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# INTERNATIONAL 'DIPLOMATIC' ACTIVITY OF CANADIAN PROVINCES, WITH EMPHASIS ON QUEBEC BEHAVIOUR\*

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Provincial activities in the last decade in the field of international relations have been considered extensively by legal commentators, scholars, politicians, journalists and by spokesmen for the federal and provincial governments.<sup>1</sup> A pioneer in the field of provocative so-called diplomatic activity, Quebec at the time of the quiet revolution asserted her right to have her own foreign policy, to conclude her own agreements with foreign governments on matters under provincial legislative jurisdiction and to send her own representatives abroad. In the seventies her claims are somewhat less vocal and have to be considered in relation to similar claims and views as regards economic priorities and decentralization submitted by the other provinces, in particular Alberta, Ontario and British Columbia, the wealthy or wealthy-to-be provinces. The overall approach is centered on the need for greater autonomy at the provincial level but also — and in the opposite direction — for participation (the key word with 'concertation' nowadays) in the formulation of a national economic policy as regards national as well as provincial needs and consequently national and provincial exchanges abroad, the more so in time of world economic crisis and recession.

The title of this panel is 'diplomatic' activity. At the outset we should explain what is meant by this word. It relates essentially to formal intergovernmental relations as opposed to almost daily transnational activities and links. At this point it is worth mentioning the fact that changes have taken place in the diplomatic function. As John W. Holmes puts it, "the diplomacy of the state, particularly a federal state like Canada, is challenged by the

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\* Cet article a été rédigé à la suite d'une communication à la conférence sur "The Federal Dimension in Canadian External Behaviour", tenue à l'Université Carleton à Ottawa en novembre 1975.

<sup>1</sup> See Bibliography *The Provinces and Foreign Affairs in Treaty Law in Canada*, by the author, 1975, at 311; also by same, *Treaty-Making Power and the Provinces: From the Quiet Revolution to Economic Claims*, 4(2) *Revue générale de Droit*, (1973) 131-153; see in particular, T.A. LEVY, *Some Aspects of the Role of the Canadian Provinces in External Affairs: a Study in Canadian Federalism*, doctoral thesis, Duke University, 1974.

loosening of its internal structure. The result is not the death of diplomacy but rather its multiplication and complication".<sup>2</sup>

Within the context of 'formal' intergovernmental relations, four questions will be considered in this paper: enactment of legislation, official representation abroad and at home, participation in international organizations and conferences, and bilateral relations with a focus on Quebec behaviour.

#### ENACTMENT OF LEGISLATION

At the federal level official relations with foreign powers involve various departments and agencies but they are mainly conducted or at least co-ordinated by the Department of External Affairs established before World War II, at a time when Canada had not yet acquired her international personality. Similarly with increased activities abroad the traditional institutional apparatus of the provinces is becoming somewhat inadequate and a lack of co-ordination in the field of External Affairs is felt. Consequently either new departments and bodies are progressively established by legislation, or individuals with specific responsibility in the field are appointed.

At the beginning of the 'quiet' revolution in Quebec the Department of Federal-Provincial Affairs was set up by a 1961 Act. The Department had the responsibility for co-ordinating Quebec's relations with all governments in Canada.<sup>3</sup> In the spring of 1967, it became the Department of Intergovernmental Affairs, with added responsibility for co-ordinating Quebec's relationships with foreign powers.<sup>4</sup> This caused concern in some federal quarters which was also expressed in Parliament. Surprisingly enough, at the passing of new legislation in December 1974, amending the 1967 Act, there was no such reaction to my knowledge, though the wording of the new Act is much more provocative.<sup>5</sup> It bears witness to the fact that "Quebec's external relations, now consecrated by law, are following an irreversible trend".<sup>6</sup>

According to the drafters of the Act, the new legislation was designed to complete the institutionalization of the Department's function as a co-ordinator and therefore to promote a better co-ordination of the activities of the various departments involved. It was also aimed at setting out the guidelines for Quebec's action in the field of intergovernmental relations. The trend toward more institutionalization is also apparent in Alberta and to a lesser extent in Ontario. Examples of it are to be found in statutory law. The

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<sup>2</sup> *The Study of Diplomacy: A Sermon*, in *The Changing Role of the Diplomatic Function in the Making of Foreign Policy*, Centre for Foreign Policy Studies, Dalhousie University, 1973, at 4.

<sup>3</sup> R.S.Q. 1964, c. 56.

<sup>4</sup> Q.S. 1967, c. 23.

<sup>5</sup> Q.S. 1974, c. 15.

<sup>6</sup> *Dossier on Bill 59, Quebec's Intergovernmental Affairs Department Redefined*, 1975.

Department of Federal and Intergovernmental Affairs Act was adopted by Alberta's Legislature in 1972.<sup>7</sup> The same year Ontario passed a statute establishing the Ministry of Treasury, Economics and *Intergovernmental Affairs*.<sup>8</sup>

The guidelines for Quebec's action in external affairs, are summarized in the 1974 statute in terms reminiscent of the 1909 Canadian Department of External Affairs Act.

