

Lordships are of opinion that the answer to the three questions should be that the Act in each case is *ultra vires* of the Parliament of Canada, and they will humbly advise His Majesty accordingly.

#### 14. Ceylon<sup>1</sup>

MEMORANDUM OF 18 MAY 1951 FROM THE MINISTRY OF EXTERNAL AFFAIRS

1. There is no general legislation in Ceylon, and no provision in the Constitution, governing the negotiation and conclusion of treaties and other international agreements; nor are there any decrees, regulations or judicial decisions having a bearing on this subject.

2. However, article 4 (2) of the Ceylon (Constitution) Order in Council, 1946, provides:

“All Powers, authorities and functions vested in Her Majesty or the Governor-General shall, subject to the provisions of this Order, and of any other law for the time being in force, be exercised as far as may be in accordance with the constitutional conventions applicable to the exercise of similar powers, authorities and functions in the United Kingdom by Her Majesty...”

Article 45 of the same Order provides:

“The executive power of the Island shall continue vested in Her Majesty and may be exercised, on behalf of Her Majesty, by the Governor-General in accordance with the provisions of this Order and of any other law for the time being in force.”

3. In practice, international agreements are negotiated and concluded under the authority of the Minister of External Affairs acting with the approval of the Cabinet. The agreements, when concluded, are laid before Parliament for information or, when appropriate, for approval before ratification.

#### 15. Chile

(a) CONSTITUTION OF 18 SEPTEMBER 1925 (AS AMENDED). TEXT FURNISHED BY THE PERMANENT DELEGATION OF CHILE. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

*Article 72.* Special functions of the President of the Republic are:

. . . .

(16) To maintain political relations with Foreign Powers, receive their agents, admit their consuls, conduct negotiations, make preliminary stipulations, conclude and sign all treaties of peace, alliance, truce, neutrality, commerce, concordats and other conventions. Treaties before their ratification must be presented to the approval of Congress. The discussions and

<sup>1</sup> An External Affairs Agreement was concluded between the United Kingdom and Ceylon in November 1947, as one of the preliminaries to the Ceylon Independence Act 1947, which accorded Ceylon full responsible status within the Commonwealth. This Agreement provided that, in external affairs generally, the governments of Ceylon and the United Kingdom will conform to the principles and practice observed by other members of the Commonwealth.

deliberations on these matters shall be in secret if the President of the Republic so demands.

*Article 43.* Exclusive functions of Congress are: . . .

(5) To approve or withhold approval of treaties that, before their ratification, the President of the Republic shall present to it. All of the above resolutions shall be subject in Congress to the same procedure as a law.

(b) MEMORANDUM OF 29 MAY 1951 FROM THE PERMANENT DELEGATION OF CHILE. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS

1. The President of the Republic exercises the function assigned to him by article 72, paragraph 16 of the Constitution through the Ministry of Foreign Affairs, in accordance with article 1 (*e*) of Organic Decree No. 402, of 11 May 1932, and article 2 (*j*) of Supreme Decree No. 280 *bis*, of 28 February 1946, organizing the Department of the Under-Secretary of Foreign Affairs. The latter provides as follows:

“The Ministry of Foreign Affairs is responsible in general for dealing with all matters connected with the external relations of the country, in accordance with instructions imparted by the President of the Republic, and particularly the following:

“(j) The study, negotiation, drafting, submission for the approval of Congress, promulgation, registration, execution, and denunciation, of treaties and international agreements; to accede to open conventions or act as a depository for them, in agreement with the competent official bodies.”

2. It has been generally understood that a distinction should be drawn between treaties in the strict constitutional sense and international undertakings which, as a group, might be called agreements in a simplified form, requiring no parliamentary approval or ratification. The latter, under the Chilean constitutional system, may refer only to matters within the ordinary competence of the Executive Power and have not the effect, under domestic law, of an Act of Congress. They include administrative agreements, agreements specifying measures of execution, the interpretation of previous conventions and other conventions of a similar type.

3. Commercial conventions in Chile enjoy a special legal position. Article 2 of Act No. 5142 of 10 May 1933, contains the following provisions:

“The President of the Republic is authorized to change the rates of duty established in the Customs Tariff when the interests of the country make it advisable to put into force a commercial convention which has not yet been ratified, and only pending the ratification of such convention.

“These changes in rates of duty shall come into force in each case on the date fixed by the President of the Republic and shall remain in force for a period of 12 months.”

4. As regards judicial decisions, it may be said that these are unanimous in recognizing that a treaty concluded and promulgated in the regular manner has the force of law in Chile.

5. In general terms, the practice followed by the Chilean Government in respect of the conclusion of treaties is as follows:

The Government of Chile appoints a plenipotentiary, who, if the convention is to be signed in Chile, is usually the Minister of Foreign Affairs, but negotiations are generally carried out by qualified officials of the Ministry and of the competent technical bodies. When the treaty is to be negotiated in a foreign country, the Chilean plenipotentiary is usually the diplomatic representative accredited to that country, or in special cases, a plenipotentiary *ad hoc*, or the delegate, or delegates, to the international body or conference concerned, advised, when necessary, by experts who also take part in the negotiation or discussion of the agreement. It often happens that the convention is signed by a different plenipotentiary who has had no part in the negotiations, acting on direct instructions from the Ministry. When the treaty has been signed in satisfactory terms the Ministry of Foreign Affairs submits its official text, in Spanish, to the approval of the National Congress by means of a written Message signed by the President of the Republic and the Minister of Foreign Affairs.

6. The approval of the National Congress is communicated to the Ministry of Foreign Affairs by an official letter empowering the President of the Republic to proceed to the ratification of the said treaty. An instrument of ratification is drawn up, and signed, by the President of the Republic and by the Minister of Foreign Affairs. When the other signatory issues a similar instrument of ratification, the ratifications are exchanged in the case of bilateral treaties; in the case of multilateral treaties, Chile's ratification is deposited.

7. Once the ratifications have been exchanged or deposited, the treaty is considered as binding upon the Government of Chile. Nevertheless the Ministry of Foreign Affairs, in conformity with Decree No. 328 of 21 June 1926, issues a decree promulgating the international treaty concerned, and this decree is signed by the President of the Republic and the Minister of Foreign Affairs, an authorized copy being issued for publication in the Official Gazette.

8. All treaties and agreements which have entered into force and have been promulgated are sent for registration with the Secretariat of the United Nations, in conformity with article 102 of the Charter.

9. Accession to an international convention is subject to the same procedure as ratification. If the text of a treaty requires its acceptance, the constitutional procedure for ratification is followed, as there are no provisions relating to the new term "acceptance".

## 16. China

CONSTITUTION OF 1 JANUARY 1947. TRANSLATION PUBLISHED BY  
THE CHINESE MINISTRY OF INFORMATION, NANKING 1947

*Article 38.* The President shall, in accordance with the provisions of the Constitution, exercise the powers of conclusion of treaties, declaration of war, and making of peace.