receive the assent of Congress through implementing legislation, it states not a limitation on the power of making treaties as international conventions but rather a necessary procedure before certain conventions are cognizable by the courts in the enforcement of rights under them.

It has also been suggested that the prohibitions against governmental action contained in the Constitution, and the Bill of Rights in particular, limit the exercise of the treaty power. No doubt this is true, though again there are no cases which so hold.[373]

One other limitation of sorts may be contained in the language of certain court decisions that seem to say that only matters of "international concern" may be the subject of treaty negotiations.[374] Although this may appear to be a limitation, it does not take account of the elasticity of the concept of "international concern" by which the subject matter of treaties has constantly expanded over the years.[375] At best, any attempted resolution of the issue of limitations must be an uneasy one.[376]

In brief, the fact that all the foreign relations power is vested in the National Government and that no formal restriction is imposed on the treaty-making power in the international context[377]

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[373] *Cf.* Reid v. Covert, 354 U.S. 1 (1957). *See also* Geofroy v. Riggs, 133 U.S. 258, 267 (1890).

[374] "[I]t must be assumed that the framers of the Constitution intended that [the treaty power] should extend to all those objects which in the intercourse of nations had usually been regarded as the proper subjects of negotiation and treaty. . . ." Holden v. Joy, 84 U.S. (17 Wall.) 211, 243 (1872). With the exceptions noted, "it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." Geofroy v. Riggs, 133 U.S. 258, 267 (1890). "The treatymaking power of the United States . . . does extend to all proper subjects of negotiation between our government and other nations." Asakura v. City of Seattle, 265 U.S. 332, 341 (1924).

[375] *Cf.* L. Henkin, supra, at 151–56.

[376] Other reservations have been expressed. One contention has been that the territory of a state may not be ceded without such state's consent. Geofroy v. Riggs, 133 U.S. 258, 267 (1890), citing Fort Leavenworth R.R. v. Lowe, 114 U.S. 525, 541 (1885). *Cf.* the Webster-Ashburton Treaty, Article V, 8 Stat. 572, 575. *But see* S. Crandall, supra, at 220–229; 1 W. Willoughby, supra, at 572–576.

A further contention is that, although foreign territory may be annexed to the United States by the treaty power, it may not be incorporated with the United States except with the consent of Congress. Downes v. Bidwell, 182 U.S. 244, 310–344 (1901) (four Justices dissenting). This argument appears to be a variation of the one in regard to the correct procedure to give domestic effect to treaties.

Another argument grew out the XII Hague Convention of 1907, proposing an International Prize Court with appellate jurisdiction from national courts in prize cases. President Taft objected that no treaty could transfer to a tribunal not known to the Constitution any part of the judicial power of the United States, and a compromise was arranged. Q. Wright, supra, at 117–118; H. REP. NO. 1569, 68th Congress, 2d Sess. (1925).

[377] *Cf.* United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936); Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 575–576 (1840).