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Ninth plenary meeting

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it might be necessary to require a two-thirds majority. It had already been approved by the Committee of the Whole, and any re-examination of the text would require a two-thirds majority of the present Conference.

81. He did not believe that the text of paragraph 2 of article 8 could have the effect of harming the activities of other organizations; the problem of agreements drafted within international organizations was adequately covered by article 4.

The meeting rose at 6.15 p.m.

NINTH PLENARY MEETING

Tuesday, 29 April 1969, at 10.35 a.m.

President: Mr. AGO (Italy)

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)*

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE *(continued)*

Article 8 (Adoption of the text) *(continued)*

1. Mr. ESCHAUZIER (Netherlands) said that article 8, paragraph 2 did not in any way affect the established practice in the organizations in the United Nations system or the current voting procedures in those organizations or in conferences held under the auspices of the United Nations or its subsidiary bodies.

2. Article 8 did not deal with treaties drawn up within an international organization. Such treaties were covered by the general provision in article 4 of the conventions, as the International Law Commission had stated in paragraph (6) of its commentary to article 8.

3. Article 8, paragraph 2 dealt with conferences convened outside existing bodies. The participants in such conferences would not necessarily have rules of procedure from the beginning. In the initial phase of their work the participants would therefore have to agree on certain principles, including a voting procedure for the adoption of the text of the treaty. It would thus appear that stringent provisions with regard to the required majority were warranted. The participants were of course free to depart from the provision in article 8, paragraph 2 and adopt more flexible rules of procedure, but it was in the interests of the participants in the conference to adhere to the rule stated in article 8, paragraph 2, unless the participating States decided by a two-thirds majority to apply different rules. The participants in a conference might also wish to adopt the standing rules of procedure applicable to most United Nations conferences, but there was no inherent link between article 8, paragraph 2, and what was known as United Nations practice.

4. It would therefore be wrong and harmful to replace the expression " participating in the conference " in paragraph 2 by the words " present and voting " and to interpret it in the sense of rule 37 of the rules of procedure of the Conference on the Law of Treaties, which provided that " representatives who abstain from voting shall be considered as not voting ".

5. The Netherlands delegation would therefore vote for the existing wording of article 8, paragraph 2.

6. Mr. GONZALEZ GALVEZ (Mexico), introducing the amendment by Mexico and the United Kingdom (A/CONF.39/L.12), said that certain representatives, in particular those of India and Iraq, had said they were in favour of replacing the word " participating " by the words " present and voting ".

7. A number of States were regarded as participating in the Conference, though their delegations were absent or did not participate in the voting. The rule stated in the amendment was based upon the practice of the United Nations and the specialized agencies, which was a standing practice save in such exceptional cases as the election of members of the International Court of Justice, where at the time of the vote account was taken of the number of States participating.

8. The representative of Ecuador had asked at the previous meeting that an addition should be made to the amendment by Mexico and the United Kingdom to the effect that it meant present and voting " when the vote in question was taken at the conference ". That was implied in the text of the amendment, but the Drafting Committee might consider the point in order to make the wording of the new text clearer, should the amendment be adopted.

9. Mr. ALVAREZ (Uruguay) said that the Conference had the choice between two formulas, that of " States participating in the conference " and that of " States present and voting ". On mature reflection, the Uruguayan delegation was in favour of the latter.

10. The International Law Commission had stated in paragraph (5) of its commentary to article 8 that the formula " participating in the conference " took account of the interests of minorities, which might be quite a substantial group. He himself believed that a formulation of that kind had three drawbacks. First, it was too rigid. Secondly, it was at variance with the provisions of the United Nations Charter, with the general practice followed within the United Nations, and in particular at all codification conferences, and with the rule laid down in rule 36 of the rules of procedure of the present Conference concerning decisions on matters of substance. Article 18 of the Charter provided that decisions of the General Assembly on important questions should be made by a two-thirds majority of the members present and voting, and United Nations practice and the rules of procedure of codification conferences had adhered to that rule. Thirdly, it presented the inevitable danger that as a result of absenteeism, deliberate or not, States might frustrate every effort to achieve practical results.

11. The " States present and voting " formula proposed by Mexico and the United Kingdom (A/CONF.39/

L.12) was a way of avoiding the drawbacks he had just listed. It was flexible; it took into account the provisions of the Charter and United Nations practice; and above all, it gave States the guarantee that if they were present during the debate and participated actively in the work — something which depended solely upon themselves — they could make their voice heard.

