EXTERNAL AFFAIRS AND THE COMMONWEALTH

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THE Commonwealth Constitution gives to the Commonwealth Parliament power to make laws for the peace, order and good government of the Commonwealth with respect to external affairs.[1] The extent of these powers is obviously difficult to define with precision, because of the simplicity of the language adopted. Flexibility may be a virtue in the language of a Constitution, but litigation and expense is the inevitable price for it. These considerations are ceasing to be mere academic reflections under modern conditions. As Latham C.J. points out, speaking from experience as an ex-Minister of External Affairs and Foreign Representative of the Commonwealth, "To-day all peoples are neighbours, whether they like it or not, and the endeavour to discover means of living together upon practicable terms—or at least to minimize quarrels—has greatly increased the number of subjects to be dealt with in some measure by legislative action."[2] The faint atmosphere of pessimism discernible in this passage strengthens, if anything, the general contention. The increasing multiplicity of international contacts raises, therefore, very practical considerations for Australians, both lawyers and laymen. It is undeniable that in the long run the extent and content of this Commonwealth power can only be determined by that process of litigious trial and error which proves so profitable to the lawyers and so bewildering to the layman. Still there are drawbacks to the process. There is established precedent from the highest tribunals as well as sound juristic fundamentals in the dictum that "the limits of the power can only be ascertained authoritatively by a course of decision in which the application of general statements is illustrated by example."[3] Nevertheless, if we are to be relegated to this inevitable process, we can mitigate some of the disadvantages by taking stock of judicial determinations at each available opportunity to try and ascertain how much of the uncharted sea has been mapped for the legislative ship of State.

For practical purposes little guidance is to be found in early High Court decisions, since they were hardly precise enough to provide the sailing directions for which we are in search. Latham C.J., in the judgment previously mentioned, cites four High Court Justices in five cases as having adverted to the subject. But there is little to be gained from these matters. What guidance there may be is contained in the recent judgments of the Full High Court in *R. v. Burgess,* and the three decisions of the Privy Council on appeals from Canada in the *Aeronautics* case,[4] the *Radio* case,[5] and the *Labour Conventions* case.[6]

1. Section 51, placitum, XXIX.
2. *The King v. Burgess,* 55 C.L.R. 640.
3. *Per* Dixon J., *ibid.,* at 669.
4. *Re Regulation and Control of Aeronautics in Canada* (1932) A.C. 54.
5. *Re Regulation and Control of Radio Communication in Canada* (1932) A.C. 304.
6. *A.G. for Canada v. A.G. for Ontario* (1937) A.C. 326.

Before proceeding to the detailed consideration of this legislative power, we in passing note one matter of general jurisprudence. The doctrine of English law is, of course, that a treaty, however validly concluded by the appropriate constitutional organ, is not itself effective to alter the law so far as it affects personal or individual rights. This is clear enough from the decision in *Walker v. Baird.*[7] Now there is discernible a tendency in modern international jurisprudence to elevate the authority of international law so as to subordinate that of municipal law in conflict therewith. A certain juristic quality is postulated of international law which by its nature compels municipal subservience. This doctrine is in truth a legal expression of political conceptions. It might well be described as the juridical parallel of the political conception subjecting the claims of unlimited national sovereignty to the servitudes implied and deduced from the existence of a community of nations. It is probably true that the *doctrine* is no more clearly established in the legal than in the political sphere. We can see, therefore, how insecure must be the basis of the supposed legal doctrine. This matter may seem remote from the enquiry upon which we are embarked—but such is not the case. There is a tendency amongst commentators to criticize the views of English Judges on the basis of the international theories which, to say the least, are far from secure even in that speculative arena from which they are said to have emerged. Thus Mr. Staricoff, in the learned and interesting article on Australia and the Constitution of the International Labour Organization,[8] says that "the generally admitted theoretical position is that national law exists only within the limits permitted by International Law. This may shock the Austinians and those who talk glibly of national sovereignty as possessing the attributes of omnipotence, but it is, nevertheless, the only scientifically correct viewpoint." To describe this theoretical position as *generally admitted,* and to adopt the expression *talk glibly* in the next sentence is to court comment. Similarly, Mr. J. G. Starke[9] describes Lord Atkin, speaking for the Privy Council in the *Labour Conventions* case as being "on most uncertain ground when he asserted the traditional Austinian (and, indeed, Diceyan) standpoint towards international law and international treaties." The present writer holds the strongest views as to the political desirability of limiting national sovereignty in the interests of an international community. But he is far from satisfied that such a step forward can be accomplished by the adoption in the field of international law of highly speculative and theoretical conceptions which may retard rather than promote the development desired, and in any case really seek to achieve the result by a process of theoretical juristic compulsion rather than by reliance upon an organic sense of responsibility which is likely to prove a more substantial basis of international solidarity. The virtues of English law lie largely in an inveterate empiricism, and we may lose the quality and

