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The Institution of Full Powers in the Process of Concluding International Agreements

Introduction

The institution of full powers derives from broadly understood private law, and has the purpose of enabling one person to take actions on behalf of another, so that such actions produce legal effects for the principal.¹ In Polish civil – law literature, such empowerment is characterized as competence given to a plenipotentiary under a declaration of intent of the party being represented, or as an entitlement of a plenipotentiary to represent another person.² On the other hand, the doctrine defines the term ‘full powers’ in different ways. In particular, terminological problems result from the application of the term ‘full powers’ in different meanings, which is caused by the Polish legislator’s lack of consistency in the use of this term.³ In my opinion, A. Sylwestrzak is right to put forward the hypothesis that full powers is an ambiguous term, and as such needs clarification, especially taking into account the context of the statement, to determine which sense of the term is used in a given case.⁴

1 J. Sandorski, *Nieważność umów międzynarodowych*, Poznań 1978, p. 77.

2 Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2011, p. 324; S. Grzybowski, *System prawa cywilnego*, vol. I, 1974, p. 614–615.

3 A. Szpunar, *Stanowisko prawne pełnomocnika*, PN 1949/I, p. 62.

4 M. Balwicka – Szczybra, M. Glicz, A. Sylwestrzak, *Pełnomocnictwo, Komentarz*, Warszawa 2020, p. 32.

The empowerment at an international level to represent a state during the conclusion of an international agreement is stipulated in Article 7 of the 1969 Vienna Convention on the Law of Treaties.⁵ As pointed out by J. Sandorski, the granting of full powers is essential for the performance of a state's legal capacity to conclude a treaty in international relations.⁶ The fundamental function of the aforementioned Article is to regulate the issue of representation of the state, since states can have different practices in that respect.⁷ On the other hand, the fundamental function of full powers is to define the scope of the representative's authority.⁸ The wording of Article 7 of the Vienna Convention of 1969 partially constitutes a piece of advice, and partially an exposition of legal freedom in that respect.⁹ It is worth pointing out that the regulation in question indicates two types of authorizations in the process of concluding treaties. Specifically, Article 7(1) applies to persons authorized under full powers to represent a state in the process of adopting, authenticating, or concluding a treaty, while Article 7(2) applies to persons who by virtue of their functions under international law are authorized to represent a state without having to produce full powers. The purpose of this paper is to analyze essential elements of the institution of full powers in the process of concluding international agreements, in the context of prevailing regulations of international law. At the end of the considerations I will present practical aspects of establishing plenipotentiaries, drawing on the example of regulations present in the Polish legislative system.

5 Cf. Article 7 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.

6 J. Sandorski, op. cit., p. 77.

7 O. Dörr, K. Schmalenbach, *Vienna Convention On The Law Of Treaties*, Heidelberg – Dordrecht – London – New York 2012, p. 119.

8 J. Sandorski, op. cit., p. 77.

9 D. Hutchinson *The Judicial Nature of Article 7 of the Vienna Convention on the Law of Treaties* AYIL 1996, 17, p. 187, 207.

Historical Background

The generally accepted form of full powers is the result of many centuries of diplomatic practice which influenced the development of the procedure of concluding international agreements.¹⁰ As pointed out in international law doctrine, the obsolete English term *full powers* itself, used in Article 7, refers back to a long tradition of the institution of full powers in international law and diplomacy. In antiquity the highest leader of the state acted on his or her own behalf.¹¹ The beginnings of the development of the institution of full powers should be sought in diplomatic law dating back to ancient times, which is one of the oldest laws governing relations between states.¹²