12. If the formula governing the work of a conference as important as the Conference on the Law of Treaties was a good one, why should it not be adopted rather than a more rigid formula which would be likely to impede the development of international relations? The formula had prevailed for more than twenty years without substantial objection and would thus become a principle governing all international conferences unless some express provision was made to the contrary.

13. The formula " States present and voting " also provided an inducement to all States to be present and to take an active part.

14. For all those reasons, the Uruguayan delegation was in favour of the formula proposed by Mexico and the United Kingdom.

15. Mr. MATINE-DAFTARY (Iran) said that in his view the question of the meaning of the word " participating " in paragraph 2 was of great importance.

16. The International Law Commission had not explained in its commentary why it had preferred to use the term " participating ", but it had said in paragraph (4) that " when the General Assembly convenes a conference, the practice of the Secretariat of the United Nations is, after consultation with the States mainly concerned, to prepare provisional or draft rules of procedure ". That was in fact the procedure the Secretariat had followed for the Conference on the Law of Treaties. The members of the International Law Commission had considered that the decision concerning the rules of procedure was normally taken at the beginning of a conference by the States participating in it and it would hardly be conceivable that participants would absent themselves and abstain at that particular time when the point at issue was a matter vital to the conference's work. Some members of the International Law Commission had rightly considered that a rule providing for a two-thirds majority was essential in order to afford sufficient protection to States which were in a minority at a conference.

17. The Conference was therefore faced with two formulas, namely " participating " and " present and voting ", and it must make its choice.

18. Mr. MARESCA (Italy) said that the rule stated at the beginning of paragraph 2 was a rule of common sense. A treaty could not be adopted at an international conference unless it had obtained a two-thirds majority; a simple majority would be quite inadequate. On the other hand, the term " States participating " in paragraph 2 of the text approved by the Committee of the Whole was ambiguous. A State might be invited to a conference, and even appoint the members of its delegation, but abstain from actually participating in the conference's work. A State, too, might not be present on the day the convention was officially proclaimed. His delegation believed that States in such cases could not be regarded as participating States.

19. He supported the amendment by Mexico and the United Kingdom which embodied a well-known rule to be found in the constitutions of many States.

20. Paragraph 2 laid down that every international conference was free to choose its procedure, but placed limits upon that freedom. The Conference on the Law of Treaties was a United Nations conference and could not ignore the procedure followed within the United Nations.

21. Mr. KOULICHEV (Bulgaria) said that he was against the amendment by Mexico and the United Kingdom. The sponsors of the amendment were afraid that the rule of the majority of two-thirds of the States participating might give rise to difficulties in carrying out the task of codifying international law, for example by enabling a minority of States to prevent the adoption of a treaty. His delegation was not sure that such apprehensions justified abandoning the very sensible voting procedure provided for by the existing wording of paragraph 2. The great merit of that formula was that it provided adequate protection for States which were in a minority at the conference and thus encouraged all participants to seek solutions that would take into account the interests of the great majority of members on the basis of a general agreement. The procedure thus prevented the taking of decisions by a minority of participants in the conference, as would be possible if the rule of the majority of two-thirds of the States present and voting was adopted. Such a formula was particularly necessary in the international regulation of matters of vital importance to States, such as disarmament. In dealing with other matters, a voting rule of that kind might appear too rigid. But in such cases the residuary nature of the rule in paragraph 2 would leave participants in the conference entirely free to choose a more appropriate voting rule. Paragraph 2 covered cases in which the States concerned had not reached agreement on the question before the conference began, and laid down the procedure which the conference should then follow in order to reach a decision on voting procedure, while leaving to States the sovereign authority to establish the voting rule applicable for the adoption of the text of the treaty.

22. His delegation thought that the practical importance of paragraph 1 of article 8 should not be overestimated. In most cases, the major codification conventions of modern times were drafted at conferences convened by international organizations. The voting rule, which was subject to approval by the conference, was generally suggested by the international organization, and the acceptance of that rule by the conference had never yet given rise to any great difficulty.

23. His delegation did not therefore think that the application of the present text of article 8, paragraph 2, was likely to produce any undesirable effects in that connexion, and it would therefore vote for the present wording of paragraph 2.

