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Treaty Procedure -
Canada

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73/004

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ACCESS TO INFORMATION
LAOCS & NOTION
EXAMINÉ
DATE
26/11/75
[Signature]

DEPARTMENT
OF
EXTERNAL AFFAIRS

MINISTÈRE
DES
AFFAIRES EXTÉRIEURES

20-3-4-CPA

TOP OF FILE

MEMORANDUM CONCERNING CANADIAN
LAWS AND PRACTICE WITH RESPECT TO
THE CONCLUSION OF TREATIES

1. Canada has very few statutory provisions relating to the exercise of the treaty-making power which is, for the most part, founded upon constitutional custom. The power to negotiate and conclude treaties, as to do other acts of an international character, is a part of the royal prerogative which the Crown has delegated to the Governor-General by Letters Patent. In practice, this part of the prerogative is exercised on the advice of the Secretary of State for External Affairs, the responsible Minister under the Department of External Affairs Act (R.S.C. 1952, c. 68). (1)

2. As the negotiation and conclusion of treaties is an executive act, there is no legal obligation upon the Government of Canada to consult the legislature, i.e. the Parliament of Canada. Accordingly, legislative approval is not a part of the ratifying process. However, it is the practice of the Secretary of State for External Affairs to table in both the House of Commons and the Senate the texts of most international agreements which would not otherwise come to the attention of Parliament. Moreover, a practice has evolved over the years by which Parliamentary approval is normally sought for treaties involving large expenditures of public funds or heavy responsibilities either political, economic or military. Such approval is obtained by means of a joint Resolution in the House of Commons and the Senate. Treaties requiring implementing legislation are usually introduced to Parliament with the legislation.

3. Current treaty action is brought to the attention of Parliament by the periodic deposit of a list of all Orders in Council, including those authorizing the conclusion of international agreements. In addition, international agreements are notified to Parliament in the Annual Report of the Department of External Affairs. A report on treaty action also appears in the Department's monthly bulletin, "External Affairs". The texts of most agreements are published by the Queen's Printer in the "Canada Treaty Series".

4. The assumption of an international obligation, although binding upon Canada internationally, does not necessarily have the force of law within Canada. Such an obligation frequently, though not always, requires for its implementation the enactment of domestic legislation either by the Parliament of Canada or by the provincial Legislatures, depending upon whether the subject matter is within federal or provincial jurisdiction under Sections 91, 92 and 93 of the British North America Act. (The general principles governing the implementation of treaties in Canada as

... 2

(1) International postal agreements are the responsibility of the Postmaster General under the Post Office Act (R.S.C. 1952 c. 212).

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a federal state, were laid down by the Judicial Committee of the Privy Council in 1937 in the Labour Conventions' Case (A.C. 1937, p. 326), which also gave a judicial interpretation of Section 132 of that Act). Before Canada assumes certain types of international obligations, therefore, the Provinces may be consulted and in certain circumstances, Canada may seek the inclusion of a federal state clause, or may make a federal state reservation.

December 19, 1962.

CLOSED VOLUME



VOLUME COMPLET

DATED FROM À COMPTER DU	66-04-01	TO JUSQU' AU	75-07-31
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AFFIX TO TOP OF FILE — À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS — NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE — POUR CORRESPONDANCE ULTÉRIEURE VOIR	
FILE NO. — DOSSIER N°	VOLUME
20-3-4-CDA	3

CHARGE-OUT DATE - DATE D'ENVOI

~~DEC 31 1997~~

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES AUG 14 1975

To/A: FEA / From/De: ACRA

SECURITY / Sécurité

Att'n: Mrs Bruce / UNCLASSIFIED

DATE July 30, 1975

NUMBER / Numéro 599

TO / À Under-Secretary of State for External Affairs, OTTAWA FIA

FROM / De Canadian High Commission, BRIDGETOWN

REFERENCE / Référence Circular Document Admin No. 33/75 of June 6, 1975

SUBJECT / Sujet Canadian Treaty Procedure

FILE	DOSSIER
OTTAWA	
20-3-4-COA	
MISSION	
12	28

ENCLOSURES / Annexes

DISTRIBUTION

BY OTTAWA

CIDAOTT/ VP, Finance and Administration

As a post responsible for concluding or administering a number of bilateral or multilateral documents with entities ranging from independent states to semi-dependent territories and a development bank, we read with interest the circular document under reference. Most of the documents in question are co-operative arrangements relating to development assistance as discussed in Section VII. While we shall, in future, bear in mind the role of Treaty Section, we should mention that any arrangement, undertaking or loan agreement concluded to date in our territory has been drafted and approved in Ottawa following interdepartmental agreement, and we assume that copies are readily available to you from CIDA Headquarters.

2. Another point we have noted (Section VII-3) is the suggestion that understandings which refer to financial commitments or to privileges and immunities might better be drawn up as binding agreements. This has not so far been the practice in the Eastern Caribbean, but we have encountered no serious difficulty in implementing, for example, customs privileges on entry for CIDA advisers. Moreover, these undertakings are convenient for the semi-dependent Associated States, since reference to the U.K. government is not, apparently, required. While no agreement is to be regarded lightly, a "binding" agreement surely calls for some consideration of enforcement and, in the context of development assistance, we feel a "gentleman's" agreement offers desirable flexibility.

3. Our Memoranda of Understanding are concluded in the English language only. The original text is provided to us by CIDA Headquarters in English only. We would prefer you to consult with CIDA on this and other points, and have thus copied this letter to its Vice President (Finance and Administration.)

RECEIVED

AUG 14 1975

In Legal Advisory Department of External Affairs

DISTRIBUTION "by OTTAWA" done in ACR

AUG 13 1975

DISTRIBUTION "par OTTAWA" effectuée par ACR

M. Hubert saw the advance copy of this. I don't think any response is called for
T. Barry

[Signature]
High Commission

File ✓
Diary
Div.diary
Circ.diary

FLA/J.-P.Hubert, 2-9553/rc

FLP

UNCLASSIFIED

J.-P. Hubert

June 17, 1975

SSEA's involvement in signatures of some
bilateral agreements.

20-3-4-CDA	
12	/

Mr. Robertson

Mr. Stanford

FLA/Treaty

Further to our recent discussion of June 12 with regard to whether this Bureau should recommend to the SSEA that he insist on signing bilateral agreements concluded by Canada whenever the signature takes place in Ottawa and he is available, (this in the context of the forthcoming signature of the Double Taxation Agreement with Israel), the following statistics, compiled by Mrs. Bruce, will be of interest to you. Note should be taken that they do not encompass agreements which have taken the form of Exchanges of Letters, and that they only take into account agreements signed in Ottawa.

a) Double Taxation Agreements:

- Period covered: 1970 - 1975
- Total number of agreements signed in Ottawa: 20
- Signed by:

Minister of Finance:	17
SSEA (acting):	1
Minister of Justice:	1
Other:	1

b) Air Agreements:

- Period covered: 1946 - 1975
- Total number of agreements signed in Ottawa: 18
- Signed by:

SSEA:	8
Minister of Transport:	8
Minister of Defence:	2

.../2

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c) Commercial Agreements:

- Period covered: 1924 - 1973
- Total number of agreements signed in Ottawa: 31
- Signed by: Minister of IT&C: 14
SSEA: 8
Jointly by SSEA and
Minister of IT&C: 6
Minister of Justice: 1
Minister of Immi-
gration: 1
Governor of Wheat
Board: 1

2. As you can readily see from these samples, the practice seems to have been, so far, for the Ministers of the Departments primarily concerned with the substance of these agreements to be called upon with some regularity to sign them. (In the case of the Double Taxation Agreements one could even say that it appears to have been an exception that the SSEA signed one of them).

3. We attach for your information a copy of the most recent Memorandum to the Minister with regard to the signature of a Double Taxation Agreement, dated June 4, 1975, and prepared by ECL. The Memorandum in question did draw the SSEA's attention to the question of whom he thought should be signing these agreements. But the original was returned to ECL with the simple mention "Seen by the Minister". Either the SSEA did not pay any special attention to the questions raised, or he chose to avoid them for the time being.

4. It would appear, on the basis of the above statistics, that we would not stand on very firm "historical" grounds should we wish, as you had thought at one point, to recommend to the SSEA that whenever he is available he should sign all of our bilateral agreements. What do you think? This Bureau might, if you deem it advisable, under the present circumstances, bring this subject to the attention of Mr. A.S. McGill, the recently appointed Special Assistant to the Under-Secretary (SAR), and whose principal task has been described as the conduct of a study on "the Role of the Department of External Affairs".

J.-P. HUBERT

Jean-Paul Hubert

Handwritten signatures and initials

Department of External Affairs



Canada

Ministère des Affaires extérieures

UNCLASSIFIED

OTTAWA, June 6, 1975

File No. 20-3-4-CDA	
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CIRCULAR DOCUMENT

Admin. No. 33/75(FLA)

CANADIAN TREATY PROCEDURE

The attached document is for the assistance of members of the Department and others in Ottawa and abroad. It contains information concerning Canadian Treaty Procedure to be followed in respect of international agreements binding on Canada and informal instruments not intended to create formal legal obligations enforceable under international law. The French language version will be published as soon as possible.

This Circular Document is cancelled effective December 31st, 1975.

Handwritten signature
 Under-Secretary of State
 for External Affairs

TO: HEADS OF POST
 DIRECTORS GENERAL
 DIRECTORS

CANADIAN TREATY PROCEDURE

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EXAMPLES OF TREATY DOCUMENTS

Annex "A"	Submission to Council requesting the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "B"	Submission to Council requesting authority to sign
Annex "C"	Order in Council authorizing the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "D"	Order in Council authorizing signature
Annex "E"	Instrument of Full Powers
"E-1"	Instrument of Ratification, Acceptance, etc., of a Multilateral Agreement
Annex "F"	GATT Notification
Annex "G"	Instrument of Ratification of a Bilateral Agreement
Annex "H"	Protocol of Exchange
Annex "I"	Consular Understanding

CANADIAN TREATY PROCEDURE

The following information concerning Canadian Treaty practice is intended to assist members of the Department and others, whether in Ottawa or abroad, involved in the negotiation of international agreements to be concluded between Canada and other countries. The procedures described apply to any international agreement concluded between Canada and another State in written form and intended to be binding under international law, whether embodied in a single instrument (e.g. a Treaty, Convention, Agreement, Protocol, etc.) or in two or more related instruments (e.g. Exchanges of Notes or letters intended to constitute such an agreement), and whatever its particular designation. They do not apply to such informal instruments as Memoranda of Understanding, Consular Understandings or other administrative arrangements, which are not intended to create formal legal obligations enforceable under international law. For a note on "Arrangements and Understandings" see paragraph VII of this Circular Document.

I CONSTITUTIONAL REQUIREMENTS

1. Before the Government of Canada can enter into any international agreement certain necessary policy approval and legal authorization must be sought and obtained. There are two steps in this process:

- (a) The first step, to secure policy approval, normally takes the form of a Memorandum to Cabinet, signed by the Minister or Ministers having substantive responsibility for the subject matter of the proposed agreement, recommending its conclusion. Our Minister should either join in signing the Memorandum to Cabinet, or concur in the recommendations. In those cases where Cabinet has previously decided on the general policy guidelines to govern Canadian participation in international arrangements to be embodied in an international agreement and has approved a draft version of the agreement, a second Memorandum to Cabinet is not usually required if the only changes to the draft agreement in the interim are minor in nature: in such cases it is usually sufficient to obtain the agreement of the Ministers most directly concerned.

... 2

- (b) The second step is to obtain executive authority to sign the agreement on behalf of the Government of Canada and to take any necessary subsequent action (e.g. ratification, acceptance or approval) to bring the treaty into force for Canada, if it does not come into force merely on signature. Where the period for signature has expired then an act known as accession is the normal means of establishing the consent of a state to be bound by a treaty (its effect combines the two stages of signature and ratification into one). In Canada this executive authority is an element of the Royal Prerogative which is exercised by the Governor General in Council and which is sought through a Submission to Council. The Submission to Council seeking authority for signature (and sometimes also for ratification or for accession) should always be signed by our Minister with the concurrence of any other Minister or Ministers involved. Although it is always basically the same in form, it will differ in specific content depending on whether the agreement in question is: (i) a single formal instrument such as a Convention, Agreement or Treaty, or (ii) constituted by an Exchange of Notes. The Submission should, in the normal course, be prepared by the Division dealing with the substantive policy aspects of the agreement with the assistance, if required, of the Treaty Section, Legal Advisory Division. The Submission to Council should, in any event, always be cleared through Treaty Section before it is submitted to the Minister for signature. If the concurrence of any other Minister or Ministers is involved, their signatures should be obtained before the Submission is placed before our Minister for his signature. Examples of the form of Submissions to Council in cases (i) and (ii) above are attached at Annex "A" and Annex "B". It is important to note that a Submission to Council seeking authority for the signature of an Agreement (Convention, Protocol, etc.) must always state the name or names of one or more specific person or persons to be authorized to sign on behalf of the Government of Canada. Under the arrangements which are at present in effect for Privy Council Meetings, the signed Submission should be in the hands of the Assistant Clerk of the Privy Council Office (at present Mr. J. Cross) before Friday noon if the document

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is to be considered at the next meeting of Council, which will normally take place the following Tuesday morning. It is helpful to Mr. Cross if a copy of the Submission is forwarded to him in Room 1531 of the Varette Building by the originator of the document at the same time as the original goes to the Secretary of State for External Affairs for signature.

If the Submission is approved by the Governor General in Council, an Order in Council (samples attached at Annex "C" and Annex "D") will be issued. It is this document which constitutes the executive authority to conclude the agreement on behalf of Canada.

2. Under international law and practice the signature of a formal agreement (e.g. Agreement, Convention, Protocol) by any person other than the Head of State, the Prime Minister or the Secretary of State for External Affairs normally requires the issuance by the Secretary of State for External Affairs of an Instrument of Full Powers (sample attached at Annex "E") which confirms that a specific person has indeed been authorized to sign on Canada's behalf. This document, which designates a specifically named person or, in the alternative, another specifically named person or persons as having been authorized to sign the agreement on behalf of the Government of Canada, is prepared in Treaty Section. While an agreement constituted by an Exchange of Notes requires an Order in Council authorizing the conclusion of an agreement in this form and naming the signatory, no Instrument of Full Powers is normally needed. When an Exchange of Notes constituting an agreement takes place in Ottawa, the Canadian note should be signed by the Secretary of State for External Affairs. Abroad, the Canadian note, which forms part of an Exchange of Notes constituting an agreement, would normally be signed by the Canadian Ambassador or High Commissioner in the country concerned or, in the absence of the latter, by the Chargé d'Affaires a.i., or Acting High Commissioner, as the case might be. Very infrequently, a high-ranking visiting Canadian official may be authorized to sign but this is a rare occurrence. In every case, signature should not take place unless and until notification from Ottawa has been received that the necessary Order in Council authority has been obtained.

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II LANGUAGE OF CANADIAN TREATIES

1. All Canadian bilateral treaties, howsoever called, must be concluded in both official languages. Where neither English nor French is the official language of the other state party, a third language version (and possibly even a fourth) may also be required.
2. In the case of agreements in the form of Exchanges of Notes or letters, the Canadian note or letter must be done and signed in two versions, one each in English and French. The note or letter from the other party is done in whatever official language or languages it uses for such purposes.
3. In the case of more formal treaties, which are set out in a single instrument to be signed by both Canada and by the other state Party, two original copies of the treaty are required, each one of which incorporates authentic texts in English and in French and in whatever other language or languages are required by the other state.

III SIGNATURE IN OTTAWA

1. If signature of an Agreement or Exchange of Notes is to take place in Ottawa, the text, which is normally first prepared in draft in the policy Division concerned, is submitted to Treaty Section to ensure that it conforms with Canadian treaty practice and the rules of international law as embodied in the 1969 Vienna Convention on the Law of Treaties and in customary international law. It is the responsibility of the action Division to arrange for translation and to provide Treaty Section with an accurate version in both official languages. Typing of the text of the Agreement or the Canadian Note forming part of an Exchange of Notes constituting an agreement will normally be done in final form in Treaty Section. In the case of a formal agreement, the document is ribboned and sealed in Treaty Section after a final verification of the texts by representatives of the foreign mission concerned and of Treaty Section has taken place.
2. The policy Division, in consultation with the Office of the Minister or other signatory, will determine the date, place and time of signature. This information should at once be passed to the Registrar of Treaties, Mrs. J.K. Bruce, so that the necessary signing arrangements, for which Treaty Section is responsible, may then be made. The policy

Division concerned is responsible for the preparation of the press release; for any short speech which the Minister may wish to make following signature; for the preparation of the guest list and the issue of invitations to the signature ceremony and the reception to follow, if there is to be one. A copy of the guest list should be made available to the Registrar of Treaties, to Protocol Division and to the appropriate officials in either the Senate, the House of Commons or the Lester B. Pearson Building, depending upon the place of signature. The Registrar of Treaties will reserve the room where the ceremony is to take place, inform the Press Office, arrange for appropriate flags and, where appropriate, in consultation with Central Staff, arrange for the serving of champagne or coffee. Protocol Division should be provided with a photocopy of any memorandum to the Minister on which the latter has indicated his approval of arrangements for a reception to follow signature of an agreement. The Canadian texts of the Agreement or Note to be signed will be brought to the ceremony by the Registrar of Treaties, who will then ensure that they are correctly signed and later deposited in the Treaty Archives of the Department. Copies of the agreement, which is entered in the Canada Treaty Register, will be made available to Divisions of the Department and later to posts by the Treaty Section. Copies of agreements which have not entered into force are not distributed outside the Department without the consent of the other country involved. Following entry into force, the agreement will be published in the Canada Treaty Series.

3. Short notes on the preparation of the authentic texts of Canadian formal agreements and on Signature Procedure are attached as Sections XI and XII.

IV ROLE OF POSTS ABROAD

1. The following paragraphs are intended specifically for the guidance of posts abroad, when signature of an agreement is to take place outside of Canada. The two necessary prior steps, that of securing policy approval and executive authority having been taken, it is of the utmost importance that the texts in draft form, in English and in French and, where appropriate, a third language version, be submitted to Treaty Section for checking well in advance of signature. When the final version of an agreement has been approved by all concerned, it is normally prepared on the treaty paper of the host country, although the Canadian original copy, in English and French, may have to be typed in the Canadian Embassy or High Commission

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concerned, in which case a photocopy of the version prepared by the host country should be requested and used as a guide. Verification of the final texts of the agreement (in English and French, together with the foreign version where appropriate) must take place before signature. Abroad, this usually involves a call by an officer of the Canadian Embassy or High Commission at the appropriate office of the Foreign Ministry, where the various texts are verified before the two original copies in all the language versions are ribboned and sealed. An Instrument of Full Powers, which has been prepared and forwarded from Ottawa, should be presented to the appropriate officials of the receiving state either before or at the time of signature of a formal Agreement.

2. If the treaty takes the form of an Exchange of Notes constituting an inter-governmental agreement, the Canadian note should be prepared on Embassy or High Commission letter-head and signed by the official who has been authorized by Order in Council. As indicated earlier, an Instrument of Full Powers is not required in connection with this form of agreement. It is important that, prior to final typing of the two notes, the draft text of the note from the other country forming part of the exchange be examined to ensure that it is consistent with the Canadian note and that paragraphs governing entry into force or termination of the agreement are the same as those contained in the Canadian note.

3. In either case, the post should ensure, prior to signature, that confirmation of Order in Council authority (e.g. you are authorized by Order in Council P.C. 19..-.... to sign, etc.) has been provided by telegram from Ottawa. In the case of a formal agreement, an Instrument of Full Powers or, if time does not permit, telegraphic Full Powers should have been received before signature takes place. Following signature, the Department should be notified by telegram of the date on which the formal Agreement or Exchange of Notes was signed. The authentic text of the Agreement or Exchange of Notes (signed original of foreign note and photostat copy of the Canadian note as signed in English and French) should be forwarded to Ottawa without delay for the attention of Treaty Section and deposit in the Treaty Archives. This is essential to keep our records up to date; in addition, where an Agreement has entered into force, provisionally or definitively on signature, copies will often be urgently required by this Department, other Departments and foreign missions.

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4. If a bilateral agreement requires ratification at a post abroad, the Canadian Instrument of Ratification (see Annex "G") is prepared in Treaty Section and after signature by the Secretary of State for External Affairs is forwarded to the post where the exchange of instruments is to take place. When the exchange of ratifications takes place, two copies of a document, which records the event, entitled a Protocol of Exchange, will be signed by representatives of the two countries. This document will be prepared by the host country in accordance with their treaty procedure and will be in the language of that country. An example of a Protocol of Exchange as prepared in Canada is attached as Annex "H". This document should bear the actual date of the exchange of instruments of ratification as it is on this date that the agreement enters into force. The Department should be notified when these documents are exchanged and the Instrument of Ratification of the other country, accompanied by one signed copy of the Protocol of Exchange, should be forwarded to Treaty Section in Ottawa.

V MULTILATERAL AGREEMENTS

1. If Canadian signature of a multilateral treaty, convention or other form of agreement is involved an Instrument of Full Powers is normally necessary. In all other cases (e.g. ratification, acceptance, approval, accession) an Instrument of Ratification, Acceptance, Approval or Accession (sample attached at Annex "E") will have to be deposited. These instruments are important since the act of ratification, acceptance, approval or accession is in each case the international act whereby a State establishes on the international plane, its consent to be bound by a treaty. All such documents will be prepared in Treaty Section and forwarded to the post, whose responsibility it will be to see that the document is deposited at the right time with the appropriate authorities. Canadian action in connection with the acceptance of GATT legal instruments differs from that described above. In accordance with the procedure outlined in GATT Secretary Document L/2785 of May 1, 1967, Canada's acceptance of GATT protocols, authorized by Order in Council, is notified to the Secretary General of GATT by signature supported by telegraphic Full Powers only (an example of this document appears at Annex "F").

2. Although a certified copy of the agreement will be available from the depositary in due course, it would be appreciated if the text of the Final Act of any conference at which a treaty is adopted (see also Section VIII below) could

be made available to Treaty Section as soon as possible, whether or not the treaty is (a) opened for signature at time of adoption and signed on behalf of Canada at that time, or (b) is not signed by Canada immediately so that Treaty Records of the instrument may be prepared.

VI MAINTENANCE OF TREATY RECORDS

1. In order that the Canada Treaty Register be maintained so as to reflect correctly the status of Canada's treaty relations, in connection with all bilaterals to which Canada is a party, and every multilateral treaty which Canada has signed, ratified or accepted, it is essential that all information concerning any treaty action taken:

(a) by Canada

and

(b) by any other country in regard to a treaty to which Canada is a party or which Canada has signed (many treaties will not enter into force for Canada on signature)

should be forwarded to the Treaty Section, Legal Advisory Division, as soon as it is available. This requirement applies equally to posts abroad and to Divisions of the Department in Ottawa.

VII ARRANGEMENTS OR UNDERSTANDINGS

1. Frequently governments wish to record in writing the terms of an agreed understanding or an arrangement between them regarding certain matters without however intending to create legal obligations that are binding internationally and which would otherwise be governed by international law. The techniques used in these cases will vary. An "arrangement" or "understanding" may take the form of an exchange of notes or letters: if embodied in a single instrument it is frequently called a Memorandum of Understanding. Whatever the form or designation employed, such arrangements do not create formal legal obligations between states on the international plane and therefore are not governed by international law. The obligations are moral and political in nature. In Canadian practice, no Order in Council authority is required to enter into arrangements or understandings of

this kind with foreign governments (e.g. the Consular Understanding attached at Annex "I"). They are not entered as agreements in the Canada Treaty Register, but are indexed separately. Whenever a post is in doubt as to whether a document in respect of which it has been asked to take any signatory or similar action is or is not intended to be a treaty, it should refer the question to Ottawa before taking such action.

2. Even more common are co-operative arrangements at the technical level concluded between Canadian Government departments or agencies and their counterparts in other countries. This Department has always recognized that such arrangements constitute an important means of enabling Canadian Government departments and agencies to function more effectively by developing close working level links with their counterparts in other countries.

3. Whether an understanding is an inter-agency or inter-governmental arrangement, it is important that the Department of External Affairs be consulted in advance of its signature so that it has an opportunity to comment:

(a) because of the Department's general responsibility for the conduct of all aspects of Canada's relations with other countries; and (b) to ensure that the content and form of the particular understanding is appropriate in terms of Canadian foreign policy requirements and international usage. Furthermore, when in fact, a proposed arrangement has broad foreign or domestic policy implications, or incorporates provisions of an intrinsically legal character (e.g. financial commitments, third party liability clauses, clauses concerning privileges and immunities or the conferring of a right on the part of one state to carry out activities in the territory of the other state) it should not be concluded as an arrangement but instead should be re-drafted in the form of a binding international agreement for the conclusion of which authorization in the form of an Order in Council will be required.

4. One signed copy of any arrangement or understanding must be forwarded to the Treaty Section for registration in a separate register it maintains of such instruments. It is essential that this step should not be overlooked, because otherwise the Department has no rapid method of referring to such arrangement, or providing copies to other Departments on request. The only central index in the Canadian Government of arrangements or understandings to which the Government of Canada is a party is that maintained by the Treaty Section of this Department. It can be a useful and valuable tool only if officers of this and other Departments ensure

that copies of such arrangements, when signed, are forwarded to our Treaty Section. CIDA arrangements or understandings are frequently entered into on behalf of the Government of Canada. The co-operation of CIDA personnel is thus particularly important if our register of arrangements is to be an up-to-date and accurate working tool.

VIII FINAL ACT

1. The Final Act of a conference is normally limited to a statement or summary of the proceedings of the conference, e.g. the name of participating states, the organization of the conference, presiding officers, committees established, resolutions adopted, etc. It will usually conclude by stating that, on the basis of its deliberations, the conference drew up a Convention on a named subject and opened it for signature on a certain date. The text of the Convention may be annexed to the Final Act but the Convention itself does not form part of the Final Act. This means that, in practice, the heads or deputy heads of Canadian delegations (or in their absence, any accredited member of the delegation) can sign the Final Acts of international conferences without engaging Canada to any international commitment so far as the Convention is concerned. No Full Powers are required for this purpose, although the Letter of Credentials appointing the delegates to the particular conference may include authority to sign the Final Act.

2. The Final Act of an international conference must be carefully distinguished from instruments such as "Act" (e.g. Act of the International Conference on Viet-Nam) or "Acts" (e.g. Acts of the ITU Plenipotentiary Conference) which are terms occasionally employed to designate instruments which are intended to create, and which do embody, international obligations. In case of doubt, the Department should always be consulted well in advance of their signature. Generally speaking, however, international conferences frame the Final Act in such a way that it does not constitute in itself nor embody an instrument or instruments having treaty force and effect.

IX SOME TERMS USED IN TREATY PRACTICE

"TREATY" An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument (e.g. treaty, agreement, convention, protocol) or in two or more related instruments (e.g. Exchanges of Notes) and whatever its particular designation.

"BILATERAL AGREEMENT"

An agreement to which two States are parties, which may provide for entry into force on signature or on exchange of Instruments of Ratification confirming consent to be bound by the agreement.

A formal bilateral agreement normally comprises the following sections:

1. the title
2. the preamble, consisting of a number of qualifying clauses such as "Being parties to, etc.", "Desiring, etc.", concluded by "Have agreed as follows:"
3. the text or body of the agreement
4. the testimonium or signature page, followed by any annexes or appendices.

"ALTERNAT" The so-called principle of the alternat refers to the practice of reversing the names of the parties in the title, preamble and concluding clauses of a bilateral agreement so that, e.g. in the Canadian copy Canada will appear first and, in the other copy, the name of the foreign country will appear first. It is Canadian practice to apply the principle of the alternat in all cases where a reversal of the names can be done simply, e. g. where the phrase "Canada and Switzerland" appears in the Canadian copy, the Swiss copy will read "Switzerland and Canada".

We do not however apply the alternat principle if it would necessitate rewording a paragraph or article in its entirety.

Where an agreement is signed abroad, the Foreign Ministry of the country concerned will advise on the application of the alternat.

"EXCHANGE OF NOTES"

A form of bilateral agreement frequently employed between states because of its ease and relative simplicity (Notes being a form of diplomatic communication). An Exchange of Notes which is

intended to constitute an international agreement has the same legal effect as any other international agreement between states and is equally binding in international law. The notes may be exchanged on the same date or on subsequent dates.

"ACCORD CADRE"

An "Accord Cadre" is the name given to a general framework agreement between Canada and another state which sets out the parameters within which the Canadian provinces may enter into subsidiary arrangements or "ententes" with that other state or with its political subdivisions. Where only one Canadian province is involved the accord cadre procedure is usually replaced by an Exchange of Notes, which expresses, on the part of the federal government, its consent for the conclusion of an arrangement between the province concerned and the foreign entity.

"MULTILATERAL AGREEMENT"

An agreement concluded among three or more States.

"SIGNATURE", "RATIFICATION", "ACCEPTANCE", "APPROVAL" and "ACCESSION"

In all cases, the legal effect of the acts of "ratification", "acceptance", "approval" or "accession" is the same - they simply serve to indicate the international act whereby a State registers on the international plane its consent to be bound by the agreement.

In some cases an agreement may provide that it enters into force on signature. In other cases, some further act may be required in order for a State to establish its consent to be bound. This subsequent act is usually termed ratification. Normally a multilateral instrument such as a convention is open for signature for a definite period, such as one year. Thereafter, it is no longer open to States for signature and subsequent ratification. Instead, States may register their consent to be bound (depending on the terms of the agreement) by the single act of depositing instruments of accession, acceptance or approval.

In Canadian practice, Order in Council authority is necessary for signature of any agreement. The same, or a different Order in Council will authorize deposit of the instrument of ratification, acceptance, approval or accession, if such action is required.

"FULL POWERS"

An Instrument of Full Powers provides formal evidence of the authority of the representative to sign on behalf of his government. It names the representative and indicates the particular agreement which he is entitled to sign. Normally, Instruments of Full Powers are exchanged at the time of signature of treaties, agreements and conventions and should be forwarded to the Department with the Canadian original of the signed agreement. Full Powers are not required when an agreement is to be signed by the Head of State, the Prime Minister or the Secretary of State for External Affairs. By international practice, the signature of Exchanges of Notes does not normally require the production of Full Powers.

"ARRANGEMENT OR UNDERSTANDING"

This refers to an instrument (such as a Memorandum of Understanding) or instruments (such as an Exchange of Notes or letters) which is or are not intended by the parties to create international legal obligations governed by international law.

"PROTOCOL OF EXCHANGE"

This is a document recording the exchange of Instruments of Ratification of a bilateral Agreement which, after being prepared in two copies bearing the date on which the exchange actually takes place, is signed by representatives of both states. The Canadian copy of this document should be forwarded to Treaty Section with the Instrument of Ratification of the foreign state.

X ABBREVIATIONS

Following is a list of abbreviations for sources of reference commonly used in relation to international agreements:

Canadian Publications

- CUS Treaties and Agreements affecting Canada in force between His Britannic Majesty and the U.S.A. (1814-1925). Queen's Printer, Ottawa (1927).
- CTS Canada Treaty Series (1928 to current). Queen's Printer, Ottawa.

British Publications

- BTS British Treaty Series (1892 to current). Her Majesty's Stationery Office, London.
- BSP British and Foreign State Papers, London.
- HBCT Handbook of British Commercial Treaties. Her Majesty's Stationery Office, London (1907, 1908, 1912, 1925, 1931 and cumulative indices up to 1940).
- HT Hertslet's Commercial Treaties, London. (N.B. Not an official publication. Includes documents ranging in date from 1856 to 1925. Came to an end as a separate publication in 1925 with Vol. XXXI.) From 1925 "Hertslet's Treaties" and "British and Foreign State Papers" appeared as one publication, annually, under the title "British and Foreign State Papers".
- CT Chalmers Treaties. London 1790. A collection of Treaties between Great Britain and other Powers by George Chalmers.
- DARBY A general collection of treaties, etc., relating to Peace, War, and Commerce and other public papers, among the Potentates of Europe, from 1648-1731. Printed by J. Darby (London) - in 4 volumes.

... 15

League of Nations Publications

LNTS League of Nations Treaty Series, Geneva,
1919 until dissolution of the League.

United Nations Publications

UNTS United Nations Treaty Series.

UNSMC United Nations Status of Multilateral
Conventions.

United States of America Publications

US/TS United States Treaty Series, Washington.

US/EAS United States Executive Agreement Series,
Washington.

US/TIAS United States Treaties and Other International
Acts Series, Washington.

USTD United States Treaty Developments. A chrono-
logical list of Treaties submitted to the U.S.
Senate; a numerical list of Treaties; and an
Index; a list by subject and regions included
as Appendices. (Publication discontinued in
1950.)

MAL Treaties, Conventions and International Acts,
Protocols and Agreements between the U.S. and
Other Countries. William M. Malloy.

MIL Treaties and Other International Acts of the
United States of America. Hunter Miller,
Washington.

Labour Publications

ILC International Labour Conference. Conventions
and Recommendations. Geneva: 1919-1949.

Miscellaneous Publications

HUDSON International Legislation (cumulative).
Edited by Manley O. Hudson, Washington.
Published by the Carnegie Endowment for
International Peace.

XI PREPARATION OF THE AUTHENTIC TEXTS OF CANADIAN FORMAL AGREEMENTS

The following rules are a guide to the preparation of formal agreements for signature in Canada. They may be helpful to Posts abroad, which should, however, be guided by the treaty procedure of the country involved if they are requested to assist in typing the English or French texts of a formal agreement to be signed outside of Canada.

- (a) Use appropriate treaty paper.
- (b) Prepare two (2) original texts, employing the principle of the alternat (see Section IX).
- (c) Type the title in capital letters at the top of the first page.
- (d) Type the preamble in double spacing.
- (e) Use Roman numerals to indicate each separate Article, capitalizing ARTICLE as ARTICLE I.
- (f) Within the Articles, use arabic numerals in the margin to indicate separate paragraphs.
- (g) Leave a margin of 2¼" at the top and bottom and a 2" margin at the left side: the right hand margin may be flexible at the discretion of the typist.
- (h) Numbering of the pages begins with page two: Arabic numerals should be placed ½" from the top and right side of each page.
- (i) The signature page should always be prepared as a separate page and its composition depends on the number of languages involved.

