for the second time and is published in the *British Treaty Series of Parliamentary Papers*. The practice does not apply to treaties which are not subject to ratification. Such treaties (which generally enter into force on the date of signature) are presented to Parliament and published in the *British Treaty Series* as soon as they have been concluded.

17. There is a further qualification upon the rule that the executive is not subject to parliamentary control in the exercise of the treaty-making power. It is that "there is a practice now amounting probably to a binding constitutional convention whereby treaties involving a cession of British territory are submitted for the approval of Parliament and the approval takes the form of a statute".[1]

18. Finally, it is to be observed that under the law of the United Kingdom treaties are not self-executing; they are not *ipso facto* part of the law of the land. If, therefore, the stipulations of a treaty require something to be done which may come into question in a court of law, or require for its enforcement the assistance of a court of law, the question will at once arise whether there is any inconsistency between the treaty and the existing law of the land, or whether the Executive is sufficiently equipped with powers under existing law to implement the treaty. In such cases legislative action by Parliament is required. This is so:

(a) Where the treaty requires for its execution and application by the United Kingdom a change in existing law;

(b) Treaties requiring for their execution by the United Kingdom that the Crown receive some new powers not already possessed by it;

(c) Treaties creating a direct or contingent financial obligation upon the United Kingdom;

(d) Treaties specifically providing that Parliament be consulted.

The Executive may also in practice consult Parliament either before signature, or after signature and before ratification, though not bound constitutionally to do so.[2]

80. United States of Ameriea

(a) CONSTITUTION OF 4 MARCH 1789. UNITED STATES CODE, 1946, VOL. I, P. XL.

Article 2.—Section 2. He[3] shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur...

(b) STATEMENT PREPARED BY THE SECRETARIAT OF THE UNITED NATIONS[4]

1. Whether a particular international agreement is a treaty within the meaning of the above provision is a question of domestic constitutional

[1] McNair, *The Law of Treaties* (1938), p. 24.

[2] Concrete examples of the instances of consultation described above are given in McNair, *op. cit.*, pp. 13-31.

[3] The President of the United States.

[4] This memorandum was prepared by the Secretariat of the United Nations on the basis of information supplied on a previous occasion by the United States Government. It was then submitted to the Department of State who, subject to certain amendments, approved it.

law, and the designation given to such an agreement by the parties thereto does not determine this question. The word "treaty" in the international sense includes more classes of instruments which are international agreements than the class submitted for the advice and consent of the Senate. Other international arrangements, such, for example, as those approved by the majority of both Houses, may properly be termed treaties, for the purposes of international usage, notwithstanding the fact that they are not submitted for the advice and consent of the Senate alone for two-thirds concurrence. The Congress of the United States has itself, on occasion, so employed the term "treaty". Thus, in legislation authorizing postal arrangements with foreign countries it provided:

"For the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster General, by and with the advice and consent of the President, may negotiate and conclude postal *treaties* or *conventions* [italics added], and may reduce or increase the rates of postage or other charges on mail matter conveyed between the United States and foreign countries: *Provided*, That the decisions of the Postmaster General construing or interpreting the provisions of any *treaty* or *convention* [italics added] which has been, or may be, negotiated and concluded shall, if approved by the President, be final and conclusive upon all officers of the United States" (5 U.S.C. section 372).

2. The treaties of the United States, in general, follow much the same pattern so far as form is concerned. Other international agreements of the United States are not drawn up in any particular form. In practice certain types of agreements are usually prepared in certain special forms, but a variation in form is not considered to affect the binding character of the obligations assumed. Consular conventions which deal with the rights and privileges of consular officers are usually concluded as between heads of States rather than as between Governments, e.g., the Consular Convention between the United States and the United Kingdom signed on 6 June 1951. The agreement between the United States and the United Nations concerning the Headquarters of the latter is an example of a comparatively new type of agreement, i.e., between a State and an international organization of which the United States itself is a member.

