acre feet annually from the Columbia river for the beneficial use of the prairie regions and for multiple-purpose use of water so diverted".

I would say in conclusion, Mr. Speaker, that this amendment will clarify the right of diversion which the minister says already exists but which is of very serious concern to many Canadian citizens.

Mr. Turner: On a point of order, Mr. Speaker, I want to take the position that the amendment is out of order and should not be accepted by Your Honour, and I have two main arguments in support of this contention. The first is a constitutional one which, before I go into it further, might be summarized as follows, that the treaty making or treaty negotiating function is an executive act, that it is a prerogative of the crown going back to the very early days of British parliamentary democracy and is now exercised by Her Majesty's government both in the United Kingdom and in Canada; that to suggest an amendment to a treaty or protocol or to suggest a further protocol or exchange of letters, as my hon. friend suggests in his amendment, is not within the competence of parliament; that parliament's rights in respect of the treaty making function are limited to the general matter of confidence, that is to say, either rejection or approval of the resolution, and that any such amendment is an infringement of the executive power as recognized under British parliamentary traditions.

My second argument is a procedural one based on what I submit to you is parliamentary practice. It is that the amendment of such a resolution in the form introduced by the hon. member for Greenwood is in effect a negativing of the resolution, the resolution being simply one calling for either approval or rejection, and that any conditions attached to it would in effect negative it. Since under the rules of the house it is not admissible to introduce an amendment which negatives the main resolution I submit that Your Honour should not admit it.

I should like to expand on these arguments and quote my authorities. I said that the treaty making or treaty negotiating power is an executive act and that in Canada the power to negotiate and conclude treaties having to do with acts of an international character is a part of the executive prerogative which in Canada is exercised on the advice of the Secretary of State foı External Affairs.

[Mr. Brewin.]

As the negotiation and conclusion of treaties is an executive act there was, strictly speaking, no legal obligation upon the government to consult parliament because legislative approval is not constitutionally a part of the ratifying process. Nevertheless it has been the practice of Canadian governments for many years to ensure that all treaties, other than minor administrative arrangements, are brought to the attention of parliament in one way or another. This has generally been done by tabling the treaty and, in the case of particularly significant agreements, referring the treaty to the standing committee on external affairs. After approval of the standing committee on external affairs, if this is forthcoming, the committee report is tabled in the House of Commons as has been done in this case, and then a joint resolution of the house and the other place such as the one before us is moved by the responsible minister asking for approval of the treaty.

I might say that since the standing committee on external affairs was set up in 1945 only nine treaties have come before this house, of which eight were approved and one was withdrawn by the government. In no case, to the best of my knowledge, was there any amendment to the resolution calling for approval of ratification, and therefore no such amendment was accepted.

My authority for saying that the treaty making process is purely an executive act may be found in a book by Professor Hendry, professor of law at Dalhousie university, entitled, "Treaties and Federal Constitutions", published in 1955. On page 62 Professor Hendry states the position clearly in these words:

In Canada, the executive power in the central government in foreign affairs is indefinite.

At page 74 he says:

Legally, the capacity of the executives of the states of Canada and Australia is unrestrained except by the limits of the prerogatives, the doctrine of "acts of state" and their constitutions. In neither state is there any rule of law or convention which requires the executive to seek prior approval from any organ of government before initiating negotiations, signing, and ratifying treaties.

McNair in his classic, "The Law of Treaties", says at page 68:

Our constitution is the net result of the operation of the common law, of a number of important statutes, and of a large and still growing body of constitutional usages or 'conventions' (not in the treaty sense), as they are usually called. The organ in which, constitutionally, the treaty making