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Summary record of the 501st meeting

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501st MEETING

Tuesday, 26 May 1959, at 9.50 a.m.

Chairman: Sir Gerald FITZMAURICE

Law of treaties (A/CN.4/101) (*continued*)

[Agenda item 3]

ARTICLE 22 *(continued)*

1. The CHAIRMAN asked the Commission to continue its consideration of article 22 (*Authority to sign*).

2. Mr. YOKOTA observed that it might be inferred from the phrase "which is the act of the State" in article 22, paragraph 1, that signature *ad referendum* was not the act of the State but the act of a private person. That surely could not be so. The person signing *ad referendum* was the representative of the State when engaged in a particular negotiation and in signing. If negotiation by a representative of a State was the act of the State and not of a private individual, signature *ad referendum* was even more certainly an act of the State, even if it did not imply final consent by the State, but only provisional assent to the text prior to full signature. Even full signature was provisional if ratification was required. Thus signature *ad referendum* was a first stage, full signature a second and ratification a third in the conclusion of a treaty. The phrase in question was open to misinterpretation.

3. Mr. Amado's remarks at the previous meeting (500th meeting, para. 43) had confirmed his own view that standing full-powers were rare. The standing full-powers of a minister of foreign affairs were probably not so much full-powers on the international plane as authorization on the domestic plane. The Special Rapporteur had explained that in the United Kingdom the standing full-power was kept at the Foreign Office and was exhibited on occasion, but full-powers, if they were those on the international plane, must certainly be exhibited whenever the foreign minister signed a treaty, as the Special Rapporteur himself had laid down in article 22, paragraph 3.

4. The CHAIRMAN, speaking as Special Rapporteur, explained that in paragraph 1 the word "signature" meant signature of any kind. The object of the "except" clause at the beginning of the paragraph was to state that for the purpose of signature *ad referendum* a full-power was not necessary. He might be prepared to omit the phrase criticized by Mr. Yokota—"which is the act of the State"—but not for the reason given by the latter. He fully agreed that signature *ad referendum* was an act of the State, but it was also an exception to the rule that signature required the exhibition of a full-power.

5. With respect to the question of standing full-powers, he said that in the United Kingdom, and probably in many other countries, the Minister of Foreign Affairs had a standing full-power which he could produce at international conferences, but which he did not necessarily have to produce as he possessed in addition full-powers as an inherent part of his functions. The Foreign Minister did not need a specific full-power to sign a treaty.

6. Mr. YOKOTA still thought that the impression given in paragraph 1 was that full signature could be effected only under the conditions set out in clauses (*a*) and (*b*), and that signature *ad referendum* could be effected without a full-power because it was not an act of the State. The phrase he had referred to should be omitted for the sake of clarity.

7. Mr. EDMONDS asked what the phrase "verified by such means as are convenient" signified in paragraph 3. The full-power was a formal instrument, usually executed by the Head of State and ordinarily carrying its own authority on its face. Verification seemed to imply some sort of reference to the issuing authority.

8. The CHAIRMAN, speaking as Special Rapporteur, replied that according to almost invariable practice delegations to international conferences were asked to submit their full-powers to the officers of the conference, to the secretariat or to a credentials committee for scrutiny. The practice might not be common in the conclusion of bilateral treaties, but even there the full-powers were exchanged. Perhaps some explanatory remarks might be added in the commentary.

9. Mr. HSU observed that the fact that the full-power was issued in some countries to the minister of foreign affairs for use for all purposes would seem to indicate that at one time the minister had not possessed the full-power by virtue of his office. With the spread of democratic institutions, ministers had apparently been given wider powers and the issuing of the full-power had become a formality. It might be interesting to find out how far the practice extended; in some countries the foreign minister probably did not have a standing full-power and embarrassing questions might be raised at small conferences.

10. The CHAIRMAN replied that Governments might be asked to describe their practice.

11. Mr. AMADO thought that the doubts expressed about the status of signature might have arisen from the fact that the Commission was forgetting that it was discussing section B (*Negotiation, drawing up and establishment* (*authentication*) *of the text*) where signature was alway an act of the State. In a sense, however, signature even of a final text was signature *ad referendum,* the text being subject to approval by the sovereign organs of the State. Signature in the present context was simply signature to authenticate the text, but countries under one particular system of law regarded signature as a decisive act of the State committing the State to the conclusion of a treaty.

