79. United Kingdom of Great Britain and Northern Ireland

STATEMENT PREPARED BY THE SECRETARIAT OF THE UNITED NATIONS [1]

1. In the United Kingdom there is no single document which can be referred to as "the Constitution", and the rules concerning the conclusion and ratification of treaties are the result of custom and usage. As a matter of law, the treaty-making power rests with the Crown. This power, however, may, according to British constitutional practice, only be exercised by Her Majesty on the advice of Her Ministers. So it was that, in 1815, when the Holy Alliance, between the Crowned Heads of Russia, Austria-Hungary, and Prussia was formed, and these rulers invited the King of Great Britain to become a party, the Prince Regent replied declining the invitation on the ground that such action would infringe the Constitutional principle stated above.

2. Where a treaty is to be made in the form of an agreement between Heads of States the Full Powers and the instrument of ratification are signed by the Queen. In the case of inter-governmental agreements the Full Power and the instrument of ratification are usually signed by the Secretary of State for Foreign Affairs, or, it may be, in exceptional cases, by the Prime Minister. Whatever the form of the treaty, and whether the Queen's signature is or is not required for such formal documents, her role today in the matter of treaty-making is a formal one, the actual decisions concerning the negotiation and contents of treaties being taken by her Ministers. As a general rule the Foreign Secretary takes these decisions, after consultation, where appropriate, with any government departments that may be interested. In some cases, according to the nature and importance of the treaty, he may consult the Cabinet. [2]

3. Each successive Secretary of State for Foreign Affairs and each Permanent Under-Secretary of State for Foreign Affairs [3] receives, on taking up his duties, a "General Full Power" which authorizes him to treat "with any other Powers or States". Where an ambassador or other diplomatic agent, or a person appointed *ad hoc*, is to be authorized to negotiate and conclude a particular treaty he receives a "Special Full Power" the authority being limited to that particular treaty. These documents are prepared by the Treaty Formalities Section of the Foreign Office.

4. The doctrine of ministerial responsibility is illustrated by the procedure followed in relation to these instruments. A Full Power requiring the Queen's signature is submitted to Her Majesty together with another document called the Warrant for affixing "the Great Seal". The Queen signs both these documents and returns them to the Foreign Secretary. The latter (or in his absence any other Secretary of State) countersigns the Warrant but not the Full Power. (The Great Seal of the Realm authen-

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[1] This memorandum was prepared by the Secretariat on the basis of published information. It was then submitted to the British Foreign Office, who, subject to certain amendments, approved it.

[2] The Cabinet is the Council of Ministers holding offices of the highest importance. This body has supreme direction of policy and takes decisions binding on all departments of Government.

[3] The Secretary of State is the Minister; the Permanent Under-Secretary is the civil service official who is in charge of the Foreign Office.

ticates the Full Power as an official document, and the Foreign Secretary, by countersigning the Warrant, assumes ministerial responsibility for the decision to enter upon negotiations.) The Warrant is transmitted, after counter signature by the Foreign Secretary, to another Minister of the Crown—the Lord Chancellor, who has custody of the Great Seal, and who, being so authorized by the Warrant, causes the Great Seal to be affixed to the Full Power. The same procedure is followed in the case of instruments of ratification.

5. The procedure described above is confined to treaties concluded in the form of agreements between Heads of States. It does not apply to inter-governmental agreements, which do not require any intervention by Her Majesty or any use of the Great Seal. In the case of such agreements Full Powers are issued by the Foreign Secretary under his own signature and seal of office. Accessions to treaties are not signed by or in the name of Her Majesty, nor are they passed under the Great Seal. Accession is effected either by a formal instrument signed on behalf of the Government of the United Kingdom or by a written notification through the diplomatic channel.

6. As regards inter-departmental agreements (i.e., agreements concluded directly between the Government Departments of different States) these agreements are, generally speaking, arrangements which concern matters of private law rather than matters of an international legal character (e.g., arrangements for, or in connexion with, the purchase of goods, or for the sale on a commercial basis of materials or supplies) and are not such as would be normally registrable under Article 102 of the Charter of the United Nations. An example of such an agreement is the Agreement of 29 August 1949 between the United Kingdom Minister of Food and the Norwegian Director of Fisheries regarding the landings of fresh white fish in the United Kingdom from Norwegian fishing vessels. This Agreement was signed, on the one part, by an Assistant Secretary to the Ministry of Food on behalf of the Minister of Food and, on the other part, by the Norwegian Director of Fisheries.

7. Agreements of this kind are normally negotiated directly between representatives of the United Kingdom Government Department concerned and the corresponding representatives of the other Government Department. Although the Foreign Office is generally kept informed of negotiations concerning such agreements, formal Full Powers for their signature are not issued by the Secretary of State. There have been occasions when another Government Department has requested that one of H.M. Ambassadors should sign a particular agreement on behalf of the Minister of the Department concerned and authority for this course has been conveyed by official dispatch addressed to the Ambassador.