XII SIGNATURE CEREMONY

1. The following comments are applicable to the signature of an Agreement or Convention. Normally signature of an agreement constituted by an Exchange of Notes is not the subject of a signing ceremony: the usual formula in such cases is for the originating note to conclude by stating: "this Note , and your reply to that effect, shall constitute an agreement between our two Governments which will enter into force on the date of your reply". There

will, of course, be the rare occasion when, because of the nature of the agreement constituted by the Exchange of Notes, a signature ceremony is considered necessary. It should also be borne in mind that the signature of certain Agreements, such as Air Transport Agreements, is frequently accompanied by one or more related Exchanges of Notes. In these cases, signature of the Notes takes place immediately following signature of the Agreement.

2. Such notes may be delivered by hand, thus dispensing with any signature ceremony.

Required: Well polished table, sufficiently long and wide enough to accommodate texts, pens and microphones;

Two or three appropriate chairs;

Standing flags of Canada and the country with which the agreement is to be signed;

Two fountain pens (normally desk sets), which should be filled and tested a short time before signature of the agreements; and

Blotters.

3. The representative of the host country sits at the left, facing the audience, in front of the flag of the other state party to the agreement, the representative of the foreign state on his right, in front of the Canadian flag. The texts, blotters protruding from signature pages, and other documents (Instruments of Full Powers and/or related notes) are placed on the table immediately before signature of the agreement takes place: the Canadian text in front of the Canadian representative's chair and vice versa; the pens above and to the right.

4. The principals meet and proceed to the table. At the invitation of the host, the foreign representative will be seated: they will exchange Instruments of Full Powers. Those who assist the principals stand behind and to the left or right of one or other signatory. Their purpose is to ensure that the ceremony takes place smoothly and that the documents are signed correctly, i.e. (1) the Canadian copy of the agreement is signed by the Canadian representative while at the same time the other copy is signed by the foreign representative, (2) each assistant then removes the

signed copy from in front of his principal and passes it to the other signatory indicating the space for the second signature. Any related Exchanges of Notes are then signed.

5. The principals then shake hands and exchange documents (the formal agreement and/or Exchange of Notes). The representative of the host country may say a few words to which the representative of the other state will respond.

6. At this point, coffee or champagne is generally served and a toast is drunk to the success of the agreement. The whole ceremony should take only approximately twenty minutes, although the reception might extend this through three quarters of an hour or an hour in all.

7. The Canadian copy of the agreement and related documents should be picked up and transmitted without delay to the Treaty Section of Legal Advisory Division.

8. The above normal procedure will of course be altered to accommodate a situation in which three or more signatories participate in a ceremony, in which case the Canadian signatory should be seated either at the extreme left or in the middle. An additional Canadian flag will also be required, one of which should be placed at either end of the row of flags. Arrangements for controlled presentation of the texts for signature by all participants will need to be carefully worked out.

Annex "A"

(Requesting execution and issue of Full Powers)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)	
)	
)	
THAT	)	These explanatory paragraphs
	)	should be typed single space
)	
)	
THAT)	
)	
)	
)	

The undersigned, therefore, (with concurrence of the Minister of) has the honour to recommend that authority be granted to the Secretary of State for External Affairs to execute and issue an Instrument of Full Powers authorizing (name), (official position), to sign, on behalf of the Government of Canada, subject to ratification, the (name of agreement), and, to take the action necessary to bring the (name of agreement) into force.

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)

Annex "B"

(Requesting authority to sign an Exchange of Notes)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)	
)	
)	
THAT	)	These explanatory paragraphs
	)	should be typed single space
)	
)	
THAT)	
)	
)	
)	

The undersigned, therefore, has the honour to recommend that authority be granted to (name and official position) to sign, on behalf of the Government of Canada, an Agreement, in the form of an Exchange of Notes, with the Government of to

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)



P.C. 1975-282

11 February, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

**HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
is pleased hereby to authorize the Secretary of State
for External Affairs**

- (a) to execute and issue an Instrument of Full Powers authorizing the Honourable Jean Marchand to sign, on behalf of the Government of Canada, an Air Transport Agreement between the Government of Canada and the Government of Morocco; and**
- (b) to sign a supplementary Exchange of Notes between the Government of Canada and the Government of Morocco, constituting an agreement concerning traffic rights granted under the Air Transport Agreement.**

RECEIVED

FEB 11 1975

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

P. H. Patfield

000031

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL



P.C. 1975-583
18 March, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
on the recommendation of the Secretary of State for
External Affairs with the concurrence of the Minister of
the Environment, is pleased hereby to authorize Marcel
Cadieux, Ambassador of Canada to the United States of
America to sign, on behalf of the Government of
Canada, an agreement in the form of an exchange of notes
between the Government of Canada and the Government of
the United States, relating to the Exchange of Information
on Weather Modification Activities.

REGISTERED IN AUTH. INDEX & REFERRED FOR ACTION TO: <i>ECS</i>
COPIES REFERRED FOR <u>INFO</u> TO: <i>FLA, GWU</i>

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

Received from T. B. 27-3-75

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)

Annex "E"

I,

Secretary of State for External Affairs

in the Government of Canada,

do hereby certify that

Minister of

**is vested with Full Power and Authority to sign, on behalf
of the Government of Canada, an Agreement
between the Government of Canada and the Government of**

**IN WITNESS WHEREOF, I have signed and sealed
these presents at Ottawa this day of 19 .**

**Secretary of State
for External Affairs**

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON
TREATY PAPER)

Annex "E-1"

I,
Secretary of State for External Affairs,
in the Government of Canada,
do hereby certify that the Government of Canada
ratifies (accepts, etc.) the Agreement on the
, done at
on , 19 .

IN WITNESS WHEREOF, I have signed and
sealed this Instrument of Ratification (Acceptance, etc.)

DONE at Ottawa this day of , .

Secretary of State
for External Affairs

MESSAGE

Annex "F"

PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
LIEU	MINISTÈRE	N ^o D'ORIG.			
FM/DE	OTT	EXT	FLA-		UNCLAS

TO/A	PERMIS GENEVA	PRECEDENCE
INFO	ITC/ FIN/	

DISTR.

REF ECL FLA/
SUB/SUJ ACCEPTANCE OF GATT LEGAL INSTRUMENTS
 FOLLOWING FOR (NAME OF HEAD OR ACTING HEAD OF CANADIAN
 PERMANANT MISSION)
 YOU HAVE BEEN AUTHORIZED BY ORDER IN COUNCIL P.C.
 OF 19 , TO ACCEPT BY SIGNATURE ON BEHALF OF THE GOVERNMENT
 OF CANADA _____

2. PLEASE PRESENT THIS TELEGRAM TO THE APPROPRIATE GATT OFFICIALS
 AS EVIDENCE OF YOUR AUTHORITY TO ACCEPT, BY SIGNATURE, _____

3. TELEGRAPHIC AUTHORIZATION IS SUBMITTED IN LIEU OF A FORMAL
 INSTRUMENT OF FULL POWERS IN ACCORDANCE WITH THE NOTIFICATION TO THE
 GATT BY THE SSEA IN OCTOBER 1967 AND IN OCTOBER 1973 IN RESPONSE TO
 SECRETARIAT DOCUMENT L/2785 OF MAY 1, 1967.

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SIG.....	FLA		SIG.....

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

WHEREAS an Agreement on
was signed
at on
by duly authorized representatives
of the Government of Canada and
the Government of
, which Agreement reads
word for word as follows:

ATTENDU qu'un Accord de
a été signé
à , le
par les représentants dûment
autorisés du Canada et de
, lequel
Accord se lit mot pour mot comme
il suit:

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

INSERT PHOTOCOPY OF AUTHENTIC TEXT

INSÉRER PHOTOCOPIE DU TEXTE AUTHENTIQUE

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

The Government of Canada having
considered the Agreement
hereby confirms and
ratifies it and undertakes to carry
out the provisions set forth therein.

Le Gouvernement du Canada ayant
considéré l'Accord
, le confirme et le ratifie
par les présentes et s'engage à mettre
à exécution les dispositions qui y
sont formulées.

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)
(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging Instruments of Ratification by their respective Governments of the Agreement between the Government of Canada and the Government of , which was signed at on , 19 , and the respective Instruments of Ratification of the aforesaid Agreement having been carefully compared and found to be in due form, the said exchange took place this day.

Les soussignés s'étant réunis pour procéder au nom de leurs Gouvernements respectifs à l'échange des Instruments de Ratification de l'Accord entre le Gouvernement du Canada et le Gouvernement de qui a été signé à le 19 , et les Instruments respectifs de ratification dudit Accord ayant été soigneusement comparés et trouvés en bonne et due forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le present Protocole d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Government of Canada
Pour le Gouvernement du Canada

For the Government of
Pour le Gouvernement de

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)
(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging
Instruments of Ratification by their respective Governments of the
Agreement between the Government of

and the Government of Canada, which was signed at
on , 19 , and the respective Instruments of Ratification
of the aforesaid Agreement having been carefully compared and found to
be in due form, the said exchange took place this day.

Les soussignés s'étant réunis pour procéder au nom de
leurs Gouvernements respectifs à l'échange des Instruments de Ratification
de l'Accord entre le Gouvernement de
et le Gouvernement du Canada qui a été signé à
le 19 , et les Instruments respectifs de ratification
dudit Accord ayant été soigneusement comparés et trouvés en bonne et due
forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present
Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le present Protocole
d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Government of
Pour le Gouvernement de

For the Government of Canada
Pour le Gouvernement du Canada

Ottawa, April 2, 1973

No. FLA-194

Excellency,

I have the honour to refer to discussions held during the meeting in Ottawa in October 1971 of the Canada-Mexico Ministerial Committee, concerning the flow of visitors between our two countries and the resulting importance of co-operation in the field of consular work.

Your Excellency will recall that both sides expressed satisfaction with the growth in number of persons visiting each other's country, whether as official visitors, tourists, business people, or in other worthwhile capacities. It was also agreed that measures that could be taken to stimulate and facilitate this flow in both directions would be to the mutual benefit of both our countries.

With the increasing flow of people between Canada and Mexico, it was evident during the discussions at the meeting of the Ministerial Committee that ways should be sought by which the work of our respective consular officials could be facilitated. In accordance with those discussions, I would propose an understanding between our two governments in the following terms:

... 2

His Excellency
Emilio O. Rabasa,
Minister of Foreign Relations of Mexico.

- (a) Consular officers shall be free to communicate in person, in writing, or by telephone with their nationals, and to have access to them. The competent authorities of the Receiving State will cooperate in facilitating and removing impediments to such communication;
- (b) If a national of the Sending State is arrested or committed to prison or to custody pending trial or is detained in any other manner and so requests, the competent authorities of the Receiving State shall inform the consular post of the Sending State without delay. Any communication addressed to the consular post by the person arrested in prison, custody or detention shall be forwarded by the said authorities without delay. Likewise, if the appropriate consular officer of the Sending State so requests, the authorities of the Receiving State shall inform him if a national of the Sending State is under arrest or held in custody pending trial, or otherwise detained;
- (c) Consular officers shall be free to enquire into any matter affecting the interests of their nationals from the competent authorities within their district;
- (d) Consular officers shall have the right to visit a national of the Sending State who is in prison, custody or detention, to converse and correspond with him, to arrange for his legal representation and to assist him in any other proper way. They shall also have the right to assist the nationals in cases of missing persons and misadventures causing injury or death;

- (e) It is understood that the foregoing constitute only a few of the more salient points among consular functions carried out by the respective officials of the two countries pursuant to established international law and custom and that there are many other tasks which they can and must legitimately perform;
- (f) In view of the growing importance of relations in this field, it will be desirable to maintain contact on the subject and to carry out consultations as the occasion demands with a view to facilitating the further growth in mutually beneficial travel between the two countries.

It is understood that the rights and duties referred to in points (a), (b), (c) and (d) shall be exercised in conformity with the constitution, laws and regulations of the Receiving State.

If the foregoing proposals are acceptable to Your Excellency's government, I have the honour to propose that this Note, in English and French, and Your Excellency's reply in Spanish, shall constitute an understanding between our two Governments, each language version of which shall be equally authentic. This understanding shall become effective on the date of your reply and may be terminated by either party upon six months' notice to the other.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

NOTE

The Mexican Foreign Minister, in his reply in Spanish to the above note, confirmed his Government's acceptance of the above proposals.

OTTAWA, le 2 avril 1973

No FLA-194

Monsieur le Ministre,

J'ai l'honneur de me référer aux discussions qui se sont déroulées au cours de la rencontre à Ottawa au mois d'octobre 1971 du Comité ministériel Canada-Mexique concernant le nombre de visiteurs de nos deux pays et l'importance qui en découle pour une coopération dans le domaine consulaire.

Vous vous rappelerez que les deux parties ont alors exprimé leur satisfaction au sujet de l'accroissement du nombre de personnes qui se rendent dans l'un et l'autre pays, que ce soit à titre officiel, ou comme touriste, hommes d'affaires ou en toute autre qualité. Il a également été convenu que les mesures prises pour favoriser et faciliter cet échange de visiteurs seraient à l'avantage réciproque de nos deux pays.

Au cours des entretiens qui se sont déroulés dans le cadre de la réunion du Comité ministériel, il est apparu que le nombre grandissant de personnes qui voyagent entre le Canada et le Mexique exigeait que de nouveaux moyens soient trouvés pour faciliter la tâche des fonctionnaires consulaires des deux pays. Suite à ces dis-

...2

Son Excellence

Monsieur Emilio O. Rabasa

Ministre des Relations extérieures du Mexique

cussions, je propose la conclusion d'une entente entre nos deux Gouvernements, selon les modalités suivantes:

- (a) Les fonctionnaires consulaires ont la liberté de communiquer en personne, par écrit ou par téléphone avec les ressortissants de leur pays et de les rencontrer. Les autorités compétentes de l'Etat d'accueil doivent faire en sorte de faciliter ces communications et d'éliminer les obstacles;
- (b) Si un ressortissant de l'Etat d'envoi est arrêté, emprisonné ou placé sous surveillance en attendant son procès ou s'il est détenu de toute autre façon et s'il le demande, les autorités de l'Etat d'accueil doivent informer la mission consulaire de l'Etat d'envoi sans délai. Toute communication adressée à la mission consulaire par la personne arrêtée, emprisonnée, placée sous surveillance ou séquestrée doit être expédiée par lesdites autorités sans délai. De la même façon, si le fonctionnaire consulaire compétent de l'Etat d'envoi le demande, les autorités de l'Etat d'accueil doivent lui signaler qu'un ressortissant de l'Etat d'envoi a été arrêté ou placé sous surveillance en attendant son procès ou qu'il est autrement détenu;

...3

- (c) Les fonctionnaires consulaires ont la liberté de se renseigner auprès des autorités compétentes de leur circonscription sur toute question touchant les intérêts des ressortissants de leurs pays;
- (d) Les fonctionnaires consulaires ont le droit de rendre visite à tout ressortissant de l'Etat d'envoi qui est emprisonné, placé sous surveillance ou détenu, de converser et de communiquer avec lui, de voir à ce qu'il soit représenté par un avocat ou de l'aider de toute autre manière. Ils ont aussi le droit d'aider les ressortissants de leur pays à l'occasion de disparitions et d'accidents entraînant des blessures ou le décès;
- (e) Il est entendu que ce qui précède ne constitue que certains des points saillants que comportent les fonctions consulaires exécutées par les fonctionnaires respectifs des deux pays, conformément au droit et aux pratiques internationaux établis, et qu'il existe de nombreuses autres tâches qu'ils peuvent et doivent légitimement exécuter;
- (f) Vu l'importance grandissante des relations dans ce domaine, il est souhaitable de demeurer en rapport à ce sujet et de procéder à des consultations, le cas échéant, afin

...4

de favoriser l'augmentation du nombre
des voyages à l'avantage réciproque des
deux pays.

Il est entendu que les droits et attributions
mentionnés dans les sous-paragraphes (a), (b), (c) et
(d) qui précèdent doivent être exercés conformément à la
constitution, aux lois et aux règlements de l'Etat d'ac-
cueil.

Si les propositions susmentionnées agréent au
Gouvernement de Votre Excellence, j'ai l'honneur de pro-
poser que les textes anglais et français de la présente
Note, et la réponse de Votre Excellence rédigée en espa-
gnol, constituent entre nos deux Gouvernements une enten-
te dont les trois textes feront également foi. Cette
entente prendra effet à la date de la réponse de Votre
Excellence, et peut être terminée par l'une ou l'autre
partie par un avis de six mois.

Veillez agréer, Monsieur le Ministre, les as-
surances renouvelées de ma très haute considération.

Le Sous-secrétaire d'Etat
aux Affaires extérieures,

Note

Le Ministre des Affaires étrangères du Mexique, dans
sa réponse en espagnol à la note ci-dessus, a confirmé l'accord de
son gouvernement avec les propositions énoncées ci-haut.

ACRD

THIS COPY OF "CDAD" TO BE PLACED ON
NUMERICAL/CHRONOLOGICAL SERIES FILE

710715

Ministère des Affaires extérieures

Department of External Affairs



Canada

UNCLASSIFIED

OTTAWA, June 6, 1975

File No. 20-3-4-CDA

CIRCULAR DOCUMENT

Admin. No. 33/75(FLA)

20-3-4-CDA		
GB		

CANADIAN TREATY PROCEDURE

The attached document is for the assistance of members of the Department and others in Ottawa and abroad. It contains information concerning Canadian Treaty Procedure to be followed in respect of international agreements binding on Canada and informal instruments not intended to create formal legal obligations enforceable under international law. The French language version will be published as soon as possible.

This Circular Document is cancelled effective December 31st, 1975.

Under-Secretary of State
for External Affairs

TO: HEADS OF POST
DIRECTORS GENERAL
DIRECTORS

CANADIAN TREATY PROCEDURE

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EXAMPLES OF TREATY DOCUMENTS

Annex "A"	Submission to Council requesting the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "B"	Submission to Council requesting authority to sign
Annex "C"	Order in Council authorizing the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "D"	Order in Council authorizing signature
Annex "E"	Instrument of Full Powers
"E-1"	Instrument of Ratification, Acceptance, etc., of a Multilateral Agreement
Annex "F"	GATT Notification
Annex "G"	Instrument of Ratification of a Bilateral Agreement
Annex "H"	Protocol of Exchange
Annex "I"	Consular Understanding

CANADIAN TREATY PROCEDURE

The following information concerning Canadian Treaty practice is intended to assist members of the Department and others, whether in Ottawa or abroad, involved in the negotiation of international agreements to be concluded between Canada and other countries. The procedures described apply to any international agreement concluded between Canada and another State in written form and intended to be binding under international law, whether embodied in a single instrument (e.g. a Treaty, Convention, Agreement, Protocol, etc.) or in two or more related instruments (e.g. Exchanges of Notes or letters intended to constitute such an agreement), and whatever its particular designation. They do not apply to such informal instruments as Memoranda of Understanding, Consular Understandings or other administrative arrangements, which are not intended to create formal legal obligations enforceable under international law. For a note on "Arrangements and Understandings" see paragraph VII of this Circular Document.

I CONSTITUTIONAL REQUIREMENTS

1. Before the Government of Canada can enter into any international agreement certain necessary policy approval and legal authorization must be sought and obtained. There are two steps in this process:

- (a) The first step, to secure policy approval, normally takes the form of a Memorandum to Cabinet, signed by the Minister or Ministers having substantive responsibility for the subject matter of the proposed agreement, recommending its conclusion. Our Minister should either join in signing the Memorandum to Cabinet, or concur in the recommendations. In those cases where Cabinet has previously decided on the general policy guidelines to govern Canadian participation in international arrangements to be embodied in an international agreement and has approved a draft version of the agreement, a second Memorandum to Cabinet is not usually required if the only changes to the draft agreement in the interim are minor in nature: in such cases it is usually sufficient to obtain the agreement of the Ministers most directly concerned.

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- (b) The second step is to obtain executive authority to sign the agreement on behalf of the Government of Canada and to take any necessary subsequent action (e.g. ratification, acceptance or approval) to bring the treaty into force for Canada, if it does not come into force merely on signature. Where the period for signature has expired then an act known as accession is the normal means of establishing the consent of a state to be bound by a treaty (its effect combines the two stages of signature and ratification into one). In Canada this executive authority is an element of the Royal Prerogative which is exercised by the Governor General in Council and which is sought through a Submission to Council. The Submission to Council seeking authority for signature (and sometimes also for ratification or for accession) should always be signed by our Minister with the concurrence of any other Minister or Ministers involved. Although it is always basically the same in form, it will differ in specific content depending on whether the agreement in question is: (i) a single formal instrument such as a Convention, Agreement or Treaty, or (ii) constituted by an Exchange of Notes. The Submission should, in the normal course, be prepared by the Division dealing with the substantive policy aspects of the agreement with the assistance, if required, of the Treaty Section, Legal Advisory Division. The Submission to Council should, in any event, always be cleared through Treaty Section before it is submitted to the Minister for signature. If the concurrence of any other Minister or Ministers is involved, their signatures should be obtained before the Submission is placed before our Minister for his signature. Examples of the form of Submissions to Council in cases (i) and (ii) above are attached at Annex "A" and Annex "B". It is important to note that a Submission to Council seeking authority for the signature of an Agreement (Convention, Protocol, etc.) must always state the name or names of one or more specific person or persons to be authorized to sign on behalf of the Government of Canada. Under the arrangements which are at present in effect for Privy Council Meetings, the signed Submission should be in the hands of the Assistant Clerk of the Privy Council Office (at present Mr. J. Cross) before Friday noon if the document

is to be considered at the next meeting of Council, which will normally take place the following Tuesday morning. It is helpful to Mr. Cross if a copy of the Submission is forwarded to him in Room 1531 of the Varette Building by the originator of the document at the same time as the original goes to the Secretary of State for External Affairs for signature.

If the Submission is approved by the Governor General in Council, an Order in Council (samples attached at Annex "C" and Annex "D") will be issued. It is this document which constitutes the executive authority to conclude the agreement on behalf of Canada.

2. Under international law and practice the signature of a formal agreement (e.g. Agreement, Convention, Protocol) by any person other than the Head of State, the Prime Minister or the Secretary of State for External Affairs normally requires the issuance by the Secretary of State for External Affairs of an Instrument of Full Powers (sample attached at Annex "E") which confirms that a specific person has indeed been authorized to sign on Canada's behalf. This document, which designates a specifically named person or, in the alternative, another specifically named person or persons as having been authorized to sign the agreement on behalf of the Government of Canada, is prepared in Treaty Section. While an agreement constituted by an Exchange of Notes requires an Order in Council authorizing the conclusion of an agreement in this form and naming the signatory, no Instrument of Full Powers is normally needed. When an Exchange of Notes constituting an agreement takes place in Ottawa, the Canadian note should be signed by the Secretary of State for External Affairs. Abroad, the Canadian note, which forms part of an Exchange of Notes constituting an agreement, would normally be signed by the Canadian Ambassador or High Commissioner in the country concerned or, in the absence of the latter, by the Chargé d'Affaires a.i., or Acting High Commissioner, as the case might be. Very infrequently, a high-ranking visiting Canadian official may be authorized to sign but this is a rare occurrence. In every case, signature should not take place unless and until notification from Ottawa has been received that the necessary Order in Council authority has been obtained.

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I LANGUAGE OF CANADIAN TREATIES

1. All Canadian bilateral treaties, howsoever called, must be concluded in both official languages. Where neither English nor French is the official language of the other state party, a third language version (and possibly even a fourth) may also be required.
2. In the case of agreements in the form of Exchanges of Notes or letters, the Canadian note or letter must be done and signed in two versions, one each in English and French. The note or letter from the other party is done in whatever official language or languages it uses for such purposes.
3. In the case of more formal treaties, which are set out in a single instrument to be signed by both Canada and by the other state Party, two original copies of the treaty are required, each one of which incorporates authentic texts in English and in French and in whatever other language or languages are required by the other state.

III SIGNATURE IN OTTAWA

1. If signature of an Agreement or Exchange of Notes is to take place in Ottawa, the text, which is normally first prepared in draft in the policy Division concerned, is submitted to Treaty Section to ensure that it conforms with Canadian treaty practice and the rules of international law as embodied in the 1969 Vienna Convention on the Law of Treaties and in customary international law. It is the responsibility of the action Division to arrange for translation and to provide Treaty Section with an accurate version in both official languages. Typing of the text of the Agreement or the Canadian Note forming part of an Exchange of Notes constituting an agreement will normally be done in final form in Treaty Section. In the case of a formal agreement, the document is ribboned and sealed in Treaty Section after a final verification of the texts by representatives of the foreign mission concerned and of Treaty Section has taken place.
2. The policy Division, in consultation with the Office of the Minister or other signatory, will determine the date, place and time of signature. This information should at once be passed to the Registrar of Treaties, Mrs. J.K. Bruce, so that the necessary signing arrangements, for which Treaty Section is responsible, may then be made. The policy

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Division concerned is responsible for the preparation of the press release; for any short speech which the Minister may wish to make following signature; for the preparation of the guest list and the issue of invitations to the signature ceremony and the reception to follow, if there is to be one. A copy of the guest list should be made available to the Registrar of Treaties, to Protocol Division and to the appropriate officials in either the Senate, the House of Commons or the Lester B. Pearson Building, depending upon the place of signature. The Registrar of Treaties will reserve the room where the ceremony is to take place, inform the Press Office, arrange for appropriate flags and, where appropriate, in consultation with Central Staff, arrange for the serving of champagne or coffee. Protocol Division should be provided with a photocopy of any memorandum to the Minister on which the latter has indicated his approval of arrangements for a reception to follow signature of an agreement. The Canadian texts of the Agreement or Note to be signed will be brought to the ceremony by the Registrar of Treaties, who will then ensure that they are correctly signed and later deposited in the Treaty Archives of the Department. Copies of the agreement, which is entered in the Canada Treaty Register, will be made available to Divisions of the Department and later to posts by the Treaty Section. Copies of agreements which have not entered into force are not distributed outside the Department without the consent of the other country involved. Following entry into force, the agreement will be published in the Canada Treaty Series.

3. Short notes on the preparation of the authentic texts of Canadian formal agreements and on Signature Procedure are attached as Sections XI and XII.

IV ROLE OF POSTS ABROAD

1. The following paragraphs are intended specifically for the guidance of posts abroad, when signature of an agreement is to take place outside of Canada. The two necessary prior steps, that of securing policy approval and executive authority having been taken, it is of the utmost importance that the texts in draft form, in English and in French and, where appropriate, a third language version, be submitted to Treaty Section for checking well in advance of signature. When the final version of an agreement has been approved by all concerned, it is normally prepared on the treaty paper of the host country, although the Canadian original copy, in English and French, may have to be typed in the Canadian Embassy or High Commission

concerned, in which case a photocopy of the version prepared by the host country should be requested and used as a guide. Verification of the final texts of the agreement (in English and French, together with the foreign version where appropriate) must take place before signature. Abroad, this usually involves a call by an officer of the Canadian Embassy or High Commission at the appropriate office of the Foreign Ministry, where the various texts are verified before the two original copies in all the language versions are ribboned and sealed. An Instrument of Full Powers, which has been prepared and forwarded from Ottawa, should be presented to the appropriate officials of the receiving state either before or at the time of signature of a formal Agreement.

2. If the treaty takes the form of an Exchange of Notes constituting an inter-governmental agreement, the Canadian note should be prepared on Embassy or High Commission letter-head and signed by the official who has been authorized by Order in Council. As indicated earlier, an Instrument of Full Powers is not required in connection with this form of agreement. It is important that, prior to final typing of the two notes, the draft text of the note from the other country forming part of the exchange be examined to ensure that it is consistent with the Canadian note and that paragraphs governing entry into force or termination of the agreement are the same as those contained in the Canadian note.

3. In either case, the post should ensure, prior to signature, that confirmation of Order in Council authority (e.g. you are authorized by Order in Council P.C. 19..-.... to sign, etc.) has been provided by telegram from Ottawa. In the case of a formal agreement, an Instrument of Full Powers or, if time does not permit, telegraphic Full Powers should have been received before signature takes place. Following signature, the Department should be notified by telegram of the date on which the formal Agreement or Exchange of Notes was signed. The authentic text of the Agreement or Exchange of Notes (signed original of foreign note and photostat copy of the Canadian note as signed in English and French) should be forwarded to Ottawa without delay for the attention of Treaty Section and deposit in the Treaty Archives. This is essential to keep our records up to date; in addition, where an Agreement has entered into force, provisionally or definitively on signature, copies will often be urgently required by this Department, other Departments and foreign missions.

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4. If a bilateral agreement requires ratification at a post abroad, the Canadian Instrument of Ratification (see Annex "G") is prepared in Treaty Section and after signature by the Secretary of State for External Affairs is forwarded to the post where the exchange of instruments is to take place. When the exchange of ratifications takes place, two copies of a document, which records the event, entitled a Protocol of Exchange, will be signed by representatives of the two countries. This document will be prepared by the host country in accordance with their treaty procedure and will be in the language of that country. An example of a Protocol of Exchange as prepared in Canada is attached as Annex "H". This document should bear the actual date of the exchange of instruments of ratification as it is on this date that the agreement enters into force. The Department should be notified when these documents are exchanged and the Instrument of Ratification of the other country, accompanied by one signed copy of the Protocol of Exchange, should be forwarded to Treaty Section in Ottawa.

V MULTILATERAL AGREEMENTS

1. If Canadian signature of a multilateral treaty, convention or other form of agreement is involved an Instrument of Full Powers is normally necessary. In all other cases (e.g. ratification, acceptance, approval, accession) an Instrument of Ratification, Acceptance, Approval or Accession (sample attached at Annex "E") will have to be deposited. These instruments are important since the act of ratification, acceptance, approval or accession is in each case the international act whereby a State establishes on the international plane, its consent to be bound by a treaty. All such documents will be prepared in Treaty Section and forwarded to the post, whose responsibility it will be to see that the document is deposited at the right time with the appropriate authorities. Canadian action in connection with the acceptance of GATT legal instruments differs from that described above. In accordance with the procedure outlined in GATT Secretary Document L/2785 of May 1, 1967, Canada's acceptance of GATT protocols, authorized by Order in Council, is notified to the Secretary General of GATT by signature supported by telegraphic Full Powers only (an example of this document appears at Annex "F").

2. Although a certified copy of the agreement will be available from the depositary in due course, it would be appreciated if the text of the Final Act of any conference at which a treaty is adopted (see also Section VIII below) could

be made available to Treaty Section as soon as possible, whether or not the treaty is (a) opened for signature at time of adoption and signed on behalf of Canada at that time, or (b) is not signed by Canada immediately so that Treaty Records of the instrument may be prepared.

VI MAINTENANCE OF TREATY RECORDS

1. In order that the Canada Treaty Register be maintained so as to reflect correctly the status of Canada's treaty relations, in connection with all bilaterals to which Canada is a party, and every multilateral treaty which Canada has signed, ratified or accepted, it is essential that all information concerning any treaty action taken:

(a) by Canada

and

(b) by any other country in regard to a treaty to which Canada is a party or which Canada has signed (many treaties will not enter into force for Canada on signature)

should be forwarded to the Treaty Section, Legal Advisory Division, as soon as it is available. This requirement applies equally to posts abroad and to Divisions of the Department in Ottawa.

VII ARRANGEMENTS OR UNDERSTANDINGS

1. Frequently governments wish to record in writing the terms of an agreed understanding or an arrangement between them regarding certain matters without however intending to create legal obligations that are binding internationally and which would otherwise be governed by international law. The techniques used in these cases will vary. An "arrangement" or "understanding" may take the form of an exchange of notes or letters: if embodied in a single instrument it is frequently called a Memorandum of Understanding. Whatever the form or designation employed, such arrangements do not create formal legal obligations between states on the international plane and therefore are not governed by international law. The obligations are moral and political in nature. In Canadian practice, no Order in Council authority is required to enter into arrangements or understandings of

this kind with foreign governments (e.g. the Consular Understanding attached at Annex "I"). They are not entered as agreements in the Canada Treaty Register, but are indexed separately. Whenever a post is in doubt as to whether a document in respect of which it has been asked to take any signatory or similar action is or is not intended to be a treaty, it should refer the question to Ottawa before taking such action.

2. Even more common are co-operative arrangements at the technical level concluded between Canadian Government departments or agencies and their counterparts in other countries. This Department has always recognized that such arrangements constitute an important means of enabling Canadian Government departments and agencies to function more effectively by developing close working level links with their counterparts in other countries.

3. Whether an understanding is an inter-agency or inter-governmental arrangement, it is important that the Department of External Affairs be consulted in advance of its signature so that it has an opportunity to comment:

(a) because of the Department's general responsibility for the conduct of all aspects of Canada's relations with other countries; and (b) to ensure that the content and form of the particular understanding is appropriate in terms of Canadian foreign policy requirements and international usage. Furthermore, when in fact, a proposed arrangement has broad foreign or domestic policy implications, or incorporates provisions of an intrinsically legal character (e.g. financial commitments, third party liability clauses, clauses concerning privileges and immunities or the conferring of a right on the part of one state to carry out activities in the territory of the other state) it should not be concluded as an arrangement but instead should be re-drafted in the form of a binding international agreement for the conclusion of which authorization in the form of an Order in Council will be required.

4. One signed copy of any arrangement or understanding must be forwarded to the Treaty Section for registration in a separate register it maintains of such instruments. It is essential that this step should not be overlooked, because otherwise the Department has no rapid method of referring to such arrangement, or providing copies to other Departments on request. The only central index in the Canadian Government of arrangements or understandings to which the Government of Canada is a party is that maintained by the Treaty Section of this Department. It can be a useful and valuable tool only if officers of this and other Departments ensure

that copies of such arrangements, when signed, are forwarded to our Treaty Section. CIDA arrangements or understandings are frequently entered into on behalf of the Government of Canada. The co-operation of CIDA personnel is thus particularly important if our register of arrangements is to be an up-to-date and accurate working tool.

VIII FINAL ACT

1. The Final Act of a conference is normally limited to a statement or summary of the proceedings of the conference, e.g. the name of participating states, the organization of the conference, presiding officers, committees established, resolutions adopted, etc. It will usually conclude by stating that, on the basis of its deliberations, the conference drew up a Convention on a named subject and opened it for signature on a certain date. The text of the Convention may be annexed to the Final Act but the Convention itself does not form part of the Final Act. This means that, in practice, the heads or deputy heads of Canadian delegations (or in their absence, any accredited member of the delegation) can sign the Final Acts of international conferences without engaging Canada to any international commitment so far as the Convention is concerned. No Full Powers are required for this purpose, although the Letter of Credentials appointing the delegates to the particular conference may include authority to sign the Final Act.