24. Mr. RUEGGER (Switzerland) said that article 8, paragraph 2, dealt with a matter which had so far been more a question of international practice or of procedure at international conferences than of law.

25. His delegation fully understood that the International Law Commission should have thought it desirable to remove a factor of procedural uncertainty by mentioning the rule applied by organizations of the United Nations family.

26. The application in principle of the two-thirds majority rule was in accordance with a trend that had now gone so far as to appear irreversible. His delegation had not wished to submit any amendment on the point, but it would prefer the absolute presumption in favour of the two-thirds majority rule to be less automatic, and it would therefore be in favour of a much more flexible formula.

27. It should be possible to adopt certain articles dealing with problems which were less important from the point of view of State sovereignty by a simple majority instead of by a two-thirds majority. Moreover, such a procedure often helped to contribute to the development of international law.

28. That had been the practice followed, for example in the case of the 1949 Geneva Conventions — the three revised Conventions and the new Convention — for the Protection of War Victims. If those Conventions had had to be adopted by a two-thirds majority, a large number of their provisions, which had subsequently been adopted by the whole international community, would undoubtedly have had to be deleted.

29. It was true that the general rule provided that States might decide to apply a rule other than the two-thirds majority rule. But once the text of article 8 had been adopted it would be more difficult to depart from that rule. He thought that the amendment by Mexico and the United Kingdom improved the present wording of paragraph 2 and his delegation would vote for it.

30. Sir Humphrey WALDOCK (Expert Consultant) said that the International Law Commission had been much preoccupied with the questions of the sovereignty of each conference to determine its voting procedure and rules of procedure. At one time, the Commission had even considered that it should not lay down any rule at all, except to state in the most general terms that it would be a matter for the States concerned to decide the voting rule. But it had come to the conclusion, for the reasons stated in the commentary, that it would be desirable to lay down some residuary rule so that a conference which began its work without rules of procedure would find in the residuary rule a ready-made means of proceeding.

31. When the Commission had used the phrase " participating in the conference " it had not meant to lay down a rigid rule that that must include every State attending the Conference. The Commission had not intended to deprive a conference of the right to decide how to deal with certain problems, such as abstentions. The rule was not intended to have such a rigid effect, but since many delegations had interpreted it in that way, the Conference must overcome the difficulty.

32. Article 8 laid down two rules: one concerned the vote on the adoption of the text, and the other — the real residuary rule — dealt with the possibility of applying a rule other than the two-thirds majority rule. The point of substance related to the expression " unless by the same majority they shall decide to apply a different rule ". That again was a matter for the Conference. He had gained the impression that many representatives thought that, since the Commission's text could imply that abstentions might not be left out of account in calculating the two-thirds majority, the voting rule for the adoption of the text was too strict for a conference drawing up a treaty, and he was largely of that mind. It was, however, for the Conference to decide whether the other rule, about the majority by which it might be decided to apply a different rule, should be strict or flexible.

33. The Drafting Committee should examine the effect of any change in the rule on the interpretation of paragraph 1. It was necessary to know whether an abstention was or was not to be counted in establishing unanimity.

34. It was very difficult to define what was meant by an international conference; his impression was that the majority of the representatives who had spoken on the problem had started from the hypothesis that the article was concerned only with large international conferences, in particular conferences convened by international organizations or organizations of the United Nations family. But in fact paragraph 2 might also cover conferences in which a comparatively small number of States participated, and that should be borne in mind in considering the decision to be taken.

35. Mr. ESCUDERO (Ecuador) said that the words " present and voting " were ambigous and might lead to confusion. His delegation's view, which it had put forward at the previous meeting, was that the amendment submitted by Mexico and the United Kingdom should be changed to include the words " when the vote in question was taken at the conference " after " present and voting ".

36. Replying to the Mexican representative's comment on his suggestion, he agreed that the clause he wished to add was implied in the word " voting "; but the wording of a legal text should be particularly precise. The Drafting Committee might consider his suggestion, which was purely one of form, if the amendment by Mexico and the United Kingdom was adopted.