12. Mr. SANDSTRÖM thought the section concerning the negotiation, drawing up and authentication of the text was not the proper place for rules which referred rather to signature as consent to the text. Certain articles might be better placed in section C (*Conclusion of and participation in the treaty*). Mr. Amado's point was well taken; the confusion had arisen from the fact that signature was being used in article 22 in a sense differing from that used generally in section B.

13. Mr. PAL said that in so far as "signature" functioned as authenticating the text, it was dealt with in articles 15 and 18. In article 22 "signature" appeared to mean signature producing the effect more fully dealt with in article 29 in section C. Obviously the requirement of "full-power" was intended to relate to signature not for authenticating the text but for concluding the treaty. In that sense article 22 was misplaced in section B and was likely to create some confusion.

14. The CHAIRMAN, speaking as Special Rapporteur, explained that the double aspect of signature had caused the difficulty. Article 22 had been placed in section B because the full-power was still required even when signature was only an act of authentication, and

some provision on the subject must be embodied in that section because it was the first in which the question of signature appeared.

15. Mr. LIANG, Secretary to the Commission, suggested the insertion, even before section B, of some explanation of the three uses of the term "signature": the somewhat less common use of "signature" as authenticating the text; the most common use of "signature" as signature of a potential basis of international agreement, most instruments requiring ratification; and "signature" signifying final consent, a less frequent procedure, although treaties existed providing for entry into force by signature alone.

16. A fourth concept, that of signature *ad referendum,* had been introduced. He could not agree with the Special Rapporteur that it was confined merely to authenticating the text, since in many cases it related to the potential basis of an agreement.

17. At the United Nations Conference on the Law of the Sea, 1958, the Credentials Committee, with the aid of the Secretariat, had scrutinized the representatives' credentials and had verified whether each had full-powers to sign. It had been understood that full-powers to sign were required even for the purpose of signing *ad referendum.* No representative had stated that he was signing *ad referendum* simply to authenticate the text, although many had signed *ad referendum.* The effect appeared to be that their signature was subject to the constitutional processes of their State. If the provisions defining the various meanings of the term "signature" were inserted before section B, the subsequent articles should contain, where relevant, a reference back to those definitions.

18. Mr. Sandström's suggestion that the substance of article 22 belonged more logically to section C, particularly in the light of article 26, paragraph 2, had some merit, but it would still be necessary to indicate whether "signature" implied a provisional basis of agreement or the acceptance of an obligation by a State. More than a drafting question was involved. The Special Rapporteur might deal with the issue involved before the article was finally referred to the Drafting Committee.

19. Mr. AGO said that clearly the Commission was not yet agreed on article 21. During the earlier discussion on that article (see 495th and 496th meetings), the Commission had agreed on the need to distinguish between certain acts and their effects. It had agreed that initialling was merely an act of authentication, not involving consent even to the text. The Secretary had correctly stated the different possible interpretations of the term "signature". In a few extreme cases signature was equivalent to the final acceptance of an obligation, but in most cases it was only a provisional approval of the text or a provisional acceptance of the text as a potential basis of international agreement, subject to ratification.

20. The notion of signature *ad referendum* as equivalent to initialling was a novel concept. Actually, signature *ad referendum* differed totally from initialling. Such signature was signature by a person not in possession of the full-power at the time and was therefore provisional. It became final, or full, signature upon ratification, by retroactive effect. Before ratification, signature *ad referendum* simply authenticated the text provisionally. Those principles had been virtually agreed and the Drafting Committee should have little trouble in setting them out clearly.

21. The provisions concerning the purposes served by signature and those concerning the organs authorized to sign should be kept separate. Whatever those organs were, a full-power would be required, and he considered that the provision to that effect should be embodied in a separate clause.

22. Mr. PAL thought that the difficulty which had arisen over article 22 might be obviated if the article was transferred to section C (*Conclusion of and participation in the treaty*), and a reference to that section was inserted in section B. Alternatively, the Commission might follow the Secretary's suggestion and explain the several functions and use of "signature" before section B.

23. The CHAIRMAN, speaking as Special Rapporteur, considered that some provision concerning authority to sign should be included in section B. Such authority was required for signature at all stages, and signature was referred to for the first time in section B. If the provision were transferred to section C, the implication would be that authority to sign was immaterial for the purpose of authenticating the text by the signature. However, Mr. Pal's suggestion to include a reference to the matter in section B might be considered. He did not believe, however, that it would be feasible to include the provision before section B.