8. In its relations with other members of the British Commonwealth of Nations the Government of the United Kingdom follows the principles agreed upon at the Imperial Conference of 1930 which are as follows:

(1) Any of Her Majesty's Governments conducting negotiations should inform the other Governments of Her Majesty in case they should be interested, and give them an opportunity of expressing their views, if they think that their interests may be affected.

(2) Any of Her Majesty's Governments should, if it desires to express any views, do so with reasonable promptitude.

(3) None of Her Majesty's Governments can take any steps which might involve the other Governments of Her Majesty in any active obligations without their definite assent.

It may be remarked, in this connexion, that the expression "Her Majesty's Government" should now be replaced by "Government of a Commonwealth country" since India, though still a member of the Commonwealth, has become a Republic.

9. In order that the third principle summarized above may in all cases be clearly understood by foreign Powers, as well as by members of the Commonwealth, it is now the practice in connection with Agreements between Heads of States that the Full Power, the instrument of ratification, and the face of the treaty itself, specifically indicate the part of the Commonwealth in respect of which the treaty obligations are assumed.[1]

10. The United Kingdom possesses a number of overseas territories governed by various kinds of constitution. These territories "are dependent on the United Kingdom in that it is responsible for the conduct of their international relations: they comprise colonies which are British possessions, and protectorates, protected States, and Trust Territories which are not".[2] It has also been said [3] that "the overseas territories of the United Kingdom do not enjoy independent status in international law and therefore cannot enter into diplomatic relations with foreign States or participate as of right in treaties to which foreign States are parties". On the other hand most of the overseas territories of the United Kingdom are self-governing in a number of administrative and technical fields. Some of them, although they are internationally dependent on the United Kingdom, and may, therefore, from the international point of view, be described as its "overseas territories", are, from the point of view of British constitutional law, "foreign" territories. This is true of British protectorates and British protected States. Other territories are British "possessions" in British constitutional law. Some of these are "colonies": others (e.g., the Isle of Man, the Channel Islands) are, for historical reasons, not "colonies", but are "possessions".

11. Thus, although, from the international point of view, the United Kingdom is responsible for its overseas territories, and can conclude

[1] Agreements made by members of the Commonwealth with each other are made in the inter-governmental form. They come into force on signature and are registered with the United Nations.

[2] Fawcett, "Treaty Relations of British Overseas Territories" *British Yearbook of International Law*, vol. XXVI (1949), p. 88. The expression "British possession" is a technical one defined in section 18 (2) of the Interpretation Act, 1889, which reads as follows:

"The expression 'British possession' shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession."

The expression "colony" is defined in section 18 (3) of that Act which reads:

"The expression 'colony' shall mean any part of Her Majesty's dominions [exclusive of the British Islands and of British India *and of British Burma*] and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony."

[3] *Ibid.*, p. 105.

treaties which apply to those territories, the constitutional relationship of the territories to the United Kingdom varies widely according to the status of the territory concerned. Because of the intricate legal issues which may arise in connexion with the application to any such territory of a treaty concluded by the United Kingdom the latter has, for many years, made a practice of ensuring the insertion in its treaties of an article (the so-called "colonial" article) providing, either that the treaty applies to territories "for whose international relations the United Kingdom is responsible", if special notice to that effect is given (thus implying that, in the absence of any such notice, it extends to the metropolitan territory only) or, in the reverse form, under which the territories are included unless a declaration is made, or notice given, that the treaty shall not apply to specified territories in the absence of a special acceptance on their behalf.

12. The form in which the "colonial article" is expressed has varied from time to time, but its function is "to bridge the gap between the dependent status of the overseas territories in international law and their independence of the Government of the United Kingdom in certain administrative and technical fields under constitutional law and practice".[1]

The use of the colonial article has been the subject of controversy in the United Nations,[2] and has been inserted in some conventions and omitted from others. In the course of the debates on the matter the Government of the United Kingdom has made statements defining its position.

13. In the course of the discussion on the transfer to the United Nations of the functions and powers previously exercised by the League of Nations under the International Convention relating to Economic Statistics, the representative of Haiti drew attention to the fact that article II of the Convention contained a "colonial article". The record states "Mr. Fitzmaurice (United Kingdom) said that the insertion of that clause was justified because colonies and Trust Territories had their autonomous political organs. The mother country or Administering Authority could not, therefore, assume any obligations regarding those Territories without having consulted the local administrations and without the latter having taken the necessary legislative measures to allow the implemention of the Convention.

"He made it clear that after such Conventions had been signed, his Government did its best to ensure that most of the colonies and territories under its administration joined in carrying out the obligations laid down in the conventions".[3]

14. In the course of the discussion of the draft Convention on Genocide, held in Paris on 15 November 1948, the representative of the United Kingdom proposed the insertion of the following form of "colonial article":

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[1] Fawcett, *ibid.*, p. 106. The historical development of the article is described, *ibid.*, pp. 93-105. See also McNair, *The Law of Treaties* (1938), pp. 76-79.

