



# CONSTITUTIONAL AND INSTITUTIONAL ASPECTS OF EXECUTIVE / LEGISLATIVE INTERACTION IN THE DECISION-MAKING PROCESS IN FOREIGN POLICY IN CHILE

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**Abstract:** Foreign policy is a public policy, both in its design, formulation and management, running forward to a wide range of state actors, governmental and non governmental institutions. However, unlike a common public policy, foreign policy matches all actions designed within a state which unfold in the external environment; moreover, is not confined to the international level, but also the endogenous nature of variables and internal factors such as the political regime, the decision making process and the leadership. Thus, the article aims to highlight the operation of the decision-making process, the processing of bills, and the relationship between the Executive and Legislative in Chilean presidentialism in matters of foreign policy, showing how political institutions influence the decision making of public policy. For that, both formal and informal documents will be observed, considering institutional, constitutional and regulatory aspects.

**Keywords:** Decision-Making Process; Executive Power; Foreign Policy; Legislative Power; Political Parties.

## 1 Introduction

The concept of foreign policy underwent major transformations throughout the twentieth century. After World War I, disputes between the hegemonic powers shaped the importance of national security issues in foreign policy, which strengthened mechanisms of military empowerment vis-à-vis other states. These aspects influenced the emergence of two theories that analyzed foreign policy: idealism and realism. According to Figueira (2009), the idealist paradigm was based on the Kantian project of Perpetual Peace, with a belief in goodness as the essence of human nature, in the search for corporatism and multilateralism, fighting the bellicosity, and in reforming institutional systems that of war. Thus, it was a paradigm that aimed at propositional models of action aiming at the promotion of world peace and the construction of a regulated legal order. On the other hand, Hobbesian and Machiavellian-inspired realism, preponderant in the analysis of international relations, emphasized a negative perspective of the human being, interpreting the bellicose nature of the State, whose ultimate goal is to achieve

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absolute hegemony through power and possibilities external factors, disregarding domestic constraints and their relationship with the international system. According to the realistic model, international relations are an anarchy composed of states that vary only in one important aspect: relative power. And such anarchy tends to endure because states want to preserve their autonomy. Thus, the search for states for power and security is motivated by the structure of the international system that forces them to act in this way (WALTZ, 1979). However, despite the contribution to the analysis of international issues, the realistic model envisaged the State as a unitary actor, centered on the figure of the Executive Power, little considering the importance of domestic actors.

In the 1960s, the freezing of world peace as a result of the Cold War and the nuclear non-proliferation regime, as well as technological revolutions, allowed for greater interaction and interdependence between states and, consequently, the capitalist system (CASTELLS, 1999). Consequently, a greater range of theoretical and analytical currents began to focus on deeper interpretations of this new transforming reality. Nye and Keohane (1977), for example, highlighted the analytical insufficiency of the realist paradigm that separated domestic and international politics. For the authors, there must be thematic interdisciplinarity - this is because the states were increasingly interdependent, with their actions causing interference in the actions of the other states of the international system. There is, therefore, complex interdependence, with the existence of multiple channels of communication and negotiation due to the increase of actors involved in any environment that involves international politics. In this sense, according to Keohane (1992), institutions play a central role in contemporary international relations, helping to shape the behavior of states through the production of information, the reduction of transaction costs and the increase of coordination points.

Influenced by the realist theory, the bureaucratic model (ALLISON, 2000) preponderated, classifying the Legislative performance as "weak", so that government policy would result from the bargaining between agents of the State inserted in the Executive. Thus, unlike the realistic argument, government behavior ceases to be the result of the choice of a single decision maker, being influenced by the various internal divisions of the Executive Branch, with competitive preferences. In this sense, foreign policy reflects the extent of these internal struggles, of which the legislature and civil society do not participate; the country's position on the international level will be shaped by the interaction of the various government members, linked to the Ministry of Foreign Affairs and other ministries.