7. (1892) A.C. 491.
8. 32 International Labour Review.
9. 11 A.L.J., at 48.

gain merely the defects of our virtues if we seek to graft foreign flowers on to such a common or garden stem. The Chief Justice of the High Court remains an unrepentant Austinian, in the language of the critics. Since at bottom this matter is one of political philosophy rather than law, it is perhaps permissible to say that this attitude is one for practical satisfaction.

The actual decisions in the cases under review may be summarized sufficiently for convenience without undue inaccuracy. In the *Aeronautics* case, the Privy Council held that the claim of the Dominion Parliament to legislate in order to carry into effect the terms and obligations of the Convention for the Regulation of Aerial Navigation, signed at Paris in 1919, was *intra vires* of that Parliament as contained in the British North America Act. In the *Radio* case, the Privy Council held that a similar claim by the Dominion Parliament, with respect to the International Radiotelegraph Convention, 1927, was similarly *intra vires*. In *R. v. Burgess,* the High Court decided that the claim of the Commonwealth Parliament to give effect by legislation to the same Aerial Navigation Convention was *intra vires* the Commonwealth's Legislature as defined by the Constitution. Finally, in the *Labour Conventions* case, the Privy Council held that legislative fulfilment of International Labour Conventions dealing with Hours of Work in Industrial Undertakings, Weekly Rest in Industrial Undertakings, and the Creation of Minimum Wage Fixing Machinery was *ultra vires* the Dominion Parliament under the British North America Act.

The nature and framework of the Canadian Constitution embodied in the British North America Act is different in very substantial respects from the Commonwealth Constitution. The guidance to be deduced from the Canadian cases is, therefore, to be found, if at all, in general principles rather than specific rules. Moreover, the ascertainment of such general principles is a matter of peculiar difficulty, since their generality is likely to be limited in any case by the fundamental characteristics of the particular constitution under consideration, even supposing we can escape from the limitations of the precise words under scrutiny by the Court.

We may note four features of the British North America Act which are relevant to this point of view and require to be kept in mind during any consideration of Canadian constitutional law as illuminating problems arising under the Commonwealth Constitution. The division of the respective legislative competences of the Dominion and Provincial Parliaments takes the form of two specific lists of subject matters contained in Sections 91 and 92 applying respectively to Dominion and Provincial Parliaments. Secondly, the residue of powers not expressly granted by the two categories is reposed in the Dominion Parliament. But this residuary grant, it must be remembered, is conditioned in very substantial respects by the exclusive and specific grant to the Provinces of power to make laws in relation to property and civil rights in the Provinces.[10] Thirdly, the Privy

10. B.N.A. Act, Section 92, paragraph 13.

Council has found a general power in the Dominion Parliament to legislate in the face of grave national emergency "for the peace, order and good government of Canada." But the matters so legislated upon must have "become matters of national concern," and have reached "such dimensions as to affect the body politic."[11] Fourthly, whilst neither Section 91 nor Section 92 contains reference to any subject matter comparable to *placitum* XXIX of Section 51 of the Commonwealth Constitution, or, indeed, to any matter of *external concern,* Section 132 of the B.N.A. Act is without any parallel in Australia's charter. The section provides that "The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries."

Now the first of the Canadian appeals may be taken merely to have decided that the legislation there in question (The Aerial Navigation Legislation) was validly enacted under the provisions of Section 132. The Aerial Convention had been entered into by *the Empire.* Without here condescending upon particulars, it is sufficient to say that that Convention had been signed in Paris in 1919 in the same manner and form as the Peace Treaty, and was ratified in a like manner and form. It was difficult to controvert this claim by counsel for the Dominion and in effect the Provinces were thrown back upon the contention that since the Provinces could each effectuate the Convention within their own limits by legislation under their own powers there was no need to resort to the Dominion powers under Section 132. If there was no such need, then such invocation, it was contended, was unconstitutional. The Privy Council rejected the fact which was basic to this contention. A single and uniform statute was found to be necessary. In consequence, it was not very clearly determined whether there was substance in the general contention. The indications of the judgment, however, are against the principle suggested.

