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17th meeting of the Committee of the Whole

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his delegation would support the amendment by Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2), for the current expansion of international relations called for a simplification of procedures.

31. Mr. BLIX (Sweden) observed that the length of the debate was in inverse proportion to the practical importance of the subject, for the problem under discussion in fact arose very seldom. The doctrinal question did not necessarily have to be settled, and there would be no harm in retaining the International Law Commission's text as it stood. If the question had to be decided, however, his delegation thought it preferable to adhere to the practice of States. Draft articles 10 and 11 did not amount, juridically, to more than a statement that States were free to choose the method by which their consent to be bound by a treaty would be expressed. The articles were useful because they enumerated and defined various methods of expressing the intention of the parties.

32. Only a minority of treaties—multilateral treaties, treaties which under internal law required parliamentary consent and treaties for which a certain solemnity was desired—provided that they would become binding by ratification. Consequently, if the parties had made no express stipulation, it was more than probable that they had intended to express their consent by signature. Could the advocates of ratification as a residuary rule point to a single treaty which had entered into force by ratification although the intention of the parties had not been made clear? A residuary rule such as that proposed by the Swiss representative would not be in conformity with the modern practice of States. Nor could it be argued that such a rule would protect States against negligence on the part of their negotiators or their Governments. If, in any event, it could be expressly stipulated in a treaty that signature would make it binding, it was hard to see what danger there would be in adopting a residuary rule to the effect that consent to be bound by a treaty was expressed by signature when the intention of the parties could not be ascertained. Nor could the argument be advanced that many constitutions required parliamentary approval of certain treaties; for in such cases the parties could stipulate in the treaty that their consent was subject to ratification.

33. Despite the fact that it was a sponsor of the amendment in document A/CONF.39/C.1/L.38 and Add.1 and 2, the Swedish delegation did not attach any particular importance to the way in which a residuary rule on signature was introduced into the draft. It might perhaps be preferable, however, to embody the rule in a separate article. If the new provision did not obtain a two-thirds majority, its disappearance would then leave the articles drafted by the International Law Commission intact, which would not be the case if the rule was inserted in the text of article 10.

34. A brief article on the lines proposed by Poland and the United States (A/CONF.39/C.1/L.88 and Add.1)[4] should, in his delegation's opinion, be inserted before article 10. It would become the principal rule, and articles 10 and 11 would state the most common practical applications. An article 11 *bis* would then state the residuary rule on signature or ratification, whichever the Committee decided.

35. Mr. AMADO (Brazil) said that nowadays it was necessary to act quickly and the methods of expressing consent had become so numerous that ratification, that respectable institution of the previous century, had rather faded away. The opinion of the greatest jurists in the world could not take precedence over actual practice as described by the Hungarian representative. His own country's constitution required ratification, but it would comply with that requirement by including an express provision in the treaties it concluded. He could not support the Latin American joint amendment, and would abstain from voting on it.

The meeting rose at 1 p.m.

[4] i.e. the proposal for a new article 9 *bis*.

SEVENTEENTH MEETING

Monday, 8 April 1968, at 3.10 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*)

Question of a residuary rule in favour of signature or of ratification (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the preliminary issue of the proposals for a residuary rule.

2. Mr. KEITA (Guinea) said that the International Law Commission's text of articles 10 to 12 fully met the needs of contemporary international practice. The choice of one or other residuary rule was largely an academic issue. The International Law Commission's text would provide a good working instrument for States, whose essential duty in the matter was to avoid silence or ambiguity. If, however, a residuary rule had to be included, he would favour a presumption that ratification was necessary, because it would safeguard the requirements of his country's Constitution, article 33 of which specified that the legislature's approval was necessary for certain categories of treaty, including the vast majority of those of any importance.

3. Mr. MATINE-DAFTARY (Iran) said he strongly supported the presumption that, in the absence of evidence to the contrary, ratification and not signature expressed consent. The opposite rule would ignore the prerogatives of the legislature under the constitution of most countries, including Iran.

