Figures 2b, 2c, and 2d are just three hypothetical examples based upon one stylized representation of the application of Article 76 criteria. Surely, in bilateral delimitation situations on the outer continental shelf, when confronted with real and complex facts verified by the Commission on the Limits of the Continental Shelf, many possibilities will present themselves. No effort is made here to identify the answers, but can there be any question that geological and geomorphological features will once again enter the universe of relevant circumstances in a boundary case pertaining to outer continental shelf delimitation? Whether they will be found to be legally compelling is another matter.

In conclusion, it is suggested that positing the equidistant line as a starting point in the analysis of a delimitation of the outer continental shelf is a useful tool. The effect of geographical features, such as islands, rocks, and coastal configurations, on the equidistant line will remain a matter for close examination. In addition, the principle of nonencroachment, however hard that may be to articulate, will probably remain a key feature of outer continental shelf cases. No state practice is likely to be so compelling as to suggest a modification of the line, unless states fail to protect their interests in response to the outer continental shelf claim of neighboring states. Also, it seems safe to predict that the proportionality test will continue to slide toward obscurity. Thus, the consolidated law of maritime boundary delimitation is secure, but after a hiatus since 1985, geological and geomorphological factors will reemerge in the law of maritime delimitation of the outer continental shelf. This time they will serve as specific facts deemed relevant for determining title, and they may be confirmed by the Commission on the Limits of the Continental Shelf. Presumably, they will work together with the other facts in the case, perhaps prominently or perhaps not, depending on the circumstances, to achieve an equitable solution.

DAVID A. COLSON*

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters to publish and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

TO THE EDITOR IN CHIEF:

Ryan Goodman, in *Human Rights Treaties, Invalid Reservations, and State Consent* (96 AJIL 531 (2002)), advocates severance as the best remedy for incompatible reservations to human rights treaties. He contends that severance does not pose a real conflict with state sovereignty because many states would prefer severance to an alternative remedy of expulsion from the treaty. However, Professor Goodman resolves the narrow problem of state consent to severance as a remedy only by ignoring the broader problems of state consent to adjudication of reservations and to enforcement of human rights treaties generally.

The narrow sovereignty question addressed by Goodman's article is the concern that state sovereignty will be undermined if a state is bound to a treaty provision that it has expressly reserved. But this concern must be addressed in the context of the more fundamental debate over the extent to which ratifying states have consented to making human rights treaties legally binding and enforceable at all. Human rights treaties often establish only very limited legal adjudication and enforcement mechanisms, if any. Ratifying states often intend

* LeBoeuf, Lamb, Greene & MacRae, L.L.P. During his United States government career, the author served on U.S. delegations to the Third United Nations Conference on the Law of the Sea from 1976 to 1982, and was Deputy Agent for the United States in the U.S.-Canada *Gulf of Maine* case before a chamber of the International Court of Justice. He wishes to express his appreciation to Coalter Lathrop of Sovereign Geographic, Inc., for his assistance with the two figures that accompany this Note.

to consent only to moral and political obligations, and not to legal ones. The severance debate has arisen in the context of efforts to make human rights treaties more effective by expanding their adjudication and enforcement mechanisms, both in the reservations context and in general. Some states contend that these efforts violate their sovereignty by subjecting them to legal claims and remedies before third-party adjudicators without their consent.

Goodman ignores these issues and argues that as between the two proposed solutions for incompatible reservations at the remedies stage, many states parties will prefer severance to expulsion. There are three problems with this conclusion. First, it assumes that states parties are willing to accept the authority of the relevant tribunal to adjudicate their reservations in the first place. In addition, for a state that did not intend to consent to enforcement at all, a severance regime that binds it to expressly reserved as well as to expressly accepted substantive provisions is a double blow to its sovereignty. Finally, to the extent that a particular treaty lacks enforcement mechanisms for its substantive provisions, it is problematic to sever a reservation when the formerly reserved provision cannot then be enforced.

Furthermore, Goodman assumes that a state can simply withdraw from a human rights treaty if it is dissatisfied with the severance of its reservation, and thus mitigate any sovereignty concerns. In fact, the settled rule of international law is just the opposite. A state cannot ordinarily withdraw from a treaty without the consent of every state party, and the nature of human rights obligations may preclude withdrawal from human rights treaties.[1]

The goal of adjudicating reservations should be to make human rights treaties more effective. To do so, reservations regimes should be crafted in light of the realities of state participation in such treaties. A good beginning would be to recognize the current ambiguities in state consent to third-party adjudication and enforcement, and to establish prospective mechanisms for more carefully defining the scope of that consent at the time of ratification.

ELENA A. BAYLIS*

Professor Goodman replies:

I appreciate Professor Baylis's letter for raising provocative issues. Her comments, however, rest on flawed assumptions. In *Human Rights Treaties, Invalid Reservations, and State Consent*, I argue that a third-party institution should consider a state's invalid reservation to a treaty presumptively severable. First, Baylis assumes that the argument concerns only third-party institutions with questionable legal authority. As I specify at the outset of the article, the argument concerns a range of third-party institutions faced with such interpretive questions, including national and subnational courts, regional human rights courts, and the International Court of Justice. Second, Baylis extrapolates general principles from a narrow range of state treaty practice—states that consent to human rights treaties to assume only moral and political obligations. The central point of my article is to reject this type of narrowly conceived reasoning. I hope my article's principal contribution, if anything, is to demonstrate empirically that states orient themselves to human rights treaty regimes in radically different ways and that regime rules should reflect such nuances. Finally, a point of clarification: even if Baylis's description of treaty law on withdrawal were correct (a position I would dispute), my point is that a state would essentially suffer only reputational costs in withdrawing from a human rights treaty (irrespective of the legality of its withdrawal).

TO THE EDITOR IN CHIEF:

We write to note the passing of our colleague Paul Szasz, an extraordinary international lawyer who served the United Nations community for forty-four years. Paul was a gentle, whimsical man with a rigorously logical mind, who could tease out the solution to any legal problem.

Paul was born in Vienna in 1929. His family fled from Nazism, moving to Hungary in 1938 and then to the United States in 1941. After gaining his bachelor's and law degrees from

[1] *See* Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, Arts. 42, 56, 1155 UNTS 331; Hum. Rts. Comm., General Comment No. 26, para. 5, UN Doc. CCPR/C/21/Rev.1/Add.8 (1997), *available at* <http://www.unhchr.ch/tbs/doc.nsf>.

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