international law and as a matter of international administration, we would do well to reconsider the oversimplified attitudes taken toward preventive war in the past, *pro* and *con*, respectively, by some patriots and all pacifists. The device of preventive international police action, non-military or military, is or would be terribly delicate and dangerous, especially if delegated to any particular state or states to carry out—and a unitary international force seems still far in the future. Nothing is to be gained by refusing to keep ahead of events in thinking out the problem, however.

PITMAN B. POTTER

RESERVATIONS TO MULTILATERAL TREATIES

The problem of reservations to multilateral treaties signed at the close of international conferences is one that has long been a matter of concern to the regional Organization of the American States, as it is now to the Secretariat of the United Nations. How can we promote the general acceptance of international agreements and yet recognize that, after the text of the treaty has been agreed upon and signed by representatives of the executive department of a state, the popularly elected Congress, which in democratic constitutions must give its assent to the ratification of the treaty, may object to certain provisions of the treaty and refuse to approve the agreement without making exception of one or more objectionable articles?

The simplest answer would be to say that we simply cannot recognize any such intervention on the part of the legislative body. Once the treaty has been signed, the treaty must be ratified in the form signed or not ratified at all. But such a position would be needlessly extreme. What if the other signatories of the treaty find no objection to the proposed reservation, looking upon it as being no more than the expression of a national complex which the particular state may have with respect to possible effects of the treaty not contemplated by themselves, or in any case as not constituting any substantial obstacle to the attainment of the objectives of the treaty? In such a case the other signatories might readily agree to accept the proposed reservation under the belief that it is better to have the particular state coöperate in that restricted way than not at all; and if they are willing to do so, why not let them?

The difficulty arises when, out of a large number of signatories, some of which may already have ratified the treaty, one or two, perhaps even as many as ten percent, may be unwilling to accept the proposed reservation. In such cases there is a choice of two distinct procedures: either to exclude the state proposing the reservation from participation in the treaty, or to permit it to participate with the large majority who are willing to accept its reservation, leaving the treaty without effect in relation to the states unwilling to accept the reservation. The first of these two procedures was

followed by the Secretariat of the League of Nations and is now followed by the Secretariat of the United Nations. The second procedure is followed by the Pan American Union in depositing the ratifications of inter-American regional treaties. Which of the two is the preferable procedure, or, better, which of the two is the procedure best suited to the particular conditions under which it is being applied?

In a recent report of the Secretary General to the General Assembly of the United Nations [1] attention is called to the lack of unanimity either as to the procedure to be followed by a depositary in obtaining the necessary consent of other governments when a state proposes to accede to a treaty with a reservation, or as to the legal effect of the objection made by a particular state to a proposed reservation, current importance being given to the question in connection with the Convention on the Prevention and Punishment of the Crime of Genocide.[2] The report surveys the practice of the Secretariat of the United Nations, presents the views of international jurists and of governments, and argues in favor of the requirement of unanimous consent to reservations. A significant feature of the procedure of the United Nations is that it does not go so far as to require that all of the signatory states agree to accept the proposed reservations, but only those which, as the report describes them, "have established their immediate concern" in the treaty by having themselves ratified it. Signatory states which had not as yet ratified the treaty would be informed of the proposed reservation, and any objections which they might make to it could be taken into account, both by the reserving state and by the other parties, without, however, being in themselves sufficient to defeat ratification.

The procedure followed by the Pan American Union, now acting as the General Secretariat of the Organization of American States, was fixed in 1932 by decision of the Governing Board of the Union acting in pursuance of the functions of depositary of diplomatic documents conferred upon it by the Habana Conference of 1928. A treaty ratified with reservations was held to be in force between the reserving state and the states which accepted the reservations; and on the other hand it was held not to be in force between a state ratifying with reservations and another state which had already ratified and which did not accept the reservations. The Eighth International Conference of American States held at Lima in 1938, seeking to discourage the introduction of reservations, adopted a resolution (XXIX) which made provision that if a state proposed to adhere to or ratify a treaty with a reservation, it should first transmit the text of the reservation to the Pan American Union so that the Pan American Union might inform the signatory states and ascertain whether they accept it or

[1] U.N. Doc. A/1372, September 20, 1950.