4. It was difficult to see what could be the scope of application of the provisions of article 10, paragraph 1. He could only think of the case of a treaty which served merely to implement the provisions of a pre-existing treaty, which had itself been ratified and had already entered into force. In a case of that nature, it might be possible for the States concerned to agree that consent to be bound by the implementation treaty would be expressed by mere signature.

5. He was in favour of combining articles 10 and 11 into a single provision which would begin by stating the traditional principle that ratification was required in order to express the consent of the State. The exceptions which could be made by States to that general rule would then be set out.

6. Mr. VIRALLY (France) said it was important not to hinder the development of treaties in simplified form. At the same time, it had to be remembered that State practice in the matter varied widely and it would be wrong to try and impose any solution which some States could not accept for constitutional reasons. Equally, it would be wrong to try to make the rules of international law subject to those of internal constitutional law. States which participated in a negotiation should be aware of their constitutional provisions and should make the necessary arrangements to enable them to enter into international undertakings. It was significant that, in article 43, the International Law Commission had taken a stand against entering into an examination of internal constitutional law.

7. The International Law Commission's method of setting out parallel provisions in articles 10 and 11 did not solve the problem. In order to avoid disputes, it was necessary to make a choice between two principles and that choice should be made not on doctrinal but on practical grounds. The fact that States specified the need for ratification in a certain number of treaties —or conversely, the fact that they expressed their consent by signature in a large number of cases—was irrelevant to the present discussion. The position was that, in the majority of cases, States made an express choice of the method of expressing their consent. The problem before the Committee was that of the presumption to be established for the minority of cases in which that choice was not made by the States concerned. A rule had to be laid down which would give States an awareness, and an assurance, of what the consequences would be of their failure to make an express choice in the matter. The present position under international law was not clear and the convention should attempt to improve that position.

8. In the interests of legal certainty, he supported proposals such as those by Switzerland (A/CONF.39/C.1/L.87) and a group of nine States (A/CONF.39/C.1/L.105) which would create a presumption that consent was given by ratification. Ratification must, however, be construed in accordance with the provisions of article 11, paragraph 2, which equated acceptance and approval with ratification. The point was an important one, because ratification emanated from the Head of State, whereas acceptance and approval emanated from the Minister for Foreign Affairs. Article 11, paragraph 2, thus introduced a desirable element of flexibility.

9. The presumption in favour of ratification would also be subject to provisions of article 10, paragraph 1(*b*), which stated an exception for cases where it was otherwise established that the negotiating States were agreed that signature would express consent. That broad formula would serve to meet all the practical needs of State practice. He could not, however, support the proposal to inject into that sub-paragraph considerations of internal law as was done in the amendment contained in document A/CONF.39/C.1/L.107.

10. Mr. DADZIE (Ghana) said that the advantages which ratification had over signature as a method of expressing State consent included the opportunity which it afforded to take a second look at a treaty as a whole. Ratification also made it possible to take the necessary steps to conform with constitutional requirements before the State bound itself by the treaty.

11. With regard to the various amendments to articles 10 and 11, which his delegation thought should be discussed together, he found the Italian amendment to article 10 (A/CONF.39/C.1/L.81) too limited in scope; its text would not improve the International Law Commission's draft. The same was true of the Belgian amendment to that article (A/CONF.39/C.1/L.100). The Finnish amendment to article 11 (A/CONF.39/C.1/L.60) was of a drafting character and should be referred to the Drafting Committee.

12. His delegation, while accepting the International Law Commission's draft articles 10 and 11 as sufficiently flexible to cover all the situations of State practice with regard to treaty-making, had an open mind as to the possibility of improving that text both in the Committee of the Whole and in the Drafting Committee.

13. Mr. MARESCA (Italy) said that the arguments put forward relating to internal constitutional procedures and the role of the legislature in approving treaties had introduced an element of confusion into the discussion. The issue was not that of determining how the consent of the State was formed in accordance with its constitution, but rather what were the procedural rules for expressing the consent of the State at the international level; the rules now under discussion were not substantive rules but procedural rules of diplomatic law.

14. From that point of view, there was little difference between ratification and signature. Ratification was a more formal method of expressing consent than signature, but a State which gave its consent whether by ratification or by signature did so in full awareness of its own constitutional law. In Italy, a full parliamentary debate had sometimes been held before the executive had been permitted to sign a treaty which did not require any ratification. Parliamentary control under the constitution was thus exercised, irrespective of the method chosen to express the consent of the State at the international level.

