

V POSSIBLE FUTURE PROVINCIAL PARTICIPATION IN TREATY-MAKING

42. The problem that arises in Canada is how to achieve, under the Canadian constitution, that degree of harmony between treaty-making and treaty-implementing powers that exist in other federal states.

43. It would appear that greater use might be made of existing possibilities for allowing the provinces to participate in the making of international agreements. There would appear to be no reason why they could not be allowed to enter into treaties of a local commercial nature subject to private and not public international law.

44. Greater use might also be made of techniques recently developed providing for an ad hoc "umbrella" arrangement between the federal government and a foreign power which would allow a province to enter into an agreement with a foreign state. Such an agreement would bind the federal government and not the province in international law.

45. Greater use might also be made of the accord-cadre type of arrangement -- a generic "umbrella" agreement between the federal government and a foreign power under which a province could enter into arrangements in respect of specific matters in fields falling within its own jurisdiction. In an accord-cadre type of arrangement, the agreement entered into between the provinces and the foreign power would be subject to federal approval and would bind not the provinces but the federal government.

46. In both the ad hoc and generic umbrella-type of agreements, the provinces would not acquire international personality or become subjects of international law; the federal government is responsible in international law for their performance.

47. The ad hoc and generic "umbrella" arrangements reflect the Swiss principle of agency according to which the member states can bind the federal unit with its consent and subject to its control.

48. Consideration might also be given to whether it would be desirable for the federal government to enter into a broad accord-cadre agreement with a federal state, particularly the United States, with regard to such specific subjects of interest to the provinces as civil defence matters, fire fighting and road and bridge building and maintenance, and other matters. It would seem desirable for generic umbrella agreements of this sort to provide that the provinces would reimburse the federal government for any breach of specific administrative arrangements undertaken by them.

49. It would also seem possible for the federal government, without legislative amendment to the Constitution, to establish an accord-cadre of an internal variety with the provinces by which they would be allowed, subject to the control of the federal authority,