

East and West Coast of the United States, such arguments as reduction of distance from New York to California by 1,250 miles as compared with the Panama route, the generally favorable winds at the termini of the interoceanic ship railway, the economy of construction of the railway both in money and time as compared with water routes, were advanced. Even in the message of President Cleveland of December 8, 1885, it was said "The Tehuantepec route is declared, by engineers of the highest repute and by competent scientists, to afford an entirely practicable transit for vessels and cargoes, by means of a ship railway, from the Atlantic to the Pacific."

When the treaty was negotiated, the United States was to enter into an arrangement with Mexico for the transit of troops and munitions from one side to the other side of the continent via Tehuantepec and the "construction of a plank and railroad" was to be "early." After more than eighty years it seems just that the rights of the United States, which have not been exercised, in the Tehuantepec area should be terminated. One chapter of the history of the transisthmian projects and controversies has been brought to an end on December 21, 1937, by the exchange of ratifications of the treaty signed at Washington on April 13, 1937.*

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RESERVATIONS TO MULTIPARTITE INTERNATIONAL INSTRUMENTS

It is only in recent years that formal articles in multipartite international instruments, upon which the effectiveness of international legislation frequently depends, have begun to receive the attention which they deserve. The drafting of the conventions which were opened for signature at the Peace Conferences at The Hague in 1899 and 1907 has been widely praised; yet if those texts are compared with the texts of some recent conventions, it will at once be seen that great progress has been made in this field. A marked tendency towards standardization of formal articles in current international instruments is noticeable, and on the whole the prevailing forms are giving little difficulty.

In spite of the progress made, however, solutions have not yet been provided for all of the problems which occasionally arise. One of these problems is connected with the necessity of consent to reservations which a state may wish to make in signing or ratifying or acceding to a multipartite international instrument. Attention was attracted to this problem some years ago, in connection with the Austrian reservations to the Convention on Traffic in Opium and Drugs, of February 19, 1925.¹ That convention was open to signature by any member of the League of Nations until September 30, 1925; on the latter date, it was signed on behalf of Austria with certain reservations, without any notice to or assent by other signatories. Austria had not been represented at the conference which drafted the convention. Great Britain

* United States Treaty Series, No. 932.

¹ 81 League of Nations Treaty Series, p. 317; 3 Hudson, *International Legislation*, p. 1589.

had previously become a signatory to the convention, and exception to Austria's action was taken by the British Government, with a request that the question be placed on the agenda of the Council of the League of Nations.² A reference to the Committee of Experts for the Progressive Codification of International Law led, in 1927, to an inconclusive report on the matter.³ The question presented was the subject of an illuminating study by Sir William Malkin who, finding that "the question of principle . . . does not seem to have been the subject of much study by writers on international law," proceeded to give a useful list of the precedents.⁴

Since the appearance of Sir William Malkin's study, a number of interesting cases have occurred, of which reference may be made to the following:

(1) On September 10, 1919, a Convention revising the General Act of Berlin of February 26, 1885, and the General Act and Declaration of Brussels of July 2, 1890, was signed at St. Germain on behalf of the United States of America, Belgium, British Empire, France, Italy, Japan, and Portugal.⁵ It was brought into force between Belgium and the British Empire on July 31, 1920; subsequently and prior to the end of 1922, ratifications were deposited by all other signatories except the United States and Italy. The convention was ratified by the President of the United States on April 11, 1930, subject to an understanding which modified the effect, as to the United States, of a provision in Article 12 concerning the arbitration of disputes arising under the convention. This ratification was promptly sent to Paris for deposit in the archives of the French Government; the consent to the reservation by other signatories was sought as a condition precedent to the deposit, and for this reason the deposit was not effected until October 29, 1934. Meanwhile, on April 14, 1931, the Italian ratification had been deposited.⁶

(2) On January 5, 1931, the Cuban ratification of the Protocol of September 14, 1929, for the Revision of the Statute of the Permanent Court of International Justice, was offered for deposit at Geneva. The ratification contained reservations as to paragraph 4 of the Protocol (relating to the coming into force of the instrument), and as to the amendment to Article 23 of the Statute of the Court, annexed to the Protocol; the covering letter with which the ratification was transmitted contained a further reservation. In this case, the Secretary-General seems to have consulted all the signatories to the Revision Protocol and all members of the League of Nations as to whether they would consent to the reservations; in their replies, a number of states

² League of Nations Official Journal, 1926, pp. 521, 612.

³ *Idem*, 1927, p. 880. See also the Council's resolution of June 17, 1927, *ibid.*, p. 800.

⁴ British Year Book of International Law (1926), p. 141. See also 1 Hudson, *International Legislation*, p. xlix; Marjorie Owen, "Reservations to Multipartite Treaties," 38 *Yale Law Journal* (1929), p. 1086.

⁵ 1 Hudson, *International Legislation*, p. 343; United States Treaty Series, No. 877; this *JOURNAL*, Supp., Vol. 15 (1921), p. 314.

