

#### IV. THE ROYAL PREROGATIVE

A number of functions performed by the Secretary of State for External Affairs or by his Department derive their authority from the exercise of the Royal Prerogative. In layman's language, these are things which the Queen has the authority to do without consulting Parliament. In Canadian practice Her Majesty may do these things on the advice of Her Canadian ministers, or the Governor General may do so, or Her Canadian ministers may exercise the prerogative on Her behalf or on the Governor General's behalf. The main elements of the Royal Prerogative in Canada in the field of external affairs are as follows:

##### A. Treaties and Agreements

In Canadian practice the power to conclude international treaties and agreements is exercised by the Governor General in Council on the advice of the Secretary of State for External Affairs.

Approval in principle to conclude an international agreement involves a policy recommendation to Cabinet by the Minister, or Ministers, responsible for the subject. The Secretary of State for External Affairs is required either to join in signing the recommendation or to concur in the recommendation.

A subsequent submission to the Governor General in Council for executive authority to sign an agreement or to ratify or accept an agreement on behalf of Canada is always signed by the Secretary of State for External Affairs and, if necessary, by other ministers involved. The authority so obtained may be for the Secretary of State for External Affairs to sign the agreement himself, or for some other minister or official to do so. In recent years, the Secretary of State for External Affairs has as often as not recommended that another minister be authorized to sign bilateral agreements which are of particular interest to that minister, e.g., the Minister of Industry, Trade and Commerce for commercial agreements, the Minister of Transport for air agreements, the Minister of Finance for double taxation agreements.

All of the above refers to treaties, agreements, protocols, exchanges of notes, etc., which are held to be formal legal instruments. There are considerable numbers of "arrangements" or "understandings" which, because they are not regarded as creating legal obligations that are binding in international law, do not require order-in-council authority under Canadian practice.

##### B. Appointment of Canadian diplomatic and consular officers

The Governor General is authorized by the Letters Patent of 1947 to appoint all Canadian diplomatic and consular officers.

In practice, consular officers are appointed by the Governor General in Council on the recommendation of the Secretary of State for External Affairs and receive a commission signed by the Deputy Governor General.