The end of the Cold War in the mid-1980s brought about a growing trend of market liberalization and internationalization of the economy, as well as its distributive effects on sectors of the economy and society, transforming the diplomatic agenda of states and including new ones actors in the foreign policy decision-making process (LIMA, 2000). With this, new interpretations and pluralist theoretical currents came to light, criticizing the realistic perspective - that

characterized the State as a unitary actor, whose decisions are centered on the Executive Branch, thus disregarding the interaction between domestic agents as participants in the process of making decision\_. This is because the pluralistic tradition of foreign policy considers the multiplicity of actors that "interact and influence the international decisions adopted by the States, in addition to forming a complex network of transnational relations, that is, the State can not be considered the only actor in international relations" (FIGUEIRA, 2009, p.25). Thus, with pluralist aspects, foreign policy analysis emerged to unravel the "black box" of the state, verifying how the internal and pre-international decision-making process occurs, highlighting the processes and institutions in decision-making and foreign policy formulation. Three theoretical approaches marked the first foreign policy analysis. The first theoretical approach, by Rosenau (1965), sought to quantify central tendencies in the patterns of external behavior from mathematical and statistical instruments, generalizing the relation between nations and States in the international scope. However, it continued to attach little importance to the dynamic relationship between the domestic and international environments, in addition to disregarding the participation of non-state actors. The second theoretical approach was based on Snyder, Bruke and Sapen (1962), who broke with mathematical parameters and sought to create multifactorial and interdisciplinary analysis tools that considered the correlations between internal and external determinants. To that end, they included the participation of various actors in the foreign policy decision-making process, such as the individual, bureaucracies, interest groups, legislators, political institutions and decision-making. Finally, the third generation, by Harold and Sprout (1980), was distinguished by incorporating contextual and cognitive elements.

The main objective of the Foreign Policy Analysis is to incorporate a new level of analysis into international issues, considering the symbiosis between internal and external aspects for the understanding of the decision-making process. This is because every international act goes through a political decision process that is governed by rules, institutions, individuals and forces that define how a result can be unraveled. Therefore, there is a diversity of variables that influence directly and indirectly in the formation of decision alternatives and in the process of implementing foreign policy (FIGUEIRA, 2009).

Hill (2003) stresses that the study of foreign policy must interact domestic and international environments with the understanding of the relationship between agent and structure, without establishing a single and unequivocal correlation between the factors. It is necessary to consider, above all, the complex and dynamic interaction between different actors and structures of the international and domestic system. Therefore, the approach of this research considers the incorporation of domestic variables, such as the institutional design of the decision-making system and the performance of political parties within the power structure of the State. Thus, the adoption of the basic assumptions of classical realism and the structural realism of international relations is rejected, refuting the argument of the specificity of foreign policy based

on the idea of unitary state with national interest defined by the structure. This is because the idea of national interest comprises the conflict and the strategic game between domestic actors fighting for internal power, being a product of the preferences and interests of the dominant party coalition (MILNER, 1997).

Thus, until the mid-1980s, many studies have emphasized the relationship between the Executive and the Legislative in foreign policy, dominating the heads of state and their bureaucratic apparatus - the concept of the imperial presidency. The legislature, on the other hand, would be more prone to parochial issues and to its constituency, without attention to international politics, relinquishing its authority in the decision-making process (SUNDQUIST 1981, Friedrich 1991). After the work of Putnam (1988), Lindsay (1994), Milner (1997) and Martin (2000), approaches became more optimistic about the internal organization and operation of the Congress, as well as its influence on international agreements, challenging the pessimistic view of legislative action. Consequently, it was found that, even if it delegates powers to the Executive and does little concrete action, the Legislative Branch may use procedural powers to shape the results in foreign policy, exerting influence.