15. The International Law Commission had acted wisely when it had simply defined the two procedures of signature and ratification and placed both on the same footing. Admittedly, that method left a gap, but any attempt to fill the gap in the interests of doctrinal considerations would detract from the flexibility of the whole system.

16. Mr. KEBRETH (Ethiopia) said the International Law Commission was to be commended for setting out in articles 10 and 11 direct practical solutions to the problem of evidence of consent. The Commission had avoided taking any doctrinal stand, but at the expense of leaving a gap in the rules. An attempt was now being made to bridge that gap and his delegation favoured the approach adopted by a number of Latin American States in their amendment to article 10 (A/CONF.39/

C.1/L.107) which, while acknowledging the need to retain ratification as the residual rule, recognized that consent in the case of administrative and executive agreements could be expressed by signature. That approach laid the emphasis on the substance instead of on the form of a treaty, and it was the substance which, in his delegation's view, should remain the controlling factor.

17. Mr. MIRAS (Turkey) said that articles 10 and 11 were satisfactory inasmuch as they made specific provision for a number of cases in which signature or ratification served to express consent. It was necessary, however, to include also a general rule to cover cases not provided for in articles 10 and 11. For that purpose, he was in favour of a residual rule which would create a presumption in favour of ratification; such a rule would be consistent with international law in force and would meet the requirements of the Turkish Constitution. He therefore supported the proposal by Switzerland for a new article 11 *bis* (A/CONF.39/C.1/L.87).

18. Mr. KRISPIS (Greece) said that on balance, he favoured the presumption that ratification was necessary to express consent. Ratification, which had survived the age when inconvenient communications made it necessary for the Head of State, before finally consenting to be bound by a treaty, to discuss it in person with his representative on his return, now served other purposes and in particular provided an opportunity for further consideration of the treaty. That was why it had been so constantly practised, and it did not seem practical to abolish it, even to the limited extent of a presumption in favour of signature. The signature rule did indeed make for certainty; but certainty was also a characteristic of ratification, as far as the international aspect was concerned. In fact, ratification had a dual significance: on the internal plane, it related to the compliance with constitutional procedures for the approval of treaties; on the international plane, ratification constituted a declaration to the effect that the State was bound. Made through the proper diplomatic channels, it must be accepted by the other party, which had no right to raise doubts grounded on the constitutional law of the State making the declaration; that point was dealt with in article 43, the last nine words of which provided for an " escape clause " and were of dubious value. Even if the treaty itself stated that it would be effective only on ratification by parliament, the notification of ratification could not be questioned by the State receiving the notification.

19. For those reasons, he supported the amendments by Switzerland (A/CONF.39/C.1/L.87) and by a group of nine Latin American States (A/CONF.39/C.1/L.105).

20. Mr. TODORIĆ (Yugoslavia) said that the success of the Conference depended on the adoption of a solution to the present issue which was likely to command general acceptance. His delegation therefore strongly supported the approach adopted by the International Law Commission, which took into account contemporary practice with regard to ratification and signature while at the same time safeguarding the constitutional position of all countries.

21. Mr. TSURUOKA (Japan) said that he was inclined to favour as a residual rule the formula proposed by Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2) which was more in keeping with present international practice, including that of Japan. However, if that proposal were not adopted, his delegation would favour the retention of the International Law Commission's draft as it stood.

22. Mr. OGUNDERE (Nigeria) said that, in their practice, States were not swayed by doctrinal considerations. An arrangement such as that embodied in the International Law Commission's draft articles 10 and 11, which allowed all States room for manœuvre, was therefore preferable to one which raised difficulties for some States. Nigeria had made use of almost all the methods set forth in those articles to express its consent to treaties, and he agreed with the United Kingdom representative that the Commission's formulation was the one most likely to obtain a two-thirds majority at the Conference. Neither signature nor ratification as a residuary rule would attract such a majority.

