



Foreign Policy and Intergovernmental Relations in Canada

ANDRÉ LECOURE / GEORGE ANDERSON

Neither Canada's original constitution, the British North America (BNA) Act of 1867, nor the Constitution Act of 1982 specifically assigned power over international relations to the federal government. The federal power to enter treaties is considered to derive from the federal Crown's Royal prerogative. However, the Judicial Committee of the Privy Council in London ruled in 1937 that the federal government alone could not enact the labour conventions required by Canada's membership in the International Labour Organization. Canadian foreign relations are therefore characterized by an uneasy balance between the federal right to enter into treaties and the provincial right to decide whether to implement them. Each order of government has used its powers to try to maintain its influence over foreign relations. Inevitably, they have been forced to cooperate to a greater or lesser extent.

A major and particular issue of Canada's foreign relations has been the Quebec government's aspirations for a greater international role. Quebec provincial politicians have been the strongest critics of the federal right to sign relevant treaties without provincial consent. They have also argued that the province should have the right to enter into international agree-

ments in its area of constitutional competence as in the Belgian model. Other provinces have typically not pushed their claims this far.

There is no intergovernmental forum specifically dedicated to foreign policy in Canada. Rather, intergovernmental relations develop when specific questions relating to provincial jurisdiction become the focus of international negotiations. Relevant consultations take place within intergovernmental forums in specific sectors, and are sometimes supported by formal intergovernmental agreements, such as in the area of labour since 2005.

Intergovernmental relations develop when specific questions relating to provincial jurisdiction become the focus of international negotiations.

Intergovernmental activity is proportionate to the importance of relevant international issues. In the negotiations over the Free Trade Agreement with the United States during the 1980s, a political decision was made that provinces would participate fully in the process, but the provinces and the federal government differed on what this meant.

The provinces sought input into the definition of the Canadian position, preferably through membership in the negotiating team and oversight of the federal negotiator. The federal government sought close consultation but no ultimate right of refusal for the provinces. They compromised with the creation of a Continuing Committee on Trade Negotiations, whose effectiveness was debated. Subsequent international trade negotiations have included similar arrangements.

A current challenging file is the Kyoto Protocol on Climate Change. While provinces participated in the Canadian delegation at Kyoto, they were divided on the issue and a number were highly critical of the emissions target Canada accepted. They were angered by Prime Minister Chrétien's unilateral announcement in 2002 that Canada would ratify the Kyoto Protocol and reacted by issuing a joint statement of condemnation. The Conservative minority government elected in 2006 announced it will not respect Canada's obligations under Kyoto. This issue is very divisive within Canada and will be a major challenge in federal-provincial relations.

Cultural issues often involve tense exchanges between the federal and Quebec governments. In 1999, France invited federal and Quebec ministers to discuss the issue of cultural diversity, and the federal minister chose not to attend. In 2005, the federal Heritage Minister invited her Quebec counterpart to attend negotiations on the Universal Convention on Cultural Diversity, but not to speak. Quebec chose not to attend. In 2006, the federal and Quebec governments agreed Quebec will have a permanent representative within the Canadian delegation at UNESCO in Paris and that the federal government will consult the Quebec government before taking a formal position in the context of the organization's work.

Canadian provinces are also international actors in their own right. Quebec has representative offices in 25 countries, managed by a separate

international relations ministry, and has also signed hundreds of agreements with countries and other sub-national units. However, all these offices and agreements are subject to framework arrangements put in place by the federal government and other sovereign partners. Quebec's push for an international role was central to very complex and tense "triangular" relations between Ottawa, Quebec City and Paris over many years. DeGaulle's famous "Vive le Québec libre" and France's highly ambiguous policy of "non-interference, non-indifference" set the early tone. Eventually, the federal government accepted a unique arrangement whereby Quebec has diplomatic status and direct relations with France. Because of Quebec, Canada and France took years to work out a formula for the creation of the International Organization of French-speaking Communities (*la francophonie*) and eventually agreed to an arrangement whereby Quebec, and New Brunswick with its large francophone minority, became "participating" as opposed to "member" governments and by restricting Quebec's role to areas of technical and cultural cooperation as opposed to foreign policy matters. Quebec has been exceptionally active within this network.

Alberta, which carefully guards its prerogatives over its petroleum resources, is the other province that gives priority to international relations, especially the United States. It influenced the terms of the Free Trade Agreement with the US to effectively constrain federal powers over energy taxation and exports. It is pushing for full provincial involvement in international meetings on energy. In March 2005, it established a three-person office within the Canadian Embassy in Washington, following a shift in federal policy which had tried to keep the provinces out of Washington so as to promote "one voice" in bilateral relations. Quebec has declined this arrangement because of its reluctance to have staff in the Canadian embassy; it operates a covert lobby from a "tourist" office in Baltimore.

Thus Canada's international relations within the federal context face two central questions. First, what types of consultative and provincial consent arrangements should the federal government seek in international agreements affecting provincial jurisdiction? Having the provinces on board when Canada negotiates and signs international agreements in areas of provincial jurisdiction facilitates implementation, but formalized and binding consultative mechanisms would limit federal ability to manage foreign relations and negotiate effectively.

Second, how should the federal government respond to Quebec's drive for a greater international role? While assisting Quebec's participation could weaken an argument for independence, too much accommodation raises federal concerns about the international integrity of Canada and could complicate the international management of a possible push for independence by a Quebec government one day.