the larger problem of reservations to multilateral conventions generally, to be studied "both from the point of view of codification and from that of the progressive development of international law."¹²¹

¹¹⁷ U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950) at 3.

¹¹⁸ For the full text of the reservations made, see *Ibid.*, Annex 1 at 22-27.

¹¹⁹ For a discussion of these facts, see Reservations to the Genocide Convention, 45 A.J.I.L. 149 (1951).

¹²⁰ U.N. General Assembly, 5th Session, Doc. A/1517 (Nov. 16, 1950).

¹²¹ *Ibid.*

The advisory opinion of the International Court of Justice, which was rendered on May 28, 1951, was, of course, restricted in its application to the Genocide Convention, and was reached by seven votes to five.¹²² The majority opinion, cognizant of the special character of the Genocide Convention as an instrument of great interest to the entire international community, advised that a State which has made a reservation, even though it is objected to by other parties, may be regarded as being a party to the Convention "if the reservation is compatible with the object and purpose of the Convention." The minority of the Court, in a joint dissenting opinion, criticized the majority ruling and stated that there was no legal basis in international law for such a "new" rule. Further, it felt that, under such a system, there would be no practical means of determining whether a reservation was compatible with the object and purpose of the Convention. Thus, in the minority opinion, the "unanimity rule" was advocated as the existing rule of international law, supported by the weight of authority and United Nations practice.

Nevertheless, the General Assembly, by a resolution adopted January 12, 1952, recommended that States be guided by the Advisory Opinion of the Court with respect to the Convention.¹²³

Of greater concern for our purposes, however, is the report of the International Law Commission which was rendered on August 23, 1951, and which covered the broader problem of Reservations to Multilateral Agreements in general. The Commission had before it the advisory opinion of the International Court of Justice, and reviewed the existing practices of the Pan American Union and the Secretariat of the United Nations. It concluded that the practice of the Organization of American States, while perhaps suitable for their needs by reason of their common historical traditions and close cultural bonds, was not to be recommended for application to multilateral conventions in general.¹²⁴ Similarly, the "criterion of the compatibility of a reservation with the object and purpose of a multilateral Convention, applied by the International Court of Justice" was not considered suitable for application as a general rule, for the reason that the status of the reserving State is too uncertain.

Thus, the Commission, in recommending a rule which it felt to "be

¹²² I.C.J. Reports, 1951, p. 15.

¹²³ U.N. General Assembly, 6th Sess., Doc. A/L.37 (Jan. 14, 1952).

¹²⁴ General Assembly, 6th Sess., Official Records, Supp. No. 9 (A/1858), p. 5 (1951).

the least unsatisfactory and suitable for application in the majority of cases,¹²⁵ adopted the "unanimity rule" practiced by the United Nations Secretariat and advocated by the minority of the International Court of Justice.

While it recognized that it is desirable that multilateral conventions should have the widest possible acceptance, the Commission felt that it was also desirable to maintain uniformity in the obligations of all the parties to them, and it was considered that "it may often be more important to maintain the integrity of a Convention than to aim, at any price, at the widest possible acceptance of it."¹²⁶

The report of the Commission was not adopted by the General Assembly however, and instead, the Secretary-General was instructed to accept the deposit of documents containing reservations or objections "without passing upon the legal effect of such documents," and to communicate the text of such documents to all States concerned, "leaving it to each State to draw the legal consequences from such communications."¹²⁷

It has been said that the rejection of the Report of the International Court of Justice represented the desire of the majority to obtain greater flexibility in the obligations of treaties through reservations.¹²⁸ It is obvious that no solution to the problem has as yet been reached.

Ancillary to an examination of the practices of these depositary authorities in the exercise of their respective functions, it may not be amiss to consider the juridical nature of the reservation *per se*. More specifically, we should seek to appreciate the legal consequences which flow from the introduction of a change in the terms of a treaty. Generally speaking, a reservation may either take the form of an exception of particular provisions or limitation of the application of certain provisions to the reserving State.¹²⁹ Basic to the nature of a reservation is the fact that in no case does it seek to affect the relations of the non-reserving States to each other.¹³⁰ Thus, the other parties are bound by

¹²⁵ *Ibid.*, at 6.