23. He therefore opposed all the amendments for a residuary rule, whether based on signature, as in document A/CONF.39/C.1/L.38 and Add.1 and 2, or ratification, as in documents A/CONF.39/C.1/L.87 and L.105, and urged the adoption of the Commission's draft articles 10 and 11 which would accommodate all needs, including those of the sponsors of the two sets of amendments to which he had referred.

24. Mr. HARRY (Australia) said that the issue must be examined from the point of view of convenience and certainty. In the great majority of cases, the treaty itself would specify that ratification was required, or alternatively, that it would enter into force upon, or a certain time after, signature. In most remaining cases there would be clear evidence of the intention of the parties in the matter. For the very few other cases, a residuary rule based on signature would be no less certain than one based on ratification. It might even add to security by making it less easy to challenge a treaty signed by one of the parties relying on the other's signature as the expression of its consent. States which did not wish to bind themselves otherwise than by ratification could always make the matter clear, for example in the full powers given to their representatives.

25. He was in favour of articles 10 and 11 as they stood, but if a residuary rule were to be adopted, he would be in favour of a presumption that signature expressed consent.

26. Mr. MOUDILENO (Congo, Brazzaville) said that some hierarchy must be established between ratification and signature. He favoured the Latin American proposal (A/CONF.39/C.1/L.105) in favour of ratification, largely because that procedure ensured that public opinion was fully informed of the treaty undertakings subscribed by the Government on behalf of the State.

27. Miss RUSAD (Indonesia) said that her delegation could accept the International Law Commission's text of articles 10 and 11, which showed no preference for any particular means of expressing consent, but merely stated the current practice in the matter. Her delegation could also support the new article 9 *bis* proposed by

Poland and the United States (A/CONF.39/C.1/L.88 and Add.1) [1] as a useful introduction to articles 10 and 11, and also the new article 11 *bis* submitted by Switzerland (A/CONF.39/C.1/L.87), which stated the residuary rule in a more general way than the other amendments before the Committee.

28. Mr. JAGOTA (India) said that the gap between the scope of articles 10 and 11 should be filled by a prescription, not by a presumption, and that the prescription should be based on ratification, which ultimately signified intention and consent to be bound by a treaty; a prescription based on signature would apply mainly to the growing practice of concluding treaties in simplified form. If it were decided to include no prescription, treaties falling in the gap between the two articles would have no legal effect under article 21, and in that case the parties would be obliged to indicate expressly their choice either of signature or of ratification as a means of bringing the treaty into effect. The practical results of including or omitting the prescription would therefore be the same, but any prescription must be based on ratification.

29. Mr. SMEJKAL (Czechoslovakia) said that, in an important question like the one under discussion, it was desirable to avoid a premature vote. A decision should be deferred until the next meeting in order to facilitate negotiations for a compromise solution, based perhaps on an approach on the lines adopted by the International Law Commission.

30. Mr. CARMONA (Venezuela) said that the time had come for the Committee to take at least a preliminary decision, which would, of course, not become final until the second session of the Conference. The vote should be taken by roll-call.

31. Mr. ALVAREZ (Uruguay) said he thought that a vote might be premature and suggested that it be postponed until the next meeting.

32. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he supported that view.

33. Sir Humphrey WALDOCK (Expert Consultant) said that some speakers appeared to have considered only cases where the treaty was silent on the method whereby consent should be expressed, but both articles contained provisions dealing with the position of the representatives themselves. Under article 10, even although, in principle, the treaty might be binding on signature, an individual representative might indicate that signature would not be binding for his State, but that the treaty would require ratification; and a similar provision recognizing that ratification might be required only in the case of a particular State appeared in article 11.

34. He had originally considered that a residuary rule should be included in the draft and, on balance, had thought that the rule should be based on the need for ratification, but the written comments of Governments had caused the International Law Commission to draft the two articles in their existing form. In considering whether the Commission's text was acceptable, or in preparing a compromise solution, the Committee might take into account the elements of flexibility in paragraph 1(*c*) of article 10 and in paragraphs 1(*c*) and 1(*d*) of article 11.

35. The CHAIRMAN suggested that the vote on the amendment by Czechoslovakia, Sweden and Poland to article 10 (A/CONF.39/C.1/L.38 and Add.1 and 2) and the nine-State amendment to article 11 (A/CONF.39/C.1/L.105) be postponed until the next meeting.

