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13th meeting of the Committee of the Whole

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

Saudi Arabia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Singapore, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Ceylon, China, Cyprus, Dominican Republic, Ethiopia, Federal Republic of Germany, Greece, Guatemala, India, Ireland, Israel, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Norway, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino.

Against: Saudi Arabia, Senegal, Somalia, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia, Afghanistan, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Dahomey, Finland, France, Gabon, Guinea, Honduras, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Liberia, Madagascar, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania.

Abstaining: Sierra Leone, Spain, Chile, Czechoslovakia, Denmark, Ecuador, Ghana, Holy See, Jamaica, Lebanon.

Those amendments were rejected by 45 votes to 38, with 10 abstentions.

48. The CHAIRMAN said that as a result of those two votes, the amendments by Australia (A/CONF.39/C.1/L.62), Mexico and Malaysia (A/CONF.33/C.1/L.66 and Add.1) and the Republic of Viet-Nam (A/CONF.39/C.1/L.82) and the second part of the amendment by Nepal (A/CONF.39/C.1/L.77/Rev.1) had been rejected.

49. He then put to the vote the sub-amendment by the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.92) to the Austrian amendment.

The sub-amendment was rejected by 42 votes to 17, with 28 abstentions.

50. The CHAIRMAN asked the Committee to vote on the Austrian amendment (A/CONF.39/C.1/L.2).

The amendment was rejected by 35 votes to 29, with 21 abstentions.

51. The CHAIRMAN said that the amendments submitted by Finland (A/CONF.39/C.1/L.54/Rev.1 and Corr.1) and New Zealand (A/CONF.39/C.1/L.59), the first part of the amendment by Nepal (A/CONF.39/C.1/L.77/Rev.1) and the amendment submitted by the Congo (Brazzaville) (A/CONF.39/C.1/L.80) would be referred to the Drafting Committee.[3]

52. Mr. CHAO (Singapore) said that his delegation had voted for the deletion of paragraph 2, the text of which might give rise to difficulties.

The meeting rose at 1.5 p.m.

[3] For resumption of the discussion on article 5, see 28th meeting.

THIRTEENTH MEETING

Thursday, 4 April 1968, at 3.15 p.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

Proposed new article 5 bis
(The right of participation in treaties)

1. The CHAIRMAN said that the joint authors of the proposal to insert a new article 5 *bis* (A/CONF.39/C.1/L.74) had asked that discussion of it be postponed.

2. Mr. KHLESTOV (Union of Soviet Socialist Republics) said the reason was that it had not yet been decided where the new article should be placed.[1]

Article 6 (Full powers to represent the State in the conclusion of treaties) [2]

3. Mr. DE CASTRO (Spain) said he supported the content of article 6 as drawn up by the Commission but considered that its wording could be made clearer and that was the reason for the Spanish amendment (A/CONF.39/C.1/L.36). Presentation of full powers was a general rule of customary law but in State practice it was not required of persons who performed certain functions. There seemed to be no need to refer to the negotiating stage in that article. His delegation had accordingly added a new paragraph 3 to the effect that failure to produce full powers did not affect the validity of the treaty when it appeared from the circumstances that such production was not considered necessary by the States concerned.

4. Mr. FLEISCHHAUER (Federal Republic of Germany) said that a rule concerning full powers must take account of a wide variety of national constitutional rules and practices and so should be drafted in flexible terms. The Commission's draft of paragraph 2 (*b*) might go beyond the practice of certain States but not be broad enough to cover that of others. A similar situation might arise under paragraph 2 (*a*).

5. There was a close relationship between the rules governing full powers and the rules of internal law on competence to conclude treaties, which was the subject of article 43. But the relationship between article 6 and article 43 was not quite clear. The wording of article 6, paragraph 2, would suggest an incontestable presumption that the persons mentioned there possessed the capacity to conclude treaties; the wording of article 43, however, led to the conclusion that that capacity might be challenged.

[1] At its 80th meeting, the Committee of the Whole decided to defer to the second session of the Conference consideration of all proposals, such as article 5*bis*, to add to the draft convention references to the term " general multilateral treaty ".

[2] The following amendments had been submitted: Spain, A/CONF.39/C.1/L.36; Federal Republic of Germany, A/CONF.39/C.1/L.50; Iran and Mali, A/CONF.39/C.1/L.64 and Add.1; Venezuela, A/CONF.39/C.1/L.68; Hungary and Poland, A/CONF.39/C.1/L.78 and Add.1; Italy, A/CONF.39/C.1/L.83; United States of America, A/CONF.39/C.1/L.90. The Venezuelan amendment was replaced by a joint amendment by Sweden and Venezuela (A/CONF.39/C.1/L.68/Rev.1).

6. The purpose of his delegation's amendment (A/CONF. 39/C.1/L.50) was to protect good faith with regard to the acts performed by the Head of State and by persons who produced full powers from him. It referred to internal law only when any other person claimed constitutional authority to express consent independently of the Head of State. That should not give rise to much difficulty in practice and would avoid the difficulties of the present paragraphs 2 (*a*) and (*b*).

