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# Multilateral Treaties: An Assessment of the Concept of Laterality\*

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with the assistance of  
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## I. INTRODUCTION

There can be no doubt that treaties form an absolutely essential part of the fabric of modern international law. If anything, the predominance of treaties over custom has increased in the fifty years since Manley O. Hudson remarked that multilateral treaties are the hope of mankind.<sup>1</sup> At the outset it is desirable to acknowledge the perspective taken here and in companion pieces.<sup>2</sup> Most international legal research approaches treaties in a decidedly microscopic way. In fact, most international legal research focuses either on a single treaty or, at most, on a small group of treaties. The contention here is not that these microscopic studies are not useful; quite the contrary, they have contributed significantly to an understanding of international law. But in order to have a thorough understanding of treaties, one must combine macroscopic and microscopic approaches. This article falls decidedly into the macroscopic category. Of course, macroscopic and microscopic approaches, while intellectually complementary, to a degree compete with each other. For example, a study such as this which looks at the totality of post-World War II multilateral treaty-making cannot look in detail at many individual treaties. In a sense, the detail

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1. INTERNATIONAL LEGISLATION AT XVI (M. Hudson ed. 1931).

2. See Gamble, *Reservations to Multilateral Treaties: A Macroscopic View of State Practice*, 74 AM. J. INT'L L. 372 (1980), and Gamble, *Multilateral Treaties: The Significance of the Name of the Instrument*, 10 CAL. W. INT'L L.J. 1 (1980) [hereinafter *Multilateral Treaties*].

generic to most legal research must be sacrificed.

An aspect of treaties that has received little critical attention is laterality. But there can be no questioning its importance. The most basic questions about any treaty are what is its content and who are the parties. Since content obviously disposes parties, it could be argued that parties are the most important aspect of treaties. It is surprising and disturbing that most analyses of treaties distinguish only between bilateral and multilateral treaties. According to most definitions, multilateral treaties consist of those treaties having anywhere from three to 160 parties. Even the most cursory examination of treaties then suggests that two such categories are inadequate.

Before surveying some of the literature about laterality, it is necessary to discuss matters of terminology. It has been pointed out, quite accurately, that the designation "laterality" might refer both to the nature of the obligation created by a treaty and to the number of parties to the treaty. Fenwick, among others, felt that laterality should refer to the obligations created and that partite is the proper term for the number of states participating.<sup>3</sup> Lord McNair showed sensitivity both for the way terms *should* be used and the way they have come to be used in the lexicon of international law:

Likewise, the term 'multilateral treaty' should denote one containing three or more 'sides' or 'parties' in this sense and creating obligations between each possible pair or some of them. Nevertheless, as the terms 'bipartite' and 'multipartite' cannot be said to be fully domiciled in the vocabulary of international law, and the terms bilateral and multilateral are constantly used to denote treaties made between two or many parties regardless of their content. . .<sup>4</sup>

In order to remain consistent with common usage, this article will use "laterality" to mean the number of parties, not the number of obligations. However it must be acknowledged that the arguments about different uses of the term laterality are valid.

The approach to laterality taken here will proceed on several fronts. First, the literature on the subject will be surveyed to illustrate that most approaches to laterality oversimplify reality. Second, a classification system (typology) will be suggested based on

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3. C. FENWICK, INTERNATIONAL LAW 518 (4th ed. 1965).

4. LORD MCNAIR, THE LAW OF TREATIES 30 (1961).

an exhaustive examination of all multilateral treaties entering into force between 1945 and 1972. Third, this typology will be related to other important treaty characteristics to see what patterns and trends exist. This analysis will be limited to multilateral treaties. Bilateral treaties, having exactly two parties, do not suffer the distortion characteristic of multilateral treaties when placed in a single category; thus they are excluded from further discussion.

## II. APPROACHES TO THE CONCEPT OF LATERALITY

One is immediately struck by the fact that most scholarly literature acknowledges only two categories of treaties defined by laterality: bilateral and multilateral. A few examples will suffice. Hodges remarked that bilateral treaties involved two parties while multilateral treaties "may involve large numbers of states."<sup>5</sup> The impression here is striking; bilateral treaties are strictly determined, while multilaterals are permitted to vary, presumably the only limit being the total number of states. Fawcett made a similar point while dwelling at some length on the distinction between laterality and partite.<sup>6</sup> One would imagine that such concern for detail would preclude lumping all multilateral treaties together in a single category. Interestingly, the Harvard Research on International Law paid considerable heed to the fact that at least two States must be involved to satisfy the definition of a treaty; but it attempted no distinction as the number of parties increased beyond two.<sup>7</sup>

There is general agreement among scholars that the name of the instrument of a treaty has no legal significance.<sup>8</sup> In spite of this admission, many authorities engage in considerable discussion on the various instrument names and neglect laterality which, by definition, has clear legal importance because it controls the number of States that can be bound by a treaty. A good example here is Gamboa who stated "[b]ilateral treaties are those concluded between two countries, multilateral treaties [are] those concluded between several countries."<sup>9</sup> Thus a potentially important issue is dismissed. Nor does Soviet scholarship attempt any distinction:

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5. HODGES, *THE BACKGROUND OF INTERNATIONAL LAW* 221 (1932).

6. J. FAWCETT, *THE LAW OF NATIONS* 92 (1968).

7. *Research in International Law, under the auspices of the faculty of the Harvard Law School*, 29 AM. J. INT'L L. SUPP. 1, 691 (1935).