24. Mr. YOKOTA could not agree that signature was principally an act of consent to the text, either as a potential basis for agreement, or as a final agreement. It was also an act of authentication, especially where bilateral treaties were concerned. Whether consent was provisional or final, signature was also an act of authentication and a provision concerning authority to sign should therefore also appear in section B.

25. Mr. SANDSTRÖM recalled his original suggestion that some of the articles in section B should be transferred to section C, since there seemed to be a lack of concordance between the title of section B and those articles, especially article 22. He therefore endorsed Mr. Pal's suggestion.

26. Mr. ALFARO thought that the opinions expressed on article 22 could be reconciled by the Drafting Committee. Before referring the article to that Committee, however, the Commission should agree on paragraph 1. The phrase "which is the act of the State" was open to misinterpretation. According to the Special Rapporteur, signature was the act of the State, but it had also been argued that it was subject to approval by higher authority. Indeed, as Mr. Amado had observed, the signature of all treaties must be regarded as *ad referendum* since it was subject to ratification by means of the constitutional processes. The simplest way out of the difficulty was to delete the phrase in question. He agreed with Mr. Ago (see 500th meeting, para. 23) that the order of clauses (*a*) and (*b*) of paragraph 1 should be reversed.

27. Turning to the second sentence of paragraph 3, he observed that the English text was somewhat confusing and should be amended. It should be made clear that full-powers in appropriate form were conferred by Heads of State, or by ministers of foreign affairs in certain cases.

28. He considered that the provision in paragraph 4 was a necessary one, since the inclusion of a clause to the effect that plenipotentiaries had authority to sign was standard international practice, even if a treaty was signed by a minister of foreign affairs. Such a phrase was included in the preamble to the United Nations Charter. He also endorsed Mr. Ago's suggested amendment providing that the absence of such a statement or

of some other indication did not affect the validity of a treaty (see 500th meeting, para. 26); however, the Commission might decide to indicate the point in the commentary.

29. Mr. LIANG, Secretary to the Commission, agreed with the Special Rapporteur that it might be inconvenient to insert the substance of article 22 immediately before section B. He suggested, however, that article 13, in section A, might be amended to include certain definitions with regard to signature. It might be made clear in that article when signature was used for authentication and when it constituted an act of provisional acceptance.

30. With regard to article 22, paragraph 1, he said he could not agree with the Special Rapporteur that a representative could sign a treaty *ad referendum* without submitting full-powers. As he had said, it was the practice at international conferences to submit full-powers before signature; except in the cases referred to in article 21, paragraph 1, any signature without possession of full-powers was not generally acceptable.

31. The CHAIRMAN, speaking as Special Rapporteur, said that he could not agree with the Secretary's views. The main purpose of signature *ad referendum* was to provide a method whereby a representative without full-powers could affix his signature to a treaty. The whole question was considered in detail in article 21, paragraph 2. The fact that article 21, paragraph 2 (*c*), mentioned the case where a Government issued full-powers but was unwilling to be committed to a full signature should not obscure the fact that a representative who had no full-powers could still sign a text *ad referendum.*

32. Mr. MATINE-DAFTARY observed that a representative who had full-powers to sign a text might nevertheless have some doubts concerning full signature and might sign *ad referendum* if he had no time to consult his Government. A way out of the difficulty over article 22, paragraph 1, might be to delete the phrase "except where made *ad referendum*", which implied that there was no need for full-powers in any case of signature *ad referendum,* even in the case referred to in article 21, paragraph 2 (*c*).

33. Mr. TUNKIN endorsed the Secretary's view that full-powers were required equally for full signature and for signature *ad referendum.* He could not wholly agree that, until the moment of confirmation, signature *ad referendum* was equivalent to initialling. For example, in the case of the United Nations Conference on the Law of the Sea, 1958, there had been no need to authenticate the text, since authentication had been effected by including the conventions in the Final Act of the Conference.[1] Signature *ad referendum,* therefore, seemed to be closer to full signature and might be regarded as a provisional signature, pending government approval. As such, it could not be regarded as equivalent initialling.

34. Mr. AMADO said that signature *ad referendum* could not be equated with provisional signature or initialling. In the practice of his country, all treaties were signed *ad referendum;* signature was an act of the State, subject to the approval of the constitutional authorities.

