

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 depositary 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) Foreign 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*.

(b) MEMORANDUM OF 6 JUNE 1951 FROM THE AUSTRIAN FEDERAL CHANCERY,
 DEPARTMENT OF FOREIGN AFFAIRS. TRANSLATION BY THE SECRETARIAT
 OF THE UNITED NATIONS

Section I. Legislative provisions

General

1. The legislative provisions which in Austria govern the conclusion and execution of international treaties are contained in the Austrian Federal Constitution Act of 1 October 1920, as revised in 1929. This Act was revalidated by the Constitution (Revision of 1929) Revalidation Act of 1 May 1945. (*Staatsgesetzblatt* No. 4.)

Federal law and international law

2. It should be mentioned, first of all, that article 9 of the Federal Constitution Act determines the relationship between domestic law and international law. This article provides as follows: "The generally recognized rules of international law form an integral part of the law of the Federation."

The generally recognized rules of international law, therefore, have immediate force in domestic matters, and must be applied by all Austrian authorities, including the Courts, as if they were rules of municipal law.

Delimitation of competence between the Federation and the Provinces regarding the conclusion and execution of international treaties

3. According to the Austrian Constitution, Austria is a federal State.

Article 10, paragraph 1, sub-paragraph 2, and article 16 of the Federal Constitution Act, which are quoted below, deal with the division of competence, as between the Federation and the *Laender*, regarding the conclusion and execution of State treaties. Article 16 also gives the Federation a supervisory right over the *Laender* with regard to the execution of State treaties.

Article 10 of the Federal Constitution Act enumerates the matters in which the Federal authorities are competent so far as the enactment and execution of legislation are concerned:

"(1) The Federal authorities are competent to enact and execute legislation in the following matters:

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

Article 16 deals with the execution of State treaties, in so far as this comes within the competence of the *Laender*, and the supervisory rights of the Federation. The article reads as follows:

"(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 (see article 102)."

The conclusion of State treaties

4. Under article 65, paragraph 1, of the Federal Constitution Act it is one of the functions of the Federal President of Austria to conclude State treaties. This reads as follows:

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

The conclusion of treaties is interpreted to include their ratification.

The Federal President participates in the conclusion of State treaties by conferring, in virtue of the powers vested in him by article 65 (1), on each person who is to sign the treaty the full powers necessary for signature. The Federal Constitution also authorizes the Federal President, in certain circumstances, to transfer the authority to conclude State treaties to specified supreme organs of the Federation.

Article 66 reads as follows:

"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."

(As regards article 50, see paragraph 5 below.)

In virtue of article 66 (2) the Federal President's "Decision" (*Entschlüssung*) of 31 December 1920 was promulgated, empowering the Federal Government and the competent members of the Federal Government to conclude certain categories of State treaties. (*Bundesgesetzblatt* No. 49 of 1921.)

The Decision reads as follows:

"Pursuant to article 66 (2) of the Act of 1 October, 1920 (Federal Constitution Act) I hereby empower the authorities enumerated below to conclude State treaties which do not require the approval of the National Council under article 50 of the Federal Constitution Act, in so far as such treaties are not expressly described as State treaties, and in so far as their conclusion does not take place by the exchange of instruments of ratification:

"“(a) The Federal Government, if such treaties are concluded in the form of Government agreements;

"“(b) The competent Federal Minister, in consultation with the Federal Minister for Foreign Affairs, and, in cases where the Federal Ministry of Foreign Affairs is competent, the Federal Minister of Foreign Affairs, if such treaties are concluded in the form of departmental agreements;

"“(c) The competent Federal Minister, if such treaties are in the nature of purely administrative agreements.”"

Participation of the National Council and the Federal Assembly in the conclusion of State treaties

5. In connexion with the participation of Parliament in the conclusion of State treaties, article 50 of the Federal Constitution Act provides as follows:

“(1) All international political treaties, and other treaties in so far as they contain provisions modifying existing laws, require for their validity the approval of the National Council.

“(2) The provisions of article 42, paragraphs (1) to (4), and, if a constitutional law be modified by an international treaty, those of article 44, paragraph (1), are applicable, *mutatis mutandis*, to decisions of the National Council regarding the approval of international treaties.”

Paragraphs 1 to 4 of article 42 as amended in 1945 provide:

“(1) Every law passed by the National Council shall be communicated without delay by the President of the Council to the Federal Chancellor, who shall immediately communicate it to the Federal Council.

“(2) In so far as the Constitution contains no contrary stipulation, no law passed may be authenticated and promulgated unless the Federal Council has refrained from raising any reasoned objection thereto.

“(3) Such an objection must be communicated in writing to the National Council through the agency of the Federal Chancellor within eight weeks of the laying of the law before the Federal Council.

“(4) Should the National Council confirm its original decision in the presence of at least half its members, it shall be authenticated and promulgated. Should the Federal Council decide to raise no objection, or should no reasoned objection be raised within the period prescribed by paragraph (3), the law shall be authenticated and promulgated.”