Putnam (1988) contributed to the overcoming of the division between domestic and international scope. This is because international cooperation can only be understood as part of a complex two-level game, in which domestic policy and international bargaining are linked. Influenced by Putnam, Milner (1997) describes that states are not unitary actors, but rather polyarchic, because a plurality of actors participates in the decision-making process. Thus, decision-making processes form a continuum, from national to international, where authority for the production of decisions is shared. States are not unitary actors, because there are actors with variable preferences who share power in decision making. In Milner's (1997) conception, the State is composed of political actors with distinct preferences and who share powers in the decision-making process of foreign policy, and the Legislative Power has influence in international cooperation. Thus, to analyze the negotiation of international treaties, one must consider the institutionally established form of interaction between Executive and Legislative. Finally, in Martin (2000), both the Executive and the Legislative benefit from cooperation in the formulation of foreign policy. Therefore, the participation of the Legislature in the conduct of foreign policy is relevant, since it is the mechanisms of the Legislative that implement international agreements and, in addition, the institutionalized participation, through Congress, in international cooperation processes, increases the credibility of international commitments of State. The legislators influence international cooperation through indirect and little apparent mechanisms. In order to understand the legislative influence, it is necessary to visualize beyond the approval or not of the treaties in the domestic plane, but through other mechanisms of influence and of transference of authority to the Executive Power in order to reach their preferences. As a result, institutionalized legislative participation enhances the credibility of inter-state agreements, and consequently,

levels of international cooperation. Delegation is a mechanism of influence, where institutional variation is a key variable in the cooperation process. This type of analysis, therefore, does not view foreign policy from the influence of only one power, but considers the interaction between Executive and Legislative as a competitive and distributive exchange relationship, so that both can gain in the agreements - provided that are permeated by strong institutions.

The major contribution of the analyzes discussed above is to add to the debate on foreign policy the variable of the decision-making process, that is, the internal dynamics of decision-making and the dispute of preferences, with multiple interests in dispute by the actors (conceived as a veto players), determining the final product of the State's external action through a polyarchical vision. Therefore, after knowing the main theses, methodologies, concepts and theoretical currents that have problematized and sought to unravel the nature of the decision-making processes in foreign policy, the main objective of this article is to highlight how the foreign policy of the Legislative Branch of the Chile, in line with the preponderance of the Chief Executive and the diplomatic corps on international issues. In order to do so, the juridical-constitutional and political-institutional analysis of the interaction between Executive Power and the Legislative Branch in Chilean foreign policy will be carried out, observing the rules of the decision-making process, as well as the formal and informal institutions that collaborate for a more effective participation of legislators. This is because the analysis of international negotiation processes can not disregard the dynamics of the domestic institutional arrangement that dictates the relationship between Executive and Legislative; such dynamics is established by the Constitution and by the Internal Rules of Congress Houses, which establish the role of each of the powers.

## **2 The preponderance of the executive branch in foreign policy and the constitutional reforms of 2005**

In Chile, the 1980 Constitution highlights the control of the legislative agenda by the Executive Branch. The latter has exclusive prerogatives to initiate legislation in certain areas (SHUGART; CAREY, 1992), dominating the agenda setting and the decision-making process in foreign policy through a series of advantages, such as greater decision-making capacity, access to confidential information, speed, etc. Consequently, the Executive has the formal and informal means to influence the decision-making process in foreign policy. In turn, recognizing the secondary role of Congress in the production of foreign policy does not mean that it is irrelevant and can significantly influence it (LINDSAY, 1993). According to Figueira (2009), the more centralized the power in the hands of the Chief Executive, the greater the political power of bureaucracies and the greater the degree of delegation of power – which depends on the convergence of preferences between Executive and Legislative. On the other hand, the greater the power of congressional influence over the bureaucracies and the Executive Branch, the more

decentralized the decision-making process and the less the degree of delegation of power. Thus, when the legislative majority opposes the Executive (and as long as the legislature has institutional control mechanisms), congressmen will not delegate power, obstructing the agenda (Marttin, 2000).

The Chilean Constitution assigns to the President of the Republic the competence to conduct political relations with foreign powers, so that foreign policy competence is the responsibility of the Chief Executive. It has legal capacities that find its complementation in practices rooted in the very ideal of presidentialism, such as: the exclusive initiative in several matters; the priority to deal with draft laws through emergency mechanisms; and the power to veto bills passed by Congress. And, together with the Executive Branch, the country's international relations are managed by the Ministries of Foreign Affairs, with a complex bureaucratic structure, personal and with its own resources. In this way, the Executive Branch has the capacity to conduct the country's international relations and lead the foreign policy area through the use of legal instruments, with ministerial coordination and agenda control (VALDIVIESO, 2007). To this end, the legal system establishes to the President of the Republic the conduct of political relations with foreign countries and international organizations through the negotiation, conclusion, signature and ratification of international treaties that he deems appropriate for the country's interest. In addition, it can appoint ambassadors, diplomatic ministers and representatives in international organizations; finally, it can declare war, provided it has been previously authorized by law. Concomitantly, the Ministry of Foreign Affairs is the division responsible for planning, directing, coordinating, executing, controlling and informing the foreign policy formulated by the Chief Executive.

