Committee and any other subsidiary organ of the Council. It was, moreover, decided that the Council "could, if it and Mr. Lie chose, appoint the Secretary General as a rapporteur or mediator in any controversy in the Council." Finally, the same powers were granted to the Secretary General's deputy (Arkady Sobolev), when acting on behalf of the Secretary General.

It was reported that the Secretary General would reorganize his "Cabinet" so that it should consist of persons of highest rank, with the intention of delegating more authority to them, as far as administrative and technical functions are concerned, so that the Secretary General might devote the greater part of his time and energy to his political functions. The legal position of the Secretary General of the UN, therefore, transcends by far that of the Secretary General of the League.

JOSEF L. KUNZ

"AS DETERMINED BY THE UNITED STATES"

The reservation relating to domestic questions which was attached to the acceptance by the United States of the obligatory jurisdiction of the International Court of Justice is subject to widely varying interpretation as to the reasons for its adoption, its aim or intention, and its probable effect.[1] Although the question of the effect of the reservation may arise only at a somewhat later date, if ever, it is desirable to try to assess the consequences of the action taken while the matter is still fresh. We can then await the results with a certain amount of assurance that we know where we stand. The two questions first mentioned are not without interest and importance in connection with both the present case and similar cases which will arise in the future, but they will not be discussed here.

The decisive question is that of the probable effect of the reservation. And in estimating this effect in advance extremes must be avoided and practical realities kept closely in view. Thus there seems to be no ground for the fear that this reservation will be used to nullify completely—as it might, logically, be interpreted as doing[2]—the acceptance of obligatory jurisdiction. As has been noted elsewhere, it will be the Executive who will act, if anyone acts, under this reservation, and this is some assurance of greater prudence and responsibility than was manifested in the adoption of the reservation.[3] What is still more to the point, the particular variety of self-determination envisaged by the reservation involves a very old and very fundamental principle of international law and relations which no brave—or are they timorous?—words can overthrow, the principle, namely, that at no point may an individual state, not even in dealing with matters left to its domestic jurisdiction, let alone in determining what those matters are, decide things for itself entirely, this either practicably or in legal principle. Political prudence, right reason, and aroused public opinion may all throw

[1] For text and interpretation see article by Francis O. Wilcox, above, p. 699.
[2] See article by Lawrence Preuss, above, p. 720. [3] Same.

https://doi.org/10.2307/2193826 Published online by Cambridge University Press

their weight in the right direction here; in addition certain well-established precedents may be cited in support of this view.

This is the situation, for example, with regard to substantive national action in matters left to domestic jurisdiction such as the tariff, immigration, and title to property. In acting upon these subjects the national state is still required to observe certain restrictions such as that proscribing arbitrary discrimination among other countries, that requiring it to receive and consider reasonable diplomatic representations relating to the action in question, and so on.[4] These are marginal considerations which leave the jurisdiction in substance intact, but they eliminate or destroy any picture of complete national discretion at this point.

In another matter the lack of power of the individual state to decide international questions for itself emerges still more sharply. This is in connection with denunciation of treaty obligations on the ground of altered circumstances. There is no doubt that some such right exists, but the discretion of the state denouncing obligations in this manner is far from complete. The mere assertion of a state that circumstances have so altered as to destroy the equity and the binding legal force of an earlier agreement is not conclusive. That state may and infallibly will be called upon to substantiate its assertion.[5] There may or may not exist any facilities for compelling it to submit its assertion to the decision of another body, but both in law and in practical politics its unilateral assertion is and will be subjected to scrutiny by the other interested state or states, and this is the case likewise in a large number of similar items of international law and relations, or indeed as a general principle.

Finally the discretion of a state to decide upon measures necessary for its self-defense has also been regarded in this light. Such an attitude would follow on grounds of principle but one concrete case may serve as a vivid illustration.[6] It will be recalled that during the negotiation of the Pact of Paris the right of self-defense was cited as a limitation upon the effect of that document. At once hypercritical students of international relations said just what they are saying now of the Connally reservation, namely that "this constitutes a loophole through which anything can pass, thus nullifying the main agreement entirely." To such an oversimplified and actually unsound view Mr. Kellogg, one of the fathers of the Pact, replied. He had admitted the right of self-defense as a limitation or qualification on the general principle of the Pact, and he unwisely, as it seems, refused to admit a definition of that right (or of aggression, its opposite) into the Pact. But he recognized the right of other states to discuss any assertion of the right

[4] On these two examples see materials cited in Potter, *Manual Digest*, p. 140, note 53 and p. 155, note 126.2.

[5] See Chesney Hill, *The Doctrine of Rebus Sic Stantibus in International Law*, 1934, p. 78.

[6] See article by present writer "International Regulation of National Action for Self-Defense" in *Southwestern Political Science Review*, Vol. X, No. 3 (December, 1929), p. 279.

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of self-defense by one signatory. Having admitted, in strong terms, that "every nation . . . alone is competent to decide whether circumstances require recourse to war in self-defense" he immediately added: "If it has a good case the world will applaud and not condemn its action," thus in turn admitting the possibility of international denial of the national assertion and, still more, of international consideration and discussion thereof. Here as in the denunciation of treaty obligations for altered circumstances it may be true that no international jurisdiction will be empowered to pass upon the contention of the individual state, but that is not the whole story. Presumably the United States has a strict right to withdraw its assent to the principle that other states are entitled to a voice in settling any question affecting their interests, including that of the limits of domestic jurisdiction, although this approximates a denial of the existence of an international juridical community entirely. Presumably other states will refrain from drawing the logical conclusion here and ostracizing the United States in return. Presumably, finally, the International Court of Justice will be inclined to respect the United States' reservation. In view of all other facts and considerations, however, it will be very surprising if the reservation has much practical effect. Any Government of the United States would hesitate to apply it in any seriously debatable case knowing that it would at once be called upon to make its contention good in the international forum, as, for instance, the General Assembly or Security Council of the United Nations.

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https://doi.org/10.2307/2193826 Published online by Cambridge University Press