

Department of External Affairs

CLASSIFIED

File No. 20-3-1-6

Subject: POLITICAL AFFAIRS

TREATIES AND AGREEMENTS - TREATY

MAKING POWERS - LAW OF TREATIES -

ILC CODIFICATION PROJECT

Vol. 7

From 15 OCT 68

To DEC 30/68

References to Related Files

File No.

Subject

PUBLIC RECORDS ORDER

P.C. 1966 - 1749 - AUTHORITY

ALB ARCHIVES APPROVALS

68/001 & 69/063

RETENTION PERIOD AND DISPOSITION

AND...

THEN TRANSFER TO P.A.C.

DIVISIONAL SYMBOL





DATED FROM Oct 16/68 FILE No. 20-3-1-6
TO Dec 31/68 VOLUME No. 7

CLOSED VOLUME

DO NOT PLACE ANY CORRESPONDENCE ON THIS FILE

FOR SUBSEQUENT CORRESPONDENCE SEE:

FILE No. 20-3-1-6 VOLUME No. 8

PLEASE KEEP ATTACHED TO TOP OF FILE



J. A. BEESLEY
[Signature]

EMBASSY OF THE UNION OF BURMA

OTTAWA FILE CHARGED OUT

TO:

TO: *M. R. [Signature]*
FROM REGISTRY

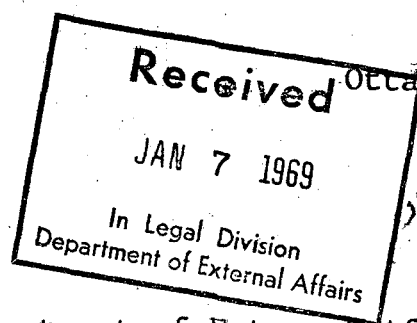
JAN 6 1969

No. J2-2/1085.

20-3-1-6	
37	11

The Embassy of the Union of Burma presents its compliments to the Department of External Affairs and, in continuation of this Embassy note No. J2-2/645 dated August 23, 1968, has the honour to inform the Department that the Government of the Union of Burma has not yet made any decision to send a delegation to the second session of the United Nations Conference on the Law of Treaties to be held in Vienna from April 9 to May 27, 1969.

The Embassy of the Union of Burma avails itself of this opportunity to renew to the Department of External Affairs the assurances of its highest consideration.



Ottawa, December 30, 1968.

The Department of External Affairs,
O T T A W A.



MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		Dec. 30/68	20-3-1-6 37	RESTD.
TO/A	COPENHAGEN	NO	PRECEDENCE	
		L-1240	PRIORITY	
INFO	LONDON (ATTENTION: MR. LEE)			

REF

SUB/SUJ LAW OF TREATIES: LDN MTG JAN. 8-10

PLEASE MAIL TO ME c/o LEE AT CANADA HOUSE THE
MIMEOGRAPHED DRAFT RAPPORTEUR'S REPORT (IN SEVERAL
SECTIONS) ON VIENNA CONF. IT IS ON SMALL TABLE BEHIND
MY DESK.

WERSHOF

DISTRIBUTION
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	NO STANDARD APPROVED/AUTORISE
SIG.....			SIG..... M. D. COPITHORNE

DE ROME DEC30/68 RESERVEE

A EXTER 1539

REF NOTRE LET 836 DECS

CONVENTION SUR LE DROIT DES TRAITES-SAN MARINO

CONFORMEMENT A VOS INSTRUCTIONS, AVIONS PAR NOTE OFFICIELLE DU

NOV28(DONT VOUS AVONS ENVOYE LA COPIE)DEMANDE AU GOVT DE SANMARINO

DAPPUYER LA POSITION CDN AU SUJET DE LARTICLE 5.DANS SON ACCUSE

DE RECEPTION RECU AUJOURDHUI LE SECRETARIAT DETAT POUR LES AFFAIRES

ETRANGERES NOUS CIT ASSURE QUE LATTITUDE ADOPTEE PAR LE GOVT CDN

SUR CETTE QUESTION AINSI QUE LA DEMANDE DAPPUI DE CE DERNIER

FERONT DE LA PART DU GOVT DE SAINTMARIN LOBJET DE LA PLUS

ATTENTIVE CONSIDERATION A LA LUMIERE DE LATTITUDE DEJA PRISE

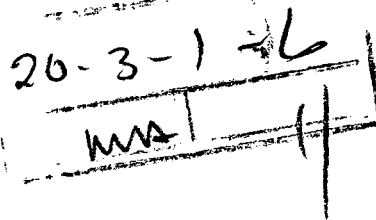
PAR LA DEL DE SANMARINO DURANT LA PREMIERE PARTIE DE LADITE

CONFERENCE FINCIT.LE SECRETARIAT DETAT SENGAGE ENSUITE A NOUS

COMMUNIQUER LA DECISION DU GOVT DE SANMARINO EN TEMPS UTILE ET

AUSSITOT QUE POSSIBLE.

ACTION



file 20-3-1-6
JH 3/1/12

21.30.12

cc Comm. Aff. Int.

Done 31/12 JH 31/12

M. D. COPITHORNE

ACTION COPY

L. 31/12

20-3-1-6

ma 11

FM LDN DEC30/68 CONFD NO/NO STANDARD

TO EXTER 6067 PRIORITY

REFYOURTEL L1236 DEC27

COMWEL PMS MTG-LAW OF TREATIES CONSULTATIONS

MTGS ON JAN8 9 AND 10 WILL DISCUSS PEACEFUL SETTLEMENT IN LAW
OF TREATIES CONTEXT ONLY.

2.PLEASE ADVISE WERSHOF THAT ACCOMMODATION HAS BEEN BOOKED AT
DORCHESTER HOTEL FROM JAN7-14 INCLUSIVE.LAW OF TREATIES MTG WILL
BEGIN AFTERNOON OF JAN8.WE UNDERSTAND BOYE OF KENYA WILL BE
ATTENDING MTGS.RAO OF INDIA CAN NOT/NOT COME TO LDN FOR MTGS BUT
BRITS HOPE TO HAVE A PRIVATE WORD WITH HIM ABOUT LAW OF TREATIES
ON JAN3.BRITS HOPE THAT JAN1-10 MTGS WILL SERVE TO INFLUENCE
COMWEL DELS WHEN THEY ATTEND AFRO-ASIAN CONSULTATIVE CTTEE MTG
ON JAN21 IN KRCHI.

2/31/68

TO: USSEA, Ottawa

Info: Bruxelles - Londres - Permis New York - Copen-
Washington

FROM: Ambassade du Canada, PARIS, France

Security: SANS COTE

Date: Le 27 décembre 1968

Air or Surface

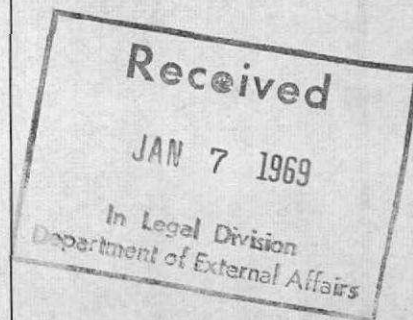
No. of enclosures: 1

The documents described below are for your information.

Despatching Authority: J. Dupuis *J. Dupuis*

20-3-1-6
37

Copies	Description	Also referred to:
1	Ref.: Notre télégramme # 4726 de ce jour. Conférence sur le droit des traités.	



INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

CONSEIL DE L'EUROPE

SECRÉTARIAT GÉNÉRAL

J/6425

Strasbourg, le 19 décembre 1968

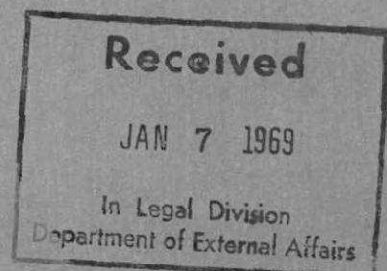
Monsieur le Ministre,

Conformément à la décision prise par le Comité des Ministres siégeant au niveau des Délégués, lors de leur 171ème réunion, tenue du 27 au 30 mai 1968, j'ai l'honneur d'inviter le Comité ad hoc chargé de procéder à un échange de vues aux fins de la préparation de la 2ème session de la Conférence diplomatique de Vienne sur le droit des traités, à se réunir du 6 (à 10 heures) au 8 février 1969 au Bureau du Conseil de l'Europe, 55, Avenue Kléber, Paris, 16ème.

Ainsi qu'il en a été décidé par le Comité des Ministres siégeant au niveau des Délégués, lors de leur 176ème réunion, tenue du 10 au 11 décembre 1968, outre les Etats membres du Conseil de l'Europe, les autres Etats faisant partie du Groupe "Europe occidentale et autres" auprès de l'Assemblée Générale des Nations Unies, à savoir l'Australie, le Canada, la Finlande, le Japon, la Nouvelle-Zélande, le Portugal, l'Espagne et les Etats-Unis d'Amérique sont invités à se faire représenter à la réunion dudit Comité ad hoc.

Au cours de cette réunion, il sera procédé à un examen du projet de Convention sur le droit des traités, tel qu'il figure dans le rapport de la Commission plénière de la Conférence de Vienne établi lors de la première session de la Conférence, afin de permettre aux participants de mieux connaître leurs points de vue respectifs. La réunion étant

Son Excellence
Monsieur le Ministre
des Affaires étrangères
du Canada
OTTAWA (Ontario)



Adress télégraphique : EUROPA Strasbourg — Téléphone : Strasbourg 33-92-21.

Strasbourg 87-92

31/7/11

002524

estimée à contribuer à la préparation des travaux de la
Eune session de la Conférence de Vienne (qui s'ouvrira le
3 avril 1984) et ne devant pas aboutir à des conclusions
formelles, elle n'affectera nullement la prise de position
définitive de chaque Etat lors de ladite session de la
Conférence.

Un document de travail établi par les soins du
Secrétariat sera adressé ultérieurement à votre Département.

Je serais très reconnaissant à Votre Excellence de
bien vouloir me faire connaître aussitôt que possible les points
particuliers concernant le projet de Convention susmentionné
que son Gouvernement désirerait soulever au cours de la réunion
du Comité ad hoc.

Afin de garantir le succès de la réunion du Comité
ad hoc, il serait opportun que les gouvernements y délèguent,
si possible, les chefs de leurs délégations à la Conférence
diplomatique de Vienne.

Je serais très obligé à Votre Excellence de bien vouloir
me faire connaître les nom, qualité et adresse de la ou des
personnes que son Gouvernement se propose de déléguer à la
susdite réunion.

Veuillez agréer, Monsieur le Ministre, l'assurance de
ma très haute considération.

Pour le Secrétaire Général,

[Signature]

R. COLOMBE

Directeur des Affaires Politiques

DIARY
DIV. DIARY
FILE
TEL FILE

MESSAGE

FM/DE

EXT OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
DEC 27, 1968	20-3-1-6 1114	CONFIDENTIAL

TO/A

LONDON

NO
1-1236

PRECEDENCE
PRIORITY

INFO

REF

YOURTEL 6022 DECEMBER 20

SUB/SUJ

COMWEL PM'S MTG - PEACEFUL SETTLEMENT OF DISPUTES AND LAW OF
TREATIES CONSULTATIONS

MR. WERSHOF, NOW IN OTTAWA, WILL STOP IN LONDON ON RETURN
TRIP TO PARTICIPATE IN PROPOSED MTGS JAN 8-10 ON BEHALF OF CDA. HE
IS SENDING SEPARATE TEL RE ARRIVAL PLANS AND ACCOMMODATION, WHICH WILL
BE AFFECTED BY FACT THAT HE WILL REMAIN IN LONDON FOR MTG OF HEADS OF
EUROPEAN POSTS WITH MINISTER JAN 13-14.

2. ANNOTATED AGENDA (YOURTEL 5858 DEC 10 REFERS) SUGGESTS
DISCUSSION OF PEACEFUL SETTLEMENT OF DISPUTES MAY GO BEYOND QUESTION
OF DISPUTES ARTICLE FOR LAW OF TREATIES CONVENTION. GRATEFUL IF YOU
COULD CONFIRM WHETHER MTGS JAN 8-10 WILL DISCUSS PEACEFUL SETTLEMENT
IN LAW OF TREATIES CONTEXT ONLY OR IN BROADER CONTEXT. IF LATTER,
GRATEFUL FOR ANY DETAILS YOU CAN PROVIDE TO ENABLE US TO BRIEF MR.
WERSHOF AS FULLY AS POSSIBLE.

DISTRIBUTION
LOCAL/LOCALE

NO STD CC: MR. WERSHOF, COMWEL DIV., UN. DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

LEGAL

2-5406

SIG..... M. D. CORTHORNE.....
M.D. CORTHORNE

NNNNVVVV

file *20-3-1-6* *27/12*
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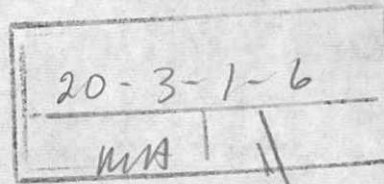
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PAR133

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DE PAR

P R 271624Z



DE PARIS DEC27/68

A EXTER 4726 PRIORITE

INFO BRU LDN WSHDC PRMNY COPEN

REF NOTRETEL 4678 DEC19

CONFERENCE SUR LE DROIT DES TRAITES

EXPEDITIONS PAR VALISE INVITATION OFFICIELLE DU CONSEIL DE L'EUROPE

AU GOVT CDN A SE FAIRE REPRESENTER A LA REUNION DU CIT GROUPE

OCCIDENTAL FINCIT QUI AURA LIEU A PARIS DU 6 AU 8 FEV 1969.

5/27/68

002527

File ✓
Diary
Div. Diary

The Canadian Embassy,
San Jose, Costa Rica.

The Under-Secretary of State for External Affairs,
OTTAWA.

Your letter No. 360 December 12, 1968.

U.N. Conference on the Law of Treaties
Article 5 - Nicaragua.

CONFIDENTIAL

December 27, 1968.

L-1233

20-3-1-6

In view of the fact that Nicaragua expects to be represented at the Second Session of the Law of Treaties Conference, we should be grateful if you would submit to the appropriate authorities of Nicaragua an Aide-Mémoire along the lines of that attached to our letter No. L-737(M) of September 10, 1968.

2. Because Nicaragua was not represented at the First Session of the Law of Treaties Conference, it would probably be helpful if you were to include in the Aide-Mémoire the following information:

There were two roll call votes on paragraph 2 of Article 5 at the First Session, one before it was referred to the Drafting Committee and one after it had been considered by the Drafting Committee. On the first vote the paragraph was retained by 45 votes to 38 with 10 abstentions. On the second vote the paragraph was retained by 46 votes to 39 with 8 abstentions. This paragraph is, of course, of particular interest to federal states. Of the federal states represented at the First Session, 9 (Australia, Brazil, Canada, Germany, India, Malaysia, Mexico, the U.S.A. and Venezuela) voted against paragraph 2 on both occasions. Two others (Argentina and Austria) voted against paragraph 2 on the first vote and voted for it on the second vote. Only 4 federal states (Nigeria, Switzerland, the USSR, and Yugoslavia) voted for the paragraph on both occasions. There are two important features to this voting. First, the majority of federal states present at the First Session opposed paragraph 2. Second, on both votes the paragraph received the support of less than half the representatives present.

3. If you expect to visit Nicaragua within the near future you may wish to present the Aide-Mémoire on the occasion of your visit. If you do not expect to visit Nicaragua in the near future, however, please send the Aide-Mémoire, which could be followed up by oral discussions on the occasion of your next visit.

M. D. COPITHORNE

Under-Secretary of State
for External Affairs.

M. Beesley to me OK

Sub 20-3-1-6

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



The Under-Secretary
(through the Legal Adviser)

Legal Division

Received
DEC 27 1968
In Legal Division
Department of External Affairs

SECURITY
Sécurité
DATE
NUMBER
Numéro

CONFIDENTIAL

December 24, 1968

TO
À

FROM
De

REFERENCE
Référence

SUBJECT
Sujet

LAW OF TREATIES - Canadian Attendance
at Preliminary Meetings

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

Prior to the first session of the Law of Treaties Conference, preliminary meetings of representatives of the Western European and others group were held in Paris, under the auspices of the Council of Europe, to discuss issues likely to arise at the first session involving the national interests of western states. Immediately prior to these meetings representatives of Britain, the US, Australia, Canada and New Zealand met in London for advance discussion of these issues. Canada was represented at both these preliminary meetings by Mr. Wershof, who was head of the Canadian Delegation to the Conference, and Mr. Stanford of Legal Division who worked with Mr. Beesley and Professor Lawford of Queen's University in preparing the commentary and instructions for the Canadian Delegation for the first session and who attended the last half of that session.

2. As you know, the Law of Treaties Conference will come up for discussion at the Commonwealth Prime Ministers Conference next month. This discussion will be confined, however, to one specific point - the peaceful settlement of disputes. We have been informed that preliminary discussions among the Western European and Others group dealing with all aspects of the Law of Treaties Conference will take place in Paris on February 6 to 8. Again, as last year, these will be preceded by U.S.A. - "old Commonwealth" discussions in London February 3 and 4. The purpose of the London and Paris meetings will be to seek agreement among Western governments on points of substance as well as tactics to be adopted at the second and concluding session of the Conference.

3. The meetings will serve an additional purpose for Canada in that they will provide an opportunity for advance lobbying, in bilateral corridor discussions with selected representatives, for support for our position on the federal states article. In this connection it should be noted that we have not yet received undertakings of support, in reply

27.12.10(us)

- 2 -

to representations in capitals, from Austria, Italy, Switzerland and Turkey and ~~our~~ replies from some other European capitals have been tentative only. A great deal of useful lobbying, therefore, remains to be done among western European delegates.

b2 4. In the circumstances it appears that, as was the case last year, Canada should be represented at these preliminary meetings by Messrs. Wershof and Stanford, the latter because inter alia he will be responsible under Mr. Beesley's direction, for drafting the instructions of the Delegation to the second session which requires that he/fully familiar with these discussions designed to arrive at common western positions for the second session.

5. We should be grateful to know whether you concur in the proposal that Messrs. Wershof and Stanford attend these meetings during the week of February 3-8. *yes* *he*

6. With respect to the meetings on peaceful settlement of disputes at the time of the Prime Ministers Meeting, the British propose to hold meetings of experts January 8-10. Canada could be represented at these meetings either by Mr. Wershof, who will be returning from leave in Canada at that time, or by Mr. Lee of Canada House. There would appear to be some advantage in having Mr. Wershof attend, since Mr. Lee is not expected to be a member of our delegation to the second session; however if Mr. Wershof attends he would remain on in London for the planned meetings with the Minister January 13 and 14, which means he would be absent from Copenhagen until mid-January. We should be grateful to know whether you wish Mr. Wershof to attend these meetings on behalf of Canada. *yes.*

Alan Beesley
Legal Division

Diary
Div. Diary
✓File
EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À
The Canadian High Commission,
NAIROBI

FROM
De
The Under-Secretary of State
for External Affairs, OTTAWA

REFERENCE
Référence
Your telegram No. 1079 of December 20, 1968

SUBJECT
Sujet
Law of Treaties - Article 5

SECURITY
Sécurité
CONFIDENTIAL

DATE
December 24, 1968

NUMBER
Numéro
L- 1232

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION MM	

ENCLOSURES
Annexes

DISTRIBUTION

USRA
Mr. Bissonnette
A. & M.E. Div.

We are grateful for the full report contained in your telegram under reference, which enables us to reply in detail to the points raised by Rhod in his discussion with you.

2. The first and possibly the most important point to be clarified for Rhod is the position adopted by representatives generally and by federal states in particular on Article 5(2) at the first session. It is entirely incorrect to suggest that only Canada and Switzerland raised objections to paragraph 2 or that we seek to delete an article on which over 120 nations have agreed. Among the federal states at the first session, Mexico and Malaysia both proposed the deletion of the whole of Article 5, while Australia proposed the deletion of paragraph 2 and Austria proposed an amendment to the paragraph which would have required the authority of the member of a federal union to conclude a treaty to be confirmed by the federal government. (This amendment was rejected by 35 votes to 29, with 21 abstentions.)

3. There were two roll-call votes on paragraph 2 at the first session, one before it was referred to the Drafting Committee and one after it had been considered by the Drafting Committee. On the first vote the paragraph was retained by 45 votes to 38 with 10 abstentions. On the second vote the paragraph was retained by 46 votes to 39 with 8 abstentions. Of the federal states represented at the first session, nine (Australia, Brazil, Canada, Germany, India, Malaysia, Mexico, the USA and Venezuela) voted against paragraph 2 on both occasions. Two others (Argentina and Austria) voted against paragraph on the first vote and voted for it on the second vote. Only four federal states (Nigeria, Switzerland, the USSR and Yugoslavia) voted for the paragraph on both occasions.

4. The aide memoire which you deliver to Rhod should recite these facts and specifically refer to the two most relevant features of the voting namely (a) that the majority of federal states present at the first session opposed paragraph 2, and (b) that on both votes the paragraph received the support of less than half of the representatives present. In order that you may deal in detail with any further points raised by Rhod concerning the discussion on this Article at the first session, we enclose for your information copies of pages 33 to 39 of the first part of the draft report of the first session, which provide details of proposed amendments and voting (including roll-call votes) on Article 5.

- 2 -

5. In replying to Bhali's request for a "definite statement" of the dangers to Canada if paragraph 2 is adopted, you should make the following points in the aide memoire:

- (a) The essential danger of the paragraph is that in practice it will require other states to interpret the constitution of the federal state. No state, federal or unitary, can accept that another state has the right to interpret its constitution;
- (b) The issue is of particular concern to Canada because treaty making is not dealt with in the written portion of Canada's constitution and a non-Canadian, unfamiliar with the evolution of that portion of the Canadian constitution which is unwritten, is unlikely to be able to interpret correctly the constitutional position in Canada with respect to foreign relations;
- (c) Nevertheless (and this is important) the danger inherent in the paragraph is not a danger for Canada alone but for all federal states, which is why the majority of federal states present at the first session opposed the paragraph.

6. As indicated in our telegram 1934 of October 18, we shall be particularly interested in the position of Kenya on the question of a separate vote for paragraph 2. Your aide memoire, in addition to containing the material referred to in the preceding paragraphs and such material from Chapter II of the white paper as you consider useful, should deal specifically with the question of separate votes. In this connection two points should be made. First, there should be a separate vote on the two paragraphs because they deal with two quite different questions. Paragraph 1 deals with the treaty making capacity of sovereign States whereas paragraph 2 refers to the treaty making capacity of the constituent members of a sovereign federal State. The fact that different considerations apply to these two paragraphs is confirmed by the difference in the voting on the two paragraphs. Second, Canada would not oppose paragraph 1 of Article 5 unless a separate vote on paragraph 2 were refused and it became necessary in order to defeat paragraph 2, to oppose the whole of Article 5. It is expected that other federal states opposed to paragraph 2, when lobbying for support at the second session, will adopt a similar position. Refusal of a separate vote on the two paragraphs would therefore seriously endanger the adoption of paragraph 1. We are unaware of any benefit flowing from refusal of a separate vote which would justify the risk of losing paragraph 1, to which many states attach considerable importance.

7. We look forward to receiving, in due course, a report of your further discussions with Bhali. If, as is indicated in your telegram, he attaches particular importance to the position adopted by other federal states on paragraph 2, we would hope that the foregoing material will dispose him favourably toward the Canadian position.

...3

002532

- 3 -

3. The extra copies of "Federalism and International Relations" which you requested have been forwarded to you by air and should reach you in advance of this letter.

J. A. BEESLEY

Under-Secretary of State
for External Affairs

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À

THE CANADIAN EMBASSY,
QUITO, ECUADOR.

FROM
De

THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA

REFERENCE
Référence

Your letter No. 181 of November 20,
1968

SUBJECT
Sujet

LAW OF TREATIES - ARTICLE 5

SECURITY
Sécurité

CONFIDENTIAL

DATE

December 23, 1968

NUMBER
Numéro

L- 1221

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 37	

ENCLOSURES
Annexes
3

DISTRIBUTION

Latin
American Div.

As requested in your letter under reference, we have submitted to the Minister and he has signed a letter to the Ecuadorian Foreign Minister.

2. The original of the letter, in Spanish, is enclosed for delivery by you to the Foreign Minister. Also enclosed are copies of the English and Spanish texts of the letter.

3. We look forward to receiving in due course a report of your call on the Foreign Minister and subsequently information concerning the position to be adopted by Ecuador in respect of Article 5(2).

