approval of treaties concluded with other Nations, and of concordats concluded with the Holy See".

5. Congress does not confine itself to approving or withholding approval of treaties; it may introduce amendments (see, for example, the Treaty of Arbitration with Bolivia of 3 February 1902, which was adopted by Act of Congress No. 4090, with an amendment to article 16; this amendment was subsequently accepted by the Bolivian Congress). A treaty which is left in abeyance, or which fails to receive approval, does not come into force. Any amendment is considered by the two contracting parties, and in the interval the treaty does not come into force.

6. Legislative ratification is not required for all international agreements. For example, protocols concluded in accordance with the terms of an already ratified treaty do not themselves require ratification, provided that they do not alter the substance of the treaty. The same applies to treaties to preserve the *status quo* (the Protocol of 5 January 1910 between Argentina and Uruguay on the River Plate; the Protocol of June 1888 between Argentina and Bolivia on boundaries; the *modus vivendi* of 27 January 1936 between Argentina and Bolivia barring territorial changes).

7. In the Argentine Republic, ratification is essential for any international agreement which, either directly or indirectly, affects a constitutional principle, involves a new international commitment, or appertains to the public revenue.

8. As regards the power to negotiate treaties, the appointment of plenipotentiaries, the deposit or exchange of ratifications, and the denunciation of agreements concluded, the Argentine Republic follows the rules established by international usage and practice.

4. Australia

MEMORANDUM OF 26 JULY 1951 FROM THE AUSTRALIAN MISSION TO THE UNITED NATIONS

Introductory observations

1. This statement describes the procedure or formalities of the treaty-making process in Australian practice. It will assist in the understanding of this practice if some general observations are first made on the constitutional basis of the treaty-making process itself. These observations are as follows:

(a) Although the Australian Constitution [1] is federal, and on the United States model, it does not give to the Senate any role whatever in the making or ratification of treaties.

(b) The Constitution does not deal expressly at all with the making of treaties. The Queen is in contemplation of law the Head of the State in Australia, and the power to make treaties is by virtue of the common law part of the Queen's prerogative. The power to make treaties in Australia is, therefore, exercisable by the Executive Government of the Commonwealth, at common law and without express statutory provision.

[1] Commonwealth of Australia Constitution Act, 1900, as amended (an Act of the Parliament of the United Kingdom).

(c) Although the Queen is the Head of the State in Australia, her executive powers in Australia are exercisable by the Governor-General, and whereas, prior to the Second World War, it was customary to obtain from the Queen in London full powers for Australian plenipotentiaries in treaty-making of a formal kind, the constitutional conventions of the British Commonwealth of Nations have altered by reason of the increased international status of the member nations, and it is now customary for the Governor-General to confer the necessary authority on Australian representatives.

(d) Although the Australian Constitution is federal in character, the component States have no international status, and the making of treaties is a function of the Federal Executive alone.

(e) In Australian public law there is no distinction drawn, in matters of legal status, operation or effect, between the formal treaty strictly so-called and the less formal categories of international agreement.

(f) There are no judicial decisions on the treaty-making process in Australia, the attention of the High Court having been directed only to the constitutional competence of the Commonwealth to make laws implementing treaties and the like. This the Court discussed in the case of *The King against Burgess*, ex parte *Henry* (1936) 55 C.L.R. 608.

Treaty-making formalities

2. *Negotiation.* Australian practice governing the negotiation of international agreements varies according to the significance of the agreement. There are, in Australia, no laws, regulations or judicial decisions having any bearing on this matter, and the course to be followed in the negotiation of any particular agreement is determined largely by the circumstances of the case.

In the case of bilateral agreements, negotiation often takes place by correspondence, although this course is generally limited to agreements of comparatively minor significance. In other cases, the negotiation takes place at an inter-governmental conference. Likewise, multilateral conventions are usually negotiated at international conferences.

Australian representatives to these conferences are normally provided with credentials issued by the Minister for External Affairs.

3. *Signature.* There are no Australian laws, regulations or judicial decisions dealing with signature but there is a well-established practice in this matter. Before an Australian representative may sign an international agreement for Australia, he is issued with appropriate full powers. These full powers are issued by the Minister for External Affairs with the approval of the Governor-General, acting with the advice of the Federal Executive Council. Before the full powers are issued, it is usual to obtain the approval of either Parliament or Cabinet if the agreement is one of considerable political significance, or of the Minister of State concerned if the agreement is one of a less important nature. The several State Governments are also often consulted in matters concerning them before signature is authorized.

4. *Ratification.* The approval of the Federal Executive Council is necessary before any international agreement is ratified. Matters of this nature are placed before the Executive Council by the Minister for External Affairs. It is the general practice, however, for agreements of major

political significance to be submitted to Parliament for approval before ratification, but the act of ratification nevertheless is an executive act. Reference to Parliament is, of course, also necessary where legislation is required to give effect to the agreement. State Governments are also often consulted before agreements are ratified.

Once Executive approval for ratification has been given, an appropriate instrument of ratification is prepared and signed by the Minister for External Affairs. This instrument is then exchanged with the other government in the case of bilateral agreements or deposited with the depository government or authority in the case of multilateral agreements.

5. *Accession.* The practice in regard to accession by Australia to international agreements is similar to that in regard to ratification. Here again established practice governs the procedure in the absence of any relevant laws or judicial decisions.

5. Austria

(a) CONSTITUTION OF 1 OCTOBER 1920. TEXT FURNISHED BY THE AUSTRIAN FEDERAL CHANCERY. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

Article 10. (1) The federal authorities are competent to enact and execute legislation in the following matters:

. . .

(ii) Forcign affairs, including political and economic representation abroad and especially the conclusion of all international treaties;...

. . .

Article 16. (1) The *Laender* are bound, within the limits of their independent competence, to take such measures as are necessary for the execution of international treaties. Should a *Land* fail to comply in due time with this obligation, its competence in the matter, and particularly in the enactment of the necessary legislation, will pass to the Federation.

(2) In the execution of treaties with foreign States, the Federation enjoys supervisory rights, even in those matters which fall under the jurisdiction of the *Laender.* In such matters, the Federation has the same rights in relation to the *Laender* as in matters which fall ultimately under Federal administration *(mittelbare Bundesverwaltung).* See article 102.[1]

. . .

Article 50. All international political treaties and all other treaties, in so far as they contain provisions modifying existing laws, require for their validity the approval of the National Council.

Article 65 (1): The Federal President represents the Republic in external matters, receives and accredits diplomatic agents, approves the appointment of foreign consuls, appoints the consular representatives of the Republic abroad and concludes international treaties.

Article 66 (2): The Federal President may empower the Federal Government, or the competent members thereof, to conclude certain categories of international treaties not covered by the provisions of article 50.

[1] This article deals with the matters which fall respectively under the authority of the Federation and that of the *Laender.*