[2] See Liang, "Colonial and Federal Clauses in United Nations Multilateral Instruments", *American Journal of International law*, vol. 45 (1950), p. 108.

[3] *Official Records of the Third Session of the General Assembly, part I, Sixth Committee*, pp. 263-264.

"Any High Contracting Party may, at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that High Contracting Party is responsible."

In supporting this amendment (which was adopted and became article 12 of the Convention) the representative of the United Kingdom said:

"The draft convention under discussion covered new ground and dealt with a completely new offence. In most countries, therefore, new legislative measures would be required in order to put its provisions into practice. Among the territories administered by the United Kingdom some were completely self-governing in their internal affairs and it would be constitutionally impossible for the United Kingdom to accept the convention on their behalf without first consulting them. His delegation had, therefore, proposed the insertion of a new article to take that situation into account and he hoped that the Committee would accept his proposal. If such an article were not inserted there would be a considerable, if not an indefinite, delay before his country and those territories for which it was internationally responsible could adhere to the convention".[1]

The representative of the United Kingdom repeated on other occasions these statements concerning the constitutional relationship between itself and the territories for which it is internationally responsible.[2]

15. It may be mentioned, however, that in the International Sanitary Regulations, which were approved by the World Health Assembly in May 1951, there is no Colonial Application Clause, but members of the Organization are allowed, in respect of overseas territories for whose international relations they are responsible, eighteen months (instead of nine months in respect of the metropolitan territory) in which to notify rejection of, or reservation to, the Regulations.[3] This provision was inserted because other members of the Organization appreciated the United Kingdom's necessity for consulting the local administrations of colonial territories before assuming obligations which would have to be carried out by those administrations.

16. The system of parliamentary control over the conclusion of treaties which exists in many countries does not prevail in the United Kingdom. The consent of Parliament is not normally required for the negotiation or ratification of treaties; as already explained above these are functions which are exercised on behalf of the Queen through Her Ministers. On certain occasions, however, the Government deems it desirable to obtain formal parliamentary approval before a treaty is ratified. This procedure was followed in the case of all the treaties of peace following the First World War. Furthermore it has been the practice in the United Kingdom, since 1924, for the Government to lay on the table of both Houses of Parliament, for a period of twenty-one sitting days, and as soon as possible after signature, every treaty which is subject to ratification. The reason for this is that Parliament should be afforded the opportunity of debating the provisions of the treaty before ratification should it so desire. The customary formalities for ratification may then proceed and, in due course, when the treaty has entered into force, the text is presented to Parliament

[1] *Ibid.*, p. 471.

[2] See *General Assembly, Second Session, Official Records, Plenary Meetings*, vol. I, pp. 341-345. See also United Nations document A/C.3/SR.294, p. 5.

[3] Article 106(2) of the Regulations.

for the second time and is published in the *British Treaty Series of Parliamentary Papers*. The practice does not apply to treaties which are not subject to ratification. Such treaties (which generally enter into force on the date of signature) are presented to Parliament and published in the *British Treaty Series* as soon as they have been concluded.

17. There is a further qualification upon the rule that the executive is not subject to parliamentary control in the exercise of the treaty-making power. It is that "there is a practice now amounting probably to a binding constitutional convention whereby treaties involving a cession of British territory are submitted for the approval of Parliament and the approval takes the form of a statute".[1]

18. Finally, it is to be observed that under the law of the United Kingdom treaties are not self-executing; they are not *ipso facto* part of the law of the land. If, therefore, the stipulations of a treaty require something to be done which may come into question in a court of law, or require for its enforcement the assistance of a court of law, the question will at once arise whether there is any inconsistency between the treaty and the existing law of the land, or whether the Executive is sufficiently equipped with powers under existing law to implement the treaty. In such cases legislative action by Parliament is required. This is so:

(a) Where the treaty requires for its execution and application by the United Kingdom a change in existing law;

(b) Treaties requiring for their execution by the United Kingdom that the Crown receive some new powers not already possessed by it;

(c) Treaties creating a direct or contingent financial obligation upon the United Kingdom;

(d) Treaties specifically providing that Parliament be consulted.

The Executive may also in practice consult Parliament either before signature, or after signature and before ratification, though not bound constitutionally to do so.[2]

80. United States of Ameriea

(a) CONSTITUTION OF 4 MARCH 1789. UNITED STATES CODE, 1946, VOL. I, P. XL.

Article 2.—Section 2. He[3] shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur...

(b) STATEMENT PREPARED BY THE SECRETARIAT OF THE UNITED NATIONS[4]

1. Whether a particular international agreement is a treaty within the meaning of the above provision is a question of domestic constitutional

[1] McNair, *The Law of Treaties* (1938), p. 24.

[2] Concrete examples of the instances of consultation described above are given in McNair, *op. cit.*, pp. 13-31.

[3] The President of the United States.

[4] This memorandum was prepared by the Secretariat of the United Nations on the basis of information supplied on a previous occasion by the United States Government. It was then submitted to the Department of State who, subject to certain amendments, approved it.