2. The Final Act of an international conference must be carefully distinguished from instruments such as "Act" (e.g. Act of the International Conference on Viet-Nam) or "Acts" (e.g. Acts of the ITU Plenipotentiary Conference) which are terms occasionally employed to designate instruments which are intended to create, and which do embody, international obligations. In case of doubt, the Department should always be consulted well in advance of their signature. Generally speaking, however, international conferences frame the Final Act in such a way that it does not constitute in itself nor embody an instrument or instruments having treaty force and effect.

IX SOME TERMS USED IN TREATY PRACTICE

"TREATY" An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument (e.g. treaty, agreement, convention, protocol) or in two or more related instruments (e.g. Exchanges of Notes) and whatever its particular designation.

"BILATERAL AGREEMENT"

An agreement to which two States are parties, which may provide for entry into force on signature or on exchange of Instruments of Ratification confirming consent to be bound by the agreement.

A formal bilateral agreement normally comprises the following sections:

1. the title
2. the preamble, consisting of a number of qualifying clauses such as "Being parties to, etc.", "Desiring, etc.", concluded by "Have agreed as follows:"
3. the text or body of the agreement
4. the testimonium or signature page, followed by any annexes or appendices.

"ALTERNAT" The so-called principle of the alternat refers to the practice of reversing the names of the parties in the title, preamble and concluding clauses of a bilateral agreement so that, e.g. in the Canadian copy Canada will appear first and, in the other copy, the name of the foreign country will appear first. It is Canadian practice to apply the principle of the alternat in all cases where a reversal of the names can be done simply, e. g. where the phrase "Canada and Switzerland" appears in the Canadian copy, the Swiss copy will read "Switzerland and Canada".

We do not however apply the alternat principle if it would necessitate rewording a paragraph or article in its entirety.

Where an agreement is signed abroad, the Foreign Ministry of the country concerned will advise on the application of the alternat.

"EXCHANGE OF NOTES"

A form of bilateral agreement frequently employed between states because of its ease and relative simplicity (Notes being a form of diplomatic communication). An Exchange of Notes which is

intended to constitute an international agreement has the same legal effect as any other international agreement between states and is equally binding in international law. The notes may be exchanged on the same date or on subsequent dates.

"ACCORD CADRE"

An "Accord Cadre" is the name given to a general framework agreement between Canada and another state which sets out the parameters within which the Canadian provinces may enter into subsidiary arrangements or "ententes" with that other state or with its political subdivisions. Where only one Canadian province is involved the accord cadre procedure is usually replaced by an Exchange of Notes, which expresses, on the part of the federal government, its consent for the conclusion of an arrangement between the province concerned and the foreign entity.

"MULTILATERAL AGREEMENT"

An agreement concluded among three or more States.

"SIGNATURE", "RATIFICATION", "ACCEPTANCE", "APPROVAL" and "ACCESSION"

In all cases, the legal effect of the acts of "ratification", "acceptance", "approval" or "accession" is the same - they simply serve to indicate the international act whereby a State registers on the international plane its consent to be bound by the agreement.

In some cases an agreement may provide that it enters into force on signature. In other cases, some further act may be required in order for a State to establish its consent to be bound. This subsequent act is usually termed ratification. Normally a multilateral instrument such as a convention is open for signature for a definite period, such as one year. Thereafter, it is no longer open to States for signature and subsequent ratification. Instead, States may register their consent to be bound (depending on the terms of the agreement) by the single act of depositing instruments of accession, acceptance or approval.

In Canadian practice, Order in Council authority is necessary for signature of any agreement. The same, or a different Order in Council will authorize deposit of the instrument of ratification, acceptance, approval or accession, if such action is required.

"FULL POWERS"

An Instrument of Full Powers provides formal evidence of the authority of the representative to sign on behalf of his government. It names the representative and indicates the particular agreement which he is entitled to sign. Normally, Instruments of Full Powers are exchanged at the time of signature of treaties, agreements and conventions and should be forwarded to the Department with the Canadian original of the signed agreement. Full Powers are not required when an agreement is to be signed by the Head of State, the Prime Minister or the Secretary of State for External Affairs. By international practice, the signature of Exchanges of Notes does not normally require the production of Full Powers.

"ARRANGEMENT OR UNDERSTANDING"

This refers to an instrument (such as a Memorandum of Understanding) or instruments (such as an Exchange of Notes or letters) which is or are not intended by the parties to create international legal obligations governed by international law.

"PROTOCOL OF EXCHANGE"

This is a document recording the exchange of Instruments of Ratification of a bilateral Agreement which, after being prepared in two copies bearing the date on which the exchange actually takes place, is signed by representatives of both states. The Canadian copy of this document should be forwarded to Treaty Section with the Instrument of Ratification of the foreign state.

ABBREVIATIONS

Following is a list of abbreviations for sources of reference commonly used in relation to international agreements:

Canadian Publications

- CUS Treaties and Agreements affecting Canada in force between His Britannic Majesty and the U.S.A. (1814-1925). Queen's Printer, Ottawa (1927).
- CTS Canada Treaty Series (1928 to current). Queen's Printer, Ottawa.

British Publications

- BTS British Treaty Series (1892 to current). Her Majesty's Stationery Office, London.
- BSP British and Foreign State Papers, London.
- HBCT Handbook of British Commercial Treaties. Her Majesty's Stationery Office, London (1907, 1908, 1912, 1925, 1931 and cumulative indices up to 1940).
- HT Hertslet's Commercial Treaties, London. (N.B. Not an official publication. Includes documents ranging in date from 1856 to 1925. Came to an end as a separate publication in 1925 with Vol. XXXI.) From 1925 "Hertslet's Treaties" and "British and Foreign State Papers" appeared as one publication, annually, under the title "British and Foreign State Papers".
- CT Chalmers Treaties. London 1790. A collection of Treaties between Great Britain and other Powers by George Chalmers.
- DARBY A general collection of treaties, etc., relating to Peace, War, and Commerce and other public papers, among the Potentates of Europe, from 1648-1731. Printed by J. Darby (London) - in 4 volumes.

League of Nations Publications

LNTS League of Nations Treaty Series, Geneva,
1919 until dissolution of the League.

United Nations Publications

UNTS United Nations Treaty Series.

UNSMC United Nations Status of Multilateral
Conventions.

United States of America Publications

US/TS United States Treaty Series, Washington.

US/EAS United States Executive Agreement Series,
Washington.

US/TIAS United States Treaties and Other International
Acts Series, Washington.

USTD United States Treaty Developments. A chrono-
logical list of Treaties submitted to the U.S.
Senate; a numerical list of Treaties; and an
Index; a list by subject and regions included
as Appendices. (Publication discontinued in
1950.)

MAL Treaties, Conventions and International Acts,
Protocols and Agreements between the U.S. and
Other Countries. William M. Malloy.

MIL Treaties and Other International Acts of the
United States of America. Hunter Miller,
Washington.

Labour Publications

ILC International Labour Conference. Conventions
and Recommendations. Geneva: 1919-1949.

Miscellaneous Publications

HUDSON International Legislation (cumulative).
Edited by Manley O. Hudson, Washington.
Published by the Carnegie Endowment for
International Peace.

PREPARATION OF THE AUTHENTIC TEXTS OF CANADIAN FORMAL AGREEMENTS

The following rules are a guide to the preparation of formal agreements for signature in Canada. They may be helpful to Posts abroad, which should, however, be guided by the treaty procedure of the country involved if they are requested to assist in typing the English or French texts of a formal agreement to be signed outside of Canada.

- (a) Use appropriate treaty paper.
- (b) Prepare two (2) original texts, employing the principle of the alternat (see Section IX).
- (c) Type the title in capital letters at the top of the first page.
- (d) Type the preamble in double spacing.
- (e) Use Roman numerals to indicate each separate Article, capitalizing ARTICLE as ARTICLE I.
- (f) Within the Articles, use arabic numerals in the margin to indicate separate paragraphs.
- (g) Leave a margin of 2¼" at the top and bottom and a 2" margin at the left side: the right hand margin may be flexible at the discretion of the typist.
- (h) Numbering of the pages begins with page two: Arabic numerals should be placed ½" from the top and right side of each page.
- (i) The signature page should always be prepared as a separate page and its composition depends on the number of languages involved.

XII SIGNATURE CEREMONY

1. The following comments are applicable to the signature of an Agreement or Convention. Normally signature of an agreement constituted by an Exchange of Notes is not the subject of a signing ceremony: the usual formula in such cases is for the originating note to conclude by stating: "this Note , and your reply to that effect, shall constitute an agreement between our two Governments which will enter into force on the date of your reply". There

will, of course, be the rare occasion when, because of the nature of the agreement constituted by the Exchange of Notes, a signature ceremony is considered necessary. It should also be borne in mind that the signature of certain Agreements, such as Air Transport Agreements, is frequently accompanied by one or more related Exchanges of Notes. In these cases, signature of the Notes takes place immediately following signature of the Agreement.

2. Such notes may be delivered by hand, thus dispensing with any signature ceremony.

Required: Well polished table, sufficiently long and wide enough to accommodate texts, pens and microphones;

Two or three appropriate chairs;

Standing flags of Canada and the country with which the agreement is to be signed;

Two fountain pens (normally desk sets), which should be filled and tested a short time before signature of the agreements; and

Blotters.

3. The representative of the host country sits at the left, facing the audience, in front of the flag of the other state party to the agreement, the representative of the foreign state on his right, in front of the Canadian flag. The texts, blotters protruding from signature pages, and other documents (Instruments of Full Powers and/or related notes) are placed on the table immediately before signature of the agreement takes place: the Canadian text in front of the Canadian representative's chair and vice versa; the pens above and to the right.

4. The principals meet and proceed to the table. At the invitation of the host, the foreign representative will be seated: they will exchange Instruments of Full Powers. Those who assist the principals stand behind and to the left or right of one or other signatory. Their purpose is to ensure that the ceremony takes place smoothly and that the documents are signed correctly, i.e. (1) the Canadian copy of the agreement is signed by the Canadian representative while at the same time the other copy is signed by the foreign representative, (2) each assistant then removes the

signed copy from in front of his principal and passes it to the other signatory indicating the space for the second signature. Any related Exchanges of Notes are then signed.

5. The principals then shake hands and exchange documents (the formal agreement and/or Exchange of Notes). The representative of the host country may say a few words to which the representative of the other state will respond.

6. At this point, coffee or champagne is generally served and a toast is drunk to the success of the agreement. The whole ceremony should take only approximately twenty minutes, although the reception might extend this through three quarters of an hour or an hour in all.

7. The Canadian copy of the agreement and related documents should be picked up and transmitted without delay to the Treaty Section of Legal Advisory Division.

8. The above normal procedure will of course be altered to accommodate a situation in which three or more signatories participate in a ceremony, in which case the Canadian signatory should be seated either at the extreme left or in the middle. An additional Canadian flag will also be required, one of which should be placed at either end of the row of flags. Arrangements for controlled presentation of the texts for signature by all participants will need to be carefully worked out.

Annex "A"

(Requesting execution and issue of Full Powers)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)	
)	
)	
THAT	)	These explanatory paragraphs
	)	should be typed single space
)	
THAT)	
)	
)	
)	

The undersigned, therefore, (with concurrence of the Minister of) has the honour to recommend that authority be granted to the Secretary of State for External Affairs to execute and issue an Instrument of Full Powers authorizing (name), (official position), to sign, on behalf of the Government of Canada, subject to ratification, the (name of agreement), and, to take the action necessary to bring the (name of agreement) into force.

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)

Annex "B"

(Requesting authority to sign an Exchange of Notes)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)	
)	
)	
THAT	)	These explanatory paragraphs
	)	should be typed single space
)	
THAT)	
)	
)	
)	

The undersigned, therefore, has the honour to recommend that authority be granted to (name and official position) to sign, on behalf of the Government of Canada, an Agreement, in the form of an Exchange of Notes, with the Government of to

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)



P.C. 1975-282

11 February, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

**HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
is pleased hereby to authorize the Secretary of State
for External Affairs**

- (a) to execute and issue an Instrument of Full Powers authorizing the Honourable Jean Marchand to sign, on behalf of the Government of Canada, an Air Transport Agreement between the Government of Canada and the Government of Morocco; and**
- (b) to sign a supplementary Exchange of Notes between the Government of Canada and the Government of Morocco, constituting an agreement concerning traffic rights granted under the Air Transport Agreement.**

RECEIVED

FEB 11 1975

Division
of External Affairs

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

P. H. Patford

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

Annex "D"



P.C. 1975-583
18 March, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
on the recommendation of the Secretary of State for
External Affairs with the concurrence of the Minister of
the Environment, is pleased hereby to authorize Marcel
Cadioux, Ambassador of Canada to the United States of
America to sign, on behalf of the Government of
Canada, an agreement in the form of an exchange of notes
between the Government of Canada and the Government of
the United States, relating to the Exchange of Information
on Weather Modification Activities.

REGISTERED IN AUTH. INDEX & REFERRED FOR ACTION TO: <i>ECS</i>
COPIES REFERRED FOR <u>INFO</u> TO: <i>FLA, GWU</i>

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

Received from T. B. 27-3-75

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)

Annex "E"

I,

Secretary of State for External Affairs

in the Government of Canada,

do hereby certify that

Minister of

is vested with Full Power and Authority to sign, on behalf
of the Government of Canada, an Agreement
between the Government of Canada and the Government of

IN WITNESS WHEREOF, I have signed and sealed
these presents at Ottawa this day of 19 .

Secretary of State
for External Affairs

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON
TREATY PAPER)

Annex "E-1"

I,
Secretary of State for External Affairs,
in the Government of Canada,
do hereby certify that the Government of Canada
ratifies (accepts, etc.) the Agreement on the
, done at
on , 19 .

IN WITNESS WHEREOF, I have signed and
sealed this Instrument of Ratification (Acceptance, etc.)

DONE at Ottawa this day of , .

Secretary of State
for External Affairs

MESSAGE

Annex "F"

PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
LIEU	MINISTÈRE	N° D'ORIG.			
FM/DE	OTT	EXT	FLA-		UNCLAS

TO/A	PERMIS GENEVA	PRECEDENCE
INFO	ITC/ FIN/	

DISTR.

REF ECL FLA/
 SUB/SUJ ACCEPTANCE OF GATT LEGAL INSTRUMENTS
 FOLLOWING FOR (NAME OF HEAD OR ACTING HEAD OF CANADIAN
 PERMANANT MISSION)
 YOU HAVE BEEN AUTHORIZED BY ORDER IN COUNCIL P.C.
 OF 19 , TO ACCEPT BY SIGNATURE ON BEHALF OF THE GOVERNMENT
 OF CANADA _____

2. PLEASE PRESENT THIS TELEGRAM TO THE APPROPRIATE GATT OFFICIALS
 AS EVIDENCE OF YOUR AUTHORITY TO ACCEPT, BY SIGNATURE, _____

3. TELEGRAPHIC AUTHORIZATION IS SUBMITTED IN LIEU OF A FORMAL
 INSTRUMENT OF FULL POWERS IN ACCORDANCE WITH THE NOTIFICATION TO THE
 GATT BY THE SSEA IN OCTOBER 1967 AND IN OCTOBER 1973 IN RESPONSE TO
 SECRETARIAT DOCUMENT L/2785 OF MAY 1, 1967.

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SIG.....	FLA		SIG.....

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

WHEREAS an Agreement on
was signed
at on ,
by duly authorized representatives
of the Government of Canada and
the Government of
, which Agreement reads
word for word as follows:

ATTENDU qu'un Accord de
a été signé
à , le ,
par les représentants dûment
autorisés du Canada et de
, lequel
Accord se lit mot pour mot comme
il suit:

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

INSERT PHOTOCOPY OF AUTHENTIC TEXT

INSÉRER PHOTOCOPIE DU TEXTE AUTHENTIQUE

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

The Government of Canada having
considered the Agreement
hereby confirms and
ratifies it and undertakes to carry
out the provisions set forth therein.

Le Gouvernement du Canada ayant
considéré l'Accord
, le confirme et le ratifie
par les présentes et s'engage à mettre
à exécution les dispositions qui y
sont formulées.

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)

(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging Instruments of Ratification by their respective Governments of the Agreement between the Government of Canada and the Government of , which was signed at on , 19 , and the respective Instruments of Ratification of the aforesaid Agreement having been carefully compared and found to be in due form, the said exchange took place this day.

Les soussignés s'étant réunis pour procéder au nom de leurs Gouvernements respectifs à l'échange des Instruments de Ratification de l'Accord entre le Gouvernement du Canada et le Gouvernement de qui a été signé à le 19 , et les Instruments respectifs de ratification dudit Accord ayant été soigneusement comparés et trouvés en bonne et due forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le present Protocole d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Government of Canada
Pour le Gouvernement du Canada

For the Government of
Pour le Gouvernement de

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)
(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging
Instruments of Ratification by their respective Governments of the
Agreement

between the Government of

and the Government of Canada, which was signed at

on , 19 , and the respective Instruments of Ratification
of the aforesaid Agreement having been carefully compared and found to
be in due form, the said exchange took place this day.

Les soussignés s'étant réunis pour procéder au nom de
leurs Gouvernements respectifs à l'échange des Instruments de Ratification
de l'Accord

entre le Gouvernement de

et le Gouvernement du Canada qui a été signé à

le 19 , et les Instruments respectifs de ratification
dudit Accord ayant été soigneusement comparés et trouvés en bonne et due
forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present
Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le présent Protocole
d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Gouvernement of

Pour le Gouvernement de

For the Government of Canada
Pour le Gouvernement du Canada

Ottawa, April 2, 1973

No. FLA-194

Excellency,

I have the honour to refer to discussions held during the meeting in Ottawa in October 1971 of the Canada-Mexico Ministerial Committee, concerning the flow of visitors between our two countries and the resulting importance of co-operation in the field of consular work.

Your Excellency will recall that both sides expressed satisfaction with the growth in number of persons visiting each other's country, whether as official visitors, tourists, business people, or in other worthwhile capacities. It was also agreed that measures that could be taken to stimulate and facilitate this flow in both directions would be to the mutual benefit of both our countries.

With the increasing flow of people between Canada and Mexico, it was evident during the discussions at the meeting of the Ministerial Committee that ways should be sought by which the work of our respective consular officials could be facilitated. In accordance with those discussions, I would propose an understanding between our two governments in the following terms:

... 2

His Excellency
Emilio O. Rabasa,
Minister of Foreign Relations of Mexico.

- (a) Consular officers shall be free to communicate in person, in writing, or by telephone with their nationals, and to have access to them. The competent authorities of the Receiving State will cooperate in facilitating and removing impediments to such communication;
- (b) If a national of the Sending State is arrested or committed to prison or to custody pending trial or is detained in any other manner and so requests, the competent authorities of the Receiving State shall inform the consular post of the Sending State without delay. Any communication addressed to the consular post by the person arrested in prison, custody or detention shall be forwarded by the said authorities without delay. Likewise, if the appropriate consular officer of the Sending State so requests, the authorities of the Receiving State shall inform him if a national of the Sending State is under arrest or held in custody pending trial, or otherwise detained;
- (c) Consular officers shall be free to enquire into any matter affecting the interests of their nationals from the competent authorities within their district;
- (d) Consular officers shall have the right to visit a national of the Sending State who is in prison, custody or detention, to converse and correspond with him, to arrange for his legal representation and to assist him in any other proper way. They shall also have the right to assist the nationals in cases of missing persons and misadventures causing injury or death;

- (e) It is understood that the foregoing constitute only a few of the more salient points among consular functions carried out by the respective officials of the two countries pursuant to established international law and custom and that there are many other tasks which they can and must legitimately perform;
- (f) In view of the growing importance of relations in this field, it will be desirable to maintain contact on the subject and to carry out consultations as the occasion demands with a view to facilitating the further growth in mutually beneficial travel between the two countries.

It is understood that the rights and duties referred to in points (a), (b), (c) and (d) shall be exercised in conformity with the constitution, laws and regulations of the Receiving State.

If the foregoing proposals are acceptable to Your Excellency's government, I have the honour to propose that this Note, in English and French, and Your Excellency's reply in Spanish, shall constitute an understanding between our two Governments, each language version of which shall be equally authentic. This understanding shall become effective on the date of your reply and may be terminated by either party upon six months' notice to the other.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

NOTE

The Mexican Foreign Minister, in his reply in Spanish to the above note, confirmed his Government's acceptance of the above proposals.

OTTAWA, le 2 avril 1973

No FLA-194

Monsieur le Ministre,

J'ai l'honneur de me référer aux discussions qui se sont déroulées au cours de la rencontre à Ottawa au mois d'octobre 1971 du Comité ministériel Canada-Mexique concernant le nombre de visiteurs de nos deux pays et l'importance qui en découle pour une coopération dans le domaine consulaire.

Vous vous rappelerez que les deux parties ont alors exprimé leur satisfaction au sujet de l'accroissement du nombre de personnes qui se rendent dans l'un et l'autre pays, que ce soit à titre officiel, ou comme touriste, hommes d'affaires ou en toute autre qualité. Il a également été convenu que les mesures prises pour favoriser et faciliter cet échange de visiteurs seraient à l'avantage réciproque de nos deux pays.

Au cours des entretiens qui se sont déroulés dans le cadre de la réunion du Comité ministériel, il est apparu que le nombre grandissant de personnes qui voyagent entre le Canada et le Mexique exigeait que de nouveaux moyens soient trouvés pour faciliter la tâche des fonctionnaires consulaires des deux pays. Suite à ces dis-

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Son Excellence
Monsieur Emilio O. Rabasa
Ministre des Relations extérieures du Mexique

cussions, je propose la conclusion d'une entente entre nos deux Gouvernements, selon les modalités suivantes:

- (a) Les fonctionnaires consulaires ont la liberté de communiquer en personne, par écrit ou par téléphone avec les ressortissants de leur pays et de les rencontrer. Les autorités compétentes de l'Etat d'accueil doivent faire en sorte de faciliter ces communications et d'en éliminer les obstacles;
- (b) Si un ressortissant de l'Etat d'envoi est arrêté, emprisonné ou placé sous surveillance en attendant son procès ou s'il est détenu de toute autre façon et s'il le demande, les autorités de l'Etat d'accueil doivent informer la mission consulaire de l'Etat d'envoi sans délai. Toute communication adressée à la mission consulaire par la personne arrêtée, emprisonnée, placée sous surveillance ou séquestrée doit être expédiée par lesdites autorités sans délai. De la même façon, si le fonctionnaire consulaire compétent de l'Etat d'envoi le demande, les autorités de l'Etat d'accueil doivent lui signaler qu'un ressortissant de l'Etat d'envoi a été arrêté ou placé sous surveillance en attendant son procès ou qu'il est autrement détenu;

...3

- (c) Les fonctionnaires consulaires ont la liberté de se renseigner auprès des autorités compétentes de leur circonscription sur toute question touchant les intérêts des ressortissants de leurs pays;
- (d) Les fonctionnaires consulaires ont le droit de rendre visite à tout ressortissant de l'Etat d'envoi qui est emprisonné, placé sous surveillance ou détenu, de converser et de communiquer avec lui, de voir à ce qu'il soit représenté par un avocat ou de l'aider de toute autre manière. Ils ont aussi le droit d'aider les ressortissants de leur pays à l'occasion de disparitions et d'accidents entraînant des blessures ou le décès;
- (e) Il est entendu que ce qui précède ne constitue que certains des points saillants que comportent les fonctions consulaires exécutées par les fonctionnaires respectifs des deux pays, conformément au droit et aux pratiques internationaux établis, et qu'il existe de nombreuses autres tâches qu'ils peuvent et doivent légitimement exécuter;
- (f) Vu l'importance grandissante des relations dans ce domaine, il est souhaitable de demeurer en rapport à ce sujet et de procéder à des consultations, le cas échéant, afin

...4

de favoriser l'augmentation du nombre
des voyages à l'avantage réciproque des
deux pays.

Il est entendu que les droits et attributions
mentionnés dans les sous-paragraphes (a), (b), (c) et
(d) qui précèdent doivent être exercés conformément à la
constitution, aux lois et aux règlements de l'Etat d'ac-
cueil.

Si les propositions susmentionnées agréent au
Gouvernement de Votre Excellence, j'ai l'honneur de pro-
poser que les textes anglais et français de la présente
Note, et la réponse de Votre Excellence rédigée en espa-
gnol, constituent entre nos deux Gouvernements une enten-
te dont les trois textes feront également foi. Cette
entente prendra effet à la date de la réponse de Votre
Excellence, et peut être terminée par l'une ou l'autre
partie par un avis de six mois.

Veuillez agréer, Monsieur le Ministre, les as-
surances renouvelées de ma très haute considération.

Le Sous-secrétaire d'Etat
aux Affaires extérieures,

Note

Le Ministre des Affaires étrangères du Mexique, dans
sa réponse en espagnol à la note ci-dessus, a confirmé l'accord de
son gouvernement avec les propositions énoncées ci-haut.

File
Div. Diary
Circ. Diary
Diary

UNCLASSIFIED

OTTAWA,

File No.	20-3-4-CDA	
	38	/

CIRCULAR DOCUMENT

Admin. No. /75(FLA)

CANADIAN TREATY PROCEDURE

The attached document is for the assistance of members of the Department and others in Ottawa and abroad. It contains information concerning Canadian Treaty Procedure to be followed in respect of international agreements binding on Canada and informal instruments not intended to create formal legal obligations enforceable under international law. The French language version will be published as soon as possible.

This Circular Document is cancelled effective December 31st, 1975.

A. W. Robertson

Under-Secretary of State
for External Affairs

TO: HEADS OF POST
DIRECTORS GENERAL
DIRECTORS

CANADIAN TREATY PROCEDURE

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EXAMPLES OF TREATY DOCUMENTS

Annex "A"	Submission to Council requesting the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "B"	Submission to Council requesting authority to sign
Annex "C"	Order in Council authorizing the execution and issue of an Instrument of Full Powers (Ratification, Acceptance, etc.)
Annex "D"	Order in Council authorizing signature
Annex "E"	Instrument of Full Powers
"E-1"	Instrument of Ratification, Acceptance, etc., of a Multilateral Agreement
Annex "F"	GATT Notification
Annex "G"	Instrument of Ratification of a Bilateral Agreement
Annex "H"	Protocol of Exchange
Annex "I"	Consular Understanding

CANADIAN TREATY PROCEDURE

The following information concerning Canadian Treaty practice is intended to assist members of the Department and others, whether in Ottawa or abroad, involved in the negotiation of international agreements to be concluded between Canada and other countries. The procedures described apply to any international agreement concluded between Canada and another State in written form and intended to be binding under international law, whether embodied in a single instrument (e.g. a Treaty, Convention, Agreement, Protocol, etc.) or in two or more related instruments (e.g. Exchanges of Notes or letters intended to constitute such an agreement), and whatever its particular designation. They do not apply to such informal instruments as Memoranda of Understanding, Consular Understandings or other administrative arrangements, which are not intended to create formal legal obligations enforceable under International law. For a note on "Arrangements and Understandings" see paragraph VII of this Circular Document.

I CONSTITUTIONAL REQUIREMENTS

1. Before the Government of Canada can enter into any international agreement certain necessary policy approval and legal authorization must be sought and obtained. There are two steps in this process:

- (a) The first step, to secure policy approval, normally takes the form of a Memorandum to Cabinet, signed by the Minister or Ministers having substantive responsibility for the subject matter of the proposed agreement, recommending its conclusion. Our Minister should either join in signing the Memorandum to Cabinet, or concur in the recommendations. In those cases where Cabinet has previously decided on the general policy guidelines to govern Canadian participation in international arrangements to be embodied in an international agreement and has approved a draft version of the agreement, a second Memorandum to Cabinet is not usually required if the only changes to the draft agreement in the interim are minor in nature: in such cases it is usually sufficient to obtain the agreement of the Ministers most directly concerned.

- 2 -

- (b) The second step is to obtain executive authority to sign the agreement on behalf of the Government of Canada and to take any necessary subsequent action (e.g. ratification, acceptance or approval) to bring the treaty into force for Canada, if it does not come into force merely on signature. Where the period for signature has expired then an act known as accession is the normal means of establishing the consent of a state to be bound by a treaty (its effect combines the two stages of signature and ratification into one). In Canada this executive authority is an element of the Royal Prerogative which is exercised by the Governor General in Council and which is sought through a Submission to Council. The Submission to Council seeking authority for signature (and sometimes also for ratification or for accession) should always be signed by our Minister with the concurrence of any other Minister or Ministers involved. Although it is always basically the same in form, it will differ in specific content depending on whether the agreement in question is: (i) a single formal instrument such as a Convention, Agreement or Treaty, or (ii) constituted by an Exchange of Notes. The Submission should, in the normal course, be prepared by the Division dealing with the substantive policy aspects of the agreement with the assistance, if required, of the Treaty Section, Legal Advisory Division. The Submission to Council should, in any event, always be cleared through Treaty Section before it is submitted to the Minister for signature. If the concurrence of any other Minister or Ministers is involved, their signatures should be obtained before the Submission is placed before our Minister for his signature. Examples of the form of Submissions to Council in cases (i) and (ii) above are attached at Annex "A" and Annex "B". It is important to note that a Submission to Council seeking authority for the signature of an Agreement (Convention, Protocol, etc.) must always state the name or names of one or more specific person or persons to be authorized to sign on behalf of the Government of Canada. Under the arrangements which are at present in effect for Privy Council Meetings, the signed Submission should be in the hands of the Assistant Clerk of the Privy Council Office (at present Mr. J. Cross) before Friday noon if the document

... 3

- 3 -

is to be considered at the next meeting of Council, which will normally take place the following Tuesday morning. It is helpful to Mr. Cross if a copy of the Submission is forwarded to him in Room 1531 of the Varette Building by the originator of the document at the same time as the original goes to the Secretary of State for External Affairs for signature.

If the Submission is approved by the Governor General in Council, an Order in Council (samples attached at Annex "C" and Annex "D") will be issued. It is this document which constitutes the executive authority to conclude the agreement on behalf of Canada.

2. Under international law and practice the signature of a formal agreement (e.g. Agreement, Convention, Protocol) by any person other than the Head of State, the Prime Minister or the Secretary of State for External Affairs normally requires the issuance by the Secretary of State for External Affairs of an Instrument of Full Powers (sample attached at Annex "E") which confirms that a specific person has indeed been authorized to sign on Canada's behalf. This document, which designates a specifically named person or, in the alternative, another specifically named person or persons as having been authorized to sign the agreement on behalf of the Government of Canada, is prepared in Treaty Section. While an agreement constituted by an Exchange of Notes requires an Order in Council authorizing the conclusion of an agreement in this form and naming the signatory, no Instrument of Full Powers is normally needed. When an Exchange of Notes constituting an agreement takes place in Ottawa, the Canadian note should be signed by the Secretary of State for External Affairs. Abroad, the Canadian note, which forms part of an Exchange of Notes constituting an agreement, would normally be signed by the Canadian Ambassador or High Commissioner in the country concerned or, in the absence of the latter, by the Chargé d'Affaires a.i., or Acting High Commissioner, as the case might be. Very infrequently, a high-ranking visiting Canadian official may be authorized to sign but this is a rare occurrence. In every case, signature should not take place unless and until notification from Ottawa has been received that the necessary Order in Council authority has been obtained.

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II LANGUAGE OF CANADIAN TREATIES

1. All Canadian bilateral treaties, howsoever called, must be concluded in both official languages. Where neither English nor French is the official language of the other state party, a third language version (and possibly even a fourth) may also be required.

2. In the case of agreements in the form of Exchanges of Notes or letters, the Canadian note or letter must be done and signed in two versions, one each in English and French. The note or letter from the other party is done in whatever official language or languages it uses for such purposes.

3. In the case of more formal treaties, which are set out in a single instrument to be signed by both Canada and by the other state Party, two original copies of the treaty are required, each one of which incorporates authentic texts in English and in French and in whatever other language or languages are required by the other state.

III SIGNATURE IN OTTAWA

1. If signature of an Agreement or Exchange of Notes is to take place in Ottawa, the text, which is normally first prepared in draft in the policy Division concerned, is submitted to Treaty Section to ensure that it conforms with Canadian treaty practice and the rules of international law as embodied in the 1969 Vienna Convention on the Law of Treaties and in customary international law. It is the responsibility of the action Division to arrange for translation and to provide Treaty Section with an accurate version in both official languages. Typing of the text of the Agreement or the Canadian Note forming part of an Exchange of Notes constituting an agreement will normally be done in final form in Treaty Section. In the case of a formal agreement, the document is ribboned and sealed in Treaty Section after a final verification of the texts by representatives of the foreign mission concerned and of Treaty Section has taken place.

2. The policy Division, in consultation with the Office of the Minister or other signatory, will determine the date, place and time of signature. This information should at once be passed to the Registrar of Treaties, Mrs. J.K. Bruce, so that the necessary signing arrangements, for which Treaty Section is responsible, may then be made. The policy

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concerned, in which case a photocopy of the version prepared by the host country should be requested and used as a guide. Verification of the final texts of the agreement (in English and French, together with the foreign version where appropriate) must take place before signature. Abroad, this usually involves a call by an officer of the Canadian Embassy or High Commission at the appropriate office of the Foreign Ministry, where the various texts are verified before the two original copies in all the language versions are ribboned and sealed. An Instrument of Full Powers, which has been prepared and forwarded from Ottawa, should be presented to the appropriate officials of the receiving state either before or at the time of signature of a formal Agreement.

2. If the treaty takes the form of an Exchange of Notes constituting an inter-governmental agreement, the Canadian note should be prepared on Embassy or High Commission letter-head and signed by the official who has been authorized by Order in Council. As indicated earlier, an Instrument of Full Powers is not required in connection with this form of agreement. It is important that, prior to final typing of the two notes, the draft text of the note from the other country forming part of the exchange be examined to ensure that it is consistent with the Canadian note and that paragraphs governing entry into force or termination of the agreement are the same as those contained in the Canadian note.

3. In either case, the post should ensure, prior to signature, that confirmation of Order in Council authority (e.g. you are authorized by Order in Council P.C. 19...-.... to sign, etc.) has been provided by telegram from Ottawa. In the case of a formal agreement, an Instrument of Full Powers or, if time does not permit, telegraphic Full Powers should have been received before signature takes place. Following signature, the Department should be notified by telegram of the date on which the formal Agreement or Exchange of Notes was signed. The authentic text of the Agreement or Exchange of Notes (signed original of foreign note and photostat copy of the Canadian note as signed in English and French) should be forwarded to Ottawa without delay for the attention of Treaty Section and deposit in the Treaty Archives. This is essential to keep our records up to date; in addition, where an Agreement has entered into force, provisionally or definitively on signature, copies will often be urgently required by this Department, other Departments and foreign missions.

