

To serve until 1975: Mr. John Carey and Professors Wolfgang Friedmann and Richard B. Lillich.

The present honorary editors of the JOURNAL were re-elected.

The new regulations regarding the editors provide for twenty-four editors instead of the previous twenty-two. Professor Oliver J. Lissitzyn indicated his desire not to be considered for re-election and his withdrawal was reluctantly accepted. The three vacancies on the Board will be filled at a later date after further consideration by the Board of Editors.

ELEANOR H. FINCH

### CORRESPONDENCE

The Editors of the JOURNAL welcome scholarly communications and will print those considered to be of general interest to its readers.

#### ON THE STATUS OF UNITED STATES TREATY LAW

In a Note on "Point Four and Codification" published in this JOURNAL in 1959,<sup>1</sup> I pointed out that, as far as information about United States treaty law was concerned, the United States was an underdeveloped country, and while we were aiding other countries with regard to codification of their law, much remained to be desired and to be done here in this respect.

Unfortunately, the situation has not improved since then. On the contrary. In 1959 there was still hope that an extremely well-done and useful State Department publication (*U. S. Treaty Developments*) which then was merely suspended, would be resumed—a hope which now must be given up, as nothing has "developed" with regard to it in the eighteen years since it ceased to appear.

In marked contrast to the data concerning two sources of the "supreme law of the land" (Article 6(2) of the Constitution), the Federal Constitution and Federal legislation, information about the third source, Federal treaties, is very incomplete, and up-to-date information thereon is completely missing. In view of the present position of the United States in the world and the tremendous increase in the number and importance of treaties concluded by her, the lack of information is all the more remarkable and regrettable. According to the Department of State, "nearly two-thirds of the total number of treaties and agreements entered into by the United States between 1776 and 1968" date from the year 1950 on.<sup>2</sup>

The *texts* of treaties are published and accessible, if one has access to a good library which has the *U. S. Statutes at Large* (Stat.), the *U. S. Treaties and Other International Agreements* (U.S.T.) and the *Treaties and Other International Acts Series* (T.I.A.S.). Smaller collections may have the Malloy-Redmond-Trenwith compilations and now the Bevans col-

<sup>1</sup> 53 A.J.I.L. 889-892 (1959).

<sup>2</sup> C. Bevans (ed.), *Treaties and Other International Agreements of the United States of America 1776-1949*, Vol. I, p. iii (Dept. of State Pub. 8407, Washington, 1968).

lection entitled *Treaties and Other International Agreements of the United States of America 1776-1949*, which is in the process of publication.<sup>3</sup> The proposed 15 volumes of this collection together with the 54 volumes of the *U. S. Treaties* contain the texts of all the treaties which have become binding upon the United States since 1776. With each passing year the number of the volumes of *U. S. Treaties* increases while the Bevans edition becomes more and more dated.<sup>4</sup>

If the situation with regard to the easy accessibility of the texts of treaties is hardly satisfactory, conditions are even worse so far as information on the *status* of those treaties is concerned. It is true that we now have the annual publication, *Treaties in Force*, which at least tells us which treaties are in force as of January 1 of each year. But the very useful *U. S. Treaty Developments* and Hunter Miller's excellent *Treaties and Other International Acts of the United States of America* have been discontinued, and there is at present no single publication which concentrates on the treaties in force, reproduces their texts, and reports at the same time on the developments concerning those treaties and on the actual practice (legislative, administrative, and judicial) in the form of concise summaries of the practice in connection with the treaty provisions concerned.