7. Mr. KAZEMI (Iran) said that the International Law Commission had drafted article 6 without regard to the internal laws of States under which the authority to represent a State in the conclusion of treaties was conferred. His delegation and that of Mali had submitted an amendment (A/CONF.39/C.1/L.64 and Add. 1) in order to fill that gap.

8. Mr. TALLOS (Hungary) said that a reference should be made to full powers to represent a State in the negotiation of a treaty, as well as in the adoption or authentication of the text, whence the Hungarian and Polish amendment (A/CONF.39/C.1/L.78 and Add.1) to paragraph 1 and paragraph 2 (*b*) and (*c*). The amendment to paragraph 2 (*c*) was designed also to achieve greater precision. The wording of that sub-paragraph was in line with the wording of General Assembly resolution 257 (III), paragraph 4, but in the present general practice representatives were also accredited to international organizations as a whole. Those amendments were of drafting character and could be referred to the Drafting Committee.

9. Mr. MARESCA (Italy) said that the Italian amendment (A/CONF.39/C.1/L.83) was meant to render the article more comprehensive by referring to diplomatic practice.

10. Mr. BEVANS (United States of America) said that the purpose of the United States amendment (A/CONF. 39/C.1/L.90) was to render the text of the article clearer. He agreed with the statement in the second sentence of paragraph (3) of the Commission's commentary about the production of full powers being the safeguard for the representatives of States of each other's qualifications to represent their State. The provision in paragraph 1 (*b*) was convenient because it would permit dispensing with full powers for the purpose of many treaties, especially those that took the form of an exchange of notes. However, the intention of the parties needed to be ascertained from the circumstances of the case as well as from past practice.

11. In paragraph 2 (*c*) reference should be made to representatives accredited to an international organization or one of its organs.

12. The aim of his delegation's proposal for a new paragraph 3 was to specify that, for any treaty, States might require the production of full powers, even from ministers for foreign affairs. That had been done, for example, in the case of the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water.

13. He could support the Venezuelan amendment, but was opposed to the Iranian amendment, since he believed that the Commission had been wise in omitting any reference to the internal law of States. He supported the Hungarian and Polish suggestion to include a reference to the negotiating stage and the Italian proposal to refer to diplomatic practice.

14. Mr. YAPOBI (Ivory Coast) said he supported the Spanish amendment. The Commission's draft was illogical in form because it failed to state first a principle and then exceptions.

15. Mr. KOPAČ (Czechoslovakia) said he had doubts about paragraph 1 (*b*) of the Commission's draft, because he was uncertain how the intention of States would be ascertained. Presumably it would have to be by the competent authority under internal law. Evidently the purpose of that paragraph was to provide for the conclusion of treaties in simplified form, which was usually done by an exchange of notes in negotiations between ministers for foreign affairs. In view of the difficulties that paragraph might involve, he supported the Venezuelan amendment (A/CONF.39/C.1/L.68) to delete it. He was opposed to the Iranian amendment to insert a mention of the internal laws of States.

16. Mr. BLIX (Sweden) said that article 6 was both too rigid and too vague, first because it recognized that there was authority to represent a State exclusively in three cases: when full powers had been produced, when circumstances indicated that the States intended to dispense with full powers, or when the person acting had authority by virtue of his office. There could, however, be other cases where authority must be recognized to exist, e.g. in a case when a Government publicly announced that it authorized an ambassador to conclude an agreement with another State. No full powers might be issued and nothing might be done to indicate that the two States, or one of them, had intended to dispense with full powers. Further, the ambassador might not possess authority merely by virtue of his office; yet, in the circumstances, he must be considered as having been authorized to conclude the agreement.

17. The article was primarily concerned with rules of evidence, but covered only evidence of authority in the form of full powers or the possession of particular functions and offices. Other types of evidence should be admitted also, and accordingly his delegation, together with that of Venezuela, had submitted the amendment in document A/CONF.39/C.1/L.68/Rev.1 to delete the introductory words " except as provided in paragraph 2 " and the word " only " before the word " if " at the end of paragraph 1.

18. Article 6, paragraph 1 (*b*) was too vague because it did not indicate how circumstances would demonstrate an intention to dispense with full powers and he urged its deletion. Admittedly, States commonly concluded agreements, for instance by an exchange of notes, and refrained from asking for full powers. The parties often assumed, without asking for evidence, that their opposite number had authority. Yet in those cases there was nothing to warrant a legal presumption that an ambassador was so authorized. His authority must derive from some action by his government or, conceivably, under internal law; it could not derive from his own action. Under international law, furthermore, the mere exercise of certain functions such as Head of State, Head of Government, or Minister for Foreign Affairs,

did create a legal presumption of the possession of authority to bind a State by treaty.

19. Of course, a person might, without having any of those functions or any full powers, or other tangible evidence, in fact possess authority granted by government action. Another State might choose to rely upon that person and *ad hominem*, if it knew him; and if his acts were not denounced by his own government, the reliance would be justified. On the other hand if he were denounced for having acted without authority, the other State might have to accept the fact that the treaty had been concluded by an unauthorized person. But admittedly, the risk in neglecting to check evidence of authority was not a great one. There were many elements deterring ambassadors from acting without authority. And since he doubted whether States would be ready to agree that every ambassador should be regarded under international law as authorized to bind them by treaty, paragraph 2 should accordingly be left unchanged.