J. A. BEESLEY

Under-Secretary of State
for External Affairs.

*Joe! Let's hurry
for, put in case*

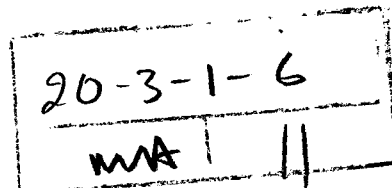
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*L Feb 20-3-1-6
JA 31/12*

FM LDN DEC20/68 CONFD NO/NO STANDARD

TO EXTER 6022

REF OURTEL 5693 NOV27

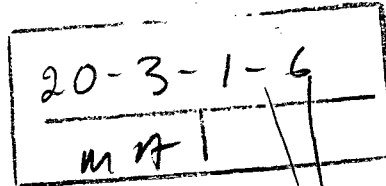


COMWEL PMS MTG: PEACEFUL SETTLEMENT OF DISPUTES AND LAW OF
TREATIES CONSULTATIONS

BRITS ARE GOING AHEAD WITH PLANS TO HAVE MTG IN FCO ON PEACEFUL
SETTLEMENT OF DISPUTES PROCEDURES IN RELATION TO LAW OF TREATIES
CONFERENCE PROBABLY ON JAN 8, 9 AND POSSIBLY 10. WHILE BRITS HAVE
NOT/NOT RECEIVED REPLIES FROM LARGE NUMBER OF COMWEL GOVIS, THEY NOW
HAVE INFO ABOUT SUFFICIENT NUCLEUS OF EXPERTS COMING TO LDN TO MAKE
PROPOSED MTG WORTHWHILE.

2. FCO OFFICIALS WILL RAISE MATTER WITH RAO ON HIS WAY THROUGH LDN
FROM NY TO DELHI. BRITS UNDERSTAND INFORMALLY THAT AUSTRALIAN
EXPERT WILL BE ABLE TO ATTEND MTG AND THAT MALAYSIANS, KENYANS AND
MALAWIANS WILL HAVE SOMEONE ON THEIR DELS TO PMS PTG PROPERLY BRIEFED
THE GHANIAN ATTORNEY-GENERAL (WHO ATTENDED PART OF THE VIENN
CONFERENCE) WILL BE PRESENT AS WILL SIR LIONEL LUCKHOO THE GUYANA
HIGHCOM WHO WAS ALSO AT THE VIENN CONFERENCE. SIR FRANCIS VALLATT
WILL BE REPRESENTING THE UK AT THE MTG BUT THE NZ EXPERT ON TREATIES
CANNOT/NOT ATTEND.

✓ 3. WE HAVE CONVEYED THIS INFO TO MR WERSHOF WHO CALLED THIS MORNING
FROM COPEN. HE WILL BE IN TOUCH WITH BEESLEY OR STANFORD DURING
THE PERIOD DEC24 TO JAN5 WHEN HE WILL BE ON LEAVE IN OTT IN ORDER TO
DETERMINE WHETHER AND, IF SO, WHEN HE SHOULD COME TO LDN TO ATTEND
THIS MTG. WE SHALL LET YOU KNOW ABOUT ANY FURTHER DEFINITE INFO
FROM BRITS ON THIS MTG.



file
Feb 20-3-1-6 JH/27/12
ACTION COPY

FM COPEN DEC20/68 CONFD NO/NO STANDARD

TO TT EXTER 555 DE HAGUE

PERSONAL FOR STANFORD(LEGAL DIV) DE WERSHOF

LAW OF TREATIES: PRELIMINARY MTGS IN LDN AND PARIS

AS LDN MTG SEEMS CERTAIN FOR FEB3 AND 4, I WILL COMBINE THAT WITH A PERSONAL VISIT INCLUDING MY WIFE. WE WILL PROBABLY GO TO LDN ON JAN31. I WILL LATER ON ASK LDN TO BOOK AT BETTER HOTEL THAN LAST YEAR AND SUGGEST YOU ARRANGE TO BE BOOKED AT WHATEVER HOTEL I STAY AT.

2. I WOULD GO FROM LDN DIRECT TO PARIS FOR MTG STARTING FEB6. IN PARIS I WILL ASK EMB LATER TO BOOK AS LAST YEAR AT HOTEL PRINCE DE GALLES AND SUGGEST YOU ARRANGE FOR AUTHORITY TO STAY IN SAME HOTEL.

3. I LEAVE HERE NOON MON DEC23 FOR OTT ON MY PERSONAL VISIT AND WILL CALL YOU. STAYING WITH S CAPLAN, 371 HINTON. BOOKED TO LEAVE MONTREAL FOR COPEN EVE OF MON JAN6 BUT THAT CAN BE CHANGED IF NECESSARY.

8/20/12

J. A. BEESLEY

ACTION COPY

FM NROBI DEC20/68 CONFID

TO EXTER 1079

REF OURTEL 976 NOV11

LAW OF TREATIES CONFERENCE

WE SAW BHOI, HEAD OF LEGAL DIV AND ACTING DEPUTY PERMSEC,
MINISTRY OF FOREIGN AFFAIRS, WHO HAS JUST RETURNED FROM LEAVE,
ABOUT POINTS RAISED IN OUR AIDEMEMOIRE (YOURLET LCM) 737
SEP10).

2. HE SAID KENYAS POSITION ON ARTICLE 5 WAS STILL UNDER
CONSIDERATION AND HE WOULD NOT/NOT BE ABLE TO TELL US
FINAL DECISION ON VOTE UNTIL AROUND MID-MAR. WHEN WE
RAISED MATTER OF SEPARATE VOTE ON PARA2, BHOI STATED NO/NO
CONSIDERATION HAD BEEN GIVEN TO SUPPORTING CDAS CALL FOR SEPARATE
VOTES ON PARAS1 AND 2 OF ARTICLE 5. WE ASSURED HIM CDA
HAD NO/NO OBJECTION TO PARA1 BEING ACCEPTED ALTHOUGH
WE DISCUSSED POINTS RAISED IN PARA10 YOURLET L7. L737.

3. BHOI SAID THAT TO HIS MEMORY ONLY CDA AND SWITZERLAND
RAISED OBJECTIONS AGAINST INCLUSION OF PARA2 AND HE
COULD NOT/NOT SEE WHY ARTICLE 5 SHOULD NOT/NOT BE ADOPTED
BECAUSE IT REPRESENTED A SYNTHESIS OF YEARS OF LEGAL
DISCUSSION AND WAS PREPARED BY DISTINGUISHED JURISTS OF THE
ILC AND CONSIDERED BY HIGH RANKING LEGAL EXPERTS AT LAST
VIENNA CONFERENCE WHO WERE CONVERSANT WITH FEDERAL CONSTI-
TUTIONS AND THEIR UNIQUE PROBLEMS. MOREOVER HE STATED THAT
WHEN OVER 120 NATIONS AGREE ON ARTICLE IT SEEMS WRONG FOR

...2

① amendments
② voting record
③ archiving

PAGE TWO 1079 CONF D

ONE OR TWO NATIONS TO REQUEST SUPPORT FOR VIEW WHICH APPEARS
TO BE OVERWHELMINGLY REJECTED. HE ADMITTED, HOWEVER, VOTE FOR
INCLUSION OF PARA2 AT FIRST SESSION OF VIENNA CONFERENCE WAS
CARRIED BY PLURALITY AND NOT/NOT TWO THIRDS MAJORITY. HE
WONDERED WHY CDA COULD NOT/NOT ATTACH RESERVATIONS TO
PARA2 AT SECOND SESSION NOTING ITS SPECIAL DIFFICULTIES. *amendment*
WE REPLIED THAT ADOPTION OF PARA2 EVEN WITH OUR RESERVATIONS
WOULD STILL OPEN DOOR TO OTHER COUNTRIES INTERPRETING OUR
FEDERAL CONSTITUTION THROUGH CERTAIN ACTIONS AND WE MENTIONED
SPECIFIC CASES OF GABON AND NIGER.

3. BHOI SEEMED OPEN TO PERSUASION ON THIS MATTER AND SINCE
HE APPEARS TO BE KEY FIGURE IN MFA IN DECIDING HOW KENYA
SHOULD VOTE AT LAW OF TREATIES CONFERENCE, HE IS WORTH
APPROACHING AGAIN. BHOI MAINTAINED HE WAS VERY FAMILIAR WITH
CDN ARGUMENT AND KNEW MR WERSHOF QUITE WELL. HE NOTED HE
UNDERSTOOD CDN CASE BUT WHAT APPEARED TO BE WEIGHING
AGAINST HIS SUPPORTING OUR POSITION WAS THAT MOST FEDERAL
STATES AT CONFERENCE IN VIENNA WERE NOT/NOT, HE CLAIMED,
AGAINST INCLUSION OF PARA2. WE REITERATED ARGUMENT THAT
CDN CONSTITUTION DOES NOT/NOT STIPULATE TREATY MAKING
POWERS AND THAT CONSTITUTIONAL AUTHORITY TO CONCLUDE TREATIES
IS PART OF ROYAL PREROGATIVE WHICH HAS UNMISTAKABLY
DEVOLVED UPON FEDERAL EXECUTIVE.

5. AT END OF THREE QUARTER HOUR MTG, WHICH WAS FRIENDLY

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PAGE THREE 1079 CONF D

AND FRANK, BHOI SAID HE WOULD APPRECIATE RECEIVING MORE BACKGROUND ON CDAS POSITION ON PARA2 AS THE AIDEMEMOIRE WAS QUOTE RATHER NARROW UNQUOTE. WE REFERRED TO CHAPTER II OF FEDERALISM AND INTERNATL RELATIONS WHICH WE HAD LEFT HIM EARLIER. HE SAID HE WAS FAMILIAR WITH THIS DOCU BUT WOULD PREFER AIDEMEMOIRE OR NOTE GIVING HIM SUCH BACKGROUND, EVEN IF IT IS A COPY OF CHAPTER II. HE ALSO WANTED QUOTE DEFINITE STATEMENT UNQUOTE OF WHAT DANGERS TO IT CDA SEES IF ARTICLE 5 WITH PARA2 INCLUDED IS ADOPTED. WE THINK IT POSSIBLE IF FURTHER INFO GIVEN HIM, EVEN A NOTE CONTAINING THE MAIN POINTS OUTLINED IN CHAPTER II, HE MIGHT BE ABLE TO PERSUADE OTHERS IN KENYA GOVT TO AGREE AT LEAST TO ABSTAIN ON VOTE ON ARTICLE 5.

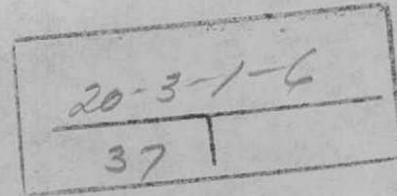
6. GRATEFUL FOR AUTHORITY TO REPRODUCE MAIN POINTS OF CHAPTER II IN NOTE OR AIDEMEMOIRE AND FOR ADVICE ON WHETHER YOU WISH TO BE MORE SPECIFIC ON DANGERS TO CDA IF PARA2 ADOPTED. BHOI SAID YOUR REPLY WOULD BE TREATED WITH ABSOLUTE CONFIDENCE. HE IS OBVIOUSLY AWARE OF DIFFICULTIES WITH QUEBEC NOT/NOT ONLY FROM OUR REPRESENTATIONS BUT ALSO BECAUSE HE HAS VISITED HIS BROTHER, A MEDICAL DOCTOR, WHO EMIGRATED TO MTL.

7. GRATEFUL FOR EXTRA COPIES OF FEDERALISM AND INTERNATL RELATIONS AND ANY DOCUS ISSUED AT END OF VIENNA CONFERENCE SUMMARIZING VARIOUS LEGAL POSITIONS COUNTRIES TOOK ON ARTICLES.

sent by air 20/12/68
[Signature]

separate note - separate questions

File
Diary
Div. Diary



OTTAWA, December 20, 1968

Mr. Max H. Wershof, Q.C.,
C/O Mr. S. Caplan,
371 Hinton,
OTTAWA.

Dear Mr. Wershof,

Many thanks for your telegram. You will doubtless be interested (though hardly surprised) to learn that the Minister has approved Mr. Cadieux's recommendation that you be Head of the Canadian Delegation to the second session of the Law of Treaties conference. The Minister has also approved a proposal that the Delegation consist of, in addition to yourself, two officers for the entire period of the second session and a third officer who would be present for the first half of the session, i.e. until the Plenary vote on Article 5.

It is anticipated that Mr. Beesley will be the officer present for the first half of the Conference, that I will be one of the officers present for the full session and that Mr. Robertson or Mr. Lapointe will be the other officer present for the full session. I should mention, however, that my participation in this exercise has become subject to some uncertainty because of additional duties which have been assigned to me in the field of constitutional revision. Needless to say, I shall be most disappointed if my new duties should prevent me from taking part in the final and crucial stage of this exercise in the codification of the law of treaties, in which we have both become so deeply involved.

Whatever may be the final decision on my participation in the Conference itself, I do not expect my new duties to interfere with my participation in the preliminary consultation among Western European representatives which is scheduled to take place in London and Paris during the week of February 3rd. As you know, my participation with you in similar meetings prior to the first session provided the basis for the preparation of instructions for the Delegation at the first session and I expect the same will be true of the meetings prior to the second session.

- 2 -

There have been few new developments in respect of our efforts to obtain support on Article 5(2). We have not yet heard from a large number of posts. I have not been pressing them for replies because I realize that many foreign office legal people have been occupied with the work of the General Assembly. I propose, however, to write again very early in the New Year to all those posts from whom we have not yet received replies.

I understand Ambassador Kearney has sent to you a copy of the proposed U.S. Article 62 big on the settlement of disputes. On December 16th Rufus Smith of the U.S. Embassy here left with the Under-Secretary a Note requesting Canadian comments on the U.S. draft Article and also asking whether Canada would agree to co-sponsor the proposed Article. Because our views on the issue of disputes settlement coincide very much with those of the Americans, I expect that we shall be supporting them in this initiative. I have not yet drafted a reply to the U.S. Note, however, and I would welcome any observations which you may have on the U.S. proposal.

Mr. Deesley has suggested that we might take advantage of your presence in Canada over the holiday period to hold consultations on the Law of Treaties. While I would be reluctant to do anything which would interfere with the limited time you have available to spend with your son during this period, should you have time free for even a few hours' consultations you may wish to let me know and I will discuss the matter further with Messrs. Bissonnette and Deesley.

Best personal regards.

J. S. STANFORD

J.S. Stanford.

O/SSBA
O/USSEA
Parl. Secy.
Press Office
F
D
Div. Diary

For translation into French

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information

File

20-3-1-6
37

OTTAWA,

Excellency,

I have the honour to refer to the United Nations Conference on the Law of Treaties, the second session of which is to begin in April 1969. In particular I refer to Article 5 of the proposed Convention to be adopted by that Conference.

The second paragraph of Article 5 refers to treaty making by members of a Federal State. The Canadian Government has given careful consideration to this paragraph and has concluded that its incorporation in the proposed Convention would be undesirable from the viewpoint of both law and policy. The Canadian Chargé d'Affaires a.i. in Quito, Mr. G. C. Cook, has informed officials of your Ministry in detail of the reasons which lead Canada to oppose this provision. I shall not repeat these reasons except to say that Canada's basic objection to the proposed paragraph is that it will require States to interpret for themselves the internal constitutions of other Federal States. Canada's concern over this paragraph is shared by many Federal States.

Mr. Cook has transmitted to officials of your Ministry Canada's request for the support of the Government of Ecuador for the deletion of the paragraph in question from the proposed Convention. I am taking the liberty of writing to you in this connection, however, to inform you personally of my Government's request and of the importance which my Government attaches to this question. My Government would be most appreciative of the support of the Government of Ecuador in this matter.

In Mr. Cook's discussions with officials of your Ministry concerning the proposed Convention, reference has been made to draft Article 49 which provides that treaties procured by the threat or use

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Excellentsimo Senor don
Rogelio Valdivieso Eguiguren
Ministro de Relaciones Exteriores
QUITO, Ecuador

- 2 -

of force are void. As the Canadian representative stated at the first session of the conference, Canada strongly opposes the threat or use of force, except in accordance with the Charter of the United Nations, to secure the consent of a State to a treaty. The Canadian representative also noted, however, that these and other articles on the invalidity of treaties should be accompanied by a provision for the impartial settlement of disputes arising from their application. It is the earnest hope of the Canadian Government that the Convention adopted at the forthcoming conference will include satisfactory provisions for the impartial settlement of disputes, thus enabling Canada to support the inclusion of articles concerning the invalidity of treaties, including an article dealing with the use of force.

Translation Service - please add appropriate Spanish
complimentary closing paragraph

Yours sincerely,

(for signature by SNEA)

OTTAWA,
20 de diciembre de 1968

Excelentísimo Señor:

Tengo el honor de referirme a la Conferencia de las Naciones Unidas sobre Derecho de Tratados, cuya segunda sesión comenzará en abril de 1969. En particular quiero referirme al Artículo 5 del Convenio propuesto para su adopción por dicha Conferencia.

El párrafo segundo del Artículo 5 se refiere a la preparación de tratados por los miembros de un Estado federal. El Gobierno canadiense ha estudiado meticulosamente este párrafo y ha llegado a la conclusión que su incorporación en el Convenio propuesto sería indeseable desde el punto de vista legal y de política. El Encargado de Asuntos a.i. canadiense en Quito, Sr. G.C. Cook, ha informado en detalle a los funcionarios del Ministerio a su cargo las razones que han conducido a Canadá a oponerse a esta disposición. No deseo repetir estas razones, excepto para mencionar que la objeción básica de Canadá al párrafo propuesto es que ello llamaría a los Estados a interpretar las constituciones internas de otros Estados federales. La preocupación de Canadá sobre este párrafo es compartida por muchos Estados federales.

El Sr. Cook ha transmitido a los funcionarios del Ministerio a su cargo la petición de Canadá del apoyo del Gobierno del Ecuador en la supresión del párrafo en cuestión del propuesto Convenio. Sin embargo, me estoy tomando la libertad de informarle personalmente sobre la petición de mi Gobierno en este sentido y la importancia que mi Gobierno da a este punto. Mi Gobierno agradecería grandemente el apoyo prestado por el Gobierno del Ecuador en este asunto.

En las conversaciones del Sr. Cook con funcionarios del Ministerio a su cargo sobre el propuesto Convenio se hizo referencia a la redacción preliminar del Artículo 49 que regula la nulidad de tratados obtenidos mediante amenazas o el uso de fuerza. Como el representante canadiense manifestó en la primera sesión de la Conferencia, Canadá se opone fuertemente al uso de amenazas o fuerza para conseguir el consentimiento de un Estado a la firma de un tratado excepto cuando estuviese de conformidad con la Carta de las Naciones Unidas. Sin embargo, el representante canadiense hizo notar también que estos artículos y otros que tratan de la invalidez de tratados debe-

- 2 -

rían estar acompañados de una disposición para la solución imparcial de disputas que surjan de su aplicación. El Gobierno canadiense tiene grandes esperanzas en que el Convenio adoptado en la conferencia venidera incluye disposiciones satisfactorias para la solución imparcial de disputas, permitiendo así a Canadá apoyar la inclusión de artículos relacionados con la invalidez de tratados, incluyendo el artículo que trata del uso de fuerza.

Aprovecho esta oportunidad para reiterar a V.E. los sentimientos de mi mayor consideración y estima.

ORIGINAL SIGNED BY
MITCHELL SHARP

Ministro de Asuntos Exteriores
(Secretary of State for External Affairs)

Excelentísimo Señor don
Rogelio Valdivieso Eguiguren
Ministro de Relaciones Exteriores
Quito, Ecuador

J. A. BEEBY TO: *M. Dwyer*
FROM REGISTRY

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES JAN 6 1969

FILE CHARGED OUT

TO: *M. Dwyer* 27-100

TO
A Under Secretary of State for External Affairs

SECURITY
Sécurité CONFIDENTIAL

FROM
De Canadian Embassy, Santo Domingo, D.R.

DATE Dec. 19, 1968

REFERENCE
Référence Our Telegram # 260 of Dec. 19, 1968
Our Letter # 390 of Sept. 25, 1968

NUMBER
Numéro 574

SUBJECT
Sujet Law of Treaties Conference

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
37	20-3-CDA

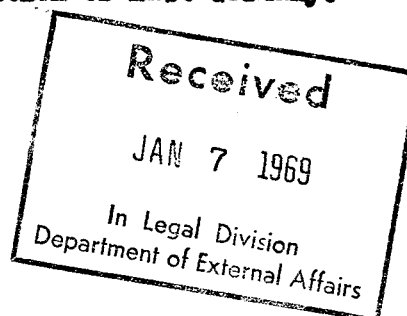
ENCLOSURES
Annexes

DISTRIBUTION
cc Caracus

Every few weeks since my original call on the Head of the Division for UN and OAS affairs, Ambassador Nicolas Silfa, I have nudged him gently by telephone for a definitive informal response to the representations concerning Article 5 of the draft Convention on the Law of Treaties I had made on Sept. 25. On November 22 I wrote him a personal note, enclosing a copy of the White Paper "Federalism and International Relations", in which he had previously expressed an interest, and reiterating our interest in an early response. In acknowledging my letter on Dec. 5, Ambassador Silfa suggested that I write a formal note to the Minister covering the whole matter. I telephoned him immediately to explain that my instructions were to take the matter up informally and that there was nothing I could add to the Aide Memoire and my personal letter to him of September 26. He suggested a call on the Minister to which I agreed, although it shouldn't have been necessary. However, it appeared we were getting nowhere by the approach suggested in your letter No. L-737 (M) of Sept. 10, 1968.

I called on the Minister this morning and made a capsule presentation of our "case", the significance of which he appeared to grasp readily. He called in his senior legal advisor and told him he "agreed completely" with our position and asked him to see that the Dominican delegate was instructed accordingly. I subsequently spent a half-hour with the latter to make sure he understood our wishes regarding procedural voting and opposition to Article 5 as a whole, if it should come to that. He promised to include specific instructions on all the points made. After my experience with Ambassador Silfa, I propose to follow up periodically until assured that these instructions have actually be sent.

Incidentally, the Minister mentioned that the Dominican vote against paragraph two at the first session had been due to considerations with respect to recognition of East Germany.



A.D. Ross
A.D. Ross
Charge d'Affaires a.i.

EXTERNAL AFFAIRS



AFFAIRES EXTERIEURES

JAN 8 1969

FILE CHARGED OUT

CONFIDENTIAL

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Sécurité

DATE

December 19, 1968

NUMBER
Numéro

562

FILE	DOSSIER
OTTAWA	
20-3-1-C	
MISSION	20-4
37	

TO
AThe Under-Secretary of State
for External Affairs, Ottawa.FROM
De

The Canadian Embassy, The Hague.

REFERENCE
RéférenceYour letter L-917 October 10 and our
Letter 525 November 29, 1968.SUBJECT
Sujet

Law of Treaties Conference.

ENCLOSURES
Annexes

DISTRIBUTION

We saw Professor Riphagen yesterday following his return from Strasbourg, and conveyed to him the personal regards of Mr. Beesley as well as expressing your thanks for the encouraging attitude Professor Riphagen had indicated earlier, as a result of our representations concerning Article 5 of the draft Convention.

2. We went on to outline the Canadian position regarding an Article providing for the compulsory settlement of disputes over the invalidity and termination of treaties, and asked whether the thirteen-power proposal had attracted much support from African and Asian countries. Professor Riphagen said that so far there had not been much evidence of support for it but, on the other hand, very little had been done to elicit support. Recently, however, he had personally spoken to a senior official from Thailand and had interested the latter in the proposal. Professor Riphagen went on to say that he hoped Canada might be able to lobby on behalf of the thirteen-power proposal, to which we replied as instructed in paragraph 4 of your letter under reference. Professor Riphagen grasped the point and welcomed this indication of our position. He said that the U.S.A. had not pursued its proposal and that the letter which had been prepared in Washington D.C., intended for all the heads of delegations, had not, in fact, been sent. He continued that the U.N. Secretariat had produced working papers on this subject, one of which resembled very much the American proposal. (The Secretariat papers have only been shown to the four great powers, but the officer dealing with legal matters in the Dutch mission in New York had managed to obtain a copy on an unofficial basis). Professor Riphagen was glad, he said, that the American proposal had been shelved, and hoped that the Secretariat's work in this area might advance matters. He intends to pursue the subject in January, and said he would call us in when he had any further information.