However, in order to understand the performance and interaction between the powers in the foreign policy decision-making process, it is necessary to analyze, first, the changes that occurred after the constitutional reform of 17 August 2005, which reviewed Parliament's role in approval of international treaties, granting greater legislative participation in the treaty approval process.

Firstly, he stressed that the approval of an international treaty, depending on the case, will be subject to the procedures of a law. Accordingly, treaties are subject to such procedures if they are compatible with the very nature of international treaties, implying that the provisions in force can not be annulled, modified or suspended by an internal act of the State.

Second, the constitutional reform contemplated the rules on the formulation and exclusion of reservations, granting greater attributions to Congress in this matter. This is because a duty of informing the Executive to the Congress was established, since the President of the Republic must inform the Congress about the reforms that he intends to confirm or formulate. Thus, the duty of information is based on the idea that if Congress approves a treaty, it is completely reasonable for it to know the content of consent and that it will be altered by the

formulation of reservations (article 50, II). And, in the same way, the Congress also recognized the initiative to suggest the formulation of reservations and interpretative declarations to an international treaty, in the course of the process of its approval, provided that in accordance with the provisions of the treaty itself or in accordance with the norms of international law (Article 50, paragraph 1, III). In this way, art. 62, I, of the Chilean Constitution stated that "the suggestion to formulate reservations and interpretative declarations, in accordance with what is established with the third paragraph of number 1 of Article 54 of the Political Constitution of the Republic, may originate in any of the Cameras. If one of them approves it, said suggestion will pass to the other to be pronounced, and if the latter accepts it, the President of the Republic will be informed of such circumstance." Consequently, from a political-constitutional point of view, the Congress can exercise great influence, since the President of the Republic can not ignore the majority ruling of the Legislative Houses, which is in line with the idea of a democratic Rule of Law in which the organ legislation is an effective counterweight to the supremacy of the Executive Branch.

In order to withdraw a reservation, it is also necessary for the Congress to accept, establishing a deadline within which it must rule - 30 days counted from the reception of the letter (article 50, n.1, VIII). As a consequence, the withdrawal of a reservation is a shared attribution between Executive and Legislative when it comes to treaty approved by the second or when the reservation considers the Congress in the moment of approving a treaty.

Thirdly, the President of the Republic has exclusive competence to denounce or withdraw from a treaty, but must request the opinion of both Congress Houses if the treaty has been approved by the Legislative Branch, and the Executive Branch must inform them within the 15 days after the denunciation (article 50, n.1, VI and VII). And once the denunciation or exclusion of a treaty produces its effects in accordance with what is established in the international treaty, it will cease to have effect in the Chilean legal system (article 50, n.1, VI). According to Peña Torres (2005), it should be pointed out that, since denunciation / withdrawal implies the sovereign will of the State not to be bound by the treaty, the participation of the Legislative is fundamental, since it was he who approved the same.

Fourthly, the constitutional reform stipulated the need to publicize aspects of international treaties, reducing their uncertainty. In order to do so, its entry into force, the formulation and withdrawal of reservations, interpretative declarations, objections to a reservation, denunciation of the treaty, withdrawal, suspension, conclusion and invalidity of the treaty should be emphasized. 50, n.1, IX).

Fifthly, the mandatory preventive control of the constitutionality of treaties dealing with matters of constitutional organic law (article 82, n. 1) was incorporated, with a view to preserving constitutional supremacy and avoiding the compromised the will of the State. Thus, preventive control is aimed at preventing the State from committing itself internationally in a manner incompatible with its Constitution, or makes possible the previous constitutional reform, allowing

the subsequent ratification of the treaty.