20. If the joint amendment were adopted, small modifications would be needed in article 7, notably the omission of the reference to article 6, which would no longer enumerate exhaustively the cases in which there was authority to represent the State.

21. He supported the Hungarian and Polish amendment (A/CONF.39/C.1/L.78 and Add.1).

22. Mr. CARMONA (Venezuela), speaking as a sponsor of the proposal to delete paragraph 1 (*b*) (A/CONF.39/C.1/L.68/Rev.1), said that it would be dangerous to deduce from " the circumstances " the intention of States to dispense with full powers. Paragraph 1 (*b*), by creating a presumption of authority to conclude a treaty, could have the effect of binding a State without its Government being even aware that a binding commitment was being undertaken on the State's behalf. Several efforts had been made to improve the wording of the provision, in particular by Spain (A/CONF.39/C.1/L.36) and the United States (A/CONF.39/C.1/L.90, para. 2) but he would prefer complete deletion.

23. Mr. RODRIGUEZ (Chile) said that the purpose of article 6 was to safeguard the security of international relations by defining the persons having authority to bind their States. The terms of the article had been carefully drafted to that end, but the language could nevertheless be improved. He therefore commended the Spanish amendment (A/CONF.39/C.1/L.36) to the consideration of the Drafting Committee.

24. He also wished to make a few further drafting points. First, the title of the article was much too narrow in that it referred only to " full powers," whereas the text of the article itself covered not only cases in which full powers were produced, but also those in which the authority to represent the State was derived from the exercise of certain official functions. The text should commence with a statement of the rule now contained in paragraph 2, namely, an enumeration of those officials who represented the State by virtue of their functions. The second paragraph would then specify the requirement of full powers in other cases. The article would conclude with a passage on the lines suggested by Spain (A/CONF.39/C.1/L.36, para. 3) to deal with cases where the production of full powers was not deemed necessary. It would be prudent to confine the provision to the production of full powers and not to refer to the possibility that States might dispense with full powers.

25. He accordingly suggested that the title and text of the article should be reworded to read:

" *Representation of the State in the conclusion of treaties*

" 1. The following are considered as representing their State:

" (*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty.

" (*b*) Heads of diplomatic missions, for the purpose of adopting or authenticating the text of a treaty between the accrediting State and the State to which they are accredited.

" (*c*) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

" 2. A person shall also be considered as representing a State for the purposes set forth in paragraph 1 (*a*) above if he produces full powers emanating from the competent authorities. However, failure to produce full powers does not avoid the validity of the treaty when it is established, or if it appears from the circumstances, that such production was not considered necessary by the States concerned."

26. Sir Francis VALLAT (United Kingdom) said he supported the Commission's text but suggested that mention should be made in paragraphs 2 (*b*) and 2 (*c*) of the authentication of the text, as was done in paragraph 1. Texts were often initialled by ambassadors as a means of authentication. It was his understanding that the designation " Minister for Foreign Affairs " would be interpreted broadly as including those exercising authority in the field of external relations.

27. The Hungarian and Polish and the United States amendments were worthy of consideration, and should be referred to the Drafting Committee. He was opposed to the Iranian amendment (A/CONF.39/C.1/L.64) because States should not be concerned with the internal law of other States in the present context; nor did he agree with the amendment by Sweden and Venezuela to omit paragraph 1 (*b*).

28. Mr. EL-ERIAN (United Arab Republic) said he supported the International Law Commission's draft article 6, and suggested that such useful drafting amendments as those proposed by Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1) and the United States (A/CONF.39/C.1/L.90) should be given full consideration by the Drafting Committee.

29. In particular, the proposal to introduce in paragraph 2 (*c*) a reference to representatives " to an international organization " in addition to representatives to an organ of such an organization, was in line with current developments. The 1946 Convention on the Privileges and Immunities of the United Nations [3] spoke of repre-

[3] United Nations, *Treaty Series*, vol. 1, p. 15.

sentatives to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations. Similar language was used in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.[4] Since then, the institution of permanent missions had fully developed and a number of international instruments had recognized that development. They included the decision of the Swiss Federal Council of March 1948 concerning the legal status of delegations to what was then the European Office of the United Nations at Geneva, a decision which had extended to those delegations facilities analogous to those afforded to the embassies of foreign countries at Berne, and the Headquarters Agreement between the French Government and UNESCO signed at Paris on 12 July 1954, which specifically covered not only representatives of States members of UNESCO to its organs and conferences, but also members of the Council of UNESCO and permanent representatives to that organization itself.