37. Mr. WARIOBA (United Republic of Tanzania) said that the intention of the amendment to article 8 (A/CONF.39/C.1/L.103) which his delegation had presented in the Committee of the Whole had been to make the majority rule more flexible. It had been criticized as making it possible for a conference to decide to adopt the text of a treaty by simple majority. The Drafting Committee, to which the amendment had been referred by the Committee of the Whole, had refused to take a decision on the ground that it was a matter of substance; the amendment had therefore been

put to the vote in the Committee of the Whole at the 91st meeting without further debate. The Tanzanian delegation, while not fully convinced of the merits of having such a rigid rule as that in paragraph 2 of article 8, had decided not to vote against the article but to abstain. However, the suggestion made by the representative of Mexico at the previous meeting had produced a spontaneous reaction against the rigidity of the rule.

38. One of the main objections to the Tanzanian amendment had been that it might lead to a decision being taken by simple majority. But under its provisions a conference could also decide to require a three-quarters majority or even unanimity. Even if the decision was to apply the simple majority rule, he could not see anything wrong in that. If the interests of the minority were strictly safeguarded at the time of the adoption of the various provisions, the act of adoption itself would be largely a procedural matter.

39. With regard to the specific proposals that had been made, he thought that the present practice within the United Nations family was both restrictive, in the sense that it would prevent a conference from deciding on its own procedure, and inherently dangerous. The " present and voting " formula adopted in United Nations bodies might be undesirable in the case of a subject of such importance that it would be desirable to obtain a sizeable majority of all the participants. The formula was also dangerous in the sense that the text of a treaty could be adopted by a majority, of whatever size, of a handful of the participants.

40. His delegation was therefore more convinced than ever that a conference should be left to decide its own procedure. A decision should be taken on the substantive question of whether or not article 8 ought to be made more flexible. If the Conference decided that the majority rule should be made flexible, the delegation of Tanzania would request that its amendment be revived and referred to the Drafting Committee along with the other proposals.

41. Sir Francis VALLAT (United Kingdom) said that to require a majority of two-thirds of the States participating in a conference would make the adoption of the text of a multilateral treaty much more difficult than under current United Nations practice. It would be well to reflect on the consequences which would follow if the rule stated in article 8, paragraph 2 were to apply to the adoption of the convention on the law of treaties. A treaty of more fundamental importance in international law and for relations between States was hard to imagine. If the rule was applied, the temporary absence of delegations from the venue of the conference, or from the conference hall itself, the number of abstentions — all would combine to create the most serious consequences with respect to the possible adoption of the text. Even if all the articles of the convention were adopted by a two-thirds majority of the members present and voting, a number of abstentions at the time of the vote on the convention as a whole could prevent it from being adopted. If the rule was unsatisfactory for the present Conference it was equally unsatisfactory for future conferences. It would be strange if the present Conference, after having provided in its rules of procedure for a two-thirds majority of the States present and voting, should now lay down a more stringent rule for future conferences. The wording of paragraph 2 proposed by the International Law Commission had of course been intended to protect minorities. But in seeking to protect minorities the task of adopting texts of multilateral treaties should not be rendered so difficult as to put a brake on future development.

42. It was for those reasons that the United Kingdom delegation had joined the delegation of Mexico in sponsoring the amendment (A/CONF.39/L.12). If the principle of that amendment was accepted, it would of course be for the Drafting Committee to decide on the precise wording. It might, for example, wish to take into account the points made by the representative of Ecuador. While the United Kingdom delegation was not wedded to the precise text of the amendment, it felt that the Conference should express a view on the point of principle involved.

43. The PRESIDENT observed that various interpretations could be placed on the text, as the Expert Consultant had pointed out. The International Law Commission had of course not intended to propose a wording so rigid as to require a majority of two-thirds of the States registered at the Conference; the text was nevertheless open to that interpretation. Accordingly, the Conference must make its position clear with respect to the two proposals before it. Moreover, the delegation of Ecuador had presented a sub-amendment to the joint amendment submitted by Mexico and the United Kingdom, suggesting the use of the expression " present and voting when the vote in question was taken at the conference ". That formula presented translation problems and it did not seem that the point needed stressing, since that practice had always been followed in the United Nations. He asked the representative of Ecuador whether he insisted on on pressing his proposal.

44. Mr. ESCUDERO (Ecuador) said that he had merely made a suggestion in order to clarify the wording of the amendment by Mexico and the United Kingdom. He did not think that repetition was necessarily superfluous in a legal text, but he would accept the President's decision so as not to cause difficulties.