⁶ United States Treaty Information Bulletin, No. 7 (April, 1930), p. 5; No. 24 (September, 1931), p. 12; No. 60 (September, 1934), p. 4.

objected to the reservation relating to the amendment to Article 23 of the Statute. Thereafter, the reservations were withdrawn, and a new ratification without reservations was deposited on March 14, 1932.⁷

(3) Prior to April 23, 1932, ratifications of the Convention on Consular Agents adopted by the Sixth International Conference of American States at Havana, February 20, 1928,⁸ had been deposited with the Pan American Union by the United States of America, Brazil, Mexico, Nicaragua, and Panama, and the convention had been brought into force for those five states. On April 23, 1932, a ratification of this convention by the Dominican Republic was offered for deposit, containing reservations as to Articles 12, 15, 16, 18, 20 and 21 of the convention and interpretations of words in Articles 14 and 17.⁹ These reservations had not been consented to by other states, but the ratification was nevertheless received for deposit by the Pan American Union. The Government of the United States later notified the Pan American Union that the reservations were unacceptable to the United States, and that it "does not regard the convention as ratified by the Dominican Republic to be in effect between the United States of America and that Republic."¹⁰

(4) The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, of July 13, 1931,¹¹ entered into force as to some thirty states on July 9, 1933. Japan was a signatory to the convention. On March 27, 1933, Japan gave notice of an intention to withdraw from membership in the League of Nations, and the withdrawal became effective two years later. In June, 1934, the Japanese Government informed the Secretary-General of the League of Nations that the Japanese ratification of the convention would be subject to a reservation as to the maintenance of Japan's position in the matter of the composition of the organs mentioned in the convention, and the appointment of the members thereof, "regardless of whether she be a member of the League of Nations or not." The Japanese Government requested that this information be communicated "to all the other contracting parties," with a "request that they will, as soon as possible, and at latest by the end of December, 1934, notify to the Secretariat any objections which they may make with regard to this reservation." The Secretary-General's communication of June 19, 1934, was addressed only to "the parties" to the convention, but the term "parties" may have included all signatories. No objection having been expressed, on January 23, 1935, the Japanese Government informed the Secretary-General that it was prepared to act "on the assumption that those governments which have not replied by the contemplated date of December 31, 1934, have no objection to the said

⁷ See the writer's account in this JOURNAL, Vol. 26 (1932), p. 590.

⁸ 4 Hudson, International Legislation, p. 2394; this JOURNAL, Supp., Vol. 22 (1928), p. 147.

⁹ United States Treaty Information Bulletin, No. 32 (May, 1932), p. 18.

¹⁰ *Idem*, No. 38 (November, 1932), p. 22.

¹¹ 139 League of Nations Treaty Series, p. 301; 5 Hudson, International Legislation, p. 1048; this JOURNAL, Supp., Vol. 28 (1934), p. 21.

reservation." This information was circulated "to the governments concerned." On March 25, 1935, the Japanese Government made a declaration in the sense of its proposed reservation, and this too was circulated at its request to "the other high contracting parties." A Japanese ratification, containing the reservation, was deposited on June 3, 1935.¹²

(5) The Convention for Facilitating the International Circulation of Films of an Educational Character, of October 11, 1933,¹³ was opened to accession by certain non-signatory states; the convention entered into force on January 15, 1935, as a result of the deposit of ratifications or accessions by five states, among which was Switzerland. On March 28, 1935, in a communication addressed to the Secretary-General of the League of Nations, the Union of Soviet Socialist Republics expressed a desire to accede to the convention, subject to a reservation as to Article 11 which provides for the settlement of disputes as to the interpretation or application of the convention; on May 11, 1935, the Secretary-General so informed the "parties" to the convention by a circular letter.¹⁴ On November 21, 1935, the Chilean Government, whose ratification had been deposited on March 20, 1935, replied that it "does not know, and cannot *prima facie* see, what reasons justify the [proposed] reservation," and was "unable for the moment to decide as to the acceptance of the said reservation before knowing its exact text and the reasons which have led the U.S.S.R. Government to make it"; on May 5, 1936, the U.S.S.R. Government replied that in view of the Chilean difficulties, it had "no objection to that convention's being considered by the Government of Chile if the latter so desires, as not binding between that State and the Union of Soviet Socialist Republics," and this course was agreed to by the Chilean Government.¹⁵ Other governments which formulated replies having accepted the reservation, on February 16, 1937, the Government of the U.S.S.R. wrote to the Secretary-General expressing the opinion that "if no other state signatory to the convention declares itself opposed to the reservation in question by March 28, 1937, the reservation should be deemed to have been accepted by all the signatories except Chile," adding that a declaration of formal accession would then follow.¹⁶ On March 12, 1937, the Swiss Government informed the Secretary-General that "the Federal Council has very serious doubts as to the propriety of supporting an accession which would, in fact, be tantamount to the suppression of a clause of essential importance"; and that the Federal Council "cannot accept the reservation which has been submitted to it."¹⁷ On March 20, 1937, the Iranian Government, whose accession had been deposited on April 12, 1935, reserved the right to express its views on the U.S.S.R. reserva-

¹² See League of Nations Official Journal, 1935, pp. 995-998.

