

TREATIES AND FEDERAL CONSTITUTIONS — THEIR MUTUAL IMPACT. By
R. C. Ghosh [Calcutta: The World Press. 1961. ix + 343 pp. Rs. 25;
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The last-minute attempt by Kelantan to interdict the establishment of Malaysia lends added interest to Professor Ghosh's study of the mutual impact of *Treaties and Federal Constitutions*. Although his analysis is confined to the United States, Switzerland, Canada, Australia and India, much of what he says is of general significance. Thus, it must never be overlooked that from the point of view of international law the treaty-making capacity is part of sovereignty, and therefore constitutional limitations, important though they be for municipal law, are completely irrelevant, save in deciding the organ which exercises the treaty-making power.

Many of the new federations, like three of those under discussion, are members of the Commonwealth and the learned author's account of the development of the treaty-making competence of the self-governing Dominions, and the concomitant development of the international status of these entities, is both interesting and important. It is a pity, therefore, that although Pakistan is outside his self-appointed terms of reference he makes no mention of either *Kahan v. Pakistan* or *Sayce v. Bahawalpur*, for these are significant to any analysis of the status of members of the Commonwealth and of member states within Commonwealth federations. Similarly, one might have expected some mention of the decision of the United States Supreme Court in *Principality of Monaco v. Mississippi*, which tends to imply that while the states of the Union are not sovereign *inter se*, they may enjoy sovereign immunities when sued by a foreign State in an American court.

Whatever internal political considerations may militate in favour of asserting the continued personality of the constituent parts of a federation, or of asserting the supreme power of the central government, it should be remembered that 'although nothing is more important in a Federal State than that its Government whether central or regional, should always act in conformity with the Constitution, and that where the Constitution limits the treaty-making powers of the Federal Government, the latter should never overstep those limits by arrogating to itself all powers that belong to the Federal State as an International Person, yet it is equally important that the constitutional limitations on the powers of the Government of a Federal State should not be considered as limiting the treaty-making capacity of the Federal State itself.'

The most important conclusion to be drawn from this survey of *Treaties and Federal Constitutions* is that there cannot really be said to be any particular treaty-making procedure which is common to Federal States, or which is to be found only among them and not among unitary States. This is so, even when a constituent part of a Federation enjoys some measure of treaty-making competence. In the United States and Switzerland this is permitted to some extent, but such competence does not confer international personality. Sovereignty remains with the Federation. Nor may it be assumed that, because some constituent part enjoys a modicum of treaty-making powers, this sovereignty is any less than that of a unitary State. From the point of view of international law, federal States are fully sovereign enjoying equal status and powers with unitary States. The only limitation that may be imposed upon them is that which flows from some special treaty, as for example the neutralised status of Switzerland.

It often happens that a conflict arises between the states and the centre as to the competence of the latter to enter a treaty, the subject matter of which affects state rights. From the point of view of constitutional practice this may result in a municipal decision that the treaty cannot be enforced within State territorial limits; or it may involve the impeachment of the government representatives involved; or, more frequently, it may result in a hesitancy on the part of the central government in entering treaties and undertaking commitments, although a reservation in favour of ratification may mitigate some of the practical difficulties. From the point of view of international law, however, all these considerations are irrelevant. Sovereignty belongs to the central government, which alone possesses the power to bind the States, on the international level. The increasing number of federal states, however, may lead to wider use of the federal reservation which appears in the constitution of the International Labour Organisation.

There can be little doubt that Professor Ghosh has made a valuable contribution to the study of treaty law in general. From the point of view of the legal adviser, the constitutional draftsman, the politician in a federal State and students of international law and political science, it provides much material of interest and meriting serious consideration.