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4. If a bilateral agreement requires ratification at a post abroad, the Canadian Instrument of Ratification (see Annex "G") is prepared in Treaty Section and after signature by the Secretary of State for External Affairs is forwarded to the post where the exchange of instruments is to take place. When the exchange of ratifications takes place, two copies of a document, which records the event, entitled a Protocol of Exchange, will be signed by representatives of the two countries. This document will be prepared by the host country in accordance with their treaty procedure and will be in the language of that country. An example of a Protocol of Exchange as prepared in Canada is attached as Annex "H". This document should bear the actual date of the exchange of instruments of ratification as it is on this date that the agreement enters into force. The Department should be notified when these documents are exchanged and the Instrument of Ratification of the other country, accompanied by one signed copy of the Protocol of Exchange, should be forwarded to Treaty Section in Ottawa.

V MULTILATERAL AGREEMENTS

1. If Canadian signature of a multilateral treaty, convention or other form of agreement is involved an Instrument of Full Powers is normally necessary. In all other cases (e.g. ratification, acceptance, approval, accession) an Instrument of Ratification, Acceptance, Approval or Accession (sample attached at Annex "E") will have to be deposited. These instruments are important since the act of ratification, acceptance, approval or accession is in each case the international act whereby a State establishes on the international plane, its consent to be bound by a treaty. All such documents will be prepared in Treaty Section and forwarded to the post, whose responsibility it will be to see that the document is deposited at the right time with the appropriate authorities. Canadian action in connection with the acceptance of GATT legal instruments differs from that described above. In accordance with the procedure outlined in GATT Secretary Document L/2785 of May 1, 1967, Canada's acceptance of GATT protocols, authorized by Order in Council, is notified to the Secretary General of GATT by signature supported by telegraphic Full Powers only (an example of this document appears at Annex "F").

2. Although a certified copy of the agreement will be available from the Depository in due course, it would be appreciated if the text of the Final Act of any conference at which a treaty is adopted (see also Section VIII below) could

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be made available to Treaty Section as soon as possible, whether or not the treaty is (a) opened for signature at time of adoption and signed on behalf of Canada at that time, or (b) is not signed by Canada immediately so that Treaty Records of the instrument may be prepared.

VI MAINTENANCE OF TREATY RECORDS

1. In order that the Canada Treaty Register be maintained so as to reflect correctly the status of Canada's treaty relations, in connection with all bilaterals to which Canada is a party, and every multilateral treaty which Canada has signed, ratified or accepted, it is essential that all information concerning any treaty action taken:

(a) by Canada

and

(b) by any other country in regard to a treaty to which Canada is a party or which Canada has signed (many treaties will not enter into force for Canada on signature)

should be forwarded to the Treaty Section, Legal Advisory Division, as soon as it is available. This requirement applies equally to posts abroad and to Divisions of the Department in Ottawa. ✓

VII ARRANGEMENTS OR UNDERSTANDINGS

1. Frequently governments wish to record in writing the terms of an agreed understanding or an arrangement between them regarding certain matters without however intending to create legal obligations that are binding internationally and which would otherwise be governed by international law. The techniques used in these cases will vary. An "arrangement" or "understanding" may take the form of an exchange of notes or letters: if embodied in a single instrument it is frequently called a Memorandum of Understanding. Whatever the form or designation employed, such arrangements do not create formal legal obligations between states on the international plane and therefore are not governed by international law. The obligations are moral and political in nature. In Canadian practice, no Order in Council authority is required to enter into arrangements or understandings of

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this kind with foreign governments (e.g. the Consular Understanding attached at Annex "I"). They are not entered as agreements in the Canada Treaty Register, but are indexed separately. Whenever a post is in doubt as to whether a document in respect of which it has been asked to take any signatory or similar action is or is not intended to be a treaty, it should refer the question to Ottawa before taking such action.

2. Even more common are co-operative arrangements at the technical level concluded between Canadian Government departments or agencies and their counterparts in other countries. This Department has always recognized that such arrangements constitute an important means of enabling Canadian Government departments and agencies to function more effectively by developing close working level links with their counterparts in other countries.

3. Whether an understanding is an inter-agency or inter-governmental arrangement, it is important that the Department of External Affairs be consulted in a [redacted] of its signature so that it has an opportunity to comment: (a) because of the Department's general responsibility for the conduct of all aspects of Canada's relations with other countries; and (b) to ensure that the content and form of the particular understanding is appropriate in terms of Canadian foreign policy requirements and international usage. Furthermore, when in fact, a proposed arrangement has broad foreign or domestic policy implications, or incorporates provisions of an intrinsically legal character (e.g. financial commitments, third party liability clauses, clauses concerning privileges and immunities or the conferring of a right on the part of one state to carry out activities in the territory of the other state) it should not be concluded as an arrangement but instead should be re-drafted in the form of a binding international agreement for the conclusion of which authorization in the form of an Order in Council will be required.

4. One signed copy of any arrangement or understanding must be forwarded to the Treaty Section for registration in a separate register it maintains of such instruments. It is essential that this step should not be overlooked, because otherwise the Department has no rapid method of referring to such arrangement, or providing copies to other Departments on request. The only central index in the Canadian Government of arrangements or understandings to which the Government of Canada is a party is that maintained by the Treaty Section of this Department. It can be a useful and valuable tool only if officers of this and other Departments ensure

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that copies of such arrangements, when signed, are forwarded to our Treaty Section. CIDA arrangements or understandings are frequently entered into on behalf of the Government of Canada. The co-operation of CIDA personnel is thus particularly important if our register of arrangements is to be an up-to-date and accurate working tool.

VIII FINAL ACT

1. The Final Act of a conference is normally limited to a statement or summary of the proceedings of the conference, e.g. the name of participating states, the organization of the conference, presiding officers, committees established, resolutions adopted, etc. It will usually conclude by stating that, on the basis of its deliberations, the conference drew up a Convention on a named subject and opened it for signature on a certain date. The text of the Convention may be annexed to the Final Act but the Convention itself does not form part of the Final Act. This means that, in practice, the heads or deputy heads of Canadian delegations (or in their absence, any accredited member of the delegation) can sign the Final Acts of international conferences without engaging Canada to any international commitment so far as the Convention is concerned. No Full Powers are required for this purpose, although the Letter of Credentials appointing the delegates to the particular conference may include authority to sign the Final Act.

2. The Final Act of an international conference must be carefully distinguished from instruments such as "Act" (e.g. Act of the International Conference on Viet-Nam) or "Acts" (e.g. Acts of the ITU Plenipotentiary Conference) which are terms occasionally employed to designate instruments which are intended to create, and which do embody, international obligations. In case of doubt, the Department should always be consulted well in advance of their signature. Generally speaking, however, international conferences frame the Final Act in such a way that it does not constitute in itself nor embody an instrument or instruments having treaty force and effect.

IX SOME TERMS USED IN TREATY PRACTICE

"TREATY" An international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument (e.g. treaty, agreement, convention, protocol) or in two or more related instruments (e.g. Exchanges of Notes) and whatever its particular designation.

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"BILATERAL AGREEMENT"

An agreement to which two States are parties, which may provide for entry into force on signature or on exchange of Instruments of Ratification confirming consent to be bound by the agreement.

A formal bilateral agreement normally comprises the following sections:

1. the title
2. the preamble, consisting of a number of qualifying clauses such as "Being parties to, etc.", "Desiring, etc.", concluded by "Have agreed as follows:"
3. the text or body of the agreement
4. the testimonium or signature page, followed by any annexes or appendices.

"ALTERNAT" The so-called principle of the alternat refers to the practice of reversing the names of the parties in the title, preamble and concluding clauses of a bilateral agreement so that, e.g. in the Canadian copy Canada will appear first and, in the other copy, the name of the foreign country will appear first. It is Canadian practice to apply the principle of the alternat in all cases where a reversal of the names can be done simply, e. g. where the phrase "Canada and Switzerland" appears in the Canadian copy, the Swiss copy will read "Switzerland and Canada".

We do not however apply the alternat principle if it would necessitate rewording a paragraph or article in its entirety.

Where an agreement is signed abroad, the Foreign Ministry of the country concerned will advise on the application of the alternat.

"EXCHANGE OF NOTES"

A form of bilateral agreement frequently employed between states because of its ease and relative simplicity (Notes being a form of diplomatic communication). An Exchange of Notes which is

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intended to constitute an international agreement has the same legal effect as any other international agreement between states and is equally binding in international law. The notes may be exchanged on the same date or on subsequent dates.

"ACCORD CADRE"

An "Accord Cadre" is the name given to a general framework agreement between Canada and another state which sets out the parameters within which the Canadian provinces may enter into subsidiary arrangements or "ententes" with that other state or with its political subdivisions. Where only one Canadian province is involved the accord cadre procedure is usually replaced by an Exchange of Notes, which expresses, on the part of the federal government, its consent for the conclusion of an arrangement between the province concerned and the foreign entity.

"MULTILATERAL AGREEMENT"

An agreement concluded among three or more States.

"SIGNATURE", "RATIFICATION", "ACCEPTANCE", "APPROVAL" and "ACCESSION"

In all cases, the legal effect of the acts of "ratification", "acceptance", "approval" or "accession" is the same - they simply serve to indicate the international act whereby a State registers on the international plane its consent to be bound by the agreement.

In some cases an agreement may provide that it enters into force on signature. In other cases, some further act may be required in order for a State to establish its consent to be bound. This subsequent act is usually termed ratification. Normally a multilateral instrument such as a convention is open for signature for a definite period, such as one year. Thereafter, it is no longer open to States for signature and subsequent ratification. Instead, States may register their consent to be bound (depending on the terms of the agreement) by the single act of depositing instruments of accession, acceptance or approval.

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In Canadian practice, Order in Council authority is necessary for signature of any agreement. The same, or a different Order in Council will, authorize deposit of the instrument of ratification, acceptance, approval or accession, if such action is required.

"FULL POWERS"

An Instrument of Full Powers provides formal evidence of the authority of the representative to sign on behalf of his government. It names the representative and indicates the particular agreement which he is entitled to sign. Normally, Instruments of Full Powers are exchanged at the time of signature of treaties, agreements and conventions and should be forwarded to the Department with the Canadian original of the signed agreement. Full Powers are not required when an agreement is to be signed by the Head of State, the Prime Minister or the Secretary of State for External Affairs. By international practice, the signature of Exchanges of Notes does not normally require the production of Full Powers.

"ARRANGEMENT OR UNDERSTANDING"

This refers to an instrument (such as a Memorandum of Understanding) or instruments (such as an Exchange of Notes or letters) which is or are not intended by the parties to create international legal obligations governed by international law.

"PROTOCOL OF EXCHANGE"

This is a document recording the exchange of Instruments of Ratification of a bilateral Agreement which, after being prepared in two copies bearing the date on which the exchange actually takes place, is signed by representatives of both states. The Canadian copy of this document should be forwarded to Treaty Section with the Instrument of Ratification of the foreign state.

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X ABBREVIATIONS

Following is a list of abbreviations for sources of reference commonly used in relation to international agreements:

Canadian Publications

- CUS Treaties and Agreements affecting Canada in force between His Britannic Majesty and the U.S.A. (1814-1925). Queen's Printer, Ottawa (1927).
- CTS Canada Treaty Series (1928 to current). Queen's Printer, Ottawa.

British Publications

- BTS British Treaty Series (1892 to current). Her Majesty's Stationery Office, London.
- BSP British and Foreign State Papers, London.
- HBCT Handbook of British Commercial Treaties. Her Majesty's Stationery Office, London (1907, 1908, 1912, 1925, 1931 and cumulative indices up to 1940).
- HT Hertslet's Commercial Treaties, London. (N.B. Not an official publication. Includes documents ranging in date from 1856 to 1925. Came to an end as a separate publication in 1925 with Vol. XXXI.) From 1925 "Hertslet's Treaties" and "British and Foreign State Papers" appeared as one publication, annually, under the title "British and Foreign State Papers".
- CT Chalmers Treaties. London 1790. A collection of Treaties between Great Britain and other Powers by George Chalmers.
- DARBY A general collection of treaties, etc., relating to Peace, War, and Commerce and other public papers, among the Potentates of Europe, from 1648-1731. Printed by J. Darby (London) - in 4 volumes.

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League of Nations Publications

LNTS League of Nations Treaty Series, Geneva,
1919 until dissolution of the League.

United Nations Publications

UNTS United Nations Treaty Series.

UNSMC United Nations Status of Multilateral
Conventions.

United States of America Publications

US/TS United States Treaty Series, Washington.

US/EAS United States Executive Agreement Series,
Washington.

US/TIAS United States Treaties and Other International
Acts Series, Washington.

USTD United States Treaty Developments. A chrono-
logical list of Treaties submitted to the U.S.
Senate; a numerical list of Treaties; and an
Index; a list by subject and regions included
as Appendices. (Publication discontinued in
1950.)

MAL Treaties, Conventions and International Acts,
Protocols and Agreements between the U.S. and
Other Countries. William M. Malloy.

MIL Treaties and Other International Acts of the
United States of America. Hunter Miller,
Washington.

Labour Publications

ILC International Labour Conference. Conventions
and Recommendations. Geneva: 1919-1949.

Miscellaneous Publications

HUDSON International Legislation (cumulative).
Edited by Manley O. Hudson, Washington.
Published by the Carnegie Endowment for
International Peace.

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XI PREPARATION OF THE AUTHENTIC TEXTS OF CANADIAN FORMAL AGREEMENTS

The following rules are a guide to the preparation of formal agreements for signature in Canada. They may be helpful to Posts abroad, which should, however, be guided by the treaty procedure of the country involved if they are requested to assist in typing the English or French texts of a formal agreement to be signed outside of Canada.

- (a) Use appropriate treaty paper.
- (b) Prepare two (2) original texts, employing the principle of the alternat (see Section IX).
- (c) Type the title in capital letters at the top of the first page.
- (d) Type the preamble in double spacing.
- (e) Use Roman numerals to indicate each separate Article, capitalizing ARTICLE as ARTICLE I.
- (f) Within the Articles, use arabic numerals in the margin to indicate separate paragraphs.
- (g) Leave a margin of 2½" at the top and bottom and a 2" margin at the left side: the right hand margin may be flexible at the discretion of the typist.
- (h) Numbering of the pages begins with page two: Arabic numerals should be placed ½" from the top and right side of each page.
- (i) The signature page should always be prepared as a separate page and its composition depends on the number of languages involved.

XII SIGNATURE CEREMONY

1. The following comments are applicable to the signature of an Agreement or Convention. Normally signature of an agreement constituted by an Exchange of Notes is not the subject of a signing ceremony: the usual formula in such cases is for the originating note to conclude by stating: "this Note , and your reply to that effect, shall constitute an agreement between our two Governments which will enter into force on the date of your reply". There

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will, of course, be the rare occasion when, because of the nature of the agreement constituted by the Exchange of Notes, a signature ceremony is considered necessary. It should also be borne (in mind that the signature of certain Agreements, such as Air Transport Agreements, is) frequently accompanied by one or more related Exchanges of Notes. In these cases, signature of the Notes takes place immediately following signature of the Agreement.

2. Such notes may be delivered by hand, thus dispensing with any signature ceremony.

Required: Well polished table, sufficiently long and wide enough to accommodate texts, pens and microphones;

Two or three appropriate chairs;

Standing flags of Canada and the country with which the agreement is to be signed;

Two fountain pens (normally desk sets), which should be filled and tested a short time before signature of the agreements; and

Blotters.

3. The representative of the host country sits at the left, facing the audience, in front of the flag of the other state party to the agreement, the representative of the foreign state on his right, in front of the Canadian flag. The texts, blotters protruding from signature pages, and other documents (Instruments of Full Powers and/or related notes) are placed on the table immediately before signature of the agreement takes place: the Canadian text in front of the Canadian representative's chair and vice versa; the pens above and to the right.

4. The principals meet and proceed to the table. At the invitation of the host, the foreign representative will be seated: they will exchange Instruments of Full Powers. Those who assist the principals stand behind and to the left or right of one or other signatory. Their purpose is to ensure that the ceremony takes place smoothly and that the documents are signed correctly, i.e. (1) the Canadian copy of the agreement is signed by the Canadian representative while at the same time the other copy is signed by the foreign representative, (2) each assistant then removes the

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signed copy from in front of his principal and passes it to the other signatory indicating the space for the second signature. Any related Exchanges of Notes are then signed.

5. The principals then shake hands and exchange documents (the formal agreement and/or Exchange of Notes). The representative of the host country may say a few words to which the representative of the other state will respond.

6. At this point, coffee or champagne is generally served and a toast is drunk to the success of the agreement. The whole ceremony should take only approximately twenty minutes, although the reception might extend this through three quarters of an hour or an hour in all.

7. The Canadian copy of the agreement and related documents should be picked up and transmitted without delay to the Treaty Section of Legal Advisory Division.

8. The above normal procedure will of course be altered to accommodate a situation in which three or more signatories participate in a ceremony, in which case the Canadian signatory should be seated either at the extreme left or in the middle. An additional Canadian flag will also be required, one of which should be placed at either end of the row of flags. Arrangements for controlled presentation of the texts for signature by all participants will need to be carefully worked out.

Annex "A"

(Requesting execution and issue of Full Powers)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)
)
)
THAT)
)
)
THAT)
)
)
)
)

These explanatory paragraphs
should be typed single space

The undersigned, therefore, (with concurrence of the
Minister of) has the honour to recommend that
authority be granted to the Secretary of State for External
Affairs to execute and issue an Instrument of Full Powers
authorizing (name), (official position), to sign, on behalf
of the Government of Canada, subject to ratification, the
(name of agreement), and, to take the action necessary to
bring the (name of agreement) into force.

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)

Annex "B"

(Requesting authority to sign an Exchange of Notes)

(Sample Submission to Council - typed on departmental vellum)

TO: HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

The undersigned has the honour to report

THAT)	
)	
)	
THAT	)	These explanatory paragraphs
	)	should be typed single space
)	
THAT)	
)	
)	
)	

The undersigned, therefore, has the honour to recommend that authority be granted to (name and official position) to sign, on behalf of the Government of Canada, an Agreement, in the form of an Exchange of Notes, with the Government of to

Respectfully submitted,

Secretary of State
for External Affairs

Ottawa, (....., 19..)

Annex "C"



P.C. 1975-282

11 February, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
is pleased hereby to authorize the Secretary of State
for External Affairs

- (a) to execute and issue an Instrument of Full Powers authorizing the Honourable Jean Marchand to sign, on behalf of the Government of Canada, an Air Transport Agreement between the Government of Canada and the Government of Morocco; and
- (b) to sign a supplementary Exchange of Notes between the Government of Canada and the Government of Morocco, constituting an agreement concerning traffic rights granted under the Air Transport Agreement.

RECEIVED

FEB 11 1975

In the
Department of
External Affairs

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

000110



P.C. 1975-583
18 March, 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
on the recommendation of the Secretary of State for
External Affairs with the concurrence of the Minister of
the Environment, is pleased hereby to authorize Marcel
Cadieux, Ambassador of Canada to the United States of
America to sign, on behalf of the Government of
Canada, an agreement in the form of an exchange of notes
between the Government of Canada and the Government of
the United States, relating to the Exchange of Information
on Weather Modification Activities.

REGISTERED IN AUTH. INDEX & REFERRED FOR ACTION TO: <i>ECS</i>
COPIES REFERRED FOR <u>INFO</u> TO: <i>FLA, GWU</i>

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

Received from T.B. 27-3-75

Annex "D"



C.P. 1975-583
18 mars 1975

PRIVY COUNCIL • CONSEIL PRIVÉ

Sur avis conforme du secrétaire d'Etat aux Affaires extérieures et avec l'assentiment du ministre de l'Environnement, il plaît à Son Excellence le Gouverneur général en conseil d'autoriser par les présentes M. Marcel Cadieux, ambassadeur du Canada aux Etats-Unis d'Amérique, à signer, au nom du gouvernement du Canada, une entente prenant la forme d'un échange de notes entre le gouvernement du Canada et le gouvernement des Etats-Unis dans le cadre de l'Accord entre les Etats-Unis et le Canada concernant l'échange de renseignements relatifs aux activités visant à modifier le temps.

REGISTERED IN AUTH. INDEX & REFERRED FOR ACTION TO:
COPIES REFERRED FOR INFO TO:

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)

Annex "E"

I,

Secretary of State for External Affairs

in the Government of Canada,

do hereby certify that

Minister of

is vested with Full Power and Authority to sign, on behalf
of the Government of Canada, an Agreement
between the Government of Canada and the Government of

IN WITNESS WHEREOF, I have signed and sealed
these presents at Ottawa this day of 19 .

Secretary of State
for External Affairs

(CE DOCUMENT SERA PREPARE A OTTAWA PAR LA SECTION DES TRAITES SUR PAPIER A TRAITES)

Annex "E"

Je soussigné,
Secrétaire d'Etat aux Affaires extérieures
dans le Gouvernement du Canada,
atteste par les présentes que

Ministre du
est revêtu des pleins pouvoirs et de l'autorité
nécessaire pour signer, au nom du Gouvernement du
Canada, un accord avec le Gouvernement de
touchant l'application _____ .

EN FOI DE QUOI, j'ai apposé aux présentes
mon sieng et sceau.

FAIT à Ottawa le jour de 19 .

Le Secrétaire d'Etat aux
Affaires extérieures

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON
TREATY PAPER)

Annex "E-1"

I, _____,
Secretary of State for External Affairs,
in the Government of Canada,
do hereby certify that the Government of Canada
ratifies (accepts, etc.) the Agreement on the
_____, done at
on _____, 19 ____.

IN WITNESS WHEREOF, I have signed and
sealed this Instrument of Ratification (Acceptance, etc.)

DONE at Ottawa this _____ day of _____.

Secretary of State
for External Affairs

MESSAGE

Annex F

FM/DE	PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER		SECURITY	
	LIEU	MINISTÈRE	N° D'ORIG.				SÉCURITÉ	
	OTT	EXT	FLA-				UNCLAS	
							PRECEDENCE	
TO/A	PERMIS GENEVA							
INFO	ITC/	FIN/						

DISTR.

REF ECL FLA/
SUB/SUJ ACCEPTANCE OF GATT LEGAL INSTRUMENTS
 FOLLOWING FOR (NAME OF HEAD OR ACTING HEAD OF CANADIAN
 PERMANANT MISSION)
 YOU HAVE BEEN AUTHORIZED BY ORDER IN COUNCIL P.C.
 OF 19 , TO ACCEPT BY SIGNATURE ON BEHALF OF THE GOVERNMENT
 OF CANADA _____

2. PLEASE PRESENT THIS TELEGRAM TO THE APPROPRIATE GATT OFFICIALS
 AS EVIDENCE OF YOUR AUTHORITY TO ACCEPT, BY SIGNATURE, _____

3. TELEGRAPHIC AUTHORIZATION IS SUBMITTED IN LIEU OF A FORMAL
 INSTRUMENT OF FULL POWERS IN ACCORDANCE WITH THE NOTIFICATION TO THE
 GATT BY THE SSEA IN OCTOBER 1967 AND IN OCTOBER 1973 IN RESPONSE TO
 SECRETARIAT DOCUMENT L/2785 OF MAY 1, 1967.

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SIG.....	FLA		SIG.....

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER),
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

WHEREAS an Agreement on
was signed
at on ,
by duly authorized representatives
of the Government of Canada and
the Government of
, which Agreement reads
word for word as follows:

ATTENDU qu'un Accord de
a été signé
à , le ,
par les représentants dûment
autorisés du Canada et de
, lequel
Accord se lit mot pour mot comme
il suit:

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

INSERT PHOTOCOPY OF AUTHENTIC TEXT

INSÉRER PHOTOCOPIE DU TEXTE AUTHENTIQUE

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER À TRAITÉS)

The Government of Canada having
considered the Agreement
hereby confirms and
ratifies it and undertakes to carry
out the provisions set forth therein.

Le Gouvernement du Canada ayant
considéré l'Accord
, le confirme et le ratifie
par les présentes et s'engage à mettre
à execution les dispositions qui y
sont formulées.

(THIS DOCUMENT WILL BE PREPARED BY TREATY SECTION IN OTTAWA ON TREATY PAPER)
(CE DOCUMENT SERA PRÉPARÉ À OTTAWA PAR LA SECTION DES TRAITÉS SUR PAPIER
À TRAITÉS)

IN WITNESS WHEREOF this Instrument
of Ratification is signed and sealed by
the Secretary of State for External
Affairs of Canada.

DONE at Ottawa this day of
1975.

EN FOI DE QUOI le Secrétaire
d'Etat aux Affaires extérieures a signé
et apposé son sceau à cette Instrument
de Ratification.

FAIT à Ottawa ce jour de
1975.

Secretary of State
for External Affairs

Secrétaire d'Etat
aux Affaires extérieures

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)
(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging Instruments of Ratification by their respective Governments of the Agreement between the Government of Canada and the Government of , which was signed at on , 19 , and the respective Instruments of Ratification of the aforesaid Agreement having been carefully compared and found to be in due form, the said exchange took place this day.

Les soussignées s'étant réunis pour procéder au nom de leurs Gouvernements respectifs à l'échange des Instruments de Ratification de l'Accord entre le Gouvernement du Canada et le Gouvernement de qui a été signé à le 19 , et les Instruments respectifs de ratification dudit Accord ayant été soigneusement comparés et trouvés en bonne et due forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le present Protocole d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Government of Canada
Pour le Gouvernement du Canada

For the Government of
Pour le Gouvernement de

(THIS DOCUMENT SHOULD BE TYPED ON PLAIN VELLUM - 8½ x 14)
(IL FAUT DACTYLOGRAPHIER CE DOCUMENT SUR PARCHEMIN - 8½ x 14)

PROTOCOL OF EXCHANGE

The undersigned, having met for the purpose of exchanging
Instruments of Ratification by their respective Governments of the
Agreement

between the Government of

and the Government of Canada, which was signed at

on , 19 , and the respective Instruments of Ratification
of the aforesaid Agreement having been carefully compared and found to
be in due form, the said exchange took place this day.

Les soussignés s'étant réunis pour procéder au nom de
leurs Gouvernements respectifs à l'échange des Instruments de Ratification
de l'Accord

entre le Gouvernement de

et le Gouvernement du Canada qui a été signé à

le 19 , et les Instruments respectifs de ratification
dudit Accord ayant été soigneusement comparés et trouvés en bonne et due
forme, ledit échange a eu lieu aujourd'hui.

IN WITNESS WHEREOF they have signed the present
Protocol of Exchange.

DONE at Ottawa this day of 19 .

EN FOI DE QUOI ils ont signé le present Protocole
d'Echange.

FAIT à Ottawa ce jour de 19 .

For the Government of

Pour le Gouvernement de

For the Government of Canada

Pour le Gouvernement du Canada

Ottawa, April 2, 1973

No. FLA-194

Excellency,

I have the honour to refer to discussions held during the meeting in Ottawa in October 1971 of the Canada-Mexico Ministerial Committee, concerning the flow of visitors between our two countries and the resulting importance of co-operation in the field of consular work.

Your Excellency will recall that both sides expressed satisfaction with the growth in number of persons visiting each other's country, whether as official visitors, tourists, business people, or in other worthwhile capacities. It was also agreed that measures that could be taken to stimulate and facilitate this flow in both directions would be to the mutual benefit of both our countries.

With the increasing flow of people between Canada and Mexico, it was evident during the discussions at the meeting of the Ministerial Committee that ways should be sought by which the work of our respective consular officials could be facilitated. In accordance with those discussions, I would propose an understanding between our two governments in the following terms:

... 2

His Excellency
Emilio O. Rabasa,
Minister of Foreign Relations of Mexico.

- (a) Consular officers shall be free to communicate in person, in writing, or by telephone with their nationals, and to have access to them. The competent authorities of the Receiving State will cooperate in facilitating and removing impediments to such communication;
- (b) If a national of the Sending State is arrested or committed to prison or to custody pending trial or is detained in any other manner and so requests, the competent authorities of the Receiving State shall inform the consular post of the Sending State without delay. Any communication addressed to the consular post by the person arrested in prison, custody or detention shall be forwarded by the said authorities without delay. Likewise, if the appropriate consular officer of the Sending State so requests, the authorities of the Receiving State shall inform him if a national of the Sending State is under arrest or held in custody pending trial, or otherwise detained;
- (c) Consular officers shall be free to enquire into any matter affecting the interests of their nationals from the competent authorities within their district;
- (d) Consular officers shall have the right to visit a national of the Sending State who is in prison, custody or detention, to converse and correspond with him, to arrange for his legal representation and to assist him in any other proper way. They shall also have the right to assist the nationals in cases of missing persons and misadventures causing injury or death;

(e) It is understood that the foregoing constitute only a few of the more salient points among consular functions carried out by the respective officials of the two countries pursuant to established international law and custom and that there are many other tasks which they can and must legitimately perform;

(f) In view of the growing importance of relations in this field, it will be desirable to maintain contact on the subject and to carry out consultations as the occasion demands with a view to facilitating the further growth in mutually beneficial travel between the two countries.

It is understood that the rights and duties referred to in points (a), (b), (c) and (d) shall be exercised in conformity with the constitution, laws and regulations of the Receiving State.

If the foregoing proposals are acceptable to Your Excellency's government, I have the honour to propose that this Note, in English and French, and Your Excellency's reply in Spanish, shall constitute an understanding between our two Governments, each language version of which shall be equally authentic. This understanding shall become effective on the date of your reply and may be terminated by either party upon six months' notice to the other.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

NOTE

The Mexican Foreign Minister, in his reply in Spanish to the above note, confirmed his Government's acceptance of the above proposals.

OTTAWA, le 2 avril 1973

No FLA-194

Monsieur le Ministre,

J'ai l'honneur de me référer aux discussions qui se sont déroulées au cours de la rencontre à Ottawa au mois d'octobre 1971 du Comité ministériel Canada-Mexique concernant le nombre de visiteurs de nos deux pays et l'importance qui en découle pour une coopération dans le domaine consulaire.

Vous vous rappelerez que les deux parties ont alors exprimé leur satisfaction au sujet de l'accroissement du nombre de personnes qui se rendent dans l'un et l'autre pays, que ce soit à titre officiel, ou comme touriste, hommes d'affaires ou en toute autre qualité. Il a également été convenu que les mesures prises pour favoriser et faciliter cet échange de visiteurs seraient à l'avantage réciproque de nos deux pays.

Au cours des entretiens qui se sont déroulés dans le cadre de la réunion du Comité ministériel, il est apparu que le nombre grandissant de personnes qui voyagent entre le Canada et le Mexique exigeait que de nouveaux moyens soient trouvés pour faciliter la tâche des fonctionnaires consulaires des deux pays. Suite à ces dis-

...2

Son Excellence
Monsieur Emilio O. Rabasa
Ministre des Relations extérieures du Mexique

cussions, je propose la conclusion d'une entente entre nos deux Gouvernements, selon les modalités suivantes:

- (a) Les fonctionnaires consulaires ont la liberté de communiquer en personne, par écrit ou par téléphone avec les ressortissants de leur pays et de les rencontrer. Les autorités compétentes de l'Etat d'accueil doivent faire en sorte de faciliter ces communications et d'en éliminer les obstacles;
- (b) Si un ressortissant de l'Etat d'envoi est arrêté, emprisonné ou placé sous surveillance en attendant son procès ou s'il est détenu de toute autre façon et s'il le demande, les autorités de l'Etat d'accueil doivent informer la mission consulaire de l'Etat d'envoi sans délai. Toute communication adressée à la mission consulaire par la personne arrêtée, emprisonnée, placée sous surveillance ou séquestrée doit être expédiée par lesdites autorités sans délai. De la même façon, si le fonctionnaire consulaire compétent de l'Etat d'envoi le demande, les autorités de l'Etat d'accueil doivent lui signaler qu'un ressortissant de l'Etat d'envoi a été arrêté ou placé sous surveillance en attendant son procès ou qu'il est autrement détenu;

...3

- (c) Les fonctionnaires consulaires ont la liberté de se renseigner auprès des autorités compétentes de leur circonscription sur toute question touchant les intérêts des ressortissants de leurs pays;
- (d) Les fonctionnaires consulaires ont le droit de rendre visite à tout ressortissant de l'Etat d'envoi qui est emprisonné, placé sous surveillance ou détenu, de converser et de communiquer avec lui, de voir à ce qu'il soit représenté par un avocat ou de l'aider de toute autre manière. Ils ont aussi le droit d'aider les ressortissants de leur pays à l'occasion de disparitions et d'accidents entraînant des blessures ou le décès;
- (e) Il est entendu que ce qui précède ne constitue que certains des points saillants que comportent les fonctions consulaires exécutées par les fonctionnaires respectifs des deux pays, conformément au droit et aux pratiques internationaux établis, et qu'il existe de nombreuses autres tâches qu'ils peuvent et doivent légitimement exécuter;
- (f) Vu l'importance grandissante des relations dans ce domaine, il est souhaitable de demeurer en rapport à ce sujet et de procéder à des consultations, le cas échéant, afin

- 4 -

de favoriser l'augmentation du nombre
des voyages à l'avantage réciproque des
deux pays.

Il est entendu que les droits et attributions
mentionnés dans les sous-paragraphes (a), (b), (c) et
(d) qui précèdent doivent être exercés conformément à la
constitution, aux lois et aux règlements de l'Etat d'ac-
cueil.

Si les propositions susmentionnées agréent au
Gouvernement de Votre Excellence, j'ai l'honneur de pro-
poser que les textes anglais et français de la présente
Note, et la réponse de Votre Excellence rédigée en espa-
gnol, constituent entre nos deux Gouvernements une enten-
te dont les trois textes feront également foi. Cette
entente prendra effet à la date de la réponse de Votre
Excellence, et peut être terminée par l'une ou l'autre
partie par un avis de six mois.

Veillez agréer, Monsieur le Ministre, les as-
surances renouvelées de ma très haute considération.

Le Sous-secrétaire d'Etat
aux Affaires extérieures,

Note

Le Ministre des Affaires étrangères du Mexique, dans
sa réponse en espagnol à la note ci-dessus, a confirmé l'accord de
son gouvernement avec les propositions énoncées ci-haut.

OTTAWA, le 2 avril 1973

No FLA-194

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Son Excellence
Monsieur Emilio O. Rabasa
Ministre des Relations extérieures du Mexique

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- (e) Il est entendu que ce qui précède ne constitue que certains des points saillants que comportent les fonctions consulaires exécutées par les fonctionnaires respectifs des deux pays, conformément au droit et aux pratiques internationaux établis, et qu'il existe de nombreuses autres tâches qu'ils peuvent et doivent légitimement exécuter;
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...4

- 4 -

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Veillez agréer, Monsieur le Ministre, les as-
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Le Sous-secrétaire d'Etat
aux Affaires extérieures,

Note

Le Ministre des Affaires étrangères du Mexique, dans
sa réponse en espagnol à la note ci-dessus, a confirmé l'accord de
son gouvernement avec les propositions énoncées ci-haut.