¹²⁶ *Ibid.*

¹²⁷ U.N. General Assembly, 6th Sess., Doc. A/L.37 (Jan. 14, 1952).

¹²⁸ Fenwick, *When is a Treaty Not a Treaty?*, 46 A.J.I.L. 297 (1952).

¹²⁹ 1 Hudson, *International Legislation* 1-li (1931).

¹³⁰ The Harvard Research commented on this point: [A reservation is a formal declaration which will limit the effect of the treaty] "in so far as it may apply in the relation of that State with the other State or States which may be parties to the Treaty." Harvard Research on International Law, *Draft Convention on the Law of Treaties*, 29 A.J.I.L. Supp. 865 (1935).

the reservation only in their relations toward the reserving State.¹³¹ Notwithstanding the general acceptance given this premise, some writers argue that because a multilateral treaty is a single contract, any exclusion from, or modification of, the terms thereof which is not acquiesced in by all of the other parties is null and void, since there is no meeting of the minds. Sir Henry Malkin, for instance, in his excellent article, *Reservations to Multilateral Conventions*, maintains this view when he declares:

Multilateral conventions are after all only a form of contract in which the consideration for the acceptance of the contract by any one party is its acceptance by the others.¹³²

Because this argument is so basic to the nature of reservations and their attendant problems, it must be considered in its full perspective. It is felt that it can have no validity outside the sphere of bilateral treaties, or, at most, treaties of a multilateral character which require the deposit of ratifications from all of the signatory states. The argument is unsound for the reason that it purports to lay down a general rule applicable to all multilateral conventions, and the nature of multilateral treaties today, in seeking wide participation, is such that one State does not normally condition its acceptance of the terms of a treaty upon the acceptance of those same terms by *all* the other parties.

It is a well-settled and almost universally recognized rule, basic to the law of treaties, that no State is bound to ratify a treaty which it has signed unless it wishes to do so.¹³³ The Draft Convention adopted by the Harvard Research on the Law of Treaties provides unequivocally, "The signature of a treaty on behalf of a State does not create for that State an obligation to ratify the treaty."¹³⁴ And the Havana Convention on treaties speaks of "refusal to ratify" as an act "inherent in national sovereignty" and as such constitutes "the exercise of a right which violates no international stipulation or good form."¹³⁵

¹³¹ Hudson states, however, that their relations may be affected if they so choose, "a reservation made by one party may be adopted by the other parties for their relations *inter se*; if not so adopted, it would have no application to such relations in the absence of a provision to the contrary." 1 Hudson, *International Legislation* 1 (1931).

¹³² Malkin, *Reservations to Multilateral Conventions*, 7 Brit. Y.B. Int. L. 142 (1926).

¹³³ See 2 Hyde, *International Law* 41-43 (1922); and Crandall, *Treaties, Their Making and Enforcement* 2 (2d ed., 1916). See also 1 Oppenheim, *International Law* 818 (6th ed., Lauterpact ed. 1947).

¹³⁴ Article 8, 29 A.J.I.L. Supp. 769 (1935).

¹³⁵ Article 7, 4 Hudson, *International Legislation* 2381 (1931). This article also provides that the "formulation of reservations" are in the same category.

Hence, it has often been the case that States which have participated in the negotiation and signature of a treaty have found it inadvisable for one reason or another to ratify. The Treaty of Versailles is an outstanding example. If, then, the consideration for the acceptance of a treaty by one State is the acceptance thereof by all States, as Sir Henry Malkin suggests, the failure of any one State to ratify the treaty confers upon a State which has previously ratified it the right to withdraw its ratification, even though it may have entered into force by the deposit of a required number of other ratifications. Such a position is unreasonable, and, having no foundation in the practice of States, is completely untenable.