¹³ 155 League of Nations Treaty Series, p. 331; 6 Hudson, International Legislation, p. 456.

¹⁴ League of Nations Document C.L.68.1935.XII; United States Treaty Information Bulletin, No. 68 (May, 1935), p. 5.

¹⁵ League of Nations Document C.L.169.1936.XII.

¹⁶ *Idem*, C.L.40.1937.XII.

¹⁷ *Idem*, C.L.53.1937.XII.

tion.¹⁸ Since that date, no further steps appear to have been taken with regard to the proposed accession by the U.S.S.R.

In each of these five cases, the instrument itself contained no provision for dealing with the situation which arose. Indeed, no provisions had been invented which would satisfactorily meet the actual difficulties. In a few instruments of recent date, limit has been placed upon the possible reservations which a state may make. Thus, a protocol to the Convention on the Simplification of Customs Formalities of November 3, 1923,¹⁹ provided that certain reservations made by states at the time of ratification or accession, were to be accepted only "if the Council of the League of Nations so decides after consulting the technical body mentioned in Article 22 of the convention." In the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes of June 7, 1930,²⁰ it was stipulated in Article 1 that the parties might make reservations "chosen from among those mentioned in Annex II of the present convention"; Annex II formulates certain reservations as made by all the parties, and others as optional to each of the parties. A similar disposition was adopted for the Convention providing a Uniform Law for Checks of March 19, 1931.²¹ In the Convention concerning Economic Statistics of December 14, 1928,²² the possibility of reservations was envisaged in the following somewhat restrictive provision (Article 17):²³

The high contracting parties agree to accept the reservations to the application of the present convention which are set forth in the protocol to this convention and in respect of the countries therein named.

The governments of countries which are ready to accede to the convention under Article 13, but desire to be allowed to make any reservations with regard to the application of the convention, may inform the Secretary-General of the League of Nations to this effect, who shall forthwith communicate such reservations to the governments of all countries on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. If within six months of the date of the communication of the Secretary-General no objections have been received, the reservation shall be deemed to have been accepted.

A new solution of the problem of reservations, invented by the Legal Section of the Secretariat of the League of Nations, has recently been embodied in the Convention for the Prevention and Punishment of Terrorism, opened for signature at Geneva on November 16, 1937.²⁴ Article 23 of this instrument provides:

¹⁸ League of Nations Document C.L.60.1937.XII.

¹⁹ 2 Hudson, *International Legislation*, pp. 1094, 1120; this *JOURNAL*, Supp., Vol. 19 (1925), pp. 146, 166.

²⁰ 5 Hudson, *International Legislation*, p. 516.

²¹ *Ibid.*, p. 889.

²² 4 *Idem*, p. 2575.

²³ A similar provision was contained in Art. 22 of the Convention on the Suppression of Counterfeiting Currency, of April 20, 1929. *Ibid.*, p. 2692.

²⁴ League of Nations Document C.546.M.383.1937.V. See the comment on a draft of this provision by Valentine Jobst III, in this *JOURNAL*, Vol. 31 (1937), p. 318.

1. Any member of the League of Nations or non-member state which is prepared to ratify the convention under the second paragraph of Article 21, or to accede to the convention under Article 22, but desires to be allowed to make reservations with regard to the application of the convention, may so inform the Secretary-General of the League of Nations, who shall forthwith communicate such reservations to all the members of the League and non-member states on whose behalf ratifications or accessions have been deposited and enquire whether they have any objection thereto. Should the reservation be formulated within three years from the entry into force of the convention, the same enquiry shall be addressed to members of the League and non-member states whose signature of the convention has not yet been followed by ratification. If, within six months from the date of the Secretary-General's communication, no objection to the reservation has been made, it shall be treated as accepted by the high contracting parties.

2. In the event of any objection being received, the Secretary-General of the League of Nations shall inform the government which desired to make the reservation and request it to inform him whether it is prepared to ratify or accede without the reservation or whether it prefers to abstain from ratification or accession.

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. Aside from this innovation, 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. It serves as a needed guide not only to international administrative officials, but also to governments themselves. Many difficulties may be avoided if this or some provision along similar lines should become a standard article for multipartite conventions.

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THE IMPERIAL CONFERENCE OF 1937

The Conference which met in London from May 14 to June 15, 1937, following the coronation, while not marked by any very spectacular achievement, dealt with certain matters which are of some general international significance. The composition of the body was somewhat different from that of previous Conferences. In the absence of representation from the Irish Free State, the group of autonomous units within the Commonwealth was not quite complete. In addition to the representatives of the other self-governing Dominions and India, there were observers from Burma and Southern Rhodesia. Newfoundland was represented by the Secretary of State for