The changes brought about by the Constitutional reform of 2005, therefore, were beneficial to the process of democratization of the country's foreign policy. But how, then, does this participation occur? The Legislative Power, one of the main actors in the process of formulating public policies in Chile, can also participate actively in all aspects of the country's foreign and defense policy (Article 54 of the Chilean Constitution), as it has legal, administrative mechanisms and regimental to acquire relevant information about the country's foreign policy. These legal norms contain tools for autonomous, independent and active action of the Legislative. Thus, the country's Constitution establishes that the Legislative Branch has exclusive competence to approve or reject international treaties presented by the President of the Republic, which must inform the National Congress about the content and scope of the treaty, as well as the reservations that it intends to confirm to the formulá it. In turn, Congress may suggest the formulation of reservations and interpretative declarations to a treaty that is in process. Therefore, the National Congress has the constitutional power to veto international treaties, being classified as an institutional and party veto player<sup>2</sup>.

### **3 The rite of processing of international treaties in the Chilean political system**

For approval or rejection of an international treaty in the National Congress, the rite of procedure follows a path similar to the Brazilian case. Who has initiative is the President of the Republic, through a message sent to the Chamber of Deputies. In the message must be the explanation of the reasons and the grounds that led to the signature of the agreement whose approval is requested to the Congress. In the discussion, the bill is sent to the international relations commission and to the Constitution and Justice Commission to be analyzed in general, technical and constitutional aspects, deciding whether to approve or reject. It is the so-called general discussion, the purpose of which is to admit or reject in its entirety the bill, considering its fundamental ideas. At the end of the debate, a vote was taken according to the quorum required by the Constitution. In this way, the first legislative process yields three possible results: project approved in its totality, passing immediately to the House Revisora; project approved with modifications; project rejected in its entirety. When sent to the Federal Senate, there is the same procedure, so that the Reviewing Chamber can approve, modify or reject the provident project of the House of origin. However, if an international treaty is approved by one House and rejected by another, a Joint Commission will be formed under the terms of art. 70, with an equal number of deputies and senators, allowing Congress to reconsider the advisability of approving a treaty in

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<sup>2</sup> Legal norms that regulate the attributions and relations of the public powers in Chile for the active work of the National Congress in foreign policy: arts. 1, 5, 8, 19.2, 19.12, 19.14, 19.15, 22, 32.21, 34-36, 37, 38, 39, 41, 48, 50, 60, 61, 61 of the Constitution; Constitutional Organic Law 18,918 (arts. 2, 3, 4, 5, 8, 9, 12, 14, 22, 23, 24).



which there was a discrepancy between both Houses. If it is approved, the bill is sent to the President of the Republic, who has a term of 30 days to promulgate it.

However, the Constitution grants other powers to the legislators that can be used in the context of the approval of foreign policy treaties. Among them, it is possible to emphasize the exclusive attribution of the Chamber of Deputies in the inspection of governmental acts and of the Federal Senate in the scope of giving their consent to the presidential acts in cases in which the Constitution or the law desire. One of the important aspects of this consent is the law that emphasizes that the sending of Chilean troops abroad depends on authorization from the Federal Senate. And while the work of the commissions is more specific, highlighting the monitoring of vicinal and regional communications in the country (as well as foreign policy in a broader sense), the Senate, for its part, has been playing a central role in analyzing the Chile in peace missions.

Legislators may also consult orally or in writing ministries, file motions, initiate investigations, interact with institutions of the justice system to control government acts, invite committee hearings, solicit specialized studies, make presentations in ministries, in addition to reviewing policies. Through the invitation to the Ministers of Foreign Affairs to expose the objectives of conducting foreign policy, Congress is allowed to deepen its knowledge about a particular theme and the general lines of the country's international policy.

Both senators and deputies can submit draft agreements on international issues to be submitted to congressional approval. These projects refer to the foundations of the law itself which deals with an international agreement, transmitting the content of it to the President of the Republic, who opines on the agreement. According to Repetto (2011), the presented projects can be grouped into two types: those through which Congress supports the foreign policy developed by the government on a given matter; and those in which Parliament expresses its views on contingent foreign policy issues.