The growing number of signed treaties and their increasing complexity have lengthened the process of their conclusion. Due to this it was essential to involve close associates when concluding treaties.¹³ This was a turning point, since agreements ceased to be quasi – personal in nature, while the ruler and his or her representatives appeared on behalf of the state.¹⁴ Over time, the need arose for the ruler's interests to be represented by an authorized person. In the Middle Ages, rulers began to confer increasingly broad powers on plenipotentiaries, and included in full powers not only the authorization to sign agreements, but also a commitment to exchange ratification documents within the time limits set out in the full powers. This state of affairs allows us to advance the hypothesis that it was the ratification obligation that vested in the plenipotentiary, who acted as the alter ego of the monarch, the final expression of consent to be bound by an agreement.¹⁵ Plenipotentiaries could be sent to negotiate the content of a treaty. The precise language of the full powers was fundamental for two reasons. First, the wording stipulated that the representative had the authority to bind the state with the plenipotentiary's signature, and sec-

10 J. Sandorski, op. cit., p. 77.

11 O. Dörr, K. Schmalenbach, op. cit., p. 120.

12 Cf. J. Sutor, *Prawo dyplomatyczne i konsularne*, Warszawa 2004, p. 21–25, 387.

13 O. Corten, P. Klein, *Vienna Convention On The Law Of Treaties*, Oxford 2011, p. 126.

14 O. Dörr, K. Schmalenbach, op. cit., p. 120.

15 J. Sandorski, op. cit., p. 78.

ond, due to the ratification procedure formed in the seventeenth century.¹⁶ The development of civil law and its influence on international relations formed the rule that the authorization to bind the principal can be restricted under the terms of the full powers. This very practice was recorded at the peace congresses of Münster (1642–1648), Cologne and Nijmegen (1673–1676), and Ryswick (1697). It is worth noting that the aforementioned congresses were attended not only by the parties to the conflict, but also by mediators who significantly influenced the achievement of the final agreement.¹⁷ The role of mediators often came down to reviewing the scope, expiry dates, and nature of plenipotentiaries' authorization, which later gave rise to the creation of commissions for the verification of full powers in international relations. J. Sandorski pointed out that the relationship of the plenipotentiary to the sovereign was modeled on the relationship of an agent to the principal in private law, hence international agreements were considered analogous to civil – law contracts. In view of the above, the ruler could evade the effects of international obligations which were incurred by a representative but were inconvenient for the ruler, only if the plenipotentiary went beyond the powers granted to him or her. Such circumstances allowed rulers to refuse the ratification promised in the full powers, which led to a situation in the 18th century where the importance of full powers, over time, diminished.¹⁸ As rulers began to refuse ratification on the pretext of plenipotentiaries' exceeding the authority vested in them, they practically turned the obligation to ratify into the possibility to do so.¹⁹ Several interesting cases of refraining from ratification took place in the 19th century and are described by H. Blix.²⁰

16 O. Dörr, K. Schmalenbach, *op. cit.*, p. 121.

17 S. E. Nahlík, *Narodziny nowożytnej dyplomacji*, Wrocław–Warszawa–Kraków–Gdańsk 1971, p. 74.

18 J. Sandorski, *op. cit.*, p. 78.

19 O. Dörr, K. Schmalenbach, *op. cit.*, p. 121

20 H. Blix, *Treaty – Making Power*, London 1960, p 7–11:

In 1809, the British government refused to ratify an agreement with the United States, stating that the British minister in Washington had exceeded his instructions. In 1822, a British plenipotentiary in Bushire on the Persian Gulf signed an agreement with the Persian minister subject to the consent of both governments. The British authorities rejected the tre-

The issue of full powers was discussed at the Congress of Vienna in 1814. It was agreed that envoys whose full powers raised doubts could participate in the deliberations, however, without the right to vote. It should be noted that this principle has been widely adopted at international conferences and in international organizations. The above rule did not apply to ambassadors accredited in the capital where the conference was convened, as it was customary to recognize their competence to negotiate in the host country.²¹