8. See *Multilateral Treaties*, *supra* note 2.

9. M. GAMBOA, *A DICTIONARY OF INTERNATIONAL LAW AND DIPLOMACY* 258 (1973).

"[t]he term 'treaty' included the most varied inter-State compacts both bilateral and multilateral (peace treaties, trade treaties, etc.)."<sup>10</sup> However, this formulation does have the advantage of acknowledging the diversity of the entities collected under the rubric "treaty." One finds a similar statement in other works, among them Leech<sup>11</sup> and Schwarzenberger.<sup>12</sup> Some indication of the degree to which such approaches oversimplify reality is provided by Jacobini who, after describing all these matters, noted "the most significant statement that can be made about such classifications is that for the most part they are of limited usefulness."<sup>13</sup>

Almost any issue dealing with treaties can be illuminated by looking at the 1969 Vienna Convention on the Law of Treaties.<sup>14</sup> While this treaty is not yet in force,<sup>15</sup> it does provide a clear indication of community thinking and expectations about this important aspect of international law. In analyzing the Vienna Convention, one can look at scholarly works about the conference that produced the treaty as well as at specific provisions of the treaty itself. Shabtai Rosenne's detailed study of the work of the Vienna Conference noted that many different, more comprehensive designations on the basis of laterality were contemplated in the negotiating process including plurilateral treaty, treaty in simplified form, general multilateral treaty, and restricted multilateral treaty.<sup>16</sup> Most of these were discarded long before intensive final negotiations began on March 26, 1968.<sup>17</sup>

T.O. Elias' excellent analysis of the work of the Vienna Conference addressed the problem well. Elias felt the problem is one of precision, i.e., exactly how many parties are possible under various formulations.<sup>18</sup> At the Vienna Conference the Syrian delegation

10. ACADEMY OF SCIENCES OF THE UNION OF SOVIET SOCIALIST REPUBLICS' INSTITUTE OF STATE AND LAW, *INTERNATIONAL LAW: A TEXTBOOK FOR USE IN LAW SCHOOLS* 250 (D. Ogden trans. 1960).

11. N. LEECH, C. OLIVER, J. SWEENEY, *CASES AND MATERIALS ON THE INTERNATIONAL LEGAL SYSTEM* 929 (1973).

12. G. SCHWARZENBERGER, *THE INDUCTIVE APPROACH TO INTERNATIONAL LAW* 30 (1965).

13. H. JACOBINI, *INTERNATIONAL LAW: A TEXT* 117 (1968).

14. Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27 (May 23, 1969), reprinted in 63 AM. J. INT'L L. 875 (1969) [hereinafter Vienna Convention].

15. At present the Convention needs two more parties to enter into force. See Briggs, *United States Ratification of the Vienna Treaty Convention*, 73 AM. J. INT'L L. 470 (1979).

16. S. ROSENNE, *THE LAW OF TREATIES: A GUIDE TO THE LEGISLATIVE HISTORY OF THE VIENNA CONVENTION* 112 (1970).

17. T. ELIAS, *THE MODERN LAW OF TREATIES* 6 (1974).

18. *Id.* at 14.

proposed a definition that would have distinguished a general multilateral treaty from other multilaterals:

A 'general multilateral treaty' means a multilateral treaty which relates to general norms of international law or deals with matters of general interest to the international community at large. . .<sup>19</sup>

An attempt to add such a provision to the draft treaty failed.<sup>20</sup> Another specific proposal, endorsed by twenty-two States, read as follows:

Every State has the right to participate in a multilateral treaty which codifies or progressively develops norms of general international law or the object and purpose of which are of interest to the international community of States as a whole.<sup>21</sup>

Elias also noted that an attempt was made to define a restricted multilateral treaty:

'Restricted multilateral treaty' means a treaty which is intended to be binding only on the States referred to in the treaty and whose entry into force in its entirety with respect to all the negotiating States is an essential condition of the consent of each of them to be bound by it.<sup>22</sup>

The Conference did not approve any of these proposals because they would further complicate the text of the Convention.<sup>23</sup> Thus it is not surprising that the text of the treaty finally adopted by the Vienna Conference paid little heed to the matter of laterality.

Probably the most significant thing about the Vienna Convention concerning laterality is its relative silence on the matter. There is almost no attempt to address the unique characteristics of treaties with more than two parties. In fact, the form of the convention and terminology adopted clearly show that bilateral treaties were at the forefront of concern of those drafting the document. For example, Article 2(1)(a) states " 'treaty' means an international agreement concluded between states in written form."<sup>24</sup> Article 2(1)(h) reads " 'third state' means a state not party to the treaty."<sup>25</sup> This illustrates the pronounced bilateral orientation of

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19. *Id.* at 15.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Vienna Convention, *supra* note 14, at Art. 2(1)(a).

25. *Id.* Art. 2(1)(h).

the text, although multilateral treaties are surely not excluded. Nevertheless one wonders why the definition did not read "between or among states."