45. Mr. GALINDO-POHL (El Salvador) said that the purpose of the Ecuadorian sub-amendment to the amendment by Mexico and the United Kingdom was to make it quite clear that the reference was to States present and voting at the actual moment of the vote in question. That was no doubt the intention of the amendment by Mexico and the United Kingdom, but the text of paragraph 2, as changed by that amendment, did not bring that intention out sufficiently clearly, since it referred to " the States present and voting in the conference ". The act of adoption took place at a precise and clearly established time. He therefore proposed that the words " in the conference " be deleted, so that paragraph 2 would read: " The adoption

of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule ".

46. Mr. GONZALEZ GALVEZ (Mexico) and Sir Francis VALLAT (United Kingdom) said they accepted the Salvadorian representative's proposal.

47. The PRESIDENT said that the Conference still had to take a decision on the Tanzanian proposal. That proposal went somewhat further than the wording proposed by Mexico and the United Kingdom, since its intention was to replace the words " unless by the same majority they shall decide to apply a different rule " by the words " unless it is decided during the conference to apply a different rule ". The latter wording did not, however, indicate by what majority and in what manner the conference could decide to adopt a different majority.

48. Mr. WARIOBA (United Republic of Tanzania) said that it would be a question of a rule of procedure, and that under his proposal an international conference would be free to decide by a simple majority to adopt the text of a treaty by the same majority.

49. Mr. CARMONA (Venezuela) said that the Tanzanian amendment (A/CONF.39/C.1/L.103) had been rejected at the 91st meeting of the Committee of the Whole by 51 votes to 27, with 16 abstentions. It was therefore hard to see why the plenary Conference should have to vote again on the same amendment.

50. The PRESIDENT said that, while it was true that there had been a vote on that amendment, any delegation was free to resubmit a rejected amendment to the plenary.

51. He invited the Conference to vote on the amendments to article 8, beginning with the Tanzanian amendment, which was furthest from the Drafting Committee's text.

The Tanzanian amendment was rejected by 62 votes to 11, with 23 abstentions.

52. The PRESIDENT put to the vote the amendment by Mexico and the United Kingdom (A/CONF.39/L.12), with the change suggested by the Salvadorian representative.

The amendment was adopted by 73 votes to 16, with 10 abstentions.

Article 8, as amended, was adopted by 91 votes to 1, with 7 abstentions.

Statement by the Chairman of the Drafting Committee on articles 9-13

53. The PRESIDENT invited the Chairman of the Drafting Committee to introduce the texts of articles 9, 9 *bis*, 10, 10 *bis*, 11, 12 and 13 approved by the Committee of the Whole, the drafting of which had been reviewed by the Drafting Committee.

54. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had made no changes in the International Law Commission's titles of articles 9, 10, 11, 12 and 13 in the English, French and Spanish versions. A few drafting changes had been made in the titles of the Russian version of those articles.

55. Article 9 *bis* was new. It originated in two amendments submitted respectively by Belgium (A/CONF.39/C.1/L.111) and by Poland and the United States (A/CONF.39/C.1/L.88 and Add.1). The Drafting Committee had based the title of the article on the titles proposed in those two amendments.

56. Article 10 *bis* was also new, and derived from an amendment submitted by Poland (A/CONF.39/C.1/L.89). The Drafting Committee had retained the title proposed in that amendment, but had corrected the French translation, which had been inaccurate.

57. With regard to the texts of the articles, the Committee had merely made a few drafting changes. In particular, in article 9, sub-paragraph (*a*), it had replaced the word " *rédaction* " by the word " *élaboration* " and the word " *redacción* " by the word " *elaboración* " in the French and Spanish versions respectively. The same change had already been made in article 8. In article 9 *bis*, it had changed the order of the terms " approval ", " acceptance " and " accession " so that they followed the order in which those terms were enumerated in article 2, paragraph 1 (*b*). The Drafting Committee had also added the conjunction " or " at the end of paragraph 1 (*b*) of article 10, in order to make it clear that that paragraph did not call for the fulfilment of all the conditions laid down in the various sub-paragraphs. The same change had been made at the end of sub-paragraph (*a*) of article 10 *bis*.

Article 9 [1]

Authentication of the text

The text of a treaty is established as authentic and definitive:

(*a*) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(*b*) Failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

58. Mr. WARIOBA (United Republic of Tanzania) introduced an amendment to article 9 (A/CONF.39/L.11), reversing the order of the two sub-paragraphs of the article. The amendment would bring the text of the article into line with that of the article immediately following, article 9 *bis*, and would result in a clearer expression of the rule. It would also, as the Expert Consultant had advocated, result in a suitable consolidation of the means of authenticating the text of a treaty. Although the amendment might seem a substantive one, his delegation hoped that it would simply be referred to the Drafting Committee.