3. Finally, we learned that the hearing by the International Court of the Barcelona Traction case has been delayed, and it now appears definite that Professor Riphagen will be unable to head the Dutch delegation to the forthcoming Vienna Conference.

D. K. Beesley
Embassy.

JAN 9 1969

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

The Under-Secretary of State
for External Affairs, Ottawa.

CONFIDENTIAL

TO
A

SECURITY
Sécurité

December 19, 1968

FROM
De

DATE

REFERENCE
Référence

The Canadian Embassy, The Hague.

NUMBER
Numéro

562

Your letter L-917 October 10 and our
Letter 525 November 29, 1968.

SUBJECT
Sujet

Law of Treaties Conference.

FILE	DOSSIER
OTTAWA	
MISSION	20-4

ENCLOSURES
Annexes

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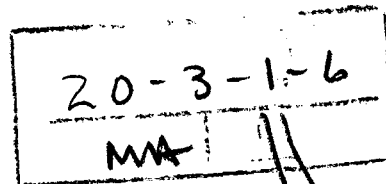
Embassy.

Leahanne Stanford
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9/27/12

File

FM SDMG0 DEC19/68 CONFD
TO EXTER 260 PRIORITY
REF OURLET 390 SEP25
LAW TREATY CONFERENCE

RECEIVED VERBAL ASSURANCE TODAY FROM MINISTER AND HEAD OF LEGAL DIV
MFA COMPLETE SUPPORT OF CDN POSITION ARTICLE 5 AND THAT SPECIFIC
INSTRUCTIONS TO THIS EFFECT WOULD BE PREPARED FOR DOMINICAN DEL.



12.19.12.

M. D. C. BITHORNE

ACTION COPY

memo BOUSSEA 24/12

Feb 20-3-1-6 27/12

20-3-1-6

file

FM PARIS DEC19/68 CONFD

TO EXTER 4678 PRIORITY

INFO BRU LDN WSHDC PRMNY TT COPEN DE HAGUE

REF NOTRETEL 4613 DEC13

CONFERENCE SUR LE DROIT DES TRAITES

RENTRE HIER DUN VOYAGE A LEETRANGER, GOLSONG DU SERVICE JURIDIQUE
DU CONSEIL DE LEUROPE NOUS APPRENAIT QUUNE LETTRE SERA ENVOYEE
CES JOURS-CI INVITANT LES GOVTS INTERESSES A SE FAIRE REPRESENTER
A UNE REUNION DU GROUPE OCCIDENTAL QUI AURA LIEU A PARIS LES 6
ET 7 FEVRIER PROCHAIN. LA REUNION POURRAIT ETRE PROLONGEE AU
BESOIN DUNE JOURNEE.

2. IL SEMBLE QUE GOLSONG AGIRA ENCORE UNE FOIS COMME SECRETAIRE
LORS DE CETTE REUNION DU GROUPE OCCIDENTAL. LA DOCUMENTATION POUR
LA REUNION EST DEJA EN VOIE DE PREPARATION ET CEST AINSI QUE,
SELON GOLSONG, LES AMERICAINS ONT DEJA SOUMIS DES DOCUMENTS DE TRAVAIL
POUR FINS DE DISCUSSION. LES AUTRES PAYS MEMBRES SONT INVITES
A EN FAIRE AUTANT ET LE SECRETARIAT JURIDIQUE DU CONSEIL DE LEUROPE
SE FERA UN PLAISIR DENVOYER AUX PAYS INTERESSES TOUTE PROPOSITION
OU SUGGESTION QUE LE CDA VOUDRAIT PRESENTER A LA REUNION DE FEVRIER.

20/19/12

Legal Division / L.S. Clerk / on

File ✓
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
A Commonwealth Division.

FROM
De Legal Division.

REFERENCE
Référence Cornett-Clark Telephone Conversation of Dec. 18.

SUBJECT
Sujet Commonwealth Prime Ministers' Meeting - Problems of Land-Locked Member Countries.

SECURITY RESTRICTED
Sécurité

DATE December 19, 1968.

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	37

ENCLOSURES
Annexes

DISTRIBUTION

You asked for our comments on the above item which is referred to in the annotated Provisional Agenda for the Commonwealth Prime Ministers' Meeting, especially with respect to the United Nations Convention relating to land-locked countries.

2. On February 10, 1965 the United Nations General Assembly decided to convene an international conference to consider the question of transit trade of land-locked countries and to embody the results in an International Convention. This decision was taken in pursuance of a resolution adopted by the first UNCTAD at Geneva in June 1964. The United Nations Conference took place in New York from June 7 to July 8, 1965. Representatives of 58 states were present at the meeting, including those of the following nine Commonwealth countries: India, Kenya, Malawi, Nigeria, Pakistan, Uganda, United Kingdom, Tanzania and Zambia. Among the 11 governments which designated observers to the Conference were those of Commonwealth members Australia and Ghana. Canada did not take part in the Conference in any way.

3. On the basis of its deliberations the Conference prepared a Convention on Transit Trade of Land-locked States which was adopted on July 8, 1965 and opened for ratification and accession by all members of the United Nations, or of any of the specialized agencies, or parties to the Statute of the International Court of Justice and by any other state invited by the United Nations General Assembly to become a party. To date the Convention has been ratified or acceded to by 42 states; Canada is not among them. The Convention came into force on June 9, 1967.

M. D. COPITHORNE

Legal Division.

feb 20-3-1-6
37

CONFIDENTIAL

December 16, 1968

MEMORANDUM FOR THE MINISTER

Law of Treaties - Federal States Article

Ecuador is one of approximately seventy states whose support we are seeking for the deletion of the federal states article from the draft Convention on the Law of Treaties to be adopted in May of 1969.

At the first session of the treaties conference, Ecuador voted to retain the federal states article. However our Chargé d'Affaires in Quito informs us that, as a result of the representations he has made, officials in the Ecuador Foreign Ministry have come around to the view that the federal states article should be deleted. A senior legal adviser in the Ecuadorian Foreign Ministry has informed our Chargé that Canada's request for Ecuador's support on this issue would be greatly strengthened if you were to write direct to the Foreign Minister of Ecuador concerning this issue and that, in the absence of such a letter, our chances of obtaining Ecuador's support are poor. The significance of this issue to Canada would appear to justify a personal letter from you to the Foreign Minister of Ecuador.

Ecuador is known to attach importance to the adoption of an article declaring that treaties concluded by the threat or use of force are void. This is related to a territorial dispute between Ecuador and Peru. Any request to Ecuador for support on the federal states article should therefore be accompanied by some reference to Canada's position on the use of force article.

-- Attached for your signature, if you approve, is a letter from you to the Foreign Minister of Ecuador requesting Ecuador's support for the deletion of the federal states article and expressing Canada's

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18-12: 57(11.5) Q&M

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- 2 -

CONFIDENTIAL

approval in principle of an article on the use of force, subject to acceptance of a satisfactory procedure for the settlement of disputes arising from the application of that article.

-- The letter to Senor Valdivieso Eguiguren has been prepared in Spanish. The English text of the letter is attached, however, for your information.



M.C.

Legal Div./J.S.Stanford/ss

O/SSEA
O/USSEA
Parl. Secy.
Press Office
Latin American Div.
File ✓
Diary
Div. Diary

File - 20-3-1-6
(Through Legal Adviser & Latin American Div.)

CONFIDENTIAL

December 16, 1968

MEMORANDUM FOR THE MINISTER

Law of Treaties - Federal States Article

Ecuador is one of approximately seventy states whose support we are seeking for the deletion of the federal states article from the draft Convention on the Law of Treaties to be adopted in May of 1969.

At the first session of the treaties conference, Ecuador voted to retain the federal states article. However our Chargé d'Affaires in Quito informs us that, as a result of the representations he has made, officials in the Ecuador Foreign Ministry have come around to the view that the federal states article should be deleted. A senior legal adviser in the Ecuadorian Foreign Ministry has informed our Chargé that Canada's request for Ecuador's support on this issue would be greatly strengthened if you were to write direct to the Foreign Minister of Ecuador concerning this issue and that, in the absence of such a letter, our chances of obtaining Ecuador's support are poor. The significance of this issue to Canada would appear to justify a personal letter from you to the Foreign Minister of Ecuador.

Ecuador is known to attach importance to the adoption of an article declaring that treaties concluded by the threat or use of force are void. This is related to a territorial dispute between Ecuador and Peru. Any request to Ecuador for support on the federal states article should therefore be accompanied by some reference to Canada's position on the use of force article.

Attached for your signature, if you approve, is a letter from you to the Foreign Minister of Ecuador requesting Ecuador's support for the deletion of the federal states article and expressing Canada's

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- 2 -

CONFIDENTIAL

approval in principle of an article on the use of force, subject to acceptance of a satisfactory procedure for the settlement of disputes arising from the application of that article.

-- The letter to Senor Valdivieso Eguiguren has been prepared in Spanish. The English text of the letter is attached, however, for your information.

M CADIEUX

H.C.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

File ✓
Diary
Div. Diary

MEMORANDUM

TO
À Commonwealth Division.

FROM
De Legal Division.

REFERENCE
Référence Cornett - Clark Telephone Conversation,
December 13, 1968.

SUBJECT
Sujet Paragraph on Commonwealth Secretariat Legal
Section for Prime Minister's Advance Briefing Notes.

SECURITY
Sécurité CONFIDENTIAL

DATE December 16, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	37

ENCLOSURES
Annexes

1

DISTRIBUTION

...

As you requested we are forwarding herewith, as set out below, a summary of our submission on the item Establishment of a Legal Section in the Commonwealth Secretariat which was prepared for the Commonwealth Prime Ministers' Meeting brief.

2. The original proposal for a Commonwealth Secretariat Legal Section had in mind a modest, pragmatically limited, legal liaison office between Commonwealth governments to be located in Marlborough House and costing only some \$57,000. per year of which Canada's share would be about \$11,200. This was generally acceptable to us. We are not however enthusiastic about the new concept, which envisages semi-automatic evolution into a more autonomous Law Institution "with a prestige and vitality of its own", and initially costing nearly twice as much. We would like to ensure that the Legal Section does not duplicate any of the present or planned functions of any other Commonwealth legal institutions. We would also want to keep the operation of the Section under review so that its development would depend on recognized success in each stage of its activities, proven need for expansion and general agreement among Commonwealth countries that growth was justified. The terms of reference of the Legal Section should clearly identify its limited nature and separate those activities which might be undertaken in the future from those of direct concern at the present time.

M. D. COPITHORNE

Legal Division.

M. D. C.

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UN CONFERENCE LAW OF TREATIES SECOND SESSION.

CONFIRMED

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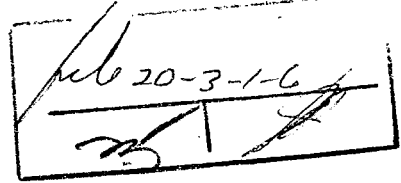
NNNN

VVVVVV

7/17/12

Stanford

16 Dec 68



No. 481

The Government of the United States has been reviewing the results of the first session of the United Nations Conference on the Law of Treaties which was held in Vienna from March 26 to May 24, 1968. The work of the first session, in the view of the Government of the United States, resulted in a draft Convention that could constitute a notable contribution to the development of international law.

For the Convention to achieve this end, it must win general acceptance among States. Despite its many admirable aspects there is considerable doubt whether, in its present form, the Convention will be acceptable to a substantial number of States.

This doubt stems from the fact that the draft articles which make up Part V on the Invalidity, Termination and Suspension of the Operation of Treaties provide a wide variety of grounds which a State may invoke for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation. For some of these individual grounds there is little State practice or precedent and, as drafted, they provide inadequate and imprecise guidelines for their invocation. There are no provisions in the Convention as drafted which provide

16.12.15/05) 21.16.12 (hepal)

real protection against a party which misuses these grounds.

There are thirteen articles in Part V under which unilateral claims of invalidity, termination and the like may be made and in which the broadly stated grounds for claiming release from treaty obligations if misused could give rise to bitter disputes between States. Because these articles are susceptible to abuse by a State which is unjustifiably seeking to escape from its obligations under a treaty and because there are no reliable safeguards against abuse there can be no doubt that quarrels of a serious nature and disrespect for treaty obligations may result.

The Government of the United States is certain that the Government of Canada is equally concerned with the threats to international peace and stable treaty relations that abuse of these articles may raise. The danger of a threat to the peace is especially acute if treaties which establish a boundary or territorial rights are involved.

The Government of the United States believes that the essential means of dealing with this problem is the adoption of an adequate procedure for the settlement of disputes regarding the invalidity, termination and suspension of treaties.

Decision on this question was postponed at the first session of the Conference and a number of pending amendments, for the inclusion of an Article 62 bis, are to be taken up at the outset of

the second session. The new Article 62 bis contained in Conference document A/Conf./39/C.1/L.352/Rev.2 which was sponsored by the following thirteen States, Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia, contains conciliation and arbitration procedure for dealing with disputes which may arise under Part V of the draft Convention that would provide substantial protection against abuse. The Government of the United States intends to support such a proposal at the second session and trusts that the Government of Canada has the same intention.

There are a few points on which the United States considers the amendment could be improved. Most of these are concerned with ensuring that the mechanics of the procedure operate satisfactorily. These are reflected in the proposed revision of the thirteen-State Article 62 bis which is attached. The most substantial changes proposed are the following:

a. The duties of the Secretary General of the United Nations are spelled out in more detail.

b. The original proposal was not designed to handle disputes over multilateral treaties. Special provision has been made for this purpose.

c. Time periods have been made more precise to speed up the procedures.

d. A provision allowing a Conciliation Commission to make interim reports and recommendations to avoid injury to any party pending settlement has been included.

e. The time periods for selection of the arbitral tribunal have been substantially reduced.

Two proposals for additional changes in the thirteen-nation amendment were put forward in Vienna which, while not included in the United States revision, have substantial merit and deserve further consideration. The first proposal is for the election of a small body of conciliators by the General Assembly, who would comprise the United Nations Conciliators for Treaty Disputes. The Chairman and non-national members of each five or seven-member Conciliation Commission would be selected from this group. One of the earlier 62 bis amendments was based on this principle and there is much to recommend it.

The most important advantage would be the interpretation and development of the complex legal concepts contained in the Treaties Convention in an orderly and integrated manner. Achievement of this goal which seems of prime importance to the effective implementation of the Treaties Convention is unlikely when the Conciliation Commissions lack any continuity, which will be the result under the present draft 62 bis. An increase in overall efficiency of operation would be a second and important advantage.

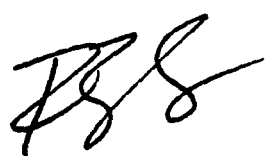
The second proposal is to permit a Conciliation Commission, with the consent of the parties to the proceeding, to seek an advisory opinion of the International Court of Justice when the proceeding involves a fundamental legal issue. A claim of

invalidity, for example, on the ground of "jus cogens" is a question on which the advice of the principal judicial organ of the U.N. should be sought. By making the request subject to the consent of the parties, the position of States which are opposed to reliance upon Court proceedings would be protected while States which agreed on the desirability of a judicial opinion would be in a position to obtain one.

The Government of the United States hopes that it will be possible to secure agreement upon a draft Article 62 bis among the many States which recognize the need for an adequate disputes-settlement procedure and that all such States will join in co-sponsoring such an amendment. Accordingly, it requests the Government of Canada to ¹review the attached revision, and also ²to consider whether further revision to establish a small body of conciliators and to permit requests for advisory opinions to the International Court of Justice should be permitted.

The Government of the United States would appreciate receiving any suggestions or comments which the Government of Canada may wish to make regarding the suggested revisions of Article 62 bis and the two open questions on size and advisory opinions. The Government of the United States hopes that through an exchange of views a generally acceptable disputes-settlement procedure can be worked out

which the Government of Canada would be prepared to
co-sponsor at the second session of the Conference.



Enclosures:

1. Article 62 bis
(U.S. revision)
2. Copy of United
Nations document
A/CONF.39/C.1/L.352/Rev.2
(New article 62 bis)

Embassy of the United States of America,
Ottawa, December 16, 1968.

Enclosure 1

Article 62 bis* (U.S. revision) .

If the parties have been unable to agree, as provided in Article 62, upon any means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution which has been accepted by the parties within twelve months after such agreement, any party may set in motion the procedures specified in Annex I to the present Convention by submitting a request to the Secretary - General of the United Nations.

Annex I

(1) A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary - General of the United Nations. To this end each State Member of the United Nations and each party to the present Convention shall be invited to nominate two conciliators for a period of 5 years, which may be renewed.

(2) The Secretary-General shall send a copy of any request made pursuant to Article 62 bis to all parties to the treaty together with a notice of the date the request was received. The Secretary-General shall refer the dispute to a Conciliation Commission established as follows.

*Changes have generally been underlined. However rearrangements in the order of phrases and sentences and minor verbal changes have not been underlined.

(a) If the dispute concerns a bilateral treaty, each party shall appoint one conciliator of its own nationality chosen either from the list referred to in paragraph (1) above or from outside that list and one conciliator not of its own nationality chosen from the list. A fifth member, to serve as Chairman, shall be chosen from the list by majority vote of the other four members.

(b) If the dispute concerns a multilateral treaty, the party or parties on one side of the dispute shall appoint three conciliators of whom at least two must be selected from the list and no more than one of whom may be of the nationality of the party or parties on that side. The party or parties on the other side of the dispute shall appoint three conciliators in the same manner. A seventh member, to serve as Chairman, shall be chosen from the list by majority vote of the other six members.

The conciliators chosen by the parties shall be appointed within a period of ninety days after the receipt of the request by the Secretary General.

The conciliators shall appoint their Chairman within sixty days after all of their appointments are made.

If the appointment of any of the conciliators or of the Chairman has not been made within the above-mentioned periods, it shall be made by the

Secretary General within thirty days after the expiration of the applicable period.

Any of the periods within which appointments must be made may be extended by agreement of all of the parties to the dispute.

(3) The Commission thus constituted shall establish the facts, determine the issues and make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Any party to the treaty may make oral or written submissions to the Commission.

Decisions and recommendations of the Commission shall be taken by majority vote. The Secretary General shall provide the Commission with such assistance and facilities as it may require and shall prepare draft rules of procedure. The expenses of the Commission shall be borne by the United Nations in accordance with applicable regulations of the United Nations.

(4) The Commission at the request of a party to the dispute may consider whether the circumstances of the dispute justify provisional measures to preserve the respective rights of the parties and may make interim reports containing recommendations for this purpose.

The Commission shall be required to report within twelve months of the selection of its chairman. Its reports, which shall contain its conclusions regarding the facts and the issues as well as its recommendations for settlement of the dispute, shall be transmitted to the Secretary General and to the parties.

(5) In the event the parties do not agree to accept the recommendations of the conciliation commission within six months from the date of the commission's report and have not agreed within that period to a means of judicial settlement or to an extension of the six-month period, any party to the dispute may request the Secretary General to refer the dispute to arbitration.

The Secretary General shall refer the dispute to an arbitral tribunal of three members. One arbitrator shall be appointed by the party or parties on each side of the dispute. The third member, who shall serve as Chairman, shall be appointed by the other two members.

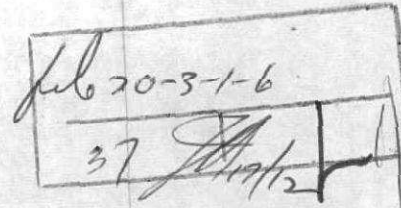
The arbitrators shall be appointed within a period of sixty days from the date of the request to the Secretary General. The Chairman shall be appointed within a period of sixty days from the date of the appointment of the arbitrators by the parties. If the chairman or any of the arbitrators are not appointed within the above-mentioned periods, the appointments shall be made by the Secretary General of the United Nations within thirty days of the expiration of the appropriate applicable period. A vacancy shall be filled in the manner specified for the original appointment.

The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by a majority vote. The award shall be binding and definitive.

To the extent the tribunal fails to establish
rules of procedure the pertinent provisions of
Chapter III of Part IV of the Hague Convention for
Pacific Settlement of Disputes (1907) shall apply.

The Secretary General shall provide the arbitral
tribunal with such assistance and facilities as it
may require. The expenses of the arbitral tribunal
shall be borne by the United Nations, in accordance
with applicable regulations of the United Nations.

Seigney, Seigney
ACTION COPY



FM COPEN DEC13/68 RESTR NO/NO STANDARD
TO TT EXTER 546 DE HAGUE
LEGAL DIV DE WERSHOF

LAW OF TREATIES CONFERENCE; DATES OF PRELIMINARY WEO MTG IN PARIS
ALTHOUGH FCO LDN SEEMS SURE THAT PARIS MTG WILL BE FEB6-7 I SUGGEST
BEST PERSONS TO CONFIRM THIS WOULD BE DR GOLSONG OF COUNCIL OF
EUROPE LEGAL SECRETARIAT OR DE BRESSON (OR HIS SUCCESSOR) HEAD OF
LEGAL DIV OF FRENCH MFA. STANFORD WILL RECALL THAT FEB/68 MTG WAS
HELD IN COUNCIL OF EUROPE OFFICES IN PARIS WITH DE BRESSON PRESIDING
AND GOLSONG AS SECRETARY. YOU MAY WISH TO GIVE EMB PARIS EXPRESS
INSTRUCTIONS ON THESE LINES.

retransmitted to Lda Paris 16/12

7.13.12

RETURN TO LEGAL DIV. DCO

File ✓
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO A Commonwealth Division (Through Mr. Bissonnette)

FROM De Mr. L.S. Clark

REFERENCE Your Memorandum of November 25, 1968.
Référence

SUBJECT Commonwealth PMS' Meeting - Briefing Material.
Sujet

SECURITY CONFIDENTIAL
Sécurité

DATE December 13, 1968.

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
37	

ENCLOSURES
Annexes

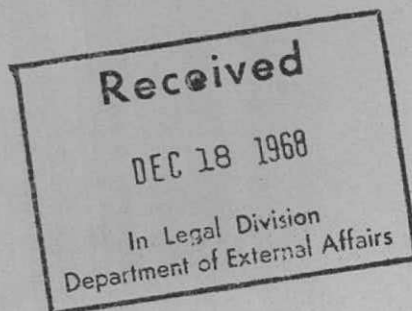
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DISTRIBUTION

Attached, as requested, is our briefing paper on
the Establishment of a Legal Section in the Commonwealth Sec-
retariat.

J. A. BEESLEY

Legal Division.



CONFIDENTIAL

December 13, 1968

Commonwealth Prime Ministers' Meeting
London, January 7 - 15, 1969

ESTABLISHMENT OF A LEGAL SECTION IN
THE COMMONWEALTH SECRETARIAT

The British proposal to establish a Legal Section refers to the origin of this idea at the Second Commonwealth and Empire Law Conference in Australia in 1965, the discussion of it by the Commonwealth Law Ministers in London in 1966 and its subsequent consideration at the Prime Ministers' Conference later that same year. The British paper sets out the background on the subject, gives an estimate of the probable costs and provides views on the possible development of the Legal Section in future years.

We are somewhat disturbed to note that what was originally proposed as a rather modest and pragmatically limited Section of the Secretariat, to be located in Marlborough House and to cost approximately £22,000 is now presented as a formulation for a semi-autonomous Law Institute "with a prestige and vitality of its own" costing initially some £40,000 a year of which Canada's share would be some £5,000 or nearly \$20,000.00.

While not wishing to preclude the possibility of a Legal Section developing eventually into a more prestigious and promotional Commonwealth body, we would want to ensure that such transformation would not be semi-automatic. In our view, such a development should depend on recognized success at each stage or level of the Section's activities, proven need for further expansion and a general willingness among Commonwealth countries to approve a pattern of growth on the basis of its practical value in relation to the probable increase in cost involved. We are sympathetic to the concept of using, wherever justifiable, such common legal institutions and systems as exist in the Commonwealth to promote and strengthen intra-Commonwealth relations and thereby the Commonwealth itself. However, we believe that all proposals should be considered realistically if only to attempt to ensure against their failure and the resulting possible harm to the Commonwealth generally.

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Great care will have to be exercised to avoid any unnecessary duplication of the present or planned activities of the Commonwealth Legal Advisory Service, the Conference on Legal Education and the proposed Commonwealth Legal Bureau with the functions and duties suggested for the Legal Section. This point was emphasized in the Report of the Committee of Officials to the 1966 Meeting of Commonwealth Law Ministers. These officials also agreed that the scope of a Legal Section should not be unlimited since too much might then be expected of it which would lead to a growth in staff with consequent increases in expense to Commonwealth Governments.