No section of the Vienna Convention deals expressly with multilateral treaties as a special type of treaty. In fact, even those areas one would expect to apply principally to multilateral treaties treat multilaterals only as a special case.<sup>26</sup> One is struck by the fact that most of the Vienna Convention seems to be aimed primarily at bilateral treaties and secondarily at general multilateral treaties. For example, Article 41 states "two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone. . . ."<sup>27</sup> Of course, the conditions under which such modification can occur are clearly spelled out. But it is difficult to imagine a case where a trilateral treaty would fit this contingency. Article 55 states "[u]nless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force."<sup>28</sup> Again, such a provision seems to be aimed at multilateral treaties open to all States. The point to be emphasized is that the Vienna Convention as the definitive document on the law of treaties provides absolutely no help in drawing distinctions based on laterality. The principal focus of the treaty seems to have been bilateral treaties with little attention given to general multilateral treaties. No significant attention was paid to the fact that there may be many separate categories of treaties between bilaterals and general multilaterals open to all States and that different types of law might be appropriate for these intermediate types.

Fortunately there are a few instances in the scholarly literature where a need was perceived for a more rigorous classificatory system for treaties, a system that admits gradations of laterality. One has the impression that those experts whose research necessitated actually dealing with large numbers of multilateral treaties immediately sensed that a single category for every multilateral treaty was inadequate. A good example is Triska and Slusser's exhaustive examination of the treaty practice of the Soviet Union. They found that Soviet treaties divide clearly into bilateral, multi-

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26. Vienna Convention, *supra* note 14. See, e.g., Part IV on Amendment and Modification.

27. *Id.* Art. 41.

28. *Id.* Art. 55.

lateral and plurilateral treaties.<sup>29</sup> Furthermore, they take the radical tact of counting each variety of multilateral treaty, finding slightly more than two hundred of each.<sup>30</sup> But the point to be emphasized is that single categories were utterly unsatisfactory to describe Soviet treaty behavior. Treaties involving more than two parties but restricted in scope by subject matter and/or geography are termed "plurilateral;" those treaties open to any State are more accurately termed general multilateral.<sup>31</sup>

One of the best discussions of what constitutes a plurilateral as opposed to a general treaty was provided by Sørensen:

Nevertheless certain multilateral treaties, entered into by a small group of states and dealing with matters in relation to which the particular position of each party has been taken into account in the framing of the treaty, remain in their legal effect very like bilateral treaties. An example of a multilateral treaty which is, in the sense explained, scarcely distinguishable from a bilateral treaty, is the Convention signed at Paris on 18 April 1951, setting up the European Coal and Steel Community, which was expressed to come into force only after ratification by all signatories (Art. 99) and to which other states may accede only after fresh negotiations have suited the special conditions for such accession (Art. 98). The distinction between the two categories attains its true significance only when account is taken of that class of multilateral instruments which are termed 'collective treaties' or 'general multilateral treaties'. . . . These are treaties, commonly signed by a substantial number of states, which are open to accession by others and which are designed to lay down general rules applicable independently of the numbers or political magnitude of the parties. Instances of 'collective treaties' are innumerable. They relate to matters as diverse as the prevention and punishment of genocide, the regime of the high seas, the drug traffic, and the protection of copyright. Not all of them, however, are of universal application. Many have merely a regional scope, such as the Pan American codification conventions.<sup>32</sup>

Sørensen's views are clearly on the right track, but certain of his distinctions are very difficult to apply. It is hard to determine whether and how rules created by a treaty are independent of the

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29. J. TRISKA & R. SLUSSER, *THE THEORY, LAW, AND POLICY OF SOVIET TREATIES* 4 (1962).

30. *Id.*

31. *Id.* at 215.

32. *A MANUAL OF PUBLIC INTERNATIONAL LAW* 125-126 (M. Sørensen ed. 1968).



number of participants in the treaty. Sørensen seems to have sensed the difficulty when he retreated by saying that all such treaties are not of universal applicability.<sup>33</sup>

One of the better definitions of a plurilateral treaty was presented by Bot who wrote that plurilateral treaties are "instruments open to a restricted number of parties . . . deal(ing) with matters of concern only to such parties."<sup>34</sup> But it must be acknowledged that most authorities fail to make much of laterality-based distinctions. Even Mostecky and Doyle's **Index to Multilateral Treaties**, which one would expect to address the matter, hardly touches the subject.<sup>35</sup> Many writers, among them Hungdah Chiu, seem preoccupied with tying laterality to the number of obligations created as opposed to the number of parties.<sup>36</sup> Laterality, when viewed this way, is no doubt important, but it is difficult to apply. Furthermore, it does nothing to address the important problem of categorizing treaties on the basis of the number of parties or, more precisely, how participation in treaties is controlled or regulated.

### III. A SUGGESTED TYPOLOGY OF MULTILATERAL TREATIES

It must be acknowledged that multilateral treaties can be grouped according to many criteria, only one of which is laterality. An inductive examination of all multilateral treaties might suggest categories based on laterality. The approach here is to try to isolate several major categories into which most multilateral treaties fall. In this section, the major categories will be explained and illustrated. Subsequent sections will address these laterality-determined categories in relation to other treaty characteristics. Of course, it must be borne in mind that laterality, as defined in this article, means only the number of parties to a treaty, or, in the alternative, the ways in which participation in a treaty is limited or not limited. It is not surprising that two broad categories of multilateral treaties are evident, multilateral treaties and plurilateral treaties.

A careful examination of all multilateral treaties<sup>37</sup> contained

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33. *Id.* at 126.