The Minister is responsible for "elaborating and proposing to the government external relations policy", within the ambit of Quebec constitutional jurisdiction and with a view to "promoting the cultural, economic and social development of the People of Quebec". He is also to establish official communications with other governments and international organizations and maintain the necessary liaison with their representatives on Quebec's territory.

The statute also deals with Quebec's representation abroad, the conclusion and domestic implementation of agreements (including ratification),<sup>9</sup> external aid and participation in international organizations. The tasks and duties listed in the Act are quite similar to 'diplomatic' activities as such. This piece of legislation constitutes a clear assertion of provincial authority in the field of external affairs though kept within limits.<sup>10</sup> Further, it should be noted that in recent years Quebec's approach to the question has been focusing on two major themes, cultural sovereignty and economic development. As stated by Premier Bourassa, "Quebec's relations with foreign countries must include the domain of natural resources and not just cultural and educational matters."<sup>11</sup> The emphasis is on both aspects.

#### REPRESENTATION ABROAD

As this new formulation of economic development emerged in the sixties and while benefiting from the Canadian diplomatic apparatus in this respect, Ontario and Quebec gradually increased the number of their permanent missions abroad. In 1975 Ontario had opened offices in fifteen foreign cities, six in Europe (London, Brussels, Frankfurt, Vienna, Milan and Stockholm), one in Asia (Tokyo), six in the United States of America (New York, Boston,

<sup>7</sup> A.S. 1972, c. 33.

<sup>8</sup> (Emphasis added); O.S. 1972, c. 3; see also for British Columbia, *The Agent-General Act*, B.C.S. 1960, c.5.

<sup>9</sup> See chapt. III: Intergovernmental and Other Agreements; chapt. IV: External Representation of Quebec.

<sup>10</sup> See, for example, S. 15: "The Minister shall recommend *the ratification of international treaties or agreements* to the Lieutenant-governor in Council in fields within the constitutional jurisdiction of Quebec" (emphasis added). The Alberta statute does not elaborate to the same extent: it essentially provides for co-ordination and reviewing of policies on both planes, domestic and international. As for the Ontario Act, it deals mainly with domestic financial matters though in practice an External Activities Branch has been set up (see Ian Macdonald's paper to the Conference).

<sup>11</sup> *The Gazette*, Montreal, 16.4. 1974.

Chicago, Los Angeles, Cleveland and Minneapolis) and two in Latin America (Mexico and Sao Paulo). In 1971 Ontario and Alberta were considering the opening of a provincial trade office in Washington, though the final agreement with Ottawa in May 1973 resulted in the appointment of a foreign service officer to deal with provincial matters from the Canadian embassy in that city. It appears that until today the officer in charge has been dealing mostly with information matters and plays the role of a sort of courier to provincial authorities for matters of minor interest through the channel of the Department of External Affairs.

Starting in 1971 by sending two immigration agents to tour Europe (Belgium, France, Germany and Great Britain), Quebec developed her representation abroad after World War II<sup>12</sup>. The province has now eleven government offices and four government houses abroad of which seven are in Europe (Athens, Brussels, Dusseldorf, London, Milan, Paris and Rome), two in Asia (Tokyo and Beirut) and six in the United States (New York, Los Angeles, Boston, Chicago, Dallas and La Fayette). Alberta has three offices abroad, Los Angeles London and Tokyo. Nova Scotia is present in two foreign countries, Great Britain and United States. British Columbia and Saskatchewan have each only one representative overseas, an Agent-General in London. The British Columbian Agent-General acts as representative and resident agent of the province in Great Britain but his functions also cover the continent of Europe. It is interesting to note that the London office of the Saskatchewan Agent-General comes 'under the umbrella' of the Canadian High Commission.<sup>13</sup>

Provincial representatives overseas are mainly dealing with economic and related matters, though not exclusively as witness for instance, the broader functions and activities of Quebec's delegates abroad and the appointment of Quebec immigration education officers to Canadian diplomatic and consular missions and the additionnal consular-type duties of British Columbia's Agent-General in London. Their legal status and duties are flexible: there is no rigid pattern followed in the matter either by the provinces or by foreign countries.<sup>14</sup> We may note that individuals or private companies es-

<sup>12</sup> Jean HAMELIN, *Québec et le monde extérieur 1867-1967, Annuaire du Québec*, 1968-69, p. 2.

<sup>13</sup> Nova Scotia's Agent-General in London was appointed by Order in Council, No 73-631, dated 26-6-1973; the province also maintains a tourism office in Bar Harbour, Maine; further, the Atlantic provinces had joint representation in London from 1958 to 1968; Manitoba opened a tourism office in Minneapolis, Minn. in September 1974 and British Columbia had 2 such offices in California.

