# The Conclusion of Treaties in Violation of the Internal Law of a Party

## Comments on Arts. 6 and 43 of the ILC's 1966 Draft Articles on the Law of Treaties

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The security of international treaty relations requires that once a State has declared its consent to a treaty it should not subsequently try to renege on that consent. The following paper examines the ILC draft articles on the question as to the validity of a treaty under international law if that treaty was consented to in violation of the internal law of a party. Certain weaknesses of the ILC draft are pointed out and a simplified provision is proposed which seeks to minimise the extent of any dependence of international treaties on internal law.

In Part II "Conclusion and Entry into Force of Treaties" of the draft articles on the law of treaties adopted on 18 July 1966[1]) arts. 6 *et seq.* read:

"*Article 6*

*Full powers to represent the State in the conclusion of treaties*

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

(a) He produces appropriate full powers; or

(b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

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[1]) AJIL vol. 61 (1967), p. 263 *et seq.* and in Reports of the International Law Commission on the second part of its seventeenth session (3–28 January 1966) and on its eighteenth session (4 May–19 Juli 1966) [General Assembly – Official Records: 21st Sess., Suppl. No. 9 (A/6309/Rev. 1); 1966] p. 10 *et seq.*

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

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

*Article 7*

*Subsequent confirmation of an act performed without authority*

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 6 as representing his State for that purpose is without legal effect unless afterwards confirmed by the competent authority of the State".

In Part V "Invalidity, Termination and Suspension of the Operation of Treaties" art. 39 reads:

"*Validity and continuance in force of treaties*

1. The validity of a treaty may be impeached only through the application of the present articles. A treaty the invalidity of which is established under the present articles is void.

2. . . .".

Art. 43 reads:

"*Provisions of internal law regarding competence to conclude a treaty*

A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation of its internal law was manifest".

In this paper, it is proposed (see IV) that arts. 6 and 43 of the ILC Draft should be replaced by the following art. x:

1. The following persons are considered as authorised to express the consent of a State to be bound by a treaty:

(a) Heads of State;

(b) Heads of Government and Ministers of Foreign Affairs if they

(i) either produce appropriate full powers from the Head of State

(ii) or are authorised under the internal law of their State to express the consent to the treaty in question without the authorisation of the Head of State;

(c) any other person producing appropriate full powers from a person authorised in terms of letters (a) or (b).

2. If the consent to be bound by a treaty has been expressed by a person authorised under para. 1, a State may not invoke the fact that

a) its consent or

b) the content of the treaty

violates a provision of its internal law.

## *I. Preliminary remarks*

The following remarks analyse draft arts. 6, 7, 39 and 43 in only one regard: Is the validity of a treaty[2]) affected under international law if it has been concluded in violation of the internal law of a party, and, if so, how? Thus the mere authentication or adoption of a text in contrast to the binding consent is not our concern, although these questions are included in art. 6[3]). As to the question of whether the validity of a treaty under international law concluded according to the rules of internal law is affected by the fact that the execution of this treaty is impossible without violation of the internal law, art. 43 clearly implies the negative answer of the ILC. This conclusion corresponds with international law and needs no further elaboration[4]). Lack of space prevents an analysis of the procedure to be followed when a party claims that a treaty is invalid owing to violation of its internal law and of the consequences of an invali-

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[2]) Throughout this paper the term "treaty" has the same meaning as in art. 2 para. 1 (a) of the ILC draft, 1966. The term "full powers" refers to those full powers in art. 2 para. 1 (c) designating a person to represent a State for expressing consent to be bound by a treaty.

[3]) Authentication and adoption are not of paramount importance. Should the international approach preferred by the Commission's majority and emphasised throughout this paper prevail at the Vienna Conference 1968, it would not be difficult to add an appropriate paragraph to the draft proposed in this paper.

[4]) See Geck, Die völkerrechtlichen Wirkungen verfassungswidriger Verträge. Zugleich ein Beitrag zum Vertragsschluß im Verfassungsrecht der Staatenwelt (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, 38) 1963, pp. 37, 229 *et seq.*; cf. also p. 25 *et seq.*

dation[5]). It may, however, be noted here that the relevant provisions, namely arts. 62–65 and art. 39 of the draft are affected neither by the criticism of arts. 6 and 43 in part III of this paper, nor by the suggestion in part IV for a re-draft. The same applies to art. 7 of the draft.

### *II. Legal history of arts. 6 and 43*

In the deliberations of the ILC our problem has frequently been referred to as one of the most important in the whole draft[6]). Undoubtedly few provisions, if any, have undergone so many and such far-reaching changes. The four reporters who went into this question were all eminent British lawyers of similar experience. Yet each reached a different conclusion.

(1) Under art. 4 of the first Brierly draft, the treaty-making power of a State was to be exercised by whichever organ the constitution provided[7]). The then predominant opinion in the ILC supported this view[8]). On the basis of the second Brierly draft the ILC tentatively adopted an art. 2 to the effect that a treaty becomes binding only when the will of the State is expressed in accordance with its constitutional law and practice through an organ competent for that purpose[9]).

(2) The second reporter, (later Sir) Hersch Lauterpacht, disagreed with the conclusion that unconstitutional treaties should be invalid. Arts. 4 and 11 of his first draft made, in principle, the assumption of treaty obligations dependent on the expression of the will of a competent State organ in accordance with the constitutional provisions and practice. Art. 11, however, modified the effect of constitutional limitations on the validity of treaties under international law to a considerable extent:

a) An unconstitutional treaty is not void, but only voidable, and then only by the State whose constitution has been violated.

b) This State, however, may be deemed to have waived its right to assert the invalidity of an unconstitutional treaty under certain circumstances, namely if for a prolonged period it has failed to invoke the invalidity or if it has acted upon or obtained an advantage from the treaty.

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[5]) See the Commission's Commentary on the articles in question.

[6]) See, *e. g.*, YBILC 1963, vol. I, p. 4 no. 19 and p. 204 no. 13.

[7]) YBILC 1950, vol. II, p. 222 *et seq.* See the application of the same principle in arts. 4 and 9 of the second Brierly draft: YBILC 1951, vol. II, p. 72 *et seq.* and in art. 4 of the third draft: YBILC 1952, vol. II, p. 51 with comment.