34. B. BOT, *NON-RECOGNITION AND TREATY RELATIONS* 105 (1968).

35. *INDEX TO MULTILATERAL TREATIES* v. (V. Mostecky and F. Doyle eds. 1965).

36. H. CHIU, *THE CAPACITY OF INTERNATIONAL ORGANIZATIONS TO CONCLUDE TREATIES* 67 (1966).

37. The sample contains all treaties having three or more States as parties, contained in the United Nations Treaty Series, and entering into force between 1946 and 1971 (inclu-

in the United Nations Treaty Series and coming into force from 1946-1971 suggests these six categories:

General Multilaterals Dependent on an International Organization

Other General Multilateral Treaties

General Multilateral Treaties that Function as Plurilateral Treaties Because of Subject Matter

Plurilateral Treaties Whose Participation is Limited Principally by Geography

Plurilateral Treaties Whose Participation is Limited Principally by Interest

Plurilateral Treaties Whose Participation is Limited by a Combination of Interest and Geography

The first three categories deal with general multilateral treaties; there is little or no restriction of participation. The most interesting of these three categories are those general multilateral treaties that may be functional plurilateral treaties. There are nineteen general multilateral treaties that are general because any State has the *right* to participate, but that seem to be de facto plurilateral treaties because a very few States have any realistic expectation of participation. One could argue about the desirability of encouraging universal participation in all general multilateral treaties. But it is clear that certain nominally general multilateral treaties cannot, usually because of technology, achieve meaningful participation from most States.

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sive). Technical assistance, mutual assistance and treaties negotiated under the auspices of the International Labour Organization have been excluded.

FIGURE I  
CATEGORIES OF MULTILATERAL  
TREATIES BASED ON LATERALITY

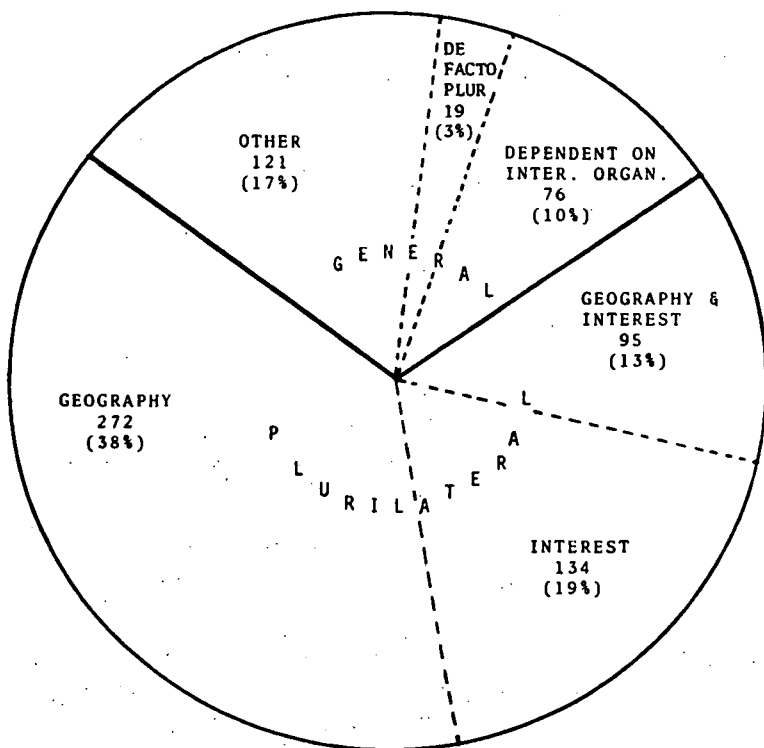


Figure I illustrates the distribution of multilateral treaties among the six categories of treaties. In each case, both the actual number of treaties and the percentage is shown. Overall, plurilaterals account for seventy percent of the total; this suggests a need for special attention to this category. The dominant factor in participation limitation in plurilateral treaties seems to be geography. About three quarters of plurilaterals rely at least in part on geography to limit participation. General treaties comprise only thirty percent of the total. About one third of this thirty percent is inextricably linked to international organizations. The de facto plurilateral category accounts for only thirty percent of general multilateral treaties. Each of these six categories will now be discussed in more detail. It should be reemphasized that the focus in each

case will be the method by which participation is regulated, not the content of the treaty; although occasionally the two are interrelated.

A. *General Multilateral—Dependent on an International Organization*

It seems that to a degree general multilateral treaties that are linked to an international organization constitute a separate category. Usually these are treaties establishing international organizations; occasionally, they are new regulations of an organization. But in all cases these treaties are directly and strongly linked to an international organization. Two typical examples will suffice. The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO) was signed at London in 1945.<sup>38</sup> The treaty created what has become a very active international organization. Participation is limited only in the following way: "[m]embership of the United Nations Organization shall carry with it the right to membership of UNESCO."<sup>39</sup> At first blush, this would seem to create few barriers to universal participation. But it should be remembered that it is only in the last ten years that the U.N. has grown to where its membership approximates the entire world community. There are instances where States have actively objected to provisions like this claiming they are far too restrictive. Often these take the form of reservations to the general multilateral treaties containing such provisions. Two examples are the reservations by the German Democratic Republic to the 1958 Geneva Convention on the Continental Shelf<sup>40</sup> and the People's Republic of Albania's reservation to the Convention of the non-applicability of statutory limitations to war crimes and crimes against humanity.<sup>41</sup> Another somewhat different example is the Convention of the World Meteorological Organization signed at Washington in 1947.<sup>42</sup> Although the intent is clearly that of a general multilateral

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38. Constitution of the United Nations Educational, Scientific and Cultural Organization, *concluded* Nov. 16, 1945, 61 Stat. 2495, T.I.A.S. 1580, 4 U.N.T.S. 275.