3. Informal authorization from the Department of State is regarded as sufficient authority for the head of a delegation to an international conference or an ambassador to sign an international agreement for which no Full Power is considered necessary, e.g., the authority of the United States representatives to sign the agreement for the trial of war criminals of the European Axis was contained in a telegram to London on 30 June 1945, signed by the Acting Secretary of State. It is the invariable practice, in the case of an international agreement of the United States deemed to be a treaty in the constitutional sense, to issue a Full Power authorizing the United States Plenipotentiary to sign. Full Powers are sometimes issued to authorize the exchange of instruments of ratification but, under United States practice, it is recognized that they are not necessarily required in that connexion. Thus, the Department of State informed the American Ambassador to France in an instruction dated 10 December 1944 as follows:

"Ordinarily the Department considers that it is not necessary to furnish a Full Power for the purpose of effecting an exchange of ratification.

Possession of the instrument of ratification is regarded as sufficient evidence of authority in this respect. This is understood to be the general international practice. However, in order to avoid any possible embarrassment and delay, in the event that the French authorities should express a desire to have you present or exhibit an appropriate Full Power, such a Full Power is furnished you herewith."

4. Since the Secretary of State is charged by law, and by the President, with duties incident to the conduct and direction of the international relations of the United States, it has been United States practice to have the Secretary of State or, in his absence, the Acting Secretary of State, sign for the United States of America international agreements concluded in Washington, unless a Full Power has been issued by the President authorizing another person to sign. Authority to negotiate an agreement is not *per se* authority to sign the agreement which is negotiated. Thus the agreement on petroleum with the United Kingdom was signed for the United States on August 8, 1944, by Mr. Edward E. Stettinius, Acting Secretary of State, rather than by the Secretary of the Interior, Acting Chairman of the Cabinet Committee appointed by the President to negotiate the agreement. Agreements which are negotiated in other countries are normally signed on behalf of the United States of America by the American Ambassador, the American Minister or, in the absence of the Ambassador or Minister, the Chargé d'Affaires. When a multilateral agreement is formulated at an international conference at which the United States is represented by a plenipotentiary delegation, the Chairman, and frequently other members of the delegation, sign on behalf of the United States.

5. With respect to the negotiation and signature of an agreement modifying the Bizonal Fusion Agreement of December 2, 1946, the view was expressed that:

"We do not perceive that any particular credentials are required for Mr. Saltzman to conduct negotiations in Washington with the British for a modification of the Bizonal Fusion Agreement of December 2, 1946. For the signature of an international agreement by an Assistant Secretary a Full Power would be required...

... If the Ambassador signs for the United Kingdom, the Secretary or the Acting Secretary should sign for the United States, according to good protocol." [Memorandum of the Assistant for Treaty Affairs (Barron), October 10, 1947].

. Changes in conditions which would affect the terms of the convention either in its scope or its application, and which occur, subsequent to signature but prior to approval by the Senate, are brought to the attention of the Senate for appropriate action.

6. Articles 1(2), 2(3) *(b)*, and 2(4) *(a)* of a consular convention[1] between the United States of America and the United Kingdom, signed February 16, 1949, provide for the inclusion of Newfoundland and Newfoundland citizens in the scope of the convention. Before 1949, the convention was submitted to the Senate, Newfoundland had been incor-

[1] On June 6, 1951, there was signed a consular convention between the United States and the United Kingdom to be substituted for the 1949 Convention, and the latter was withdrawn from the United States Senate.

porated in the Dominion of Canada so that, notwithstanding those articles, the convention could have no application in Newfoundland. In reply to a note from the British Ambassador, the Secretary of State replied as follows:

"Your note states, with reference to those articles, that by virtue of the British North America Act, 1949, His Majesty's Government in the United Kingdom has ceased to be responsible, effective April 1, 1949, for the international relations of Newfoundland, which became incorporated in the Dominion of Canada as from midnight of March 31, 1949. Accordingly, you propose that notwithstanding the aforementioned articles the convention shall be deemed not to apply to Newfoundland and Newfoundland citizens.

"I have the honor to inform Your Excellency that the Government of the United States agrees to the foregoing proposal, and regards Your Excellency's note and this reply as constituting the understanding reached with regard to this matter, and as modifying the said convention accordingly." [The Secretary of State (Acheson) to the British Ambassador (Franks), October 12, 1949].

