Some Senators are opposed to a Constitutional amendment to limit the effect of treaties on the ground that the members can enact a "reservation" or "understanding" which will limit any treaty before the Senate. They may be surprised to learn that when they attach such a reservation to a treaty sometimes it doesn't mean a thing.

That is the opinion of Philip C. Jessup, professor of international law and diplomacy at Columbia University, former United States representative to the United Nations and ambassador at large, and Oliver J. Lissitzyn, Columbia public law professor.

The views occur in an opinion on the validity of a Senate reservation to the 1950 treaty with Canada concerning use of water of the Niagara River. The New York Power Authority wants to develop power on the Niagara. But in its reservation to the treaty the Senate said that development of the U.S. share of such waters is illegal unless authorized by Act of Congress.

The opinion began a hassle between Mr. Robert Moses, chairman of the New York Power Authority, and Senator Lehman of New York. The Senator accused Mr. Moses of dragging the issue of the Bricker Amendment into a question of power development.

Dragged in or not, the treaty issue is certainly found in the opinion's reasoning, which goes like this: The so-called "reservation" had nothing to do with Canada and was only an attempt to amend or repeal, insofar as the Niagara River is concerned, the Federal Power Act.

The Columbia professors argue that the "reservation"—even though it was assented to by Canada—amounts to nothing because it had to do with a domestic matter which neither obligated Canada to do anything nor granted Canada any rights not included in the treaty itself. It was, therefore, not a treaty reservation nor was it a legal part of the treaty with Canada.

Throughout the opinion there is a strong thread of argument that the treaty-making power is broad enough to cover all subjects deemed proper to the conduct of foreign relations. The authors write: "... Missouri v. Holland, a case often cited for the proposition that the treaty-making power is virtually unlimited ..."

And again: "It is, furthermore, unnecessary for the purposes of this opinion to discuss the constitutional standing of agreements concluded by the President without the advice and consent of the Senate requisite under ... the Constitution. Such instruments, commonly referred to as "executive agreements," have been held by the Supreme Court to operate, for some purposes, as the supreme law of the land because they are made in the exercise of the President's plenary power in the field of international relations."

That is exactly what Senator Bricker, Senator George and others have been saying all along.

The authors further argue that a "reservation" to a treaty must be accepted by the other Governments concerned or it has no standing in international law or practice, and they point to two Supreme Court decisions which knocked out Senate reservations or understandings to treaties.

One was New York Indians v. United States, where the Supreme Court decided Senate "reservations"—which purported to modify the operation of the treaty—in the resolution of advice and consent to ratification were not a part of the treaty. The other was Fourteen Diamond Rings v. United States. In this case the Supreme Court gave no legal effect to a Senate resolution setting forth the Senate's "understanding" of a treaty already ratified.

All this puts in considerable doubt the belief of those Senators who think a Constitutional amendment saying just what a treaty shall and shall not do is unnecessary as long as the Senate can attach a "reservation" to the treaty—that there is safety in some words that say the Senate understands a treaty to mean thus and so.

It seems to us there is safety only in some words spelling out by Constitutional amendment exactly how far a treaty or executive agreement can go.