<sup>14</sup> See B.C. *Agent-General Act*, S. of B.C., 1960, c. 5; Q.S. 1974, c. 15; Agreement Canada-Quebec on immigration, signed 17 october 1975; 15-16 George VI & 1 Elizabeth II (1952) c. 18 (U.K.). *An Act to confer certain immunities on the representatives .... of the states and provinces [of Commonwealth countries]*; 17 Elizabeth II (1968) c. 18, *Consular Relations Act*, amended in September 1971 to include consular officers and employees from Commonwealth countries. The 1971 amendment enabled the U.K. to improve the position of Commonwealth officials by extending to them treatment equivalent to that accorded to consular personnel of a foreign country under the Consular Relations Act.

tablished abroad are sometimes asked to play the role of provincial representatives.

If we study the 1975 chart of provincial offices abroad, amounting to thirty-eight, we notice that first on the list is London with six offices whereas New-York, Los Angeles and Tokyo take second place with only three offices in each city, and Boston, Chicago, Brussels and Milan are third choice with two offices in each city. The historical link with London is still predominant. Will it still be true a few years from now? It is quite doubtful and the trend will likely be toward more provincial offices of some sort in the United States, Brussels (seat of E.E.C.) and Tokyo.

As a result of this assertion of provincial autonomy in the field of external affairs, direct relationships with foreign governments and visits of officials abroad are noticeable and reported by the media. Quebec Premier, Robert Bourassa, for example, made an official visit to France in December 1974; he had talks with the French President, the Prime Minister and other governmental officials. He then signed a general agreement with Premier Jacques Chirac.<sup>15</sup> In October 1975, that Premier had conversations with German officials and businessmen in Frankfurt. The same month he was on an official tour in Iran which attracted much attention.

Ontario is also very active in the field. One has only to take into consideration the fact that the province accounts for approximately forty per cent of all Canadian exports to see the importance of trade for this part of the country. Thus trade missions from both sectors, public and private, are financially supported by the government with a view to promoting foreign investments at home and expanding markets in Europe, Asia, Africa and Latin America.<sup>16</sup> Alberta follows the same pattern and Premier Lougheed's recent visits abroad made daily headlines<sup>17</sup>. Alberta's missions abroad in 1974 are geographically more diversified than those from British Columbia. The former cover Japan as well as France, the Soviet Union or Mexico and Brazil. The latter concentrate on the Pacific area, Malaysia, Indonesia, Japan, China and Australia. These contacts with foreign powers bear witness to the trend followed primarily by the wealthiest provinces. All provinces, however, are asking for participation in international talks affecting their economy and development. "Canada is not a unitary state, notwithstanding the yearnings of

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<sup>15</sup> *Relevé des conclusions et des décisions arrêtées au cours des entretiens entre le Premier Ministre du Québec et le gouvernement français*, signé à Paris le 5 décembre 1974.

<sup>16</sup> In 1974, Ontario had budgeted \$175,000. for air transportation for businessmen participating in trade missions (*International Canada*, February 1974); Ontario's Minister of Industry and Tourism visited Brazil, Peru, Columbia and Venezuela in February 1974. Tokyo, Singapore, Kuala Lumpur, Hong Kong, Djakarta in March 1975 (*ibid.* March 1975).

<sup>17</sup> See also visits abroad of Alberta's Minister of Mines and Natural Resources: in June 1974, to France; Alberta's Deputy Premier: in August 1974, to Japan; Alberta's deputy minister of Industry and Commerce: in June 1974, to Brazil.

some commentators... We are a highly decentralized (State) with immense economic and fiscal powers in the hands of the provinces".<sup>18</sup> In the field of energy and pollution, for instance, each provincial government, in particular Alberta and Ontario, is asserting its right to have its own direct foreign relations as well as its share and input in the national policy formulation process.<sup>19</sup>

At home provincial authorities have had conversations with various foreign trade commissions and also in some cases with visiting heads of states or their ministers, to study economic, scientific, technical, cultural and educational cooperation, foreign investment and trade relations<sup>20</sup>.

#### PARTICIPATION IN INTERNATIONAL ORGANIZATIONS AND CONFERENCES

It has been noticed that "for some years, signs have been discernible of provincial interest in a greater involvement in various international organizations".<sup>21</sup> This remark certainly applies to Quebec where, for instance, Bill 59 provides that the minister must promote the consolidation of international francophone institutions in which the government of Quebec participates. Quebec authorities in the sixties, as well as today, believe that they have a special calling in the field<sup>22</sup> but they are also active in other fields.

In his 1971 doctoral thesis entitled *Canadian Federation and International Organizations: a Focus on Quebec*, Louis Sabourin states: "In view of Quebec's assertion that the province should be entitled to participate directly in the organizations of La Francophonie as well as in those like UNESCO, ILO, WHO and FAO that concern themselves with areas which .... are under provincial jurisdiction, the federal government has sought to maintain its exclusive authority." In the field of international organizations, in the sixties there was direct confrontation between both levels of government on this issue. Thus to Mr. Trudeau's government Canada's position was quite simple: only Canada, a sovereign State, could participate as member in international conferences.<sup>23</sup>

<sup>18</sup> H.I. MACDONALD, *Canada's Economy — Can we advance back to reason?* The Empire Club Addresses, 1974-75, at 366.