We would wish to see a clear statement identifying the limited nature of the Legal Section and a separation of those activities which may be undertaken by the Section in the future. These additional considerations would then have to depend on the continuing evidence of the value of the Legal Section in operation.

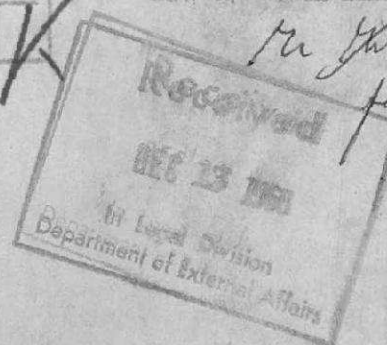
M. D. COPITHORNE

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20-3-1-6

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FROM: COMMONWEALTH DIVISION
DEPT. OF EXTERNAL AFFAIRS



FM CNBRA DEC13/68 CONF NO/NO STANDARD

TO EXTER 1646 PRIORITY

INFO WLCTN TT LDN DE OTT

COMWEL PMS MTG: REVIEW OF COMWEL COOPERATION

SENIOR OFFICIALS OF PMS DEPT AND DEA MTG THIS MORNING APPROVED

BRIEFING PAPERS ON COMWEL COOP PROPOSALS FOR INCLUSION IN

AUSTRALIAN BRIEF AS FOLLOWS: (A) YOUTH-PROPOSAL OF MINISTERIAL

CONFERENCE ON YOUTH PROBLEMS SHOULD NOT/NOT BE SUPPORTED AS IT IS

LIKELY TO BE UNPRODUCTIVE AND SELECTION OF APPROPRIATE AUSTRALIAN

REP WOULD BE DIFFICULT. PROPOSAL FOR YOUTH STUDIES BY COMWEL

SECRETARIAT SHOULD NOT/NOT BE SUPPORTED AS SECRETARIAT SEEMS

INAPPROPRIATE ORGAN FOR SUCH AN UNDERTAKING AND USEFUL RESULTS

APPEAR DOUBTFUL. (B) ENGLISH LANGUAGE TEACHING-EXPANSION OF ENGLISH

LANGUAGE TEACHING ON BILATERAL BASIS, PARTICULARLY IN SE ASIA UNDER

CLMBO PLAN OR THROUGH CELC SEEMS PREFERABLE TO NEW AND MORE CENTRAL-

IZED MULTILATERAL SCHEME. (C) INFO AND PUBLICITY-NO/NO CLEAR EVIDENCE

HAS YET EMERGED THAT PROPOSAL IS WORTHY OF SUPPORT. AGAIN AN ELABOR-

ATE CENTRALIZED INFO SCHEME HAS LITTLE TO OFFER AUSTRALIA. (D) BOOK

PROGRAM-SECRETARIAT PROPOSAL APPEARS TO DUPLICATE (IF NOT/NOT UPSTAGE)

WORK OF CELC ON LIBRARY EXCHANGES. CELC MIGHT BETTER BE ENCOURAGED TO

FORMULATE BROAD PROPOSAL FOR CONSIDERATION AT 1971 COMWEL EDUCATION

CONFERENCE. CONSIDERATION OF COSTLY SECRETARIAT BOOK SCHEME BY PMS

SEEMS PREMATURE. (E) LAW-EXCHANGES IN LEGAL EDUCATION FIELD MIGHT

BETTER BE LEFT TO INDIVIDUAL UNIVERSITIES OR COMWEL UNIV ASSN.

CONTINUED SUBSIDIZATION OF LEGAL ADVISORY SERVICE SEEMS REASONABLE

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PAGE TWO 1646 CONF

AS CURRENT AND PROSPECTIVE COSTS APPEAR MODEST. CREATION OF LEGAL
CELL WITHIN THE SECRETARIAT SEEMS UNNECESSARY ASSUMING LEGAL
ADVISORY SERVICE IS CONTINUED.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FROM REGISTRY

DEC 27 1968

FILE CHARGED OUT

TO: Mr. Stanford
RESTRICTED

TO Under-Secretary of State for External Affairs,
A OTTAWA.

FROM Canadian Embassy, ROME.
De

REFERENCE Our letter No. 836 of December 9 and your
Référence letter No. L-737(M) of September 10, 1968.

SUBJECT Law of Treaties Conference -- Article 5
Sujet

SECURITY
Sécurité

DATE December 12, 1968.

NUMBER
Numéro

848

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	MA 20-5-2-5

ENCLOSURES
Annexes

DISTRIBUTION

Cdn Ambassador,
Copenhagen.

We have been advised today by Dr. Adolfo Maresca, Head of the Legal Department of the Treaty Section of the Italian Foreign Ministry, that he is in complete agreement with the Canadian position on Article 5 of the draft Convention on the Law of Treaties. He will now submit his recommendations to the Foreign Ministry's General Directorate for Political Affairs and will give us a formal answer as soon as possible.

2. Dr. Maresca, who was the second-ranking member of the Italian delegation to the first session of the international conference, made a number of flattering remarks (beyond what is normal even by Italian standards) with respect to the expertise of Mr. Wershof, the Head of the Canadian delegation to the first session.

Leila C...

The Embassy

Received

DEC 30 1968

In Legal Division
Department of External Affairs

20-3-1-6
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December 12, 1968

MEMORANDUM FOR THE MINISTER

U.N. Conference on the Law of Treaties
Second Session - Canadian Delegation

As you know, the second session of the U.N. Conference on the Law of Treaties is to take place in Vienna from April 9 to May 21, 1969. In earlier memoranda to you in connection with this Conference, I have referred to the issue of the federal states Article, which is of particular concern to Canada and upon which you have authorized representations to a large number friendly governments, and to the issue of the peaceful settlement of disputes arising in connection with the invalidity and termination of treaties, which may be discussed at the forthcoming Commonwealth Prime Ministers' Conference. This memorandum requests your approval for the size and composition of the Canadian Delegation to the second session of this Conference.

2. During the nine-week first session of the Conference, earlier this year, it met in Committee of the Whole and dealt with almost 85 Articles. The second session, in contrast, will last only six weeks. The first two weeks will be devoted to further discussion in Committee of the Whole in an attempt to resolve particularly difficult issues, especially the question of the peaceful settlement of disputes. In the final four weeks the Conference will meet in Plenary session to review and either adopt or reject all Articles of the proposed Convention. It is expected that the vote on Article 5, which contains the paragraph on federal states, will take place during the third week of the Conference.

3. Our experience at the first session indicates that, under ordinary circumstances, a delegation of three officers is required. Certainly a delegation of at least this size would appear appropriate in view of the more intense pace of the second session. Moreover, the first three weeks of the second session will be particularly active for the Canadian delegation because, in addition to participating in general western efforts in Committee to secure satisfactory Articles on the settlement of disputes and other unresolved issues, the Canadian delegation will be required during this period to carry out very active lobbying on Article 5, the federal states Article.

- 2 -

4. I recommend therefore that the delegation be made up of at least three officers who would be present for the full six weeks, plus a fourth who would be present for the first half of the Conference, until the Plenary vote on Article 5.

5. If you agree with the foregoing, I recommend that Max H. Wershof, Q.C., former Assistant Under-Secretary and Legal Adviser and at present Canadian Ambassador to Denmark, who was Head of the Canadian Delegation to the first session of this Conference, be Head of Delegation for the second session. The remaining three members of the delegation would be drawn from officers of the Department in Ottawa and at our posts abroad who have experience in this subject.

6. I should be grateful to know whether you agree with the foregoing proposals. As the subject matter of this Conference falls entirely within the field of responsibility of the Department of External Affairs, it would not appear necessary to refer this matter to Cabinet for decision.



M.C.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

DEC 18 1968

FILE CHANGED OUT

TO:

TO
A The Under-Secretary of State for External Affairs,
OTTAWA.

SECURITY
Sécurité

UNCLASSIFIED

FROM
De The Canadian Embassy,
SAN JOSE.

DATE December 12th, 1968.

REFERENCE
Référence Our Letter No. 276 of September 28th

NUMBER
Numéro 360

SUBJECT
Sujet United Nations Law of Treaties - Second Session,
Vienna, April and May, 1969

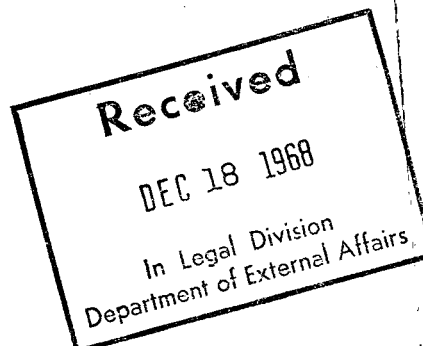
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OTTAWA	20 - 3 - 1 - C
MISSION	37

ENCLOSURES
Annexes

DISTRIBUTION

In your telegram No. L-683 of August 19th, 1968 you asked if we could determine whether Nicaragua, El Salvador and Panama intend to send representatives to the above conference. Nicaragua has replied in the affirmative. We have no definite replies from El Salvador and Panama and have written again to those countries.

S. Mac K.
The Embassy.



O/SSEA
O/USSEA
Parl. Sec.
P. & L. Div.

RESTRICTED

December 12, 1968

MEMORANDUM FOR THE MINISTER

20-3-1-6
37

U.N. Conference on the Law of Treaties
Second Session - Canadian Delegation

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M. CADIEUX

H.C.

ACTION COPY

J. A. BEELEY

20-3-1-6
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TO IT EXTER 545 DE HAGUE

LEGAL DIV DE WERSHOF

REF QUITO LET 181 NOV20

LAW OF TREATIES ARTICLES 5 AND 49

HAVE JUST RECEIVED REFLET WHICH SUGGESTS ECUADOR MIGHT HELP US ON ARTICLE 5 IF WE SHOW SYMPATHY FOR ECUADOR POSITION ON ARTICLE 49. I DO NOT/NOT KNOW WHICH PART OF THAT POSITION THEY MEAN. SEE THEIR LENGTHY SPEECH IN SUMMARY RECORD OF 48TH MTG.

2. FIRST POSSIBILITY IS THAT THEY MEAN AMENDMENT L27. CDA OPENLY AND STRONGLY OPPOSED THIS AND IT WAS NOT/NOT PRESSED TO A VOTE; INSTEAD THE CTTEE OF WHOLE APPROVED A DRAFT DECLARATION CONDEMNING USE OF ANY FORM OF PRESSURE IN TREATY NEGOTIATIONS. THIS WAS A COMPROMISE TO WHICH NO/NO ONE OBJECTED AND IT WOULD BE SURPRISING IF ECUADOR WISHES TO REOPEN ISSUE.

3. SECOND AND MORE LIKELY POSSIBILITY IS THAT THEY MEAN L289. CDA DID NOT/NOT SPEAK AGAINST IT BUT ABSTAINED IN ROLL-CALL VOTE. UK VOTED AGAINST WHILE FRANCE AND USA ABSTAINED. THIS AMENDMENT WAS ADOPTED AND INCORPORATED IN TEXT OF ARTICLE 49 WHICH CTTEE OF WHOLE LATER APPROVED UNANIMOUSLY. ALTHOUGH WE DID NOT/NOT LIKE L289 I DOUBT THAT CDA HAS ANY THOUGHT OF REOPENING THIS ISSUE.

4. ALTHOUGH SUCH BARGAINING IS DISTASTEFUL IT MAY BE THAT YOU COULD TELL ECUADOR THAT IN THE LIGHT OF THE DEBATE WE ACCEPT THEIR POSITION ON L289 AND ARE PREPARED TO VOTE IN PLENARY FOR ARTICLE 49 (AND OF COURSE FOR DRAFT DECLARATION) IN FORM APPROVED BY CTTEE OF WHOLE-SUBJ ONLY (SO FAR AS ARTICLE 49 IS CONCERNED) TO GENERAL CDN RESERVATION ON NEED FOR SATISFACTORY SETTLEMENT OF DISPUTES PROCEDURE RELATING TO NUMEROUS ARTICLES IN PART V.

Seems
impossible
JD

27/12/12

(L-100 only)

Document disclosed under the
Document divulgué en vertu de la Loi sur l'accès à l'information

Copy to DISSONETTE

ACTION COPY

J.A. BEEBLEY
L-100/Marpre

Feb 20-3-1-6
37 13/11

FM WSHDC DEC12/68 RESTR

TO EXTER 4327

INFO PRMNY LDN PARIS BRU HAGUE TT COPEN DE HAGUE

REF YOURTEL L1161 DEC9

LAW OF TREATIES CONFERENCE

KEARNEY OF LEGAL ADVISERS OFFICE IN STATE DEPT TOLD US TODAY THAT,

WHILE FINAL DECISIONS PROBABLY STILL REMAINED TO BE TAKEN, HE

UNDERSTOOD DATES OF FEB6,7 AND 8 TO BE FAIRLY FIRM. HE ALSO

MENTIONED THAT BRITS ARE LIKELY TO ORGANIZE PRELIMINARY MTG OF

OLD COMWEL COUNTRIES PLUS USA WHICH WOULD BE HELD EARLY IN SAME WEEK:

2/13/12

002582

COPY TO BISSONNETTE

J. A. WESLEY *[Signature]*

ACTION COPY

L Feb 20-3-1-6
37 *[Signature]* 13/12

DE PARIS DEC12/68 RESTR

A EXTER 4613 PRIORITE

INFO BRU PRMNY LDN WSHDC TT COPEN DE HAGUE

REF VOTRETEL L1161 DEC9

CONFERENCE SUR DROIT DES TRAITES

ROGER JEANNEL DU SERVICE JURIDIQUE AU QUAI NOUS A DIT AUJOURDHUI

QUIL ETAIT FORTEMENT QUESTION DUNE REUNION DU GROUPE OCCIDENTAL AUX

QUARTIERS GENERAUX DU CONSEIL DE LEUROPE A PARIS AU DEBUT DE FEV

PROCHAIN, LES DATES PROPOSEES ETANT COMME MENTIONNE DANS VOTRE

TEL SOUS RUBRIQUE, LES 6, 7 ET 8 DE CE MOIS. LE QUAI NAURAIT AUCUNE

OBJECTION, AU CONTRAIRE, A LA TENUE DE CETTE REUNION ET A SON AVIS

LE DEBUT DE FEV CONVIENDRAIT PARFAITEMENT ETANT DONNE CERTAINS

ENGAGEMENTS ULTERIEURS DU PERS DU SERVICE JURIDIQUE.

1/13/12

Copy to Bissonette

J. A. DEESLEY

ACTION COPY

FM BRU DEC12/68 CONFD NO/NO STANDARD
TO EXTER 2364
INFO PERMISNY LDN PARIS WSHDC
TT COPEN DE HAGUE
REF YOURTEL L1161 DEC9
LAW OF TREATIES CONFERENCE

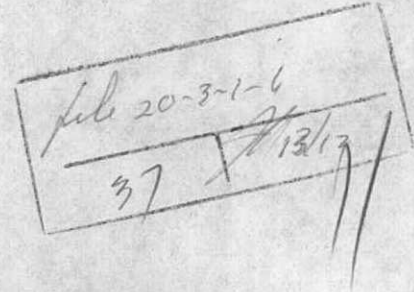
THANK YOU FOR INFO ABOUT PRELIMINARY MTGS PROPOSED FOR PARIS IN
EARLY FEB TO CONSULT ON LAW OF TREATIES CONFERENCE. WE PASSED THIS
INFO THIS MORNING TO DEVADDER, HEAD LEGAL DIV AND TO FOURDIN, HEAD
INTERNATL ORGANIZATIONS DIV MFA, DURING DISCUSSION OF BELGIAN
POSITION ON ARTICLE 5 OF DRAFT TREATY.

2. WE HAD SOUGHT INTERVIEW AFTER LEARNING THAT DEVADDER THOUGHT
IT WISE TO WITHHOLD SEEKING MINISTERIAL APPROVAL OF BELGIAN POSITION
ON DRAFT TREATY UNTIL SHORTLY BEFORE NEXT VIENN CONFERENCE. WE WERE
ALSO CONCERNED ABOUT PRECARIOUS POSITION OF BELGIAN GOVT AS WELL AS
ABOUT PROPOSALS FOR REVISING BELGIAN CONSTITUTION TO GIVE GREATER
CULTURAL AUTONOMY TO FLEMISH AND FRENCH LINGUISTIC COMMUNITIES.

IN OUR VIEW IT MIGHT BECOME LESS EASY FOR BELGIAN GOVT TO ASSUME
POSITION FAVOURABLE TO CDA ON ARTICLE 5 IF THESE CONSTITUTIONAL
CHANGES ARE IMPLEMENTED. WE ALSO THOUGHT BELGIAN AUTHORITIES MIGHT
SEE SOME ADVANTAGE IN BELGIUMS OWN NATL INTEREST FOR TAKING
EARLY STAND ON ARTICLE 5 TO REINFORCE GOVTS EXCLUSIVE TREATY
MAKING POWERS IN FACE OF PROPOSED MEASURES FOR INCREASING
FLEMISH AND FRANCOPHONE CULTURAL AUTONOMY UNDER TWO SEPARATE
SENATE COUNCILS (OURTEL 2192 NOV15). MOREOVER IT SEEMED OPPORTUNE
TO ENCOURAGE BELGIANS TO TAKE POSITION BEFORE WESTERN EUROPEAN

...2

6/17/12



PAGE TWO 2364 CONF NO/NO STANDARD

AND OTHERS MEET IN PARIS ON THIS QUESTION.

3. WE ACCORDINGLY HAD DISCUSSIONS THIS MORNING AT MFA TO ENCOURAGE THEM TO SEEK HARMELS APPROVAL FOR BELGIUM SUPPORT FOR DELETION OF PARA 2 ARTICLE 5 OR IF THIS FAILED, FOR DELETION OF ARTICLE 5 IN ENTIRETY. FOURDIN SUGGESTED THAT IN ADDITION TO BELGIAN DOMESTIC CONSIDERATIONS AND TO CDN REPRESENTATIONS HARMELS ATTN SHOULD BE DRAWN TO THE DIFFICULTIES THAT MIGHT BE CREATED IN INTERNATL ORGANIZATIONS BY RETAINING PARA 2 OF ARTICLE 5. FOR INSTANCE SMALL TRUCIAL STATES IN ARABIAN FEDERATION WERE SHOWING INCLINATION TO SEEK UN AND SPECIALIZED AGENCIES MEMBERSHIP. INCLUSION OF PARA 2 IN LAW OF TREATIES MIGHT ASSIST SUCH PRETENSIONS.

4. DEVADDER AND FOURDIN ACCORDINGLY AGREED TO SEEK HARMELS APPROVAL FOR BELGIAN POSITION FAVOURABLE TO CDA ON ARTICLE 5 OF TREATY. HOWEVER THEY DOUBTED THIS COULD BE OBTAINED MUCH BEFORE EARLY JAN BUT HOPED TO HAVE FAVOURABLE REPLY BEFORE CONSULTATIONS TAKE PLACE IN PARIS NEXT FEB; REMAINDER OF TREATY WOULD PROBABLY BE PUT TO MINISTERS LATER.

*Is this
worth
following
up?
The question
of implementation
of 5(2) for
regions on but
they are not
to be put
to govt*

Jul 20-3-1-68
CONFIDENTIAL

by Bag

SAVING TELEGRAM

PRIORITY FOREIGN AND COMMONWEALTH OFFICE TO BRITISH HIGH COMMISSIONS

Reino Y Circular 24 Saving

2 December, 1968 (UNITED NATIONS)

CONFIDENTIAL

DEC 9 1968

Addressed to Y Circular 24 Saving of 2 December
Repeated for information Saving to: U.K. Mis New York

Y Circular No. 5 Saving (of 19 January) and Guidance telegram
No. 88 (of 27 March): United Nations Conference on the Law of
Treaties.

We wish to take the opportunity afforded by the Commonwealth
Prime Minister's Conference in January to put across to the
influential Afro-Asian members our views on the key issue of
settlement procedures in the Law of Treaties Convention, on which
our positions were opposed at the first conference last spring.
(see paragraphs 6-8 below). We have therefore suggested to the
Commonwealth Secretariat that the agenda item "World political
situation and trends" should include a specific reference to the
peaceful settlement of disputes. In this context, we would like
to discuss at official level the Law of Treaties question referred
to above. The timing will be particularly suitable as the Law
of Treaties is to be the principal item on the agenda of the
Asian-African Legal Consultative Committee meeting in Karachi
from 21-31 January.

The following Commonwealth Governments were represented at
the first session:

Australia, Canada, Ceylon, Cyprus, Ghana, Guyana, India,
Jamaica, Kenya, Malaysia, Mauritius, New Zealand, Nigeria,
Pakistan, Sierra Leone, Singapore, Trinidad and Tobago,
Tanzania and Zambia.

2. So that the discussion in London may achieve its purpose,
it will be important that their delegations include, as far as
possible, at least one official properly briefed on the subject.

INSTRUCTIONS

Done 3. The Commonwealth Secretariat are expected to issue the
annotated agenda to High Commissions here during the course of
this week. As soon after 9 December as possible, posts in
Commonwealth countries should inform the Governments concerned,
at appropriate level, that this proposal has been included in
the agenda at our request. Posts listed in paragraph 2 should
say that we hope that they will send to London a senior member
of their delegation to the Law of Treaties Conference and that
we should be glad to know soon if the Governments concerned wish
themselves to raise any points on the Law of Treaties Conference.
For your information, Canada and Australia are likely to raise
draft Article 5(2), concerning the capacity of members of a
federal union to conclude treaties.) Other posts should say
that we would welcome their participation in the official dis-
cussions but shall quite understand if they would rather not.

/4.

CONFIDENTIAL

Received

DEC 12 1968

In Legal Division
Department of External Affairs

002586

CONFIDENTIAL

-2-

4. Canberra, Ottawa and Wellington should know that the Old Commonwealth support us on all the major issues. The possibility of separate consultations with them and the Americans after the Prime Minister's Conference is being discussed in New York.

5. You may, as necessary, draw on the following talking points, in addition to those in paragraph 3 above.

We attach the greatest importance to the Conference and will continue to do our best to work for a successful outcome. It is vital to maintain the stability of treaties as a bulwark of peace in present world circumstances. Our main aim is to achieve a Convention which is generally acceptable and which no large section of the international community finds itself unable to ratify. The most fundamental issue is the provision of satisfactory procedures for the settlement of disputes arising out of the application or interpretation of those Articles of the Convention which relate to the invalidity and termination of treaties. It is in the interest of all the participants in the Conference that there should be independent and automatic procedures for settling disputes of this nature, given the importance and significance of treaty relationships in the contemporary world, and the risk that failure to provide such procedures would encourage States to invoke spurious grounds of invalidity or termination. We had hoped to be able to hold informal consultations with the Commonwealth before the first session of the Conference, but unfortunately there was not enough time. We think that it would be very helpful to exchange views before the second session and the Prime Ministers' Conference offers a suitable opportunity.

BACKGROUND

6. At its second session, from 9 April to 21 May, 1969 (also in Vienna), the Conference on the Law Of Treaties will complete the study by the Committee of the Whole of the International Law Commission's draft Articles to which the first Session was almost exclusively devoted. The whole draft will then be examined in Plenary.

7. From our point of view (and that of other Western Delegations) the most important single issue is the question of providing adequate procedures for the independent adjudication of disputes arising out of the application or interpretation of those articles in the Convention which govern the invalidity of treaties. A number of these articles would in effect permit States unilaterally to claim, by applying largely subjective criteria, that particular treaties are null and void. Draft Article 62, the only one providing for any such procedures is totally inadequate in the form approved by the Committee of the Whole. In the event of objection to a claim of invalidity; it simply provides that "the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations" which are too general to help. Unless the present provisions can be improved, Her Majesty's Government may be unable to ratify the Convention.

/s. Western

CONFIDENTIAL

CONFIDENTIAL

FCO telegram No. Y Circular 24 Saving

-3-

8. Western members tabled a number of amendments to Article 62, proposing various forms of automatic third party settlement procedures. The Soviet Union and its Allies, effectively supported by the Afro-Asian group, were unwilling to accept any proposals which went beyond those quoted in paragraph 7 above. Three Commonwealth delegations - India, Ghana and Kenya - led the opposition to Western proposals and influenced the rest of the Afro-Asian group. In order to achieve a generally acceptable convention, they must be persuaded to adopt a more flexible attitude at the second session, when Western proposals for some independent third party procedures for settlement of disputes will be considered as a new Article 62.