[8]) Cf. YBILC 1951, vol. I, pp. 14 *et seq.*, 20 *et seq.*, 29 *et seq.* and the dissent of J. P. A. François, *ibid.*, pp. 31 and 47.

[9]) YBILC 1951, vol. II, p. 73 *et seq.* The same text appeared in the third Brierly draft: YBILC 1952, vol. II, p. 51 (with commentary).

c) The State asserting the invalidity of a treaty is liable to the other party for any damage if that party cannot properly be assumed to have been aware of the constitutional limitation.

d) The State asserting the invalidity of a treaty is bound, in case of disagreement, to submit this question or the question of damages to the International Court of Justice or to another international tribunal[10]).

The reporter regarded his draft partly as a rule *de lege ferenda*. In his comprehensive commentary to these articles, Lauterpacht emphasised the ambiguities in the constitutional law and practice of numerous States, of which a contracting party could not possibly be aware; in order to safeguard legal certainty in treaty relations, he considered it necessary at least to protect the good faith of the other party[11]). The Lauterpacht draft was not discussed by the ILC.

(3) In his very comprehensive draft for a Code – instead of a Treaty – the third reporter, (now Sir) Gerald Fitzmaurice, drew on his long experience as Legal Adviser to the British Foreign Office. According to him, a treaty should, under international law, as far as possible be independent of the rules of constitutional law. In arts. 9 and 22 of his first report, treaty-making is on the international plane an executive act: All treaties are valid if they have been made by a person either having "inherent capacity to bind the State by virtue of his position or office as Head of State, Prime Minister or Minister of Foreign Affairs" or by a person having full powers. The lack of legislative assent required by constitutional law is irrelevant on the international plane[12]). In the other relevant articles of his first report, as well as in his second and third reports, Fitzmaurice applied the same principles[13]). In his commentary to art. 10 of his third report he referred to the numerous possible discrepancies between international and constitutional law and to the dangers to treaty relations resulting from a dependency on constitutional and other internal law[14]). Fitzmaurice considered the greater part of his reports as a draft *de lege lata*, although a provisional one.

The Commission discussed only some parts of his reports. Perhaps in part because of a change in the Commission's membership hardly any objections were raised against the main suggestions of the reporter although

[10]) YBILC 1953, vol. II, pp. 106 *et seq.*, 141 *et seq.*

[11]) See especially YBILC 1953, vol. II, p. 142 *et seq.* Lauterpacht stated that the recognition of a right to void treaties on account of non-compliance with constitutional limitations might encourage allegations of this kind and endanger the stability of international relations: *ibid.*, p. 142 no. 2.

[12]) YBILC 1956, vol. II, p. 108 *et seq.*

[13]) Cf. *ibid.* and YBILC 1957, vol. II, p. 34; 1958, vol. II, pp. 25, 33 *et seq.*

[14]) YBILC 1958, vol. II, p. 33 *et seq.*

there had been opportunity for objections at the initial discussion of art. 9 of the first draft[15]). There were some reservations[16]) against the assumption of general authority of a Prime Minister or a Minister of Foreign Affairs to conclude treaties without authorisation from the Head of State. The ILC, however, adopted an art. 15 assuming the treaty-making power *ex officio* of these three State organs[17]).

It is interesting to note the striking contrast between the Brierly and the Fitzmaurice draft. This contrast has a parallel in the monographs of Paul De Visscher on the one hand[18]), and the most recent ones of Blix[19]) (who corresponds most closely to Fitzmaurice) and Geck[20]) on the other hand.

(4) Art. 4 of (now Sir) Humphrey Waldock's first report considered Heads of State, Heads of Government and Foreign Ministers as authorised *ex officio* to conclude treaties; other persons were considered authorised only if they produced full powers[21]).

Art. 5 of the second Waldock report, concerning the essential validity of treaties, was based on the Commission's discussions. The invalidity of a treaty entered into by a representative considered authorised under art. 4 of the first report could be asserted only if the violation of constitutional law was known to the other party or manifest to any representative of a foreign State dealing with the matter in good faith. Waldock considered the notion that a distinction can readily be made between notorious and non-notorious constitutional limitations "to a large extent an illusion"[22]).

The discussion revealed an overwhelming majority against the suggestion that a known or manifest violation of constitutional law should be a reason for invalidating a treaty concluded by a person considered authorised to declare the will of the State[23]). There was particular emphasis on the dangers to legal certainty in treaty relations that would result from the many

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[15]) YBILC 1959, vol. I, pp. 11 and 15.

[16]) *E.g.*, YBILC 1959, vol. I, p. 97.

[17]) YBILC 1959, vol. I, p. 190 = AJIL vol. 54 (1960), p. 266.

[18]) De la conclusion des traités internationaux (1943).

[19]) Treaty-Making Power (1960).

[20]) *Supra* note 4.

[21]) YBILC 1962, vol. II, p. 38 *et seq.* For the text of art. 4 as adopted by the ILC see YBILC 1962, vol. I, p. 243 *et seq.* or AJIL vol. 57 (1963), p. 205 *et seq.* (with commentary).

[22]) YBILC 1963, vol. II, p. 41 *et seq.*, quotation from p. 42 no. 7.

[23]) It is worthwhile to read the significant comments in YBILC 1963, vol. I, by Mr. Cadieux, p. 5 no. 23; Mr. Ago, p. 5 no. 24 and 28, p. 13 no. 53; Mr. Briggs, p. 9 no. 9; Mr. Gros, p. 9 no. 15, p. 10 no. 18 *et seq.*; Mr. Tsuruoka, p. 10 no. 22; Mr. de Luna, p. 12 no. 41; Mr. Pal, p. 13 no. 62; (chairman) Mr. Jiménez de Aréchaga, p. 18 no. 52; Mr. Pessou, p. 19 no. 63 *et seq.*; Mr. Castrén,

ambiguous provisions in constitutions, not to speak of other internal law[24]). In the light of this discussion it seemed perfectly safe to expect that the drafting committee would eliminate even known or manifest violation of constitutional law as a reason for invalidating a treaty. The drafting committee accordingly suggested that the consent of a State, expressed by a representative authorised under art. 4 of the first report, could not be invalidated; however, the committee made an exception to this rule, namely, when the violation of the internal law was "absolutely manifest"[25]). The reporter again justified this most surprising exception as a compromise between two otherwise irreconcilable opinions[26]). In spite of strong reservations on the part of some members[27]), the outcome of the discussion was the Commission's draft of the then art. 31: If the consent of a State is given by a representative, regarded as authorised under art. 4 of part I (*i.e.* the first draft), a violation of internal law regarding competence to enter into treaties shall not invalidate the consent unless the violation was manifest[28]). The word "absolutely" before "manifest" was deleted as superfluous. The whole discussion up to this point clearly revealed that the majority of the Commission had submitted to this compromise with the sole object of reaching a conclusion without any dissenting votes, which were otherwise to be expected from a small but insistent minority[29]).