<sup>19</sup> See Address of Ontario's Minister of Energy and Resources, W. Darcy McKeough, *Energy and Government*, Empire Club Addresses 1973-1974, at 130; see also meetings on energy reported between provincial government representatives and State officials (January 1974: meeting between New York Governor and Ontario Premier); Nova Scotia and Venezuela representatives met in June 1974; see meetings between Canada, U.S.A., Manitoba, North Dakota and Saskatchewan officials to discuss to Garrison Diversion Project and establishment of a monitoring committee by Premier Schreyer and Governor Link (*Globe and Mail*, 26.2.1974).

<sup>20</sup> See, for example, President Lamizana (of Upper Volta) visiting New-Brunswick Premier in May 1975, or UNESCO Director-General's visit to Quebec's Premier in April 1975.

<sup>21</sup> G.L. MORRIS, *Canadian Federalism and International Law*, in *Canadian Perspectives on International Law and Organization*, 1974.

<sup>22</sup> S. 36, *Intergovernmental Affairs Department Act*, Q.S. 1974, c. 15; and *Dossier on Bill 59*, op. cit.

<sup>23</sup> *International Journal*, vol. 1(3)p. 61; also *Federalism and International Conferences on Education*, 1968, at 12.

Quebec's position on foreign policy was vigorously presented at that time by the Liberal government of Jean Lesage and the National Union governments of Daniel Johnson and Jean-Jacques Bertrand. It is illustrated by the events associated with the Francophone International conferences on Education held from February 1968 to the Niamey Conference in March 1970 which set up the Agency for Cultural and Technical Cooperation (ACCT). The controversy between Ottawa and Quebec as to the status of the latter at the conferences is an illustration of the many difficulties encountered in Canada in the field of external relations. Foreign powers played their part — though a minimal one — in the conflict (for example, Gabon in February 1968 by directly inviting Quebec to participate in an educational conference in Libreville without inviting Ottawa, or France) by supporting Quebec's stand for separate and distinct representation at conferences of this type.<sup>24</sup>

The Canadian delegation to the Nouakchott (Mauritania) Conference of Ministers of Education of French-Speaking countries of Africa and Madagascar, held in February 1970 was headed by Quebec's Minister of State for Education and included representatives of Quebec, New Brunswick, Ontario and Manitoba. Before the Niamey constitutional conference held in March of the same year to establish the francophone Agency for Cultural and Technical Cooperation (ACCT) the composition of the Canadian delegation was a subject of discussion between Ottawa and Quebec. A compromise was reached. The delegation was chaired by the Secretary of State of Canada, Quebec's Secretary General of the Government being the vice-chairman and not the co-chairman. Quebec was also asking for membership in the ACCT. This request was rejected and it was finally agreed that the province would not have direct membership or voting power in the agency, though the status of participating government would be granted to her with Ottawa's approval.

The 1971 agreement arrived at under pressure between Ottawa and Quebec on the modalities of Quebec's participation in the ACCT, whereby Quebec became a "participating government" but not a party to the convention either as a member or an associate member could not serve as a model to be applied for provincial participation in other organizations: a compromise had been reached in certain bargaining circumstances and affected only two actors, Quebec and Ottawa.<sup>25</sup>

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<sup>24</sup> See Prof. McWhinney's interesting comments on the matter and the distinction he is making between XIX<sup>th</sup> century protocol and diplomacy and the functionally oriented new diplomacy of today, in *Canadian Federalism, and the Foreign Affairs and Treaty Power. The Impact of Quebec's Quiet Revolution* (7) CYIL 3 (1969).

<sup>25</sup> Canada, Dep. Ext. Aff., Press release, 8 October 1971; See art. 3 (3) of the Charter of the Agency which reads as follows: "Any government may be admitted to the institutions, activities and programs of the Agency as a participating government, subject to the approval of the member-State representing the territory over which the participating government in question exercises its authority, and according to procedures agreed upon between the latter government and that of the member-State."



In looking at the global aspect of the question, a distinction has been suggested in the past between two categories of international organizations, agencies of a technical nature and agencies dealing with questions of foreign policy. Only the first type of organizations would entail provincial participations. The provinces, it was submitted, had never asked for participation in organizations and alliances dealing with questions of sovereignty, peace and war, neutrality, collective security and the like.

Against this view the federal government relies on the very nature of international affairs which prevents any such line being drawn. They illustrate their point by giving the examples of ILO, UNESCO, WHO and FAO's annual conferences where political questions not really related to the subject matter or the organization have been discussed in the past and have resulted in votes of the utmost political importance.<sup>26</sup>

The problem of provincial participation is to be considered at different levels, membership, formulation of a national policy, attendance at international conferences, domestic implementation of resolutions, recommendations and conventions.