Paragraph 1 of article 44 reads as follows:

“(1) Constitutional laws or constitutional provisions incorporated in ordinary laws may not be passed by the National Council except in the presence of at least one-half of its members, and by a majority of two-thirds of the votes cast; they shall be expressly designated as such (‘constitutional law’; ‘constitutional provision?’).”

Accordingly, the assemblies which, in Austria, represent the people, are enabled to decide whether a State treaty which is likely to lead to the amendment of existing legislation, or is of a political nature, should be concluded or not.

Classification of State treaties according to Austrian law

6 Briefly it may be said that, under the relevant legislative provisions, Austrian law recognizes *for domestic purposes* the following categories of international treaties:

(A) Treaties the conclusion of which is reserved for the Federal President. They comprise:

(i) Treaties which involve amendments to existing legislation. The question whether the provisions of a State treaty involve such amendments is one to be decided by the competent Federal Minister.

(ii) Political treaties. The decision as to whether a treaty is of a political nature or not is reserved for the Council of Ministers.

(iii) Treaties the terms of which require that they shall be ratified by the Federal President.

As already stated in the preceding paragraphs of this memorandum, the conclusion of the treaties referred to under (i) and (ii) above requires the approval of the National Council.

(B) Treaties for the conclusion of which the Federal President has given a general authorization to certain supreme organs of the Federation. (See the Decision quoted in paragraph 4 of this Memorandum.) These are:

(i) "Government agreements"—that is to say, treaties which are not of a political nature and do not involve amendments to existing legislation, the conclusion of which is not reserved to the Federal President (either because they are described as "State treaties", or because their terms require that they shall be ratified by the Federal President) and the negotiation of which concerns more than one Federal Ministry.

These are concluded by the Federal Government, which empowers the Federal Chancellor or one of the Federal Ministers, as the case may be, to proceed to the formal conclusion of the treaty.

(ii) "Departmental agreements", that is to say treaties the conclusion of which is not reserved to the Federal President, which do not involve amendments to existing legislation, and are not of a political nature, and which are concluded by a single Federal Ministry in consultation with the Office of the Federal Chancellor Foreign Affairs Section, or by the Federal Minister of Foreign Affairs if the latter is competent.

(iii) "Administrative agreements", that is to say, treaties the conclusion of which is not reserved to the Federal President, and which, furthermore, do not involve amendments to existing legislation, and are not of a political nature, and are concluded by a Federal Ministry as being within the scope of its administrative functions. These are taken to include agreements of a purely technical nature, concluded by individual Federal Ministries, in respect of the services for which they are responsible, for example, railway, postal and telegraph agreements of purely local importance.

Entry into force of State treaties for the purposes of municipal law

7. With regard to the entry into force of State treaties which are to become part of Austrian municipal law, article 49 (1) of the Federal Constitution Act provides as follows:

"(1) Federal laws and the international treaties specified in article 50 shall be promulgated by the Federal Chancellor in the *Bundesgesetzblatt*. In the absence of any specific decision to the contrary, they enter into force on the day following that on which the issue of the *Bundesgesetzblatt* containing the promulgation is published and, in the absence of any specific decision to the contrary, they are applicable throughout the entire Federal territory.

"(2) A special Federal law shall be issued regarding the *Bundesgesetzblatt*."

Publication of State treaties in the Bundesgesetzblatt

8. The Federal legislation regarding the *Bundesgesetzblatt* referred to in paragraph 7 of this Memorandum contains the following provisions relating to the publication of State treaties:

Federal Act of 7 December 1920, BGBl. No. 33, regarding the *Bundesgesetzblatt* (as amended by the Federal Act of 4 July 1922, BGBl. Nr. 435, and article 14 of the Administrative Indemnity Act of 21 July 1925, BGBl. Nr. 257). This provides:

Article 2 (1) "The *Bundesgesetzblatt* is intended for the publication of:

"(b) State treaties approved by the National Council, including declarations of accession to multilateral international treaties."

(3) "State treaties which do not require the approval of the National Council may also be published in the *Bundesgesetzblatt*. The same applies to declarations, made in similar circumstances, of accession to multilateral international treaties..."

Section II. Practice observed in the conclusion of State treaties

General

Treaty negotiations begin when it has been established that a foreign State is prepared in principle to conclude a treaty with Austria on some question.

Conclusion of treaties by exchange of notes

1. The treaty negotiations may be conducted through an exchange of notes. These negotiations may lead up to a formal record announcing the common desire of the two States to conclude a treaty.

Conclusion of treaties by representatives

2. When more important matters are being dealt with, the treaty negotiations are conducted orally by representatives.

For this, the following procedure has been developed:

(a) In the case of economic matters the representatives of the two parties usually conduct negotiations without written authorization and initial the results of their negotiations. The head of the Austrian delegation reports on the results of the treaty negotiations, whereupon the competent Federal Ministry submits a proposal to the Council of Ministers requesting the latter to approve the agreement, and to appoint a plenipotentiary to sign the treaty on behalf of the Federal Government. If the negotiations are conducted in a place where Austria maintains a diplomatic mission, the rule is that the head of this diplomatic mission is authorized to sign.