Turning at this stage to the decision upon the same subject-matter in *R. v. Burgess,* we reach the conclusion that the powers of effectuating by appropriate legislative machinery the "Empire obligations" to which the Commonwealth is a party are contained no less in Section 51, *pl.* XXIX, of the Commonwealth Constitution than in Section 132 of the B.N.A. Act. It is also submitted that these powers are not cut down by consideration of the nature of the subject-matter of the international obligation. The powers exist none the less because the subject-matter could be effectively regulated by State legislation. It may be said that the nature of the Aerial Convention itself required one single statutory *execution,* and that other international conventions might not require anything more than uniform State legislation. Nevertheless, where the Commonwealth becomes bound by reason of its relationship to the Crown in an international obligation, it would seem that the necessary implementing legislation may be said to be a law with respect to external affairs. It is to be observed that this

11. (1937) A.C., at 353.

external affair is one which can be justified as having been within the contemplation of Parliament in 1900. At that time it was probably true to say that the proposed Commonwealth could not have been contemplated as likely to be found in an international obligation except by way of treaty made by the King in respect of the whole of his territories. It is also to be remembered that there is still no constitutional impropriety in the execution of a treaty in the form adopted for the Aerial Convention of 1919. For these reasons it may be believed that where the Commonwealth does become so bound, then the resulting obligation is an external affair imposed upon the Commonwealth because of the constitutional and international functions of the Crown. Whatever the nature of the subject-matter, the necessary implementing of such obligation falls within the Commonwealth legislative power not because of the nature of the subject-matter but because of the nature of the obligation which, in some respects at all events, in point of law if not politics, may be said to be imposed *ab extra* by force of Imperial constitutional law.

Thus far the situation seems to be fairly definitely settled by the decision of the High Court in *R. v. Burgess*. Nevertheless, there are not wanting certain suggestions in the judgments therein that it is the essential *nation-wide* character of the subject-matter which lends justification to the validity of the legislation.

Having reached the position that external obligations undertaken by the Crown with respect to the Empire as a whole result in creating an *external affair,* legislation upon which falls within the Commonwealth's powers, we may ask whether the same result should be held to follow—

(a) With regard to obligations undertaken by the Crown, but not with respect to the Empire as a whole, but only with respect to some parts thereof—and more particularly with respect to the Commonwealth of Australia only, and
(b) with regard to obligations undertaken by the Government of Australia and not by the Crown at all.

Now at first sight it may be said that obligations of these two classes are not to any extent less matters of *external affairs* than obligations of the class already held to fall within the constitutional power. But certain difficulties arise. The task is one of interpreting a statute in the light of meanings to be attached to terms as employed and understood at the date of enactment. New processes, practices and methods arise in the course of time and legislation must be adapted by Courts to these novelties perhaps unthought of at the time of the enactment. If upon a true construction of the concept as envisaged by those who enacted it the novelty falls within the connotation of that concept, then it is not to be excluded from the scope of the statute by the fact that it was outside its denotation as understood at enactment. The problem then is to determine, in relation to the Commonwealth proposed to be established, the true connotation of the expression *external affairs.*

The Privy Council decisions are, unfortunately, not very helpful upon this matter. The concept contained in Section 132 (B.N.A. Act) is so specifically and narrowly expressed as to leave little room either for doubt or expansion.[12] In the *Radio* case it was contended that this concept was to be expanded so as to include obligations of Canada towards foreign countries not undertaken as part of the British Empire. The Privy Council seem to have been ready to adopt this contention: "In fine, though agreeing that the Convention was not such a treaty as is defined in Section 132, their Lordships think it comes to the same thing."[13] This reasoning is justified as the "outcome of a gradual development of the position of Canada *vis-a-vis* to the Mother Country, Great Britain, which is found in these days expressed in the Statute of Westminster."[14] But this somewhat unprecise approach to the precise concept embodied in Section 132 was unequivocally rejected by the Privy Council in the *Labour Conventions* case. Obligations of the kind involved in the Radiotelegraph Convention are not allowed to have a character at variance with the particular form of international agreement out of which they arise. They are "not obligations of Canada as part of the British Empire but of Canada by virtue of her new status as an international person."[15] The Radio legislation was, therefore, not to be validated under Section 132, nor were the statutes implementing the Labour Conventions.