35. The CHAIRMAN, speaking as Special Rapporteur, agreed with Mr. Ago that signature *ad referendum* could not be regarded as full signature until confirmed by the Government. During the intervening period, pending confirmation, it could be regarded only as an act of authentication. Accordingly, signature *ad referendum* could be made without full-powers; if it were held to require the same full-powers as full signature, signature *ad referendum* lost all its point. It had been designed to avoid situations in which representatives were unable to sign because they could not communicate with their Governments. Although such cases might be less frequent than in the past, owing to modern methods of communication, the essential character of signature *ad referendum* had not changed.

36. Referring to criticism of the arrangement of the articles on signature in section B, he observed that he had included those provisions in that section, and inserted further articles on signature in section C, in order to express the double aspect of signature. He had some doubt about transferring articles 22 and 23 to section C, since that might give rise to misinterpretation. It might be possible to insert a new section after section B, comprising articles 20 to 25, dealing with methods of signature. In any case, he would consider the matter further.

37. The debate on article 22 had become general and had extended to the nature of full signature, initialling and signature *ad referendum.* In connexion with articles 20 and 21, it had been agreed that many of the clauses needed redrafting. Although the position was somewhat confusing, he thought that the nature of those three acts could be generally established. The Commission would agree that initialling was solely an act of authentication, except in the cases referred to in article 21, paragraph 1. With regard to full signature, it had been decided to expand article 20, paragraph 3, to indicate all the different aspects of signature. That paragraph would meet the Secretary's main point. Apart from the cases where signature brought a treaty into force, it was generally agreed that signature always operated as provisional acceptance of the text. Additionally and simultaneously, it might operate as authentication of the text, but that was not always the case, because the text might have been authenticated in some other way, for instance, by a resolution or a final act of an international conference.

38. With regard to signature *ad referendum,* although there was a difference of opinion concerning the full-powers required, the Commission was agreed on the nature of the signature. There could be no doubt that if and when signature *ad referendum* was confirmed, it operated retroactively as full signature from the moment that it had been appended. Meanwhile, its only effect was that of authentication of the text. The Commission had agreed to redraft article 21, paragraph 2, to make it clear that initialling could never be regarded as signature.

39. The Commission had agreed to rearrange the order of sub-paragraphs (*a*), (*b*) and (*c*) of article 21, paragraph 2, and to replace the words "only justified" in that paragraph by a less categorical term. Article 21, paragraph 3, would be rearranged to correspond with paragraph 2. With regard to Mr. Yokota's question concerning references to the personal recommendations or approval of the individual signing the text (see 500th meeting, para. 13), he said the Commission had decided to omit the reference from article 20, paragraph 2, but had not reached the same conclusion with regard to article 21, paragraph 4. He would be inclined to retain the first sentence of that paragraph, redrafted in the light of other

[1] *United Nations Conference on the Law of the Sea, Official Records, Volume II: Plenary Meetings* (United Nations publication, Sales No.: 58.V.4, Vol. II), annexes, documents A/CONF.13/L.52, A/CONF.13/L.53, A/CONF.13/L.54 and A/CONF.13/L.55.

changes, but to omit the last sentence and to refer to the question in the commentary.

40. After pointing out that any remarks made henceforth on articles 22 to 25 would be without prejudice to the question of the arrangement of their provisions in the draft code, he summarized the discussion on article 22. He agreed that in paragraph 1 the words "which is the act of the State" might be open to misunderstanding and could be omitted. He also agreed to the inversion of clauses (*a*) and (*b*). He was prepared to accept the suggestion that the word "Ambassador" should be omitted from clause (*a*) but agreed with Mr. Hsu that it would be worth asking Governments to furnish information on their practice: he had the impression that many States did issue standing full-powers to their ambassadors. However, he thought that the words "Minister of Foreign Affairs" should be retained.

41. The question had been raised in connexion with paragraph 1 whether full-powers were necessary in order to sign *ad referendum.* Historically, that was not the case, for one of the main reasons for signature *ad referendum* was that the signer was not in possession of full-powers to sign. The rule was that signature *ad referendum* only authenticated the text and did not signify provisional acceptance, which was signified when the signature *ad referendum* was by subsequent ratification converted into a full signature retrospectively. He had been surprised by the Secretary's statement concerning the present practice at conferences held under the auspices of international organizations. The practice of requiring full-powers for signatures *ad referendum* was not in keeping with doctrine. If that practice had developed at international conferences, and Governments were prepared to issue full-powers for signature *ad referendum,* that was probably due to their desire for time for reflection before committing themselves to the extent of a full signature. As a solution, he would prefer to keep the general rule stated in paragraph 1 and add an exception to the effect that at international conferences full-powers to sign *ad referendum* were needed. Without such a formula, the basic utility of signature *ad referendum,* namely, for the case in which the signer did not have full-powers to sign, would be destroyed. The commentary might explain why an exception was made, to some extent set out the two schools of thought in the Commission concerning the exact effect of a signature *ad referendum,* draw the attention of Governments to the point, and ask for their comments.