[1] For the discussion of article 9 in the Committee of the Whole, see 15th and 59th meetings.

An amendment was submitted to the plenary Conference by the United Republic of Tanzania (A/CONF.39/L.11).

59. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had already examined the matter raised in the amendment by the United Republic of Tanzania, and had finally decided in favour of the text now before the Conference.

The amendment by the United Republic of Tanzania (A/CONF.39/L.11) was rejected by 47 votes to 20, with 30 abstentions.

Article 9 was adopted by 98 votes to none, with 3 abstentions.

Article 9 bis [2]

Means of expressing consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

60. Mr. DENIS (Belgium) introduced an amendment (A/CONF.39/L.13) which he said was purely a matter of drafting. The words " exchange of instruments " should be replaced by the words " exchange of letters or notes ", since the expression " exchange of instruments " was traditionally kept for the exchange of instruments of ratification, whereas the case covered by article 9 *bis* was in fact the exchange of letters or notes. In the French text the word " *moyen* " should be replaced by the word " *mode* " which was the word customarily used; moreover, it was used in the title of the article.

61. Mr. NAHLIK (Poland) stressed the importance of article 9 *bis,* which his delegation had submitted in the form of an amendment (A/CONF.39/C.1/L.88 and Add.1) at the first session of the Conference and which the United States delegation had co-sponsored. At the 15th meeting of the Committee of the Whole he had given the reasons for adopting an article to serve as an introduction to the provisions on the various means by which a State could express its consent to be bound by a treaty.

62. The International Law Commission had devoted three of its draft articles — articles 10, 11 and 12 — to the various means of expressing consent to be bound by a treaty; but they did not exhaust the matter, since they left out treaties concluded by an exchange of instruments. In such cases it was simply the act of exchange that should be regarded as constituting the expression of the consent of the parties to be bound by the agreement. Such agreements were certainly to be considered as treaties, since they were " in written form " and " embodied in two or more related instruments ", within the meaning of article 2, paragraph 1 (*a*) of the convention. As treaties of that type were becoming more and more frequent, the Polish delegation had thought it useful, at the first session of the Conference, to propose the inclusion of a new article 10 *bis* (A/CONF.39/C.1/L.89) [3] governing the case of such treaties and to mention that special type of treaty in article 9 *bis* in addition to all the others.

63. Article 9 *bis* did not however expressly mention all the means that could be used for expressing a State's consent to be bound by a treaty. In international law States were free to use procedures suited to any given case, and practice introduced new forms and new procedures from time to time.

64. There was one in particular which had great importance for the new African and Asian States, namely the declarations often made by such States after having acceded to independence, to the effect that they still considered themselves bound by some of the treaties concluded by the former colonial Power, in respect, for example, of the territory which had become an independent and sovereign State. Since there were as yet no detailed rules on succession in respect of treaties, declarations of that kind constituted a distinct means of expressing consent to be bound by a treaty. The International Law Commission's preparatory work on the question of State succession confirmed that view. And the final clause of article 9 *bis* " or by any other means if so agreed " would allow such declarations to be taken into consideration as one of the means of expressing consent to be bound by a treaty.

65. The Belgian amendment (A/CONF.39/L.13) to replace the words " exchange of instruments " by the words " exchange of letters or notes " would surely not improve the text, since it would unduly restrict the article's scope. The exchange of letters or notes was certainly the most frequent case of its kind but it was not the only one, since there might be an exchange of memoranda, aide-mémoires, and so on. It would be better, therefore, to keep the words " Exchange of instruments ".

66. There was no need to replace the word " *moyen* " by the word " *mode* " in French text of article 9 *bis,* since " *moyen* " was used throughout the convention. He had no objection, however, to the amendment being referred to the Drafting Committee.

67. Sir Humphrey WALDOCK (Expert Consultant) said he agreed generally with the Polish representative's comments, but he would hesitate go quite so far in the delicate question of State succession. He hoped that the Conference would not make any assumptions about the status of the declarations to which the Polish representative had alluded, so far as State succession was concerned.