First, is a component unit of a federation entitled to original or subsequent membership in international organizations and under what conditions and modalities? Are these conditions to be governed by international law, municipal law or both? What are the domestic and external political implications? These are a few questions among others raised by provincial involvement. Ottawa has always maintained that only the federal union may qualify for membership, the component units lacking such capacity unless the federal constitution provides for it and the other members of the agency give their agreement. Such would be the case of Ukraine and Byelorussia that have separate original membership in the United Nations and are given such capacity by the constitution of the Soviet Union<sup>27</sup>.

The sole example of Quebec participation in an international organization, that of the Francophone Agency (ACCT), is not conclusive. As mentioned earlier Quebec was admitted as a Participating Government (and not as an associate or a direct member) to the institutions, activities and programs of the Agency, under the terms of both the Charter of the Agency and a 1971 Quebec-Ottawa agreement.<sup>28</sup>

Other attempts have been made. Thus it was reported that Ottawa expressed her concern over, and opposition to, Quebec's participation in the

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<sup>26</sup> See *Federalism and international Conference on Education*, *op. cit.* at 12; and more recently the political controversy on Israel.

<sup>27</sup> 1936 Federal Constitution as amended in 1944.

<sup>28</sup> See note 25.

International Telecommunication Union. It would appear, however, that only Quebec has asked for separate membership or a special status of some sort though other provinces have requested provincial participation in international conferences.

Second, the provinces have asked to participate in the national policy formulation process with respect to international organizations dealing primarily with categories of matters within their legislative power or affecting their interests and economic priorities. To most provinces — and depending on the questions involved — a national policy does not mean a federal policy but rather a balance between the points of view expressed by federal and provincial authorities. This position has been gradually accepted by Ottawa in certain fields regulated at the domestic level by the 1867 British North America Act and its subsequent amendments. An illustration of it is constituted by the field of "education" though there are still difficulties in defining precisely the meaning of the word as opposed to the term "culture" and to draw the line between federal and provincial jurisdiction in the related field of communications.<sup>29</sup> Nevertheless provincial-federal co-operation in the preparation of international conferences on education sponsored by UNESCO, the Commonwealth, OECD, the International Bureau of Education and francophone agencies dealing with educational matters, is more or less realized. Federal officials maintain that it is now of long standing.<sup>30</sup>

However some provinces, in particular Quebec, are still claiming more involvement on their part and a better co-ordination at the federal-provincial preparatory work level. This request is formulated for the francophone agencies (then by Quebec) and UNESCO where related matters are often a source of domestic conflicts.<sup>31</sup> Indeed the situation is not clear as to what degree of Quebec's involvement, for example, Ottawa is agreeable to.

In the same vein, though seen in a different perspective, that of the famous 1937 *Labour Conventions* case, consultation and provincial input in the preparatory work of I.L.O. and W.H.O.'s conferences is not yet definitely settled. The same remark applies to the global field of human rights where consultations before ratification of the conventions by the Federal Crown have been organized with an empirical approach. The extent of provincial participation receives different answers from federal and Quebec quarters. The latter would like to be associated with the drafting of recommendations and conventions since, according to the doctrine of water — tight compartments

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<sup>29</sup> For example, educational television.

<sup>30</sup> See note 26.

<sup>31</sup> There have been divergent opinions on draft resolutions to be submitted to the francophone Agency annual conference; in the same vein, Quebec would like more involvement in preparatory work for UNESCO seminars, symposiums and federal conferences.

formulated by Lord Atkin in the *Labour Conventions* case, the implementation of this international legislation will fall primarily within provincial jurisdiction.

Various causes of conflict are evident in other areas of more recent interest to the provinces or/and in the absence of specific constitutional provisions governing distribution of jurisdiction between Ottawa and the provinces. Even in some fields undoubtedly within federal jurisdiction, the provinces contend that they share responsibility in the policy formulation and implementation process. There have been many examples of it in recent years related to economic matters.

As far as trade (specifically, GATT) is concerned Quebec and the other provinces want close liaison with the federal government's negotiators during the World Trade Talks. As put by Quebec's Minister of Industry and Commerce, "It is of the greatest importance that Quebec be kept up to date in these negotiations and participate in formulating the Canadian position".<sup>32</sup> Quebec has been asking for day-to-day consultation and participation in the bargaining process — be it indirectly through federal officials or Canada's negotiating team.<sup>33</sup> The other provinces are in agreement with this request. For example Manitoba's Minister of Industry and Commerce submitted a brief to Ottawa in 1975, on his government's position on GATT negotiations and asserted that Ottawa ought to develop its negotiating policy in conjunction with the provinces.<sup>34</sup> It was followed in February of the same year by a joint brief presented by the governments of Manitoba, Saskatchewan, Alberta and British Columbia. The provinces were asking for federal-provincial talks with a view to ensuring "that the legitimate interests of the provinces were incorporated into the Canadian negotiating position".<sup>35</sup>

The thirty-member Canadian delegation to the Bucharest United Nations Population Conference of 1974 included the Alberta minister of environment who complained that provincial officials had not been given the opportunity to take part in organizing Canadian participation at the Conference.<sup>36</sup>

At this level it seems that the major source of conflict between Ottawa and the provinces is a conceptual and substantive one. Ottawa would like the provinces to play a *consultative* role whereas the provinces are demanding full partnership. This is the crux of the matter and the dominant guideline governing provincial-federal relationships in the whole area of foreign affairs and policies.

