

(2) No international agreement requiring or likely to require legislation in order to give effect thereto shall be ratified except with the approval of the Parliament.

(3) No international agreement involving a charge upon the revenues of the Union shall be ratified unless the terms of the agreement shall have been approved by the Chamber of Deputies.

Explanation. This section shall not apply to inter-governmental agreements or conventions of a technical or administrative character.

*Article 214.* No international agreement as such shall be part of the municipal law of the Union, save as may be determined by the Parliament.

#### THIRD SCHEDULE

List I. Union Legislative List.

. . .

2—External Affairs.

. . .

(5) The entering into and implementing of treaties and agreements with other countries.

### 11. Byelorussian S.S.R.

CONSTITUTION OF 23 DECEMBER 1936 (AS AMENDED IN 1947). TEXT FROM BYELORUSSIAN OFFICIAL PUBLICATION OF THE BSSR, MINSK, 1950. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

*Article 16a.* The BSSR. has the right to enter into direct relations with foreign States and to conclude agreements and exchange diplomatic and consular representatives with them.

*Article 43.* The Council of Ministers of the Byelorussian SSR.:

. . .

(g) Exercises guidance in the sphere of the relations of the Byelorussian SSR. with foreign States on the basis of the general procedure<sup>1</sup> established by the USSR. governing the relations of Union Republics with foreign States.

### 12. Cambodia<sup>2</sup>

CONSTITUTION OF 2 JUNE 1947. TEXT PUBLISHED BY THE MINISTÈRE DE LA JEUNESSE, DES ARTS ET DES LETTRES (*La documentation française, notes et études documentaires*, 2 JUNE 1947, N° 633)

*Article 45:* Le Roi signe les traités passés avec la France ou autres Etats associés de l'Union Française et les ratifie en vertu d'un vote de l'Assemblée Nationale. Il désigne les personnalités chargées de fonctions ou de missions diplomatiques à l'étranger.

<sup>1</sup> See under title "USSR." in this volume. An identical provision appears in the Constitutions of all the other Union Republics (sixteen in all).

<sup>2</sup> Cambodia is a constitutional monarchy and a member of the French Union.

*Article 46: Le Roi a la faculté de déléguer en partie ses pouvoirs en ce qui concerne ceux indiqués par les articles 42 et 45 de la présente constitution.*

### 13. Canada

#### MEMORANDUM OF 21 JULY 1952 FROM THE GOVERNMENT OF CANADA

1. Canada has very few statutory provisions relating to the exercise of the treaty-making power. The rules followed, so far as they can be ascertained, are for the most part founded on unwritten custom.

2. The Constitutional Authority to negotiate and conclude treaties is part of the Royal Prerogative, which in practice is exercised in the name of the Crown by the Governor-General in Council on the advice of the Secretary of State for External Affairs, who is responsible (under the Department of External Affairs Act, R.S.C. 1927, c. 65) for the negotiation and conclusion of treaties and other international agreements.<sup>1</sup>

3. There is no law imposing any obligation on the Government of Canada to refer treaties or other international agreements to the Parliament of Canada for approval prior to ratification. International obligations are entered into in many instances without reference to Parliament. The negotiation and conclusion of a treaty or other international agreement is an executive act.

4. Before the Government of Canada assumes an international obligation, two things must be considered. First, there is the question whether the provisions of the treaty or obligation accord with existing Canadian law and secondly whether any action proposed to be taken to implement the treaty is authorized by existing law. Entry into an international obligation or treaty, although binding on Canada internationally, does not give it force of law in Canada. Consequently the power of the Federal Government to implement the treaty frequently, though not always, requires domestic legislation to be passed by the Parliament of Canada or the Provinces, depending upon whether the subject matter is within federal or provincial jurisdiction according to the British North America Act.

5. The only other statutory provision in Canadian law referring to treaty-making powers is to be found in section 132 of the British North America Act, which reads as follows:

"The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries."

This section of Canada's Constitution has in recent years given rise to some difficulty, although, at the time the Canadian Constitution was drafted, it fulfilled our requirements because Canada did not normally negotiate or conclude its own treaties as it does to-day. Various judicial decisions since 1867, however, have developed a constitutional pattern which at present does not permit the Federal Parliament to implement certain types of treaties without concurrent legislative action on the part of the Canadian Provinces.

<sup>1</sup> International postal agreements are the responsibility of the Postmaster-General under the Post Office Act (S.C. 1951-1st Sess. c. 57).