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p. 19 no. 66 and especially the remarks of the reporter himself, p. 20 no. 73 and 76. Mr. Waldock explained that the reason for the deletion of the exception to the rule "seemed to him cogent" and that he had suggested this exception only in order to reconcile opposing views without expecting the strong criticism of that exception by the Commission. Mr. Elias also doubted the wisdom of the exception, but referred *expressis verbis* only to its consequences for multilateral treaties: *ibid.*, p. 7 no. 55. – The view of the small minority was expressed by Mr. Yasseen, p. 6 no. 42; Mr. Paredes, p. 11 no. 32 (emphasising the democratic principle) and Mr. Tabibi, p. 9 no. 11 (emphasising the need to protect small and inexperienced States against instability in their own internal law). See also the comment by Mr. Tunkin, p. 15 no. 16 *et seq.*

[24]) Cf. especially the forceful comments by Mr. Ago, Mr. Briggs, Mr. Gros and Mr. Jiménez de Aréchaga mentioned in note 23 *supra.* Mr. Cadieux stated that his country's constitution was so complex that one could always invoke some constitutional provision in order to elude treaty obligations: *ibid.*, p. 5 no. 23. Mr. Verdross gave the example of American constitutional law which did not clearly distinguish between treaties and executive agreements: *ibid.*, p. 3 no. 7.

[25]) YBILC 1963, vol. I, p. 203 *et seq.*

[26]) *Ibid.*, p. 204 no. 14.

[27]) See especially the comment of (the chairman) Mr. Jiménez de Aréchaga (*ibid.*, p. 204 no. 29) that the division of opinion in the Commission did not justify the exception to the rule, and that of Mr. Briggs supporting this view (p. 206 no. 50 *et seq.*) as well as the comment of Mr. de Luna (p. 205 no. 32 *et seq.*).

[28]) Adopted with 18 against 0 votes and 3 abstentions: YBILC 1963, vol. I, p. 207 = AJIL vol. 58 (1964), p. 246 (with commentary).

[29]) Thus the discussion throughout, see especially the comment of the chairman *supra* note 27.

(5) The draft of the ILC was submitted to governments through the Secretary-General of the United Nations for their observation. By 1 March 1965 there were replies from 31 governments, the majority of which contained proposals with regard to one or more draft articles. It is impossible even to summarise the governmental comments here[30]). In the light of the nine comments to art. 4, Waldock submitted to the ILC a re-draft to the effect that a Head of State, Head of Government and a Foreign Minister may be considered authorised to sign a treaty unless the lack of authority was manifest in the particular case. Other persons may be considered authorised only if they produced full powers or if it appeared from the circumstances that the States concerned wanted to dispense with full powers[31]). The discussion in the ILC revealed uncertainty regarding the relation between arts. 4 and 31. The matter was twice referred to the drafting committee, but without clear instructions[32]).

Art. 4 was finally adopted by 16 votes to none. It provided that a person is considered authorised to express the consent of a State if he produces appropriate full powers or if it appears from the circumstances that the intention of the States concerned was to dispense with full powers. Heads of State or of Government and Ministers of Foreign Affairs, however, are considered as representing their State in virtue of their function[33]). Thus the provision concerning the manifest lack of authority was eliminated from art. 4.

More important than the governmental suggestions on art. 4 are those on art. 31[34]). The reporter summarised them to the effect that 17 of the governmental comments expressed themselves in favour of the rule proposed by the Commission, while suggesting improvements in its formulation[35]). As I see it, there was criticism of the word "manifest" by Bulgaria, Great Britain, Iran, the Netherlands, the Philippines, Romania and Thailand; Cyprus and Spain wanted to have the word "manifest" eliminated entirely. On the other hand, Iraq, Italy, Uganda, the United Arab Republic and Yugoslavia favoured the constitutional approach. Seven governments agreed with the substance of the draft, while the rest did not express an opinion on this matter[36]).

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[30]) Cf. YBILC 1965, vol. II, p. 18 *et seq.*
[31]) *Ibid.*, p. 21 and YBILC 1965, vol. I, p. 32.
[32]) YBILC 1965, vol. I, pp. 32 *et seq.;* 39; 253 *et seq.;* 255.
[33]) *Ibid.*, p. 281; also in AJIL vol. 60 (1966), p. 165.
[34]) Cf. YBILC 1965, vol. II, p. 67 *et seq.*
[35]) *Ibid.*, p. 70.
[36]) Cf. YBILC 1965, vol. II, p. 67 *et seq.*

The result was the reporter's re-draft of art. 31, providing that a violation of the internal law in the conclusion of a treaty could invalidate the consent only if the violation "was known to the other States concerned or was so evident that they must be considered as having notice of it" [37]). The main change was a concession to the recurring governmental criticism regarding the obscurity of the word "manifest" [38]). After only a very brief discussion art. 31 was submitted to the drafting committee [39]) and finally accepted in its present form (now art. 43) with 16 votes to none, but with two abstentions [40]). Mr. Briggs and Mr. Ruda, who abstained, explained that they opposed the relevance even of manifest violation of the internal law [41]).

One alteration to Sir Humphrey Waldock's last report should be underlined: the ILC restricted the reference to the relevant internal law by again inserting the words "regarding competence to conclude treaties" which had been deleted in the reporter's last draft [42]). Again by the insistence of a small minority, the view that a manifest violation of the internal law regarding competence to conclude treaties could justify the invalidation of the treaty had prevailed; the reporter's last attempt at least to lessen the departure from the general rule had been in vain.

