

#### IV PROVINCIAL PRACTICE IN CANADA IN RESPECT OF TREATY-MAKING

36. A survey of material available leads to the conclusion that the provinces, although lacking the capacity to enter into international agreements, have long shown a desire and need to enter into agreements of an essentially local nature affecting technical and non-political matters on such subjects as bridges, roads, power supplies, civil defence etc. It seems likely that a careful study of the practice of the provinces would show the existence of a very high number of such agreements. Twelve examples are given of such agreements entered into by British Columbia, Manitoba, Nova Scotia and Ontario. The Canadian Government regards such agreements (at least insofar as they purport to be subject to international law) to be invalid.

37. There are many examples of agreements which the provinces have expressed a wish to enter into but did not do so following advice of the Federal Government that they lacked the capacity to do so. Examples are the Northeast Inter-state Forest Fire Compact, certain civil defence compacts and the Great Lakes Basin Compact.

38. The federal authorities have sometimes suggested to the provinces that if they wished to enter into an agreement with an American state, the Canadian and United States Governments could enter into a treaty which would accomplish what the province wished to achieve. The provinces would then enter into an agreement with the Federal Government undertaking to perform the obligations concerned and to indemnify the Canadian Government for any failure to do so. The provinces have so far shown little interest in this type of agreement.

39. The Canadian Government has never taken a position on whether the provinces may enter into agreements with foreign entities which are in the nature of private or commercial contracts covered by private law only. Although direct evidence is not available, it would seem that the provinces have over the years entered into many such agreements particularly in relation to commercial matters. There would seem to be no compelling reason why the provinces cannot enter into agreements of a private law character with foreign entities or their agents.

40. There have recently been examples of agreements entered into between the provinces and a foreign entity as part of an arrangement agreed upon by the Federal Government and the foreign entity. Examples of this type of agreement concern technical and cultural matters in Quebec.

41. There has also been discussion and consideration by federal authorities of more general types of agreements (accords-cadres) which would authorize the provinces to enter into administrative arrangements with foreign powers concerning certain matters falling within a specific sphere of provincial authority (education, civil defence).