39. *Id.* Art. 11.

40. UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS 568 (1979).

41. Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, *adopted* Nov. 26, 1968, 754 U.N.T.S. 73.

42. Convention of the World Meteorological Organization (with annexes and Protocol concerning Spain), *done* Oct. 11, 1947, 1 U.S.T. 281, T.I.A.S. 2052, 77 U.N.T.S. 143.

treaty, participation is limited to some extent by technology. The treaty text implies that States must have a meteorological service in order to join.<sup>43</sup> But this remains a general multilateral treaty because participation restrictions are not severe. Since no standards are set for domestic meteorological organizations, participation has been broadly based and includes about one hundred States.

*B. General Multilateral Treaties that are De Facto  
Plurilateral Treaties*

This category is controversial because it has a developed/developing State dimension to it. There can be no doubt that certain treaties, while general multilateral treaties on the surface, are limited in their application to a few States that are really able to do what the treaty is trying to regulate. In these instances one would think that participation by many States is token or vacuous. For example, the International Convention for the Prevention of Pollution of the Sea by Oil<sup>44</sup> seems to have been aimed at a large group of States; although the text is mute on the participation issue, it seems certain that it was conceived as a general multilateral treaty. But most States in the world do not have the oil tankers to comply with (or thwart) the provisions of the Convention. It clearly has full applicability only for a small group of States. Perhaps in acknowledgment of this fact, it has been ratified or acceded to by only forty-five States.

Another good example in this category is the Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies.<sup>45</sup> This is unmistakably a general multilateral treaty if one relies on the text which states: "[t]he exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development."<sup>46</sup> The fact remains however that most of the subjects covered in this treaty have prac-

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43. *Id.* Art. 3.

44. International Convention (with annexes) for the Prevention of Pollution of the Sea by Oil, 1954, done May 12, 1954, 12 U.S.T. 2989, T.I.A.S. 4900, 327 U.N.T.S. 3.

45. Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, T.I.A.S. 6347, 610 U.N.T.S. 205.

46. *Id.* Art. 1.

tical application for fewer than ten States in the world, often for only the United States and the Soviet Union. The one exception to this statement is that the treaty does provide that astronauts shall be given "all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas."<sup>47</sup> Thus there may be some theoretical applicability; but in more than twenty years of space exploration, these provisions have seldom, if ever, been applied. Although this treaty has some sixty parties, it should be classified as *de facto* plurilateral by nature of the content. This raises a broader issue: most treaties produce different degrees and kinds of obligations on certain of the parties. The same treaty can create vastly different obligations on different States. International law largely avoids this important fact.

### C. *General Multilateral Treaties—Other*

Most general multilateral treaties fall into this "other" category, i.e., they are not linked to an international organization and participation is not severely limited by the substantive terms of the treaty. In almost all of these cases, participation is open except for the frequent restriction that States be a member of the U.N. or one of its specialized agencies. There are over one hundred examples of such treaties. These five are perhaps typical of the range and variety:

Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field<sup>48</sup>

Convention on the Political Rights of Women<sup>49</sup>

Convention for the Protection of Human Rights and Fundamental Freedoms<sup>50</sup>

Convention on the Continental Shelf<sup>51</sup>

47. *Id.* Art. 5.

48. Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 12, 1949, *done* Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31.

49. Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, 27 U.S.T. 1909, T.I.A.S. 8289, 193 U.N.T.S. 135.

50. Convention for the Protection of Human Rights and Fundamental Freedoms, *signed* Nov. 4, 1950, 213 U.N.T.S. 221.

51. Convention on the Continental Shelf, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. 5578, 449 U.N.T.S. 311.

Vienna Convention on Diplomatic Relations<sup>52</sup>*D. Plurilaterals Limited Principally by Geography*

The problem with the various categories of plurilateral treaties is discerning the most important criterion by which participation is limited. Many do, in fact, have some combination of interest and geography. Among treaties where geography is the main factor, a good example is the Agreement concerning cooperation for the saving of human lives and assistance to vessels and aircraft in distress in the Black Sea.<sup>53</sup> While there is navigation on the Black Sea by States from other regions, the wording of the treaty suggests that only States bordering the Black Sea may become parties.<sup>54</sup> Thus the limiting factor to participation is largely geography. The 1964 Agreement concerning the Niger River Commission and navigation and transport on the River Niger<sup>55</sup> illustrates how the text of a plurilateral treaty can explicitly limit participation. Only States that attended "Conference on the Riparian States of the River Niger"<sup>56</sup> may become parties.

*E. Plurilateral Limited Principally by Interest*

This category contains examples of spectacularly important treaties, most notably the treaty establishing the Organization of Petroleum Exporting Countries (OPEC).<sup>57</sup> But such treaties are atypical. The Convention for the regulation of the meshes of fishing nets and the size limits of fish<sup>58</sup> is an example of a treaty aimed at a specific interest area and clearly germane only to a small group of States that fish extensively. Although the text of the treaty admits participation by any government,<sup>59</sup> the pattern is

52. Vienna Convention of Diplomatic Relations, *done* Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

53. Agreement concerning co-operation for the saving of human lives and assistance to vessels and aircraft in distress in the Black Sea, Sept. 11, 1956, Union of Soviet Socialist Republics-Bulgaria-Romania, 266 U.N.T.S. 221.