DEPARTMENTAL DISTRIBUTION

United Nations Dept

Commonwealth Co-Ordination Dept

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MESSAGE

Div. Diary
Tel. Diary

FM/DE EXTERNAL OTTAWA

TO/A LONDON

INFO

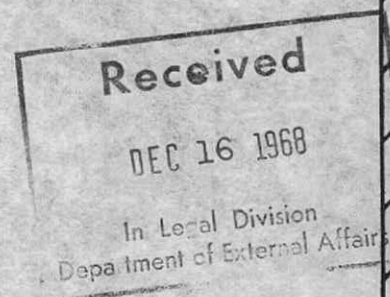
DATE	FILE/DOSSIER	SECURITY SECURITE
DEC 11/68	20-3-1-6	RESTRICTED

NO	PRECEDENCE
1174	Routine

REF

SUB/SUJ COMMONWEALTH PRIME MINISTER'S CONFERENCE.

IN LIGHT OF NUMBER OF CONFERENCE AGENDA ITEMS HAVING LEGAL IMPLICATIONS
GRATEFUL IF LEE COULD BE MADE AVAILABLE TO FOLLOW DEVELOPMENTS FROM LEGAL
POINT OF VIEW. ~~IF THIS NOT/NOT POSSIBLE WE MIGHT CONSIDER SENDING OFFICER
FROM LEGAL DIVISION TO ASSIST IN THIS AREA OF DISCUSSIONS.~~

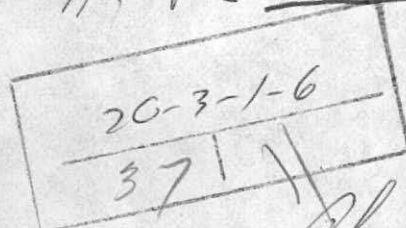


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J. A. BEECHLEY



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L file 12/12

Shond Kraeger 12/12
12/12

FM WSHDC DEC11/68 RESTR

TO EXTER 4307 PRIORITY

REF YOURTEL L1161 DEC9

LAW OF TREATIES CONFERENCE

BRU TEL 2330 DEC6 NOT/NOT RECEIVED HERE. PLEASE RPT TO US IF

RELEVANT TO ENQUIRY YOUR REFTEL.

8.12.12

002590



Document disclosed under the Access to Information Act -

Document divulgué en vertu de la Loi sur l'accès à l'information

ACTION REQUEST
FICHE DE SERVICE

FILE NO. — DOSSIER N°

20-3-1-6

TO — À

TRANSLATION SERVICES

DATE

Dec. 5/68

LOCATION — ENDROIT

FROM — DE

Legal Div. (J.S.Stanford)

☐ ACTION
DONNER SUITE☐ APPROVAL
APPROBATION☐ COMMENTS
COMMENTAIRES☐ DRAFT REPLY
PROJET DE RÉPONSE☐ MAKE
FAIRE.....COPIES☐ NOTE AND FILE
NOTER ET CLASSER☐ NOTE & RETURN/OR FORWARD
NOTER ET RETOURNER/OU FAIRE SUIVRE☐ P. A. ON FILE
CLASSER☐ REPLY
RÉPONSE☐ SEE ME
ME VOIR☐ SIGNATURE☒ TRANSLATION
TRADUCTION☐ YOUR REQUEST
À VOTRE DEMANDE☐

One letter for translation into Spanish
to be signed by the Secretary of State for
External Affairs, please.

002591

DEPARTMENT OF THE SECRETARY OF STATE

TRANSLATION BUREAU
FOREIGN LANGUAGES DIVISION



BUREAU DES TRADUCTIONS
DIVISION DES LANGUES ÉTRANGÈRES

Feb 20-3-1-6
37 CITY
VILLE

YOUR NO.
VOTRE N°

DEPARTMENT
MINISTÈRE

DIVISION/BRANCH
DIVISION/DIRECTION

CITY
VILLE

-

External Affairs Legal Div.

Ottawa

OUR NO.
NOTRE N°

LANGUAGE
LANGUE

TRANSLATOR (INITIALS)
TRADUCTEUR (INITIALES)

DATE

5894-1

Spanish

J.U.

December 11, 1968

BEESLEY

ACTION COPY

Jul 20-3-1-6
12/1/72

FM PRMNY DEC11/68 RESTR NO/NO STANDARD

TO EXTER 4434

INFO BRU LDN PARIS WSHDC TT COPEN DE HAGUE

REF YOURTEL L1161 DEC9

LAW OF TREATIES CONFERENCE

FURTHER TO REFTTEL WE HAVE DISCUSSED DATES OF PARIS MTGS WITH
INTERESTED LOCAL WESTERN MISSIONS, ON DELS OF WHICH THERE ARE
MANY PARTICIPATING IN VIENN CONFERENCE.

2. LOCAL CONSENSUS IS THAT THE DATES OF FEB6,7 AND POSSIBLY 8
HAVE NOT/NOT YET BEEN FIXED. NEVERTHELESS THERE IS APPARENTLY
STRONG SUPPORT AMONG WESTERN EUROPEANS FOR CONSULTATIONS AROUND
THAT TIME.

17/11/12

002593

For translation into Spanish



The Secretary of State for External Affairs
Canada

OTTAWA,

Excellency,

I have the honour to refer to the United Nations Conference on the Law of Treaties, the second session of which is to begin in April 1969. In particular I refer to Article 5 of the proposed Convention to be adopted by that Conference.

The second paragraph of Article 5 refers to treaty making by members of a federal State. The Canadian Government has given careful consideration to this paragraph and has concluded that its incorporation in the proposed Convention would be undesirable from the viewpoint of both law and policy. The Canadian Chargé d'Affaires a.i. in Quito, Mr. G. C. Cook, has informed officials of your Ministry in detail of the reasons which lead Canada to oppose this provision. I shall not repeat these reasons except to say that Canada's basic objection to the proposed paragraph is that it will require States to interpret for themselves the internal constitutions of other federal States. Canada's concern over this paragraph is shared by many federal States.

Mr. Cook has transmitted to officials of your Ministry Canada's request for the support of the Government of Ecuador for the deletion of the paragraph in question from the proposed Convention. I am taking the liberty of writing to you in this connection, however, to inform you personally of my Government's request and of the importance which my Government attaches to this question. My Government would be most appreciative of the support of the Government of Ecuador in this matter.

In Mr. Cook's discussions with officials of your Ministry concerning the proposed Convention, reference has been made to draft Article 49 which provides that treaties procured by the threat or use

.. 2

Excellentísimo Señor don
Rogelio Valdivieso Eguiguren
Ministro de Relaciones Exteriores
QUITO, Ecuador

- 2 -

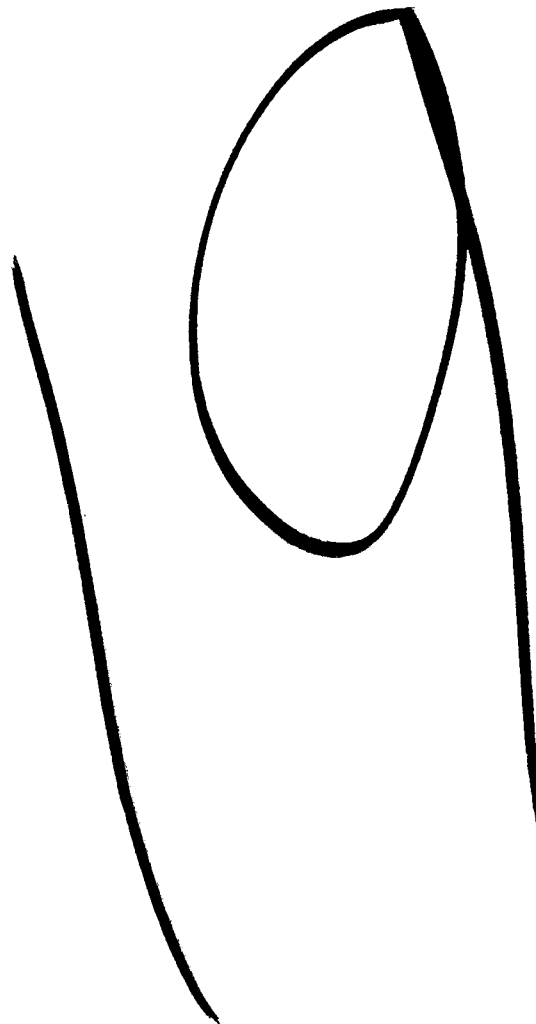
of force are void. As the Canadian representative stated at the first session of the conference, Canada strongly opposes the threat or use of force, except in accordance with the Charter of the United Nations, to secure the consent of a State to a treaty. The Canadian representative also noted, however, that these and other articles on the invalidity of treaties should be accompanied by a provision for the impartial settlement of disputes arising from their application. It is the earnest hope of the Canadian Government that the Convention adopted at the forthcoming conference will include satisfactory provisions for the impartial settlement of disputes, thus enabling Canada to support the inclusion of articles concerning the invalidity of treaties, including an article dealing with the use of force.

/Translation Service - please add appropriate Spanish
complimentary closing paragraph/

Yours sincerely,

(for signature by SSEA)

2



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12/12/37
12/13/12
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FM LDN DEC10/68 SECRET NO/NO STANDARD

TO EXTER 5858

INFO WSHDC PRMNY TT COPEN DE HAGUE CNBRA WLGTN DE OTT

BAG ROME(MALTA)CLMBO NICOS ISBAD KLMPR DE LDN ACCRA NROBI LAGOS

DSLAM PSPAN GRGTN KNGTN DELHI PRET DE OTT

REF YOURTEL L1125 DEC2

COMWEL PMS MTG:PEACEFUL SETTLEMENT OF DISPUTES AND LAW OF TREATIES
CONSULTATIONS

WE DRAW YOUR ATTN TO FOLLOWING PARA UNDER ITEM IN ANNOTATED
AGENDA ON QUOTE WORLD POLITICAL SITUATION AND TRENDS UNQUOTE FOR
PMS MTG WHICH WAS CIRCULATED TO HIGHCOMS YESTERDAY:

QUOTE SOME OF THE MAJOR PROBLEMS TO WHICH HEADS OF GOVT MAY WISH TO
DRAW PARTICULAR ATTN ARE:

PEACEFUL SETTLEMENT OF INTERNATL DISPUTES.

IT HAS BEEN SUGGESTED THAT HEADS OF GOVTS MIGHT WISH TO CONSIDER
HOW BEST TO ENCOURAGE OBSERVANCE OF THE PRINCIPLES OF THE UN
CHARTER PROHIBITING THE THREAT OR THE USE OF FORCE IN INTERNATL
DISPUTES.(THERE HAS ALSO BEEN A SUGGESTION THAT,AS THE CONFER-
ENCE ON THE DRAFT CONVENTION ON THE LAW OF TREATIES IS DUE TO RESUME
IN APR/69,SOME DELS MAY WISH TO TAKE THE OPPORTUNITY TO DISCUSS
AT OFFICIAL LEVEL SOME DETAILED LEGAL ASPECTS OF SETTLEMENT PROCEED-
URES IN THE DRAFT CONVENTION.)UNQUOTE

2.BRIT ARE VERY KEEN TO FORM SPECIAL GROUP TO DISCUSS THIS
QUESTION DURING THE PMS MTG,HOWEVER THEY HAVE HAD NO/NO REACTIONS
TO THIS SUGGESTION FROM COMWEL GOVTS,OTHER THAN THE VIEWS CONVEYED

...2

PAGE TWO 5858 SECRET NO/NO STANDARD

IN YOURTEL ABOUT WHICH THEY ARE NOT/NOT INCLINED TO AGREE. WE SHALL
KEEP YOU AND WERSHOF INFORMED AS REACTIONS ARE RECEIVED BY FCO TO
THEIR APPROACHES IN CAPITALS.

3. REF YOURTEL L1161 DEC9, FCO SEEM PRETTY SURE ABOUT MTG IN PARIS FEB
6, 7 AND POSSIBLY 8 AND ABOUT PRELIMINARY MTG IN LDN ON FEB3 AND 4.
NZ HIGHCOM HAS INFORMED FCO THAT NZ PROBABLY WOULD NOT/NO BE ABLE
TO FIELD EXPERT FROM WLGTON FOR ANY OF MTGS PLANNED IN JAN OR FEB.

MESSAGE

FM/DE	EXTERNL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		10 DEC./68	20-3-1-6	UNCLSPD.
TO/A	VIENNA	NO		PRECEDENCE
		L-1167		ROUTINE
INFO	COPENHAGEN			

REF OURTEL L-973 OCTOBER 24

SUB/SUJ U.N.CONFERENCE ON THE LAW OF TREATIES - SECOND SESSION

IN ADDITION TO RESERVATIONS REQUESTED IN REFTL, PLEASE RESERVE ADDITIONAL
ROOM WITH BATH FOR A PERIOD ~~XXXXXX~~ APRIL 7 TO MAY 3. PLEASE CONFIRM
THAT THESE RESERVATIONS HAVE BEEN MADE.

DISTRIBUTION
LOCAL/LOCALE

FINANCE DIV.(TRAVEL SECTION:MCCORD) (Done in Div.)

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....J.S.STANFORD:ZS.....	LEGAL	2-5406	SIG.....J.A.BEESLEY..... J.A.BEESLEY

EXTERNAL AFFAIRS



20/12
AFFAIRES EXTÉRIEURES

DEC 20 1968

FILE CHARGED OUT

TO:

TO
À Under-Secretary of State for External Affairs,
OTTAWA.

FROM
De Canadian Embassy, ROME.

REFERENCE
Référence Your letter No. L-737(M) of September 10 and your
telegram No. L-810 of September 16, 1968.

SUBJECT
Sujet Law of Treaties Conference -- Article 5.

SECURITY
Sécurité

RESTRICTED

DATE December 9, 1968.

NUMBER
Numéro

836

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	37 11

ENCLOSURES
Annexes

DISTRIBUTION

As requested, we have made approaches to Italian, San Marino and Malta officials and shall advise you when we receive formal replies. During the course of his December 1 - 6 visit to Malta, the Ambassador discussed this question and left a note (with the Aide Memoire included as an attachment) with the Secretary (Deputy Minister) for Commonwealth and Foreign Affairs, Mr. Amato Gauci. Mr. Amato Gauci was not sure whether Malta would be represented at the second session of the Conference.

[Signature]
The Embassy

Received

DEC 20 1968

In Legal Division
Department of External Affairs

18.20.12

20-31-6
13

ACTION COPY

L

FM CANDELNY DECS/68 RESTR NO/NO STANDARD
TO EXTER 4372 PRIORITY

UNGA XXIII: SIXTH CTTEE: WESTERN GROUP CONSULTATIONS: LAW OF TREATIES
UK DEL INFORMED US THAT PLANS ARE GOING FORWARD IN COUNCIL OF
EUROPE FOR LAW OF TREATIES MTG OF WESTERN GROUP OF VIENN IE MTG WOULD
BE ONE TO WHICH QUOTE OTHERS UNQUOTE AS WELL AS EUROPEANS ARE
INVITED. MTG PLANNED TO TAKE PLACE IN PARIS FEB 6 7 AND 8. FULL APPROVAL
HAS NOT/NOT YET BEEN GIVEN BUT IS EXPECTED SHORTLY.

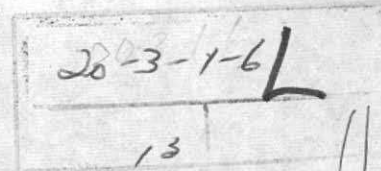
2. SWEDEN SUGGESTED THAT INVITATION TO CYPRUS MIGHT RAISE SOME
DIFFICULTY BUT UK DEL THOUGHT THIS PROBLEM COULD BE SORTED OUT BEFORE
COUNCIL OF MINISTERS GIVES ITS APPROVAL.

When does the
Conference start?

3.10.12

002601

Stacked
ACTION COPY



Impose to the Nigerian desk officer on this in U.S. He said he didn't think our position would be very different

FM LAGOS DEC9/68 CONFD NO/NO STANDARD

TO EXTER 2717

REF OURTEL 1938 SEP27

LAW OF TREATIES CONFERENCE

INFORMAL REPLY TO REPS MADE TO MEA ON THIS SUBJ AS REPORTED

PARA4 REFTEL HAS NOW BEEN RECEIVED IN NOTE DATED DEC2.

OPERATIVE PORTION OF NOTE STATES QUOTE REQUEST OF CDN GOVT WILL BE TAKEN INTO CONSIDERATION BEFORE DECISION ON NIGERIAS STAND IN FORTHCOMING SECOND SESSION OF CONFERENCE ON LAW OF TREATIES IS REACHED. AIDE MEMOIRE LEFT WITH MEA IS BEING CLOSELY STUDIED. UNQUOTE.

2. WE SHALL SEEK OPPORTUNITY TO ASCERTAIN FROM MEA AND FROM ELIAS WHETHER THIS ROUTINE REPLY TO OUR REPRESENTATIONS INDICATES ANY SUBSTANTIAL CHANGE IN NIGERIAN POSITION ON THIS ISSUE.

16. 9.12

File
Diary
Div. Diary
Tel. File
SS

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information

MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
9 DEC/68	20-3-1-6	
	13 ✓	RESTRICTED
	NO	PRECEDENCE
	L-1161	PRIORITY

TO/A

BRUSSELS

INFO

PERMISNY, LDN, COPEN, PARIS, WASHDC

REF YOURTEL 2330 DECEMBER 6

SUB/SUJ LAW OF TREATIES CONFERENCE

BRITISH OFFICIALS IN LDN HAVE INFORMED CDA HOUSE OF PROPOSAL TO HOLD
PRELIMINARY MEETINGS AMONG WESTERN EUROPEAN AND OTHERS GROUP ON LAW OF TREATIES
IN PARIS FEB. 6, 7 and POSSIBLY 8. AS WE ARE UNCERTAIN JUST HOW DEFINITE
THESE PLANS ARE, WE WOULD WELCOME ANY INFO BELGIANS ARE ABLE TO PROVIDE
CONCERNING THESE PROPOSED DISCUSSIONS.

FOR PERMISNY, LDN, PARIS, WASHDC. - GRATEFUL IF YOU COULD MAKE INQUIRIES TO
DETERMINE WHETHER MEETINGS AND DATES REFERRED TO ABOVE HAVE BEEN FIRMLY FIXED
BY WEO GROUP

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. STANFORD, ZS	LEGAL	2-5106	SIG..... J. A. BEESLEY

File ✓
Diary
Div. Diary

EXTERNAL AFFAIRS



Legal Div./J.S.Stanford/zs

AFFAIRES EXTÉRIEURES

RETURN TO LEGAL DIV. DCO

MEMORANDUM

TO
A Under-Secretary

FROM
De Legal Division

REFERENCE
Référence

SUBJECT
Sujet Law of Treaties Conference - Article 5

SECURITY
Sécurité

CONFIDENTIAL

DATE December 9, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	37

ENCLOSURES
Annexes

-2-

DISTRIBUTION

-- Attached for your signature, if you approve,
is a reply to the letter of November 27 to the Apostolic
-- Delegate (also attached) informing you of the Holy See's
intention to support the Canadian position on Article 5
at the second session of the Law of Treaties Conference.

J. A. BEESLEY

Legal Division.

Ottawa,
le 9 décembre 1968

Excellence,

J'ai l'honneur d'accuser réception de votre lettre du 27 novembre, concernant le paragraphe deux de l'Article 5 du projet de Convention sur le Droit des Traités qui doit être soumis à la deuxième session de la Conférence des Nations Unies sur le Droit des Traités.

Le gouvernement canadien est reconnaissant au Saint-Siège pour son appui en cette matière. J'aimerais en outre vous remercier pour l'intérêt que vous avez bien voulu manifester à l'égard de la demande de notre gouvernement.

Veuillez agréer, Excellence, les assurances de mon profond respect et de ma haute considération.

Le Sous-secrétaire d'Etat
aux Affaires extérieures,

M. CADIEUX

Son Excellence
Monseigneur Emanuele Clarizio
Délégué Apostolique au Canada
Avenue Manor
Rockcliffe Park
Ottawa 2, Ontario.

Legal Div./J.S.Stanford/zs

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
À

Under-Secretary ✓

FROM
De

Legal Division *W.B.*

REFERENCE
Référence

SUBJECT
Sujet

Law of Treaties Conference - Article 5

SECURITY
Sécurité

CONFIDENTIAL

DATE

December 9, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
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ENCLOSURES
Annexes

-2-

DISTRIBUTION

-- Attached for your signature, if you approve,
is a reply to the letter of November 27 to the Apostolic
-- Delegate (also attached) informing you of the Holy See's
intention to support the Canadian position on Article 5
at the second session of the Law of Treaties Conference.

Shan Beesley
Legal Division.

Diary copy
Div. diary
file copy
(M. Stanford)

20-3-1-6
37 11

PERSONAL - BY AIR BAG

Ottawa, December 6, 1968.

Mr. A.W. Robertson,
Canadian Permanent Mission to the
United Nations,
NEW YORK, N.Y.

Dear Ron,

My reply to your letter of November 22 is necessarily meagre, at least so far, but because of the time element involved I am sending now the little information I do have. If I obtain any additional information in time to be of use to you I will try to phone it down.

— Attached are lists of multilateral treaties for which the U.N. is depositary and which have been signed and/or ratified by Canada. These lists have been updated to the present.

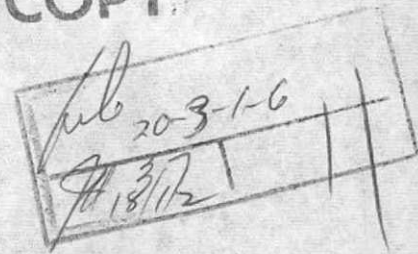
I have checked quickly through the files on the ILO Conventions and the U.N. Human Rights Declaration, Covenants and Conventions for the period 1965-1968. There is much material on both subjects reciting the Canadian Government's support for the principles embodied in these documents and Canada's desire to adhere to as many of the documents as is possible. The difficulty has been the constitutional problem with which you are only too familiar. I have been unable to find on these files, however, any discussion of a change in approach of the kind you mention in your letter.

I will keep looking, as time permits, and let you know if I find anything.

Best regards,

M. S. STANFORD

ACTION COPY



V

FM BRU DEC6/68 CONF

TO EXTER 2330

LEF OURTEL 1904 OCT9

LAW OF TREATIES CONFERENCE

WE HAVE JOINT APPOINTMENT WITH DEVADDER, HEAD LEGAL DIV AND FOURDIN
HEAD UN DIV NEXT THURS DEC12 TO DISCUSS BELGIAN POSITION ON
AIDE-MEMOIRE PRESENTED SEP16.

2. IF YOU HAVE ANY INFO ABOUT WESTERN CONSULTATION MENTIONED
IN REFTTEL OR ANY OTHER POINTS WE MIGHT USEFULLY RAISE PLEASE
CONVEY BY DEC11.

15.6.12

NNNN

002608

Prof. J. J. J.
10/9/12
ACTION COPY

FM BAIRS DEC6/68 CONFID NO/NO ETANDARD
TO EXTEROTT 1214
REF OURTEL 991 SEP20 YOURTEL L769 AUG12
LAW OF TREATIES CONFERENCE

L
20-3-1-6
11

DR DE LA GUARDIA LEGAL ADVISOR AT MFA CONFIRMED WHAT DR CANDIOTTI, TEMPORARY HEAD OF LEGAL DIV, HAD PREVIOUSLY TOLD US REGARDING ARGENTINAS POSITION ON PARA2 OF ARTICLE 5 OF LAW OF TREATIES CONVENTION. (SEE OUR REFTTEL). DE LA GUARDIA STATED THAT HE AGREED FULLY WITH VIEWS EXPRESSED IN OUR AIDE MEMOIRE AND THAT ARGENTINA WILL SUPPORT CDA IN OPPOSING PARA2 AT SECOND SESSION; IN VOTING FOR A SEPARATE VOTE ON PARA2; AND IN VOTING FOR DELETION OF WHOLE OF ARTICLE 5 SHOULD THIS VOTE BE DENIED. HE SAID THAT REASON ARGENTINA HAD VOTED FOR PARA2 ON ONE OCCASION AT FIRST CONFERENCE WAS BECAUSE OF SOME OBSCURE PROCEDURAL QUESTION WHICH HE COULD NOT/NOT NOW RECALL.