68. Mr. MOLINA ORANTES (Guatemala) said that articles 9 *bis* and 10 had been very fully discussed at the first session. Guatemala had stated its support of a residuary rule to be applied where the States concerned had not defined the means of expression by which they consented to be bound by a treaty, since consent to a treaty should, in its view, be expressed by ratification. In Guatemala the procedure by which international treaties were ratified was to some extent of a mixed type,

[2] For the discussion of article 9 *bis* in the Committee of the Whole, see 15th, 18th and 59th meetings.

An amendment was submitted to the plenary Conference by Belgium (A/CONF.39/L.13).

[3] For text, see 17th meeting of the Committee of the Whole, para. 64.

involving both legislative and executive action. The executive alone did not commit the people. The legislature was not always in a position to endorse beforehand a text in course of negotiation of which it had no cognizance. It was for such purely constitutional reasons that the Guatemalan delegation would not be able to support articles 9 *bis* and 10.

69. At the first sessions of the Conference some delegations had advocated a simplification of the means of expressing consent to be bound by a treaty in view of the growing number of treaties in simplified form. He did not believe that too general a view should be taken, since in any event account must be taken of the object of the treaty, and legislative control was exercised in different ways, depending whether it was an agreement, for example, on compulsory arbitration, which in Guatemala had to be approved by a majority of two-thirds of the Congress, or an agreement on satellites, which could be approved merely by simple majority.

70. Mr. MARESCA (Italy) said he fully supported the Belgian amendment, which in fact was similar to proposals made by the Italian delegation to the Drafting Committee at the first session.

71. Mr. YASSEEN, Chairman of the Drafting Committee, said that he regarded the first part of the Belgian amendment, whereby the words " exchange of instruments " would be replaced by the words " exchange of letters or notes ", as a substantive change, because it would restrict the scope of the article as approved by the Committee of the Whole. It was therefore for the Conference to take a decision on the matter.

72. On the other hand, the Drafting Committee would be prepared to examine the second part of the Belgian amendment.

73. Mr. DENIS (Belgium) said that he had submitted his delegation's amendment on the understanding that article 9 *bis* related solely to cases of exchanges of letters or notes, but the discussion had shown that there might be other cases. He therefore withdrew the first part of his amendment.[4]

74. The PRESIDENT said that the second part of the Belgian amendment (A/CONF.39/L.13) would be referred to the Drafting Committee.[5] He invited the Conference to vote on the text of article 9 *bis*.

Article 9 bis *was adopted by 100 votes to none, with 3 abstentions.*

Article 10 [6]

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(*a*) The treaty provides that signature shall have that effect;

(*b*) It is otherwise established that the negotiating States were agreed that signature should have that effect; or

(*c*) The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(*a*) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(*b*) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

75. Mr. ESCHAUZIER (Netherlands) asked for a separate vote on the words " or was expressed during the negotiation " at the end of paragraph 1 (*c*). An oral proposal to delete those words had been made at the first session.[7] He thought those words should be deleted because they might cause confusion by implying that the representative of the State could himself express the intention " to give that effect to the signature ", or that he could alter his full powers.

76. He also asked that a separate vote be taken in due course on the same words in article 11, paragraph 1 (*d*), which raised the same difficulties.

77. Mr. BINDSCHEDLER (Switzerland) asked for a separate vote on paragraph 2 (*a*) of article 10, and said that he would vote against that sub-paragraph. Initialling could never express consent to be bound and could never have the same legal force as signature. The provision was meaningless and would only cause confusion over the procedure for the conclusion of treaties.

78. Mr. YASSEEN, Chairman of the Drafting Committee, said that the objection raised by the Netherlands representative had been carefully considered by the Drafting Committee. Its members had taken the view that paragraph 1 (*c*) could not refer just to any statement by the representative of a State, but only to the fact that the intention of the State to give the requisite effect to the signature had been expressed during the negotiation. The Drafting Committee had therefore thought it unnecessary to alter the wording of the provision.

79. Mr. MATINE-DAFTARY (Iran) said that the consent of a State to be bound by signature was an exception to the rule, and should therefore be treated very strictly, like all exceptions. He agreed with the Netherlands representative that paragraph 1(*c*) should end with the words " full powers of its representative ". As they stood, the concluding words made the provision too flexible and might be a source of misunderstanding.