54. *Id.*

55. Agreement concerning the Niger River Commission and the navigation and transport on the River Niger, *done* Nov. 25, 1964, 587 U.N.T.S. 19.

56. *Id.* at 21.

57. Agreement concerning the creation of the Organization of Petroleum Exporting Countries (OPEC), *done* Sept. 14, 1960, 443 U.N.T.S. 247.

58. Convention (with annexes) for the regulation of the meshes of fishing nets and the size limits of fish, *signed* Apr. 5, 1946, 231 U.N.T.S. 199.

59. *Id.* Art. 15.

clear that only major fishing States have shown any interest in the agreement.

When a treaty appeals to States located primarily in one geographic region, and the limiting factor is interest, it is placed in the latter category. For example, the Multilateral Convention on the Association of Spanish Language Academies<sup>60</sup> has only one party from outside Latin America (Spain), but the limiting factor is interest in the Spanish language.<sup>61</sup>

#### F. *Plurilateral Treaties Limited Both by Interest and Geography*

In ninety-five treaties, geography and interest were so intertwined that both clearly limited participation. Two examples will suffice. The North Atlantic Treaty<sup>62</sup> creating the North Atlantic Treaty Organization (NATO) has a geographic focus but also a compelling security interest. Additional parties are permitted by unanimous consent of the original parties, but these must be European States.<sup>63</sup> It should be acknowledged that this is one of those examples where it could be argued that geography is *the* principal focus. Another treaty with an unforeseen, infamous future is the Agreement for mutual defense assistance in Indochina, signed December 23, 1950.<sup>64</sup> Again the focus is a region, but an important interest is involved along with participation of States from outside the region, in this case the United States and France. Since the text specifically lists the five parties and no mention is made of wider participation, one assumes that it is limited to these five.<sup>65</sup> The point is that a regional focus is coupled with a clearcut interest making it difficult to determine which is the dominant factor in limiting participation.

It is probable that some disagreement could exist about the assignment of treaties to one or another of these six categories. The important point is that the categories do seem to accommo-

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60. Multilateral Convention on the Association of Spanish Language Academies, signed July 28, 1960, 485 U.N.T.S. 3.

61. *Id.*

62. North Atlantic Treaty, signed Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. 1964, 34 U.N.T.S. 243.

63. *Id.* Art. 10.

64. Agreement (with annexes) for mutual defense assistance in Indochina, signed Dec. 23, 1950, 3 U.S.T. 2756, T.I.A.S. 2447, 185 U.N.T.S. 3.

65. *Id.*



date most treaties. Disagreement about a few treaties would surely not alter overall conclusions. Dividing treaties among these categories makes it possible to compare each group according to certain other characteristics. This can illuminate the nature of the categories themselves. For example, are plurilateral treaties which came into force in the 1960's more likely to be limited by geography than were plurilaterals coming into force during the 1950's?

#### IV. LATERALITY RELATED TO OTHER TREATY CHARACTERISTICS

Tables I through V compare the categories of multilateral treaties defined by laterality with certain other important attributes of treaties. The goal here is to identify differences in the laterality categories themselves. For example, are plurilateral treaties limited principally by geography more likely to use "treaty" as the instrument name than are mixed plurilateral treaties? Since the method employed is identical for all five tables, it is desirable to explain the structure of the tables at the outset. These are contingency tables. This means that each multilateral treaty is classified according to two characteristics. For example, in Table I, the large number 15 in the upper left cell means that there are fifteen multilateral treaties that are General Multilaterals Dependent on International Organizations *and* that entered into force from 1946 through 1951. The small numbers surrounding the number of treaties represent percentages. Looking again at the upper left cell in Table I, the small number 20 to the right means that these fifteen treaties constitute twenty percent of all General—International Organization Dependent treaties. In similar fashion, the small 11 below the 15 means that General—International Organization Dependent treaties entering into force from 1946 through 1951 constitute eleven percent of all treaties entering into force during that period. The small number 2 to the left and above the 15 means that these fifteen treaties constitute two percent of *all* treaties described in the table. Although including these percentages makes the tables more difficult to read, comparison and analysis is facilitated.

Table I divides treaties according to force date; thus it should reveal any trends in the use of the different categories of multilateral treaties. In general the table suggests fairly constant behavior, i.e., no changes over the twenty-five year period covered. The exceptions here are the Plurilateral Limited by Geography and the Plurilateral Limited by Interest categories. The Geography cate-

gory shows a large increase while the Interest category declines. This means that since World War II States have shown a marked tendency to use plurilateral treaties more for geographic reasons and less for matters defined by interest.