2. DE LA GUARDIA THOUGHT THAT CDA WOULD HAVE GREAT DIFFICULTY IN WINNING SUFFICIENT SUPPORT TO OBTAIN DELETION OF PARA 2 AT SECONDV CONFERENCE BECAUSE IT HAD BEEN SUPPORTED BY VERY LARGE MAJORITY AT FIRST CONFERENCE. MOREOVER OUR VIEWS FOR OPPOSING ITS INCLUSION WITH WHICH HE FULLY AGREED WERE NOT/NOT WELL UNDERSTOOD BY MOST COUNTRIES AND PARTICULARLY BY THOSE THAT DID NOT/NOT HAVE A FEDERAL CONSTITUTION. HE URGED US TO MAKE EVERY EFFORT TO MAKE OUR POSITION CLEAR TO THESE COUNTRIES.

3. AS FAR AS ARGENTINAS CONSTITUTIONAL POSITION IS CONCERNED PARA2 DOES NOT/NOT CAUSE ANY PARTICULAR DIFFICULTY. THEIR PROVINCES HAVE NOT/NOT CONCLUDED ANY TREATIES WITH FOREIGN COUNTRIES SINCE 1860 AND UNDER THEIR PRESENT CONSTITUTION COULD NOT/NOT DO SO, IF THEY WISHED.

10/9/12

TRANSMITTAL SLIP

TO: The Under-Secretary of State

for External Affairs, OTTAWA

FROM: The Permanent Mission of Canada

to the United Nations, NEW YORK

The documents described below are for your information.

Despatching Authority: A.W.J. Robertson

Security

FROM REGISTRY

UNCLASSIFIED

Date

December 6, 1968

Air or Surface

Air

No. of enclosures

1

Copies

Description

Also referred to:

1

Washington
letter from Mr. Kearney/to Mr. Robertson
dated December 2, 1968

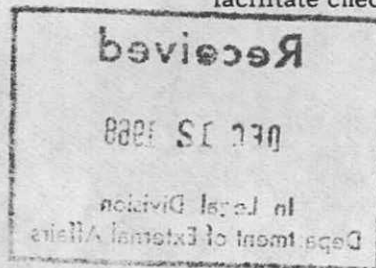
Received

DEC 12 1968

In Legal Division
Department of External Affairs

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.





DEPARTMENT OF STATE

Washington, D.C. 20520

December 2, 1968

A. W. J. Robertson, Esquire
First Secretary
Permanent Mission of Canada
to the United Nations

Dear Ron:

The enclosed papers represent our current thinking on settlement of disputes. Although I am writing Max directly, it occurred to me that it would be useful for you to have a copy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dick", followed by a horizontal line.

Richard D. Kearney
Ambassador

Enclosure:

As stated

ACTION COPY

L *file 20-3-1-6*
37 *13/12*

FM COPEN DEC4/68 CONFD NO/NO STANDARD

TO TT EXTER 533 DE HAGUE

INFO TT LDN DE HAGUE

LEGAL DIV DE WERSHOF

REF YOURTEL L1125 DEC2

LAW OF TREATIES AND PMS MTG IN LDN

I AGREE IT IS MOST UNLIKELY THAT A SPECIAL GROUP WILL BE FORMED
REQUIRING MY PRESENCE. HOWEVER, ON VIEW OF POSSIBILITY, YOU SHOULD KNOW

THAT I PLAN VACATION LEAVE IN OTT DEC23 TO JAN6 TO VISIT MY SON.
IF NECESSARY, LENGTH OF THIS LEAVE COULD BE SHORTENED OR FOR THAT
MATTER I COULD GO FROM OTT DIRECT TO LDN MTG. GRATEFUL IF YOU WOULD
KEEP ME PROMPTLY INFORMED OF ANY DECISIONS RELATING TO POSSIBLE
FORMATION OF SPECIAL GROUP.

2. I NOTE THAT WEEK OF FEB3 LIKELY FOR OTHER LAW OF TREATIES MTGS
IN LDN AND PARIS. NO/NO DOUBT YOU OR LDN WILL TELL ME AS SOON AS
SCHEDULE FIRM...

*Perhaps
we can
add today
or two
consultation*

*PM's
mly 7-15*

6.6.12

File
Diary
Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
A
Commonwealth Division (through U.N. Division and
Legal Adviser)

FROM
De
Legal Division

REFERENCE
Référence
Your memorandum of November 25, 1968

SUBJECT
Sujet
Commonwealth Prime Ministers' Meeting - Briefing
Material - Peaceful Settlement of Disputes.

SECURITY
Sécurité
RESTRICTED

DATE
December 4, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	37

ENCLOSURES
Annexes

3

DISTRIBUTION

In Annex A to your memorandum under reference it was proposed that briefing material on the item "Peaceful Settlement of Disputes" be prepared by U.N. Division. Canada House in London has since reported, however, the British proposal that discussion of this item be related specifically to the disputes settlement provision of the proposed U.N. Convention on the Law of Treaties (London telegram No.5693 of November 27.)

2. As this Division is responsible for matters related to the Law
-- of Treaties conference, we have prepared and attach a briefing paper, a possible statement for use by the Prime Minister or senior official and a list of talking points, all related to this item. Please inform us should you require any additional material.

A. BEESLEY

Legal Division.

RESTRICTED

December 4, 1968

Commonwealth Prime Ministers' Meeting
London, January 7 - 15, 1969

LAW OF TREATIES: PEACEFUL SETTLEMENT OF DISPUTES

MEMORANDUM

Object

The question of the peaceful settlement of disputes is to be raised briefly during the Prime Ministers' discussion of the world political situation and trends (Agenda item 1) and discussed subsequently by senior officials. The purpose in raising this question at the Prime Ministers' level is to inform Asian, African and Caribbean Commonwealth governments of the importance which western governments attach to including in the U.N. Convention on the Law of Treaties an article requiring independent adjudication of disputes arising from certain provisions of the Convention and to solicit their support for such an article.

Background

The U.N. International Law Commission (ILC) prepared draft articles on the law of treaties. An international conference is to prepare a Convention based upon the ILC draft articles. The draft article on disputes (Article 62) would require parties to the Convention to seek to resolve any dispute concerning the invalidity or termination of a treaty "through the means indicated in Article 33 of the Charter of the United Nations", i.e. negotiation, mediation, conciliation, arbitration, judicial settlement, etc. The Article does not provide, however, that where the parties fail to resolve their dispute, the dispute may be referred, at the request of either party, to compulsory independent adjudication. With no mandatory requirement to submit unresolved disputes to arbitration, there is no effective obstacle to subjective and abusive application of certain articles. Communist bloc countries oppose a requirement for compulsory settlement of disputes on the ground that it is an unacceptable derogation from state sovereignty. The ILC commentary stated that its draft articles did not require compulsory submission of disputes to the International Court of Justice because "in the present state of international practice it would not be realistic for the Commission to put forward this solution of the procedural problem." The ILC commentary did not deal with other possible forms of compulsory settlement.

- 2 -

RESTRICTED

The Western Position

Western governments are of the view that certain provisions of the draft Convention dealing with specific grounds for invalidity of treaties, e.g. error, fraud, coercion, fundamental change of circumstances, are so liable to subjective interpretation that they would disrupt the reliability of treaty relationships if their application is not subject to the safeguards of compulsory independent adjudication. For some western governments, notably Britain and the United States, absence of a compulsory settlement article might make the convention unacceptable. There is, however, the danger that once the treaty Convention enters into force its provisions will be assimilated into customary international law binding even on States which are not parties to the Convention.

With the Communist countries opposing compulsory arbitration, the position of the newer States will determine whether such a provision is contained in a Convention. Hence the importance of securing the support of the newer members of the Commonwealth on this issue.

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TALKING POINTS

1. The requirement for compulsory settlement would not relate to all articles of the convention, only those relating to invalidity and termination of treaties because these are the most important articles. Disputes over other aspects of the treaties Convention, e.g. interpretation, reservations and objections, would remain subject to settlement by negotiation or other agreed procedures.
2. The grounds for invalidity and termination contained in the draft articles, e.g., error, fraud, corruption and coercion, are taken from States' internal law of contracts. Experience in the application of these concepts in internal law confirms the importance of submitting disputes over these issues to independent adjudication, failing successful settlement by other means.
3. Even with the greatest degree of good faith, it is extremely difficult for a party to a treaty to determine objectively whether such subjective elements as error, corruption or fundamental change of circumstances have occurred in respect of that treaty; hence the interests of basic justice require that the application of these articles not be left to the unilateral action of any party to a treaty if States are to be able to rely in confidence upon their treaty relationships.
4. The importance of treaties in international relations is

RESTRICTED

increasing enormously. The proposed convention could contribute materially to the developing world order, in which so much of international law is based on or derived from bilateral and multilateral treaties. Thus any action by States which might impair the stability and reliability of treaty relations would have adverse consequences for the spirit of mutual confidence in inter-State relations which we all must seek to encourage.

5. Many governments have indicated that the absence of a compulsory settlements provision would make the treaties Convention unacceptable. Governments taking this position include some of the world's major treaty-making powers, whose failure to adhere to the treaties Convention would delay, and possibly prevent entirely, the incorporation into general international law of the codification of treaty law in which the whole of the international community has participated.
6. Canada understands the reluctance of many States to submit to compulsory adjudication by the International Court of Justice. If the principle of compulsory independent arbitration is agreed upon, however, it should be possible to establish either standing or ad hoc adjudication machinery which, in its composition, would meet the requirements of all the geographical areas and legal systems of the world.

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OUTLINE OF STATEMENT

for use by the Prime Minister or Senior Official

Many States refuse to accept the compulsory adjudication of disputes because they claim that to do so would impair their national sovereignty. But if sovereign equality means anything, it means equality before the law. The only way in which middle and smaller States can assure their equality before the law is to assure that, if necessary, their disputes with more powerful States may be submitted to independent adjudication. Failure to assure independent adjudication invites the use of pressure and coercion, in their various forms, by the stronger State against the weaker as the two seek to settle their dispute bilaterally. On the other hand, knowledge that a dispute may ultimately be referred to independent adjudication will do much to ensure that, in their bilateral efforts to resolve the dispute, the parties will act responsibly in accordance with principles of law and equity.

Treaties are becoming an increasingly important element in relations between States and the application of the principle of independent adjudication of disputes to the field of treaty relations will be a large step toward giving real meaning to the concept of sovereign equality of States.

**Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information***

Note -- Jan. 8/69 sent photocopy of
this memorandum, with Mr. Cadieux's
comments (or approval) to
Personnel Ops. Div.
and Finance Div. (Travel Section (Mr.
McGord))

002620

ZS

Document disclosed under the *Access to Information Act* -
Document divulgué en vertu de la *Loi sur l'accès à l'information*

FOR INFORMATION
POUR INFORMATION

SECURITY - SÉCURITÉ

DATE

TO - À

☐ RETAIN
CONSERVER

☐ RETURN
RETOURNER

☐ FORWARD TO

☐ DESTROY
DÉTRUIRE

☐ FILE
CLASSER

002621

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO Under-Secretary (through the Legal Adviser)

SECURITY
Sécurité

RESTRICTED

FROM Legal Division

REFERENCE
Référence

SUBJECT U. N. Conference on the Law of Treaties -
Sujet Second Session - Canadian Delegation

Received		DATE	December 4, 1968
		NUMBER Numéro	
DEC 6 1968		FILE	DOSSIER
In Legal Division Department of External Affairs		OTTAWA	20-3-1-6
		MISSION	37

ENCLOSURES
Annexes

DISTRIBUTION

Pers.Ops.Div.
Finance Div.
U.N. Div.

We should be grateful for your instructions concerning the size and composition of the Canadian Delegation to the second session of the U.N. Conference on the Law of Treaties which is to take place from April 9 to May 21, 1969. You will recall that during the first session Mr. Wershof was Head of Delegation. For the first five weeks of the nine-week session he was assisted by Mr. McKinnon; during the last four weeks, when the pace of the conference quickened and the more controversial articles were being discussed, Mr. McKinnon had to return to Geneva and Mr. Robertson from New York and Mr. Stanford from this Division assisted Mr. Wershof.

2. During the nine-week first session the conference sat in Committee of the Whole and dealt with almost 85 articles (75 ILC articles plus several new ones proposed by representatives). The second session will last only six weeks. The first two weeks will be devoted to Committee of the Whole discussion of those questions which were too difficult and controversial to dispose of at the first session. These include disputes settlement, the "all States" question and final clauses. During the final four weeks the conference will meet in Plenary to dispose finally of all 75-80 articles.

3. Experience during the first five weeks of the first session indicated that, even under normal conditions, a delegation of only two persons was inadequate. The pace of the second session will be more intense throughout the full six weeks than was the first session. Moreover the first three weeks of the second session will be particularly active for the Canadian delegation because, in addition to participating in general western efforts in Committee to secure satisfactory Articles on disputes settlements and other unresolved issues, the Canadian delegation will be required during this period to carry out very active lobbying on Article 5 (the federal States article) which will probably be voted upon in Plenary during the third week of the session.

Size

4. It appears therefore that the delegation should be made up of at least three persons who would be present for the full six weeks, plus a fourth who would be present for the first part of the Conference, i.e. until the Plenary vote on Article 5.

Received	
DEC 10 1968	
In Legal Division Department of External Affairs	

..2

5.12.15/05)

- 2 -

RESTRICTED

Composition

5. If you agree with the foregoing, the composition of the Canadian delegation might be as follows:

Mr. Wershof, Head of Delegation

yes

Mr. Beesley, to be present for the first 2-1/2 to 3 weeks to deal particularly with Article 5,

yes

Mr. Stanford, (Head of Treaty Section) to be present for the full session,

yes/
no
yes
no
yes
no

OR Mr. Robertson, (New York) if available ✓
Mr. Lapointe, (Geneva) if available ✓
to be present for the full session. However if neither could be spared by his mission for the full six weeks we would seek to have them each attend for half the session.

yes

6. On the basis of your comments on the foregoing proposals, we shall prepare for your initials a memorandum to the Minister seeking his approval for the size and composition of the Delegation. It would not appear necessary to refer this matter to Cabinet for decision.

Alan Beesley
Legal Division.

File
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
A Under-Secretary (through the Legal Adviser)

FROM
De Legal Division

REFERENCE
Référence

SUBJECT
Sujet U. N. Conference on the Law of Treaties -
Second Session - Canadian Delegation

SECURITY
Sécurité RESTRICTED

DATE December 4, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	37

ENCLOSURES
Annexes

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Finance Div.
U.N. Div.

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2. During the nine-week first session the conference sat in Committee of the Whole and dealt with almost 85 articles (75 ILC articles plus several new ones proposed by representatives). The second session will last only six weeks. The first two weeks will be devoted to Committee of the Whole discussion of those questions which were too difficult and controversial to dispose of at the first session. These include disputes settlement, the "all States" question and final clauses. During the final four weeks the conference will meet in Plenary to dispose finally of all 75-80 articles.

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Size

4. It appears therefore that the delegation should be made up of at least three persons who would be present for the full six weeks, plus a fourth who would be present for the first part of the Conference, i.e. until the Plenary vote on Article 5.

..2

- 2 -

RESTRICTED

Composition

5. If you agree with the foregoing, the composition of the Canadian delegation might be as follows:

Mr. Wershof, Head of Delegation

Mr. Reesley, to be present for the first 2-1/2 to 3 weeks to deal particularly with Article 5,

Mr. Stanford, (Head of Treaty Section) to be present for the full session,

Mr. Robertson, (New York) if available

OR Mr. Lapointe, (Geneva) if available
to be present for the full session. However if neither could be spared by his mission for the full six weeks we would seek to have them each attend for half the session.

6. On the basis of your comments on the foregoing proposals, we shall prepare for your initials a memorandum to the Minister seeking his approval for the size and composition of the Delegation. It would not appear necessary to refer this matter to Cabinet for decision.

W. A. WESLEY

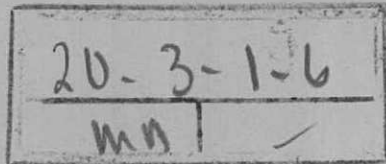
Legal Division.

*To Translation Bureau
for translation into
French - 12/2/68.*

Our File*20-3-1-6

December 2, 1968.

*Sent out
in French
Dec 9*



Your Excellency,

I have the honour to acknowledge Your Excellency's letter of November 27 concerning paragraph two of Article 5 of the proposed Convention on the Law of Treaties to be considered at the forthcoming second session of the U.N. Conference on the Law of Treaties.

The Canadian Government is most grateful for the support of the Holy See in respect of this question. In addition I should like to express my sincere appreciation for the personal interest you have taken in this matter of importance to Canada.

I remain, Your Excellency,

Yours very sincerely,

Under-Secretary.

His Excellency,
The Most Reverend Emaluele Clarizio,
Apostolic Delegate to Canada,
Manor Avenue,
Rockcliffe Park,
OTTAWA 2, Ontario.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FROM DEPT. OF EXTERNAL AFFAIRS

DEC 10 1968

FILE CHARGED OUT

TO: Mr. Clark
CONFIDENTIAL

TO
À

The Under-Secretary of State
for External Affairs, Ottawa.

SECURITY
Sécurité

FROM
De

The Canadian Embassy, The Hague.

DATE November 29, 1968

REFERENCE
Référence

Your letter L-917 October 10, 1968. J-45

NUMBER
Numéro

525

SUBJECT
Sujet


LAW OF TREATIES CONFERENCE

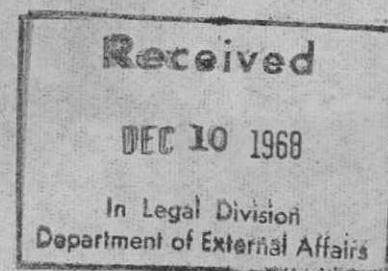
FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	20-4
37	

ENCLOSURES
Annexes

DISTRIBUTION

When your letter under reference arrived, Professor Riphagen was occupied with the North Sea Continental Shelf case which was being heard, as you know, by the International Court of Justice. When we telephoned him last week to make an appointment, the earliest that he could see us was today but we were not, unfortunately, able to keep the appointment owing to the departure of the Ambassador and Mrs. Bull. Professor Riphagen leaves for Strasbourg on Monday and will not return until about December 12 and we will not, therefore, have a chance to see him until that time.


Embassy.



O/BSEA

O/USSEA

Parl. Secy.

Press Office

File

Diary

Div. Diary

Commonwealth Div. (Miss Dench)

U.N. Division (Mr. Parry)

CONFIDENTIAL

November 29, 1968

MEMORANDUM FOR THE MINISTER

Commonwealth Prime Ministers' Meeting

This memorandum seeks your views on a proposal by Britain that the forthcoming Commonwealth Prime Ministers' Meeting discuss the inclusion in the proposed U.N. Convention on the Law of Treaties of a requirement for the compulsory independent adjudication of disputes arising out of the application of the Convention.

This topic is particularly important in the law of treaties context because the new Convention will almost certainly contain a great many provisions on the invalidity and termination of treaties, e.g. on grounds such as fraud, coercion or changed circumstances, which could give rise to serious abuse if they are not made subject to independent adjudication. Such abuse could gravely undermine treaty relations generally. For this reason many western countries have stated they will not accept a treaties convention unless it contains a requirement for compulsory independent settlement of disputes. Eastern European governments oppose such a provision on the ground that it is contrary to the sovereignty of States. Whether such a provision is contained in the Convention will therefore depend almost entirely on the position of the newer States.

The British proposal is that the Prime Ministers themselves discuss the question briefly in their general review of the world political situation and that the question be discussed further during the week of the conference by senior officials.

The major factor against discussing the question during the conference is the problem of time. As you know the conference agenda is already crowded. However the importance of the topic would appear to justify a brief discussion by Prime Ministers and senior officials.

/s/

- 2 -

CONFIDENTIAL

I attach, therefore, for release if you approve, a telegram to London saying that we would not object to a brief discussion of this item by Prime Ministers and senior officials if other countries agree, but that we doubt the necessity of detailed discussion of this question by officials at the time of the Prime Ministers' conference. The telegram also states, in reply to a query, that Canada will take part in preliminary discussions among western governments in February, prior to the second session of the treaties conference in April and May. Canada participated in similar discussions earlier this year, prior to the first session of the treaties conference.

M. CADIEUX

H. C.

MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER		SECURITY SECURITE					
		29 NOV. 1968	20-3-116	37	CONFID.					
TO/A	LDN	NO		PRECEDENCE						
		L-1125		PRIORITY						
INFO WSHDC, PERMISNY, CNBRA, WIGTN, COPEN.										
BAG: ROME (MALTA) CLMBO, NICOS, ISBAD, ACCRA, NROBI, LAGOS, DSLAM, PSPAN, GRTN,										
KNGTN, DELHI, LKMPR										

REF YOURTEL 5693 NOV 27

SUB/SUJ COMWEL PRIME MINISTERS MTG: PEACEFUL SETTLEMENT OF DISPUTES AND LAW OF TREATIES CONSULTATIONS.

ALTHOUGH WE ARE RELUCTANT TO ADD NEW ITEM TO ALREADY CROWDED AGENDA WE WOULD HAVE NO OBJECTION TO PRIME MINISTERS DEALING BRIEFLY WITH DISPUTES SETTLEMENT, IN LAW OF TREATIES CONTEXT, IF OTHERS AGREE. WE ASSUME PRINCIPAL OBJECT IN RAISING THIS QUESTION AT P.M. LEVEL IS TO IMPRESS UPON DEVELOPING COMWEL COUNTRIES IMPORTANCE WHICH WESTERN COUNTRIES ATTACH TO INCLUSION OF SATISFACTORY DISPUTES ARTICLE IN LAW OF TREATIES CONVENTION, RATHER THAN TO DISCUSS MECHANICS OF PROCEDURES. IF FURTHER DISCUSSION OF THIS TOPIC BY OFFICIALS AT TIME OF ~~XXXX~~ P.M.'S CONFERENCE IS TO TAKE PLACE WE ASSUME IT WOULD BE IN CONTEXT OF GENERAL POLITICAL DISCUSSIONS, IN WHICH CASE ~~XXXX~~ *Diptil* ~~XXXX~~ *Ryo* COULD DISCUSS ITEM ON BEHALF OF CANADA ~~XXXX~~

~~XXXX~~ IN UNLIKELY EVENT A SPECIAL GROUP IS TO BE FORMED TO DISCUSS QUESTION DURING PRIME MINISTERS' MEETING, WE WOULD CONSIDER SENDING WERSHOF, HEAD OF CANADIAN DEL TO TREATIES CONFERENCE, TO LDN TO TAKE PART. WE SERIOUSLY QUESTION, HOWEVER, NEED FOR DETAILED TECHNICAL DISCUSSIONS AMONG

DISTRIBUTION COMMONWEALTH DIV (MISS DENCH) P.C.O. (MR. ROBERTSON)
LOCAL/LOCALE U.N. DIV. (MR. PARRY) PMO. (MR. LALONDE) (DONE IN DIV.) NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD:ZS	LEGAL	2-5406	SIG..... M. CADIEUX

- 2 -

CONFID.

OFFICIALS AT TIME OF PRIME MINISTERS' CONFERENCE.

2. WITH RESPECT TO GENERAL PRELIMINARY MEETINGS ON LAW OF TREATIES IN LONDON AND PARIS WEEK OF FEBRUARY 3 (PARA 2 RETTEL REFERS) WE AGREE THAT MEETINGS OF KIND PLANNED BY BRITS AND WEO GROUP COULD BE MOST USEFUL IN PREPARING WESTERN POSITION FOR SECOND SESSION OF LAW OF TREATIES CONFERENCE. WE WOULD PROPOSE THAT WERSHOF AND STANFORD ATTEND THESE MEETINGS.

--

ACTION COPY

L	20-3-1-0
13	11

FM KLMPR NOV29/68 CONFD

TO EXTEROTT 1399

REF YOURLET L-737(M)SEP10 OURTEL1173 OCT9 YOURTEL L-916 OCT10

LAW OF TREATIES CONFERENCE-BURMA

IN RANGOON NOV19 JAMES CALLED ON U AUNG THANT, DEPUTY HEAD OF UN DIV
IN MFA TO MAKE REPRESENTATIONS RE PARA 2 OF ARTICLE 5 AND DELIVER
AIDE MEMOIRE. U AUNG THANT DID NOT/NOT KNOW WHETHER BURMA WOULD ATT-
END SECOND SESSION OF CONFERENCE BUT WAS INTERESTED IN ORAL PRESENT-
ATION AND HE PROMISED TO STUDY AIDE MEMOIRE CAREFULLY AND BRING IT
TO ATTN OF APPROPRIATE LEGAL AUTHORITIES IN BURMA.