42. He was prepared to omit the whole of paragraph 2. The first half of the paragraph might be included in the commentary, and the second half was redundant.

43. The first sentence of paragraph 3 could also be transferred to the commentary, although it was not entirely out of place in the text of the article. In addition, the commentary might mention the practice at international conferences of verifying full-powers. He suggested that the second sentence of paragraph 3 should be retained, subject to the drafting changes suggested by Mr. Alfaro (see para. 27 above). The remainder of paragraph 3 had not been objected to.

44. Some members had suggested the omission of paragraph 4, and he could not agree. Admittedly, there were many cases in which a statement or recital to the effect that the representative of the signatory State had authority to sign was not required, but those cases all fell within the exceptions mentioned at the beginning of the paragraph. In other cases, if such a recital was omitted from the preamble of the treaty and no statement of authority to sign appeared in the part of the treaty immediately before or after the signatures, the authority was indicated in another way, sometimes simply by the use of the word "Plenipotentiaries", as in the formula "In faith whereof the undersigned Plenipotentiaries have signed this treaty". He felt that paragraph 4 should be retained even if regarded *de lege ferenda.* It would be useful to promote the practice of including a statement of authority to sign in the treaty in order to make the validity of the signatures incontestable.

45. Mr. LIANG, Secretary to the Commission, wished to endorse the Special Rapporteur's view that paragraph 4 would be useful, particularly in the case of bilateral treaties. The practice of including a statement of authority to sign in multilateral treaties was not very often followed.

46. He wished to draw attention to two minor points. First, in the case of multilateral treaties negotiated under the auspices of an international organization, credentials indicating only that a representative had been appointed as "Plenipotentiary" to the conference would be insufficient for the purpose of signature. The credentials would have to specify that he had been authorized to sign, for the word "Plenipotentiary" might refer only to full-powers to negotiate, or simply to attend or observe the conference. Secondly, he failed to grasp the significance of the words "or other cases where authority is implied by the act of signature". The other exceptions indicated at the beginning of paragraph 4 referred to the office of the person signing, which would make a recital of authority to sign superfluous, or to certain types of instruments which by their nature precluded the inclusion of such a recital. The words in question might be omitted.

47. Mr. AGO said that he agreed with the Special Rapporteur's summary and suggestions regarding article 22. He wished to point out, however, that in a previous statement (see 500th meeting, para. 26) he had not suggested the deletion of paragraph 4 and had not opposed the idea of including a kind of recommendation in that paragraph. His concern had been that a formula should not be used which would place in doubt the validity of a treaty in which a statement of authority to sign happened to have been omitted, although the plenipotentiaries, in fact, possessed that authority. The paragraph should be drafted in terms of the verb "should" rather than the verb "must".

48. In connexion with the Special Rapporteur's suggestion regarding a redistribution of the provisions in various articles, he observed that it would help to clarify the situation if the new version could be presented as soon as possible. The Special Rapporteur had chosen to deal with the various aspects of the treaty-making process in the logical order of the different stages. He (Mr. Ago) approved of that choice. Nevertheless, whatever system was adopted, it would not be possible to avoid dealing with certain established practices, such as signature, in connexion with more than one stage in the treaty-making process; he hoped, however, that the Special Rapporteur would do his best to avoid references to signature in the new section on authentication, reserving them for the new section on provisional acceptance. Initialling and signature had quite different implications and should be treated separately as much as possible.

49. The CHAIRMAN, speaking as Special Rapporteur, said that he would prepare a rearranged draft as soon as he could. He suggested that article 22 should be referred to the Drafting Committee on the basis he had

indicated and on the further understanding, in view of the observations just made, that in paragraph 4 a clause or sentence would be inserted to the effect that the absence of a statement of authority to sign would not affect the validity of the treaty if the necessary full powers to sign had in fact existed, that the words "is implied by the act of signature, or" would be omitted, and that the paragraph would be amended to take into account the Secretary's comment on the word "Plenipotentiaries".