TABLE I  
LATERALITY CATEGORIES BY FORCE DATE

	DATE OF ENTRY INTO FORCE					
	1946-51	1952-56	1957-61	1962-66	1967-71	TOTALS
General I.O. Dependent	2 15 20 11	2 13 17 10	2 17 22 12	2 14 19 9	2 17 22 11	11 76 100 11
General De Facto Plurilateral	* 1 5 1	* 3 16 2	1 6 32 4	1 5 26 3	1 4 21 3	3 19 100 3
General Other	4 26 21 20	3 19 16 14	3 23 19 16	4 30 25 19	3 23 19 16	16 12 100 16
Plurilateral Limited by Geography	4 26 10 20	6 43 16 32	8 60 22 41	10 72 26 46	10 71 26 47	38 272 100 38
Plurilateral Limited by Interest	6 40 30 31	6 38 28 29	2 17 13 12	3 22 16 14	2 17 13 11	17 134 100 19
Plurilateral Mixed	3 22 23 17	3 18 19 13	3 22 23 15	2 15 16 9	3 18 19 12	13 95 100 13
TOTALS	18 130 16 100	19 134 19 100	21 145 20 100	22 158 22 100	21 150 21 100	100 717 100 100

\* = less than  
 $\frac{1}{2}$  %

Table II attempts to determine if certain instrument names are more frequently selected for certain laterality-defined categories. It is widely noted that there is no *legal* distinction between differently named instruments; but it can be demonstrated that there are sharp empirical differences.<sup>66</sup> It is clear from Table II

66. See *Multilateral Treaties*, *supra* note 2, at 13-24.

that "convention" and "agreement" are the names most often chosen for each of the six laterality categories. Thus the six differ most significantly according to the relative use of "agreement" and "convention." The patterns are clear here. Convention is far and away the most frequently used instrument name for all general multilateral treaties except the International Organization Dependent category. All three plurilateral groups use "agreement" most often as the instrument name. In fact, the differences among the three plurilateral categories relate to how instrument names are distributed among the other names besides "agreement." Plurilateral Limited by Geography uses the name "convention" very

TABLE II

## LATERALITY CATEGORIES BY NAME OF INSTRUMENT

	Treaty	Convention	Agreement	Protocol	Exchange	Other	TOTALS
General I.O. Dependent	* 2 3 6	2 15 20 8	6 40 53 12	1 5 6 8	0 0 0 0	2 14 18 22	11 76 100 11
General De Facto Plurilateral	1 4 21 12	2 11 58 6	* 3 16 1	* 1 5 2	0 0 0 0	0 0 0 0	3 19 100 3
General Other	0 0 0 0	10 69 57 35	3 27 22 8	3 20 17 33	0 0 0 0	1 5 4 8	17 121 100 17
Plurilateral Limited by Geography	1 8 3 24	11 75 28 38	19 137 50 42	2 19 7 31	2 17 6 52	2 16 6 25	38 272 100 37
Plurilateral Limited by Interest	1 9 7 26	2 11 8 6	10 71 54 21	2 11 8 18	2 14 10 42	3 18 13 29	19 134 100 19
Plurilateral Mixed	2 11 12 32	2 14 15 7	7 53 55 16	1 5 5 8	* 2 2 6	1 10 11 16	12 95 100 13
TOTALS	5 34 5 100	27 195 27 100	46 331 45 100	9 61 9 100	5 33 5 100	8 63 9 100	100 717 100 100

\* = less than  
½ %

heavily (twenty-eight percent), while the others do not. It is interesting that "treaty," the most solemn of instrument names, is used only thirty-four times. By far the highest percentage of "treaty" use is for General—De Facto Plurilateral treaties where "treaty" accounts for twenty-one percent of the cases. But these results should be viewed with some care, since the absolute numbers are small.

TABLE III  
LATERALITY CATEGORIES AND LEVEL OF IMPORTANCE

	IMPORTANCE					TOTALS
	LOW	MED-LOW	MEDIUM	MED-HIGH	HIGH	
General I.O. Dependent	1 4 5 1	6 41 54 20	4 26 34 25	1 5 7 14	0 0 0 0	11 76 100 11
General De Facto Plurilateral	1 7 35 2	1 7 35 3	* 3 15 3	* 2 10 5	* 1 5 11	3 20 100 3
General Other	7 49 40 13	6 43 36 21	3 18 15 18	1 10 8 27	* 1 1 11	17 121 100 17
Plurilateral Limited by Geography	26 190 69 52	8 57 21 28	3 21 18 21	* 2 1 5	* 2 1 22	38 272 100 38
Plurilateral Limited by Interest	10 75 66 120	4 27 20 13	3 18 14 18	2 11 8 30	* 2 2 22	19 133 100 19
Plurilateral Mixed	6 44 47 12	4 26 27 15	2 15 16 15	1 7 7 19	* 3 3 34	12 95 100 12
TOTALS	51 369 52 100	28 201 28 100	14 101 14 100	6 37 5 100	1 9 1 100	100 717 100 100

\* = less than  
½ %

Table III is both the easiest to interpret and the most controversial of the tables. Each treaty has been assigned an importance index ranging from 1 through 5. These indices, based upon the content of the treaty, are somewhat subjective. It is clear that the

data suggest that most treaties are not very important; most are rated in the lower categories. These results make it possible to calculate an average importance for each category of laterality-defined treaties. This reveals that the only significant importance differences come with the Plurilateral Limited by Geography category which, on the average, is somewhat less important than any of the other groups. This means that more minor matters are dealt with by this kind of plurilateral treaty than by any of the other groups. It must be emphasized that these are averages, so that wide individual variation can be expected. For example, it is surely possible to find individual treaties in this "least important" group that are themselves highly important.