Ottawa, April 2, 1973

No. FLA-194

Excellency,

I have the honour to refer to discussions held during the meeting in Ottawa in October 1971 of the Canada-Mexico Ministerial Committee, concerning the flow of visitors between our two countries and the resulting importance of co-operation in the field of consular work.

Your Excellency will recall that both sides expressed satisfaction with the growth in number of persons visiting each other's country, whether as official visitors, tourists, business people, or in other worthwhile capacities. It was also agreed that measures that could be taken to stimulate and facilitate this flow in both directions would be to the mutual benefit of both our countries.

With the increasing flow of people between Canada and Mexico, it was evident during the discussions at the meeting of the Ministerial Committee that ways should be sought by which the work of our respective consular officials could be facilitated. In accordance with those discussions, I would propose an understanding between our two governments in the following terms:

... 2

His Excellency
Emilio O. Rabasa,
Minister of Foreign Relations of Mexico.

- 2 -

- (a) Consular officers shall be free to communicate in person, in writing, or by telephone with their nationals, and to have access to them. The competent authorities of the Receiving State will cooperate in facilitating and removing impediments to such communication;
- (b) If a national of the Sending State is arrested or committed to prison or to custody pending trial or is detained in any other manner and so requests, the competent authorities of the Receiving State shall inform the consular post of the Sending State without delay. Any communication addressed to the consular post by the person arrested in prison, custody or detention shall be forwarded by the said authorities without delay. Likewise, if the appropriate consular officer of the Sending State so requests, the authorities of the Receiving State shall inform him if a national of the Sending State is under arrest or held in custody pending trial, or otherwise detained;
- (c) Consular officers shall be free to enquire into any matter affecting the interests of their nationals from the competent authorities within their district;
- (d) Consular officers shall have the right to visit a national of the Sending State who is in prison, custody or detention, to converse and correspond with him, to arrange for his legal representation and to assist him in any other proper way. They shall also have the right to assist the nationals in cases of missing persons and misadventures causing injury or death;

- (e) It is understood that the foregoing constitute only a few of the more salient points among consular functions carried out by the respective officials of the two countries pursuant to established international law and custom and that there are many other tasks which they can and must legitimately perform;
- (f) In view of the growing importance of relations in this field, it will be desirable to maintain contact on the subject and to carry out consultations as the occasion demands with a view to facilitating the further growth in mutually beneficial travel between the two countries.

It is understood that the rights and duties referred to in points (a), (b), (c) and (d) shall be exercised in conformity with the constitution, laws and regulations of the Receiving State.

If the foregoing proposals are acceptable to Your Excellency's government, I have the honour to propose that this Note, in English and French, and Your Excellency's reply in Spanish, shall constitute an understanding between our two Governments, each language version of which shall be equally authentic. This understanding shall become effective on the date of your reply and may be terminated by either party upon six months' notice to the other.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

NOTE

The Mexican Foreign Minister, in his reply in Spanish to the above note, confirmed his Government's acceptance of the above proposals.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO File (through Mr. Robertson)

SECURITY
Sécurité

UNCLASSIFIED

FROM Mrs. J.K. Bruce

DATE

December 5, 1974

REFERENCE
Référence

NUMBER
Numéro

SUBJECT Change in Policy - Binding of Treaties

FILE	DOSSIER
OTTAWA	
20-3-4-CDA.	
MISSION	
38.	

ENCLOSURES
Annexes

DISTRIBUTION

Copy for Mr. P. O. R. No. 2

In a conversation with Mr. Robertson shortly before my departure on vacation in May it was decided that we should, with few exceptions, limit the use of the blue leather, gold embossed treaty cover to Instruments of Ratification. When the size of the treaty or its importance necessitates the use of the leather binder, the Canadian text should be ribboned and sealed in a vellum cover which may be split to accommodate the quantity of paper and placed temporarily inside a blue leather binder for signature purposes only.

2. While these suggestions arose as the result of a discussion concerning the necessity to bind separately in blue leather all three Canada/U.S. Air Agreements (which would have required six binders had we used a similar binding for the Canadian copies) the increasing cost of paper and the storage space such binders require are factors to consider. We noted that the U.S. treaty office is also concerned with conservation as indicated by a recent U.S. Instrument of Ratification which, bound in a plastic folder, omits the text of the agreement which is ratified.

3. The British have decided to publish multilaterals in the English language only.

Jessie K. Bruce
J.K. Bruce

file 10/10/74 JWS.



①. DALHOUSIE UNIVERSITY
FACULTY OF LAW

THE OFFICE OF THE LIBRARIAN

②. *Christian L. Wiktor*

HALIFAX, NOVA SCOTIA
CANADA

September 24, 1974

(2)

Mrs. J. Bruce
Treaty Registrar
External Affairs Department
Lester B. Pearson Bldg.
125 Sussex Drive
Ottawa, Ont. K1A 0G2

20-3-4-CDA.	
38.	20

Dear Mrs. Bruce:

Following our telephone conversation of September 20th, and one with Mr. Ryn of September 23d, I would like to thank you for your kind offer to help me with the research project on Canadian treaties, depending of course on your available time.

I hope I will be able to come to Ottawa and use your treaty files at your library. In the meantime I would appreciate receiving the following:

- 1) a copy of the master cards of the two most earliest treaties in the file.
- 2) a copy of the master cards for five U.S. treaties: Nov. 19, 1794 (Jay); Aug. 9, 1842 (Webster-Ashburton treaty), June 15, 1846 (Oregon treaty), June 5, 1854 (Reciprocity), and the Treaty of Washington of May 8, 1871.
- 3) a copy of the up-dated list of CTS after 1964 (English and French).

Looking forward to hearing from you.

Sincerely yours,

Christian L. Wiktor

Christian L. Wiktor
Associate Professor &
Law Librarian

CLW/bw

File 8/7/74

Mrs Bruce

ACTION COPY (2)

20-3-4-CDA	
12	20

UNCLASSIFIED
London
FM LDN 1140 MAY20/74

TO EXTOTT FLA

REF YOURTEL FLA304 MAY17 OURTEL 1134 MAY17

---PROPOSED VISIT BTO-MRS JK BRUCE

APPOINTMENTS RESCHEDULED FOR MAY29 AND 30. MRS BRUCE WILL BE EXPECTED 1000HRS MAY29 AT TREATY SECTION FCO. LUNCH NOW SET FOR MAY29.

201125Z 30 END/8

RECEIVED

MAY 21 1974

In Legal Advisory Division
Department of External Affairs

Mrs Bruce

(3) 20-3-4-CDA
12 20

ACTION COPY

UNCLASSIFIED

FM LDN 1134 MAY17/74

TO EXTOTT FLA

REF YOURTEL FLA300 MAY15

---PROPOSED VISIT TO BRIT TREATY OFFICE-MRS JK BRUCE

TREATY SECTION FCO WOULD WELCOME OPPORTUNITY TO BRIEF MRS BRUCE ON OPERATION OF THEIR OFFICE, GENERAL PROCEDURES FOR RECORD KEEPING AND METHOD OF PUBLICATION FOR BTS. MAY28 AND 29 WOULD BE CONVENIENT WITH WHOLE OF FIRST DAY LIKELY TO BE DEVOTED TO TREATY SECTION OPERATIONS AND SECOND DAY TO PUBLICATION. TREATY SECTION WOULD BE HAPPY TO LET MRS BRUCE HAVE COPY OF GENERAL INSTRUCTIONS ON TREATY PROCEDURES CIRCULATED TO UK MISSIONS BUT ARE MORE HESITANT ABOUT RELEASING COPY OF DETAILED WRITTEN PROCEDURES SINCE THEY ARE FOR INTERNAL USE ONLY. NEVERTHELESS SHE WOULD BE FREE TO TAKE COPIOUS NOTES OF THESE PROCEDURES WHEN SHE CALLS AT FCO. MRS BRUCE WILL BE EXPECTED AT 1000 HOURS MAY28. TREATY SECTION IS LOCATED AT CLIVE HOUSE, PETTY FRANCE SW1. SHE COULD CALL MAWHINNEY AT MACDONALD HOUSE 6299492 AM MAY28 (MAY27 IS BANK HOLIDAY).

2. MAWHINNEY PROPOSES TO HOST LUNCH FOR MRS BRUCE AND GLOVER HEAD OF TREATY SECTION PLUS ONE OTHER MEMBER OF SECTION ON MAY28. HOPE SHE CAN ACCEPT.

171700Z 170 END/15

RECEIVED

MAY 21 1974

In Legal Advisory Division
Department of External Affairs

MESSAGE

FM/DE	PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
	LIEU	MINISTÈRE	N° D'ORIG.		20-3-4-CDA	
	OTT	EXT	FLA-304	MAY 17/74	17	UNCLAS
						PRECEDENCE
TO/A	LDN					
INFO						MAY 17 21 TOR/TOD COMCENTRI EXTERNAL AFFAIRS
DISTR.						4/1/74

REF FLA-300 MAY 15
SUB/SUJ PROPOSED VISIT BTO - JK BRUCE

MRS. BRUCE ARRIVING LDN MAY 28 10.30 AM INSTEAD
 OF MAY 27. IF APPOINTMENTS COULD BE SCHEDULED FOR 29 AND
 30 IN PLACE OF 28 AND 29 THIS WOULD BE GREATLY APPRECIATED.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SG J.K. Bruce/sjk

FLA

6-3863

SG B.S. Stanford

File
Div. diary
Circ. diary
Diary

①

Canadian High Commission, LONDON
Attention: Mr. B. Mawhinney
Under-Secretary of State for External
Affairs, OTTAWA
Our telegram FLA-300 of May 15, 1974

RESTRICTED
May 15, 1974
FLA-301

Proposed Visit to British Treaty Office -
Mrs. J.K. Bruce

②

③ 20-3-4-CDA	
12	20

--- Attached is a photocopy of Chapter 700 of the
Foreign Affairs Manual of the U.S.A. Department of
State.

2. As requested in our telegram under reference,
would you please enquire whether the British have a
comparable manual in loose-leaf or printed form and if
they would be prepared to let us have a copy on a con-
fidential basis to assist this office in preparing a
similar Canadian manual.

A. W. ROBERTSON

Under-Secretary of State
for External Affairs

MESSAGE

PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
LIEU	MINISTÈRE	N° D'ORIG.		20-3-4-CDA	
OTT	EXT	FLA-300	MAY 15/74	12	UNCLAS

FM/DE	TO/A	LDN	PRECEDENCE
			MAY 16 13 41 '74
INFO			EXTERNAL AFFAIRS TOR/TOD CONCENTRE
DISTR.			

REF

SUB/SUJ

PROPOSED VISIT TO BRITISH TREATY OFFICE - MRS JK BRUCE

IF IT CAN BE ARRANGED WOULD APPRECIATE YOUR SETTING UP APPOINTMENTS FOR MRS JESSIE BRUCE, REGISTRAR OF TREATIES, TO SPEND ONE OR TWO DAYS IN TREATY SECTION OF BRITISH FOREIGN OFFICE, PREFERABLY MAY 28 AND 29 IN ORDER TO LEAVE FREE REMAINDER OF HER STAY IN BRITAIN. ARRIVAL LDN MAY 27 FOR APPROXIMATELY FIVE WEEKS VISIT IN COUNTRY OUTSIDE LDN. PARTICULAR INTEREST COMPARISON BRITISH TREATY PROCEDURE WITH CDN PRACTICES. ALSO INTERESTED IN METHOD OF PUBLICATION BTS.

2. WE ARE SENDING YOU BY BAG COPY OF CHAP 700 OF THE FOREIGN AFFAIRS MANUAL OF THE USA DEPT OF STATE WHICH FORMS A MANUAL OF USA TREATY PRACTICE. IN COURSE OF MAKING APPOINTMENTS FOR MRS BRUCE WOULD YOU PLEASE ENQUIRE WHETHER BRITS HAVE SUCH A MANUAL, IN LOOSELEAF OR PRINTED FORM AND IF THEY WOULD BE PREPARED TO LET US HAVE A COPY ON CONFID

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
sg. J.K. Bruce / J.C. Parry / sjk	FLA	6-3863/6-7194	A.W. Robertson

PAGE 2

BASIS TO ASSIST US IN PREPARING SIMILAR CDN MANUAL.

File
Div. diary
Circ. diary
Diary
JS Stanford

*Treaty Procedures
Provincial approval*

MEMORANDUM

FCO

CONFIDENTIAL

FLA

November 13, 1973

Your memorandum of November 8, 1973

Criteria for Provincial Approval of
International Agreements

②

20-3-4-CDA	
12	20

1. There is no requirement in international law or in domestic Canadian law that the federal government obtain the prior approval of provincial governments before signing or ratifying an international agreement. This absence of a legal requirement for approval applies whether or not the subject of the agreement is, under the British North America Act, within federal or provincial legislative competence.

2. The practice of consulting the provinces before signing, ratifying or adhering to certain international agreements is a practical measure designed to ensure, in a situation where Canadian adherence to the treaty would require action by the provinces in order to implement the obligations which Canada would assume under the treaty, that the provinces are prepared in principle to take the necessary implementing measures.

3. Because the consultations, and the agreement with the provinces which they would hopefully produce, are designed to meet practical rather than legal problems, it follows that they are not subject to formal legal rules. There would be no objection in principle to the federal department concerned with the substance of the agreement, which would of necessity be involved in the consultations with the provinces, also requesting provincial confirmation that, if Canada adheres to the treaty, the provinces will take the necessary implementing action. Where the substance of the treaty is essentially technical, we would have thought a letter from the provincial minister substantively concerned would be sufficient indication of provincial readiness to implement. In other cases where major policy issues are involved, it may be considered prudent, for political reasons, to have the SSEA or even the Prime Minister seek formal confirmation from the provincial Premiers.

- 2 -

4. It is not clear from your memorandum why, in the present case, two federal ministers wrote separate provincial addressees seeking provincial agreement to implement the treaty in question. Provinces which have replied to Mr. Davis' letter may not be replying to the SSEA's letter simply because they consider his question has already been answered. On the other hand, it is possible they may not be replying because they are having second thoughts. If you or the Department of the Environment has reason to believe that, in any province, the latter may be the case, then the question should be clarified with the provincial government by whatever channel you consider most effective.

5. Subject to the foregoing caveat, if the letters from the wildlife Ministers of the five provinces whose Premiers have not replied to the SSEA's letters clearly indicate the willingness of their governments to implement the terms of the treaty, then it would appear that Cabinet could be so informed when the matter is referred to it. No further assurances from the provinces would appear necessary.

6. In reply to question (c) in paragraph 3 of your memorandum, it is normal to seek provincial agreement prior to signature of the treaty. In cases where signature must be followed by ratification, it would not be necessary to seek a second indication of provincial concurrence unless there were some indication that a province had changed its mind, in which case only that province need be consulted again. In cases where Canada becomes bound to a treaty not by signature alone or by ratification following signature, but by accession or adherence to an already existing treaty, provincial agreement to implementation should be obtained prior to the deposit of the Canadian Instrument of Adherence or Instrument of Accession. Concerning question (d), a submission to Cabinet recommending Canadian signature, ratification, accession or adherence to a treaty should be made by the SSEA and be concurred in by any other ministers having an interest in the subject matter of the treaty.

7. Finally, we wish to point out that care should be taken to ensure that any letters from a federal minister to a provincial premier or minister should not ask for provincial agreement or consent to sign, ratify or accede to the treaty. No such consent is necessary and it would

... 3

- 3 -

be most unfortunate if a practice were to develop in which the federal government implied that it thought such consent was necessary. Rather such letters should ask for provincial agreement to carry out the necessary implementing measures if Canada were to become a party to the treaty. This is a point to which we attach considerable importance and we should be grateful if it could be brought to the attention of all those, in this or other Departments, who may be involved from time to time in the preparation of such correspondence.

A. W. ROBERTSON

A.W. Robertson
Director
Legal Advisory Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Mr. Sharp: Jack can't handle Friday or Monday, please reply

TO
À
FROM
De
REFERENCE
Référence
SUBJECT
Sujet

FLA
FCO
Criteria for Provincial Approval of International agreements

Jul 11/11 Mr. Sharp, This was passed direct to me by Mr. Brown of FCO. It seems to me that it remains a good subject for

SECURITY / Sécurité
DATE: November 8, 1973
NUMBER / Numéro

FILE	DOSSIER
OTTAWA	20-3-4-CD
MISSION	121

ENCLOSURES / Annexes

DISTRIBUTION

A potential problem has arisen concerning action on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Negotiations on the convention were concluded on March 2, 1973 and the draft text was sent to the provincial Wildlife Ministers by the Honourable Jack Davis on June 15th. Mr. Davis' letter also asked whether the provinces had any objections to Canada signing the convention. On July 16 a similar letter was sent by the Secretary of State for External Affairs to the provincial premiers and ministers of intergovernmental affairs and this letter too asked if there were objections to Canada signing the Convention.

2. To date all ten provincial wildlife ministers have given their concurrence, in reply to Mr. Davis' letter, but only five provinces -- Newfoundland, PEI, New Brunswick, Quebec and Manitoba -- have sent letters of concurrence from or on behalf of the Premier to Mr. Sharp. The Department of the Environment considers that concurrence has been given and is preparing a submission to Cabinet asking that Canada proceed with signing the agreement. This will be signed, we are told, by the two ministers Sharp and Davis as well as by Mr. Gillespie of Industry, Trade and Commerce.

3. In view of this situation we have four questions:
- a) Can a department other than External Affairs seek provincial consent for Canada to sign an international agreement? *Odd, but why not?*
 - b) There has been no reply from five provinces to Mr. Sharp, the only indication of consent being from individual ministers writing on their own behalf to Mr. Davis. Does this constitute an acceptable form of consent in this case, or in any similar situation? By acceptable form of consent we mean whether they can serve as a basis for recommending to Cabinet that Canada proceed to signature. *One would have to see replies to determine*
 - c) Is there any difference between a situation such as this one involving concurrence in signing a convention and a similar one involving ratification?

Our practice is seek concurrence (usually) at the last stage rather than (if it is applicable) the second.

CONFIDENTIAL

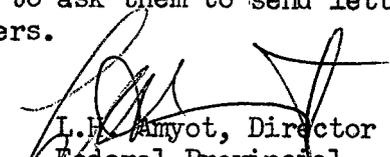
No - pretty ok.

d) Can a department other than External Affairs originate submissions to Cabinet asking for authorization to proceed with either signing or ratification of international agreements, and if so what is the role of the Department of External Affairs ?

4. It is our understanding, based on previous discussions with you, that there is no obligation on Canada to seek the concurrence of the provinces in signing an international agreement which touches on provincial interests, although the practice has developed of informing them. We assume that in the present case, however, since we have asked for concurrence in signing we shall have to obtain it before proceeding. Do you agree ?

Not necessary

5. We would appreciate an early answer, at least to question b) since if your answer is negative we shall have to get in touch with the provinces in question to ask them to send letters of consent from or on behalf of the premiers.


L.H. Amyot, Director
Federal-Provincial
Coordination Division

File
Div. diary
Diary

MEMORANDUM

PDM (through ECP)

CONFIDENTIAL

November 24, 1972

FLP

Apparent abuse of Canadian Treaty Making
Procedures by CIDA

20-3-4-CDA
161

ECL

--- I attach, for your initials and onward transmission
to Mr. Sharp, if you agree, a memorandum covering a letter
for his signature, which is to be sent to Mr. Gérin-Lajoie,
the President of CIDA, and a telegram, also for his signature,
--- to be sent to all Heads of Post. I also attach, for your
own information and for onward transmission through Mr. Sharp
to Mr. Gérin-Lajoie, an authentic copy, presumably prepared
by the Indonesian Foreign Ministry, of what in almost every
respect certainly appears to be, and was probably believed
by them to be intended to be, an international treaty between
Canada and Indonesia, which was signed in Djakarta by our
Ambassador to Indonesia, Mr. Delworth, and the Indonesian
Foreign Minister, Mr. Malik, on October 30, 1972.

2. To our best knowledge at no time was this Department
consulted about this apparent "treaty" between Canada and
Indonesia, concerning a development line of credit loan, or
informed that Mr. Delworth was being instructed to sign it.
Certainly, the requisite Order in Council authority for
signature which Canadian treaty procedures would require for
the conclusion of a valid international agreement was neither
sought nor obtained. Indeed, the document only came into
our hands fortuitously, since it was delivered to our Treaty
Section rather than being sent to CIDA, the intended
recipient, from where it will in due course be forwarded to
the Department of Finance for retention, as is their practice
for line of credit agreements.

3. Officials in CIDA inform us that this particular
Development Line of Credit Loan is more or less in standard
form (at least as far as its contents are concerned) and
thus it may well be only one among many. Whether or not
this is so, it seems to us that it is necessary to try, once
again, to constrain this sort of activity.

4. You may recall that, some years ago, this Depart-
ment made clear to CIDA by means of an exchange of communi-
cations which involved Mr. Cadieux, the Minister and
Maurice Strong dated November 4 and December 6 and 9, 1968,

that it was our preference, in all cases where Canada was extending aid to other countries, for there to be negotiated "Umbrella" type aid agreements, which would be in proper treaty form and under the provisions of which subsidiary administrative understandings, project agreements and other sorts of arrangements could then be concluded at the official level. For some time it seemed that CIDA was prepared to go along with our request and indeed a number of such "Umbrella" aid agreements were subsequently concluded, with countries such as Ceylon, Cameroon and Niger. In some cases, this is still their practice and negotiation of others, principally with West Indian Governments, are also in hand. (The present Director of Legal Advisory Division, Mr. Robertson, will, moreover, be spending the next two weeks travelling with a mixed External Affairs-CIDA negotiating team which it is hoped will reach final agreement on the texts of "Umbrella" aid agreements with four Central American countries. Here, however, it is perhaps due more to the fact that the Central American countries concerned insisted on formal treaties than out of respect for our own objectives, that CIDA may have been motivated to request our assistance.)

5. We do not know how many other "treaties", similar to the example attached, may have been concluded in the name of Canada by our Heads of Post abroad, on direct instructions from CIDA, though we are aware of at least one other recent example. This was an agreement between Nigeria and Canada for assistance in the construction of a power transmission system, which was signed in Lagos on October 23, 1972, by our High Commissioner, Mr. Wardroper, on behalf of Canada. In any event what is clear is that the original reasons which had led us to propose the conclusion of "Umbrella" aid agreements are still valid. Moreover, any continuation of the present practices, under which CIDA can instruct our Heads of Post to enter into what are clearly intended to be agreements binding under international law but which do not conform to our practices and are not even known to us, can surely only lead to confusion in our international relations and uncertainties as to our obligations to other countries, and theirs to us. The purpose of the attached letter for Mr. Sharp's signature, therefore, is to remind Mr. Gérin-Lajoie of what had been agreed earlier and to request that he ensure that every effort be made in future to adhere to our practices and for this Department to be adequately consulted. It also seeks further information from him on whatever other unauthorized agreements might have been entered into in the past few years. The purpose of the telegram to Heads of Post is to bring this

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CONFIDENTIAL

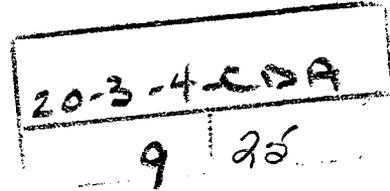
situation to their general attention, to warn those in developing countries that they must not conclude what might be likely to be regarded as international agreements without the express authority of this Department and to seek their assistance in locating other similar unauthorized agreements of which we may not be aware.

6. If you agree, would you therefore initial the attached Memorandum to the Minister and forward the letter and telegram to him for his signature.

J. A. BEESLEY

J.A. Beesley
Legal Adviser

File
Div. diary
Diary



PERSONAL

Ottawa, K1A 0G2
May 5, 1972

Dear Allan,

I was pleased that you invited me to comment on your article on treaty-making for Ron MacDonald's collection of essays on international law. Your suggestion that I do so led to my examination of a number of treaty issues, and some of the results of this study are reflected in this letter. If, perhaps, your article had been of less interest I would have been in a position to give you my comments earlier. As it is, however, I hope that what follows will be of interest.

I might say at the beginning, without exaggeration, that I consider your article on evolving treaty practice in Canada to be a highly useful and informative piece of work. Turning to the Introduction, I note your reference to the conclusion you expressed in Canadian Treaty-Making, as to the informal and pragmatic character of Canadian treaty-making. I continue to agree with your conclusion, but would suggest, as I hope to show in this letter, that, perhaps, the word "flexible" might better be substituted for the word "informal". Certainly, Canadian treaty-making no longer employs the formality of the Head of State Treaty, but I have the impression that Canadian treaty practice in the most recent period has favoured increasing flexibility rather than increasing informality. A small point, but one which may prove to be of significance. I was also interested, having just finished the preparation of the Great Lakes Water Quality Agreement, on your comments in the Introduction on the need for the adapting of treaty forms to areas that are subject to rapid technological change. This was

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Mr. A.E. Gotlieb,
Deputy Minister,
Department of Communications,
Berger Building,
100 Metcalfe Street,
OTTAWA. K1A 0C8

- 2 -

certainly the case with this Agreement, where the amendment procedure created for the Annexes, themselves an integral part of the Agreement, lends itself to amendment of those Annexes to meet technological requirements. I am not sure, however, that the Canadian practice can be said to meet international exigencies by informal methods in the preparation and adoption of international agreements and arrangements, for the phrase "informal methods" may suggest instruments of less than full legal force. The Canadian practice has, rather, simplified formal methods to the point where our treaty practice meets the majority of Canadian requirements with ease.

In response to those portions of the article where you examine recent trends in respect of exchanges of notes, agreements, agreements subject to ratification and multilateral agreements, while I find the statistical description of the practice during the five-year period 1965-70 to be highly useful, I am not as confident about some of the conclusions which you draw. I agree that the exchange of notes form of international agreement continues to play an important role in Canadian treaty-making. I wonder, however, if the move from "full fledged inter-governmental agreements to the exchange of notes form of arrangements" (I would have used the word "agreements" in relation to the exchange of notes form as well) is not, if it can continue to be described as a "move", an exercise in flexibility rather than one of informality. As you are well aware, in Canadian practice the resulting international agreement is no less binding on the Government of Canada than any other instrument purporting to bind the Government in international law. The variables of agreements constituted by exchange of notes, including provision for internal ratification, if necessary, are too many in my opinion to indicate other than that the exchange of notes form is a form which currently meets the requirements of governments. It is favoured by Canada and, amongst Canadian treaty partners, the United States, especially in specific subject areas and in respect of agreements amending or extending existing agreements. I do not think that a decline in the proportion of the total number of agreements created as exchanges of notes should be a cause for surprise - the trend may easily be reversed. As you have noted, one cannot generalize about trends, and I think the only conclusion that can be drawn is that the exchange of notes, notwithstanding limitations as to signature and language versions in Canadian treaty practice, is a form favoured by Canada as a flexible means of treaty-making.

I agree that there is an increasing tendency to use the term "agreement" as descriptive of the bilateral treaty which is not an exchange of notes. It is here where I believe simplicity, and flexibility, in Canadian practice and in the

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practice of a large number of Canada's treaty partners, is having the greatest effect. The usefulness of the agreement, as an international instrument establishing obligations between governments, containing the requisite language versions, lending itself to a variety of procedural requirements, including external ratification, if required, is clearly recognized. The ease of attaching annexes or appendices to such agreements, and the possibility of separate amendment procedures for annexes and appendices also lends itself to use of this form of treaty-making. In addition, the agreement, at signature, may more readily lend itself to the political visibility often favoured by governments. On the basis of present evidence I would anticipate that the use of the agreement will increase, even to the point, perhaps, of displacing the exchange of notes form of treaty-making, for the agreement can be as simple or complex as required in the individual case.

I must confess I do not find it curious that the percentage of bilateral and multilateral treaties entered into by Canada since the end of World War II which are subject to ratification has not declined. If the increase in ratification of bilateral treaties, which you have noted as taking place since 1956, continues, and it may, the increase in future will be for the same reasons as in the past. As you know, there is a limited Canadian requirement for signature, subject to ratification, where, before external ratification takes place, the Parliament of Canada or the legislature of the provinces must take legislative action to implement. In addition, there exist those categories of treaties where by tradition the Government seeks the approval of Parliament before seeking authority of the Governor-in-Council to bring the treaty into force. The number of such occasions will depend on the subject areas of the treaty, the requirements of existing legislation and the relationship of subject areas to the distribution of authority under the British North America Act. I have doubts that one can base trends on these variables, and if trends do exist I suggest they are based on the chance of subject; another circumstance that may easily be reversed. Moreover, the requirement for external ratification of bilateral treaties is, in my experience, based most of all on the constitutional requirements of Canada's treaty partners, rather than on Canadian requirements. If the treaty partner's constitutional practice dictates internal ratification, that requirement will usually be expressed in the requirement for external ratification, to be effected after internal ratification has been completed. Where we are concerned with the varying constitutional practices of treaty partners, as with the chance of subject, I do not think it can be said that Canadian treaty practice, of itself, is moving to greater formality, even if the statistical evidence shows an increased number of bilateral treaties as being subject to ratification.

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In your article you go on to suggest that in the multilateral area, while there has been a clear trend toward greater informality, the most recent statistics show a slight return to formality. Again, I doubt that these trends are indicative of informality or formality in Canadian treaty-practice for, in the case of the multilateral convention, the form of the instrument, including the requirement of ratification, will in most instances be the result of the requirements of a large number of countries, only a few of which will possess the flexibility of Canada. I have considerable difficulty with your conclusions in respect of multilateral treaties, for I think you have not given sufficient weight to the form and timing of the Canadian treaty action in the multilateral area. If Canada increases its participation in multilateral treaties - an action which you have very correctly indicated as being the case in recent years - Canada may for a variety of reasons sign the multilateral treaty when the instrument is first opened for signature. Such signature, in the instance of the genuine multilateral treaty, even when it takes place with the objective of encouraging other countries to commit themselves to the obligations of the multilateral treaty, will, almost invariably, be subject to ratification, for reasons including those which, in the Canadian practice, apply to bilateral treaties. If, on the other hand, Canada does not participate in the preparation of the multilateral treaty, or delays signature, the ultimate Canadian treaty action will be the deposit of an instrument of accession, not normally requiring ratification. I do not believe, however, that accession, rather than signature, subject to ratification, can be considered as informal as opposed to formal, for to do so has the effect of characterizing delay on the part of Canada in assuming the obligations of a multilateral treaty as an exercise in informal treaty-making. I do not think that the practice supports your conclusions as to trends. For example, you will have noted that on October 14, 1970, Canada deposited an Instrument of Accession to the Vienna Convention on the Law of Treaties, done on May 23, 1969. Shortly thereafter, on December 16, 1970, Canada signed, subject to ratification, The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature on that date. In the first instance Canada delayed its treaty action pending resolution within Canada of the questions affecting Canadian participation. In the second, Canada signed, subject to ratification, pending amendment of the Criminal Code in respect of the offence of "hijacking". Both Conventions are formal multilateral treaties, and the character of the Canadian treaty action has, I suggest, no bearing on the informality or formality of Canadian treaty-making. To give another illustration, on May 3 Canada joined the Inter-American Development Bank, and to do so simultaneously signed the Articles of Agreement and deposited an Instrument of Ratification. This procedure was

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carried out solely to fulfil the legal requirements of the Articles of Agreement, and the act of ratification can scarcely be attributed to the formality of Canadian treaty practice. As with the Canadian practice in respect of ratification of bilateral treaties, the only conclusion which can be drawn, I believe, is that the Canadian practice is sufficiently flexible to meet the informal or formal requirements of bilateral and multilateral treaties, and to meet those requirements with ease.

A part of your article which is of very real concern to me is that sub-titled "New Techniques for Authorizing Subsidiary Agreements". You have written that a development of interest in recent practices is the method of achieving both a state of formal obligation and informal cooperation in the field of economic and technical cooperation with developing countries. With this I am in total agreement. While there were, in fact, four early formal treaties in the area of aid (the three you have mentioned and the agreement with the former Federation of the West Indies of 1958) Canada has continued to negotiate and conclude bilateral aid agreements embracing the concept of the subsidiary agreement, the latter agreement not of itself constituting an agreement binding the parties at international law. In addition to those concluded, some ten or more such aid agreements are currently under negotiation. In your article, at pages 16-17, you go on to suggest that this technique appears to be borrowed from the France/Canada Cultural Agreement of November 17, 1965. I have gone over the history of this form of aid agreement, and have satisfied myself that no direct link between the France/Canada Cultural Agreement and the aid agreements exists. The idea of the aid agreement, establishing basic principles and terms and conditions of the provision of Canadian aid, and embracing the concept of subsidiary agreements, developed independently to the employment of the accord cadre concept in the instance of the France/Canada Cultural Agreement. Indeed, the agreements on cooperative economic development with Pakistan and India in 1951, Ceylon in 1952 and the Federation of the West Indies in 1958 can be considered as the real precursors of the aid agreement concept. For example, the preambular paragraph of the West Indies agreement provided that "supplementary understandings may be reached to cover specific claims and projects". In addition, there was concern expressed fairly frequently through the early 1960s - I have checked this back as far as 1961 - by the Legal and Economic Divisions of this Department, as they then were, regarding the need for a basic agreement with each aid recipient country setting forth, as binding legal obligations, the basic terms and conditions which should govern such aid. The essential factor, as you have noted, is that the subject of the aid agreement falls within the federal jurisdiction. The cultural accord cadre with France, on

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the other hand, was negotiated in 1965 to deal with a specific situation in a field where jurisdiction is divided between the federal government and the provinces. While there is a certain superficial similarity between the two forms, I doubt that they can be considered as part of the same genre of treaty. If, however, any borrowing was done, and I do not think this is the case, the borrowing will have been in the other direction, to meet a specific and individual case.

In that same part of your article, in referring to the exchange of notes between Canada and the United States, of January 29, 1970, authorizing the participation of Quebec and New Brunswick in the North Eastern Interstate Forest Fire Protection Compact, you conclude by stating that this is the first occasion whereby an exchange of notes has been used to authorize adherence of provinces to a multilateral agreement. It is, in my opinion, extending the normal usage to describe the Compact as a multilateral agreement. The Compact is an interstate relationship authorized by the Congress of the United States, which made provision for adherence by any Canadian province. The agreement, however, is a bilateral exchange of notes between Canada and the United States, and it can hardly be said that the agreement authorizing participation of those provinces in the Compact constitutes authorization of adherence of provinces to a multilateral agreement.