These decisions provided nothing more than certain negative limits when interpreting the words in Section 51 (*pl.* XXIX) of the Commonwealth Constitution—very different from those in Section 132 of the B.N.A. Act. But we may safely conclude that the historical evolution of Dominion status and the consequential treaty-making powers does not automatically extend the constitutional powers—and particularly the legislative powers—of Dominion parliaments. The grant of legislative power must first be examined and its connotation as at the date of enactment determined. Then it may be permissible to admit an additional denotation, if within the connotation so ascertained, which may have arisen as a result of the historical evolution. Part of the power granted by Section 51 (*pl.* XXIX) of the Commonwealth Constitution is the power to implement by legislation obligations binding on the Commonwealth. Is it necessary to read this expression as limited to "obligations entered into on behalf of the Crown and binding upon the whole Empire"? Surely it is not so necessary. It is true that this limited category of obligations exhausted the denotation of this particular concept in 1900. But there is nothing in the very general expression *External Affairs* to suggest that the connotation was so limited by the framers of the Constitution. It is therefore suggested that it is unnecessary to show that the obligation being implemented under the Constitutional power was entered into by the Crown, or that it binds the whole Empire.

12. *Supra*, p. 6.
13. *Ibid.*, at 312.
14. *Loc. cit.*
15. (1937) A.C., at 349.

So far we have been considering the manner and form of the international obligation. Then it may be asked whether the constitutionality of implementing legislation can depend upon the subject-matter of the international agreement. It was contended before the High Court that the mere inclusion in a treaty of some particular subject did not make that subject necessarily an *external affair,* and that the subject must be one, in the words of the Chief Justice, which "*in se* concern(s) external relations or . . . matters which may properly be the subject of international agreement." At the outset it may be said that this argument might be conceded without resulting in any conceivable circumstances in any appreciable diminution in the powers of the Commonwealth Parliament. As the Chief Justice shows, the list of "*bona fide* international matters" is already a very long one—and constantly growing. It may be indeed impossible to prescribe *a priori* the characteristics of matters which will be held to fall within the supposed limited class. And once it is clear that a matter has been made the subject of an international compact, it is difficult to escape the conclusion from that very fact that it is a genuine matter of international concern. Starke J. gives tentative allegiance to the view expressed by Willoughby in relation to the treaty-making power of the U.S.A. that the matter thereof must "fairly be said to be of sufficient international significance to make it a legitimate subject for international co-operation and agreement." But taking these words as prescribing a literal test, the result is highly curious at the very least. The question of whether a matter is *of sufficient international significance* seems a singularly inappropriate one for determination by a Court. On the other hand, it is precisely the kind of question which the political arm of the State is equipped to handle. It is true that written constitutions frequently compel courts to embark upon enquiries as to which legal yardsticks are non-existent. But seldom do they have to handle questions so purely political in nature and so devoid of juridical characteristics as this one would be. Later on in his treatise Professor Willoughby returns to this proposition. He then lays down "that the treaty-making power may not be used to secure a regulation and control of a matter not properly and fairly a matter of international concern."[16] But when he comes to exemplify this proposition it is apparent that the idea involved is much more limited than these general words suggest. Thus the learned author suggests that a treaty made between the United States and Great Britain whereby the United States bound itself to extend property rights (say) not merely to British nationals but to all persons would be obnoxious to the *bona fide* exercise of the constitutional power.

This much may be conceded, but it would appear that the real vice in such a case in the exercise of the treaty power is that it is a *fraud on the power* and an exhibition of *mala fides* rather than that the treaty is not *of sufficient international significance.* Indeed, it is

16. Willoughby on the Constitution, 2nd Edn., p. 570.

curious to note that in the hypothetical case it is the *excess* of international solicitude which mars the agreement suggested. On the whole, it cannot be believed that in the long run the High Court can build up a juristic principle by scrutinizing treaties to determine whether they are *international* in character. Not only is the Court ill-equipped for any such task which must inevitably turn upon political opinions rather than legal standards, but the results of any such doctrine would be remarkable. After all, some other State or States must be a consenting party to the treaty in question. To deny the legislature power to implement the treaty would be to leave the Commonwealth Government or the Crown liable for the international wrong arising from the breach of contract. To add to this wrong a formal finding by the final appellate tribunal that the treaty was one that should not have been made as *insignificant* or *not international* is certainly not going to smooth the diplomatic path of the Government.