### *III. Analysis and criticism of arts. 6 and 43*

(1) We must examine arts. 6 and 43 against the background, firstly, of the constitutions of various States, relevant clauses in international treaties and international practice [43]), and secondly, of the deliberations of the ILC, particularly in regard to Sir Humphrey Waldock's draft. One is then led to conclude that the articles reflect the law as it is at present, in that they seek to divorce the question of validity of treaties under international law from internal law. Compared to Brierly's first drafts, the present proposal constitutes a substantial degree of progress. By decreasing the dependence of international treaties on internal law, the draft adds to the security of international treaty relations (*Rechtssicherheit*).

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[37]) YBILC 1966, vol. I part I, p. 10.

[38]) *Ibid.*, no. 83. Further, the cross-reference to art. 4 and the words "regarding competence to enter into treaties" defining the relevant internal law had been eliminated.

[39]) YBILC 1966, vol. I part I, p. 11.

[40]) *Ibid.*, p. 124. The text is printed at the beginning of this paper, (with commentary) in AJIL vol. 61 (1967), p. 394 *et seq.* and in the UN Document referred to *supra* note 1.

[41]) YBILC 1966, vol. I part I, p. 125 nos. 55 and 56.

[42]) Cf. YBILC 1966, vol. I part I, p. 10 no. 80 and YBILC 1965, vol. II, p. 18.

[43]) Cf. Geck, *op. cit.* (*supra* note 4) chapters 2–5, and Blix, *op. cit.* (*supra* note 19) sections XV–XXII.

Contributing to this is the fact that only a manifest violation of internal law regarding competence to conclude treaties constitutes a ground for invalidating a treaty. Thus internal law is relevant only in so far as procedural provisions regarding the treaty-making power are concerned and not in regard to substantive provisions. For example, infringements of human rights, of rules concerning the necessity for budgetary authorisation or of constitutional provisions on national frontiers are irrelevant, on the international plane, to the validity of an international treaty[44]). In view of the countless rules of substantive internal law which otherwise might become relevant to the conclusion of a treaty, this limitation of the relevance of internal law is entirely correct; it corresponds to prevailing theory and practice[45]). Any other rule would be a substantial step backwards, and would destroy the security of international treaty relations.

Although the evident desire of the ILC to limit the relevance of internal law in regard to the validity of international treaties is to be welcomed, the best solution has, I submit, still not been reached. The principle that internal law should affect the validity of a treaty under international law as little as possible is, in my view, unnecessarily weakened by making manifest violations of internal law regarding competence to conclude treaties relevant in international law. This qualification is a rule *de lege ferenda,* not one *de lege lata*[46]). There are, in particular, strong reservations of legal policy against this, which are outlined below[47]).

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[44]) Cf. Geck, *op. cit.,* p. 219 *et seq.* In regard to federal questions, see Helmut Steinberger, Constitutional Subdivisions of States or Unions and their Capacity to conclude Treaties, *supra* p. 411.

[45]) Sir Humphrey Waldock, did, it is true, on one occasion say in connection with the official opinions of Luxembourg and Panama that violations of internal law regarding competence to conclude treaties include not only violations of procedural provisions regarding the exercise of treaty-making power but also provisions of substantive law entrenched in the constitutions: YBILC 1965, vol. II, p. 71 no. 6. This view is, however, not supported by the deliberations of the ILC. The whole trend of the discussions favours the view that only procedural provisions regarding the exercise of treaty-making authority should be relevant in international law – and not all the countless rules of substantive internal law. Cf. in this regard particularly Mr. Briggs, YBILC 1966, vol. I part I, p. 10 no. 90 *et seq.;* Mr. Verdross, *ibid.,* p. 124 no. 44; Mr. Castrén, *ibid.* no. 46; Mr. Bedjaoui, *ibid.* no. 48; Mr. de Luna, ibid. no. 52. See also the Commission's Commentary to art. 43: AJIL vol. 61 (1967), p. 394 *et seq.* and Geck, *op. cit.* (*supra* note 4), p. 219 *et seq.*

[46]) Cf. *supra* notes 23 and 27. See also Geck, *op. cit., passim,* especially pp. 174, 385 *et seq.*

[47]) Lack of space compels me to make frequent reference to my monograph mentioned above in note 4, which appeared shortly after the 1963 session of the ILC, by which time the discussion in point had been concluded. A survey of the views of the various authors

(2) Art. 6 of the draft does not say clearly whether the persons named therein are entitled to express the consent of a State to a treaty, which consent cannot subsequently be contested. It is true that art. 7 says expressions of consent made by persons, who, under art. 6, cannot be considered as representing their State in the conclusion of a treaty, are without effect until confirmed by a "competent authority". But it is not clear whether an expression of consent by a person considered as representing his State under art. 6, can be contested. One might indeed gain the impression from art. 7 (*argumentum e contrario*) that an expression of consent to a treaty made by a person considered as representing his State under art. 6 should be binding in international law; the other party to such a treaty could then rely on a declaration made in accordance with art. 6. It would thus be inadmissible subsequently to invalidate the consent under art. 43. This interpretation is further supported in the Commentary on art. 6 by the fourth sentence of section 1 and, in particular, by section 4[48]). The relationship between art. 6 and art. 43 has, however, not been made entirely clear by the ILC. The majority was inclined to allow a treaty to be invalidated under art. 43, where the organ expressing consent to a treaty was, in terms of art. 6, considered as representing the State[49]). This view appears correct, as the wording of art. 43 allows no exceptions and would seem to presuppose proper consent to a treaty in terms of art. 6. It is thus assumed that any expression of consent to a treaty by any person considered as representing a State under art. 6 may be contested, but only if expressed in manifest violation of a provision of the internal law regarding competence to conclude treaties. As a result, good faith is protected neither in the case of an expression of consent by the Head of State, nor by the Head of Government or Minister of Foreign Affairs.

This seems to me to be regrettable. A satisfactory solution can, I believe, be reached only by distinguishing the rules of internal law on the authority to express consent (*Erklärungsbefugnis*) from those on internal formation of will (*Willensbildung*). These latter internal rules are those which require the participation in the treaty-making process of State organs other than the one actually expressing consent, especially approval by parliament, or by a council of state or ministers, or by the people, or ministerial countersignature. This distinction will be followed below; section (3) deals with rules on the authority to express consent (*Er-*

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on the subject can be found there (p. 20 *et seq.*) and in Blix, *op. cit.* (*supra* note 19), p. 370 *et seq.*

[48]) AJIL vol. 61 (1967), p. 297 *et seq.*

[49]) See especially YBILC 1965, vol. I, pp. 32 *et seq.*, 36 *et seq.*

*klärungsbefugnis*), section (4) with those on formation of will (*Willensbildung*).