In the sections on "Interdepartmental Arrangements - Ministerial Responsibilities" and "Canadian Practice in the Field of telecommunications - Interdepartmental Arrangements" I have also a number of comments. First of all, I question if, notwithstanding the sub-title of the article "Informal Agreements and Interdepartmental Arrangements", interdepartmental arrangements can properly be characterized as being part of Canadian treaty practice. At the risk of stating the obvious, agreements which are not governed by public international law are not treaties, and, thus, whatever interdepartmental arrangements may be, their form, substance and existence does not effect the style of Canadian treaty practice. It is certainly true that there exist large numbers of interdepartmental arrangements - in my own experience, having examined the practice of a number of departments and agencies, interdepartmental arrangements are legion - and, no attempt has been made, outside of individual departments and agencies, to provide a record of these in a common government register. Surely, however, in terms of treaty practice, the concern of the Treaty Section should be that those arrangements having high international visibility are cast such as to avoid the impression that they are treaties governed by international law. Form is important in this respect, and it is a considerable function of the Treaty Section to assist

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departments and agencies in avoiding treaty forms. I do not think, however, that this activity has other than indirect relevance to the development of Canadian treaty practice.

Form is important, and misunderstanding of the use of forms can have results that imply change in Canadian treaty practice. At page 23 you have made reference to the examples cited in Canadian Treaty-Making of the two occasions when the exchange of notes form of agreement was employed by departments other than the Department of External Affairs. As a result of misunderstanding on the use of the exchange of notes form last year, I examined the two precedents you cited in footnote 14 at page 33 of Canadian Treaty-Making, and found that the first exchange of notes, that of December 8 and 10, 1959, between the British High Commissioner in Ottawa and the Minister of National Health and Welfare, was not in fact an exchange of notes but rather an exchange of letters. The exchange of letters was not regarded in Canada as an exercise of treaty-making, but, rather as the creation of an arrangement. For reasons, thus far unknown, in 1960 the United Kingdom registered the exchange of letters with the United Nations under Article 102 of the Charter. The exchange of letters has never been published in the Canada Treaty Series and is not regarded as constituting a treaty by the Department of External Affairs. The other illustration, the Canada/Belgium exchange published in the Canada Treaty Series in 1949, is an even more curious set of documents. The Belgian note originated with a body called the Department of International Organization and of the Settlement of the Peace. The Department, which directed a first person note to the Canadian Ambassador, may have been associated with the Ministry of Foreign Affairs at that time. (I have made enquiries on this but have not yet received an answer.) At any rate the Canadian reply was in the form of a third person note directed to the Ministry of Foreign Affairs. Whatever this exchange of notes may be, and recognizing that the exchange was entered in the Treaty Register, it does not provide a precedent for the use of the exchange of notes form by departments other than the Department of External Affairs. There is, however, a recent precedent which has to be considered: the exchange of notes between the Government of Canada and the Government of the United States of America concerning joint participation in an augmentor flight test project, of November 10, 1970. In this instance, the Canadian note was signed by the Minister of Industry, Trade and Commerce. Preparation of the note was undertaken on the basis that there was thought to be previous precedent for signature by a Minister other than the Prime Minister or the Secretary of State for External Affairs. This was in fact the case which later caused me to examine the earlier precedents and determine that they did not genuinely relate to exchanges of

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notes by other departments, signed by other Ministers. We are in the situation, therefore, where we have a precedent based on a false precedent and no more. Insofar as the Treaty Section is concerned, in relation to Canadian treaty practice, all three are recorded as being unique situations not an accepted part of the practice in respect of the exchange of notes form.

Elsewhere in this section of your article you go on to discuss the authorization of Parliament of specific ministers to make international agreements or international regulations, and give illustrations of circumstances where they have exercised that power. It is certainly the case that in specific instances ministers other than the Secretary of State for External Affairs are authorized to enter into agreements on subjects within the responsibilities of their portfolio. In terms of treaty practice, however, it has not followed that such ministers have attempted to exercise their specific statutory authority without ensuring that the actions taken are in accordance with established treaty practice. While the signature of the Canadian note part of an exchange of notes is not delegated to other ministers, it is the case in Canadian treaty practice that the Secretary of State for External Affairs has, in a wide variety of fields, indicated his willingness to delegate signature of other forms of agreement to ministers where the subject matter of the agreement is within the specific responsibilities of that minister. The Secretary of State for External Affairs makes this delegation, of course, by instrument of full power. Where another minister has statutory authority to enter into agreements the issuance of the instruments of full power will invariably be issued, but in practice this delegation of authority takes place in a number of other fields such as taxation and trade. One of the issues which is relevant here is, of course, the international practice as codified in the Vienna Convention on the Law of Treaties. In relation to the existing international practice, where the prospective treaty partner requires an instrument of full power, the instrument will be issued by the Secretary of State for External Affairs. This requirement will not arise in the instance of agreements effected by exchange of notes, as Ministers other than the Prime Minister and the Secretary of State for External Affairs do not in current Canadian treaty practice, and reflecting the requirements of the External Affairs Act, issue diplomatic communications. Whatever the fine points of international practice and Canadian treaty practice, it can be said, however, that there is full cooperation between other departments and this Department and the problem of authority or full powers for signature of agreements rarely causes difficulty in terms of the Canadian practice. We are all, I believe, genuinely committed to the objectives of flexibility and a rational application of evolving Canadian treaty practice.

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In relation to this section of the article, and reflecting some of my earlier comments, I wonder if the extent of your commentary on interdepartmental or inter-agency arrangements not binding in international law, ranging from page 29 to page 33, is warranted in an article entitled "Canadian Treaty-Making". This comment reflects, however, no more than my feeling that this section of the article has disproportionate emphasis.

Finally, turning to the "Conclusion" of the article, I agree with your view that one has difficulty in perceiving broad or uniform trends, whatever may be the evidence of recent practice. I must register my surprise, however, that here, as earlier in the article, you have not directed attention to what is the significant development in Canadian treaty practice during the period since publication of Canadian Treaty-Making: the accession by Canada, on October 14, 1970, to the Vienna Convention on the Law of Treaties. The Convention, of course, is not yet in force, but as a codification of a considerable part of the law of treaties it has already had an influence on the international practice. Certainly, it has already had and will, I suggest, continue to have, a profound influence on Canadian treaty practice.

I must also register my disagreement with the final paragraph of the article. My reasons are reflected in my comments in the preceding paragraphs of this letter. I cannot accept the implication that increasingly a number of departments and agencies make international agreements in their own right. A number of departments and agencies make interdepartmental and inter-agency arrangements; a lesser number of departments, through their Ministers, have statutory responsibility for the substance of particular international agreements; but when the objective is an intergovernmental agreement binding on Canada in international law, the Canadian practice is clear: the Government of Canada makes international agreements, not the individual departments.

Having written at such length, I am confident there are a number of statements in this letter with which you will disagree. I have set down my personal views, however, appreciating that you will accept them as such. Perhaps we can continue the discussion on another occasion.

With my best wishes,

Yours sincerely,

W. H. MONTGOMERY

W.H. Montgomery
Head,
Economic and Treaty Section, 000161
Legal Advisory Division

EXTERNAL AFFAIRS



FLA/B. Mawhinney/mkh
AFFAIRES EXTÉRIEURES

TO
À Mr. Montgomery

SECURITY
Sécurité RESTRICTED

FROM
De B.M. Mawhinney

DATE February 7, 1972.

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet Gotlieb Article on Canadian Treaty Making

FILE	DOSSIER
OTTAWA 20-3-4-CDA	
MISSION	

ENCLOSURES
Annexes

9
Fli
20-3-4-CANADA

DISTRIBUTION

I think Mr. Gotlieb's article on developing treaty making practice in Canada is a highly useful and informative piece of work not only from the standpoint of providing a lucid consolidation of comparative statistics and commentary on the forms of agreements Canada employs in treaty making, but also because it reveals a rather detached, if not approving attitude, on the part of the author regarding the increasing practice of departments, other than External Affairs, making international agreements with foreign governments or their designated agents.

M
Mawh.

Mr.
Copithorne

2. I have only a few random comments on the article which may possibly be of use to you in drafting a reply to Mr. Gotlieb's letter of January 25, 1972.

3. Beginning on page 16 of his article Mr. Gotlieb discusses "New Techniques for Authorizing Subsidiary Agreements" and in this context mentions the developing practice of concluding/on economic and technical cooperation with countries receiving Canadian technical and capital assistance. He states that "this technique appears to be borrowed from the France-Canada cultural accord cadre of November 17, 1965". I do not believe that there was any such direct link between the accord cadre, which, you are probably aware, was negotiated at very short notice to deal with a specific challenge to federal primacy in the treaty making field and, the umbrella aid agreement, whose genesis goes back in a certain sense to the early fifties. While there are certain superficial similarities between the accord cadre and the umbrella aid agreement, I think to suggest that they are part of the same genre of treaty form is misleading and could, given the stature of the author, be misunderstood on the part of certain provinces seeking legal basis' and precedents as a means of pressuring the federal government into greater use of the accord cadre type of agreement authorizing them to conclude agreements with foreign governments.

/umbrella agreements

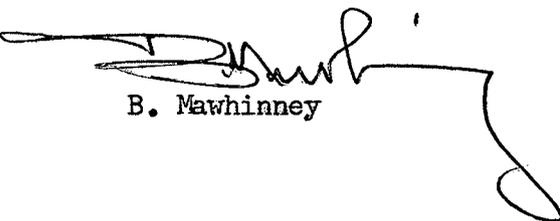
4. I think there is a clear distinction between the accord cadre, which authorizes a provincial government to conclude separately an agreement direct with a foreign government and an umbrella aid agreement, which, inter alia, authorizes subsidiary arrangements covering specified projects and clearly defined as non treaty in character. In the case of an accord cadre, which it should be noted has only been employed once in a binding international agreement (the Canada/France Cultural Agreement of November, 1965), the Canadian government concludes an agreement with a foreign government which expressly authorizes provincial governments to enter into "ententes" subsidiary to the constituent accord direct with such foreign governments on matters which fall within the ambit of the accord cadre. While these subsidiary ententes would not normally take the form of international legal instruments, the accord cadre leaves open the possibility of provinces concluding agreements with the foreign government which could give rise to international obligations binding on Canada. This is not to say that the provinces exercise, under an accord cadre, any degree of treaty making power in their own right but they could be said to have delegated to them the power to conclude agreements with foreign jurisdictions which could bind the federal government. Whereas in the case of the umbrella aid agreement, the Canadian government is simply authorizing subsidiary arrangements between one of its agencies and the other party (or its designated agency). Such subsidiary arrangements are expressly not intended to create legal obligations in international law. In addition, and more importantly, the umbrella aid agreement does not entail any delegation of authority to a subordinate jurisdiction within Canada to conclude arrangements with a foreign government.

5. I do not recollect, and a cursory examination of the relevant files seems to confirm this view, that the umbrella aid agreement concept derived in any way from the accord cadre of 1965, as suggested by Mr. Gotlieb. The idea of frame work agreements, incorporating certain basic principles and terms and conditions governing the provision of Canadian aid, with recipient countries developed, so far as I am aware, quite independently of the accord cadre concept. Indeed the Agreements on Cooperative Economic Development with Pakistan and India in 1951, Ceylon in 1952 and the West Indies in 1958 could be considered as the real precursors of the umbrella aid agreement concept. For example the preambular paragraph of the West Indies Agreement provides that "supplementary understandings may be reached to cover specific schemes and projects". In addition, of course, there were fairly frequent concerns expressed throughout the early sixties by the Legal and Economic divisions of this department, as they then were, regarding the need for a basic agreement with each country receiving substantial quantities of Canadian aid which /set forth as binding legal obligations the basic terms and conditions which should govern such aid.

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6. To summarize therefore, I am inclined to think that in his article Mr. Gotlieb has oversimplified and in consequence blurred the very different and independent sets of motivations which led to the conclusion of these two types of agreements. In so doing he has conveyed the impression that the accord cadre technique is being increasingly employed by the Canadian government when, in fact, the federal authorities, having in mind a variety of jurisdictional problems that have arisen vis a vis France and Quebec concerning the application of the 1965 Cultural Agreement, have sought to avoid further employment of this form of agreement for fear of seriously eroding federal primacy in the treaty making field.

7. On page 23 Mr. Gotlieb refers to his own book in noting the great rarity "of use of the exchange of notes form of agreements by departments other than External Affairs". The implication is obvious however, that such use is permissible in the Canadian system given the "informal and pragmatic approach that has characterized Canadian Treaty making practice." Perhaps in responding to Mr. Gotlieb's letter you might take up this point by noting the reasons why, in terms of treaty practice and this department's policy, exchanges of diplomatic notes or letters should not be permitted other than by the Secretary of State for External Affairs or a designated Canadian diplomatic representative, abroad.


B. Mawhinney

DEPUTY MINISTER OF COMMUNICATIONS



SOUS-MINISTRE DES COMMUNICATIONS

File -
20-3-4-CANADA
9 OTTAWA 4, ONT. 25/1/72

May 21

January 25, 1972.

Mr. W.H. Montgomery,
Head, Economic and Treaty Section,
Department of External Affairs,
540 Daly Bldg.,
555 Mackenzie St.
Ottawa, Ontario

Dear *Bill*

Attached is a copy of an article I have sent to Ron MacDonald for his collection of essays on international law. I really would be very grateful if you could supply me with any comments you might have.

Many thanks.

A. E. Gotlieb

FLA

CANADIAN TREATY-MAKING

INFORMAL AGREEMENTS AND INTERDEPARTMENTAL ARRANGEMENTS

A. E. GOTLIEB

Introduction

The dominant feature of Canadian treaty-making is "the informal and pragmatic approach that has characterized, over the years, the actions taken by Canada in developing effective and simplified methods for making treaties".⁽¹⁾ This conclusion, which I emphasized in "Canadian Treaty-Making" in 1968 is evident in a wide range of characteristics of Canadian treaty-making. The Canadian Government was able, through various techniques and arrangements, worked out over many years, to pass from the use of formal and sometimes cumbersome methods of concluding international agreements, such as treaties in Head-of-State form, to treaty-making in the form of a variety of entirely intergovernmental agreements which, in turn, simplified the often complex procedural requirements for full-powers, signature and ratification of treaties. In thus avoiding the delays of satisfying formal constitutional requirements involving the taking of steps in London as well as in Ottawa, Canada, as an independent member of the international community, was able to move effectively and relatively swiftly to equip itself to meet the needs of contemporary international dealings.

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There has been no diminution whatever of the trends, evident for over a century, to extend the areas of international cooperation into virtually all aspects of the affairs of the state. Each year that passes reveals new focal points of international regulation which result from problems that surpass the boundaries of a single state, even large and important ones. Most recently, we see an increasing need for greater international regulation in a number of areas that are subject to rapid technological change such as telecommunications and the utilization of the seas and of space, as well as in fields of growing social concern, such as the preservation of man's environment against the damage caused by industrial development and of various forms of pollution. Inevitably, the very rhythm of international cooperation affects the timing of national plans and programmes and may require the preparation of government positions and arrangements with the least possible delay. These international exigencies are often continuing to be met by informal methods in the preparation and adoption of international agreements and arrangements.

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Exchanges of Notes - Recent Trends

Just as procedures developed to reduce dependency on formal engagements by transferring normal authority to enter into treaties from the Head of State to the government, procedures also evolved, during the past half-century, to move treaty-making from the level of full-fledged intergovernmental agreements (whether in the form of 'treaties', in the formal sense of the term, or conventions, protocols or 'agreements') to the exchange-of-notes form of arrangements. Elsewhere, I have shown that an extremely high proportion of all Canadian treaties in the two-decade period of 1946 to 1965 were in the form of exchange of notes. Of a total of 494 bilateral agreements that I have identified as being concluded by Canada in this twenty-year period, 351, or approximately 71 percent, were in the form of exchange-of-notes, or rarely, of letters. (2) But it is not possible to generalize about trends without running the risk of inaccuracies.

It is rather surprising that in the period 1965 to 1970 the proportion of the total number of exchange of notes entered by Canada, in relation to the total number of its bilateral agreements, has declined. As will be seen from the following table Canada, in this period, entered into 128 bilateral agreements, of

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which only 63 were in exchange-of-notes form.

1966-70 Canadian Exchanges of Notes ⁽³⁾

<u>Year</u>	<u>Bilateral Agreements</u>	<u>Exchange of notes</u>
1966	31	13
1967	29	16
1968	19	9
1969	27	15
1970	22	10
	128	63
Total	128	63

Thus, exchanges of notes constitute approximately only 49% of the total number of bilateral agreements made by Canada in this period, in comparison with a percentage of approximately 67% of the total number of bilateral agreements in the period 1956-1965 and of approximately 74% in the years 1947-1955. It is difficult to find an explanation of this decline in favour of the use of exchange of notes in the last few years. The decline is all the more mysterious considering that the exchange-of-notes form remains particularly predominant in the case of Canada-U.S. bilateral agreements.

The following table shows the annual number of Canada-U.S. treaties in the period 1947-1965, as well as the annual number in exchange-of-notes form. ⁽⁴⁾

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	<u>Canada-U.S. Treaties</u>	<u>Exchange-of-Note Form</u>
1947	9	7
1948	7	7
1949	10	9
1950	5	3
1951	8	6
1952	13	10
1953	8	7
1954	4	4
1955	12	8
1956	6	5
1957	7	5
1958	6	5
1959	12	11
1960	9	8
1961	8	8
1962	6	3
1963	8	8
1964	15	13
1965	11	9
	164	136 (83%)

Thus, in the period 1947 to 1965, almost 83% of all agreements made with the U.S. were in exchange-of-notes form - a percentage running over 12% above

the average percentage of exchange-of-notes agreements (71%) in relation to all bilateral agreements made by Canada in this period.

In the years 1966-1970, the same pattern emerges for Canada-U.S. agreements.

Canada-U.S. Exchanges-of-Notes 1966-1970⁽⁵⁾

	<u>Agreements</u>	<u>Exchange-of-notes form</u>
1966	7	5
1967	9	7
1968	3	3
1969	7	7
1970	7	5
	<hr/>	<hr/>
Total	33	27 (82%)

Thus the proportion of Canada-U.S. agreements in exchange-of-note forms in relation to all of Canada's bilateral agreements with the U.S. runs at approximately 82%, only one percent below the average for 1947-1965.

If we compare the proportion of bilateral agreements in exchange-of-notes form with the total number of Canada's bilateral agreements with all other countries we detect the following:

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Bilateral Agreements Between Canada and all
 Countries Other than the United States 1947-1965 (6)

	<u>Total number of agree- ments between Canada and countries other than the U.S.</u>	<u>Number in Ex- change-of-note form</u>
1947	19	9
1948	11	6
1949	18	14
1950	16	13
1951	22	14
1952	13	12
1953	16	14
1954	6	5
1955	17	12
1956	21	13
1957	23	15
1958	24	15
1959	12	7
1960	14	8
1961	9	5
1962	12	8
1963	16	5
1964	15	12
1965	11	3
Totals	<u>295</u>	<u>190 (Approximately 65%)</u>

Thus in the period 1947 to 1965, agreements in exchange-of-notes form constituted only approximately 65% of the total number of informal bilateral agreements with these same countries - a significantly lower proportion than the 83% figure for U.S. treaties in the same period.

In the years 1965-1970, the following statistics emerge for all Canadian bilateral treaties with countries other than the U.S.

Exchange of Notes Between Canada and Countries
 Other than United States (7)

<u>Year</u>	<u>Total number of bi-lateral agreements between Canada and countries other than U.S.</u>	<u>Number of Exchange-of-notes form</u>
1966	24	8
1967	20	9
1968	16	6
1969	20	8
1970	15	5
	<u>95</u>	<u>36 (approximately 38%)</u>

Accordingly, it appears that in the five-year period 1965-1970, only about 38% of all bilateral agreements between Canada and countries other than the U.S. were in exchange-of-notes form. This compares with the

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proportion of 82% for Canada-U.S. agreements in exchange-of-notes form in the same period.

These figures reflect the emergence of a very substantial variation between Canada-U.S. treaty practice and Canadian treaty practice vis-a-vis countries other than the U.S. in the 1965-70 period. The low proportion - 38 percent - of exchange-of-notes between Canada and all countries other than the U.S. in this period should also be compared with the far higher figure of 65% for exchanges of notes between Canada and all states other than the U.S. in the period 1947-1965. If we examine the period of the early sixties we can perceive the beginnings of this definite swing away from agreements in exchange-of-notes form between Canada and countries other than the U.S., the trend becoming more prominent in the last 6 years. In contrast, the exchange-of-notes form in Canada-U.S. treaty practice continues to predominate to an almost overwhelming degree.

"Agreements"

If we look at the form of the agreements that are not exchange-of-notes, one finds an increasing tendency to use the term "agreement". A bilateral agreement is usually a single document consisting of a number

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of articles; most commonly not subject to ratifications, signed by authorized representatives of the two parties. "Agreements" normally contain final clauses about when they come into effect and terminate, and whether and how they can be renewed or renounced.

In 1970, Canada entered into 9 bilateral "agreements", in 1969, Canada made 11; in 1968, there were 9; in 1967, the total was once again, 9; in 1966, they numbered 16. Thus, out of a total of 128 bilateral agreements with all countries in the years 1965-1970, 54, or somewhat over 42% were called, and were drawn up in the form of, "agreements". If, however, we compare another active five-year period of treaty-making -- 1956-1960, when 134 bilateral agreements were made with all countries, we find the following annual number of treaties called agreements: 1956 - 8; 1957 - 6; 1958 - 9; 1959 - 5; 1960 - 5. Thus, only a total of 33 treaties called agreements were entered into by Canada during these years, or somewhat under 25% of the total number of bilateral agreements between Canada and other countries.

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Agreements Subject to Ratification - New Trends

Another curious feature of Canadian treaty-making since the end of World War II is the fact that the percentage of bilateral and multilateral treaties subject to ratification i.e., treaties of a more formal character have, contrary to what might have been expected, not been declining.

In respect of bilateral treaties, in the period 1926-1935 only about 11% of Canadian treaties were subject to the ratification process or to accession, acceptance or approval. This ratio increase to 12 1/2% percent in the decade 1936-1945, went down to 7 percent in the period 1946-1955, and, surprisingly, increased to 13 percent in the decade 1956-1965.⁽⁸⁾ The following are statistics for the period 1965-1970:

Bilateral Treaties Subject to Ratification⁽⁹⁾

<u>Year</u>	<u>Number of bilateral agreements</u>	<u>Number subject to ratification</u>
1966	31	2
1967	29	6
1968	19	2
1969	27	4
1970	22	2
	128	16 (12 1/2 percent)

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Thus, in this five-year period, approximately 12 1/2 percent of Canada's bilateral treaties were subject to ratification - the proportion of formal agreements thus remaining almost the same, although very slightly lower, than during the years 1956-1965.

When the field of multilateral agreements is examined, it appears that, in the decade 1926-1935, slightly under 43 percent of total number of such treaties were formal, or subject to the ratification process; the percentage declining to under 25 percent in 1936-1945, rising to 34% in the years 1946 and 1955 and declining again to 30% in 1956-1965. Thus in the multilateral area, unlike the bilateral, Canadian practice has shown a clear trend over a forty-year period towards greater informality⁽¹⁰⁾. When we examine the years 1965-70, we find the following:

1965-1970: Informal Multilateral Agreements⁽¹¹⁾

<u>Year</u>	<u>Total number of multi-lateral agreements</u>	<u>Number of formal multilateral agreements</u>
1966	16	7
1967	16	4
1968	18	12
1969	15	6
1970	21	3
	86	32 (37%)

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Once again, we can detect a slight swing back to more formality in Canadian practice, the proportion of 37% of formal to the total multilateral treaties being higher than in any period during the past 50 years except for the years 1926-35, when, as was just noted, the proportion of formal multilateral treaties to the total number of multilateral agreements ran at approximately 43%.

It is difficult to account for this tendency towards somewhat greater formality in treaty-making in the period 1965-1970. It may be observed in the declining use of exchange-of-notes in the bilateral field; in the emergence of a higher percentage of bilateral treaties subject to ratification than in late pre-World-War II years and in an upswing in formal multilateral treaty-making. It is possible to surmise that the increasing emphasis, in Canadian foreign policy, on the political and economic significance of the strengthening and development of Canada's bilateral relations with a wide number of countries outside of North America is reflected, in this manner, in the processes of its treaty-making; this would not, however, account for a similar trend in the multilateral field, where the choice of form by the individual country is obviously restricted by the preference not just of one but of many partners. The

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emphasis on strengthening bilateral ties is not reflected in any significant increase, in this period, in the total annual number of bilateral agreements. On the other hand, it is interesting to note that 1970 saw the highest number of multi-lateral treaties - 21 - ever entered into by Canada in a single year. The second highest number also appears in this period - 18 in 1968 - which seems to suggest an increasing level of multilateral treaty-making on the part of Canada.

Some Other Features of Bilateral Treaties

So far as concerns both the subject-matter of Canadian bilateral treaties and the identity of Canada's treaty partners, no significant new trends seem to have appeared in this same five-year period. With regard to Canada's formal bilateral treaties, the topics have remained virtually the same. In the period 1946 to 1965 Canada entered into 50 bilateral treaties subject to ratification, acceptance, approval or confirmation in some other form. These break down as follows:

1946-1965: Subject-matter of formal bilateral treaties: (12)

Taxation and fiscal matters	17
trade	11
fisheries, waters, etc.	6

atomic energy	6
air service	6
extradition	1
radio	1
industrial property	1
settlement of disputes	1

In the period 1966-1970, the pattern is very similar:

1965-1970: Subject-matter of formal bilateral treaties (13)

taxation	4
trade	5
extradition	3
radio	2
fisheries, waters	1
economic cooperation	1
culture	1
diplomatic communities	1

These tables show the continuation of the same major trends in respect of formality of treaty-making: the main areas that Canadian treaty practice singles out for the ratification process being trade and tax matters.

No new significant features have emerged in the period 1965-1970 with respect to the profile of Canada's treaty practices. In 1968 I listed 70 post-war treaty partners of Canada within which Canada had,

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between 1946-1967 entered into 555 bilateral agreements⁽¹⁴⁾. If pre-war treaty partners are added, the total reached 77. To that number, should be added the Asian Development Bank, Barbados, Brazil, Singapore, Panama, Thailand, Cameroon and Uganda making a total of 85 treaty partners of Canada at end of 1970.

New Techniques for Authorizing Subsidiary Agreements

In Canadian Treaty-Making, I described the general practice, in the field of international cooperation and aid, to adopt understandings with countries which were not intended to be binding or which were of a contractual or private-law character. Such understandings have not appeared in the Department of External Affairs' Treaty Register or the Canada Treaty Series. Until the end of 1967, the Canadian International Development Agency (CIDA) and its predecessor, the External Aid Office, had entered into 68 loan agreements, 35 technical assistance agreements and approximately 190 memoranda of understanding on capital projects. There were however only 3 formal treaties in this area - with India, Pakistan and Ceylon⁽¹⁵⁾.

An interesting development in recent practice reflects a special method for achieving both a state of formal obligation and informal cooperation in the field of economic and technical cooperation with developing countries. This technique appears to be borrowed from

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the France-Canada cultural agreement of November 17, 1965, to which was appended an exchange of notes authorizing the provinces to enter into ententes falling within the framework of the cultural agreement⁽¹⁶⁾. In the economic cooperation field, the Government of Canada entered into an agreement, in 1970, with the Government of the Federal Republic of the Cameroon for economic and technical cooperation which provides a binding legal framework governing several modalities of cooperation and which at the same time makes provision for subsidiary but non-binding agreements. Article 4 of the agreement provides that "in pursuance of the objectives of the present Agreement, the Government of Canada and the Government of the Federal Republic of the Cameroon, acting directly or through their competent agencies, may in due course conclude secondary agreements, evidenced by letters, notes or memoranda in writing relating to [various aspects of conditions of service, personal loans, subsidies, etc.]". Article 6 of the agreement then provides that "unless the text thereof expressly states the contrary, subsidiary agreements concluded in accordance with Article 4 of this Agreement shall be considered to be administrative arrangements only and not formal agreements binding the

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Parties in international or domestic law"⁽¹⁷⁾. The Canada-Cameroon agreement is, it may be noted, more explicit than the Canada-France cultural agreement in defining what is the legal status of subsidiary arrangements made within the framework of the agreement. In the case of the Canada-Cameroon agreement the competence is, of course, conferred not on the provinces but on federal agencies.

It remains to be seen to what extent this agreement will serve as a model for further types of umbrella arrangements between Canada and other countries in the field of economic and technical cooperation. It seems a sensible way of underlining the importance which each country attaches to the agreement, of setting out the basic overall framework of cooperation and, at the same time, facilitating the making of detailed administrative arrangements of a less significant character between agencies of the two parties.

Canada has also sought methods for arranging cooperation of an administrative nature between the provinces and bodies or agencies of a foreign country. It is well-known that Canada has pioneered the development of the technique of the accord-cadre, and of

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agreements in the form of an exchange of notes to serve as an umbrella for the authorization of provincial administrative arrangements⁽¹⁸⁾. Of course, many jurisdictions in federal states enter into informal administrative arrangements of a reciprocal character where there is no document specifying the nature of the agreement between the jurisdictions. Such types of cooperation are found, for example, in the areas of reciprocal enforcement of maintenance orders, licensing regulations, driving privileges, etc. A recent exchange of notes between Canada and the United States in the field of forest fire protection, which has no specific precedent in Canadian practice, again shows the flexibility of Canadian treaty-making methods. On January 29, 1970 Canada and U.S. representatives exchanged notes governing the participation by New Brunswick and Quebec in the north eastern forest fire protection act. This agreement authorized both Quebec and New Brunswick to sign the North Eastern Interstate Forest Fire Protection Compact of 1949. Quebec adhered to the compact on September 23, 1969, four months prior to the federal-level exchange of notes; New Brunswick has not yet done so. The interstate agreement of 1949 had been authorized by an Act of the United States Congress.⁽¹⁹⁾

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The Canada-U.S. exchange of notes brought out an interesting point of jurisprudence concerning Canadian practice: that the signature of the Canadian provinces presumably does not take legal effect until the date of the authorizing agreement, unless otherwise specified by the exchange of notes. In the case of the Northeastern Interstate Forest Fire Protection Compact, the U.S. note expressly provided that "I am also pleased to confirm that the United States Government accepts the view of the Canadian Government that, in accordance with Canadian law, the signing by these two Provinces takes effect on the date of this exchange of Notes or on the date of their signature of the Compact, whichever is the later".

This is the first occasion on which the technique of an exchange-of-notes on the federal government level has been used to authorize adherence of a province to a multilateral agreement.

Treaties and Contracts

Another area which provides some flexibility with regard to the making of international obligations is that of international arrangements in the field of private law. It is usually said that states are competent to enter into "contracts" governed by an appropriate domestic law and not just international agreements

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governed by public international law⁽²⁰⁾. Nevertheless, examples of this latter type of arrangements are rarely given and seem equally hard to find in Canada as well as international practice. A Canadian illustration is a document stated to be a "contract" between Her Majesty the Queen in right of Canada and the State of Alaska containing a variety of stipulations concerning the maintenance (in the form of snow removal) of a portion of Haines Road. Article 10 of the document provides that "this contract shall be interpreted and the rights and obligations of the parties construed in accordance with the law of Canada and for the purpose of adjudicating any dispute arising out of this contract, Alaska will submit to the jurisdiction of a Canadian Court". The document is signed by the Deputy Minister and Secretary of Public Works of Canada and the Governor of Alaska and Commissioner of Highways of Alaska. The Canadian agreement to this arrangement is contained in a note of September 29, 1964, dealing with snow removal on other parts of the Haines Road, which is not registered in the Department of External Affairs Register but is referred to in Canada Treaty Series No. 27, 1964.

It is apparent that the distinction between a contract and a treaty may be of significance from

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the standpoint of federal states as most federal constitutions do not recognize a right in the constituent parts to conclude agreements and when they are so allowed may do so only on rather stringent conditions. When Legal Adviser of the Department of External Affairs, I found few other examples of what were clearly contractual arrangements formally subject to private law entered into by Canadian jurisdictions.

Interdepartmental Arrangements: Ministerial Responsibilities

It is also difficult to obtain evidence about the practice of government departments and agencies in the making of international arrangements. It is probable that the files of many government departments contain a substantial number of interdepartmental agreements and arrangements of a wide variety. These are never listed in the Treaty Register of the Department of External Affairs nor are they ever published in the Canada Treaty Series nor registered with the United Nations. When Legal Adviser of the Department of External Affairs, I again turned up few examples. Accordingly Canadian Treaty-Making does not provide much insight into the nature, variety or extent of this practice. The only indication I was able to obtain of the extent of interdepartmental arrangements was the list of 293 memoranda of understanding

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technical assistance and loan agreements entered into by the Canadian International Development Agency (CIDA) with other countries and their agencies up to the end of 1967. Canadian Treaty-Making also notes the great rarity of use of the exchange-of-notes form of agreement by departments other than External Affairs. In fact, only 2 examples have been found, one involving social security and the other compensation for war damage⁽²¹⁾.

Occasionally, Parliament has expressly granted authority to specific Ministers to make international agreements or international regulations but this has not happened too often. An example of a specific authority to make international agreements is found in the Canada Pension Plan in which Parliament authorized the Minister of National Health and Welfare to enter into agreements with foreign governments for the making of certain reciprocal arrangements relating to the administration or operation of the Canada Pension Plan or similar laws of foreign states⁽²²⁾. Authority to make international postal agreements is specifically granted by Parliament to the Postmaster General⁽²³⁾ and power to make agreements with foreign governments for exchange of information concerning

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taxation of estates has been granted by Parliament to the Minister of National Revenue⁽²⁴⁾. The power to secure "by international regulation or otherwise; the rights of Her Majesty in respect of Her Government of Canada in international air traffic" has been assigned to the Minister of Transport under the Aeronautics Act⁽²⁵⁾. Similar powers are given to the Minister of Communications under the Radio Act which provides that "The Minister shall take such action as may be necessary to secure, by international regulation or otherwise, the rights of Her Majesty in right of Canada in telecommunications matters and shall consult the Canadian Radio-Television Commission with respect to all such matters that, in her opinion, affect or concern broadcasting⁽²⁶⁾". A similar provision is also contained in the Department of Communications Act, which speaks more broadly of communications matters⁽²⁷⁾. In such areas of ministerial responsibility, it is not necessarily the case that all international agreements are signed by the Minister identified in the Act of Parliament. In respect of telecommunication matters, the Minister of Transport and, subsequently, the Minister of Communications have made international agreements, for example, the agreement

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between Canada and the United States for the provision of Safety on the Great Lakes by Means of Radio, signed by the Minister of Transport in 1952⁽²⁸⁾, and the International Telecommunications Union Convention of 1965, signed by the Director of the Telecommunications Branch of the Department of Transport⁽²⁹⁾. But the Secretary of State for External Affairs also makes such agreements, for example, the agreement between Canada and United States concerning Pre-Sunrise Operation of Certain Radio Stations⁽³⁰⁾. A study of Canada's telecommunications agreements over the years indicates that the majority of these agreements are made by the Secretary of State for External Affairs or Canadian diplomatic representatives abroad.