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<sup>32</sup> *Globe and Mail*, Toronto, 18 December 1973.

<sup>33</sup> See professor Molot's paper submitted to the Conference.

<sup>34</sup> *International Canada*, January 1975.

<sup>35</sup> *International Canada*, February 1975.

<sup>36</sup> *Ibidem*, July-August 1974.

Various formulas have been applied for actual provincial representation at international conferences and meetings. They have been pragmatically and progressively introduced by Ottawa to answer new needs and provincial claims. Federal authorities give in to provincial claims on a near-regular basis only for questions undoubtedly within provincial jurisdiction. In the other areas, concurrent jurisdiction, federal jurisdiction and grey areas, considered by Ottawa as having a national dimension, there is no set pattern.

As mentioned previously, a compromise has been tentatively reached between Quebec and the federal union, on the former's participation in the institutions, activities and programs of the Agency established at the Niamey Conference (ACCT). According to Quebec authorities, the province has a distinct and separate representation. To federal officials, this representation is within Canada's delegation to the conference. Legally-speaking both statements are correct. Quebec is not an original or admitted member: she has a "participating government" status. Therefore her delegation is part of the Canadian delegation. But since Quebec has been granted a special status, that of participating government, Quebec's delegation within the Canadian delegations is distinct and is not to be put on the same level as the other provincial delegations that have to be totally integrated. In a way Quebec's new status in the Agency is to be compared to the Dominions' status within the British Empire. This is one of the many illustrations of Quebec special status in the federation. Today however there is no other example of that sort concerning institutionalized provincial participation in international organizations.

Thus, once invitations have been sent to the federal government, federal officials initiate consultations with their provincial counterparts "and other interested authorities" as to the composition of the Canadian delegation. Provincial representatives may be chosen at the ministerial level and when appropriate a provincial minister may chair the Canadian delegation, creating thereby a degree of ambiguity.<sup>37</sup> This would be a case of *dédoublement fonctionnel*, according to Georges Scelle's terminology. Arrangements are flexible and worked out separately almost for each case though a certain agreed pattern tends to prevail, for example, in the field of education.

Other factors may be taken into account. Thus the Canadian delegation to the 1968 Hague Conference on Private Law included two representatives of the civil law system and three of the Common Law. Or the Canadian delegation to the 1975 Law of the Sea Conference included provincial government advisers from Quebec, Nova Scotia, New Brunswick, British Columbia and Newfoundland.

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<sup>37</sup> The Canadian delegation to the 28th session of the conference of Ministers of Education from French speaking states, in May 1975, was chaired by Quebec's minister of Education and included representatives from New Brunswick, Ontario and Manitoba.

From this sampling of relatively recent provincial interest in international agencies a few points emerge. The problems considered in an international perspective have their counterparts in the municipal sphere. The solutions agreed to after lengthy federal-provincial negotiations therefore gain their support or come to an end depending upon the skills of the negotiators involved and the flux of domestic conflicts. "This is a federal state with eleven governments, all having authority for decision-making within all or some part of the nation. If there is to be effective planning it must involve the ten provincial governments"<sup>38</sup>. The present trend noted earlier toward more collaboration and concertation between the eleven governments in defining a national policy is noticeable for domestic and international problems. It is however ambiguous and is associated with provincial claims for more autonomy and decentralized power in certain fields. In short there seems to be a common provincial position when it comes to fight Ottawa but a lack of common objectives and motivations and consequently a lack of co-ordination when regional interests are concerned.

#### FORMAL BILATERAL RELATIONS: TREATIES AND AGREEMENTS

As a result of this trend toward a sort of balkanization of provincial interests each province is increasing her ties and relations with foreign territorial entities, the States or their territorial subdivisions whether they are neighbours or countries with common priorities or needs. Transborder informal relations, be they informal reciprocal arrangements or joint enterprises, exchange of correspondence or individual contacts at almost all political and bureaucratic levels, do not create major legal and political conflicts. However when these relations are formalized one way or the other there are tensions and confrontation between the federal union and the provinces.