(3) According to art. 43 of the draft, an expression of consent to a treaty by a Head of State can be invalidated if he were obviously unauthorised by internal law, that is, in effect, constitutional law, to express such consent. Instances of this nature will hardly occur, as the authority of the Head of State to express binding consent to treaties is established in almost all constitutions[50]). Many authors even regard it as a general rule of international law[51]). The actual acceptance in international law of a rule that a Head of State has general authority to express consent to a treaty, is to be recommended *de lege ferenda*, if one accepts that, till now, in the absence of *opinio iuris sive necessitatis*, no such general rule of international law exists.

In terms of art. 43 of the draft, an expression of consent to a treaty by a Head of Government or a Minister of Foreign Affairs may be contested if

a) such persons are not constitutionally empowered to express consent to treaties, because the authority to express such consent lies exclusively with the Head of State and if

b) in such instances the Head of State has not granted authority to express consent and if, finally,

c) the violation of internal law regarding authority to conclude treaties is manifest.

The dependence of international law on the internal law of the parties as regards the authority to express consent, and therefore the possibility that the consent to a treaty expressed by a Head of Government or Minister of Foreign Affairs be contested on the grounds of lack of authority is the result of two factors. Firstly, there is no general rule of international law which grants Heads of Government and Ministers of Foreign Affairs an authority to express consent independently of the Head of State. Secondly, many constitutions, especially those establishing a presidential system, impede the development of such a rule in international law[52]). The *Ihlen*

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[50]) Cf. Geck, *op. cit.* (*supra* note 4), pp. 60 *et seq.*, 79. Cf. in regard to the new African States P. F. Gonidec, Note sur le droit des conventions internationales en Afrique. Annuaire Français de Droit International, vol. 11 (1965), pp. 866 *et seq.* (especially 868 and 873).

[51]) Cf. the opinions given by the reporters, in particular by Sir Gerald Fitzmaurice, the relevant discussions in the ILC, and for writing on the subject, Blix, *op. cit.* (*supra* note 19), pp. 388 *et seq.*, 392 (theory of apparent authority).

[52]) Cf. Geck, *op. cit.* (*supra* note 4), p. 79 *et seq.*, critically in regard to the theory of apparent authority in Blix (*op. cit. supra* note 19, *passim*) and Fitzmaurice

judgment by the Permanent Court of International Justice is often cited in support of the contention that a Minister of Foreign Affairs may, regardless of his authority under the constitution, express a binding consent. On closer examination, however, the case does not justify this conclusion[53]). Some authors contend that the Head of Government has power to consent to treaties independently of the Head of State, but they fail to adduce adequate support from either national constitutions or international practice. It is clear that other persons have no independent authority to express binding consent to a treaty, either according to the constitutional law of most States, or according to international law. Where such other persons are concerned, a direct or possibly an indirect authorisation given by either the Head of State, or a Head of Government or Minister of Foreign Affairs directly endowed with treaty-making power by the constitution, is as a rule indispensable.

The dangers which may arise for the security of international treaty relations if one has to refer to internal law (*i.e.* in effect constitutional law) to ascertain whether authority to express consent to a treaty exists independently of the Head of State, are limited and tolerable. Problems are conceivable where a Head of Government or a Minister of Foreign Affairs is, independently of the Head of State, empowered to express consent. However, internal law can and usually will prevent Heads of Government and Ministers of Foreign Affairs from expressing consent to a treaty unless authorised by the Head of State or directly by the constitution. It is a common feature of modern internal law that Heads of Government and Ministers of Foreign Affairs can be held legally and politically responsible for their unconstitutional acts. This has a constraining effect on those officials, which is reflected also on the international plane. In addition, the other party to the treaty may usually ask for full powers from the Head of State. This request is customary in international relations and – in contrast to a question as to whether there has been constitutionally prescribed approval by parliament or countersignature – does not constitute an interference in the internal affairs of that party. Possible difficulties are therefore limited to those instances where a Head of Government or Minister of Foreign Affairs lays claim to constitutional authority to express consent independently of the Head of State. This type of difficulty would

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(cf. *supra* II, (3)). My conclusions are based on an examination of the constitutions of some 100 States.

[53]) Cf. Geck, *op. cit.* (*supra* note 4), p. 362 *et seq.* on the one hand and Blix, *op. cit.* (*supra* note 19), pp. 34 *et seq.*, 368 on the other.

not yet appear to have arisen in international disputes[54]). The same applies where consent to a treaty has been expressed by other persons[55]).

All this leads to the following conclusion: On the basis of almost universally uniform constitutional law, and indeed perhaps even on the basis of a rule of international law, a Head of State is empowered to express binding consent to a treaty. There has not been a single instance in the international disputes which have become known so far, where the Head of State was not authorised to express binding consent to a treaty (*Erklärungsbefugnis*). In this regard no danger to the security of international treaty relations has come to my knowledge[56]). One should always be able to rely on the fact that Heads of State and, in consequence, all persons holding full powers from them, have authority to express binding consent.

It is, however, at present both necessary and sensible to refer to constitutional law for the answer as to whether other representatives of a State are authorised to express consent independently of any authorisation by the Head of State. Nor will any substantial danger to the security of international treaty relations arise here. One need not even require in this respect that violations of internal law regarding competence to conclude treaties should be manifest in order to be relevant in international law (see *infra* IV).

(4) The situation is entirely different in regard to internal formation of will (*Willensbildung*). Here we are concerned with the question as to whether State organs other than the organ authorised to express consent are required by internal law to participate in the treaty-making process. The ILC has variously grappled with the distinction between internal rules on the authority to express consent to a treaty and those on the internal formation of will, *i.e.* the participation of State organs other than the one which expresses consent[57]). But it reached no final conclusion. This constitutes, I submit, an important weakness in the draft, which the re-draft seeks to avoid[58]).

a) In practice constitutions often require approval by parliament, or sometimes by only one chamber, or by a council of state or ministers, or else the participation of the whole electorate or of specific groups or, in

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[54]) Cf. Geck, *op. cit.*, p. 383 *et seq.* and Blix, *op. cit.*, p. 393.

[55]) Geck, *ibid.* The cases mentioned at pp. 325 *et seq.* and 330 *et seq.* do not conflict with the view expressed here.