The Governor-in-Council might also, of course, authorize any particular Minister to sign an international agreement on any particular subject. This would normally be done on the advice of the Secretary of State for External Affairs. An example of this practice may be noted in a variety of fields. On October 29, 1968, the Minister of Industry, Trade and Commerce signed at Caracas, a Reciprocal Amateur Radio Operating Agreement between

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the Government of Canada and the Government of Caracas⁽³¹⁾. An Agreement of April 24, 1970 between the Government of Canada and the Government of the United States on Reciprocal Fishing Privileges in certain areas off their coasts was signed for Canada by the Deputy Minister of Fisheries⁽³²⁾.

When agreements are made by ministers or representatives of departments which have the express authority of Parliament to enter into such agreements, the instruments are normally binding in international law. The authority to sign by a Minister is usually by order-in-council signed or co-signed by the Secretary of State for External Affairs and the agreement is usually listed in the Department of External Affairs Treaty Register although it may not be published in the Canada Treaty Series. Canada's postal agreements, for example, which are made by or under the authority of the Postmaster General, are rarely listed in Canada's Treaty Series although information about them can be obtained from the Department's Treaty Register.

Given the international competence or responsibility of a specific minister of the Crown, it is to be expected that the departments or agencies

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for which they are responsible would from time to time have occasion to enter into less formal international arrangements. But it is very likely that such arrangements are also entered into by departments and agencies which do not have specific grants of authority by Parliament to conclude international agreements. Very few government departments or agencies have responsibilities which do not involve some area of international cooperation and there is no doubt that many, if not most, agencies make arrangements with representatives of entities of foreign jurisdictions both at the senior and working level. These are commonly of a routine administrative type. In saying that such agreements are of an administrative character it should not, however, be thought that they are necessarily lacking either in political or policy significance. The use by government departments of exchanges of letters between officials signifies less the absence of political importance than the desire to avoid binding arrangements and the need for flexibility and speed of response. But major new directions in departmental policies in specific areas would not normally be reflected in working-level exchanges of letters.

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Canadian Practice in the Field of Telecommunications -
Interdepartmental Arrangements (33)

Analysis of the practices of the Department of Transport when it was responsible for telecommunications matters and more recently of the Department of Communications, reveals the variety of circumstances in which interdepartmental agreements and arrangements may be made. It also reveals the different techniques involved, with their varying degree of informality.

The Government of Canada might, of course, enter into agreements of a fully binding character in the field of telecommunications. As previously noted such agreements may be signed by the Secretary of State for External Affairs or members of his Department or the Minister of Communications or his representatives. Of course, such agreements may or may not be subject to ratification.

Another binding method of treaty-making which is, however, of a less formal character is the signature of a memorandum of understanding between departments or agencies covered by an exchange of notes. The memorandum of understanding governs the detailed modalities of cooperation and is then made

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an annex to the exchange of notes. Thus the inter-agency agreement is enshrined in a more formal and hence, in a sense, more political context and, at the same time, is given international legal effect. The technique of an exchange of notes between diplomatic representatives of Canada and the United States was used on May, 6th 1964 to cover the Memorandum of Understanding between the Canadian Defence Research Board and the United States National Aeronautics and Space Association dated December 23rd 1963, concerning the Alouette-ISIS ionospheric monitoring program⁽³⁴⁾. This technique was also used in notes of April 21 and April 27, 1971 to embrace the Memorandum of Understanding between the Canadian Department of Communications and the United States National Aeronautics and Space Association, dated April 20th 1971, concerning cooperation in an experimental communications technology satellite for launching into geostationary orbit⁽³⁵⁾.

Having regard to the subject-matter of the arrangement and to the need to meet specific time requirements, a department might enter into an inter-departmental or inter-agency arrangement which is not binding under international law and is not published

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in the Canada Treaty Series or maintained in the Treaty Register of the Department of External Affairs. Nevertheless for reasons of simplicity or presentation, the arrangement might be drawn up in the form of articles and contained in a single document. This is the case in connection with the Memorandum of Understanding between l'Office de Radiodiffusion-Télévision Française and the Department of Communications, Canada which was signed in Paris in a French and English version on November 5, 1971. This document, which relates to the allotment and utilization of television channels of St-Pierre and Miquelon and neighbouring parts of Canada, is a highly complex instrument of 21 pages containing a considerable amount of statistical data.

A further example of the use of the memorandum of understanding is the arrangement dated August 22, 1962 between the Deputy Minister of Transport and the Commandant of the United States Coast Guard concerning the coordination of the Marine Radio Beacons of Canada and the United States. This memorandum is somewhat less structured than the memorandum between the Office de Radiodiffusion-Télévision Française and the Department of Communications although in some ways it follows similar lines.

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Some points of practice should be pointed out. The memorandum of understanding concerning Marine Radio Beacons came into effect August 22, 1962 but it was signed at dates several months apart by representatives of the two agencies. The memorandum was signed by the Coast Guard on April 18, 1962 and for the Department of Transport on August 22, 1962. It should also be noted that this document replaced another document entitled the "General Principles Recommended for the Coordination of the Marine Radio Beacons of the United States and Canada" agreed upon by representatives of the Department of Marine, Canada and the Lighthouse Service, Department of Commerce, United States, in 1935 and revised in 1939. This indicates that the practice of interdepartmental arrangements, so far as Canada is concerned, is indeed of long standing. An additional feature of interest is that the memorandum of understanding concerning the coordination of radio beacons contains no final clauses while the later memorandum between the Department of Communications and the Office de Radio-diffusion-Télévision Française concerning frequency coordination in the areas of St-Pierre and Miquelon contains a final clause specifying the duration in force of the agreement, the fact that it can be

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renewed by tacit agreement or denounced.

There are also several examples of inter-agencies arrangements in the form of exchange of letters - the most informal method available to departments and agencies. One such example is an exchange of letters dated June 20, 1960 and September 2, 1960 between the Director, Telecommunications Electronics Branch of the Canadian Department of Transport and the Acting Secretary of the Federal Communications Commission in Washington concerning frequency plans for the railroad radio service in the United States and Canada. Another example of a non-binding international arrangement is an exchange of letters between the Assistant Deputy Minister, Canadian Department of Communications, dated December 10, 1969 and a letter from the Chairman of the Federal Communications Commission in Washington, which appears to be undated but was received on January 20, 1970, concerning principles for the coordination of the proposed maritime mobile use of UHF channels excluded from arrangement (A) in the U.S.-Canada coordination agreement for frequencies above 30 mc/s. In this case an annex is attached to the Canadian letter which is described as "principles of Federal Communications Commission-Department of Communications Understanding etc."

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A further example is an exchange of letters between the Director-General Telecommunications Regulation Branch, Department of Communications, dated August 9th and the Chief Engineer of the Federal Communications Commission dated August 20, 1971 concerning principles relating to provision of trans-border radio paging services by Canadian and U.S. licencees. In this instance, the Canadian letter specifies that, together with an earlier Federal Communications Commission letter of June 25, might constitute an "informal agreement".

It may be seen from this outline of the methods by which federal government departments enter into international arrangements that there is a wide variety of methods which can be used ranging from formal agreements binding in international law to very informal methods with no legal standing. It would be desirable for such arrangements to be collected in a central source in the federal government and, at least where no national security arrangements are involved, made available to members of the public. Until that time no definitive assessment of the extent of Canadian practice in the making of interdepartmental and inter-agency agreements can be made.

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Conclusion

A review of Canadian practice in various areas of Canadian practice in the making of international agreements confirms the difficulty of perceiving any broad or uniform trends, during the past few years, in respect of the forms of concluding international agreements and arrangements. There is a continuation of the major thrust of Canadian practice, over the past fifty years, of developing new informal and flexible methods for enabling international agreements to be made quickly, and effectively, but there is also a tendency, particularly evident in very recent practice, to attach value or importance to certain formalities in the treaty-making process.

There is substantial evidence that a number of departments and agencies of the federal government make many international agreements with counterpart bodies in other countries. There is a wide variety of methods for making such arrangements, with their own varying degrees of formality. Not enough is known about such arrangements to determine the full extent of the practice or whether it is growing.

FOOTNOTES

1. GOTLIEB, A.E.; Canadian Treaty-Making,
(Butterworths 1968) p. 84
2. Ibid., p. 57
3. Information concerning Canada's treaties
in this period (1966-1970) is taken from
the annual reports of the Department of
External Affairs for the years 1966, 1967
1968, 1969, 1970.
4. All statistics taken from GOTLIEB, op.
cit. supra, note 1
5. See note 3
6. See note 4
7. See note 3
8. GOTLIEB, pp. 51-54
9. See note 3
10. GOTLIEB, p. 51
11. See note 3
12. GOTLIEB, pp. 58-59
13. See note 3
14. GOTLIEB, pp. 60-61

15. GOTLIEB, p. 63
16. Signed at Ottawa, November 17, 1965;
in force December 6, 1965; Canada
Treaty Series 1965 No. 21
17. Agreement on Economic and Technical Co-
operation between the Government of Canada
and the Government of the Federal Republic
of Cameroon, signed at Toronto, September
15, 1970. Provisionally in force as of
September 15, 1970.
18. GOTLIEB, pp. 22-32
19. See 63 U.S. Statutes 271 and 66 U.S. Statutes
71. The Canada-U.S. agreement is set out in
an Exchange of Notes between Canada and the
United States of America concerning Participa-
tion by New Brunswick and Quebec in the North-
Eastern Interstate Forest Fire Protection Com-
pact, done at Washington, January 29, 1970,
in force January 29, 1970. Canada Treaty
Series 1970 No. 3.
20. See International Law Commission commentary
to Article 2 (paragraph 6 of commentary)
General Assembly Official Records 21st Session,
Supp. 9 (a) - 6309 Rev. 1; Also, D P.
O'Connell, International Law, 1965, Vol. 1,
p. 224, Also GOTLIEB p. 24

21. GOTLIEB, p. 33, footnote 14
22. Sec. 109(1) of the Canada Pension Plan,
Stat. Canada, 1964-65, C.51
23. Under the Post Office Act, R.S.C. 1970,
s. 5(1)(j) the Postmaster General may
"make and give effect to any postal agree-
ment or arrangement with the government or
postal authorities of any country or inde-
pendent postal administration..."
24. Stat. Canada, 1958, C. 29, s.56(2)
25. Aeronautics Act R.S.C. 1970, sec. 3(h)
26. Radio Act, R.S.C. 1970, sec. 8(i)
27. R.S.C. 1970, sec. 5(f)
28. Signed at Ottawa February 2, 1952. Ins-
truments of ratification exchanged and in
force November 13, 1954 Canada Treaty Series
No. 25, 1952; for further list of treaties
in the area of telecommunications, together
with information about signatures, see Tele-
commission Study 3(a), International Implica-
tions of Telecommunications: the Role of Canada
in Intelsat and other Relevant International
Organizations

29. Signed at Montreux, Nov. 12, 1965;
entered into force January 1967
30. Exchange of notes of March 31 and June 12,
1967. Canada Treaty Series No. 11, 1967
31. Signed at Caracas, October 29, 1968.
Entered into force, November 13, 1968
Canada Treaty Series No. 13, 1968
32. Canada Treaty Series No. 9, 1970
33. For a record of Canada's treaties in the
field of telecommunications, see the
Department of Communications Study 3(a)
International Implications of Telecommuni-
cations: the Role of Canada in Intelsat
and other Relevant International Organiza-
tions.
34. Canada Treaty Series 1964, No. 6
35. Agreement signed April 21 and 27, 1971.

File
Diary
Circulation
ECL
IT&C (General Trade Policy Branch)

Circ ECL

Copy for (5)

20-3-4-COY
171 -

OTTAWA, February 25, 1971.

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Dear Mr. Walsh,

I regret that my absence on a language course in January and the resultant backlog of work, have delayed my response to your letter of January 11, which raises a number of questions concerning Canada's treaty procedures and obligations as they relate to our external trade commitments.

By way of introduction I should say that some of your questions touch on very intricate aspects of Canada's bilateral and multilateral trade relations. I am deferring answers to your questions 3, and in part 5, which deal respectively with partial withdrawal of MFN status and western European trade quotas, vis-à-vis Eastern European countries, until I have had an opportunity to obtain more detailed information on the technical aspects of these matters from the General Trade Policy Branch of the Department of Industry, Trade and Commerce.

The following are the answers to the other questions you have raised; our numbers corresponding to those used in your letter:

- (1) The Canadian ratification procedure for trade agreements does not differ from the ratification procedure for all other types of agreements concluded by Canada, and may be described briefly as follows: Once a policy decision has been taken by the government to conclude an international agreement, the Secretary of State for External Affairs makes a Submission to Council seeking authority from the Governor General in Council to execute and issue an instrument of ratification of the agreement in question. The significance of seeking the Governor General's authority to conclude the agreement is that in Canada the treaty-making power is a part of the Royal Prerogative, and on the advice of the Queen's Canadian Ministers, these prerogatives have been assigned to the Governor General by Letters Patent. Once the Order-in-Council is issued by the Clerk of the Privy Council over the signature of the Governor General, the Department of External Affairs prepares the instrument of ratification, which is signed by the Secretary of State for External Affairs. Instruments are then exchanged with the appropriate representative of the foreign government concerned.

Mr. R.F.G. Walsh,
Room 1526, Ottawa YM-YWCA,
180 Argyle Avenue,
OTTAWA 4, Canada.

- 2 -

It should be understood, of course, that ratification of treaties, in the sense of an internal act of the legislature, is not required in Canada. Although in the case of certain treaties of particular importance successive governments have adopted the practice of seeking Parliamentary approval before ratification of a treaty. This has not been considered necessary in the case of trade agreements. However, in some cases trade agreements have required implementing legislation in order to give them the force of law in Canada, an example being the New Zealand Trade Act. But in most cases implementing legislation is not required each time Canada concludes a bilateral trade agreement incorporating general MFN concessions. Statutory authority already exists to give such agreements force of law in Canada, e.g. Customs Tariff Act, Canada Grains Act, and Export-Import Act. (If you require a more detailed description of Canadian treaty practice I would suggest you consult "Canadian Treaty Making" written by A.E. Gottlieb, a former Legal Adviser in the Department of External Affairs. The book was published by Butterworth's in 1968 and should be available in the Carleton University Library).

- (2) It is possible by means of Order-in-Council to revoke MFN privileges for a particular country for a period of six months. However, if any longer period of revocation is sought, Parliamentary authority must be obtained. Such action by Canada would likely provoke an equivalent response from the trading partner concerned, pursuant either to the reciprocal undertaking contained in a bilateral trade agreement, or, if a GATT obligation is involved, remedial actions provided to state parties under the General Agreement. We could not comment in any precise way on the possible legal implications of such a unilateral action without being furnished a specific fact pattern.

- (4) There is no legal distinction between the Conventions of Commerce concluded by Canada with Poland and Czechoslovakia prior to the war and trade agreements entered into by Canada with other Eastern European countries following the war. Both the pre and postwar agreements created rights and obligations in international law as between Canada and each of the parties. Although the Polish and Czechoslovakian Conventions were suspended during the war, they were revived immediately after, and remain in force as treaty obligations (with the exception of Article 5 of the Czechoslovak agreement relating to ports from which Czechoslovak goods shall be conveyed without transshipment, which has been temporarily suspended pursuant to an exchange of notes of 1945). The legal distinction between a consular agreement and a "mere" exchange of letters, would depend

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on the intended status of the latter. In treaty practice an exchange of letters may very often constitute a binding agreement between governments creating treaty obligations. For reasons of administrative convenience, and a minimum of ceremony, states very often employ the exchange of note or exchange of letter form to conclude binding agreements. In Canadian usage, however, exchanges of letters are usually not intended to create treaty obligations but are designed simply to record an understanding between authorities of the Canadian Government and another government on a particular matter. Often this form is employed as a means of articulating certain obligations arising out of a bilateral agreement. This procedure is most often followed with respect to trade agreements. For example, the letters between the Canadian Minister of Industry, Trade and Commerce, and an official of the Ministry of Foreign Trade of Romania, dealing with the dollar value of Romanian purchases of Canadian goods, exchanged at the same time as the Canada-Romania Trade Agreement of March 22, 1968 was concluded, are not considered an integral part of the Agreement, and, therefore, do not have treaty force; although they do constitute a moral commitment on the part of the two officials concerned that their two governments will endeavour to generate a certain volume of trade between the two countries.

- (5) Generally speaking, the general MFN clause enshrined in Article I of GATT, subsumes any bilateral MFN concessions binding as between states which accede to GATT to the extent that such concessions touch on trade and commercial relations (Very often MFN concessions contained in a bilateral agreement extend to such other matters as consular privileges and the right of citizens of one party to carry on business in the territory of the other party). It does not necessarily follow, however, that the bilateral agreements incorporating MFN concessions are automatically terminated when both parties accede to GATT. Often such agreements contain specific provisions of unique importance to the parties, for example, in our trade agreement with the Soviet Union there is a special provision governing the carrying on of business by Canadian and Soviet citizens in each other's territory. However, to the extent that the bilateral agreement relates to matters covered by GATT, the general rule of international treaty law will apply to the effect that when all the parties to the earlier treaty are parties also to the later treaty, but the earlier treaty is not terminated or suspended in operation, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

- (6) The distinction between an "Agreement" and a "Protocol" is one of form and usage rather than of law. "Agreement" has been described as the protean word in treaty nomenclature--generically it can be used to describe any type of bilateral or multilateral treaty. More strictly speaking, in Canadian usage "Agreement" is commonly used to describe most bilateral (e.g. the trade agreement between Canada and the USSR of 1956) and many multilateral (e.g. the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System of 1964) treaties requiring ratification.

The common usage of "Protocol" in Canadian and general international practice is to describe an agreement which is subsidiary to a primary instrument for adding to, clarifying, interpreting or modifying its provisions. A good example is the Protocol to the Trade Agreement with the USSR of 1960, which extends the Agreement for a further period of three years. (For a more detailed description of treaty nomenclature, you should refer to "Canadian Treaty Making" op. cit.)

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As requested, we are attaching copies of the exchange of ^{*} letters between Mr. Winters, then Minister of Trade and Commerce, and Mr. Rauta, of the Ministry of Foreign Trade of the Socialist Republic of Romania, dated March 22, 1968, concerning the dollar value purchase commitment of Romania.

I trust our answers to your questions will be of some assistance in the preparation of your research essay. I will, of course, be writing to you again very shortly once I have received information from officials in the Department of Industry, Trade and Commerce, enabling me to answer your questions 3 and 5.

Yours sincerely,

B.M. MAWHINNEY

B.M. Mawhinney

^{*} Since Mr. Winter's letter is repeated verbatim in Mr. Rauta's reply, we thought it was only necessary to enclose the text of the latter.

(Translation)

Ministry of Foreign Trade
of the Socialist Republic of Romania

Ottawa, March 22, 1968.

The Honourable Robert H. Winters
Minister of Trade and Commerce
Ottawa

Sir,

I have the honour to acknowledge receipt of your letter of today, which reads as follows:

"On the occasion of signing today the Trade Agreement between the Government of Canada and the Government of the Socialist Republic of Romania, I have the honour to confirm that, in pursuance of the desire of the Government of Canada and the Government of the Socialist Republic of Romania to progressively expand trade between the two countries to a mutually satisfactory level, we have reached the following understandings:

The Government of the Socialist Republic of Romania, taking into account the possibilities of developing Romanian exports to Canada, will see to it that the appropriate Romanian foreign trade enterprises shall buy in Canada under normal commercial conditions Canadian goods of their choice from Canadian exporters or their representatives to a minimum value of \$ 9 million, during the three years of the current Agreement, with purchases in the first year of \$1.5 million and in the second year of \$3 million.

In addition, during the period of the Agreement, Romania will give every consideration to Canada as a competitive source of supply for Romanian import requirements of goods for which Canada has a demonstrated competitive export performance.

I recognize the importance which the Government of Romania attaches to the further development of Romanian exports to Canada. In my view, it should be possible, within the framework of the laws and regulations which apply to imports from all countries, for Romania to achieve this objective.

In order to facilitate the development and diversification of the trade between our two countries, representatives

- 2 -

of the two sides will meet as required to review the progress which has been made."

I hereby confirm my agreement to the above.

Accept, Sir, the assurances of my highest consideration.

Vasile Rauta

V. Rauta

OTTAWA, March 25, 1971.

Dear Mr. Walsh,

I refer to my letter of February 25, 1971 responding to a number of questions you had raised in your letter of January 11, 1971, concerning Canadian treaty procedures and obligations as they relate to our external trade commitments. Having had an opportunity to consult with the appropriate officials in the Department of Industry, Trade and Commerce, I am now able to answer question 3 and the second portion of question 5, as contained in your letter under reference.

With reference to question 3, I am only in a position to outline in a very general way the sequence of steps available to the Canadian Government if faced with a foreign nations default of a bilateral purchase commitment. You will appreciate, however, that the action the Canadian Government will adopt in any specific case of this nature will depend very largely on the circumstances of the breach of obligation and the nature of the obligation. If faced with such a default, Canada could, as a first step, urge the defaulting country either to honour its commitment or, if this is not possible, seek renegotiation of the agreement with a view to striking a new balance of reciprocal trade benefits. Failing renegotiation, Canada might then take action to withdraw MFN concessions in favour of the country concerned, in whole or in part, either temporarily or permanently, bearing in mind, of course, that a revocation of MFN concessions extending for any period beyond six months requires Parliamentary action.

As to the second part of question 5, I am not aware that GATT has made any pronouncement on the type of purchase commitments Canada has concluded with East European countries. Nor am I in a position to comment on the trade quotas that the European Community countries maintain with their Eastern European trading partners. Suffice it to say however that discriminatory quotas as between contracting parties of the GATT are clearly inconsistent with Article VIII of that instrument, which contains three types of obligations:

- (a) A most-favoured-nation type of obligation;
- (b) Certain detailed rules for the manner in which quantitative restrictions are applied, designed to achieve an equitable distribution of import permissions among various contracting parties; and
- (c) A series of obligations requiring notification and consultation.

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Mr. R.F.G. Walsh,
Room 1526, Ottawa YM-YWCA,
180 Argyle Avenue,
OTTAWA 1, Canada.

cc: IT&C (Mr. Miner, General Trade Policy Branch

- 2 -

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Since you are particularly interested in the operation of the GATT Agreement, I might mention to you a recent book on the subject, in case you are not already familiar with it, entitled World Trade and the Law of GATT, which is an excellent legal analysis of that body by one of the foremost authorities on the subject, John H. Jackson, of the University of Michigan. If the book is not available at the Carleton University Library, you would be most welcome to make use of the copy in our library, which, as you will recall, is located on the fifth floor of the Daly Building. The only caveat is that this book and other materials in our library cannot be borrowed.

If you have any further questions on the above, or other matters relating to Canadian trade policy, please do not hesitate to contact me.

Yours sincerely,

E. AL. MAWHIRNEY

E. Mawhirney

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with accompanying
letter.

Rm. 1526,
Ottawa 4M-YWCA,
180 Angyle Ave.,
Ottawa 4.

Jan. 11, 1971

Mr. B. Mauchinney,
Treaty Registration,
Legal Division,
Dept. of External Affairs,
Rm. 513, Daly Bldg.
Markenjin and Rideau Sts.
Ottawa.

Dear Sir, I am a graduate student in International Affairs at Carleton University doing a research essay entitled "Canadian trade negotiation with Eastern Europe". Last summer (August, 1970) you were extremely helpful in providing me with some trade agreements that I had requested and you mentioned that, if there were any problems, I should contact you again. I do not have any problems as such but, rather, have several questions regarding some legal aspects of the trade agreements. I realize that answers to these points could be quite detailed. Basically, I am interested in general answers suitable for broad application in my essay. Of course, the source



of the information will remain confidential.

Accordingly I pose several questions:

1. could you briefly outline the Canadian ratification procedure of a trade agreement (ie an MFN exchange);
2. could you describe some of the legal and practical difficulties involved in the revocation by Canada of MFN status for another nation;
3. could you briefly describe how Canada, faced with a foreign nation's default of a section of a bilateral agreement (ie a purchase commitment), might still retain MFN status with that foreign nation yet partially restrain that country's exports to Canada;
4. can one make a legal distinction between a pre-war Convention of Commerce, such as the ones Canada signed with Czechoslovakia and Poland, and a post-war bilateral trade agreement such as those signed with Rumania, Bulgaria, Hungary and Russia; what is the legal distinction between a consular agreement and a mere exchange of letters;
5. what is the residual status of these bilateral agreements if these East European nations, with which we have these agreements, join the GATT;



why does GATT consider a purchase commitment, such as the type in Canada's bilateral trade agreements with East Europe, to be discriminatory whereas many West European nations are allowed retention of quotas for trade with East European countries after ^{their} joining GATT;

6. what is the legal distinction between an agreement and a protocol; what is the status of an agreement and its contents on expiry of the time period stated in the agreement;

Finally, I would appreciate your sending me, if possible, a copy of the letter re: the dollar value purchase commitment, attached to the March 22, 1968 Rumanian - Canadian trade agreement.

Needless to say, I would appreciate very much your assistance in providing some general answers to the above questions.

Thank you.

Yours truly

R. F. G. Walsh

File
Diary
Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

The Under-Secretary
(through the Legal Adviser)

SECURITY CONFIDENTIAL
Sécurité

DATE January 9, 1969

TO
À

FROM De Legal Division

NUMBER
Numéro

REFERENCE Cabinet Document 785/68 of November 12
Référence

SUBJECT The Reformed Senate and Treaty Making
Sujet

FILE	DOSSIER
OTTAWA	
20-3-4-CDA	
MISSION	37

ENCLOSURES
Annexes

This memorandum deals with one particular aspect of Senate reform and is not intended to be exhaustive, since the document to which it relates has already been considered by Cabinet. Cabinet Document 785/68, which we have only just acquired, noted that the Cabinet has decided:

DISTRIBUTION

"That the Senate continue to share with the House of Commons the right to approve formal international agreements."

Mr. Yalden

The document goes on to make more specific recommendations, including the proposal that, among the Senate's functions, to be shared with the House of Commons "as it does now", would be "approval of formal treaties or conventions with foreign states". Finally, the document proposes that the Senate have a veto in respect of "treaties touching on provincial legislative competence".

✓ 2. The drafters of the document appear to have been under the impression that Parliament has a right to approve treaties. As you know, no such right exists. Successive governments have, as a matter of policy, submitted certain narrow classes of treaties to Parliament for approval by resolution, usually prior to ratification. And of course the Senate participates in treaty implementation whenever such implementation requires federal legislation.

3. Any suggestion that the Senate, either alone or with the House of Commons, should have under the new constitution a right to approve (i.e. ratify in the internal sense) treaties should be recognized as a major departure from the present constitutional position. It would mean removal of the treaty-making power from the area of Royal Prerogative, exercised on the advice of the executive, into the area of legislative responsibility. In addition to increasing substantially the workload of Parliament it would mean that each individual treaty would be the subject of political debate. These disadvantages would have no counterbalancing advantage unless, as part of the new procedure, Senate approval of a treaty automatically gave the whole of the treaty, including those of its provisions which normally fall within provincial legislative jurisdiction, the force of law in Canada. This is the effect of treaty ratification by

- 2 -

CONFIDENTIAL

the U.S. Senate. Only in this context would a right in the Senate to veto treaties touching on provincial legislative competence appear relevant. If a requirement for Parliamentary ratification is to be introduced, provision will have to be made for a distinction between treaties which require such ratification and those agreements which, while treaties in the international law sense, do not require such ratification, i.e. what the U.S. calls "executive agreements". ✓

4. We note that the federal propositions concerning the Senate, submitted on December 2, 1968, provide only that the Senate retain its present powers (which are not specified) and would have certain additional powers. No reference is made to treaty making.

J. A. BEESLEY
Legal Division.

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cc:20-3-4-1

RM
File 20-3-4-CDA
20-3-4-1 copy
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CONFIDENTIAL

Ottawa, May 6, 1968.

Dear Ed -

I have asked our treaty people what they think of the suggestion in your letter of April 25 that full powers being sent to Washington include authority for Peter Towe to sign agreements in your absence. In reply they have pointed out that full powers are normally issued for the signature of more important agreements, that is to say, those which are drafted in treaty or agreement form rather than as exchanges of notes. In their view, it would be eroding this distinction to include automatically the number two's name in all full powers. They tell me that to the best of their knowledge, no other country submitting full powers in Ottawa, including the United States, inserts in its instruments as a matter of standard practice, authority for a designated alternate to sign formal agreements.

You may be interested to know that we are now going to regularize the procedure in the case of Washington and a few other large missions of obtaining Order-in-Council authority for the head of mission and the number two to sign international agreements, and this will increase operating flexibility. We will then be able to issue full powers in your name, or if you were going to be absent, in Peter's name without going back to Council.

For my part, I am inclined to accept the view that to go beyond this and to include an alternate as a matter of routine in all full powers issued for Washington could lead to a down-grading of the signing process, something I would be reluctant to see. If you feel strongly on the matter, perhaps you could let me know if in fact you or the Embassy have been inconvenienced by the need to have you present in Washington for the signing of particular agreements.

Mr. A.E. Ritchie,
Ambassador,
The Canadian Embassy,
WASHINGTON, D.C.

Yours sincerely,
A. E. GOTLIEB

6.5.21 (us)

CANADIAN EMBASSY



AMBASSADE DU CANADA

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CO: 90-3-4-1

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R M

Washington, D.C.,
April 25, 1968.

Mr Bentley
Stanford
AG
Mr Caputhans for reply
Mr Scott to make
Mr Stanford to re
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CONFIDENTIAL

Dear Allan,

I think it would be desirable in the future to ensure that Full Powers for signature by me of any agreement could include authority for Mr. P.M. Towe to sign in my absence. I believe a procedure similar to this was followed in the past and of course covers eventuality of my unexpected absence at time of signing.

Best regards,

Yours sincerely,

A. E. Ritchie,
Ambassador

A. E. Gotlieb, Esq.,
Assistant Under-Secretary,
Department of External Affairs,
Ottawa, Canada.

30.4.12(us)

Diary
Div. Diary
File

Legal Division, etc. (partially obscured)



EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
A Economic Division

FROM
De Legal Division

REFERENCE
Référence Your memorandum of April 8, 1968

SUBJECT
Sujet Commonwealth Telecommunications Organization

SECURITY
Sécurité RESTRICTED

DATE April 24, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	26-3-4-CDA
MISSION	32

ENCLOSURES
Annexes

DISTRIBUTION

We have no objection to your informing the British High Commission that the draft Financial Agreement is acceptable to Canada and that we are seeking formal authority for Canadian signature.

2. The draft terminating agreement relating to the Commonwealth Telegraphs Agreement (1948 and 1963) also appears to us to be in order.

3. With respect to the proposed amendment to Article 39 of the Constitution of the Commonwealth Telecommunications Organization, we should point out that this document, which is somewhat unusual in form, does not appear to constitute a treaty. It was not signed, ratified or acceded to by Canada and does not appear in our treaty register. Nor has it been published by the British Government in its treaty series. If our conclusion that the Constitution is not a treaty is correct, it follows that there is no need from a treaty viewpoint for an Order in Council to amend the Constitution. By P.C. 1966-2277 of December 5, 1966, the Governor in Council "accepted" the conclusions and recommendations of the Commonwealth Telecommunications Conference, 1966. These included a recommendation that the Commonwealth Telecommunications Organization be established with the Constitution adopted at the Conference. The Submission to Council did not request and the Order did not grant authority to sign, ratify or adhere to the Convention. It is not clear from the material on file why it was decided to seek the "acceptance" of the Governor in Council of the conclusions and recommendations of the 1966 Conference. However, it appears that the Submission to Council was originally drawn to include authority to sign a revised Commonwealth Telecommunications Agreement. This recommendation was deleted from the Submission during the drafting process because the text of the proposed new agreement was not yet available and it appears that what may have happened is that the Submission to Council was made after its *raison d'être* had ceased to exist. In any event, we are aware of no requirement for an Order in Council authorizing a proposed amendment to the Constitution. You are, however, correct in the assumption in the final paragraph in your memorandum that an Order-in-Council will be required for Canadian signature of the Financial Agreement and the Terminating Agreement.

T. A. BEESLEY

Legal Division

Economic / S.W. Hubble / mt

M. Hubble
M. Stewart

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



TO
À Legal Division

FROM
De Economic Division

REFERENCE
Référence Your memorandum of February 6, 1968

SUBJECT
Sujet Commonwealth Telecommunications Organization

Received
DATE APR 9 1968
NUMBER
In Legal Division
Department of External Affairs

SECURITY
Sécurité **RESTRICTED**
April 8, 1968

FILE	DOSSIER
OTTAWA	
MISSION	41-4-CCG-20-3-4-CDA 32

ENCLOSURES
Annexes

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DISTRIBUTION
(without att)
Comm. Div.

-- We informed the Department of Transport of the comments you made in the memorandum under reference concerning the draft Financial Agreement for the Commonwealth Telecommunications Organization. The Department of Transport has now replied, and a copy of their letter, dated March 7, is attached. In view of the comments in the 4th, 5th, and 6th paragraphs of this letter, we tend to think it would be preferable not to pursue further the points you raised concerning Article 11 of the draft Financial Agreement. Accordingly, unless you have any objections, we propose to inform the British High Commission that the draft Financial Agreement is acceptable to us, and that we are seeking formal authority for the Canadian signature. (We will, however, remind the British about the possible inclusion of an amendment procedure, as suggested in the final paragraph of the Department of Transport's letter.)

-- We have now received a further letter concerning the Commonwealth Telecommunications Organization from the British High Commission, dated March 20 (copy attached). With this letter was forwarded a draft Terminating Agreement with respect to the Commonwealth Telegraphs Agreements (1948 and 1963), and we have been asked whether this second draft Agreement is acceptable to us. We are forwarding a copy of this letter, together with a copy of the draft Terminating Agreement, to the Department of Transport for their comments, but in the meantime we would be grateful to receive any comments which you might have.