80. Mr. EUSTATHIADES (Greece) said that he endorsed the comments of the Netherlands and Iranian representatives. Nevertheless, the need might arise during the negotiations for recourse to the exception provided for in paragraph 1 (*c*), and in that case the representative would have to have the requisite full powers, which would not necessarily be his initial full powers. The concluding words of paragraph 1 (*c*)

[4] But see next meeting, para. 2.

[5] The Drafting Committee came to the conclusion that it could not accept the amendment. See 29th plenary meeting.

[6] For the discussion of article 10 in the Committee of the Whole, see 17th and 59th meetings.

[7] See 17th meeting, para. 47.

should therefore be deleted, as the Netherlands representative had suggested, and the words " the full powers " should be replaced by the words " full powers ".

81. Sir Humphrey WALDOCK (Expert Consultant) pointed out that the question of full powers was covered more fully in article 6. Article 10, paragraph 1 (*c*) related to the case of an agreement in simplified form where a State's practice might be to follow a simple procedure, and where it might be stated during the negotiations that a signature was to be binding. Such cases were extremely common, and he did not think that the provision should give rise to difficulties.

82. The PRESIDENT invited the Conference to vote on the words " or was expressed during the negotiation " in article 10, paragraph 1 (*c*).

The words in question were retained by 54 votes to 26, with 19 abstentions.

83. Mr. EUSTATHIADES (Greece) said that his proposal to replace the words " the full powers " by the words " full powers " would only have applied if the concluding words of paragraph 1 (*c*) had been deleted. In view of the result of the vote on those words, he withdrew his proposal.

84. The PRESIDENT put paragraph 2 (*a*) to the vote separately, as requested by the Swiss representative.

Article 10, paragraph 2 (a), *was retained by 74 votes to 15, with 12 abstentions.*

Article 10 was adopted without change by 95 votes to 1, with 5 abstentions.

85. Mr. HAYTA (Turkey) said that he had abstained in the vote on article 10 in view of the comments made by the Turkish representative at the 17th meeting of the Committee of the Whole on the question of consent to be bound by a treaty.

The meeting rose at 1.15 p.m.

TENTH PLENARY MEETING

Tuesday, 29 April 1969, at 3.15 p.m.

President: Mr. AGO (Italy)

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)*

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE *(continued)*

1. The PRESIDENT invited the Conference to continue its consideration of the articles approved by the Committee of the Whole.

Article 10 bis [1]

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 constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) The instruments provide that their exchange shall have that effect; or

(*b*) It is otherwise established that those States were agreed that the exchange of instruments should have that effect.

2. Mr. DENIS (Belgium) said that his delegation's amendment to article 10 *bis* (A/CONF.39/L.14) had a connexion with its amendment to article 9 *bis* (A/CONF.39/L.13) which he had withdrawn at the previous meeting. Upon reflexion, however, he now felt that both amendments should be considered by the Drafting Committee, since they would improve the wording of the two articles without restricting in any way their provisions of substance. The terms " letters " and " notes " covered the memoranda, aides-mémoires and notes verbales to which the Polish representative had referred. Surprise had been expressed that ratification, accession, exchanges of letters and so forth should be placed on the same footing, and it had been asked whether, in the case of exchanges of letters, it was not the signatures, rather than the exchange, which constituted the means of expressing consent. Part of the reply to that question was of course the fact that notes exchanged were as often as not unsigned and that their reciprocal delivery was in such cases the means of expressing consent.

3. The PRESIDENT said that, if there were no objection, he would consider that the Conference agreed to refer the Belgian amendments to article 9 *bis* and 10 *bis* (A/CONF.39/L.13 and L.14) to the Drafting Committee, for that Committee to take them into account in the drafting of those articles, without changing the substance.[2]

It was so agreed.

Article 10 bis *was adopted by 91 votes to none.*

Article 11 [3]

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(*a*) The treaty provides for such consent to be expressed by means of ratification;

(*b*) It is otherwise established that the negotiating States were agreed that ratification should be required;

(*c*) The representative of the State has signed the treaty subject to ratification; or

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[1] For the discussion of article 10 *bis* in the Committee of the Whole, see 17th, 18th and 59th meetings. An amendment was submitted to the plenary Conference by Belgium (A/CONF.39/L.14).

[2] The Drafting Committee came to the conclusion that it could not accept the amendments. See 29th plenary meeting.

[3] For the discussion of article 11 in the Committee of the Whole, see 18th and 61st meetings.