30. Mr. WERSHOF (Canada) said he would like to draw the attention of the Drafting Committee to a number of points. First, the enumeration in paragraph 1 of the acts which a representative could perform was incomplete. Paragraph 1 (*c*) of article 2, on "full powers," also mentioned " negotiating "—which some amendments now proposed should be covered in article 6—and " any other act " accomplished " with respect to a treaty." It would be useful to cover that last point as well, since in certain circumstances, full powers might be required for such purposes as delivering a notice of denunciation of a treaty.

31. Secondly, the opening clause of paragraph 1 created a presumption that States gave full powers to their representatives, or required full powers from the representatives of other States, for the purpose of adopting or authenticating the text of a treaty. In the practice of bilateral negotiations, States did not usually issue or require full powers for such purposes. In the case of a conference convened to formulate a multilateral treaty, the provisions of article 6 as they stood would seem to require representatives to the conference to produce full powers for the adoption of the text, quite apart from their credentials as representatives to the conference. The difficulty could perhaps be solved by adopting the United States amendment to refer to " the practice of the States concerned " (A/CONF.39/C.1/L.90, para. 2).

32. Thirdly, he supported the Italian amendment (A/CONF.39/C.1/L.83), which was in conformity with Canadian experience on exchanges of notes constituting a treaty. Of course, it was always open to a State to require full powers for a particular exchange of notes to which special importance was attached. The United States proposal for a new paragraph 3 (A/CONF.39/C.1/L.90, para. 4) was relevant to that issue.

33. Lastly, for the reasons given by the United Kingdom representative, the Canadian delegation strongly opposed the proposal to delete paragraph 1 (*b*); indeed it would prefer to see that provision expanded, as proposed in the United States amendment (A/CONF.39/C.1/L.90, para. 2).

34. Mr. BINDSCHEDLER (Switzerland) said he supported in principle article 6 as submitted by the International Law Commission; that text was in conformity with the practice of the vast majority of States and accurately reflected customary international law.

35. There had been considerable discussion in academic circles on the question of the authority to conclude treaties, but there was no need for the Conference to take those theoretical discussions into account. The case was one which called not only for the codification of existing law, but for a step forward in the progressive development of international law.

36. Article 6 should be read in conjunction with the provisions of article 43 on the validity of a treaty when consent to be bound by it had been expressed in violation of a provision of the internal law of that State regarding competence to conclude treaties. Article 43 stated that such a violation could not be invoked as invalidating consent of the State " unless that violation of its internal law was manifest ". At the appropriate time, the Swiss delegation would voice its objections to that final proviso.

37. The essential consideration in article 6 should be to lay down rules that were as clear as possible, and at the same time to create a uniform system for all States, so as to avoid uncertainties which could give rise to misunderstandings; only in that manner would international relations be secure, and mutual trust be maintained between States and between the representatives of States.

38. Consequently, he opposed all proposals to refer back the question of competence to the internal law of the States. That type of *renvoi* invariably led to misunderstandings and opened the door to abuses.

39. With regard to the text of article 6, he supported the International Law Commission's formulation of paragraph 2 (*b*); as a general rule, ambassadors were empowered to negotiate and to adopt a treaty, but not to conclude it. It was true that full powers were often not required from ambassadors in the case of agreements which took the form of an exchange of notes, but it would be going too far to make a general rule of that exception. He was therefore unable to support the Italian amendment (A/CONF.39/C.1/L.83). The problem could in fact be solved by dropping paragraph 1 (*b*) and leaving the matter to be governed by the opening clause of paragraph 1. If it were decided not to delete paragraph 1 (*b*) he favoured the retention of the International Law Commission's text with the United States amendment (A/CONF.39/C.1/L.90, para. 2) which would also largely cover the point raised in the Italian amendment.

40. For the reasons he had already given, he opposed the amendments by the Federal Republic of Germany (A/CONF.39/C.1/L.50) and by Iran and Mali (A/CONF.39/C.1/L.64 and Add.1) to introduce references to internal law; that would only create difficulties and give rise to disputes. He supported the proposals to mention the representatives to international organizations—and not merely to their organs—for the reasons given by the representative of the United Arab Republic.

41. Lastly, he had some doubts regarding the proposed references to the negotiating of treaties; the greater power to adopt the text of a treaty included the lesser

[4] United Nations, *Treaty Series*, vol. 33, p. 261.

power to negotiate. The proposed addition was therefore unnecessary.

42. Mr. JAGOTA (India) said he supported the International Law Commission's article 6, which reflected contemporary international practice. India had concluded several hundred treaties with other countries, and the conclusion of those treaties provided extensive evidence on the matter of full powers, including the cases in which full powers were not requested either by India or by its numerous treaty partners. That experience fully bore out the rules embodied in article 6.

43. In paragraph 1 (*c*) of article 2, it was stated that " full powers " emanated from " the competent authority of a State." That expression must be construed in the light of the international practice of States rather than of the provisions of municipal law. In India, for example, the authority to issue full powers was vested by law in the President; however, where the representative of a foreign State produced full powers emanating from a lesser authority, it might not be necessary for the full powers of the Indian representative in the negotiations to be issued by the President of India himself. He therefore supported the use of the expression " appropriate full powers " in paragraph 1 (*a*) of article 6. That expression would make it possible to take into account State practice in the matter.