It is worth noting that the representatives' full powers were also thoroughly examined in bilateral negotiations. In case of doubts regarding the scope of their powers, they were requested to produce new full powers in order to verify the authority necessary to sign an agreement. In practice, there were cases where negotiations were ongoing while the full powers document had not yet been delivered. Two solutions were used in this situation. The first derives from US practice. According to the Instructions to the Diplomatic Officers of the United States published in 1897, a concluded agreement was to be signed in the form of an instrument expressly stating that it was signed subject to the approval of the signer's government. The second solution developed with the advancements of communications, when agreements were increasingly signed by representatives who did not have full powers. In such a situation, after receiving full powers, earlier announced by telegraph, the fulfillment of formalities was recorded in a special protocol.²²

Given the varying practices of states in the nineteenth century, often the documents presenting full powers differed, which led to problems in

aty and informed the Persian government that the plenipotentiary was never in possession of any instructions to enter into treaty negotiations and had exceeded his powers. In 1879, the Chinese plenipotentiary Chonghou signed the Treaty of Livadia with Russia for the return of Ili Province to China. Upon Chonghou's return, the ruler found that Chonghou had disobeyed instructions and exceeded his powers. The treaty was rejected and the emissary sentenced to death. Only after the Russian government's and Queen Victoria's interventions did the Chinese emperor change his mind and send a new negotiator to St. Petersburg. After some hesitation by Russia, a new treaty was drafted, signed and eventually ratified.

21 J. Sandorski, *op. cit.*, p. 79.

22 *Ibidem*, p. 79.

determining plenipotentiaries' actual powers. This problem became apparent at the 1868 conference on the treatment of the sick and wounded in war, when a commission to review full powers was not appointed, but delegates were asked to clarify what powers they held. In the course of clarifications it turned out that there was a large discrepancy in the scope of authority given in individual full powers documents.²³

Discrepancies and misunderstandings resulting from the different – phrased wording of the full powers resulted in an attempt to standardize them after World War I. This work was undertaken by the League of Nations and later by the United Nations.²⁴

It is worth pointing out that the members of the League of Nations' Council comprised states represented mostly by ministers of foreign affairs with broad international competence, while for the persons representing members of the Assembly the requirement was introduced for them to hold full powers. The Commission for the Verification of Full Powers found that instead of full powers, delegates often submitted telegrams or letters from the minister of foreign affairs, and sometimes there were cases where delegates issued full powers to themselves.²⁵ This practice led to a change in the rules of procedure of the Assembly and introduction of a provision that stipulated that full powers must be issued by the head of state, or the minister of foreign affairs, and presented to the Secretary General one week before the start of the session.²⁶

International law doctrine representatives analyzed whether international law should regulate the question of who had the right to represent a state in international relations. On the one hand, references were made to internal law, and, on the other hand, it was pointed out that internal law implied that the competence to represent a state is vested with the head of state.²⁷ The United Nations made an attempt to put order to

23 Ibidem, p. 80.

24 Ibidem, p. 80.

25 League of Nations, Official Journal 1933, No. 115, p. 30.

26 J. Sandorski, op. cit., p. 80.

27 S. E. Nahlik, *Kodeks Prawa Traktatów*, Warsaw 1976, p. 111.

the practices of various legal doctrines. In the work on the codification of treaty law, conducted by the International Law Commission, three issues emerged: 1) who can represent the state in concluding treaties by virtue of their position; 2) how can a person not supported by their position prove their competence; and 3) whether and to what extent a person who is not supported by his position and who has not been given the authority to represent the state, even on an ad hoc basis, can be considered as acting on behalf of the state.²⁸ The International Law Commission (ILC) associated the power to conclude treaties *ex officio* with three state positions: the head of state, head of government, and minister of foreign affairs²⁹, and to a limited extent also with the head of a permanent diplomatic mission, and with the state's representative at an international conference and in a body of an international organization.³⁰ Subsequently, the ILC put forward a draft where it proposed a regulation on persons whose competence was not supported by their position, and who had to demonstrate that they represented the state on the basis of an issued full powers instrument. The ILC's draft put forth this possibility to be the first choice.³¹ Subsequently, promoting the postulate of flexibility, in its draft the ILC allowed the abandonment of full powers if 'circumstances' indicated that this was the intention of the parties.³² The proposed text of the provision was supplemented by an amendment from the United States that added 'in practice the states concerned', which may indicate an intention to resign from full powers.³³ With regard to the binding of the State by an unauthorized person subject to the approval of the state, the ILC made a very cautious proposal of the provision, guided by issues in the field of the problem of invalidity of international agreements.³⁴ Based on the above agreements, the