(b) In the case of negotiations with a State on other matters, and when representatives are to be sent to a diplomatic conference of States for the conclusion of a multilateral treaty, the competent Federal Minister, before the beginning of the treaty negotiations, submits a proposal to the Council of Ministers to the effect that it shall resolve to send repre-

sentatives to attend the negotiations. At the same time, the Federal Minister applies for authorization from the person competent in the particular case to obtain full powers for the representatives to participate in the negotiations, and, if necessary, to sign the treaty. (The person competent will be the Federal President or the competent Federal Minister, as the case may be; see paragraph 3 below.)

The issuing of the full powers

3. The fact that Austrian constitutional law recognizes several different categories of State treaties, must be taken into account even at the early stage when an application is made to the Council of Ministers, for the purpose of authorizing negotiations for a treaty.

If the treaty is one the conclusion of which falls within the competence of the Federal President, then the full powers are issued by him. In the case of government agreements, the full powers are issued by the Federal Chancellor; in the case of departmental agreements, by the competent Federal Minister after consultation with the Federal Minister of Foreign Affairs; and, in the case of administrative agreements, by the competent Federal Minister.

In this connexion it is relevant to note the terms of article 67 (2) of the Federal Constitution Act, with respect to the Federal President's signature:

"(2) All acts of the Federal President, unless otherwise specified by the terms of the Constitution, require for their validity the countersignature of the Federal Chancellor or of the competent Federal Minister."

Accordingly, the full powers issued by the Federal President must be countersigned by the Federal Chancellor or by the competent Federal Minister.

Reservations to treaties

4. Reservations to treaties, if any, are for the most part made in pursuance of internal departmental instructions at the time of the signature of the treaty in question.

Special procedure for treaties under article 50 of the Federal Constitution Act, submission to the National Council and ratification

5. If the treaty is one which, according to article 50 of the Federal Constitution Act, must be submitted to the approval of the National Council, the competent Federal Ministry, when the treaty has been signed, introduces a further proposal in the Council of Ministers requesting the Council of Ministers to submit the signed treaty to the National Council for approval. The proposal to the Council of Ministers must also contain a request for a proposal to the Federal President that, after signature, he should, by his ratification, give effect to the approval of the treaty by the National Council.

The requirement of ratification is as a rule contained in the text of the treaty itself. If in an exceptional case there should be no ratification clause in such a treaty, the treaty must nevertheless be ratified in accordance with Austrian law. The effect of such ratification is, however, merely domestic.

When the treaty has been ratified by the parties, the instruments of ratification are exchanged.

Publication in the Bundesgesetzblatt

6. After completion of all the prescribed formalities, the treaty must (or may, as the case may be) be published in the *Bundesgesetzblatt* (see section I, paragraph 8).

Departmental and administrative agreements are not usually published in the *Bundesgesetzblatt*.

Accession to multilateral treaties

7. Accessions to multilateral treaties take place in conformity with the accession clause contained in the text of the treaty. Internally, the same procedure is observed in Austria for accessions to multilateral treaties as for accession to bilateral treaties. In both cases, a proposal must be introduced in the Council of Ministers specifying the category of treaty which is to be the subject of accession. If the treaty involves amendments to existing legislation, or is of a political nature, the agreement which is to be the subject of accession must be submitted to the National Council. After the latter has given its approval, the Federal President signs the instrument of accession countersigned by the Federal Chancellor, in which, on behalf of the Republic of Austria, he announces its accession to the agreement and promises faithfully to give effect to the terms thereof. This step completes the ratification procedure required by Austrian law. The Austrian representative is thereupon instructed to deposit the instrument of accession with the depositary named in the treaty.

If, however, the treaty in question is a Government agreement as defined by Austrian law, the Austrian instrument of accession requires the signature of the Federal Chancellor.

6. Belgium

(a) CONSTITUTION OF 7 FEBRUARY 1831. TEXT FURNISHED BY THE
BELGIAN GOVERNMENT

Article 68: — « Le Roi fait les traités de paix, d'alliance et de commerce. Il en donne connaissance aux Chambres aussitôt que l'intérêt et la sûreté de l'Etat le permettent, en y joignant les communications convenables.

« Les traités de commerce et ceux qui pourraient grever l'Etat ou lier individuellement des Belges, n'ont d'effet qu'après avoir reçu l'assentiment des Chambres.

« Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi. Dans aucun cas, les articles secrets d'un traité ne peuvent être destructifs des articles patents. »

(b) MEMORANDUM OF 6 MARCH 1951 FROM THE BELGIAN GOVERNMENT

1. Les questions relatives à la conclusion et à la mise en vigueur des traités et conventions conclus par la Belgique ont, jadis, fait l'objet d'études qui ont abouti à la mise sur pied d'une procédure dont les grandes lignes