Therefore, as can be seen, most of the congressional activities in matters related to the country's foreign policy are related to constitutional attributions - such as the approval / rejection of international agreements submitted to Congress by the Executive Branch. And it is necessary to emphasize that the participation of the Chilean Legislative Power in international relations has been active and constant, helping to consolidate it as a relevant actor of the decision making process. According to Cook (2012), one can highlight some emblematic cases that generated greater congressional activity and, therefore, greater intention to influence and structure the country's foreign policy. These are: the embargo on Chilean fruit decreed by the US authorities in 1989; border boundaries with Argentina; the agreement of economic association with Mercosur; the International Criminal Court; the country's participation in peace operations; the Chilean incorporation in APEC; the maritime demand with Bolivia and Peru; the Association Agreement with the European Union; the free trade agreement with the United States; restrictions on Argentine gas exports; the Middle East crisis.

In the 1996 agreement on economic complementarity with MERCOSUR (ACE n. 35), Congress should decide whether to approve or reject the set of Agreements and Protocols stipulated between the country and the Mercosur members. At the outset, the executive branch believed that since it was a supplementary agreement to the ALADI Constitutive Treaty of Assumption, there was no need for parliamentary approval. However, this thesis was rejected by both Houses.

But the greatest example of active congressional participation in foreign policy issues is related to the deployment of Chilean troops to Haiti and the law on peace operations. In 2004, President Ricardo Lagos decided to join the multinational force for the United Nations Stabilization Mission in Haiti (MINUSTAH), which provoked severe criticism from Congressmen. This is because the Executive Branch did not consult the Federal Senate, which should authorize the removal of national troops from the territory by virtue of law n. 19,067. In this context, the senators approved the authorization for the departure of troops, but there was a strong question about the procedure and the convenience of the decision, and there were debates about the complexity of the mission and its duration, as well as its costs. With the request for an extension of the authorization, the Senate continued to debate the participation of Chilean troops every six months, so that a special commission was requested to be composed of equal numbers by Senators of the situation and the opposition, with the purpose of evaluating the situation in Haiti as the milestone that regulates the departure of troops for future peacekeeping missions. Thus, in 2007, the Senate followed the recommendation of the Special Commission and approved the proposal for a new national policy of participation in peace operations, sending to the Committee on Foreign Relations and Defense a bill that modified Law n. 19,067 and established rules for such participation. Thus, the project was approved in 2008 and was later sent to the Chamber of Deputies, which approved the project after nominations proposed by the internal committees and amended some aspects of the text. After the bill passed by the Federal Senate, it was sent to President Michelle Bachelet, culminating in the promulgation, in 2008, of Law n. 20.297, which "amends law no. 19,067 and establishes norms for the participation of Chilean troops in peace operations".

#### **4 Final considerations**

As a conclusion, it can be seen that the Legislative Power, and consequently the political parties, are primordial in the formulation and approval of a certain foreign policy, interacting its preferences with those of the Executive Power, which negotiates the agreements at the international level. The state, then, can not be conceived as a unitary actor, for the explanation of domestic determinants of foreign policy must consider political parties, social cleavages, interest groups, legislators and even public opinion and elections.

Therefore, the main objective of this article was to verify, through the specialized literature

and official documents, the role of the Chilean Congress in matters of foreign policy, questioning, in some aspects, the hegemony of the realistic model of predominance of the Executive. In order to do so, it was highlighted the way in which the legislature can influence the formulation, application and results in foreign policy, assuming itself as a central actor in the decision-making process. According to the results found, it can be observed that the Chilean Congress has been consolidating itself as a relevant national actor in matters related to the country's foreign policy, leading to greater demands for participation of its members. Adding to this fact can highlight the relevance and specialization of its international relations committees. But what is essential is that, in addition to direct participation through strategic voting and approval of draft agreements, Congress has the capacity to influence the country's foreign policy, analyzing issues in special committees and expressing opinions, as well as inviting Chancellery officials.

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