

to safeguard basic provincial and minority rights and yet possesses sufficient flexibility to ensure that the Constitution can be altered to meet changing circumstances has been the subject of repeated consideration in the Parliament of Canada as well as in a series of formal federal-provincial conferences and meetings in 1927, 1935-36, 1950 and 1960-61. In 1964 the text of a draft Bill "to provide for the amendment in Canada of the Constitution of Canada", which embodied the amending procedure or formula recommended by the Conference of Attorneys General, was unanimously accepted by the Conference of the Prime Minister and the Premiers in October of that year. However, Quebec subsequently withdrew its approval of the formula and it was never adopted.

Between February 1968 and June 1971, eight federal-provincial conferences were held on the constitution. A committee of officials was established to provide assistance in the study of constitutional questions. The provincial governments with one exception and the federal government submitted proposals for a new constitution. The discussions culminated in the drafting of the Canadian Constitutional Charter 1971, which set out specific constitutional reforms including a revised amendment procedure. The Charter was considered at the Constitutional Conference in Victoria, BC, in June 1971 but as yet has not been accepted by all governments.

Treaty-making powers. The federal government has exclusive responsibility for the conduct of external affairs as a matter of national policy affecting all Canadians. The policy of the federal government in discharging this responsibility is to promote the interest of the entire country and of all Canadians of the various provinces within the over-all framework of a national policy.

In matters of specific concern to the provinces of Canada, it is the policy of the Canadian government, in a spirit of co-operative federalism, to do its utmost to assist the provinces in achieving the particular aspirations and goals that they wish to attain. The attitude of the federal government in this respect was illustrated by the "entente" signed by representatives of Quebec and France in the field of education in February 1965. Provincial and federal authorities co-operated actively in a procedure that enabled Quebec, within the framework of the Constitution and the national policy, to participate in international arrangements in a field of particular interest to that province.

Thus, under existing procedures, once it is determined that what a province wishes to achieve through agreements in the field of education or in other fields of provincial jurisdiction falls within the framework of Canadian foreign policy, the provinces may discuss detailed arrangements direct with the competent authorities of the country concerned. When a formal international agreement is to be concluded, however, the federal powers relating to the signature of treaties and the conduct of over-all foreign policy must necessarily come into operation.

3.2 Distribution of federal and provincial powers

The most important provisions of the BNA Act relate to the distribution of powers between the federal and provincial governments. Sections 91 and 92 are particularly important:

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: Provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one third of the members of such House.