

Document:-
A/CN.4/L.17

**Law of treaties - Draft convention on the Law of treaties contained in the first report of the
Special Rapporteur (A/CN.4/23) - incorporated in footnote 11 of A/CN.4/SR.98**

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
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ARTICLE 5: EXERCISE OF CAPACITY TO MAKE TREATIES

99. Mr. HUDSON considered that the whole question of the delegation of competence with regard to treaties was entirely a matter of domestic law. The Commission was not called upon to deal with it from the international standpoint.

100. Mr. LIANG (Secretary to the Commission) likewise considered that the article served no purpose. Furthermore, it raised a problem of terminology: it was impossible to say that a plenipotentiary had delegated to him the capacity to make a treaty.

101. Mr. HUDSON recalled that the United States Constitution gave the President the power to make treaties. There was no provision explicitly forbidding him to delegate such power, but American public opinion would be shocked if it learned that such delegation had been made.

102. Mr. SCELLE declared that, in France, delegation of power in the matter of treaties was not admitted.

103. Mr. AMADO recalled that article 5, as it appeared in Mr. Briery's report, was the outcome of a previous formulation in which exchanges of notes had been assimilated to treaties. It was a specific application of that doctrinal attitude. Executive agreements made as between Ministers, quite apart from the question of whether they were desirable or not, were a natural step in the development of international life. There was, however, no need to deal with delegation of powers in the draft Convention.

It was decided to delete article 5.¹¹

Press comment on the work of the Commission

104. Mr. HUDSON pointed out that an incorrect report had been given in a newspaper of the deliberations of the Commission on the question of defining aggression. The article in question contained unpleasant references to some members of the Commission. He considered that there was no occasion to give publicity to the work of the Commission, so long as it had not come to any final decisions. The Commission should decide whether it was desirable to issue press releases.

¹¹ The text of the articles tentatively adopted by the Commission at the present meeting read as follows (document A/CN.4/L.17):

“ Chapter II

“ Competence to Make Treaties

“ Article 3

“ All States have competence to make treaties, but the competence of some States and the exercise of such competence by all States may be subjected to limitation.

“ Article 4

“ (1) The competence of a State to make treaties is exercised by whatever organ or organs of that State its Constitution may provide.

“ (2) In the absence of provision in its Constitution to the contrary, the competence of a State to make treaties is deemed to reside in the Head of that State.

“ Article 5

(deleted) ”.

105. Mr. KERNO (Assistant Secretary-General) said that he had read the article in question in the Paris edition of the *New York Herald Tribune*. The information used in that article had not been supplied by the Secretariat of the Commission. The fact that the meetings were held in public explained the appearance of such reports.

106. The Journal of the United Nations, published in New York, received and issued each day a short summary of the Commission's meetings. Only that summary, which was communicated by the Secretariat, was official. Under a general rule, an account had to be sent to the *Journal* of the work of all the Commissions of the United Nations. Nothing in such reports could have been used by the newspaper in question as a basis for its comments, but it was conceivable that journalists might misinterpret them.

107. Mr. HUDSON was strongly of the impression that a fuller statement had been issued to the Press. He doubted whether it was wise to issue such press releases.

108. Mr. KERNO (Assistant Secretary-General) recalled that, at its previous session, the Commission had decided not to issue official press releases. The press releases issued by the New York or Geneva Information Centres were not official.

109. Mr. CORDOVA thought that a certain amount of publicity was inevitable, since the meetings of the Commission were public. It was a good thing, generally speaking, to keep the public informed of the Commission's work.

110. Mr. HUDSON, after examining the press release issued by the Geneva Information Centre, declared that it was accurate and beyond reproach.

111. Mr. CORDOVA asked that the members of the Commission should be supplied regularly with copies of the press releases relating to the Commission issued to the Press by the Information Centre.

112. Mr. KERNO (Assistant Secretary-General) said he would see that that was done.

The meeting rose at 1 p.m.

99th MEETING

Friday, 8 June 1951, at 9.45 a.m.

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