28 Ibidem, p. 111.

29 H. Waldock 1962, ILC, Report 1962, Article 4(2).

30 H. Waldock 1962, ILC, Report 1962, Article 4(3).

31 ILC, Report 1966, Article 6(1)(a).

32 ILC, Report 1966, Article 6(1)(b).

33 S. E. Nahlík, *Kodeks...*, op. cit., p. 113.

34 ILC, Report 1966, commentary to Article 7 sections 1–3.

final wording of Articles 7 and 8 of the 1969 Vienna Convention on the Law of Treaties was formulated.

Authorization to Conclude the Treaty

Undoubtedly, treaties are the most important tools regulating international relations. They can be concluded between states, between states and international organizations, or between international organizations. International organizations, and the UN in particular, play a very important role in international lawmaking, often as initiators of treaties.³⁵ Treaties may be drafted or concluded in virtually any way the parties see fit. The procedure for formulating a treaty depends on the intention of and agreements between the stakeholders. Regardless of the above, the 1969 Vienna Convention on the Law of Treaties³⁶ specifies certain common norms that govern the formation of international agreements. Since states are not identifiable persons, specific rules have been adopted under which persons representing states actually do have the powers to conclude treaties.³⁷ Article 7 of the VCLT stipulates that the following persons are fully exempt from the obligation to submit full powers, by virtue of their functions: heads of state, heads of government, and ministers for foreign affairs, while a limited exemption applies to the heads of a diplomatic mission and states' representatives at an international conference or in its body. Without a full powers document, heads of a diplomatic mission may accept the text of a treaty between a sending and receiving state. Similar powers are vested in state representatives accredited to a treaty drafting conference or to an international organization when a treaty is being concluded within its framework (Article 7(2)(a, b, c)). There is no equivalent of the above regulation applicable to bodies of international organizations in the 1986 Vienna

35 M. Fitzmaurice in: *International law*, ed. M.D. Evans, Oxford 2004, p. 177.

36 Hereinafter: VCLT.

37 M. N. Shaw, *Prawo międzynarodowe*, Warszawa 2000, 2006, p. 523–524.

Convention on the Law of Treaties between States and International Organizations or Between International Organizations. The above Convention does not authorize any person to express, by virtue of their function, the consent of an international organization to be bound by a treaty.³⁸

It is worth noting that despite the fact that the institution of full powers has its origins in diplomatic law, none of the conventions regulating diplomatic and consular relations directly governs the matter of full powers, which is so important for the conclusion of international agreements. The Vienna Convention on Diplomatic Relations lists among the functions of diplomatic missions the function of representing the sending state in the receiving state, and holding negotiations with the government of the receiving state. Additionally, relevant literature emphasizes that the negotiation function is one of the oldest and most important diplomatic functions.³⁹ The matter of the institution of full powers in the execution of the negotiation function was pointed out by J. Bryła, who highlighted that the necessity of fulfilling the requirement of presenting formal full powers to conduct negotiations depends in practice on the degree of regular contacts between the negotiating parties, mutual knowledge of the negotiators themselves, and mutual trust between the participants of the negotiations.⁴⁰

The question of full powers to conclude international agreements is extensively addressed by the VCLT. Each state determines in its internal law which authority is competent to issue full powers for particular treaty actions. The type and nature of the scope of the delegated activities determines what the nature of full powers is, and what official body is authorized to issue such a document. In international organizations, the authority to conclude agreements is always held by the highest officer (e.g. secretary or director general). Their authority usually includes the issuance of a full powers document. Treaty competence, on the other

38 M. Frankowska, *Prawo traktatów*, Warszawa 2007, p. 68.

39 M. Sykulska – Przybysz, edited by S. Sykuna, J. Zajadło, *Leksykon prawa i protokołu dyplomatycznego*, Warszawa 2011, p. 238.