It was so agreed. [2]

Article 10 (Consent to be bound by a treaty expressed by signature)

36. The CHAIRMAN invited the Committee to pass on to consider article 10 and the amendments thereto. [3]

37. Mr. MARESCA (Italy) said that his delegation's amendment to paragraph 1(*c*) (A/CONF.39/C.1/L.81) had been prompted by a wish to introduce an element of greater certainty into the text. If the International Law Commission's text were adopted, the last phrase of paragraph 1(*c*) might be subject to misinterpretation in the course of practical negotiations, and the Italian delegation had thought it wise to introduce the idea of formal manifestation of intention during negotiations. He would have no objection if the amendment were referred to the Drafting Committee.

38. Mr. DENIS (Belgium), introducing his delegation's amendment to paragraph 2 (*a*) (A/CONF.39/C.1/L.100) said that paragraph (4) of the commentary to the article drew attention to the practice of initialling, especially by a Head of State, Prime Minister or Foreign Minister, as the equivalent of full signature. But the wording " when it is established that the negotiating States so agreed " in paragraph 2 (*a*) might give rise to practical difficulties and cast doubts on the actual effect of initialling. In particular, the words " it is established " were so general as to exclude no method of proof, and might conceivably include alleged consent, based on conversations or on any source whatsoever, in certain specified circumstances. The Belgian delegation therefore proposed that the word " expressly " be inserted before " so agreed " at the end of the paragraph, but would not press for a vote on its amendment.

39. Mr. VARGAS (Chile) said that the reason why nine Latin American delegations had submitted an amendment to paragraph 1 of article 10 (A/CONF.39/C.1/L.107) was that, although they had endorsed the Committee's decision to ascribe a generic meaning to the term " treaty ", which now included all denominations of treaty, including administrative and executive agreements and treaties in simplified form, they wished to draw attention to the fact that, whereas other treaties were normally ratified to express the consent of States, signature alone sufficed to commit the State in the case of administrative and executive agreements. The constitutions of most Latin American countries provided that treaties entered into force once they were ratified by the executive after parliamentary approval; in practice, however, unduly strict interpretation of that rule often entailed delay in concluding international agreements, and a solution had been found, without entailing consti-

[1] See 15th meeting, para. 42.

[2] For resumption of discussion, see 18th meeting, para. 6.

[3] For a list of the amendments to article 10, see 16th meeting, footnote 1.

tutional changes, whereby the substance of a treaty was taken into account in deciding whether signature might suffice to bring a purely administrative or executive agreement into force.

40. Paragraph (3) of the commentary to article 2 pointed out that the treaty in simplified form was very common and that its use was steadily increasing, and in its 1962 draft, the International Law Commission had indicated that such treaties might constitute exceptions to the principle of ratification,[4] although it had subsequently decided to eliminate any specific reference to such agreements owing to the difficulty of defining them. The nine-State amendment was designed to remove that difficulty, by including a clear and objective definition of treaties for which ratification would not be required. The sponsors were aware that it was undesirable to refer to internal law in the articles, but had found it necessary to make such a reference, since internal law was the only possible criterion in the case at issue; moreover, the International Law Commission had itself referred to internal law in article 43.

41. Mr. CUENCA (Spain) said that there were reasons not only of form but also of substance for his delegation's amendment (A/CONF.39/C.1/L.108) especially in the case of paragraph 2(*b*). The Commission's paragraph 1(*b*) was unduly rigid, since the words " it is otherwise established " implied formal agreement. In its 1965 text, the Commission had used the more flexible expression " it appears from the circumstances of the conclusion of the treaty ";[5] the Spanish delegation therefore proposed the words " it is clear from the circumstances that the negotiating States were agreed... ". His delegation proposed that the words " in question " should be deleted from paragraph 1(*c*), because the term was ambiguous in Spanish; that point could be referred to the Drafting Committee. His criticism of the Commission's paragraph 1(*b*) also applied to paragraph 2(*a*), and the Spanish delegation had proposed a similar amendment to that paragraph.