The treaty-making power as such is denied to the provinces by the federal government in the absence of any written constitutional provision regulating the matter apart from section 132 of the 1867 British North America Act which applies only to an historical context that of the Dominion's implementation of imperial treaties. The tentative rules applied so far are enshrined in an essentially political and economic context, of a rapidly changing character in both domestic and international terms. The treaty-making power is part of the Royal Prerogative and as such belongs to the Crown and is exercised by the federal Cabinet. But the Crown in right of Canada is distinct from the Crown in right of the provinces, which would lead to sharing this capacity according to the constitutional distribution of legislative power applicable to domestic law. It is indeed in this area of domestic implementation of international treaties that major difficulties have arisen at both levels, legal and political. A treaty does not automatically

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<sup>38</sup> Darcy McKEOUGH, *Empire Club Address*, November 22, 1973.

become part of Canadian law. It has to be transformed into domestic law to be applied by the courts. The constitutional distribution of powers in this area leads to great difficulties. Many areas regulated by international agreements in recent times fall at the domestic level under the exclusive or concurrent jurisdiction of the provinces. No field of international relations is strictly reserved to the *bon plaisir* of the federal Crown. The result is a certain overlapping of jurisdictions, international and domestic, federal and provincial; and legal principles and political claims are closely intertwined.

Set alongside such legal and political problems, the Quebec government's approach to the question since April 1970 is somewhat different. They still assert their cultural identity, distinctiveness and special vocation and place in *La Francophonie*, as opposed to English-speaking North America. However the emphasis is also on economic priorities and development as well as participation in the formulation of a national policy and implementation of international agreements concluded by federal authorities but with the accord of the provinces whenever deemed appropriate or essential.

In the thirties the question of domestic implementation has been solved along constitutional lines and for traditional areas — temporarily or definitively, only time will tell — by the highest judicial authorities. However the question of any distribution of the treaty-making power between the federation and the province is still left open.

Thirty years after or so this discussion was still a topical one and led to a virulent controversy mostly between two actors Ottawa and Quebec, at the outset within the context of the "quiet" revolution of "La belle province". No ready and definite solution applicable to each and every case was found by the parties involved. In the seventies, as mentioned earlier, provincial objectives in this area are twofold. They are claiming a voice and a share in the formulation of a national policy leading to the conclusion of treaties between Ottawa and certain foreign powers on matters of provincial or common interest. They are also acting separately and concluding their own arrangements whenever convenient, appropriate or deemed essential to their own interest. The request for decentralized policy-making authorities, it is submitted, is not made in the same terms by Quebec and her sister-states. To Quebec it is essential to be allowed to have direct formal contacts with certain foreign countries. To most provinces on the other hand it is essential to achieve their specific aims and objectives be it by directly dealing with foreign entities or having the federation meet these goals. To the former *la forme* is essential though associated with *le fond*. To the latter the result is what counts.

Thus Quebec openly gives a list of a certain number of formal agreements concluded through a treaty-making process similar to that adopted by the federal government. The Department of intergovernmental affairs has ap-

pointed a Registrar to set up a Master Registry of all agreements concluded by the province with other governments in the country and abroad. The other provinces do not give details of their formal relations with foreign entities unless asked for it. Quebec's work in treaty matters is carried out by the Department of Intergovernmental Affairs; it is institutionalized, 'formalized' and the 'foreign' officers of this bureaucratic apparatus play a role similar to their federal counterparts. In the other provinces there is no such bureaucratic unit of similar importance and no set pattern for these activities.

At the procedural level Quebec's relationships with other governments are to be regulated by law, domestic or international, and whether Canadian or foreign entities are involved. However the rules adopted in the matter are somewhat ambiguous and in some instances one does not see a clear distinction drawn between Canadian and foreign intergovernmental agreements. A partial answer would be given by the dual proposition formulated as follows: most agreements are concluded at the domestic level and the same Department handles both categories. It follows that the small number of "international" agreements and arrangements tends to be integrated into the global national dimension and procedural aspects.

In this light, Quebec's own agreements with foreign entities which have been more or less formalized and are part of a treaty making process, *une opération à procédure*, were concluded at the outset in the mid-sixties at the highest level the Premier or a member of his Cabinet. It was done within the context of the province's autonomy in the field and the establishment of high-priority-level relations with certain countries announced by well-publicized governmental statements.

Progressively more discretion and flexibility transform the original pattern. Furthermore, other ways and means are sought for such as co-operation with Ottawa at the decision-making level and provincial participation for the implementation of treaties that do not fall directly or exclusively within the ambit of provincial legislative power.

For bilateral treaties negotiations are usually conducted through the foreign offices of the parties concerned. In Quebec's case, Cabinet members, officials from the Department of Intergovernmental affairs and the province's representatives abroad are the actors involved in the process. But in many instances other departments and bodies are active, whether they belong to the federal or provincial bureaucratic apparatus and policy-makers. The 1974 statute provides that the Minister of intergovernmental affairs "shall oversee the negotiation of all intergovernmental agreements".

At the end of the negotiations phase signature will be authorized by order-in-council. As the 1974 statute puts it, intergovernmental agreements

must be approved by the Lieutenant-Governor in Council and signed by the Minister unless otherwise provided.

Here it should be noted that for the purpose of the Act the expression 'intergovernmental agreements' covers both domestic and international agreements. The former are concluded either between the provinces or with the federal government the latter with foreign countries or their component units and agencies and with international organizations.