This writer proposed to prepare such a publication and, at his request, Senator H. S. Baker, Jr. (R. Tenn.), and Congressman J. J. Duncan (R. Tenn.) introduced identical bills in their respective Houses as follows:

#### A BILL

To provide for publication of a United States Treaty Code Annotated

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

That section 73 of the Printing Act of January 12, 1895 as amended, is amended by inserting after the paragraph relating to the printing of the United States Treaties and Other International Agreements (44 U.S.C. 196a) the following new paragraph:

"The Public Printer shall, at such time as the Joint Committee on Printing shall direct, print, bind, and deliver to the Superintendent of Documents a number of copies of the United States Treaty Code Annotated, and of annual supplements thereto, not exceeding the number of copies of the Statutes at Large required for distribution in the manner provided by law. The cost of such printing and binding shall be charged to the Congressional allotment for printing and binding. Copy for the United States Treaty Code Annotated, and annual

<sup>3</sup> Multilateral Treaties: Vol. 1: 1776-1917; Vol. 2: 1918-1930; Vol. 3: 1931-1945; Vol. 4: 1946-1949; Vol. 5: Bilateral: Afghanistan-Burma; Vol. 6: Canada-Czechoslovakia (Dept. of State Pub. 8407, 8441, 8484, 8521, 8543, and 8549, Washington, 1968-1971). For an evaluation of this publication, see my book review in the March, 1971, issue of the *American Political Science Review*, Vol. 65, pp. 234-236.

<sup>4</sup> 187 (42%) of the 449 multilateral treaties published in the multilateral part of the Bevans edition referred to in the preceding footnote, were no longer in force at the time of their publication, while 262 (58%) treaties were still in force then.

supplements thereto shall be furnished to the Public Printer in the manner directed by the Joint Committee on Printing.”<sup>5</sup>

The bills were referred to the Senate Committee on Rules and Administration and to the House Committee on House Administration, respectively.

Following standard procedure, the House Committee asked the Department of State for its “evaluation and recommendation,” which were negative. In a letter dated October 6, 1970, to the Subcommittee on Printing of the House Committee, the Department pointed out the difficulties of a Treaty Code analogous to the U. S. Code Annotated. Such difficulties are real indeed, and the point would have been well taken if such an analogous publication had been intended, which was not the case. Admittedly, the title of the bills lends itself to such misinterpretation, and it is proposed to submit better drafted bills in the 92nd Congress. The Department further stressed that “the amount of annotation material . . . in regard to treaties would not justify a separate publication that would include the full texts of the treaties.” With all due respect, this remains to be seen. The data published in the abortive *U. S. Treaty Developments*, covering only part of the material, would seem to indicate the contrary, not to mention the fact, as seen above, that it will have taken some 70 volumes to print the texts of all treaties.

The Department of State rightly pointed out that “questions regarding the interpretation or application of a treaty may be resolved by supplementary agreements between the United States and the other country concerned, in which cases the texts of the supplementary agreements are now published separately.” This is true, but instead of having to look for and finding the texts of such supplementary agreements elsewhere, the suggested publication would either (preferably) print them together with the main treaty or refer to one of the few other volumes comprising the publication.

The Department of State then mentions various publications, such as Stat., U.S.T., T.I.A.S., the Malloy and Bevans compilations and the new Whiteman *Digest of International Law* for the texts of the treaties and some treaty interpretation. As has been shown, even the texts of the treaties are not conveniently available, not to speak of the relevant practice thereunder.

Having “found that some treaty provisions that are of constant application and the subject of numerous inquiries can be compiled separately,” the Department listed the following “compilations which are revised periodically and transmitted to State authorities and, upon request, to others”:

Treaty provisions in force between the U. S. and other countries relating to:

Notification of consular officers of the arrest of their fellow nationals;  
exemption of government-owned property from real property taxes;

<sup>5</sup> 91st Cong., 2nd Sess., S. 3308 and H.R. 15744. The above bills are identical to the bills introduced by the late Senator Estes Kefauver (D. Tenn.) in the 86th and 87th Congresses; see S. 3002 and S. 625, respectively.

most-favored-nation treatment of consular officers; rights of inheritance, acquisition, and ownership of property; competency and authority of consular officers in the settlement of estates.

These are indeed useful compilations but they cover, of course, only a very small part of United States treaty law.