44. The essential idea in paragraph 1 (*b*) was that normally full powers were required, but that the States engaged in the negotiations could agree to dispense with full powers if it became apparent that the results of those negotiations could be incorporated in an agreement in simplified form. In every case, the onus was on the negotiators to see that they were qualified to bind their respective States.

45. Article 7 provided a safeguard against the possibility of abuse, by enabling a State to denounce an agreement entered into by an unauthorized person. It was that article which provided the remedy to a violation of any of the provisions of article 6, rather than article 43, which dealt with the invalidity of a treaty arising from a manifest violation of domestic law. In practice, cases of denunciation in the circumstances set forth in paragraph 1 (*b*) of article 6 were very rare. On the other hand, if that paragraph were dropped and no provision made for those circumstances, full powers would in future be required for a very large number of agreements now being concluded in simplified form; an unnecessary burden would thereby be imposed on Ministries of Foreign Affairs, particularly on their legal departments. The deletion of paragraph 1 (*b*) would thus conflict with universal practice.

46. Lastly, he agreed that the amendments by Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1) and the United States (A/CONF.39/C.1/L.90) should be referred to the Drafting Committee.

47. Mr. KOROMA (Sierra Leone) said his delegation could support the Commission's draft of article 6, because it was a satisfactory restatement of general principles of international law and of State practice. On the other hand, it was difficult to take a decision on the article until the definition of " full powers " in article 2, paragraph 1 (*c*), had been approved.

48. With regard to the amendments before the Committee, his delegation considered the Italian amendment (A/CONF.39/C.1/L.83) unnecessary, since treaties in simplified form were normally concluded by one of the persons enumerated in paragraph 2 (*a*). Nor could it support the amendments of the Federal Republic of Germany (A/CONF.39/C.1/L.50) or of Iran and Mali (A/CONF. 39/C.1/L.64 and Add.1) which would in practice lead to inadmissible interference in the domestic affairs of States, or the Swedish and Venezuelan amendment (A/CONF.39/C.1/L.68/Rev.1). On the other hand, it did support the United States amendment (A/CONF. 39/C.1/L.90) and the Hungarian and Polish amendment (A/CONF.39/C.1/L.78 and Add.1).

49. Mr. BRAZIL (Australia) said that his delegation supported the International Law Commission's text of article 6, which struck a balance between undue rigidity and undue flexibility. The text would not be improved by the deletion of paragraph 1 (*b*), as the Swedish and Venezuelan amendment proposed, and the references to internal law proposed by the Federal Republic of Germany and by Iran and Mali were clearly inappropriate. The Australian delegation had some doubts concerning the Hungarian and Polish proposal (A/CONF. 39/C.1/L.78 and Add.1) to insert the word " negotiating " in paragraphs 1 and 2, for article 6 related to the steps taken in connexion with the conclusion of a treaty, not to the initial stages of treaty-making; moreover, it was sometimes hard to judge when negotiation began.

50. Mr. MAKAREWICZ (Poland) said he agreed with the Hungarian representative that the amendment (A/CONF.39/C.1/L.78 and Add.1) submitted jointly by the Polish and Hungarian delegations should be referred to the Drafting Committee. His delegation could support the Italian amendment (A/CONF.39/C.1/L.83), which filled a gap by referring to agreements concluded in the form of an exchange of notes and corresponded to international practice; he would suggest, however, that the words " in conformity with diplomatic practice, in particular " might be deleted. In referring to internal law, the amendments of the Federal Republic of Germany (A/CONF.39/C.1/L.50) and Iran and Mali (A/CONF. 39/C.1/L.64 and Add.1) would introduce an element of uncertainty, by necessitating analysis of the domestic law of other countries, and the Polish delegation therefore could not support those proposals. Nor could it agree to the second United States amendment (A/CONF.39/C.1/L.90), because the scope of the word " circumstances " was broader than that of " practice ", and the idea was satisfactorily covered in the International Law Commission's text of paragraph 1 (*b*). The third and fourth United States amendments, however, were acceptable. The Polish delegation could not support the Swedish and Venezuelan amendment (A/CONF.39/C.1/L.68/Rev.1), since it believed that international practice should be taken into account in cases where no full powers were required. Finally, the Spanish amendment (A/CONF.39/C.1/L.36) might be referred to the Drafting Committee.

51. Mr. RUDA (Argentina) said he was in favour of the Commission's approach to article 6, which first stated the general rule with regard to the requirement of full powers and then enumerated some exceptions.

His delegation had some sympathy with the Spanish amendment (A/CONF.39/C.1/L.36), especially paragraphs 1 and 2, but would have preferred a positive statement in paragraph 3, since article 7 dealt with the subsequent confirmation of an act performed without authorization. He agreed with the Swiss representative that the amendments submitted by the Federal Republic of Germany (A/CONF.39/C.1/L.50) and Iran and Mali (A/CONF.39/C.1/L.64 and Add.1), which referred to internal law, would cause considerable difficulties. The addition of the word " negotiating " proposed in the Hungarian and Polish amendment (A/CONF.39/C.1/L.78 and Add.1) depended on the Committee's final decision on the definition of " full powers " in article 2 and on the fate of the French amendment (A/CONF.39/C.1/L.24) to that article, proposing a definition of " adoption of the text of a treaty".