40 J. Bryła, *Negocjacje międzynarodowe*, Poznań 1997, p. 71.

hand, is held by the highest authority in the international organization (the assembly or council).⁴¹ Full powers may be required to negotiate or adopt a text (i.e., for example, to initial or vote in favor of a text at an international conference), but also to sign an agreement, or to perform other activities.⁴² It is worth pointing out that, for example, Article 67 of the VCLT stipulates that “Any act of declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.” It is on behalf of authorities competent to conclude international agreements that plenipotentiaries usually act, as they are persons with the appropriate authority, which is called ‘full powers’.⁴³ The VCLT defines ‘full powers’ as a document “emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty” (Article 2(1)(c)). Thus, full powers are simply written proof that the person named therein is authorized to represent the state in performing certain acts with respect to a treaty, usually only to sign it.⁴⁴ As Sandorski rightly pointed out, a characteristic feature of full powers should be clarity. Full powers, as a document containing a declaration of intent of a state authority, should clearly define the scope of authorization, in a way that makes it easy to ascertain the authority’s intention. Failure by states to follow this principle may result in disputes over the validity of the agreement concluded by the plenipotentiary.⁴⁵

41 J. Sozański, *Współczesne prawo traktatów*, Warszawa – Poznań 2005, p. 76–77.

42 A. Wyrozumska, *Umowy międzynarodowe teoria i praktyka*, Warszawa 2006, p. 149.

43 M. Frankowska, op. cit., p. 67.

44 A. Aust, *Handbook of International Law*, Cambridge 2005, p. 59.

45 J. Sandorski, op. cit., p. 86.

Due to the fact that many international agreements are subject to ratification, plenipotentiaries acting within the scope of their authorization cannot conclusively bind their state to a treaty. The full powers instrument authorizing the conclusion of a treaty therefore relates to international agreements that enter into force on the date of signature.⁴⁶ For multilateral agreements, the full powers are submitted to the executive committee of the conference. They are then reviewed by a verification commission. Then, following their examination, the committee reports the findings to the conference. Customarily, the original copies of full powers are kept by the state on whose territory the conference is holding its session, i.e. by the state acting as depositary. International practice varies in terms of bilateral agreements. State delegates may retain the original copies of the other party's full powers instrument, or may present the originals and only exchange copies. Typically, the actions relating to the presentation or exchange of full powers are noted in the introduction to the treaty.⁴⁷

Today, however, the requirement for full powers is increasingly being dropped. This is due to the fact that many international agreements concern specialized areas, on which various forums for meetings of state representatives (experts), commissions, or joint committees are set up. Interestingly, international organizations also establish commissions, committees, or working groups. Such forums can negotiate international agreements in a simplified formula, e.g. by officially communicating the names of their representatives without showing special full powers.⁴⁸ Pursuant to Article 7(1)(b), in exceptional situations, full powers are not needed when it appears from the practice of the states concerned or from other circumstances that their intention was to consider a given person as authorized to undertake specific actions without full powers. It is worth noting here that an analogous provision is stipulated in the 1986

46 R. Jennings, A. Watts, *Oppenheim's International Law*, vol. 1, London 1992, p. 1222.

47 A. Wyrozumska, *op. cit.*, p. 150.

48 *Ibidem*, p. 150–151.