Reference is also made in the British High Commission's letter of March 20 to the possibility of amending Article 39 of the Constitution of the Commonwealth Telecommunications Organization, and we would be grateful to have your comments on this matter also. Canada accepted the Constitution of the Commonwealth Telecommunications Organization by virtue of Order-in-Council PC 1966-2277 of December 5, 1966, and if we agree to the British proposal for amending Article 39, we wonder whether a further Order-in-Council would be necessary.

OK ✓

appears in order

NO provisions

What is the amendment procedure provided for in the Constitution

... 2 a next

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Finally, there is the question of authority for the Canadian signatures for the Financial Agreement and the Terminating Agreement with respect to the Commonwealth Telegraphs Agreements (Your memorandum of October 25, 1967, refers). In view of Order-in-Council PC 1966-2277, it appears to us that no further policy approval for the Canadian signature to these two Agreements is required, but that an Order-in-Council authorizing the Canadian signature for each Agreement will be needed. We would be grateful to know whether you concur in this view.

R. E. Reynolds
Economic Division

Min Bantl
Could you please
lead into this?
Mr



TO: *Mr Harbottle*
 FROM REGISTRY
 MAR 14 1968
 FILE CHARGED OUT

RESTRICTED
 YOUR FILE
 VOTRE RÉF:
 IN REPLY QUOTE
 À RAPPÉLER:

DEPUTY MINISTER OF TRANSPORT
 SOUS-MINISTRE DES TRANSPORTS
 OTTAWA, CANADA

LL)/L%
 110-15 (BTI)

March 7, 1968.

Under-Secretary of State for
 External Affairs,
 East Block,
 Parliament Buildings,
 Ottawa, Ontario.

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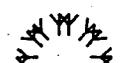
Dear Sir:

The draft Financial Agreement sent along with your letter of January 31, 1968 is acceptable to this Department and to the Canadian Overseas Telecommunication Corporation.

As regards your question about the authority granted in Order-in-Council PC 1966-2277, our Departmental Counsel believes that it covers only formal acceptance of the Conclusions and Recommendations of the 1966 Conference Report to Governments and does not include authority to enter into the Agreement nor to designate a signing officer both of which are essential. You may recall that our first draft Report-to-Council sought to include these items but were dropped in light of your letter of November 1, 1966.

Our letter of October 10, 1967 forwarded a draft Report-to-Council preparatory to a submission that would provide the authority necessary concerning signature of Agreements. This draft envisaged the need to sign two separate Agreements, namely the Financial Agreement now under consideration and another one cancelling the existing Agreements of 1948 and 1963 the draft of which we have not yet seen. It is understood that your Department wishes in due course to prepare the necessary submission seeking Council approval to enter into these Agreements and to designate a signing officer.

The comments made by your legal officers as outlined in your letter of February 13th have been considered and we are prepared to accept the replacement of the parenthesis by commas in Article 11 if this is helpful. The parenthesis



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- 2 -

were initially inserted for easier reading of the article but the other form of punctuation is equally suitable.

Concerning the second point raised by your legal officers about Article 11, the British legal experts amended the original draft by inserting the words which your officers propose to delete.

The recorded reasons given for adding these words reads as follows:

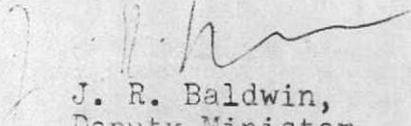
"It would seem that this article is intended to provide for Governments which have not signed before the date by which the original members will sign which is specified in Article 16(1). The draft has been amended to provide that those of either class mentioned in this article which have signed by the due date are excluded from this article."

It is for this reason that we are willing to accept the Article as now worded.

It is understood that officers of the Department of Finance are prepared to recommend to their Minister that he sign a submission to Council such as the draft sent along with our letter of October 10th except that the first line of its penultimate paragraph should read "That officers of Government and ----".

When you advise British authorities of Canadian acceptance of the Agreement it might be well to recall that the British Representative at the Second Council Meeting in Sydney last November undertook to determine if wording could be included to provide for amendment of the Agreement as may from time to time be desirable. You will note that the current draft does not include this facility.

Yours very truly,


J. R. Baldwin,
Deputy Minister.

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BRITISH HIGH COMMISSION

80 Elgin Street, OTTAWA 4

<i>Mr. Hubble</i> FROM REGISTRY		E
MAR 25 1968		
FILE CHARGED CUI		
TO:		

8/2

*Mr. Hubble
for action
new*

20 March, 1968

41-9-11	
38	9

Dear Mr. Kirkwood,

You will recall that the Commonwealth Telecommunications Conference, 1966, recommended that the existing arrangements for the Commonwealth Telecommunications Partnership under the Commonwealth Telegraphs Agreements, 1948 and 1963, should be terminated and should be replaced by a new Commonwealth Telecommunications Organisation with a constitution as set out in Annex B to the Report of that Conference. These recommendations have been accepted by all Commonwealth Governments; and the Commonwealth Telecommunications Council of the new Organisation has already been set up and has met twice. It is proposed that the Commonwealth Telecommunications Bureau should be set up in October this year, and that the Commonwealth Telegraphs Agreements should be terminated, and the Commonwealth Telecommunications Board dissolved, at the end of March, 1969. In order that the Commonwealth Telegraphs Agreements (and the operational Agreements under the Schedule to the 1963 Agreement) can be terminated, it will be necessary for all the Governments which are Partners in the 1948 and 1963 Agreements to sign a Terminating Agreement. With the Agreement of the Commonwealth Telecommunications Board and the Council, the British Government have now prepared a draft Terminating Agreement, and two copies are attached. The terms of this Agreement have been agreed by the Chairman of the Commonwealth Telecommunications Board and are acceptable to the British Government; and I would be grateful if you could confirm that they are acceptable to your Government.

2. The draft Terminating Agreement is, we think, largely self-explanatory. When it comes into force, settlement of the wayleave account under the Commonwealth Telegraphs Agreements will not have been completed; and this draft therefore provides that Partner Governments and their National Bodies should take action to complete and settle the wayleave account for the period up to the date of coming into force of the Terminating

/Agreement ...

D.H.W. Kirkwood, Esq.,
 Economic Division,
 Department of External Affairs,
 OTTAWA, Ontario.

RESTRICTED

- 2 -

Agreement. Any settlement will, of course, include the usual contributions due in respect of the expenses of the Commonwealth Telecommunications Board prior to its dissolution.

3. On the Commonwealth Telecommunications Board being dissolved, continuing provision will be required for the payment of the pensions of the existing pensioners of the Board and for the gratuities or pensions of any of the pensionable staff of the Board who are not given employment by the Commonwealth Telecommunications Bureau. If any of the pensionable staff of the Board are given employment with the Bureau, their service with the Board should be counted in reckoning the pension which they will eventually be entitled to receive from the Bureau. At its Meeting in Sydney in November, 1967, the Commonwealth Telecommunications Council agreed that the Council should take over the pension liabilities of the Commonwealth Telecommunications Board; and that these should be considered to be one of the expenses of the Council. (See "Agreed 5" on page 27 of the Minutes.) However, the Legal Advisers to the British Government advise that it is necessary that the Partner Governments to the Commonwealth Telegraphs Agreements should formally accept this arrangement, both as to existing pensioners and as to the pensionable staff of Board who cease to be employed or may be employed by the Bureau; and an Article to cover this has therefore been inserted.

4. In this connection, the Council noted at its Sydney Meeting that paragraph 39 of the Constitution of the new Organisation (setting out Expenses of the Council) did not appear to permit the Council to meet the expenses of paying pensions to pensioners of the Commonwealth Telecommunications Board. The Council therefore invited the British Government, in collaboration with the Chairman, to prepare an amendment to Article 39 of the Constitution and to seek the agreement of Governments to this amendment. In the course of drafting an amendment, some doubt was expressed whether sub-paragraph (d) of Article 39 of the Constitution clearly permitted the Council to pay pensions and gratuities, and increases in pensions and gratuities, to the staff of the Bureau; and the Legal Advisers to the British Government recommend that, to remove this doubt, sub-paragraph (d) should also be amended. Two copies of a draft amendment to sub-paragraph (d) is attached herewith, together with a draft of a new sub-paragraph (f). These draft amendments have been prepared in collaboration with the Chairman of the Council and have been agreed by him and are acceptable to the British Government. It will be seen that the proposed Article 3 in the Terminating Agreement is consistent with these draft amendments. I hope, therefore, that your Government will be able to confirm that these amendments are acceptable.

5. It is proposed that the Terminating Agreement should be signed by the High Commissioners of Partner Governments in

/London ...

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RESTRICTED

- 3 -

London; and we would be grateful if your Government could authorise your High Commissioner in London to sign on their behalf when the time comes. No signature in respect of the change in the Constitution will be required: the change will automatically take place when all Commonwealth Governments have agreed to it.

6. You will recall that on 22 January I sent to you copies of a draft Financial Agreement which it is proposed should, when the Commonwealth Telegraphs Agreements are terminated, take the place of the financial sections of those Agreements. I hope that it will be possible for you to confirm soon that this Financial Agreement is acceptable to you.

7. The British Government is required, by the terms of the Constitution of the Commonwealth Telecommunications Organisation, to make sufficient legal provision for the Commonwealth Telecommunications Bureau. You may wish to know that a Commonwealth Telecommunications Bill is now before the British Parliament and, if passed, will give to the Bureau, when established, the legal capacity of a body corporate and will also make provision, on the dissolution of the Commonwealth Telecommunications Board, for the repeal of those sections of the British Commonwealth Telegraphs Act 1949 which established the Board.

*Yours sincerely
Michael McKenna*

20.3.68.

(M.A. McConville)

J.

CONSTITUTION

OF

THE COMMONWEALTH TELECOMMUNICATIONS ORGANISATION

Proposed amendment

(Prepared by the British Government in collaboration with the Chairman of the Commonwealth Telecommunications Council in accordance with AGREED 5 of the Minutes of the Second Meeting of the Commonwealth Telecommunications Council)

1. Sub-paragraph (d) of paragraph 39 of the Constitution should be amended to read as follows:-

"The costs of the Bureau, including the costs of any pension or gratuity payable to any person in respect of his employment with the Bureau and of any pension or gratuity payable to any dependant of any such person and of any increases in such pensions or gratuities as may from time to time be agreed by the Council, but excluding the costs of the services provided by the Bureau to the Conference as set out in paragraph 37 above;"

2. A new sub-paragraph (f) should be added to paragraph 39 of the Constitution to read as follows:-

"The costs of any pension or gratuity payable or which may become payable to any person in respect of his employment with the Commonwealth Telecommunications Board and of any pension or gratuity payable to any dependant of any such person and any increases in such pensions or gratuities as may from time to time be agreed by the Council".

COMMONWEALTH TELEGRAPHS AGREEMENTS

TERMINATING AGREEMENT

The Governments signatories to this Agreement :

Being Partner Governments to the Commonwealth Telegraphs Agreement 1948 and the Commonwealth Telegraphs Agreement 1963,

The Commonwealth Telecommunications Council having been established to replace the existing arrangements under the aforesaid Agreements and

A Commonwealth Telecommunications Council and a Commonwealth Telecommunications Bureau, which has the legal capacity of a body corporate in the United Kingdom, having been established within the aforesaid Organisation,

Agree as follows -

ARTICLE 1

The Commonwealth Telegraphs Agreement 1948, the Commonwealth Telegraphs Agreement 1963 and the Agreements entered into pursuant to the provisions of clause 6 of the Commonwealth Telegraphs Agreement 1948 are hereby terminated.

ARTICLE 2

Accounts in respect of the period prior to the entry into force of this Agreement which have not been settled under the Agreements entered into pursuant to clause 6 of the Commonwealth Telegraphs Agreement 1948 shall, as soon as possible after entry into force of this Agreement, if not already made up be made up by the National Bodies of the Governments parties to this Agreement and settled between them as nearly as may be in accordance with the provisions of the said Agreements entered into pursuant to clause 6 of the Commonwealth Telegraphs Agreement 1948.

ARTICLE 3

The costs of any pension or gratuity payable or which may become payable to any person in respect of his employment with the former Commonwealth Telecommunications Board or with the Commonwealth Telecommunications Bureau and of any pension or gratuity payable to any dependant of any such person and any increases in such pensions or gratuities as may from time to time be agreed by the Commonwealth Telecommunications Council shall, in the same proportions as the Governments parties to this Agreement contribute to the expenses of the Commonwealth Telecommunications Council, be paid to the Commonwealth Telecommunications Bureau for disbursement by the Bureau to the persons to whom any such pension or gratuity is payable.

ARTICLE 4

By their acceptance of this Agreement the Governments parties hereto accept it on their own behalf and on behalf of their National Bodies and in respect of the territories for the international relations of which any such Government is responsible.

ARTICLE 5

This Agreement shall come into force on 1 April 1969

Diary
Div. Diary
File

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

1

TO
À

Economic Division

SECURITY RESTRICTED
Sécurité

FROM
De

Legal Division

DATE February 6, 1968

REFERENCE
Référence

Your letter of January 31 to
Dept. of Transport with attachments

NUMBER
Numéro

SUBJECT
Sujet

Commonwealth Telecommunications Organization's
Draft Financial Agreement

FILE	DOSSIER
OTTAWA	20-3-4-CDA
MISSION	28

ENCLOSURES
Annexes

DISTRIBUTION

We note that the draft financial agreement was accepted by the Commonwealth Telecommunications Council at its last Sydney meeting and that the present draft is a tidied-up version of that document. We also note that the British are hopeful nobody will suggest amendments at this stage.

2. Our only comments concern Article 11 and they are of such a nature that you may feel they should not be pressed in view of the advanced state of the negotiations. To begin with, the use of parentheses raises uncertainty as to the status of the words that appear within them. Secondly, we note that the intention of the Article is to provide for the acceptance of the Agreement by members of the Commonwealth and by Commonwealth territories after the Agreement has come into effect. One of the effects of this Article, coupled with Articles 10 and 13, is that States which accepted the Agreement after it came into force could withdraw and later reaccept the Agreement, but founder members are apparently excluded from taking such action. It may be that this exclusion is intentional. It would be easy enough, however, to remove this anomaly by deleting the clause in Article 11 which reads, "...other than any Government signing the Agreement before the date specified in paragraph (1) of Article 16,..."

M. A. BEESLEY

Legal Division

cc: Dept. of Finance
Legal Div.
Cwlth. Div.

M. Offenberg
Cornthorne

File: 41-4-GCC

Wagon Chubb
25-680

file

RESTRICTED

20-3-4-EDA
28

January 31, 1968.

Received
FEB 1 1968
In Local Division
Department of External Affairs

The Deputy Minister,
Department of Transport,
Hunter Building,
Ottawa, Ontario.
Attention: Mr. H. J. Williamson

Commonwealth Telecommunications
Organization

Attached is a copy of a letter dated January 27, from the British High Commission, together with a copy of the revised draft financial agreement for the Commonwealth Telecommunications Organization, which was considered and approved by the Commonwealth Telecommunication Council at its meeting in Sydney in November 1967. We have been asked whether the Canadian Government can accept this draft, and, if so, to authorize our High Commissioner in London to sign it in company with other Commonwealth representatives in London, sometime later this year.

We would be grateful to know whether this draft is now acceptable to your department. We assume the Department of Finance may also have comments, and we are accordingly referring a copy of this letter to them.

If you consider that Order in Council PC 1966-2277 of December 5, 1966, represents all the policy approval required for Canadian signature to the agreement, we will prepare the necessary Submission to Council for signature by the Secretary of State for External Affairs. We would be grateful to have your comments on this point also.

(SGD) R. E. REYNOLDS

Under-Secretary of State
for External Affairs.

RESTRICTED



BRITISH HIGH COMMISSION

80 Elgin Street, OTTAWA 4

8/2

22 January, 1968.

Commonwealth Telecommunications Organisation
Financial Agreement

Dear Mr. Kirkwood,

You will recall that a new draft financial agreement was considered, firstly, by the Commonwealth Telecommunications Council at its Meeting in London in April, 1967, and then, with further amendments, at its Meeting in Sydney in November, 1967. The Council, at its latter Meeting, unanimously approved a revised draft. I attach a copy.

2. The text of this latest draft is identical with that accepted by the Council at its Sydney Meeting except that minor alterations in punctuation, and in the numbering of Article 2, have been made on legal and protocol advice, and a few misprints have been corrected. None of these minor changes in any way affect the text. We hope that member Governments can agree the draft without amendment.

3. We have also been asked to propose to Commonwealth Governments that the Agreement should be signed in London by their High Commissions in London, on a date to be agreed in London. For this purpose we would be grateful if Commonwealth Governments would give their High Commissioners the necessary instructions. It is proposed that the Agreement should be signed in advance of its coming into force, and we would like to get it signed this year. The present intention is that it should come into force on 1 April, 1969, immediately following the termination of the Commonwealth Telegraphs Agreement.

Yours sincerely
Mark W.L.
(M.A. McConville)

D.H.W. Kirkwood, Esq.,
Economic Division,
Department of External Affairs,
OTTAWA, Ontario.

j.

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41-4-000

~~41-9-7~~
31

RESTRICTED

DRAFT FINANCIAL AGREEMENT

TO: MR H. H. H. H.
FROM REGISTRY
JAN 24 1968
FILE CHARGED OUT
TO: [E]

The Governments signatories to this Agreement:

Having established the Commonwealth Telecommunications Organisation to replace the existing arrangements under the Commonwealth Telegraphs Agreements 1948 and 1963, Desiring to constitute new financial arrangements to replace those subsisting under the said Agreements, Agree as follows:

ARTICLE 1

The parties to this Agreement shall be known as Partner Governments.

ARTICLE 2

In this Agreement -

- (a) the expression "Council" means the Commonwealth Telecommunications Council established by the constitution of the Commonwealth Telecommunications Organisation;
- (b) the expression "common-user system" means -
 - (i) such telecommunications facilities as the Council with the concurrence of the Partner Governments from time to time prescribes which are used to provide external telecommunications services other than the facilities used for services excluded by the Council under subparagraph (ii) of this paragraph; and
 - (ii) all telecommunications services for which the prescribed telecommunications facilities are used other than those services which the Council may from time to time determine to exclude and the facilities used for those excluded services;

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- (c) the expression "common-user facilities" means telecommunications facilities which form part of the common-user system;
- (d) the expression "common-user services" means telecommunications services which form part of the common-user system.

ARTICLE 3

For the purpose of operating and maintaining its common-user facilities and common-user services each Partner Government shall nominate a Department, public corporation or other body (hereinafter referred to as the "National Body") having the powers necessary for the purpose of this Agreement and references hereinafter to the National Body shall include any operator subordinate to that National Body in operating and maintaining common-user facilities and common-user services.

ARTICLE 4

The Partner Governments on their own behalf and on behalf of their National Bodies shall use the Council as a means of consultation on all matters substantially affecting the common-user system and will give due consideration to the recommendations and advice given by the Council.

ARTICLE 5

Before making any substantial addition, extension or alteration to any portion of a Partner Government's telecommunication facilities or services which forms or might form part of the common-user system -

- (a) that Partner Government's National Body shall furnish to the Council such particulars, in relation to the addition, extension or alteration, as the Council may require; and

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- (b) that Partner Government and its National Body shall give due consideration to the recommendations and advice of the Council relating to the addition, extension or alteration.

ARTICLE 6

Each National Body shall furnish to the Council in respect of each financial year in such form as the Council may prescribe a forecast of its expenditure (including its programme of capital expenditure) on and revenue from telecommunications facilities and services which form or might form part of the common-user system and shall give due consideration to any recommendations and advice made thereon by the Council.

ARTICLE 7

Each National Body shall furnish to the Council statements of account in respect of each financial year in such form as the Council may prescribe.

ARTICLE 8

(1) The aggregate expenses of the common-user system incurred in each financial year by the National Bodies of all the Partner Governments shall be shared between the National Bodies in proportion to the net revenue derived by each National Body in that year from the common-user services operated by it.

(2) The National Body shall retain its net revenue and the sharing of the aggregate expenses of the common-user system between the National Bodies in accordance with the provisions of paragraph (1) of this Article shall constitute the settlement of the indebtedness of the National Bodies among themselves in respect of their use of the common-user system.

ARTICLE 9

For the purposes of this Agreement the Council shall determine from time to time -

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- (a) the expenses which are to be regarded as the expenses of the common-user system;
- (b) the manner in which such expenses are to be computed;
- (c) the items which are to be regarded as constituting the net revenue derived by each National Body;
- (d) the manner in which the net revenue of each National Body is to be computed;
- (e) the accounting arrangements which are necessary to give effect to this Agreement;
- (f) the times and manner in which sums due from one National Body to another shall be paid;
- (g) the currencies in which accounts are to be prepared; and
- (h) the financial year for the purpose of this Agreement.

ARTICLE 10

(1) Acceptance of this Agreement under the provisions of Article 11 of this Agreement shall be effected by the signature of the Agreement which shall be kept in the custody of the Government of the United Kingdom of Great Britain and Northern Ireland. The latter Government shall notify all other Partner Governments and the Council of such signatures as soon as possible.

(2) By their acceptance of this Agreement, Partner Governments accept it on their own behalf, on behalf of their National Bodies and, subject to any reservations or exceptions made from time to time, in respect of the territories for the international relations of which they are responsible.

ARTICLE 11

The Government of any independent Member of the Commonwealth and (by agreement of the Partner Governments) the Government of any other Commonwealth country or territory, other than any Government signing the Agreement before the date specified in paragraph (1) of Article 16, may accept this Agreement and become a Partner Government by signing the Agreement as provided for in paragraph (1) of Article 10 of this Agreement.

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ARTICLE 12

On the date on which any Partner Government leaves the Commonwealth it shall forthwith cease to be a Partner Government.

ARTICLE 13

(1) If any Partner Government wishes to withdraw from this Agreement, it may do so by giving notice in writing to the Government of the United Kingdom of Great Britain and Northern Ireland. The latter Government shall notify all other Partner Governments and the Council of such notice and the date of receipt thereof as soon as possible.

(2) The notice shall take effect at the end of a financial year as determined under Article 9(h) and the period of notice shall include two complete financial years from the date of the receipt of the notice by the Government of the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 14

The account under Article 8 of this Agreement of the National Body of any Government ceasing to be a Partner Government under Article 12 or Article 13 of this Agreement shall be made up to the date of that Government ceasing to be a Partner Government and all payments shall be made accordingly.

ARTICLE 15

In the event of a Government ceasing to be a Partner Government this Agreement shall thereafter remain in force and effect as between the remaining Partner Governments subject only to such consequential modifications (if any) as they may agree to be necessary or expedient.

ARTICLE 16

(1) This Agreement shall enter into force for all Governments signing it before 196 on a date which shall be agreed by them.

(2) This Agreement other than Article 8 shall enter into force for a Government signing it pursuant to Article 11 on the date of signature and Article 8 shall enter into force for that Government on such date as the Council shall prescribe.

RESTRICTED

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In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at this day of 196
in a single original which shall be deposited in the archives of the Government of the United Kingdom of Great Britain and Northern Ireland, which shall transmit certified copies thereof to all signatory Governments and to the Commonwealth Secretary-General.

RESTRICTED

Diary
Div Diary
File

20-3-4 CDA

OTTAWA, January 4, 1968

20-3-4-CDA
/ /

Dear Mr. Kear,

...

At your request, please find enclosed a copy of the bulletin "External Affairs" of September 1967. You will find on page 369 the article entitled "Some Aspects of Canadian Treaty Law and Practice" about which you had the opportunity to speak with Mr. A.J. Robertson of this Department.

Yours sincerely,

J. A. BEESLEY,

Under-Secretary of State
for External Affairs

Mr. Allan Kear
Room 6606
Pavillon Parent
Université Laval
Québec 10

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À

Economic Division

FROM
De

Legal Division

REFERENCE
Référence

Your memorandum of October 23, 1967

SUBJECT
Sujet

Commonwealth Telecommunications Organization

UNCLASSIFIED

SECURITY
Sécurité

October 25, 1967

DATE

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-4-CDA	
MISSION	28

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Scott

There are normally two steps in the process by which authority is obtained for the signature of an international agreement. The first is the Memorandum to Cabinet by the Minister having substantive responsibility for the subject matter of the Agreement, recommending as a matter of policy Canadian adherence to the Agreement. This Memorandum is concurred in by our Minister. The second step, which follows Cabinet approval, is the Submission to Council by our Minister recommending that the Governor in Council authorize the Minister to sign, or to empower someone else (e.g. an Ambassador, High Commissioner, or another Minister) to sign the Agreement in question.

2. It appears that the Submission to Council prepared by the Department of Transport may be an attempt to combine these two steps into one. While it is presumably possible for the Department of Transport to seek policy approval from Cabinet on the basis of the information now available, the Submission to Council which follows Cabinet approval should refer to the Agreements by their formal names and dates of conclusion. In addition, the Submission should refer by name to the person who will sign the Agreement for Canada. Finally, the Submission should be in the name of the S.S.F.A. (It may be concurred in by other Ministers though this is not necessary.)

3. We recommend therefore that the Department of Transport be informed that it may, if it wishes, proceed to seek Cabinet approval for Canadian signature of the Agreements but that the Submission to Council should await finalization of the agreements and approval by Cabinet.

4. D.O.T. may feel that the P.C. 1966/2277 of December 5, 1966 represents all the policy approval required for Canadian signature of these agreements and that no Memorandum to Cabinet is required. If so, we need only await finalization of the Agreements, at which time this Department can prepare the necessary Submission to Council

... 2

- 2 -

by the S.S.E.A. The approval of a Submission to Council, as you know, normally takes considerably less time than Cabinet consideration and approval of a policy memorandum. The delay which we propose in the Submission to Council need not therefore entail any significant delay in Canadian signature of the Agreements.

J. A. BEESLEY

Legal Division

Economic/S.W.Hubble/rm

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

File 25/10
Mr. Beatty
Ms. Stanford
Mr. Smith

TO
A Legal Division

FROM
De Economic Division

REFERENCE
Référence

SUBJECT
Sujet Commonwealth Telecommunications Organization

SECURITY
Sécurité UNCLASSIFIED

DATE October 23, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	4171-000 20-3-4-EDA
MISSION	28

ENCLOSURES
Annexes

DISTRIBUTION

Canada has accepted (Order-in-Council P.C. 1966-2277 of December 5, 1966) the conclusions and recommendations of the Commonwealth Telecommunications Conference, 1966, involving the establishment of a new Commonwealth Telecommunications Organization to replace the old Commonwealth Telecommunications Board and the Commonwealth Telegraphs Agreements of 1948 and 1963. To give effect to the new arrangements, two intergovernmental agreements will be required, one with respect to the new financial arrangements and the other to terminate the 1948 and 1963 Telegraphs Agreements.

2. Although there have been extensive discussions concerning a new financial agreement, neither of the agreements is yet available in a final agreed form. The Department of Transport is, however, anxious to proceed with this matter as expeditiously as possible and has prepared the attached draft Submission to Council for use when the two agreed draft agreements are available. The Department of Transport has further sought our concurrence in the form of this draft Submission to Council.

3. We would be grateful to have your views with respect to this matter. You will note that an alteration has been made in the third paragraph on Page 2 of the draft; this was done at the suggestion of the Department of Finance.

[Signature]
Economic Division.

Received
OCT 24 1967
In Legal Division
Department of External Affairs

D R A F T

The undersigned have the honour to represent:

That under authority of Order in Council P.C. 2103 of 11th May, 1948, the High Commissioner for Canada in the United Kingdom was authorized to sign the Commonwealth Telegraphs Agreement of 1948;

That under authority of Order in Council P.C. 1963-851 of 4th June, 1963, the High Commissioner for Canada in the United Kingdom was authorized to sign the Commonwealth Telegraphs Agreement of 1963, being supplemental to the Agreement of 1948;

That in its Report to Governments, the 1966 Commonwealth Telecommunications Conference has recommended that the existing Commonwealth Telecommunications Board, set up under the 1948 Commonwealth Telegraphs Agreement, be reorganized and that a new Commonwealth Telecommunications Organization with a Bureau (Secretariat) in London be set up with basically the same obligations and objectives as those under the 1948 and 1963 Commonwealth Telegraphs Agreements, but dispensing with resident Board members;

That the Commonwealth Telecommunications Conference, 1966, has recommended that a new Commonwealth Telecommunications Agreement be entered into between the parties to the 1948 agreement and the 1963 supplemental agreement, in cancellation and supersession of the said agreements, incorporating the provisions of the 1948 and 1963 agreements which remain relevant, together with the new provisions arising from the recommendations of the 1966 Conference and that the cancellation of the 1948 and 1963 agreements should take effect as of the date of the coming into force of the revised agreement;

That under authority of Order in Council P.C. 1966-2277 of December 5th, 1966 the Conclusions and Recommendations of the Commonwealth Telecommunications Conference, 1966 were accepted by the Government of Canada; including the recommendations aforesaid for a new Commonwealth Telecommunications agreement;

...

That the financial provisions contained in the 1948 and 1963 Commonwealth Telegraphs Agreements are now contained, with amendments, in a new Financial Agreement which has been prepared for entry into between the Governments, in supersession of the financial provisions contained in the said 1948 and 1963 agreements.

That another Agreement, not containing the financial provisions referred to in the next preceding paragraph, in cancellation of the 1948 and 1963 Commonwealth Telegraphs Agreements, effective from a date coinciding with the effective date of the above referenced Financial Agreement, has been prepared for signature by Governments that are signatories to the said Agreements;

That ^{appropriate} officers of the ^{departments concerned} ~~Department of Transport and of Canadian Overseas Telecommunication Corporation~~ have examined the two Agreements now presented for acceptance signatures and are satisfied that the said agreements, in their present form and terms are in conformity with the decisions taken at the meetings of the Commonwealth Telecommunications Council set up in accordance with recommendations of the 1966 Conference;

The undersigned, therefore, recommend that Your Excellency in Council may be pleased to:

- (1) authorize entry into the new Financial Agreement;
- (2) authorize entry into the further Agreement cancelling the 1948 and 1963 Commonwealth Telegraphs Agreements; and
- (3) authorize the High Commissioner for Canada in the United Kingdom to sign the said Agreements on behalf of the Government of Canada.

Respectfully submitted,

Minister of Transport

Minister of Finance

Secretary of State for External Affairs.

*not necessary -
these will be contained in
the Articles of the
New Agreements*

c.c. U.S.A. Div.
Diary
Div. Diary
File

20-3-4-10DA
281, 2

RETURN TO LEGAL DIV. DCD

, March 16, 1967

(1)

Dear Mr. Côté,

I regret the delay in replying to your letter of December 6, 1966 concerning a proposed mutual protection agreement between Canada and the United States of America covering the border between Alaska and Yukon.

The type of agreement outlined in your letter is usually concluded by an exchange of notes, which can take place either in Ottawa between this Department and the Embassy of the United States, or conversely in Washington between our Embassy and the State Department.

I have taken note that there have already been informal exchanges between representatives of your Department and of the Bureau of Land Management in the United States Department of the Interior. I would think it appropriate in the circumstances to instruct our Embassy in Washington to approach the State Department and propose that the text of a draft agreement be finalized directly between representatives of your Department and of the United States of America Bureau of Land Management in Fairbanks. As soon as I receive confirmation that your representatives are ready to proceed in this fashion, I will arrange for such instructions to be sent to Washington.

On the assumption that the State Department will agree to such a procedure, I should be grateful if you would arrange for our Department to be kept informed of all exchanges taking place directly between representatives of your Department and the Bureau of Land Management. After agreement has been reached on the substance, draft notes will be prepared in this Department. A Submission to Council requesting authorization for this exchange of notes will also be prepared in this Department at that time.

Yours sincerely,

M. CADIEUX

M. Cadieux

E. A. Côté, Esq.,
Deputy Minister,
Department of Indian Affairs and
Northern Development,
400 Laurier Avenue W.,
Ottawa, Canada.

"APSSA indicated letter to Mr Côté
must be in French if at all possible"
L.S.

16.3.58(us)

UNIVERSITÉ D'OTTAWA
FACULTÉ DES SCIENCES SOCIALES
Département de Science Politique



UNIVERSITY OF OTTAWA
FACULTY OF SOCIAL SCIENCES
Department of Political Science

OTTAWA 2, CANADA

File

TO: <i>Robertson</i>	L
FROM REGISTRY	
NOV 25 1966	
FILE CHARGED OUT	
TO:	

November 22, 1966
Dictated November 16, 1966

Mr. A.W. Robertson
Treaty and Economic Section
Government of Canada
Ottawa, Ontario

<i>20-3-4</i>		<i>Cda</i>
<i>31</i>	|	<i>31</i>

Dear Mr. Robertson,

Further to our telephone conversation of recent date, this is to confirm that your special lecture on Treaty Making Procedure in Canada is scheduled to take place on Tuesday, November 29th at 4 P.M. As I indicated to you, you can have the full two hours if necessary that is until 6 o'clock.

I do hope that this time will be convenient to you and unless I hear from you, I presume that you will be able to make it. Thank you again for your very kind cooperation.

Yours very truly,

[Signature]

Donat Pharand
Chairman

DP/pmj

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file ✓

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
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Memorandum for Mr. B.B. Seott, Treaty Section.

SECURITY UNCLASSIFIED
Sécurité

FROM
De

A.W.J. Robertson, Legal Division

DATE April 22, 1966.

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet

Treaty Section Procedures

FILE	DOSSIER
OTTAWA	20-3-4-CJA
MISSION	25/—

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Gotlieb(o.r.)
Mrs. Wetherup

During your unexpected absence on Thursday and Friday of this week it was necessary for Treaty Section to prepare a number of instruments for the Minister's signature, of the sort for which Order-in-Council authorization is required. As on similar occasions in the past we experienced some difficulties in determining exactly what was required in the case of these instruments. I think it therefore would be a good idea if, as soon as you return to work, you were to prepare examples of each type of instrument with which you normally deal (such as full powers, ratifications, accessions, protocols of exchange, etc, on the back of each of which you could indicate what type of seal is used, whether the instrument is bound or not, whether it required a hard cover, etc.) Mrs. Wetherup could keep these copies in her office for easy reference.

2. We also were unable to lay our hands on the office copy of a treaty which is still in the process of being published. I believe that it would also be a good idea if, in future, you were also to provide Mrs. Wetherup with two or three office copies of each and every treaty, as soon as they can be made available. They could be in the form of photostats of the original text, in the first place, and later in the booklet form prepared by Production Services. She could keep these, arranged by date, until Queen's Printer texts were available.

A. W. J. ROBERTSON

A. W. J. Robertson
Legal Division