[56]) Cf. *ibid.*, p. 380 *et seq.*

[57]) Cf., *e. g.*, the observations of Mr. Verdross and Mr. Ago: YBILC 1963, vol. I, p. 8 no. 5 *et seq.*, respectively p. 5 no. 24 and p. 12 no. 42.

[58]) *Infra* IV.

the case of a treaty consented to by a Head of State, a ministerial countersignature. The literature on the subject, as well as the ILC's work in this connection, have too narrowly accentuated only parliamentary participation. But even here the problems are greater than they appear at first glance. For further details I must refer to my monograph. Lack of space permits me to mention here only that under many constitutions the most varied types of treaties require parliamentary approval. Political or especially important treaties, treaties which impair national sovereignty or relate to international organisations, as well as treaties which impose a financial burden on the State or which concern matters which are the subject of legislation, all give rise to most difficult problems[59]). A mere indication of these problems of interpretation must suffice here; they have largely been underestimated by earlier writers[60]). These problems cannot be solved by declaring only manifest violations of the constitution relevant in international law, for even then disputes may arise – the question frequently then becoming one of interpreting the word "manifest". This is particularly so if one were to regard internal law other than constitutional law (a problem of which mere mention is made herein; till 1963 the ILC limited its

[59]) Cf. Geck, *op. cit.* (*supra* note 4), pp. 119 *et seq.* (political treaties); 132 *et seq.* (treaties of major importance); 136 *et seq.* (treaties bearing on sovereignty or effecting a change in a State's territory); 139 *et seq.* (treaties concerning international organisations); 148 *et seq.* (treaties imposing a financial burden on the State or the people); 152 *et seq.* (treaties falling within the domain of legislation). These are some of the important, though by no means all the types of treaties, which require consent. Even within the individual categories there is a considerable difference in language and content. This often means that they can be interpreted only in the light of case law and practice, which in consequence frequently leads to an inconclusive result. Cf. in this regard the difficulties of delimiting treaties and executive agreements in the USA, as in The Restatement of the Law – Second. Foreign Relations Law of the United States (1965) part III, especially p. 370 *et seq.* published by the American Law Institute, and Byrd, Treaties and Executive Agreements in the United States – Their separate roles and limitations (1960). See for the problems arising from political treaties and treaties concerning matters of legislation in the Federal Republic of Germany, Reichel, Die auswärtige Gewalt nach dem Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949 (1967), especially pp. 98 *et seq.*, 106 *et seq.* Even where constitutions in principle require that treaties be consented to, but then allow exceptions, extensive difficulties of interpretation can arise. Cf. art. 60 *et seq.* of the Dutch constitution. For an English translation, see H. F. van Panhuys in AJIL vol. 58 (1964), p. 88 *et seq.* (107).

[60]) A correct view was taken by Blix, (*op. cit. supra* note 19), Lauterpacht, Fitzmaurice, Waldock, most members of the ILC and a number of States which submitted official opinions (cf. *supra passim*, especially notes 11, 14, 23, 27, 29 and the text before note 36). The UN Document Laws and Practice Concerning the Conclusion of Treaties (U.N. Legislative Series ST/LEG/Ser. B/3 – 1952 [1953]) which received such frequent mention in the ILC was always incomplete and has now been completely superseded. Cf. in its stead Geck, *op. cit.* (*supra* note 4) chapter 2.

discussions to constitutional law) as relevant, in international law, to the question of competence to conclude treaties[61]).

The uncertainty becomes greater in that some national constitutions require all or specific treaties to be approved by a council of state or ministers or by the electorate, or part of it[62]). If a constitution requires that a consent to a treaty expressed by the Head of State should be countersigned by a responsible minister, it is sometimes difficult to establish how far this requirement goes and which minister is competent for that purpose. Furthermore, it is often impossible to ascertain whether countersigning has taken place – in some countries it need not even be in writing[63]). It would constitute an interference in the internal affairs of a party to a treaty, if its Head of State were asked whether his country's constitutional requirements in regard to countersigning had been complied with. The same would apply to an inquiry as to whether other constitutional requirements regarding internal formation of will (*e.g.* parliamentary approval) or rules of law subsidiary to the constitution have been observed. States have rightly never concerned themselves with the other party's internal law in this regard[64]).

The reasons set out above all bear against making a manifest violation of internal law regarding competence to conclude treaties a ground for invalidating a treaty concluded in accordance with art. 6.

Mention should be made of some additional difficulties arising from the word "manifest". Section 11 of the Commission's Commentary on art. 43 states that a violation of internal law regarding competence to conclude treaties is manifest if it would be "objectively evident to any state dealing with the matter normally and in good faith"[65]). Thus the criterion is not whether and the extent to which the violation is evident to a party to the treaty. Nonetheless the ILC has failed to create an objective test with the word "manifest". Is a violation of the constitution manifest if its wording is contravened? On this basis, one could say the executive agreements concluded by the USA are manifest violations of its constitution. Or should one include customary constitutional law, or constitutional practice (which is so often not clear)[66])?

[61]) Cf. Geck, *op. cit.*, pp. 222 *et seq.*, 227 *et seq.*

[62]) *Ibid.*, pp. 204 *et seq.* and – respectively – 210 *et seq.*

[63]) Cf., in this regard *ibid.*, pp. 186 *et seq.*, 200 *et seq.*

[64]) Cf. Blix, *op. cit.* (*supra* note 19), p. 260 *et seq.* and Geck, *op. cit.* (*supra* note 4), especially p. 201 with, in addition, references to "summit conferences". – The theory of apparent authority as postulated by Blix and Fitzmaurice's whole concept (*supra* II (3)) rest on this fact.

[65]) AJIL vol. 61 (1967), p. 399 (italics in original).

[66]) In the Federal Republic of Germany, for instance, many uncertainties existed

To what extent should one consult case law and literature? The majority in the ILC saw clearly that the question is only cast in another form if "manifest" becomes the criterion; the view taken by some States reflects the same apprehension[67]). The uncertainties in art. 43 are clearly illustrated in the case of multilateral treaties, the number and importance of which are steadily increasing. These difficulties are particularly evident in regard to quasi-universal open treaties. What State could or would want to go beyond the authority to express consent to a treaty – usually evidenced by full powers from the Head of State – and concern itself with the internal law of the other participants in a conference of some 100 States? Where an open treaty is acceded to subsequently, should the depositary investigate whether the declaration of accession by the Head of State has been countersigned and/or whether there was a manifest lack of parliamentary approval possibly required by the constitution? To put the question is by implication to answer it.