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.⁴⁹ The ILC emphasized that the rule set out in Article 7 “makes it clear that the production of full powers is the fundamental safeguard for the representatives of the States concerned of each other’s qualifications to represent their State for the purpose of performing the particular act in question; and that is for the States to decide whether they may safely dispense with the production of full powers.”⁵⁰

At this point, I would like to draw attention to Article 8 of the VCLT, which stipulates that an act relating to the conclusion of a treaty performed by a person who cannot be considered as authorized to represent the state for the relevant purposes is legally ineffective. The above regulation sanctions the existence of full powers.⁵¹ An interesting example was the case that occurred in 1951 with regard to a cheese naming convention. The Convention was signed by a joint delegate of both Sweden and Norway, but it turned out that the delegate was authorized only by Norway. However, the Convention was later ratified by both countries and entered into force.⁵² It is worth noting that Article 47 of the VCLT provides for a situation where the authority of the plenipotentiary to express the consent of a state to be bound by a particular treaty is subject to a specific restriction and the plenipotentiary failed to comply with that restriction. However, the above case should be considered in the category of conditions that invalidate an international agreement.

49 M. Frankowska, op. cit., p. 68–69.

50 A. Watts, *The International Law Commission 1949–1998*, vol. 2: The Treaties Part II, Oxford 1999, Article 6 (3).

51 M. Muszyński, *Państwo w prawie międzynarodowym*, Bielsko Biała 2012, p. 394.

52 *Yearbook of the International Law Commission YILC*, 1966, t. 2, p. 195.

Classification of Full Powers

Based on the collected literature, the purpose of this chapter is to propose a classification of international full powers from the point of view of their nature, the scope of authorization, the authority issuing the full powers instrument, the period for which full powers are granted, the entity recognized by international law, and the mode in which the international agreement is concluded.

From the point of view of their nature, full powers can be divided into personal and joint ones. Personal full powers are given to one person, while joint full powers are issued when there are several plenipotentiaries. The latter full powers may be of joint – and – several type, where all plenipotentiaries must sign the international agreement, or individualized, where the agreement may be signed by all plenipotentiaries or only one of them. As indicated in the relevant literature, personal full powers stress the principle of uniformity of a delegation, while joint powers of attorney have their practical justification, particularly in the event of the indisposition of one of the plenipotentiaries or, for example, when one of them needs to leave earlier.⁵³ It is worth noting that a plenipotentiary cannot commission anyone to perform for them the acts authorized by the full powers (in international law one cannot appoint a substitute plenipotentiary, as is the case, for example, in Polish civil law).⁵⁴

With regard to the scope of authorization, full powers can be divided into general and special. Such a division was made by I. Sinclair on the basis of an analysis of British practice, which ascertained that general full powers are held by the Secretary of State for Foreign and Commonwealth Affairs (the British term for the minister of foreign affairs), a Secretary of State, and Parliamentary Under – Secretaries of State at the Ministry of Foreign Affairs, and Britain's Permanent Representatives to the United Nations, which authorize them to negotiate and sign

⁵³ A. Wyzomska, *op. cit.*, p. 149.

⁵⁴ M. Frankowska, *op. cit.*, p. 68.

any treaties. Specific full powers, on the other hand, are given to specific individuals to negotiate and sign specific treaties.⁵⁵ In the field of special full powers, one could differentiate between powers to negotiate, to adopt a text, or to initial, sign or conclude an international agreement. In their content, such special full powers hold special instructions from the government.⁵⁶

With regard to the authority issuing full powers, a distinction can be made between powers issued by the president to conclude state agreements, powers issued by the prime minister to conclude government agreements, and powers issued by the competent minister in the case of concluding departmental agreements.⁵⁷

With regard to the term for which the full powers are issued, persons acting on behalf of a state, as well as representing states in international organizations, as a rule must hold special authorization. It is worth pointing out that such an authorization concerns clearly specified and one – time activities, and is issued for a specified period of time. In contrast, a specific type of general authorization, essentially indefinite, under which a representative performs multiple actions forming part of his or her duties, are letters of credence.⁵⁸

With regard to the entity recognized by international law, one can distinguish full powers issued by competent authorities of the state, which usually results from the regulations stipulated by the state's internal law, and in the case of international organizations, full powers issued by the highest officer of such an organization. The statutes and bylaws of specialized organizations use the term 'full powers'. It should be noted here that such a document is given to delegates of states only for the duration of sessions held by authorities, and not to states' permanent representatives in the organization. It is not the name of the authorization but its scope that