1.29.11

file 20-3-1-6
37 3/12

CONFIDENTIAL

November 29, 1968

MEMORANDUM FOR THE MINISTER

Commonwealth Prime Ministers' Meeting

This memorandum seeks your views on a proposal by Britain that the forthcoming Commonwealth Prime Ministers' Meeting discuss the inclusion in the proposed U.N. Convention on the Law of Treaties of a requirement for the compulsory independent adjudication of disputes arising out of the application of the Convention.

This topic is particularly important in the law of treaties context because the new Convention will almost certainly contain a great many provisions on the invalidity and termination of treaties, e.g. on grounds such as fraud, coercion or changed circumstances, which could give rise to serious abuse if they are not made subject to independent adjudication. Such abuse could gravely undermine treaty relations generally. For this reason many western countries have stated they will not accept a treaties convention unless it contains a requirement for compulsory independent settlement of disputes. Eastern European governments oppose such a provision on the ground that it is contrary to the sovereignty of States. Whether such a provision is contained in the Convention will therefore depend almost entirely on the position of the newer States.

The British proposal is that the Prime Ministers themselves discuss the question briefly in their general review of the world political situation and that the question be discussed further during the week of the conference by senior officials.

The major factor against discussing the question during the conference is the problem of time. As you know the conference agenda is already crowded. However the importance of the topic would appear to justify a brief discussion by Prime Ministers and senior officials.

/ .2

[Handwritten signature]

29.11.21/05) BSM

- 2 -

CONFIDENTIAL

--

I attach, therefore, for release if you approve, a telegram to London saying that we would not object to a brief discussion of this item by Prime Ministers and senior officials if other countries agree, but that we doubt the necessity of detailed discussion of this question by officials at the time of the Prime Ministers' conference. The telegram also states, in reply to a query, that Canada will take part in preliminary discussions among western governments in February, prior to the second session of the treaties conference in April and May. Canada participated in similar discussions earlier this year, prior to the first session of the treaties conference.

me

M. C.

MESSAGE

FM/DE EXTERNL OTT

DATE
29 NOV.
1968

FILE/DOSSIER

SECURITY
SECURITE

CONF.

TO/A IDN

NO
L-1125

PRECEDENCE
PRIORITY

INFO WSHDC, PERMISNY, CNBRA, WLGTN, COPEN.
BAG: ROME(MALTA) CIMBO, NICOS, ISBAD, ACCRA, NROBI, LAGOS, DSLAM, PSPAN, GRGTN,
KNGTN, DELHI, LKMPR

REF YOURTEL 5693 NOV 27

SUB/SUJ COMWEL PRIME MINISTERS MTG: PEACEFUL SETTLEMENT OF DISPUTES AND LAW
OF TREATIES CONSULTATIONS.

ALTHOUGH WE ARE RELUCTANT TO ADD NEW ITEM TO ALREADY CROWDED AGENDA
WE WOULD HAVE NO OBJECTION TO PRIME MINISTERS DEALING BRIEFLY WITH DISPUTES
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OBJECT IN RAISING THIS QUESTION AT P.M. LEVEL IS TO IMPRESS UPON DEVELOPING
COMWEL COUNTRIES IMPORTANCE WHICH WESTERN COUNTRIES ATTACH TO INCLUSION OF
SATISFACTORY DISPUTES ARTICLE IN LAW OF TREATIES CONVENTION, RATHER THAN TO
DISCUSS MECHANICS OF PROCEDURES. IF FURTHER DISCUSSION OF THIS TOPIC BY
OFFICIALS AT TIME OF P.M.'S CONFERENCE IS TO TAKE PLACE WE ASSUME IT
WOULD BE IN CONTEXT OF GENERAL POLITICAL DISCUSSIONS, IN WHICH CASE
MENTAL REPRESENTATIVES, DEPART-
COULD DISCUSS ITEM ON BEHALF OF CANADA.

IN UNLIKELY EVENT A SPECIAL GROUP IS TO BE FORMED TO DISCUSS
QUESTION DURING PRIME MINISTERS' MEETING, WE WOULD CONSIDER SENDING WERSHOF,
HEAD OF CANADIAN DEL TO TREATIES CONFERENCE, TO LDN TO TAKE PART. WE
SERIOUSLY QUESTION, HOWEVER, NEED FOR DETAILED TECHNICAL DISCUSSIONS AMONG

*****2

DISTRIBUTION COMMONWEALTH DIV (MISS DENCH)
LOCAL/LOCALE U.N.DIV. (MR. PARRY)

P.C.O. (MR. ROBERTSON)
P.M.O. (MR. LALONDE) (DONE IN DIV.) NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG. J. S. STANFORD:ZS

LEGAL

2-5406

SIG. M. CADIEUX:ZS 002635

- 2 -

CONF.

OFFICIALS AT TIME OF PRIME MINISTERS' CONFERENCE.

2. WITH RESPECT TO GENERAL PRELIMINARY MEETINGS ON LAW OF TREATIES IN LONDON AND PARIS WEEK OF FEBRUARY 3 (PARA 2 REFTEL REFERS) WE AGREE THAT MEETINGS OF KIND PLANNED BY BRITS AND WEO GROUP COULD BE MOST USEFUL IN PREPARING WESTERN POSITION FOR SECOND SESSION OF LAW OF TREATIES CONFERENCE. WE WOULD PROPOSE THAT WERSHOF AND STANFORD ATTEND THESE MEETINGS.

Diary
File



TO: Mr. Stangford
FROM: REGISTRY
DEC 12 1968
FILE CHARGED C
TO: Mr. Clark

Rome, le 28 novembre 1968

Monsieur le Consul Général,

A la demande de mon Gouvernement, j'ai l'honneur de vous transmettre, sous ce pli, une Note officielle que je vous saurais gré de bien vouloir transmettre au Secrétariat d'Etat pour les Affaires Etrangères de la République de Saint-Marin.

Je vous prie d'agréer, Monsieur le Consul Général, les assurances de ma très haute considération.

Le Consul du Canada,

Pierre Dumas
Pierre Dumas

Son Excellence
le Marquis Giuseppe del Pennino,
Consul Général de la République de San Marino,
Via Po, 22,
ROMA

Received
DEC 12 1968
In Legal Division
Department of External Affairs

17.12.12

Rome, le 28 novembre 1968

Le Consulat du Canada près la République de Saint-Marin présente ses compliments au Secrétariat d'Etat pour les Affaires Etrangères et a l'honneur de se référer à la deuxième session de la Conférence Internationale chargée de rédiger la "Convention sur le Droit des Traités", qui doit avoir lieu à Vienne du 9 avril au 21 mai 1969.

Lors de la première session de cette conférence internationale, qui s'était déroulée à Vienne du 26 mars au 24 mai de cette année, le paragraphe 2 de l'article 5 (se lisant "Les membres d'une Union fédérale peuvent conclure des traités si leur constitution fédérale le permet, et dans les limites que celle-ci prévoit) a été adopté en commission à la suite d'un scrutin à la simple majorité.

Pour les raisons indiquées dans l'Aide-Mémoire ci-annexé, le Gouvernement du Canada saurait gré au Gouvernement de la République de Saint-Marin de bien vouloir l'appuyer lorsqu'il demandera l'omission du paragraphe 2 de l'article 5, lors de l'examen de l'article 5 en séance plénière, durant la deuxième session. Il est à espérer que le représentant de Saint-Marin à la deuxième session continuera - comme il l'avait fait lors de la première session - à s'opposer à l'adoption du paragraphe 2.

Vu l'importance que de nombreux états accordent au premier paragraphe de l'Article 5 (se lisant "Chaque état est habilité à conclure des traités"), les autorités canadiennes espèrent également que le représentant de Saint-Marin appuiera la demande canadienne pour que l'on vote séparément au sujet du paragraphe 2. Toutefois, si l'on devait refuser un scrutin séparé sur le paragraphe 2, il est à espérer que le Gouvernement de la République de Saint-Marin alors voudra bien appuyer la demande canadienne d'omettre complètement l'Article 5, puisque les inconvénients de cet article, autrement, l'emporteraient sur ses avantages.

Le Consulat du Canada saurait gré au Secrétariat d'Etat pour les Affaires Etrangères de bien vouloir lui faire part, en temps utile, de l'attitude que le Gouvernement de la République de Saint-Marin adoptera sur les questions précitées.

Le Consulat du Canada saisit cette occasion de renouveler au Secrétariat d'Etat pour les Affaires étrangères de la République de Saint-Marin les assurances de sa très haute considération.

Secrétariat d'Etat pour les Affaires Etrangères,
Palais du Gouvernement,
San Marino,
Repubblica de San Marino.



A I D E - M E M O I R E

The Canadian Government considers that the inclusion in the proposed international Convention on the Law of Treaties of draft Article 5, paragraph 2, could be disruptive of treaty-making practice both for federal States and for other States which seek to conclude treaties with federal States.

The Federal Constitution in Internal Law

Paragraph 2 of Article 5 provides that the treaty-making capacity of a member of a federal State is to be determined by reference to the federal constitution. The paragraph contains no provision, however, which recognizes that the federal constitution is an internal law of the federal State and that its interpretation therefore falls within the exclusive jurisdiction of the internal tribunals of the federal State having jurisdiction in constitutional matters. The result is that the paragraph, if adopted in its present form could lead to the practice, which no State would consider acceptable in principle, of other States assuming the right to interpret for themselves the constitutions of federal States. This practice, particularly in cases where the constitutional provisions regarding treaty-making are the subject of dispute, would constitute a clear case of interference by the outside State in the internal affairs of the federal State.

The Federal Constitution in International Law

Proposed paragraph 2 of Article 5 appears to establish the principle that the federal constitution alone is determinative of status in international law, whereas in fact a federal constitution, because it is an internal law of the federal State, cannot of itself determine matters of international law. This failure to take account of other elements equally important in international law, such as recognition, has implications extending beyond the law of treaties. For example, if the present paragraph 2, referring as it does to the federal constitution, were adopted and regarded as law it would be possible to maintain that members of federal States are entitled in international law to join international organizations on the same basis as recognized sovereign States, provided only that the federal constitution purports to confer the international status which would be necessary to meet the conditions of membership. Such a situation could, of course, lead to a distortion of national representation in international organs. In fact there is no instance of state practice which supports the view that a federal constitution of itself confers any status in international law.

State Practice

An examination of State practice reveals that no federal constitution authorizes the constituent parts of the federation to enter freely and independently into international agreements. The constitutions of the great majority of federal States reserve to the federal government the responsibility for the conclusion of

- 2 -

international agreements and make it clear that the constituent members do not possess this right. Even in these cases where, for special historical or political reasons, the constitutional practice of federal States apparently allows the constituent parts to enter into certain types of agreements with foreign States, these constitutions all provide that this authority must be exercised either through the intermediary of the federal government or subject to ultimate federal approval or control. These constitutional practices cannot be said to have given rise to State practice sufficient to permit the codification of rules of law of universal application.

There is no suggestion that the omission of paragraph 2 of Article 5 would in any way impair the rights of the members of any federal State, whereas many federal States have indicated that its inclusion would create difficulties for them.

Scope of the Convention

Article 1 adopted at the first session of the Law of Treaties Conference provides that "The present Convention applies to Treaties concluded between States". Members of a federal union are not States as that term is used in Article 1. This was confirmed by the deletion of the word "States" from paragraph 2 of Article 5 at the first session. A paragraph dealing with treaty-making by members of federal States is therefore outside the scope of the proposed Convention.

Conclusion

In view of the legal considerations referred to above and because of the importance which it attaches to this matter, the Government of Canada earnestly requests the support of the Government of the Republic of San Marino for the omission of paragraph 2 of Article 5 from the Convention on the Law of Treaties to be adopted in Vienna.

pub 20-3-1-6
JH 12/12

Legal Div.
a letter of credentials seems
indicated

sent 9/12/68

DÉLÉGATION APOSTOLIQUE
AVENUE MANOR
PARC ROCKCLIFFE
OTTAWA 2, ONTARIO



APOSTOLIC DELEGATION
MANOR AVENUE
ROCKCLIFFE PARK
OTTAWA 2, ONTARIO

N. 6355 / 68

Le 27 novembre 1968

20-3-1-6
37

Cher Monsieur Cadieux,

Faisant suite à ma communication verbale en rapport avec votre aimable lettre du 15 octobre dernier, j'ai le plaisir de porter à votre connaissance la réponse que je viens de recevoir de Son Eminence le Cardinal Amleto Cicognani, Secrétaire d'Etat de Sa Sainteté, au sujet de la Convention internationale sur le Droit des Traités qui se déroulera à Vienne en avril prochain, et plus particulièrement concernant le second paragraphe de l'Article 5 du Projet de Convention qui est à l'étude.

Son Eminence le Cardinal Cicognani m'indique que des instructions seront données aux Membres de la Délégation du Saint-Siège en vue de favoriser la requête du Gouvernement du Canada, dans les limites permises par les circonstances et à condition que la question soit maintenue dans un contexte non politique.

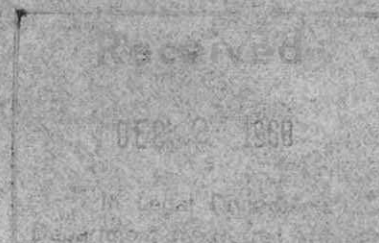
Je puis aussi ajouter que, selon la promesse que je vous en avais faite, j'ai moi-même traité personnellement de cette affaire à la Secrétairerie d'Etat, lors de mon récent séjour à Rome, et j'y ai constaté les dispositions les meilleures en vue de seconder votre désir.

Avec mes hommages, je vous prie d'agréer, cher Monsieur Cadieux, l'expression de mes sentiments distingués.

+ E. Clarici

Délégué Apostolique.

Monsieur Marcel Cadieux
Sous-Secrétaire d'Etat aux affaires Extérieures
Ministère des Affaires Extérieures
Edifice de l'Est
OTTAWA.



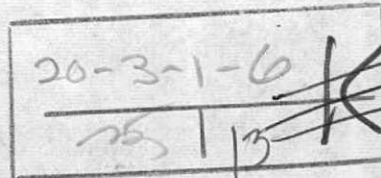
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Jul 20-3-1-67

ACTION COPY

→ Legal Division



FM LDN NOV27/68 CONFD NO/NO STANDARD
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INFO WSHDC PRMNY

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PCO(ROBERTSON)PMO(LALONDE)DEOTT

BAG ROME(MALTA)CLMBO NICOS ISBAD DE LDN ACCRA NROBI LAGOS DSLAM

PSPAN GRGTN KNGTN DELHI DE OTT KLMPR DE CNBRA

REF OURTEL 5361 NOV25

COMWEL PRIME MINISTERS MTG:PEACEFUL SETTLEMENT OF DISPUTES AND LAW
OF TREATIES CONSULTATIONS

CONTRARY TO IMPRESSION WE HAD RECEIVED EARLIER THIS WEEK BRITS ARE
NOW PROPOSING TO ALL COMWEL GOVTS THROUGH UK HIGHCOMS THAT IT WOULD
BE USEFUL TO HAVE HIGH LEVEL DISCUSSIONS BETWEEN OFFICIALS DURING
PRIME MINISTERS MTG ON PEACEFUL SETTLEMENT OF DISPUTES PROCEDURES
IN RELATION TO LAW OF TREATIES CONFERENCE.BRITS ENVISAGE THAT
PRIME MINISTERS MIGHT TOUCH ON SUBJ OF PEACEFUL SETTLEMENT OF DIS-
PUTES DURING GENERAL DISCUSSION UNDER AGENDA ITEM ON REVIEW OF WORLD
POLITICAL SITUATION AND THAT THEREAFTER SUBJ COULD BE DISCUSSED BY
BROUP OF OFFICIALS.MAIN PURPOSE OF DISCUSSIONS WOULD BE TO ATTEMPT
TO INFLUENCE POSITION OF DEVELOPING COMWEL COUNTRIES ON ARTICLE 62
OF DRAFT LAW OF TREATIES CONVENTION ALTHOUGH OTHER MATTERS MIGHT BE
RAISED.WHILE BRITS DO NOT/NOT EXPECT THAT EXPERTS ON THIS SUBJ
WILL BE ATTACHED TO ALL DELS THEY ARE HOPEFUL THAT OLD COMWEL DELS
PLUS REPS FROM IMPORTANT COUNTRIES SUCH AS INDIA,PAK,GHANA,NIGERIA
AND KENYA WILL HAVE SOMEBODY ATTACHED TO THEIR DELS WHO WOULD BE

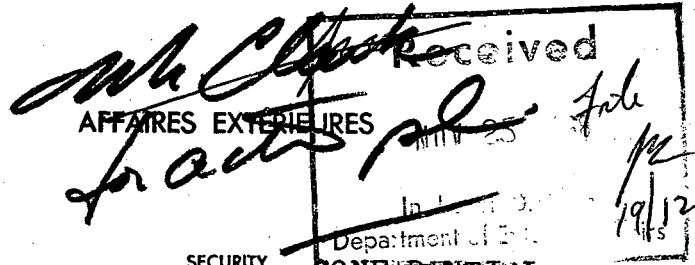
PAGE TWO 5693 CONFD NO/NO STANDARD

FAMILIAR WITH THIS SUBJ.

2. IN ADDITION TO THESE CONSULTATIONS WHICH WOULD BE HELD AT SAME TIME AS PRIME MINISTERS MTG BRITS CONSIDER IT WOULD BE USEFUL TO HAVE A GENERAL DISCUSSION OF TACTICS TO BE FOLLOWED AT NEXT SESSION OF LAW OF TREATIES CONFERENCE IN WEO GROUP PLUS JPN MTG TO BE HELD IN PARIS ON FEB6,7 AND POSSIBLY FEB8. FCO ALSO BELIEVE IT WOULD BE HELPFUL TO HAVE ONE DAY OF CONSULTATIONS IN LDN PRIOR TO THE PARIS MTG WITH CDN, AUSTRALIAN, NZ AND AMERICAN REPS TO DISCUSS CONCLUSIONS WEO GROUP MIGHT ADOPT AT MTG IN PARIS AND TO REVIEW DISCUSSIONS HELD AT TIME OF PRIME MINISTERS MTG. BRITS ARE EMPH- SIZING HOWEVER TO AUSTRALIAN AND NZ GOVTS THAT IF THEY FIND IT DIFF- ICULT TO SEND QUALIFIED REPS TO BOTH PRIME MINISTERS MTG AND THE COMBINED LDN-PARIS MTGS IN FEB BRITS CONSIDER THAT MORE IMPORTANT EFFORTS SHOULD CENTRE AROUND DISCUSSION OF PEACEFUL SETTLEMENT OF DISPUTES HELD CONCURRENTLY WITH PRIME MINISTERS MTG.

3. GRATEFUL FOR YOUR VIEWS ON ABOVE PROPOSALS.

EXTERNAL AFFAIRS

TO
A Divisions Listed BelowFROM
De Commonwealth DivisionREFERENCE
Référence Our Memo of November 5, 1968SUBJECT
Sujet Commonwealth Prime Ministers' Meeting -
Briefing MaterialSECURITY
SécuritéDepartment of External Affairs
CONFIDENTIAL

DATE November 25, 1968.

NUMBER
Numéro

FILE	20-3-1-6	DOSSIER
OTTAWA	23-3-1968	
MISSION	37	

ENCLOSURES
Annexes

DISTRIBUTION

..

Further to our memorandum under reference and your replies we have now consolidated the list of subjects on which briefs should be prepared. A copy of the list (Annex A) is attached indicating in each case the Division responsible for action.

2. Divisions so indicated are requested to prepare, or cause to be prepared in consultation with other divisions and departments as appropriate, informative briefs on recent developments not to exceed two pages, single spaced. Detailed information is not required except in very special cases where the responsible Division considers it necessary to the understanding of the subject. (If it is found absolutely necessary to exceed this limitation, Divisions are asked to provide appropriate headings in order to facilitate reference). The briefs should be forwarded to reach Commonwealth Division by December 16. The format and procedures to be followed are outlined in Annex B to this memorandum.

3. At this time we are reminding Divisions only of the requirement for background papers so that preparations for them may be put in hand at the earliest possible date. Later we will probably request from some divisions and for certain subjects: (a) draft statements for use by the Prime Minister in his main interventions, (b) talking points, and (c) draft passages for the Communiqué. Divisions will wish to keep these possibilities in mind during preparation of the background briefs, so that any supplementary material required can be made available at short notice.

- 2 -

CONFIDENTIAL

4. Responsible Divisions will bear in mind the necessity of clearing briefs through the appropriate Assistant Under-Secretaries and should work out their own programme in such a way that all papers do not reach Assistant Under-Secretaries on the morning of the final day. Your co-operation in providing material as far in advance of the deadline as possible where the subject matter permits will be much appreciated. Such clearance of course may be applicable more to the supplementary material mentioned in para 2 than in the background papers.

K. L. Bennett
Commonwealth Division.

Distribution

African and Middle Eastern Div.	6 copies
U.N. Division	2 "
Far Eastern Division	3 "
Commonwealth Division	4 "
European Division	1 "
Peacekeeping and Military Assistance Division	2 "
N.A. Defence & Nato Division	1 "
Disarmament Division	1 "
Commercial Policy Division	5 "
Aid and Development Division	4 "
Consular Division	1 "
Cultural Affairs Division	1 "
Information Division	1 "
<u>Legal Division</u>	1 "

Info to

Dept. of Finance Attn: Mr. Ostreicher
P.C.O. (Mr. Robertson(Mr. Wright))
O/SSEA (Mr. McGill)
O/USSEA (Mr. Collins) (Mr. Langley)
Miss Dench

- 2 -

ASIA AND FAR EAST:

1. Vietnam - Far Eastern Division
2. China - Far Eastern Division
 - (a) Canadian views on China
 - (b) Canadian policy towards China
 - (c) Views of principal Commonwealth Governments on China
3. Regional Cooperation in South East Asia - Far Eastern Division
(to include Sabah as an example of political problem which has to be overcome)
4. India - Pakistan - Commonwealth Division

EUROPE:

1. East West Relations in the aftermath of Czechoslovakia - European Division
2. Cyprus - Peacekeeping and Military Assistance
3. NATO - North American Defence and NATO

DISARMAMENT

- Disarmament Division

Prospects for Arms Control and Disarmament

- (a) Strategic arms limitation talks
- (b) Non-proliferation Treaty
- (c) Prospects for ENDC

Agenda Item 2 - World Economic Situation and Trends:

1. World Economic Situation - General - Commercial Policy Division
2. Commonwealth Economic Developments: - Commercial Policy Division
Finance Ministers' Meeting

...../3

- 3 -

- 3. Commonwealth Trade - Commercial Policy Division
- 4. Post Kennedy Round Developments - Commercial Policy Division
- 5. International Monetary Developments - Commercial Policy Division
- 6. UNCTAD - Aid and Development Division

(a) Problems of Trade Development

(b) Commodity Agreements - recent developments

- 7. Commonwealth Assistance Programmes - Aid and Development (in consultation with CIDA)
- 8. Canadian External Aid Policy - Aid and Development Division
- 9. Secretary-General's proposal for a Commonwealth Aid Programme - Aid and Development Division

Agenda Item 4 - Review of Commonwealth Cooperation

- "Growth Points"

- Commonwealth Division to coordinate with contributions from Cultural Affairs, Legal and Information Divisions and other Departments as required.

- Value of Prime Ministers' Meetings (Canadian proposal)

Agenda Item 5 - Secretariat Matters:

- 1. Commonwealth Secretariat - General Report - Commonwealth Division
- || 2. Establishment of Legal Section - Legal Division in consultation with Commonwealth Division
- 3. Establishment of Information Section - Information Division in consultation with Commonwealth
- 4. Scale of Assessments for Secretariat Budget - Commonwealth Division in consultation with Department of Finance

Miscellaneous

"Country" Papers

- Commonwealth Division

Military Assistance

- Peacekeeping and Military Assistance Division to consider the need for a brief on this subject

- 4 -

Peaceful Settlement of Disputes

- U.N. Division

Citizenship Questions)

)

Immigration Policy)

- By general consent the proposed item on Citizenship and Migration has been deleted from the provisional agenda. However, it is possible that some government may raise these questions in the course of the meetings. There may also be discussion outside the conference proceedings. Consular Division will coordinate with Departments concerned the preparation of background papers on these two subjects.