The question, however, of what subjects are properly matters of international agreement leads naturally to the most difficult and debatable aspect of this whole problem. The examples of the Labour Conventions drafted by International Labour Conferences at Geneva provide both a nice question as to the limits of the constitutional powers of the Parliament and of *proper* international agreements. The conventions deal with subject-matters which in many cases are entirely *inside* Australia. The execution of the agreement requires nothing more (nor less) than domestic legislation directed to the regulation and control of the nationals of the contracting State not in their relations with the nationals of other States or in any aspect of external affairs but entirely in relation to local affairs of a normal though it may be very extensive character. Yet it is obvious that such matters as maximum hours in industry and minimum wages may be vital matters in international economic competition and undoubtedly *of sufficient international significance* to satisfy the practical politician. Mr. Staricoff provides an abundance of reasoning as to the practical importance of such considerations. By any such test as previously suggested these *treaties* would prove to be both *bona fide* and *international*—and not the less the latter because the implementing thereof requires legislation designed to act entirely *internally*.

The consideration of these conventions brings us face to face with the major question as to whether the legislative power granted by Section 51 (*pl.* XXIX) extends so as to trench upon the reserved powers of the States' legislatures. It is to be observed that *R. v. Burgess* provides no definite answer to this question, because it may be said that the implementing of a treaty made by the Crown on behalf of the whole Empire leaves no option. In effect, the exercise of this major prerogative by the Imperial Crown involves or necessitates a modification of the constitutional distribution of powers. Whilst it has been argued that the form of treaty which the Commonwealth seeks to implement by legislation cannot itself determine whether the legislation in question falls within Section 51 (*pl.*

XXIX), it is not difficult to see that the fact that the Commonwealth Government is the sole contracting party may be relevant when the question of the constitutional legislative competence of Commonwealth and State Parliaments comes into question. It is to be remembered on the one hand that the execution of treaties by the Crown in respect of the Empire as a whole is still in accordance with constitutional usage despite the Statute of Westminster, and on the other hand that representation of the Commonwealth at both the League and the I.L.O. at Geneva is by and on behalf of the Commonwealth Government and not the Crown and the ratification of Conventions arising from both bodies is in a similar form.

The current of opinion in America seems to be turning towards the view that the *treaty power* may be used to invade the reserved powers of the States. This would appear to be the inevitable result of the decision in *Missouri v. Holland,*[17] where legislation was held valid as implementing a treaty which had previously been held invalid when unsupported by any treaty. The doctrine is upheld by Willoughby.[18] But the form of the Constitution obviously differs, particularly in regard to this subject-matter, and the persuasion of this authority is therefore reduced.

On the other hand the prevailing doctrine in the Privy Council points in a very different direction—though again the Constitution under review was of a different character. In the *Labour Conventions* case the Privy Council held that the Dominion Parliament had no power to implement by legislation the I.L.O. Conventions to which the Canadian Government had become a party. It has already been pointed out that the Judicial Committee was not prepared to extend the words of Section 132 of the British North America Act to cover such *treaties.* Having justified the previous decision with regard to Radio Comunications on the ground that the subject-matter of the legislation properly understood fell within the powers of the Dominion as prescribed in Section 91 of the Act, the Judicial Committee had then to consider legislation dealing with a subject-matter which in itself clearly fell under the heading of *property and civil rights* specifically allocated to the Provinces. The principal justification for the Dominion legislative power was found in the *residuary powers* given by Section 91. Using terms more characteristic of our own Constitution than that of Canada, we may put the argument for the Dominion thus: "The power to legislate with respect to external affairs is a recognized head of legislative competence. It has now come to be a necessary head in view of the stage of development reached by the Dominion of Canada. The power is not granted to the Provinces and therefore resides in the Dominion. The legislation may therefore be justified under such power." In the first place the Privy Council deny the existence of such a head of legislative competence as *External Affairs in the scheme of division envisaged in the British North America Act.* This qualification is the essence of the judgment.