7. The notes exchanged regarding the non-application of the convention to Newfoundland constituted a modification of the convention. In another communication, the Department of State had pointed out that:

"It will be necessary for these notes to be transmitted to the Senate of the United States along with the Convention in order that both the Convention and the notes may receive the advice and consent of the Senate to ratification. The United States instrument of ratification will, accordingly, apply to the notes as well as to the Convention, and we would expect, in return, that the British instrument of ratification would do likewise." [Assistant to the Legal Adviser (Lay) to F. H. A. Gates, British Embassy, August 1, 1949].

8. It is possible, of course, for a particular agreement to specify without qualification that it enters into force on the date of signature, but in United States practice it is never considered appropriate to provide in a bilateral agreement for entry into force on signature when the agreement is considered to be a treaty which is to be sent to the Senate. In the event that an agreement specifies without qualification that it is to enter into force on signature, each government must decide for itself whether it can constitutionally or legally bind itself as a party to the agreement by signature only, or whether further national action must be taken. If further national action is necessary, then the government should make a reservation to that effect at the time of signature. In the case of certain agreements, such as the sugar protocols, the signature on behalf of the United States has been affixed with a reservation "Subject to ratification" or "Subject to approval". In any case, where the reservation refers specifically to ratification, it is the invariable practice to send the agreement to the Senate as a treaty in the constitutional sense. If the reservation is "Subject to approval" or "Subject to acceptance", the agreement may still be sent to the Senate for advice and consent to ratification, depending on the character of the agreement; for example, an agreement which amended or modified a treaty to which the United States is a party would be sent to the Senate with a view to ratification in the same way as the original treaty itself. On the other hand, a reservation "Subject to approval" or

"Subject to acceptance" avoids the necessity for the negotiators to decide what national procedure shall be followed; this is sometimes a matter that requires careful consideration after the close of a conference at which an agreement has been formulated.

9. As to the national action which must be taken in the event of such reservations, it may be pointed out that, so far as the United States is concerned, this depends primarily on the character of the agreement, involving such factors as these: (1) whether it affects substantively the provisions of an existing treaty; (2) whether the substantive provisions of the agreement are already consistent with or within the framework of existing national law; (3) whether, if the agreement's provisions do not already have an adequate basis in national law, it would be sufficient and practicable to obtain legislative action to lay such a basis in national law, and then to take the necessary international action in accordance with such law; or (4) whether the terms of the agreements would, in and of themselves, establish fundamental law of a kind which, in the light of established constitutional concepts, makes it necessary to follow the customary treaty procedures. It probably would be unwise to attempt to lay down an inflexible rule-of-thumb applicable in all circumstances.

10. In recommending action enabling the Government of the United States of America to approve the trusteeship agreement for the Territory of the Pacific Islands, President Truman stated as follows in his message to the Congress:

"I have given special consideration to whether the attached trusteeship agreement should be submitted to the Congress for action by a joint resolution or by the treaty process. I am satisfied that either method is constitutionally permissible, and that the agreement resulting will be of the same effect internationally, and under the supremacy clause of the Constitution, whether advised and consented to by the Senate or whether approval is authorized by a joint resolution. The interest of both Houses of Congress in the execution of this agreement is such, however, that I think it would be appropriate for the Congress, in this instance, to take action by a joint resolution in authorizing this Government to bring the agreement into effect." [Message of the President to the Congress, July 3, 1947; House Document No. 378, 80th Congress, 1st Session.]

Authority to approve the agreement was granted to the President by the Joint Resolution of the Congress of July 18, 1947, and the agreement was approved by him that day.

11. With regard to the processes of making international agreements other than treaties, the Department of State has commented as follows:

... "throughout the history of this country, both treaties and international agreements other than treaties have been made in conducting its foreign relations. The existence and validity of international agreements other than treaties is recognized in long-standing statutes of the United States; for example, the statutory provision[1] ... regarding publication in the United States Statutes at Large of 'treaties' and 'international agreements other than treaties' to which the United States is a party (Act approved January 12, 1895, as amended June 20, 1936 and June 16, 1938; 26 Stat. 615; 49 Stat. 1551; 52 Stat. 760)."