It was so agreed.

The meeting rose at 1 p.m.

502nd MEETING

Wednesday, 27 May 1959, at 9.50 a.m.

Chairman: Sir Gerald FITZMAURICE

Law of treaties (A/CN.4/101) (*continued*)

[Agenda item 3]

ARTICLE 23

1. The CHAIRMAN, speaking as Special Rapporteur, introduced article 23 and said that its principal application would be to a signature or initialling executed by a representative without the authorization of, and perhaps without communication with, his Government. It might be argued that the article was not strictly necessary if the earlier provisions regarding the validation of initialling and signature were retained.

2. Mr. FRANÇOIS thought that it might be useful to specify whether *ex post facto* validation dated from confirmation or was retroactive to the date of the unauthorized act.

3. The CHAIRMAN, speaking as Special Rapporteur, said that the operative date would depend on the nature of the unauthorized act that was validated. In the case of initialling it would be the date of full signature, and in the case of unauthorized signature, in effect a signature *ad referendum,* the validation would be retroactive to the date of the unauthorized signature.

4. Mr. PAL said that subsequent validation of an unauthorized act could not produce an effect greater than that which would have resulted if the act had been authorized. In his view the article was necessary in the code.

5. Mr. SANDSTRÖM also felt that the article was necessary. He failed to see the need for specifying from what date the validation became operative, since the unauthorized acts themselves produced no effect between the parties.

6. Mr. TUNKIN questioned the utility of article 23 in view of the Commission's decision to omit from articles 20 and 21 the references to personal approval and personal recommendation of the treaty on the part of the individual person signing or initialling.

7. The CHAIRMAN, speaking as Special Rapporteur, explained that article 23 related to acts performed by a representative without the knowledge or authorization of his Government, perhaps in an emergency; the representative's personal approval or recommendation was immaterial in the context.

8. Mr. TUNKIN said the Special Rapporteur's explanation had not convinced him. It was self-evident that a Government could decide to sign an agreement negotiated by an agent without its authorization or even negotiated by an unofficial organ.

9. Mr. LIANG, Secretary to the Commission, agreed that it might be useful to include an article such as article 23. It rested on a principal of the law of agency which, he thought, had common elements in the legal systems of all civilized States.

10. He suggested, however, that the words "The provisions of articles 15 to 22 above" were too general and that the relevance of article 23 to specific aspects of the treaty-making process should be made more evident.

11. The CHAIRMAN, speaking as Special Rapporteur, saw no objection to the Secretary's suggestion and subject thereto he suggested that article 23 should be referred to the Drafting Committee.

It was so agreed.

ARTICLE 24

12. The CHAIRMAN, speaking as Special Rapporteur, introduced article 24. There was no need for comment on paragraph 1, which might be improved through minor drafting changes.

13. The principle in paragraph 2 became more obvious, the smaller the number of States participating in the negotiations, and was most clear, of course, in the case of bilateral treaties. On the other hand, it tended to become obscured in the case of large international conferences and there it might be thought that any State could subsequently sign the treaty. In his view, unless the treaty contained a provision admitting other States to signature, signature of the treaty would be limited to the negotiating States unless they decided by another agreement to open the treaty to other States. In the case of a treaty that had been signed or where the period for signature by the negotiating States had expired, the expression "signatory States" would denote not the original negotiating States but the parties to the agreement opening the treaty to other States.

14. Mr. LIANG, Secretary to the Commission, considered article 24 a useful article that should be included in the code. He said that the discussion on the articles immediately preceding article 24 had emphasized that signature was evidence not only of authentication but also of provisional acceptance. He suggested that the second part of paragraph 1 should be deleted.

15. He had no quarrel with the principle in paragraph 2, which, in his view, was recognized in practice. However, he considered the wording insufficiently flexible. If there was a stipulation in the treaty concerning the right of signature by States other than those which had participated in the negotiations, the matter was settled satisfactorily. In the absence of such a provision, the matter was subject to agreement by the negotiating States and not the signatory States, for a negotiating State might agree that States could sign without itself being able to sign. He suggested that paragraph 2 after the word "provides" might be amended to read: "or if it is agreed by all the negotiating States that other States may sign either at the time of signature provided for in the treaty, or during the period the treaty remains open for signature".

16. The CHAIRMAN, speaking as Special Rapporteur, agreed that it might be better to omit from paragraph 1 the words "in all cases where signature is the method of authentication adopted", and he also agreed