

The Constitutional Conference - February 1969

EXTERNAL RELATIONS

1. It is not the Federal Government's intention to elaborate at this meeting on various proposals with respect to the field of international relations, which will be dealt with when formal discussion proceeds to the question of external powers. Some indication of the nature of federal proposals with respect to international conferences has already been given in the paper on Federalism and International Conferences on Education, which also contains an outline of federal proposals on external aid. In addition, the paper on Federalism and international Relations contains an outline of the general principles which will guide the Canadian Government in putting forward proposals on matters such as international agreements and other topics of provincial interest.

2. However, since the question of international relations has been raised at this meeting, I should like to recall briefly the main elements of the Federal Government's stand, as expressed in these papers.

3. To put it as succinctly as possible, the Government is convinced that in its dealings with other states and with international organizations, Canada must act as one country. At the same time, however, the Government recognizes that these dealings should take into account and reflect both the federal nature of the Canadian Constitution and the interests of our two founding linguistic communities.

4. The Government has repeatedly stated its position that in law as well as in practice only the federal authorities can represent a federal state in its relations with other states and with international organizations. It has also been clearly stated that the power to conclude international agreements rests exclusively with the federal authorities.

5. The fact remains, however, that under the constitution as interpreted by the Courts, the Parliament of Canada is not empowered to enact legislation to implement international agreements the subjects of which are matters of provincial legislative competence. There is the fact also that in recent years the range of international activities has expanded so as to encompass a number of subjects falling at least partly within the domestic jurisdiction of the provinces.

6. The Federal Government does not dispute the legitimacy of the provinces' aspirations to participate at the international level in activities which, under the constitution, come within the scope of their domestic jurisdiction; indeed, it holds that the provinces are justified in expecting to receive full cooperation from the federal authorities in their endeavours outside Canada, provided such endeavours are not utilized as methods for the acquisition of an independent international personality, distinct and separate from that of Canada. The procedures which the Federal Government insists should be respected in each particular case are not intended to hinder, nor do they in fact hinder, the provinces in the pursuit of their legitimate interests, but rather they are designed to protect the integrity of Canada's international personality.

7. With regard to agreements, the Federal Government has no objection to the provinces entering into a variety of arrangements with foreign states on subjects coming within their legislative competence, so long as the procedures followed respect federal competence in international relations. Such procedures exist and have been used with success in the past. Under these procedures, provinces may, for example, enter into informal administrative arrangements with foreign jurisdictions, involving, let us say, reciprocal recognition of legislation.

8. The provinces may also enter into contracts of a private or commercial nature.

9. The provinces may also benefit from more formal arrangements with another country, provided that these arrangements are subsumed under an international agreement between the Canadian Government and the other country concerned. Such an agreement may be designed to deal with one project or arrangement or programme of cooperation, for example as in the case of the Ad Hoc Covering Agreement between France and Canada which authorized the France-Quebec Education Entente. Alternatively, Canada and the other country concerned can sign a more general framework agreement, such as that under which the France-Quebec Cultural Entente was signed, which allows any interested province to conclude arrangements with the other state as authorized by the accord cadre.

10. The Federal Government is fully aware of the fact that an increasing number of international organizations and conferences discuss subjects which, under the

Canadian Constitution, come within the ambit of provincial legislative competence. The Government recognizes the legitimacy of the provinces' desire to participate in the formulation of the Canadian position and to be adequately represented within the Canadian delegations to such conferences. To achieve this, the Federal Government has made it a regular practice to ensure that at such conferences, first, the Canadian position takes into account the views of the provinces and, second, the composition of the Canadian delegations takes proper account of Canada's federal structure.

11. This is well illustrated by the practices which have been followed in the past at various international conferences on education. When the Federal Government receives an invitation for Canada to attend a Commonwealth meeting on education, for instance, it initiates consultations with the provinces and other interested authorities in regard to both the composition and the briefing of the Canadian delegation. In the past this has enabled Provincial Ministers or senior officials to play a substantial role in the work of Canadian delegations, and we hope this practice can be expanded in future.

12. As another example, there is regular consultation with regard to UNESCO meetings on matters related to the provincial component of the Canadian delegation. Provincial officials and Ministers are regularly attached to the Canadian delegation as delegates, advisers or observers.

13. The Kinshasa Conference of francophone Education Ministers provides the most recent example of the ability of Federal and Provincial Governments to innovate in this field in a manner which preserves Canada's identity while giving full recognition to provincial interests. Canada was represented at that Conference by delegates from Ontario, New Brunswick and Quebec under the distinguished co-chairmanship of Premier Robichaud of New Brunswick, and the Ministre d'Etat à l'Education du Québec, the Hon. Jean-Marie Morin. The provincial representatives were identified by their province of origin, and spoke for their provinces on technical matters relating to education, while at the same time being clearly identified as Canadians. Federal advisers accompanied the Delegation. To my mind, although these arrangements are only temporary and although they leave a number of problems unsolved, they may point the way toward reasonable and practical solutions which will preserve the interests of both orders of government in Canada while maintaining the Canadian presence abroad. I hope they are a sign of what we will be able to accomplish in the future.

14. I should add, lest there be any misunderstanding, that the federal contribution to Canadian delegations to educational conferences is normally confined to issues of foreign policy which may arise on occasion, or to other matters of direct and obvious interest to the central authority, for example, administrative and protocol questions or Canada's contribution to the budget of the organization in question.

15. In short, whether it be in dealings with other countries or with international bodies, the Federal Government has given proof of its willingness to cooperate actively with the provincial governments whenever and wherever cooperation is required for the effective pursuit of the legitimate interests of the provinces.

16. Periodic consultations among officials in Ottawa and the provincial capitals would make for an easier and more productive exchange of ideas, and heighten understanding of positions on all sides. The Federal Government has, for its part, made a number of specific proposals in respect of Canadian participation at international conferences on subjects of interest and concern to the provinces, which may be found in Chapter VI of Federalism and International Conferences on Education. We would welcome comments and suggestions from others.

17. What is important is to expand and improve the present framework for federal-provincial cooperation abroad in those areas where the provinces have legitimate interests and concerns. The Federal Government does not intend to fix upon any one formula prior to a thorough examination, in concert with provincial authorities, of all the problems at hand. It is prepared to consider any proposal provided it does not lead in the short run or in the long run, to the destruction of Canadian unity.