55 I. Sinclair, *The Vienna Convention on the Law of Treaties*, Manchester 1973, p. 32.

56 J. Sozański, op. cit., p. 77.

57 M. Frankowska, op. cit., p. 68.

58 G. Grabowska, *Prawo dyplomatyczne w stosunkach państw z organizacjami międzynarodowymi*, Katowice 1980, p. 119–120.

determines the powers of the head of mission or delegation. When differentiating between the nature of missions and delegations of states, it can be presumed that heads of permanent diplomatic missions receive letters of credence, while heads of delegations to authorities and to conferences act on the basis of an authorization similar to full powers.⁵⁹ An interesting distinction between full powers and letters of credence was drawn by M. Fitzmaurice, who pointed out that letters of credence are submitted to an international organization or a government organizing conferences by a delegate participating in the negotiations, and authorize the delegate only to accept the text of a treaty and sign the final deed. In contrast, the signing of a treaty requires general full powers or specific instructions received from the government in such an instrument. Full powers and letters of credence can be set out in one document.⁶⁰

Due to the mode in which a given agreement is concluded, one can distinguish between full powers to conclude an agreement, and full powers to sign an agreement. In the simple procedure, a state becomes a party to an agreement as a result of its signing by plenipotentiaries or by exchanging with a counterparty documents forming the agreement (sometimes the initialing can have the effect of signing an international agreement if the negotiating states have so agreed). In the complex procedure, the signing merely reveals the state's intention to be bound by the agreement, while the state represented by the plenipotentiary acquires the status of signatory.⁶¹

Full Powers in the Polish Treaty Procedure

In Polish law, the procedure for issuing international full powers is regulated by the Act on International Agreements of 2000, and the Regulation of the Council of Ministers of 2000 on the Implementation of Cer-

⁵⁹ Ibidem, p. 120.

⁶⁰ M.D. Evans ed., op. cit., p. 177.

⁶¹ R. Kwiecień, *Miejsce umów międzynarodowych w porządku prawnym państwa polskiego*, Warszawa 2000, p. 70.

tain Provisions of the Act on International Agreements.⁶² Pursuant to Article 9 of the aforementioned Act, the Minister of Foreign Affairs is the authority authorized to issue full powers to negotiate and adopt a text of an international agreement. The issuance of full powers by the Minister of Foreign Affairs is subject to prior consent given by the Prime Minister to conduct negotiations. This consent also includes the designation of the official authorities involved in the negotiations. In turn, in accordance with Article 10 of the aforementioned Act, full powers to sign an agreement are granted by the Prime Minister. This competence stems from Article 148(4) of the Constitution of the Republic of Poland, under which the Prime Minister determines how to implement the policy of the Council of Ministers, which had previously given its consent to the signing of an agreement. Such authority applies to all categories of agreements, including agreements requiring ratification.⁶³

The analysis of the aforementioned regulations shows that the President of the Republic of Poland is not a competent authority to sign an agreement that requires ratification. As A. Wyrozumska rightly pointed out, since the President does not conclude an agreement, and the signing of an agreement is undoubtedly a stage in the procedure of concluding ratified agreements, the President cannot have at the same time the authority to issue full powers. Polish regulations governing the procedure for concluding international agreements give such authority to the President, but only with the prior consent of the Council of Ministers, when the government authorizes the President to act on its behalf.⁶⁴

When the state is represented by a plenipotentiary, what applies is the procedure set out in the Regulation of 2000. Pursuant to section 7, an application for granting full powers to conduct negotiations, adopt the text

62 Cf. text of the Act on International Agreements of 14 April 2000 (Dz.U. 2000 No. 39, item 44); cf. text of the Regulation of the Council of Ministers of 28 August 2000 on the Implementation of Certain Provisions of the Act on International Agreements, Journal of Law 2000 No. 79, item 891.