[2] See Supplement to this JOURNAL, p. 13; also Notes on Legal Questions Concerning the United Nations, this JOURNAL, Vol. 44 (1950), p. 127.

not. According to this procedure the ratifying state still has the right to proceed to ratify with the reservation in spite of the fact that the effect will be to bring the treaty into effect as to the states accepting the reservation and leave it inoperative as to other states. The resolution suggests, however, that it was the hope of the Conference that if the observations of a number of signatory states should indicate that they were not willing to accept the reservation, in such event the state which proposed to ratify with the reservation would reconsider its decision, and before proceeding to deposit its ratification of the treaty would try to modify it so as to make it generally acceptable, or possibly eliminate it altogether.

It is of interest to note that the report of the Secretary General of the United Nations concedes certain advantages to the procedure of the Pan American Union, noting that it is "well adapted to the needs of a regional agency and to the close relations existing between States within a defined geographic area." On the other hand, it is argued that the theory is not well fitted to the purposes of multilateral conventions drawn up under the auspices of the United Nations which have a world-wide character and to which states "in very diverse circumstances" agree to be bound. This would appear to be particularly true in the case of treaties having a legislative or constitutional character, such as the Genocide Convention, as distinguished from contractual conventions which, although multilateral in form, are in operation simply a complex of bilateral agreements.

As against the position taken by the Secretary General of the United Nations, the Uruguayan Delegation argued before the Sixth Committee that it was inexpedient to give to any single state the power to exclude any other state from the operation of a treaty by reason of disagreement with "the most trivial and inoffensive reservation," a rule which, it was said, would be "equivalent to extending the veto into the sphere of the General Assembly." The United States Delegation proposed that the problem be referred to the International Law Commission, and that in the meantime the system proposed by the Secretary General be applied; while the United Kingdom, in an annex to the report of the Secretary General, took the position that reservations should be accepted only with the consent of all of the signatory states. Among the other resolutions submitted to the Committee, one coming from the French representative held that the question should be referred to the International Court of Justice for an advisory opinion.

The conclusion reached by the Sixth Committee and submitted to the General Assembly in the form of a resolution calls for a request from that body to the International Court of Justice for an advisory opinion, limited, however, to the Genocide Convention. Three separate points are raised:

1. Can the reserving state be regarded as being a party to the Convention while still maintaining its reservation if the reservation is ob-

jected to by one or more of the parties to the Convention but not by others?

2. If the answer to the first question is in the affirmative, what is the effect of the reservation as between the reserving state and:

(a) the parties who object to the reservation,
(b) those who accept it?

3. What would be the legal effect as regards the answer to question (1) if an objection to a reservation is made:

(a) by a signatory which has not yet ratified,
(b) a state entitled to sign or accede but which has not yet done so?

The resolution also proposed that the International Law Commission be invited in the course of its work on the codification of the law of treaties "to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law." Priority is to be given to the study and a report is to be presented which can be considered by the General Assembly at its sixth session.

In the meantime the rules at present followed by the Pan American Union are to be reconsidered in order to meet the new conditions which have come about since the adoption of the resolution of the Lima Conference.

C. G. FENWICK

THE SECOND SESSION OF THE INTERNATIONAL LAW COMMISSION

The International Law Commission held its second session in Geneva from June 5 to July 29, 1950.[1] Two members were absent and the Soviet member, Professor Koretsky, withdrew when the Commission refused to exclude the member who was a national of China. The Chairman ruled, and was upheld by the Commission, that Mr. Koretsky's proposal was out of order since the members of the Commission serve in a personal capacity and not as representatives of governments. Professor Georges Scelle was elected Chairman.

On the agenda were several topics, the treatment of which can only be briefly noted here. The General Assembly had asked the International Law Commision to formulate the principles of international law recognized in the Charter and in the judgment of the Nürnberg Tribunal. The Commission took the view that its task was not to express any appreciation of the Nürnberg principles as principles of international law, but merely to formulate them in accordance with instructions. Seven principles were stated and were referred back to the General Assembly.

[1] For report of the Commission on its second session, see this JOURNAL, Supp., Vol. 44 (1950), p. 105.