[1] See below p. 14.

"Treaties continue to be made in accordance with the treaty-making provision in the Constitution. International agreements other than treaties continue to be made, in appropriate cases, in accordance with the constitutional and legal authority of the President in conducting the foreign relations of the United States.

"The subject of so-called Executive agreements is a complex one. A clear understanding of the subject, however, requires first of all the pointing out that the term "Executive agreement" is itself a misnomer as applied to all "international agreements other than treaties".

"Actually, such agreements may be considered broadly in three classes: (1) agreements or understandings entered into with foreign governments, pursuant to or in accordance with, specific direction or authorization by the Congress; (2) agreements or understandings made with foreign governments but not given effect except with the approval of the Congress, by specific sanction or implementation; and (3) agreements or understandings made with foreign governments by the Executive solely under and in accordance with the Executive's constitutional power.

"The latter, number (3), is comparatively rare; examples are armistice arrangements, made under the Executive's power as Commander-in-Chief.[1] The other two categories, where the agreements or understandings are made pursuant to or within the framework of existing law, or are implemented by legislative action, constitute the vast majority of international agreements other than treaties. In a true sense, they could well be designated Legislative-Executive agreements instead of Executive Agreements.

"Typical examples of class (1) are the reciprocal trade agreements made under and in conformity with the Trade Agreements Act or that Act as amended, the lend-lease agreements which were made under and in conformity to Acts of Congress, the series of agreements made by the exchange of diplomatic notes for reciprocal tax exemptions on shipping profits in conformity to provisions in the Internal Revenue Code, and others. Examples of class (2) are various arrangements whereby the United States has participated in the work of certain international organizations, after legislative implementation and appropriation, such as the work of the International Labour Organisation.

"As already indicated, the subject is a complex one. Generalized statements which would imply that there is any concerted attempt to nullify or circumvent the treaty-making provision in the Constitution are made without a clear appreciation of the normal processes of conducting foreign relations. There is nothing new in the processes of making international agreements other than treaties. It has been the practice of this Government, during the greater part of this nation's existence, in intercourse with foreign governments, to enter into agreements other than treaties to deal with many problems or questions on an executive or administrative level, where this could be done consistently with, and within the framework of, existing law."

12. The joint resolution of the Congress of the United States of America approved July 1, 1947 (Public Law 146, 80th Congress) authorizing the President of the United States

[1] Such agreements, however, i.e., those made without Statutory authorization have been held to be part of the "law of the land" within Article VI of the Constitution. *United States* v. *Belmont* (1937) 301 U.S. 324; *United States* v. *Pink* (1942) 315 U.S. 203.

of America, the Constitution of the International Refugee Organization, stated that such authorization was given "upon condition and with a reservation". It was deemed necessary to include in the United States acceptance of the International Refugee Organization constitution the text of the condition and reservation as set forth in that joint resolution of the Congress.

13. It is the position of the Government of the United States that if the Congress of the United States of America (or the legislative body of another country) has seen fit to include a condition and reservation in the enabling law by which the Executive is empowered to accept membership in an international organization established pursuant to international agreement, the Executive must take cognizance of that condition and reservation in his execution of the instrument of acceptance. Inclusion of the condition and reservation in the instrument of acceptance will constitute official notice to the other governments concerned with respect to the legislative restriction upon United States action. The ultimate decision with respect to the question of the completeness of an acceptance of the constitution of such an international organization will be made by other governments parties to that constitution rather than by officials of the organization concerned. Failure of other governments concerned to question the adequacy of the instrument is usually taken as tacit consent.

14. The term "understanding", when used in a Senate resolution approving a treaty "subject to an understanding" or when used in the United States ratification of a treaty "subject to an understanding", is used most appropriately to apply to a statement of purpose, an interpretation, a definition, or a paraphrase which is in effect a mere clarification of a particular provision or of the treaty; that is to say, it is not intended to modify or amend in any way the treaty provisions, or to reserve the position of the United States in such a way as to preclude the full operation of any of the treaty provisions in respect of the United States, but has the object of clarifying the understanding as to the actual intention of the negotiators in formulating the provisions to which the "understanding" relates.