17. 252 U.S. 416.
18. *Op. cit.,* pp. 563 *et seq.*

"The distribution"—so reads the judgment—"is based on classes of subjects; and as a treaty deals with a particular class of subjects so will the legislative power of performing it be ascertained." This distribution is the very essence of the federal scheme in Canada. But this view of the Constitution necessarily rests upon the view that there is no such residuary head of power as *External Affairs*. Any particular legislation with respect to such matters must upon analysis be found to be legislation with respect to some specific subject-matters allocated by Sections 91 and 92 (including, of course, the residuary clause). The growth of the executive power by the development of Canada's international status has had no effect in altering the fundamental distribution of subject-matters for legislation. "There is no existing constitutional ground for stretching the competence of the Dominion Parliament so that it becomes enlarged to keep pace with enlarged functions of the Dominion executive. If the new functions affect the classes of subjects enumerated in Section 92, legislation to support the new functions is in the competence of the Provincial Legislatures only. If they do not, the competence is declared by Section 91, and existed *ab origine*. In other words, the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth."[19] This is a principle as emphatic and unmistakable as it is far-reaching. How far is it applicable to Australia?

It may be said that the principle itself extends beyond the merely literal interpretation of the Constitution. It faces and decides an issue as fundamental to the maintenance of the balance of a federation as it is recent in its emergence. Thus the Privy Council say that the alternative result "would appear to undermine the constitutional safeguards of Provincial constitutional autonomy." This result would come about because the accidental fact of an international agreement would, upon the alternative view, give to the Dominion apparently unlimited powers otherwise denied to it. There is no denying that the same principle might prove equally applicable in Australia. It is true that the method of interpretation by the implication of limitation arising from the Federal nature of the compact is now judicially out of favour. This matter is specifically mentioned by both Latham C.J. and Evatt J. in their treatment of Section 51 (*pl.* XXIX). In effect, they say that the *placitum* is to be measured by the interpretation of the words used in the first instance without any reading down in accordance with the nature of the Federal pact. Can it be said that this new view of the Privy Council has altered the situation? Is the pendulum about to swing again to its original position? It is not possible to determine this matter with certainty. Two matters incline to the view, however, that the rule laid down for Canada cannot alter the position now adopted in Australia.

In the first place there is the express grant of the *External Affairs* power in *placitum* XXIX. It may be retorted that a similar power

19. (1937) A.C., at 352.

is to be assumed to exist amongst the residuary powers granted to the Dominion under Section 91. But it is permissible to conclude that the Privy Council rejected this view. They must be taken to have held that the residuary powers granted by Section 91 (*pl.* XXIX) are powers with respect to subject-matters comparable to the other subject-matters enumerated in the remaining *placita* of Section 91 and also in Section 92. No subject-matter could be included in the residuary power therein which might, under appropriate circumstances, embrace all or any of the other classes of subjects enumerated. The Dominion Parliament has, therefore, no legislative competence with respect to external affairs and the result embodied in the judgment is precisely the opposite of the one relevant to Australia.

In the second place the allocation of the residuary powers to the States' Legislatures in Australia must also make for a different result. In Canada the incapacity of the Dominion Executive to secure effectuation of international obligations which it has undertaken or contemplates is an incapacity with regard to the classes of subjects allocated to the Provinces only. In view of the *property and civil rights* power, this limitation is substantial, particularly when we consider the subject-matter in the future of probable international agreements. Nevertheless, the situation is very different from that of a national government whose international capacity for negotiation is not unlimited except for specified subjects, but limited to specified subjects and otherwise denied.

It is submitted, therefore, that the recent decision of the Privy Council provides no basis for curtailing the legislative competence of the Commonwealth Parliament under *placitum* XXIX. This is not to say that the decision of the High Court opens a completely unlimited field. Some reasons have been given for suggesting that so far no clear limitations are readily perceptible. It may well be that limitations will be found in the actual nature of the obligations said to arise from the *treaty* or *convention* involved. When this situation does arise for determination, it may well be that in the case of, for example, the International Labour Organization Conventions, the absence of any actually binding international obligations may prove a crucial point in the determination of the question. Speculation must stop short of so indeterminate a matter.