It may be recalled here that the first reporter who introduced the element of knowledge of a constitutional violation into the Commission's deliberations was fully aware of its inherent dangers. Sir Hersch Lauterpacht therefore proposed a compulsory submission of such a question to the International Court of Justice or to another international tribunal[68]). But as it was realised that Lauterpacht's suggestion would not find acceptance, the Commission contented itself with a reference to the means indicated in art. 33 of the United Nations Charter for the solution of disputes (see art. 62 para. 3 of the 1966 draft).

It is not surprising that, in the disputes which have arisen in international practice, the States which have asserted the invalidity of a treaty on the grounds of a violation of their constitutional law, have done so mostly not out of an abstract concern for the protection of their laws, but rather because of a concrete political or economic interest to be rid of a treaty obligation which has become inconvenient to them[69]). Nor

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in relation to treaties requiring parliamentary approval; some of these problems were subsequently cleared up by decisions of the Federal Constitutional Court – see in this connection: Entscheidungen des Bundesverfassungsgerichts – especially BVerfGE 1, 351; 1, 372; 4, 157. Much, however, remains uncertain; cf. Reichel, *op. cit.* (*supra* note 59), pp. 98 *et seq.*, 106 *et seq.* and Geck, *op. cit.* (*supra* note 4) chapter 2 *passim*, especially pp. 174 *et seq.*, 385 *et seq.*

[67]) Cf. especially *supra* notes 23, 24 and 27 and – respectively – the text before note 36. See also the decisions of the (German) Federal Constitutional Court in: BVerfGE 16, 220 (227) and 1, 396 (412 *et seq.*).

[68]) Cf. *supra* II (2).

[69]) Cf. Geck, *op. cit.* (*supra* note 4) chapter 5, especially p. 389 *et seq.* In no international dispute was the State which relied on a violation of its own constitution

can one rely on the argument that international disputes of this nature have not been very numerous. The number of international treaties has grown enormously with the increase in the number of States (the United Nations Treaty Series contains at the moment some 8600 treaties in 548 volumes). The constitutional and political situation in many countries is neither clear nor stable. In a world where national sovereignty is sometimes regarded as a justification for evading political or economic treaty obligations, there is a danger that States will, by relying on their national law, seek to rid themselves of treaty bonds which no longer suit them.

Finally it runs against the realities of the modern world and against the role of international law to make constitutional law, merely for its own sake, internationally more relevant than is absolutely necessary. In various countries on all four great continents constitutional law is characterised by instability or is even subject to manipulation. The press daily provides evidence of this. Furthermore the western democracies' interest in upholding the constitutions of the peoples' democracies is no greater than the interest of the latter in upholding the constitutions of the former. Neither is there in the international community as a whole a general interest in maintaining an abstract concept of constitutional order. At present the values expressed in the various constitutions are simply too varied. This is true even for human rights, where one would most expect to find common standards.

States are even less interested in enforcing foreign legal norms which are subsidiary to constitutional law. The problems arising in connection with international cooperation in legal matters exemplify this. Collaboration even in criminal matters, where there is surely a common interest, has found but partial regulation in international treaties. In the limited number of extradition treaties in force, extradition is usually not provided for in the case of political and military offences, and often not in the case of fiscal offences. One of the underlying reasons for this is that it is regarded as undesirable to support foreign legal systems, the values of which are possibly diametrically opposed to one's own values. This consideration leads States to accept that they themselves may not demand extradition in such matters.

But on the other hand, all States have an undeniable common interest in the security of international treaty relations. It is up to each State itself to ensure that its internal law, especially constitutional law, is observed when it assumes international obligations. On grounds of legal policy it

compelled to do so by a judgment of one of its courts. Cf. in general David R. Deener, Treaties, Constitutions and Judicial Review. Virginia Journal of International Law, vol. 4 (1964), p. 7 *et seq.*

would appear most unfortunate to carry internal difficulties of this nature over into the sphere of international law, and so shift the risk of a constitutional violation on to the other party to the treaty, more than absolutely necessary[70]). This point was emphasised as clearly as possible, both by the overwhelming majority of the ILC members and in the official opinions submitted by some States[71]). As was stated by an eminent Dutch authority as early as 1934: "If anyone is to become the victim of the disregard of rules of constitutional law, this must be the State whose constitutional organs do not function properly, not the opposite party" [72]).

b) The following further arguments can be advanced against making internal law on internal formation of will (*Willensbildung*) relevant, even in the weakened form of art. 43.

A closer examination shows that the authors of present-day constitutions have seldom had a clear idea of the relevance of internal law to the validity of international treaties. Nowhere is a distinction drawn between the consequences of manifest and of non-manifest violations of internal law[73]). In fact, this distinction is entirely immaterial in relation to the maintenance of a State's legal order. The same is true in regard to the implementation of the treaty. If its implementation is forbidden by internal law, it remains forbidden if the violation of internal law is not manifest[74]).

A detailed examination of the approximately 4900 international treaties published in volumes 1–300 of the United Nations Treaty Series revealed that only about 5% of those treaties refer, in regard to their coming into force, to the internal law of one, both or all parties. Even here it could in many instances not be assumed that the parties wanted to make the validity of the treaty dependent on its compliance with internal law. This would seem to indicate that most States do not consider it expedient to link international treaty validity to internal law. Insofar as some treaty clauses seem by way of exception to favour the relevance of constitutional law, they of course draw no distinction between manifest and non-manifest violations[75]).

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[70]) That is to say, other than in regard to *Erklärungsbefugnis;* cf. Geck, *op. cit.* (*supra* note 4), p. 412 *et seq.*

[71]) See especially *supra* note 67.

[72]) As in J. H. W. Verzijl, The Jurisprudence of the World Court, vol. 1 (1965), p. 366.