15. The term "reservation", when used in a Senate resolution approving a treaty "subject to a reservation" or when used in the United States ratification of a treaty "subject to a reservation", is used most appropriately to designate a statement which has the effect of writing into the treaty a new provision or of modifying the application of a treaty provision with respect to the United States or of indicating the non-application of certain provisions with respect to the United States. A familiar example of a reservation in the case of a bilateral treaty is that which was set forth in the Senate resolution of approval and also in the President's ratification of the treaty of friendship, commerce and navigation of December 8, 1923 with Germany (Treaty Series 725; 44 Stat. 2132). That treaty, as signed, contained certain broad provisions relating to the rights of the nationals of either country with respect to the entry into and travel and residence in the other country. The Senate gave its advice and consent to ratification subject to the following reservation affecting the application of the treaty: "Nothing herein contained shall be construed to affect existing statutes of either country in relation to the immigration of aliens or the right of either country to enact such statutes". After

obtaining the consent of the foreign government to that reservation, the treaty was ratified by the President, the ratification embodying the text of the reservation.

16. Sometimes the Senate resolution and the ratification will set forth both understandings and reservations, introduced by wording such as "subject to the following understandings and reservations". On the other hand, it may be difficult to determine with certainty whether a statement to be included in the Senate resolution and the ratification is an "understanding" in the nature of a mere clarification, or has in fact the character of a "reservation" involving a possible modification or amendment in the terms of the treaty. In such case, it is customary to designate the statement a "reservation", although it may be designated as "the following understanding and reservation".

17. After conclusion of a treaty, the original signed text, or in the case of a multilateral convention a duly certified or otherwise authenticated copy is submitted by the Secretary of State to the President and by him transmitted to the Senate. In his message to the Senate of January 10, 1947, President Truman wrote as follows:

"With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention between the United States of America and France, signed at Paris on October 18, 1946, for the avoidance of double taxation and the prevention of evasion in the case of taxes on estates and inheritances, and for the purpose of modifying and supplementing certain provisions of the convention between the two Governments relating to income taxation signed at Paris on July 25, 1939.

"I also transmit for the information of the Senate the report by the Secretary of State with respect to the convention."

18. After consideration of a treaty, the Senate may return it to the President with a resolution of advice and consent to ratification, with or without a reservation, or with a resolution that the Senate has considered and rejected the treaty. If the treaty has been returned without action having been taken by the Senate or returned with Senate action which the President believes should be reconsidered, the President may resubmit it at a later date for further consideration.

19. The Committee on Foreign Relations asked and received the unanimous consent of the Senate on September 26, 1940, to return three conventions, without the advice and consent of the Senate to ratification, "in view of the political changes effected through military operations in Europe since these conventions were signed". (Congressional Record, vol. 86, part 11, page 12670.) Two of the conventions, a double taxation convention, and protocol thereto, with France, signed July 25, 1939 (Executive A, 76th Congress, 3d Session), and a claims convention with Norway, signed March 28, 1940 (Senate Executive H, 76th Congress, 3d Session), were resubmitted to the Senate after the liberation of France and Norway, and the Senate gave its advice and consent to their ratification. The third, a consular convention with Lithuania, signed May 10, 1940 (Senate Executive I, 76th Congress, 3d Session), has not been resubmitted.

20. A treaty may remain pending in the Senate, carried on the Treaty Calendar from Session to Session. The Committee on Foreign Relations

may suggest measures to be taken to facilitate Senate approval of a particular treaty.

21. A treaty which remains pending in the Senate for a long period of time may become obsolete by virtue of changed conditions, or another treaty may be drawn up to replace it. The Executive Branch of the Government may conclude that there is little chance that the treaty will receive the approval of the Senate, and decide that it should be withdrawn and filed in the National Archives as an "unperfected treaty".