Furthermore, it is submitted that no error can be found in stating that since, in these cases where ratification is not required to bring the treaty into force, the failure of a signatory State to ratify leave unaffected the relationship of the other parties, the situation is analogous to the deposit of a ratification with reservations. In both cases, the relations of the other parties *inter se* are left unaffected, and if one of the other States wishes to do so, it may register an objection to the reservations, rendering the treaty without legal force as between itself and the reserving State. Thus, it cannot be said that the reserving State has greater rights, as against the objecting State, though it does participate in the treaty.

The most significant defects in the arguments advocating the rule of unanimous consent are the very consequences which the exercise of the rule may bring about. Clearly, when a State finds that it cannot accept a proposed reservation, and finds, even in all sincerity, that it must object to it, the only conceivable consequence is one of destruction, rather than construction. This may be best illustrated by means of an example. Suppose, for hypothetical purposes, States A, B, C, D and E, with others, conclude negotiations and signature of a treaty which is to come into force after the deposit of ten ratifications, and State A attaches a reservation to its ratification which limits the effect of the treaty by excepting the application of certain of its provisions to that State. Let us suppose some of the other States, including State B, had previously ratified without reservation.

If all of the States consent to the reservation, the application of the clauses in question will only affect the relations of State A with the other States; their relations *inter se* will be unaffected. If, however, State B objects to the reservation, the objection will have the deleteri-

ous effect of excluding State A from participation in the treaty, while the relations as between all the non-reserving States will be unchanged. No valuable purpose, therefore, can be served by requiring unanimous consent to reservations, especially where the ratification of all the parties to the treaty is required, since the treaty would fall.

It cannot be argued by State B, the objecting State, that it has given State A more than it has received, since the treaty will not be in force as between State A and State B, a result which is the same as would occur if State A were excluded from participating in the treaty altogether. It is felt that a State which is forced, in order to balance its own domestic interests, to attach a reservation to its ratification will in the majority of cases be perfectly willing to discharge faithfully its duties and obligations arising out of the other provisions of the treaty to which it has subscribed.

Some writers, however, have envisaged a situation in which a proposed reservation would work such a substantial change in the rights and obligations of the reserving State as to be in effect a rejection of the terms of the treaty.¹³⁶ Miller contemplates this possibility when he states:

There are limits, difficult to define, beyond which a reservation may not go. A declaration which is in substance a rejection of the terms of a treaty cannot be called a reservation.¹³⁷

Treaty practice, on the other hand, has indicated that such is not usually the case and, were such a situation to arise, there should be no difficulty in rendering ineffectual the one-sided attempt to participate in the treaty. It is felt that the terms of any such reservation would be so objectionable to all or the greater part of the other States as to exclude the reserving State, for all partical purposes, from participation in the agreement.

Application of the practice of the Organization of American States to treaties concluded under the auspices of the United Nations has been felt to be unwarranted on the ground that there is a distinction to be drawn between the types of treaties concluded under each of the two systems.

It has been said that the treaties made under the United Nations are of a law-making character, not of mere contract, and, because they are multilateral in their purpose as well as their essential juridical ef-

¹³⁶ See 1 Hudson, *International Legislation* li (1931).

¹³⁷ Miller, *Reservations to Treaties* 79 (1919).

fect, they contemplate no reservations to which objections have been expressed.¹³⁸

To sustain this position, reference is made to the distinction advanced by McNair between treaties which are in the nature of contractual bargains and those which are of a legislative or constitutional character.¹³⁹ This distinction is well taken, but it does not follow logically that because of its legislative character the conclusion of a treaty should be subject to the rule of unanimous consent to reservations. For, after all, it is not contended that no reservations are possible in such a treaty but merely that reservations are not possible if objected to by any other party. It is not, therefore, the character of the treaty which controls the uniformity of its acceptance, but the objection. If a reservation by one State is not objected to by any other State, the obligations of the parties are not clearly equal, and the legislative character of the treaty has nothing to do with it.

Something more may be said, however, for restricting reservations to treaties which are of a constitutional or organizational nature, since in that case, it is the participation of all the States which serves as an inducement to each State, and reservations regarding the obligations of the parties would violate the object and purpose of the treaty. But in such a Convention it might easily be provided that no reservations will be permitted. Here again, however, it is not a question of unanimous consent to reservations, but of the permissibility of reservations.