52. Paragraph (6) of the commentary clearly stated the International Law Commission's position with regard to representatives accredited to international organizations, and the Argentine delegation could not support the Hungarian and Polish and the United States amendments to paragraph 2 (*c*). The idea of the Italian amendment (A/CONF.39/C.1/L.83) was satisfactorily covered by the Commission's paragraph 1 (*b*) and therefore seemed unnecessary; the same applied to the new paragraph 3 proposed by the United States (A/CONF.39/C.1/L.90). Finally, he could not support the Swedish and Venezuelan amendment (A/CONF.39/C.1/L.68/Rev.1), for the effect of the deletion of paragraph 1 (*b*) would be to leave no rule governing agreements in simplified form, which were becoming increasingly frequent.

53. Mr. MARESCA (Italy) said he could support the Hungarian and Polish proposal to include the word " negotiating," which seemed to be an essential procedure of treaty-making and was included in the definition of " full powers " in article 2. He would also be able to support the Swedish and Venezuelan proposal that paragraph 1 (*b*) be deleted, for that would remove an element of uncertainty. The Spanish amendment (A/CONF.39/C.1/L.36) seemed to be an improvement on the Commission's text, and the new paragraph proposed by the United States (A/CONF.39/C.1/L.90) would give the article additional flexibility. The amendment by the Federal Republic of Germany (A/CONF.39/C.1/L.50) gave an organic form to the article. Finally, he would not object to having his delegation's own amendment (A/CONF.39/C.1/L.83) referred to the Drafting Committee.

54. Mr. MERON (Israel) said that his delegation was prepared to support the Commission's text, with the possible addition of the United States amendments (A/CONF.39/C.1/L.90). The point raised in the Italian amendment (A/CONF.39/C.1/L.83) was adequately covered by the United States amendment to paragraph 1 (*b*).

55. Mr. CHAO (Singapore) said he could support the Hungarian and Polish and the United States proposals (A/CONF.39/C.1/L.78 and Add.1 and L.90) to include a reference to representatives accredited by States to international organizations; if those amendments were adopted, the last phrase of paragraph 2 (*c*) should then read " in that conference, organization or organ." The Hungarian and Polish proposal to insert the word " negotiating " should be carefully considered in the Drafting Committee in connexion with the definition of " full powers " in article 2. Subject to those amendments, his delegation could support the Commission's text of article 6.

56. Mr. SECARIN (Romania) said that article 6 should be read in conjunction with other articles, especially articles 2 and 7. For the purpose of concluding treaties, States might be represented in three ways: formally, by persons holding the full powers defined in article 2, paragraph 1 (*c*), informally, when both States decided that full powers were not required because other factors provided an adequate basis for mutual confidence, and finally by the persons listed in paragraph 2, by virtue of their functions and legal status under international law. The Commission's text laid down the essential legal norms and was flexible enough to meet the needs of State practice. His delegation could therefore support the article as it stood, but considered that it would be improved by some of the amendments, particularly that of Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1), which brought the article into line with the definition of full powers in article 2.

57. Mr. BLIX (Sweden) said that his delegation appreciated the approach to the drafting of the article in the Spanish amendment (A/CONF.39/C.1/L.36), but could not support paragraph 3 of that amendment, which contained the same ambiguity as the Commission's draft of paragraph 1 (*b*). Nor could it support the amendment of the Federal Republic of Germany (A/CONF.39/C.1/L.50.) because it did not recognize the authority of a Minister for Foreign Affairs to represent a State by virtue of his position, and also because it introduced a reference to internal law in a matter which belonged essentially to the international sphere. He was in favour of the Hungarian and Polish proposal (A/CONF.39/C.1/L.78 and Add.1) to introduce the word " negotiating," but thought that the point made by the Australian representative might be valid; the question might be referred to the Drafting Committee. The Swedish delegation could not support the amendment by Iran and Mali (A/CONF.39/C.1/L.64 and Add.1), which also introduced a reference to internal law, or the Italian amendment (A/CONF.39/C.1/L.83), which did not seem to add anything of substance to paragraph 1 (*b*). The United States amendments should be referred to the Drafting Committee.

58. In reply to the United Kingdom representative's criticism of the Swedish and Venezuelan amendment (A/CONF.39/C.1/L.68/Rev.1), he pointed out that the amendment would not debar States from refraining from requiring full powers for the conclusion of treaties. Its purpose was to eliminate certain paradoxical results: under paragraph 2 (*b*), heads of diplomatic missions were only vested with authority to express the consent of the State to be bound by a treaty in the case of a treaty between the accrediting State and the State to which they were accredited, but under paragraph 1 (*b*) they could acquire that right in respect of other treaties merely by suggesting that they should be concluded in simplified form.