22. In his message to the Senate dated April 8, 1947, President Truman stated that:

"Because of changed conditions affecting their provisions since they were submitted to the Senate, a number of the treaties now pending in the Senate have become obsolete. The situation with respect to several other pending treaties would be clarified if they were withdrawn for further study and consideration in the light of developments since they were formulated and, if found advisable, resubmitted with a fresh appraisal of their provisions.

"I, therefore, desire to withdraw from the Senate the following treaties with a view to placing the Treaty Calendar on a current basis:"

The nineteen treaties, conventions, and protocols named by the President were returned to him in accordance with a resolution of the Senate passed on April 17, 1947. A similar procedure was followed in 1949, when, by a message dated August 10, 1949, the President informed the Senate of his desire to withdraw certain other treaties, which were returned to him pursuant to the Senate resolution of October 13, 1949.

23. An international agreement which has the effect of amending a treaty or convention ratified with the advice and consent of the United States Senate is submitted to the Senate for its concurrence. In transmitting to the Congress a draft of a joint resolution providing for acceptance by the United States of America of the revised constitution of the International Labour Organisation as adopted at Montreal on October 9, 1946, the statement was made in a document accompanying the letter from the Secretary of State that:

"The Final Articles Revision Convention, which is printed in the same document, is to be discussed in a separate memorandum. It is intended that this convention will be submitted to the Senate for its advice and consent inasmuch as its intended effect is to change the language of conventions which have been ratified with the advice and consent of the Senate or are pending before that body." [Appendix C to letter from the Secretary of State (Marshall) to the Speaker of the House of Representatives (Martin), May 8, 1947; House Report 1057, 80th Congress, 1st Session.]

24. After a treaty or other international agreement has entered into force with respect to the United States, it is mandatory that its text be published, in accordance with the Act of Congress approved September 23, 1950, and be registered with the Secretariat of the United Nations. The United States also registers texts of aviation agreements with the International Civil Aviation Organization, in accordance with articles 81 and 83 of the 1944 Convention on International Civil Aviation, and registers texts of treaties and other agreements with the Organization of American

States (formerly the Pan American Union), in accordance with resolution XXIX of the Eighth International Conference of American States.

25. Treaties and other international agreements of the United States which entered into force up to the end of the year 1949 were published in the United States Statutes at Large pursuant to the Act of Congress approved June 16, 1938 (Act of January 12, 1895 as amended) which provided in part as follows:

"That the Secretary of State shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress; all treaties to which the United States is a party that have been proclaimed since the date of the adjournment of the regular session of Congress next preceding, all international agreements other than treaties to which the United States is a party that have been signed, proclaimed, or with reference to any other final formality which has been executed, since that date... (52 Stat. 760; 1 U.S.C. Sec. 30, 44 U.S.C. Sec. 196).

26. By the Act of Congress of September 23, 1950 the law with respect to publication of treaties and other international agreements of the United States was amended so that, as to those instruments which entered into force beginning with 1950, they are to be published separately from the Statutes at Large, but with essentially the same evidentiary quality, in a compilation entitled "United States Treaties and Other International Agreements". The new law provides in part as follows:

"S. 112a. The Secretary of State shall cause to be compiled, edited, indexed and published, beginning as of January 1, 1950, a compilation entitled 'United States Treaties and other International Agreements' which shall contain all treaties to which the United States is a party that have been signed, proclaimed, or with reference to which any other formality has been executed, during each calendar year. The said United States Treaties and other International Agreements shall be legal evidence of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and agreements, therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States" (1 U.S.C. sec. 112a).

81. Uruguay

CONSTITUTION OF 25 JANUARY 1952. TEXT FURNISHED BY THE PERMANENT DELEGATION OF URUGUAY. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

Article 6. In any international treaties which the Republic may conclude there shall be proposed a clause to the effect that all differences which may arise between the contracting parties shall be settled by arbitration or other peaceful means.

Article 85. The General Assembly is competent:

. . .

(7) To declare war and to approve or withhold approval, by an absolute majority of the full membership in each Chamber, of such treaties of