In the final analysis, the different legal characteristics of the many types of treaties is not the criterion for deciding whether a State should be allowed to participate in a limited way, rather than not participate at all. The answer certainly is not exclusion by reason of the objection of one State.

The Secretary-General of the United Nations Secretariat, in a recent report regarding reservations to multilateral conventions, stated that the practice followed by the Pan American Union was well adapted to the needs of a regional agency and "to the close relations existing between States within a defined geographic area."¹⁴⁰ Likewise,

¹³⁸ U.N. Doc. A/1372 Report of the Secretary-General on Reservations to Multilateral Conventions (Sept. 20, 1950) at 12-13.

¹³⁹ McNair, *The Functions and Differing Legal Character of Treaties*, 11 *Brit. Y.B. Int. L.* 100 (1930).

¹⁴⁰ U.N. Doc. A/1372 at 2 (1950). The Secretary-General also distinguished the Pan American Practice from that of the United Nations by reason of the nature of the conventions which were concluded, that is, he stated that the conventions of the Pan American States, "although multilateral in form, are in operation simply a complex of

to sustain its restricted application, the Report of the International Law Commission referred to the common historical traditions and close cultural bonds of the organization of American States. The points raised are debatable. Can it be said that it is little more than the geographical and cultural proximity of the States which gave birth to that concept of international treaty practice, or was it a spirit of cooperation seeking to create harmonious relations between independent States on the widest possible basis? The latter explanation is preferred. The conflicts of interest, both national and international, which exist in the whole international community at the present time fervently bespeak the great need for international cooperation and harmony. This political disunity is the very evil which we are seeking to reduce. Mr. Yepes of the International Law Commission advocated the adoption by that body of the Pan American practice and stated:

(1) If the so-called Pan American system of making reservations could be successfully applied to a complex of States closely linked together and in intimate relations such as the Organization of American States, it could *a fortiori* be applied to a much vaster organization more loosely linked together such as the United Nations, whose universal character makes it less exacting in this respect than a purely regional organization such as the Organization of American States.¹⁴¹

Furthermore, it was maintained by Mr. Yepes:

(2) As the Pan American system was, in his opinion, used in practice by the majority of the Members of the United Nations, it could be regarded as the existing law in the matter and, for that reason, should have been adopted by the Commission.¹⁴²

Thus it is seen that the proposal here made is not original, nor is it totally unrealistic. It is felt that its adoption as a general rule of international law will best serve the needs of the present time with respect to the conclusion of international agreements. A multilateral treaty is an instrument of cohesion and friendship; its function is to conciliate, to transform utter diversity into a system of at least approximated unity.

The rule requiring unanimous consent to reservations by all parties to a convention does little more than extend the veto into the sphere

bilateral agreements." Multilateral conventions drawn up under the auspices of the United Nations, on the other hand, were of a world-wide character by which States in very diverse circumstances agree to be bound.

¹⁴¹ General Assembly, 6th Sess., Official Records, Supp. No. 9 (A/1858) at 5 (1951).

¹⁴² *Ibid.*

of the treaty-making process. The conclusion that adherence to the "unanimity rule" would have the effect of preventing, or at least discouraging, reservations is unfounded in fact and is not substantiated by actual practice. The finished draft of a given convention is generally an expression of the will of the majority of the negotiators, and if a State finds certain provisions to be unacceptable, it must either make a reservation to the convention or refrain from participation in the treaty altogether. Which, then, is the more desirable alternative—limited participation or none at all? A rule which permits the widest possible participation, it is felt, is certainly to be desired, so long as the basic structure of the treaty is not impaired.

It is humbly submitted that these ends can in nowise be served by a rule which contravenes the spirit of compromise and makes impossible the very cooperation which is sought to be established. The international community of today, in its present stage of development, is primarily concerned with international peace and understanding; this is no longer a world dominated by the laws of "war, peace and neutrality"; and the office of governments and statesmen today is to construct, not destroy, that understanding, the lack of which for so long has plagued mankind.

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