Having looked at the list of the various agreements to which Quebec is a party, registered at the Master Registry (*Le Greffe des accords*) or published in the province or abroad, attention must be directed at the form of the small number of international agreements as such. They are not formal treaties. They range from *accords*, *ententes*, protocols, joint *communiqués*, to *procès-verbaux*, the bulk being constituted by administrative and transnational arrangements. This would tend to prove, I assume, that Quebec is no longer interested by a narrow legalistic systematic organizational approach to the matter though further evidence would have to be given before a definite and conclusive statement is made. On the list we note the agreements concluded with France in the sixties that really launched the federal-provincial controversy. They deal with economic, cultural, scientific, technical and economic cooperation. The recent 1974 Bourassa-Chirac accord entitled *Relevé des conclusions et des décisions arrêtées au cours des entretiens entre le Premier ministre du Québec et le gouvernement français* covers a broader field.<sup>39</sup> It is both a survey of past co-operation during the last decade and a programme for the future. The agreement aims at enlarging the scope of co-operation restricted until now mostly to cultural and educational matters and putting the emphasis on economic questions.

In addition to the French ententes other agreements were entered into with francophone countries as those with Gabon — the 1969 *procès-verbal* — or with the Lebanon — this time a 1973 exchange of letters on education. Quebec also reports bilateral agreements with four American states, three New England states with special links with Canadian Eastern provinces (Maine and Massachusetts in 1972, New Hampshire in 1975) and Louisiana in 1969.

Apart from direct relations with foreign entities Quebec and the other provinces have been advocating federal-provincial consultation and concertation for the implementation of Canadian treaties which require provincial participation. Thus the provinces, in particular Quebec, participate in programs placed under the auspices of the 1971 Federal Republic of Germany Treaty, the 1969 and 1975 Belgian Treaties, the 1971 Soviet Union

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<sup>39</sup> See text in *Greffe des ententes*, Department of Intergovernmental Affairs, Quebec.



Treaty, and CIDA's various memorandums of agreements or contracts with African and Latino-American countries. This concerted policy is illustrated by programmes in Morocco, Senegal, Mali, Ivory Coast and Peru, dealing with technical co-operation, rural development, establishment of Health basic units.

Quebec's government has compiled a *dossier* in Bill 59 entitled Quebec's Intergovernmental Affairs Department Redefined. In this search for answers to the various questions raised by recent provincial interest in a great number of issues with international implications, I do not believe that this statute has settled the matter for a lengthy period of time. There are still uncertainties. Article 15 of the 1974 Act is one of many examples. It states that "The Minister shall recommend the ratification of international treaties or agreements to the Lieutenant-Governor in Council in fields within the constitutional jurisdiction of Quebec." If Quebec was a sovereign state this rule could easily apply. However in the present federal context it seems doubtful or at least a debatable proposition. Bil 59 was discussed at the National Assembly and during the debate it was argued that an *international treaty* could not be ratified by the Lieutenant-Governor or the Crown in right of Quebec, in the absence of any agreed solution to that effect between Ottawa, Quebec and the third parties concerned. Discussing this point is not our objective now. It just serves our purpose to illustrate the present ambiguity of any systematic organization and legislation in the field.

In concluding one has to ponder over statistics and figures. Provincial budgetary allocations for external affairs do not look very impressive and would not permit each province concerned to dig great avenues in the field. In Quebec's case, for example, the moneys involved were the following: \$6,350,000 for the year 1972-73, \$10,505,200 for 1974-75, of which \$8,603,300 for international relations, and \$12,700,000 are the estimates for 1975-76. If we compare this average amount of \$10,000,000 first to the moneys allocated in the 1974-75 budget to other departments, \$1,963,855,400 for social affairs and \$1,698,082,600 for education, the limits imposed on external relations cannot be ignored. If we were to compare with federal budgetary allocations the gap would be much bigger. The very limits of monetary resources entail a co-operative approach to Canadian and provincial policies in the matter.

Finally it should be pointed out that this co-operation has already been accepted in principle by the parties involved in the process. But full agreement has not yet been reached on the method, ways and means to achieve such co-operation. The federal government, acting in terms of the national interest of the country and relying on the residuary clause of section 91 of the British North America Act asserts its right and duty to formulate the general guidelines and priorities of Canada's foreign policy. It is ready however to

study procedural terms and formulas to obtain the views of the provinces on matters falling within their own legislative jurisdiction. Claims for more autonomy submitted by the provinces, primarily Quebec, may appear to the federal authorities as parochial in nature but they are an important political factor. Therefore there are, at the present time forces, operating in both directions, centralization and decentralization.

To deal with these difficulties a type of remedy seems to be appropriate: it centers on the concept of flexible systematic organization, if those words can be put together, or a sort of flexible institutionalized federal-provincial co-operation. Establishing a joint Federal-Provincial Secretariat for International Relations, assisted by joint permanent Commissions specializing in the main fields of interest, could be one of the answers. But it would not solve all problems. Flexible solutions would be devised by this bureaucratic apparatus with a dynamic approach taking into consideration the conflicting views of all parties concerned.