42. With regard to paragraph 2(*b*), on signature *ad referendum*, the United States Government in its comments on the draft articles had proposed the addition of the phrase " unless the State concerned specifies a later date when it confirms its signature ",[6] in order to avoid difficulties for negotiating States which had to fulfil certain requirements of internal law before becoming definitely bound by a treaty. Spain was such a country, and considered that signature *ad referendum* provided a satisfactory solution; but on confirming its signature *ad referendum*, a State should be free to declare whether it wished to become a party to the treaty from the time of signature *ad referendum*, or whether from the time of confirmation of that signature. The Special Rapporteur had included that possibility in his 1965 draft, and the Spanish delegation had proposed the reintroduction of the phrase because it was not satisfied with the Commission's reasons for excluding the provision.

43. Mr. CARMONA (Venezuela) said that, although he had withdrawn his delegation's amendment (A/CONF. 39/C.1/L.70) in favour of the nine-State amendment (A/CONF.39/C.1/L.107), he would like to explain the reasons for his original proposal. The addition of paragraph 1(*b*) introduced the subjective element of establishing the agreement of the negotiating States, which was very hard to evaluate, and the same applied to paragraph 1(*c*), for the intention of the contracting States was subject to varying interpretations. Since the controversies that might arise could even lead to disputes before international legal instances, the Venezuelan delegation considered it necessary to delete both sub-paragraphs.

44. Mr. LADOR (Israel) said that he had no objection to the Italian amendment (A/CONF.39/C.1/L.81), which sought to provide a further safeguard, but feared that the words " formally manifested " might give rise to difficulties of interpretation.

45. Just as he was reluctant to become involved in the controversial question concerning residuary rules about signature or ratification, he did not wish to enter into considerations relating to whether or not a treaty was an administrative or an executive agreement under the internal law of a particular State. He therefore could not subscribe to the nine-State amendment (A/CONF. 39/C.1/L.107).

46. The Spanish amendment (A/CONF.39/C.1/L.108) seemed to be primarily of a drafting character. It diverged somewhat from the Commission's draft on the question of the moment when a treaty signed *ad referendum* would enter into force by admitting the possibility of that happening as from the date of notification of the signature. Perhaps the point could be dealt with by the Drafting Committee.

47. Mr. ZEMANEK (Austria) said he doubted whether the phrase " or was expressed during the negotiation " served any purpose. It suggested that a representative was entitled to claim that his full powers authorized him to express his State's consent to be bound. He therefore proposed that the phrase be deleted and would ask for a separate vote on that proposal.

48. He could support the Venezuelan amendment, but not the nine-State amendment, because although administrative and executive agreements were all part of modern State practice, it was undesirable to introduce questions of internal law into the draft. As the initialling of a text was usually only a provisional stage, he could also support the Belgian amendment.

49. Mr. KRAMER (Netherlands) said that paragraph 1(*c*) seemed to suggest that signature implied consent to be bound in spite of evidence indicating that ratification should follow. Cases of that kind had occurred with some Council of Europe agreements, which had been considered by the Secretariat as having been ratified on the date of signature.

50. Sub-paragraph 1(*c*) suggested that a statement during the negotiation could be the equivalent of an expression of consent to be bound, and if the treaty did not contain a provision to that effect, that would be regarded as evidence. The statement would need to be made only if full powers did not authorize the repre-

[4] *Yearbook of the International Law Commission, 1962*, vol. II, p. 163, paragraph (11) of commentary to article 1.

[5] *Yearbook of the International Law Commission, 1965*, vol. II, p. 161, article 11, paragraph 1(*b*).

[6] *Yearbook of the International Law Commission, 1966*, vol. II, p. 348.

sentative to sign the treaty without a reservation as to ratification and would contradict the full powers. A Government would so rarely withdraw in that way the order given in the full powers that there seemed to be no point in providing for it under the general law of treaties.

51. The Italian amendment (A/CONF.39/C.1/L.81) was an improvement, and made the subsequent confirmation in article 7 more or less superfluous. Perhaps the Drafting Committee could consider excluding the possibility of expressing during the negotiations something contradictory to the full powers.