59. Mr. KRISPIS (Greece) said he could support the Swedish and Venezuelan amendment (A/CONF.39/C.1/

L.68/Rev.1), since the production of full powers was a simple practice and represented a factor of order and security in relations between States. A rule on dispensing with full powers was therefore unnecessary. If, however, the majority of the Committee was in favour of retaining paragraph 1 (*b*), the Greek delegation would consider it indispensable to include the new paragraph proposed by the United States (A/CONF.39/C.1/L.90).

60. His delegation was in favour of the form given to the article by the Spanish amendment (A/CONF.39/C.1/L.36), especially where paragraphs 1 and 2 were concerned; paragraph 3 of that amendment would, of course, depend on the decision whether or not to retain the International Law Commission's paragraph 1 (*b*). With regard to the amendments by the Federal Republic of Germany (A/CONF.39/C.1/L.50) and Iran and Mali (A/CONF.39/C.1/L.64 and Add.1), his delegation did not consider that the time was ripe to take official notice of internal law in rules of international law. He could support the Hungarian and Polish amendment (A/CONF.39/C.1/L.78 and Add.1), but considered that the point raised in the Italian amendment (A/CONF.39/C.1/L.83) was already covered by the Commission's text. With regard to the amendment by the Federal Republic of Germany, his delegation would prefer to see Heads of Government and Ministers for Foreign Affairs mentioned expressly, so that they would be covered by the presumption contained in article 6, paragraph 2.

61. Sir Humphrey WALDOCK (Expert Consultant), replying to a question by the Iranian representative, said that the word " conclusion " was used in paragraph 2 (*a*) to mean all acts relating to the conclusion of a treaty which were dealt with in part II of the draft convention.

62. Some of the drafting points that had been raised had related to the opening words of paragraph 1, " Except as provided in paragraph 2 ". He believed that the words could be omitted, as well as the word " only " in the same paragraph; the Commission had arrived at that formulation more or less by accident, as the order of the paragraphs had been changed more than once. The elimination of those words would meet the objections of the Ivory Coast and perhaps those of the Spanish delegation. Nevertheless, he preferred the general structure decided on in the Commission to that of the Spanish amendment (A/CONF.39/C.1/L.36).

63. The debate in the Committee had largely centred on the advisability of retaining paragraph 1 (*b*). He agreed with those representatives who considered that the deletion of the paragraph would leave an important gap in article 6: the main purpose of the article was to show where the risk lay in dispensing with the production of full powers, and if the provision were omitted, a large category of treaties, namely, agreements in simplified form, would not be covered. Perhaps the general formulation of the paragraphs had given rise to some anxiety. In his 1965 draft, he had tried to set out the circumstances more fully, but some Governments in their written comments had raised the question of the established practice of individual States, and the Commission had decided on the general formula in order not to be too exclusive.

64. The Swedish representative had raised the hypothetical case in which the heads of a diplomatic mission concluding a treaty in simplified form would be covered by paragraph 1 (*b*) instead of paragraph 2 (*b*); he believed that the Swedish representative was exaggerating the difficulty, since the criterion in paragraph 1 (*b*) was the intention of the State, not that of the head of the diplomatic mission. In that connexion, the Italian amendment (A/CONF.39/C.1/L.83) seemed to be unnecessary, but the United States amendment to paragraph 1 (*b*) might provide an additional element of coverage.

65. The question of a specific reference to negotiation in paragraphs 1 and 2 had been considered carefully in the Commission, and the text he had submitted in 1965 had contained such a reference, but it had finally been decided to omit it, because negotiation was not really a specific stage of the process of concluding a treaty. He could not quite agree that it was difficult to decide when a negotiation began and ended, since a distinction could be made between negotiations preceding the conclusion procedure and the specific negotiation of the treaty itself. In any event, that negotiation seemed to be fully covered by the reference to adoption and authentication.

66. With regard to the proposals to include a reference to representatives accredited by States to an international organization, the International Law Commission had been informed by the United Nations Secretariat that it did not regard the accrediting of a permanent representative to the Organization as covering full treaty-making powers. Such accreditation covered power to bind the States in concluding treaties only if the instrument of accreditation referred not only to the Organization, but specifically to the organs in which treaties might be concluded or adopted. In view of that information, the Commission thought that the draft would go beyond existing practice in stating the position of permanent representatives as broadly as did the Hungarian and Polish and the United States amendments (A/CONF.39/C.1/L.78 and Add.1 and L.90). Nevertheless, the Committee might consider whether it wished to reflect existing practice or to lay down a rule entailing progressive development of international law in the matter on the lines of those amendments.

67. With regard to paragraph 3 of the Spanish amendment (A/CONF.39/C.1/L.36), he must point out that the phrase " Failure to produce full powers does not affect the validity of the treaty... " ran counter to the entire philosophy of article 6. The question of validity was dealt with in article 43, whereas article 6 was confined to stating where the risk of not producing full powers would lie.

68. In conclusion, he agreed with the many representatives who had objected to including any reference to internal law in the draft.

69. Mr. FLEISCHHAUER (Federal Republic of Germany) said that, since the consensus of opinion in the Committee was against including any reference to internal law, he would withdraw his delegation's amendment (A/CONF.39/C.1/L.50).