[73]) See Blix, *op. cit.* (*supra* note 19) section XV and Geck, *op. cit.* (*supra* note 4) chapter 2, especially p. 180 *et seq.*

[74]) See Geck, *ibid.*, especially p. 227 *et seq.*

[75]) Cf. Geck, *op. cit.* chapter 3, especially p. 257 *et seq.* A similar conclusion is reached by Blix, *op. cit.* (*supra* note 19), p. 277 *et seq.*

The same tendency is to be seen in the international disputes which have arisen to date though, however, one may hesitate to draw a final conclusion from these. The distinction between manifest and other violations of the constitution certainly played no part in the solution of these disputes[76]). Furthermore, in over a third (!) of these international disputes it is most difficult to determine whether the constitutional violation concerned was manifest or not[77]).

Finally it should be mentioned that a distinction between manifest and non-manifest violations of internal law is dogmatically inconsistent[78]). One cannot counter this by pointing out that it has been maintained above (III (3)) that one should refer to internal law (in effect constitutional law) to ascertain whether an authority to consent to a treaty exists independently of the Head of State. In that case the dependence of international law on internal law is unavoidable so long as international law itself has not evolved generally binding rules on authority to express consent to a treaty (*Erklärungsbefugnis*); here, in regard to internal formation of will (*Willensbildung*), the dependence of international law on internal law can easily be avoided[79]).

### *IV. Suggestions for a re-draft of articles 6 and 43*

The above remarks can, perhaps, in spite of their brevity, provide the basis for the following suggestion:

Art. x (substitute for arts. 6 and 43 in the International Law Commission's Draft of 18 July 1966)

1. The following persons are considered as authorised to express the consent of a State to be bound by a treaty:
   (a) Heads of State;
   (b) Heads of Government and Ministers of Foreign Affairs if they
      (i) either produce appropriate full powers from the Head of State
      (ii) or are authorised under the internal law of their State to express the consent to the treaty in question without the authorisation of the Head of State;

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[76]) See Geck, *op. cit.*, p. 385 *et seq.* Cf. also Blix, *op. cit.* (*supra* note 19), sections XX and XXII.

[77]) See Geck, *op. cit.*, p. 387.

[78]) *Ibid.* chapter 2, especially p. 227 *et seq.*

[79]) Cf. the relevant observations in the ILC, especially by Mr. Ago and Mr. Verdross, *supra* note 57 and Geck, *op. cit.* (*supra* note 4), pp. 232 *et seq.*, 413.

(c) any other person producing appropriate full powers from a person authorised in terms of letters (a) or (b).

2. If the consent to be bound by a treaty has been expressed by a person authorised under para. 1, a State may not invoke the fact that

(a) its consent or

(b) the content of the treaty

violates a provision of its internal law.

This suggestion closely follows the intentions of the majority in the Commission and – as far as style is concerned – the 1966 draft. It does not affect arts. 39, 62 *et seq.* at all. Neither does it affect art. 7. Provisions on the authentication and adoption of the text of a treaty can easily be inserted should the Conference in 1968 consider this necessary.

The re-draft refers to the constitutional law of the parties to the treaty only so far as is unavoidable. It sets out from the almost universally recognised authority of the Head of State to express consent and distinguishes clearly between the internal rules on authority to express consent independently of the Head of State, on the one hand, and all other internal norms on the other. The re-draft thus solves a problem with which the ILC has variously but unsuccessfully contended [80]).

The re-draft protects good faith in regard to the consent to a treaty expressed by a Head of State and all persons who produce appropriate full powers from him. It requires an inquiry into internal law only when a Head of Government or Minister of Foreign Affairs claims constitutional authority to express consent independently of the Head of State. Cases of this sort should present no great difficulty. Where such a person had no constitutional authority, his expression of consent can be confirmed by the competent authority as provided for in art. 7 of the ILC draft.

In all other cases, the re-draft suggested above fully eliminates dependence of treaties on internal law, which dependence is particularly dangerous from the viewpoint of security of international treaty relations. The problems of interpretation of art. 6 para. 1 (b) of the ILC draft, which have not been considered here, but which should not be underestimated, also fall away. The suggested re-draft does not violate democratic principles, however they may be understood [81]). It does not release the State organ expressing consent from its constitutional duties, and in particular does not affect

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[80]) Cf. *supra* note 57.

[81]) In regard to western democracies, see Hans D. Treviranus, Außenpolitik im demokratischen Rechtsstaat (1966) und Luzius Wildhaber, Rechtsvergleichende Bemerkungen zur sogenannten vertragschließenden Gewalt. Zeitschrift für Schweizerisches Recht N. F. vol. 86 (1967), p. 33 *et seq.*

the legal relationship of the executive to the legislature. Thus constitutional law operates within its proper bounds and the other party to the treaty is not burdened by any violation of constitutional or other internal law.

It should be mentioned once more that the re-draft reflects international practice and the tendency in modern writing on the subject, as well as the clearly predominant opinion in the ILC and the real aim of its last reporter, Sir Humphrey Waldock. This view might already have been accepted by a majority of States if the ILC, influenced by a small but vocal minority, had not chosen to compromise by accepting the word "manifest". The considerations set out above may still win acceptance at the 1968 Conference. This hope finds support in the fact that several States have objected to the word "manifest" and that most States have expressed either no opinion or no clear opinion, on this problem, – including, among others, Argentina, Brazil, China, France, the Federal Republic of Germany, Mexico, the USSR and the USA.

When a final decision is reached on the relevant provisions of the draft on the law of treaties, the States should take into account that the amendment suggested here, of course, does not prevent them from refusing to implement treaties which conflict with their internal law. The question is one of whether there is an obligation in international law to carry out a treaty or, where applicable, to pay damages. It is essentially a question of applying the basis of the whole law of treaties, *i. e.* the maxim *pacta sunt servanda* properly. In reaching their decision the States should not set out from the idea that they may one day want to invalidate their consent to a treaty. A State should rather rely on the fact that it can and will restrain its Head of State and, where consent to a treaty is expressed independently of the Head of State, its Head of Government and Minister of Foreign Affairs from entering into treaties which conflict with its law on the conclusion of treaties. A State should always bear in mind that a treaty which it regards as important may be disputed by the other party on the grounds that this party's organs have violated its law on the conclusion of treaties. It is, after all, in the real interest of all States to have the validity of international treaties not depend on internal law any more than is unavoidable in international law's present stage of development[82]).

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[82]) Concluded on 1 July 1967. It was impossible for me to consider Luigi Ferrari Bravo's recent monograph: Diritto internazionale e diritto interno nella stipulazione dei trattati.