TABLE IV

## LATERALITY CATEGORIES AND TOPICS

	Political	Economic	Cultural	Humanitarian	TOTALS
General I.O. Dependent	1 7 9 3	8 58 76 15	4 1 1 6	1 10 14 11	11 76 100 11
General De Facto Plurilateral	1 8 42 4	1 9 47 2	0 0 0 0	* 2 11 2	3 19 100 3
General Other	4 26 21 12	9 63 53 15	* 3 2 19	4 29 24 31	17 121 100 17
Plurilateral Limited by Geography	12 86 32 40	21 147 54 37	1 9 3 57	4 30 11 31	38 272 100 38
Plurilateral Limited by Interest	8 54 40 25	9 61 54 16	* 1 1 6	3 18 13 19	19 134 100 19
Plurilateral Mixed	5 34 36 16	7 53 56 14	* 2 2 12	1 6 6 6	12 95 100 12
TOTALS	30 215 30 100	55 391 55 100	2 16 2 100	13 95 13 100	100 717 100 190

\* = less than  $\frac{1}{2}$  %

Table IV divides all treaties into four subject categories and compares these subjects with the laterality categories. It should be noted that largely military and diplomatic matters are included in the political category. Overall, most treaties seem to be economic in nature. Plurilateral treaties are more likely to have sizeable numbers of political treaties. The De Facto Plurilateral group consists of almost half political treaties, but again this must be viewed tentatively since the actual numbers are small.

TABLE V

LATERALITY CATEGORIES AND DELAY FROM SIGNATURE TO ENTRY INTO FORCE

YEARS OF DELAY

	0		1		2		3		4-6		More Than 6		TOTALS	
General I.O. Dependent	1	6	1	3	22	29	5	34	45	1	8	11	76	100
	2			10	36		36		11	3	7	13	11	
General De Facto Plurilateral	1	5	26	0	0	3	16	5	26	1	6	32	19	100
		1		0	0	3		7		13		0	0	3
General Other	3	21	17	4	32	26	3	18	15	3	21	17	121	100
		8		15	18		18		30	36		50	17	
Plurilateral Limited by Geography	13	95	35	14	103	38	4	30	11	3	23	8	272	100
		37		47	31		31		33	14	5	30	27	
Plurilateral Limited by Interest	13	91	69	3	24	18	1	7	5	1	7	5	134	100
		35		11	7		7		10	*	3	2	19	
Plurilateral Mixed	6	42	45	5	38	44	1	5	5	1	6	6	95	100
		16		17	17		5		5	6	9	6	13	
TOTALS	36	260	35	30	219	31	14	97	14	10	70	10	717	100
	100			100	100		100		100	100		100	100	

\* = less than  
½ %

Table V looks at a very important aspect of treaty-making: the length of time following signature that it takes for a treaty to enter into force. The range here is extreme. Certain treaties enter into

force on signature; other treaties, most often general multilaterals, can take a decade or more. It is evident that the Plurilaterals Limited by Interest category is the group which States were most anxious to have enter into force quickly—fully sixty-nine percent of them entered into force within two years of signature. There are interesting trends evidenced in the General International Organization (I.O.) Dependent group and in the General Other group. Both take a considerable length of time, but the I.O. Dependent group achieves force mostly during the first four years—three quarters are in force within three years of signature, even though only one percent enter into force in less than a year. The General Other category is distributed over a much longer time interval suggesting hesitance on the part of States to follow through with required ratifications. This illustrates another point germane to this entire undertaking. Since it takes such a very long time for ratifications to materialize, it is impossible to have truly current treaty data. Often treaty participation patterns do not take shape until years after signing.

## V. SUMMARY AND CONCLUSIONS

Multilateral treaties represent a dilemma for international law. While they are one of the most important components of that law, they are incompletely understood. Almost no scholarly work has even attempted what could be called a theory of multilateral treaty-making. It seems highly probable that part of the reason why there is no theory of multilateral treaty-making is the fact that scholarship has tended to be intensive, but very narrowly focused. In a sense, scholarship about multilateral treaties faces a situation similar to the cartographers of the Middle Ages; there were excellent, detailed maps of major cities, but neither the people nor the resources to draw an accurate global map.

The bridge to a theory of treaty-making can begin by taking a broader perspective. This article has attempted such a perspective in the area of laterality. The assumption is made that a wider focus at least makes it possible to consider theoretical propositions. The gap that must be crossed to go from treaty-by-treaty analyses to a general theory is, at present, simply too large. This author proposes that if there are six categories of treaties instead of two, a theory of treaty-making is possible. But if the dual categorization is maintained, valuable data will remain lost in an unusable conglomerate of treaties.

The research presented here suggests that it is possible to categorize treaties, and the six laterality-based categories do exhibit distinguishing characteristics. The criteria by which participation is restricted are a fruitful avenue of endeavor for future work. Of course, other approaches could be taken to the idea of participation. It would be possible to ask, given the statutory participation limitations, what portion of those States that could participate have actually become party to a treaty. This would make it possible to give a participation ratio for each treaty, a figure that would probably be of considerable analytical value. If so, it would help to clarify further the idea of *de facto* plurilateral treaties.

The moving force behind this work is the belief that international law as a discipline has now reached the point where it must attempt to take a wider view of certain of its important aspects. Treaties play a vital role in the development of international law. This makes it essential to have as complete as possible an understanding of treaties. Such an understanding *must* include knowledge of aggregate patterns of treaty behavior, in order to develop a real theory of treaty-making.