Finally, the Department of State announced that it has "under active study a computerization project which, when completed, should serve as a source for compilation of all relevant treaty information." It hopes "to have this project under way in the near future" and added that

if any publication along the lines of an annotated treaty code were found to be feasible, both in technical and financial respects, it should be developed on the basis of the material that would be stored in the proposed computer system. For the present, in view of the above factors, the Department would not favor expenditure of funds or other resources for an annotated treaty code.

In transmitting this letter to Congressman Duncan, the Chairman of the House Subcommittee on Printing stated: "In view of the negative correspondence from the State Department, no further action is anticipated on this proposal."

This super-cautious attitude of our Government in terms of pace and money contrasts sharply with that of the Canadian Government towards the independently conceived Queen's University Treaty Project under the direction of Professor Hugh Lawford. Originally the Project was designed to gather information about treaties relating to Canada only, but was soon expanded to cover the entire Commonwealth of Nations. It has become "the most exhaustive single collection of information concerning Commonwealth treaties." Its research staff consisted at the start in 1961 of one director and one research assistant. In March, 1970, it comprised one director, eight full-time and ten part-time research assistants, one secretary and four terminal operators. A consolidated statement of its receipts for the years 1967, 1968 and 1969 lists grants by the Canadian International Development Agency in the amount of over \$97,000 and by the Canadian Council of over \$52,000.<sup>6</sup>

I do not know how long the Department of State's computerization project has been under active study, when it will be through with the study, when the computerization will begin, and how long it will take to complete it. If and when completed, this computerization would indeed yield all the data required for the proposed annotated edition of the United States treaties in force. However, it would still be necessary to publish those data in some form to make them generally accessible. And it is still necessary to publish the texts of the treaties in force in some convenient, easily accessible form. *Quo usque tandem?*

<sup>6</sup> See Queen's University Treaty Project, Cumulative Progress Report to the Canadian International Development Agency for the Period ending March 15, 1970, Working Paper No. 8, pp. 1, 2, 9, 14. See also note by Professor Lawford in 64 A.J.I.L. 925 (1970).

According to Article 24 of the Statute of the International Law Commission, the latter "shall consider ways and means for making the evidence of customary international law more readily available." As the above samples show, evidence of international and national *treaty* law is not readily available either.<sup>7</sup>

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P.S. After the completion of the above, Senator Baker introduced indeed a bill which omits any mention of a Code and restricts the scope of the proposed publication to the *multilateral* treaties in force. It is "to provide for publication of the United States Multilateral Treaties in Force, Annotated." See 92nd Cong., 1st Sess., S.1033. A companion bill will be introduced in the House by Representative Duncan.

S.E.

#### TEACHING INTERNATIONAL LAW

*The University of Texas at Austin*

*January 27, 1971*

One of the perennial complaints from students of international law is that the standard introductory course is not "relevant." Who cares what happened to the officer of a French ship in a collision off the coast of Turkey almost fifty years ago, or to the Schooner *Exchange* in 1812? The fault may well have been mine in the presentation; but my students have flatly refused to read the stuff, and I would get half a dozen "unprepareds" in a row, day after day, and wind up leading them by the hand.

This past autumn, with about 110 students registered, I decided on an experiment which would at least shut off this particular criticism. I required each student to take out student membership in the Society and to subscribe to *International Legal Materials* for the calendar year 1970, and announced that the five issues of the JOURNAL and the six issues of *ILM* would be the only text materials for the course. The students were a little surprised, but interested and curious. They did not complain, as the cost was within the range of what they have come to expect to pay for an ordinary book of "Cases and Materials."

The Society's co-operation was unstinted; without this it would not have worked at all. On the first day of class my students already had three issues of the JOURNAL and four of *ILM* on which to begin work, and I had had them long enough to do some organizing and prepare an outline and advance assignments.

The thing that astonished me was how easy it was to draw from this hot-off-the-griddle accumulation of current material—and in the case of

<sup>7</sup> In 1950 this writer proposed the creation of an International Legislation Register which would contain up-to-date information on the status of multipartite treaties of general interest; see Engel, "On the Status of International Legislation," 44 A.J.I.L. 737-739, at 739 (1950).