63 A. Wyrozumska, *op. cit.*, p. 155.

64 *Ibidem*, p. 155.

of an international agreement, or sign it shall be submitted by the authority competent to conduct negotiations to the minister in charge of foreign affairs at least 14 days before the commencement of negotiations, the intended adoption of the text of an international agreement, or its signing. An application may be submitted later only in exceptional cases and requires detailed justification. In turn, the minister responsible for foreign affairs is competent to submit an application for granting full powers to sign an international agreement to the Prime Minister within 7 days of receiving an application on this matter from the authority competent to conduct negotiations. An application made at a later date can also take place in exceptional cases and requires detailed justification. Section 7(3) of Regulation of 2000 puts forth the formal requirements of the application, in particular the title of the international agreement, the negotiating parties in the case of an application for full powers to negotiate or adopt the text of an international agreement, obtaining consent to hold negotiations, adopt the text of an international agreement, or sign it, as well as the full name, official position or function of the person to be the plenipotentiary. Other instruments are attached to the applications, namely a document confirming the consent to conduct negotiations, the adoption of the text of the international agreement, or its signing, the Polish text of the international agreement, or the text of its translation into Polish, certified by the authority competent to conduct negotiations by inserting the clause 'certified translation', justification and the negotiation instructions, unless specific provisions exempt the obligation to draw up such documents. Application templates form annexes to the Regulation of 2000.⁶⁵

Conclusions

Summarizing the above considerations, it should be noted that the institution of full powers has evolved over the years and continues to be very important in the process of concluding international agreements.

⁶⁵ Ibidem, p. 156.

A historical analysis of the institution of full powers, an analysis of the provisions of the 1969 and 1986 Vienna Conventions, and the practices of entities recognized by international law, allows us to conclude that the practice of issuing full powers is diverse, and often depends on the regulations contained in the internal law of a given state, as well as the rules and statutes of international organizations. A further field for scholarly analysis of the use of the institution of full powers could be an analysis of the diplomatic practice of international law actors other than states and international organizations. In view of the increasing number of international agreements, the emergence of increasingly specialized international organizations, and the lack of uniform practice in the institution of full powers, it should undoubtedly be said that this is an indispensable institution, since the appointment of a plenipotentiary speeds up the process of concluding an international agreement.

It is worth noting that an analysis of Article 7(1) of the VCLT, to which a substantial part of this study has been devoted, shows that it embodies a certain general principle for each stage of the conclusion of treaties, which is equally important in relation to Article 9 on the adoption of the text of a treaty, Article 10 on the determination of the authenticity of the text of a treaty, and Articles 11 to 17 on giving consent to be bound by a treaty. Questions of empowerment are also regulated explicitly or by implication in other articles of the Vienna Convention: Articles 2(1)(c), 12(1)(c), 14, as well as Articles 46 and 47, which could be the focus of analysis in another study.⁶⁶

The proposed classification of full powers, based on the collected literature on the subject matter, is not exhaustive. The constantly evolving practice of states in this area, and in particular evolving diplomatic law, may lead to the development of a new practice or the creation of new rules for concluding international agreements by plenipotentiary. Nevertheless, the subject matter addressed in this publication seems to be very interesting and merits further didactic analysis.

66 O. Corten, P. Klein, *op. cit.*, p. 126.

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SUMMARY

The Institution of Full Powers in the Process of Concluding International Agreements

This paper addresses issues related to the institution of full powers in the process of concluding international agreements. The author makes an analysis of the historical evolution of the institution of full powers and discusses the essential elements of the full powers instrument with regard to the representation of the state and international organizations, taking into account current international law regulations. In this regard, the author also refers to international practice and, based on a review of the scholarly literature, attempts to classify full powers.

Finally, the author presents the practical aspects involved in appointing plenipotentiaries on the example of regulations in force in the Polish legislative system.

Keywords: full powers, state representation, treaty law, international agreement.

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