70. Mr. MATINE-DAFTARY (Iran) said that, in referring to " internal law," the sponsors of the amendment in document A/CONF.39/C.1/L.64 and Add.1 had been guided by a similar reference in article 43. Nevertheless, they would withdraw the amendement.

71. The CHAIRMAN said he would put the Swedish and Venezuelan amendment (A/CONF.39/C.1/L.68/Rev.1) to the vote.

The Swedish and Venezuelan amendment was rejected by 51 votes to 13, with 23 abstentions.

72. The CHAIRMAN suggested that the amendments submitted by Spain (A/CONF.39/C.1/L.36), Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1), Italy (A/CONF.39/C.1/L.83) and the United States of America (A/CONF.39/C.1/L.90) be referred to the Drafting Committee.

It was so agreed.[5]

The meeting rose at 6.10 p.m.

[5] For resumption of the discussion on article 6, see 34th meeting.

FOURTEENTH MEETING

Friday, 5 April 1968, at 10.50 a.m.

Chairman: Mr. ELIAS (Nigeria)

Tribute to the memory of the Reverend Martin Luther King

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of the Reverend Martin Luther King.

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

Article 7 (Subsequent confirmation of an act performed without authority)[1]

1. Mr. DE CASTRO (Spain) said that the purpose of the Spanish delegation's amendment (A/CONF.39/C.1/L.37) was not only to improve the drafting of the Spanish version in which the word "*efecto*" was repeated with different meanings, but also to supplement the wording of the article by referring to the case in which the powers of the person acting as the representative of a State were defective. For the powers might not only not exist, they might also have a defect. What was involved was not a defect in the State's consent resulting from a limitation imposed by its internal law, which was the case dealt with in article 43, but a defect in the powers themselves, that was to say in the instrument by which a State designated a person to represent it in the conclusion of a treaty.

2. Full powers implied the existence of a relationship between a State and a person for the purpose of performing an act relating to the conclusion of a treaty. That person could not be regarded as properly authorized by the State if he had not received the necessary powers to conclude a treaty—the case dealt with by the International Law Commission—or if those powers were vitiated by fraud. Those two cases certainly concerned the conclusion of treaties, and he thought they should be dealt with together in article 7 without prejudice to consideration of that question in the context of Part V of the draft.

3. He was in favour of the Venezuelan amendment (A/CONF.39/C.1/L.69), which required express confirmation by the State of an act relating to the conclusion of a treaty performed without authority, for tacit confirmation of that act was not covered in article 42, and it was necessary to state the conditions in which such confirmation should be given.

4. Mr. BEVANS (United States of America), introducing his delegation's amendment (A/CONF.39/C.1/L.56), said he wished to add to the rationale following its text that the State concerned must make its position clear with regard to the validity of the acts of the person claiming to represent it within a reasonable time; otherwise, it could not continue to enjoy the benefits of the treaty.

5. Mr. CARMONA (Venezuela), introducing his delegation's amendment (A/CONF.39/C.1/L.69), said that, in his opinion, an act which was invalid could only be confirmed expressly. The idea of a tacit confirmation or a confirmation inferred from subsequent facts had no legal basis. The interpretation of an act as constituting confirmation was debatable. To leave that interpretation to third parties in case of a dispute would endanger the existing legal system and impair the very principles of international law.

6. He supported the Spanish amendment. He could not, however, support the United States amendment, which prejudged the results of the discussion on article 42, to which the Venezuelan and a number of other delegations intended to submit amendments.

7. Mr. CHAO (Singapore) explained that the amendment submitted by the Singaporean delegation (A/CONF.39/C.1/L.96) dealt with drafting only. The ideas expressed in articles 6 and 7 were closely connected, and article 7 was the logical consequence of article 6.

8. Mr. TSURUOKA (Japan) reminded the Committee that the Japanese Government had stated in its comments (A/CONF.39/5) that the text of article 7 involved danger of abuse; it was for that reason that his delegation had submitted an amendment (A/CONF.39/C.1/L.98).

9. The fact that the article was placed in Part II, which contained the provisions relating to conclusion and entry into force, might give the impression that the question of "subsequent confirmation of an act performed without authority" belonged to the procedure for concluding treaties—which might lead to misunderstandings.

10. The Japanese delegation would submit whatever drafting amendments it considered necessary when Part V came to be discussed.

11. Mr. STREZOV (Bulgaria) said he agreed with the International Law Commission's argument that any act performed by a person who had not received from his State authority to represent it in the conclusion of a treaty was without legal effect. In those circumstances, the State was entitled to disavow that person's act. But as paragraph (3) of the commentary on the article rightly observed, it seemed equally clear that, notwithstanding the representative's original lack of authority,

[1] The following amendments had been submitted: Spain, A/CONF.39/C.1/L.37; United States of America, A/CONF.39/C.1/L.56; Venezuela, A/CONF.39/C.1/L.69; Singapore, A/CONF.39/C.1/L.96; Japan, A/CONF.39/C.1/L.98; Malaysia, A/CONF.39/C.1/L.99.