52. He presumed that no Government would accept full powers or an instrument of ratification unless fully signed. Likewise, a treaty should always be fully signed unless it was completely and formally clear that that was not intended. He therefore supported the Belgian amendment (A/CONF.39/C.1/L.100).

53. Mr. FINCHAM (South Africa) said that paragraph 1(*b*) might cause difficulties if signature were to have a binding effect. According to paragraph (3) of the commentary, that was simply a question of demonstrating the intention from the evidence, but it was often anything but simple to establish the subjective elements of intention. In the interests of greater clarity, that paragraph might be redrafted to read " The consent of a State to be bound by a treaty is expressed by the signature of its representative when the negotiating States expressly so agree, whether in the treaty or otherwise".

54. If it were decided to maintain three sub-paragraphs in paragraph 1 of the article, sub-paragraph 1(*b*) might be reworded to read " the negotiating States expressly so agree " and the words " was expressly stated during the negotiations " might be substituted for the words " was expressed during the negotiation " in sub-paragraph 1(*c*). Those changes might meet the difficulty mentioned by the Italian representative; similar modifications would have to be introduced in articles 11 and 12.

55. He could not support the nine-State amendment, since he was convinced that the draft should not contain references to the internal law of States; that was something which was often difficult to determine.

56. Though he was in sympathy with the Belgian amendment (A/CONF.39/C.1/L.100), he considered that it did not go far enough.

57. Mr. BLIX (Sweden) said he could not support the Italian amendment (A/CONF.39/C.1/L.81), which would only permit a signature expressing the State's consent to be bound if that intention had been formally manifested during the negotiations.

58. If the proposal by Poland and the United States (A/CONF.39/C.1/L.88 and Add.1) for a new article 9 *bis* were adopted, the unusual case dealt with in paragraph 1(*a*) would have been covered.

59. He could not support the nine-State amendment (A/CONF.39/C.1/L.107), because States should not be required to study the internal law of other States in order to determine whether a treaty was an administrative or executive agreement; such a task was difficult enough for national lawyers and would be much more so for foreigners.

60. The Spanish amendment (A/CONF.39/C.1/L.108) could be referred to the Drafting Committee.

61. The CHAIRMAN said he would first put to the vote the nine-State amendment (A/CONF.39/C.1/L.107).

The nine-State amendment was rejected by 60 votes to 10, with 16 abstentions.

62. The CHAIRMAN put to the vote the Austrian oral amendment to delete the words " or was expressed during the negotiation," in paragraph 1(*c*).

The Austrian amendment was rejected by 37 votes to 10, with 30 abstentions.

63. The CHAIRMAN said he assumed that the remaining amendments could be referred to the Drafting Committee.

It was so agreed.[7]

Proposed new article 10 bis (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)

64. The CHAIRMAN invited the Committee to consider the new article 10 *bis* (A/CONF.39/C.1/L.89) proposed by Poland, which read:

" *Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

" The consent of States to be bound by a treaty embodied in two or more related instruments is expressed by the exchange of such instruments, unless the States in question otherwise agreed."

65. Mr. NAHLIK (Poland) said that his delegation's proposal for a new article 10 *bis* was a logical complement to its proposal for a new article 9 *bis* (A/CONF.39/C.1/L.88). Articles 10, 11 and 12 in the Commission's draft did not cover all the methods whereby a State could express its consent to be bound, and notably the most frequent of them, namely, an exchange of notes, not necessarily signed, where that exchange alone expressed the consent of the parties. That process was quite distinct from the exchange of ratifications or other documents referred to in article 13, which was only the final stage in a two-stage procedure.

66. Mr. JIMENEZ DE ARECHAGA (Uruguay) said he supported the Polish proposal, which constituted a rule of progressive development.

The meeting rose at 6.5 p.m.

[7] For resumption of the discussion on article 9, see 59th meeting.

EIGHTEENTH MEETING

Tuesday, 9 April 1968, at 10.50 a.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 10 bis (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty) *(continued)*[1]

1. Mr. BEVANS (United States of America) said he supported the Polish proposal (A/CONF.39/C.1/L.89)

[1] For text, see 17th meeting, para. 64.