Possible Cdn. Peacekeeping Role in Nigeria

- Peacekeeping and Military Assistance Division

Commonwealth Parliamentary Association

- Commonwealth Division

ANNEX B

Excerpts from the Manual of Procedures on the Preparation of Briefs

1.5.7.5 Preparation of Briefs

- .1 Briefs are to be short and concise. Long, speculative and theoretical essays, supported by a wealth of detail, are not of value to Ministers. Papers should be limited to departmental conclusions on the subject and should avoid the reasoning which led to these conclusions.
- .2 When the issues are complicated or highly technical, appendices may be attached, but they should rarely be necessary.

1.5.7.7 Approval of Briefs and Talking Points

- .1 It is the responsibility of divisions preparing briefs and talking points to have them cleared with the appropriate Deputy or Assistant Under-Secretary, typed in final form, and sent in the proper number of copies to the co-ordinating divisions before the deadline. N.B. But please note paragraph 2 of the covering memorandum.
- .2 The originating division retains the file, diary, and circulation copies and sends the following to the co-ordinating division:

original
O/SSEA copy
O/USSEA copy
Press Office
co-ordinating division copy

.../2

- 2 -

ANNEX B

(Format to be used for briefs)

CLASSIFICATION

Date

Commonwealth Prime Ministers' Meeting
London, January 7 - 15, 1968 (small letters)

TITLE OF ARTICLE (all letters capitalized)

MEMORANDUM

(text)

(to be single spaced)

(1½" margin)

(Note: Commonwealth Division requires the original
on 8½ x 11 Vellum and two carbon copies
(approved by the appropriate Assistant Under-
Secretary)

Mr. Beaufort to see OK

Mr. Co. Pithers
S. J. H. 1

Number

ACTION COPY

FM LDN NOV25/68 CONFD NO/NO STANDARD

TO EXTER 5631

INFO IT COPEN DE HAGUE PRMNY

LAW OF TREATIES CONSULTATIONS

LAST WEEK THE AUSTRALIAN HIGHCOM WAS INSTRUCTED TO INFORM THE FCO THAT THE AUSTRALIANS DID NOT/NOT LOOK WITH FAVOUR ON THE POSSIBILITY, WHICH HAD APPARENTLY BEEN FLOATED IN NY, THAT DISCUSSIONS MIGHT TAKE PLACE BETWEEN AUSTRALIAN, NZ, CDN AND BRIT OFFICIALS (WITH PERHAPS ALSO THE AMERICANS JOINING IN) IN LDN AT THE SAME TIME AS THE COMWEL PRIME MINISTERS MTG. WHEN THE AUSTRALIAN HIGHCOM INFORMED THE FCO OF THIS VIEW BRIT OFFICIALS AGREED THAT IT WOULD BE IMPRACTICABLE TO TIE IN CONSULTATIONS ON THIS SUBJ IN ANY WAY WITH THE PRIME MINISTERS MTG. FCO OFFICIALS ARE THINKING IN TERMS OF HAVING WESTERN CONSULTATIONS ON THIS SUBJ SOMETIME IN FEB EITHER BEFORE OR AFTER WESTERN EUROPEAN CONSULTATIONS ON THE LAW OF TREATIES ARE CONVENED.

20-3-1-6	
37	

file 20-3-1-6

J. H. 2/12

Jul 20-3-1-6
26/11

20-3-1-6
10/✓

CONFIDENTIAL

November 21, 1968

SEEN BY THE MINISTER

MEMORANDUM FOR THE MINISTER

U. N. Conference on the Law of Treaties

In August you authorized representations to friendly governments to seek their support for the deletion from the proposed Convention on the Law of Treaties of a paragraph purporting to establish that members of a federal State may, in certain circumstances, enjoy independent treaty-making capacity. At that time you instructed that the Prime Minister be informed of your decision to authorize these representations.

-- The Prime Minister has recently indicated his concurrence in your decision and has asked "What has since happened at the U.N. in this regard?" Attached for your initials, if you approve, is a memorandum to the Prime Minister replying to his query.

Memo signed
& sent to
1/8 M
Nov. 25/68

J.R.R.
M.C.

21. 11. 28 (cc) RSM

O/TN
O/SSEA
O/USSEA
Parl. Secy.
Press Office
C.O. (Fed.-Prov. Sect.)
Co-Or. Div.
U.N. Div.
European Div.
Pays Franco. Div.
A.M.E. Div.
Commonwealth Div.
Far Eastern Div. ✓
Mr. Yalden (O/USSEA)

Our File: 20-3-1-6

CONFIDENTIAL 13 ✓

November 21, 1968

MEMORANDUM FOR THE PRIME MINISTER

U.N. Conference on the Law of Treaties

You recently enquired about developments at the United Nations concerning the law of treaties since August of this year, when I instructed that representations be made to friendly governments to seek support for the deletion from the proposed Convention on the Law of Treaties of a paragraph purporting to establish that members of a federal State may, in certain circumstances, enjoy independent treaty-making capacity.

The draft Convention was discussed at the first session of a U.N. Conference on the Law of Treaties in April of this year. The second session, which is expected to adopt a Convention, will take place from April 9 to May 21, 1969. At that session a decision will be taken whether or not to include the "federal States" paragraph in the Convention. Because the draft Convention is before a U.N. diplomatic conference, it is not being discussed at the current session of the General Assembly.

The initial reaction of friendly governments to our request for support has been encouraging. While replies are necessarily tentative at this stage, they indicate that we can almost certainly secure a separate vote on paragraph 2 of Article 5 (the paragraph which deals with federal States); and that in a vote on paragraph 2, there would be a "blocking third", and possibly even a simple majority, against the paragraph. (While the opposition of one third of the delegates plus one will be sufficient to delete the paragraph, there would be obvious presentational advantages to a majority vote against the paragraph.) It is not yet possible to say whether, in the unlikely event a separate vote on paragraph 2 is refused, we can obtain a "blocking third" against Article 5 as a whole.

ORIGINAL SIGNED BY
MITCHELL SHARP

M.S.

O/SSEA
O:USSEA
Parl.Secy.
Press Office
Co-Ordination Div.
U.N.Division
European Div.
Pays franco.Div.
A&M.E.Div.
Commwlv.Div.
Far Eastern Div.
Mr. Yalden (O/USSEA)

Our File:20-3-1-6

CONFIDENTIAL

November 21, 1968

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ABR
M.C.

O/PM
O/SSBA
O/USSEA
Parl. Secy.
Press Office
P.C.O. (Fed.-Prov. Sect.)
Co-Gr. Div.
U.N. Div.
European Div.
Pays Franco. Div.
A.M.E. Div.
Commonwealth Div.
Far Eastern Div.
Mr. Yalden (O/USSEA)

File ✓
Diary
Div. Diary

Our File: 20-3-1-6

CONFIDENTIAL

13 | ✓

November 21, 1968

MEMORANDUM FOR THE PRIME MINISTER

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ORIGINAL SIGNED BY
MITCHELL SHARP

H.S.

O/SSEA
O:USSEA
Parl. Secy.
Press Office
Co-Ordination Div.
U.N. Division
European Div.
Pays franco. Div.
A.M.E. Div.
Comwel. Div.
Far Eastern Div.
Mr. Yalden (O/USSEA)

File ✓
Diary
Div. Diary

Our File: 20-3-1-6

CONFIDENTIAL 13 ✓

Received November 21, 1968

NOV 25 1968

In Legal Division
Department of External Affairs

MEMORANDUM FOR THE MINISTER

U. N. Conference on the Law of Treaties

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(SGD.) H.B. ROBINSON

for H.C.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

DEC 2 1968

FILE CHARGED OUT

TO
A The Under-Secretary of State
for External Affairs, Ottawa

FROM
De The Embassy, Quito, Ecuador

REFERENCE
Référence My Letter No. 159 of October 11, 1968

SUBJECT
Sujet Law of Treaties - Article 5

SECURITY
Sécurité

CONFIDENTIAL

DATE

November 20, 1968

NUMBER
Numéro

181

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	11
37	

ENCLOSURES
Annexes

DISTRIBUTION

Bogota

Shortly after speaking with Dr. Humberto Garcia Ortiz (my letter under reference) I was approached on the subject of Article 5 by Sr. Bolivar Paredes Zarama of the Foreign Ministry, who is also a senior "advisor" on legal matters, and who in fact ranks slightly above Dr. Garcia in the hierarchy. Sr. Paredes Zarama expressed considerable interest in our position with regard to Article 5, and asked to be provided with additional information on our constitutional position and practice in the area of federal-provincial relations. I subsequently sent him a copy of "Federalism and International Relations", drawing his attention in particular to Chapter II. This he returned to me about a week later with a most complimentary letter. He had had Chapter II translated into Spanish in its entirety, and said that the pamphlet was a most valuable legal study, adding that he hoped that Canada would publish a Spanish language version for the benefit of legal scholars in the Spanish-speaking world.

Received

DEC 2 1968

In Legal Division
Department of External Affairs

2. At a social function last evening Sr. Paredes Zarama took me aside to again raise the question of Article 5. He gave me a copy of Mr. Wershof's statement on Article 5 at the Vienna meeting earlier this year, together with details of the vote, which presumably were taken from the official transcript. He said that although Ecuador had first abstained on and later voted in favour of paragraph 2 of Article 5, he was now of the personal view that unless paragraph 2 could be deleted, the whole of Article 5 should be eliminated, since in reality it was redundant and unnecessary.

3. Sr. Paredes Zarama then said - and this is the principal reason for this letter - that in his opinion our request for Ecuador's support in our wishes with respect to Article 5 would be greatly enhanced if Mr. Sharp were to write directly to the Foreign Minister about it, a letter which I could personally deliver to the Minister.

4. I of course recommend that this be done, and believe that the sooner it is done the greater effect it will have. Since Sr. Paredes Zarama also alluded to reciprocal Canadian support for Ecuador's position on Article 49, it would be most helpful if the letter could also express some sympathy

...2

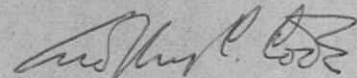
CONFIDENTIAL

- 2 -

for Ecuador on Article 49, if only in principle and subject to such reservations as we may have. Such a letter should be in Spanish, and should be addressed as follows:

Excellentísimo Señor don
Rogelio Valdivieso Eguiguren,
Ministro de Relaciones Exteriores,
Quito, Ecuador.

5. I believe that with such a letter the chances that Ecuador will agree to support us are good, and will be excellent if the letter contains something sympathetic with regard to Article 49. Without such a letter, now that it has been suggested, our chances of support will in my opinion be poor.



G. C. Cook,
Chargé d'Affaires a.i.

July 20-3-1-6 JH 30/69
371
Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,
November 19, 1968.

Re: Loss of Allowances by Employee

Dear David,

Joe Stanford of Legal Division sent me a copy of your Memorandum of November 6 to Legal Division entitled "U.N. Conference on the Law of Treaties - Secretarial Assistance (Allowances)". I am specially interested in the subject because I was the Head of the Canadian Delegation at the Law of Treaties Conference in Vienna early in 1968, and the prospective loss of allowances complicated the task of borrowing a secretary from one or other of the Embassies in Europe to work for the delegation.

Your Memorandum of November 6 is clear enough on the point that no exceptions can be made to Regulation 2.33.2 of the Manual of Departmental Regulations. This Regulation says in part:

"if the employee is absent from the post for a period in excess of thirty days, the employee shall not be paid any allowances that he could be paid if he were at the post in respect of that period of absence."

However, we are still in doubt at this post as to the scope of the quoted regulation. Let us take as an example Miss Taylor of this Embassy, who was borrowed for a few weeks for the Law of Treaties Conference in the spring of 1968. Her F.S. Allowance for one month is \$107.10 to which should be added \$13.88 under the heading of Sal. Equal. This makes a total monthly allowance of \$120.98 from which the Government deducts \$65. as Miss Taylor's share of the rent. The total rental per month is Kroner 932.75 or \$133.25(Cdn).

...2

Mr. David Wilson,
Head of Staff Relations &
Compensation Division,
Department of External Affairs,
OTTAWA.

cc: J. Stanford, Legal Division ✓
cc: Arthur Young, Finance Division.

2.

If Miss Taylor were to go on temporary duty to the next conference for a period in excess of 30 days, it is clear that she would forfeit the F.S. and Sal.Equal. for the whole period of the temporary duty. What is not clear to us is what would happen to the rent. Would she have to pay out of her own pocket

- (a) the whole of the rent for this period, or
- (b) only her normal share at the rate of \$65 per month, or
- (c) no part of the rent.

Regulation 2.11C.5 seems to mean that the answer is (b).

I am not at this time suggesting an approach to Treasury Board on any part of this problem, but merely wish to know for certain what the financial consequences for an employee would be.

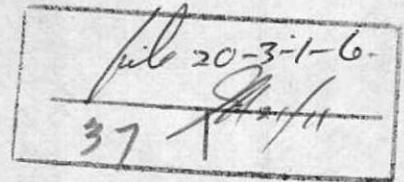
Yours sincerely,
M. H. WERSHOF

M. H. Wershof,
Ambassador.

OFFICE OF
THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS



William Stanford
CABINET DU
SECRÉTAIRE D'ÉTAT AUX AFFAIRES EXTÉRIEURES



MEMORANDUM

TO
À Legal Division

FROM
De O/SSEA - A.S.McGill

REFERENCE
Référence Memo of August 14, 1968

SUBJECT
Sujet U.N. Law of Treaties Conference

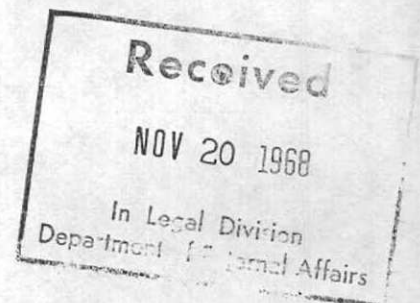
SECURITY
Sécurité CONFIDENTIAL

DATE November 19, 1968.

... The attached memorandum was finally released by the Prime Minister's Office on November 12. You will note that the Prime Minister asks what has happened since August on this question.

sent 21/11/68 2. I suggest you prepare a short memo on the latest developments for the Prime Minister through the Minister.

ASMc
A. S. McGill



MEMORANDUM

CONFIDENTIAL

FROM THE OFFICE OF

THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS

SEEN BY
PRIME MINISTER
J.M.

To Miss M. Macdonald,
Office of the Prime Minister

August 15, 1968.

U.N. Law of Treaties Conference -
Treaty-making by the Provinces

... Attached is a departmental memorandum to the Secretary of State for External Affairs concerning the U.N. Conference on the Law of Treaties, dated August 14.

Mr. Sharp asked particularly that this memorandum be brought to the attention of the Prime Minister and that the Prime Minister be informed that Mr. Sharp had approved the action which is recommended in the memorandum.

*I agree. What has since
happened at the U.N.
in this regard?*

A.S.M.
A.S. McGill

SEEN BY
PRIME MINISTER
12.11.68

Released ->

CONFIDENTIAL

August 14, 1968

MEMORANDUM FOR THE MINISTER

U.N. Law of Treaties Conference -
Treaty-making by the Provinces

This memorandum seeks your approval for Canadian diplomatic representations to certain friendly governments aimed at preventing the incorporation into a U.N. Convention on the Law of Treaties of a provision recognizing that members of a federal State may, in certain circumstances, enjoy a treaty making capacity independent of the central government.

The first session of the U.N. Conference on the Law of Treaties took place in Vienna from March 26 to May 24, 1968. The second session, which is expected to adopt an international Convention, will take place from April 9 to May 21, 1969. The basic proposal before the Conference on this issue is one of the draft articles, prepared by the International Law Commission, namely Article 5, entitled "Capacity of states to conclude treaties", which reads as follows:

- "1. Every state possesses capacity to conclude treaties.
2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down."

The Canadian delegation to the U.N. Conference was instructed, at the first session, to support but not to initiate efforts to delete paragraph 2 of the article and, failing that, to support efforts to delete from paragraph 2 the reference to political subdivisions as "States".

In the debate on Article 5, Mexico and Malaysia moved deletion of the whole article and Australia, Nepal and Viet Nam moved deletion of paragraph 2. (Finland also proposed the deletion of Article 5 but withdrew its proposal as a result of pressure which the Soviet Union brought to bear in Helsinki.) The Canadian delegation, as instructed, supported these proposals; however both proposals were defeated. The proposal to delete paragraph 2 came closest to success (38 for deletion, 45 opposed, 10 abstentions). Among those favouring deletion were most Latin American

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States (including Mexico, Argentina, Uruguay and Brazil). European States favouring deletion included Austria, Belgium, Britain, Germany, Italy, the Netherlands and Norway. Other opponents of the paragraph included the USA, Australia, New Zealand, India and Japan. Support for paragraph 2 came mainly from the USSR and its satellites (except Czechoslovakia, which abstained) and from France and the states of the French Communauté. Also defeated was an Austrian amendment which would have required specific authorization by the federal government to enable any member government to conclude a treaty. A proposal by New Zealand to delete reference to States in paragraph 2 was referred to the Drafting Committee where it was accepted. The support which had developed for amendment or deletion of the article proved insufficient due in large part to a last minute campaign launched by the USSR and France to retain the article unchanged. Gabon did much of the lobbying for France with other French-speaking African states.

As a consequence of these developments the word "States" was deleted from paragraph 2, but the paragraph thus amended was retained by a simple majority (46 for the article, 39 against, 8 abstentions). At the second session next spring, every article in order to be accepted for inclusion in the final draft treaty must be adopted by a two-thirds majority of the vote in Plenary, as opposed to a simple majority in Committee of the Whole at the first session. Although Article 5(2) did not receive a two-thirds majority at the first session, it may be expected that there will exist at the second session a general bias in favour of articles adopted at the first session. It cannot be assumed, therefore, that Article 5(2) will be rejected in the absence of a determined effort by its opponents to defeat it.

There are a number of reasons based on general principles of international law for objecting to the inclusion of Article 5(2) in the proposed Convention. First, although many States (including Canada) have said that the reference in 5(2) to the federal constitution ought not to be considered as an invitation to outside States to interpret another State's constitution, many other States argued at Vienna that 5(2) is objectionable precisely because it does invite States to interpret for themselves the constitutions of other States. There can be little doubt that, in practice, Article 5(2) would lead to this kind of objectionable behaviour, since there is nothing in the article which indicates who shall make the determination as to which federal units of a given state have the treaty making power. This is the most serious defect in the article. Moreover, Article 5(2) fails to deal with the principles of state responsibility and recognition; i.e., who is responsible under international law for the breach of a treaty by a member of a federal state, the member government or the federal government; and the requirement under international law that

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- 3 -

other States must have recognized the purported treaty-making capacity before it can be said to exist in international law; thus it ought not to be enough merely for a unit of a federal state to assert that it possesses certain powers if this is not accepted by the central government and by other states. Finally, Article I of the Convention provides that it shall apply only to treaties between States. As members of federal States are not themselves States (in the international law sense) and the Convention is confined to relations between States, Article 5(2) goes beyond the terms of the Convention.

For Canada, however, the main objection to paragraph 2 of Article 5 is internal. Its inclusion in the Convention would constitute international recognition that, in certain circumstances, member governments of a federal state may enjoy a treaty making capacity independent of the central government, and without reference to the views of the government of the country as a whole. The effect of the article is that it is open to foreign States, if they so choose, to decide whether or not a federal State's constitution permits direct treaty relations with a unit of a federal State. This would provide proponents of an independent treaty making capacity for the Canadian provinces with an exceedingly valuable weapon in the forthcoming constitutional negotiations in Canada when they turn to the role of the provinces in international affairs. Similarly the rejection of these principles by the Conference would significantly advance the position of the federal government on this question. It is for this reason that I recommend that Canada actively seek the support of certain other governments represented at the Conference for the deletion of Article 5(2).

Possible objections to a Canadian initiative of this kind are partly presentational, since it must be assumed that an active campaign by the Canadian government will become known to, and be commented upon by, those persons in Canada who oppose the federal position on treaty making by the provinces. This need not necessarily embarrass the federal government, however, for such an initiative is a logical extension on the international plane of the position which the federal government has consistently taken within Canada on this issue. Second, as appears above, Article 5(2) obtained a simple majority at the first session largely due to the vigorous efforts of the USSR, anxious to preserve the international personality of Byelorussia and the Ukraine, and the efforts of France, which lined up all the French Communauté representatives in support of the paragraph. It is possible that an initiative by Canada of the kind proposed may generate a counter campaign on the part of the USSR, France or both. However, the continued support of the Eastern Europeans and the French-speaking Africans for the article as it stands is most unlikely to abate in the absence of some effort to this end by Canada, and there would seem to be more to be gained than lost by such efforts.

- 4 -

In the light of the foregoing, I should be grateful for your authority to instruct our Ambassadors and High Commissioners in friendly countries to make discreet approaches to the governments to which they are accredited, tailored to the situation in each country in question, to seek their support for the rejection of Article 5(2) at the second session. This initiative would have as its objectives (a) to assure that those governments whose representatives opposed Article 5(2) at the first session maintain their opposition at the second session, thereby depriving paragraph 2 of the two-thirds majority it requires for adoption, and (b) to assure a simple majority in favour of a procedural motion for a separate vote on paragraph 2 of Article 5, as was done at the first session. (Without a successful vote on this procedural question we could secure the rejection of Article 5(2) only through the rejection of Article 5 as a whole. This would be virtually impossible since a great many Afro-Asian governments which oppose paragraph 2 attach considerable importance to paragraph 1 and, if faced with a choice, would accept both paragraphs rather than lose paragraph 1.)

If the Canadian government is to undertake this initiative it should do so within the next few weeks, prior to the beginning of the U.N. General Assembly. The General Assembly will be followed by a meeting of the Afro-Asian legal consultative group, which will discuss in detail the positions to be adopted by Afro-Asian States at the second session.

me

M.C.

ACTION COPY

Feb 20-3-1-6

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FM GRGTN NOV18/68 CONFID NO/NO STANDARD

TO EXTER 989 PRIORITY

INFO TT PRMNY DE OTT

REF OURTEL 926 OCT18

LAW OF TREATIES CONFERENCE

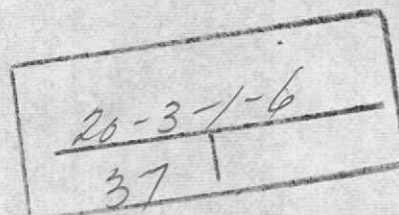
JACKSON, ACTING PERMSEC, MINISTRY OF EXTER, HAS CONFIRMED GOVT

WILL SUPPORT US AS REQUESTED AT FORTHCOMING LAW OF TREATIES

CONFERENCE. HE WILL BE COMMUNICATING THIS DECISION SHORTLY TO POLLARD

ON GUYANAS DEL TO UNGA

DOUGAN



1.20.11

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EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES 26 1968

FROM REGISTRY

FILE CHARGED OUT

TO: CONFIDENTIAL

SECURITY
Sécurité

DATE November 12, 1968

NUMBER
Numéro 570

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	37 11

TO
A The Under-Secretary of State
for External Affairs, OTTAWA

FROM
De The Canadian Embassy, BONN

REFERENCE
Référence Our Telegram No. 1215 of October 10 and
Our Telegram No. 1140 of September 20, 1968

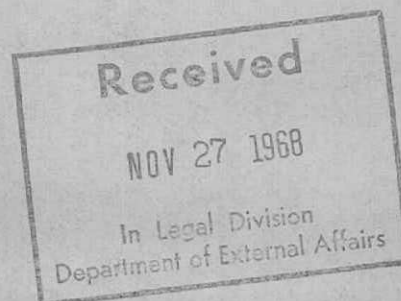
SUBJECT
Sujet Law of Treaties Conference - Article V

ENCLOSURES
Annexes

DISTRIBUTION

We were called on October 28, 1968 to the Foreign Office by Dr. Fleischauer of the Legal Division to receive an aide-memoire confirming what we have already reported on Article V in our telegram of October 10. Attached is an unofficial translation of the aide-memoire.

The Embassy



FOREIGN OFFICE

V 1 - 83.20/0

A i d e - M e m o i r e

The Foreign Office has thoroughly examined the Aide-Memoire, presented by the Canadian Embassy on September 20th, 1968, giving the Canadian Government's opinion on Article 5, para. 2 of the Law of Treaties Convention, which is at present under study. The Federal Government's opinion on the above Article of the draft Convention can be summarized as follows:

1. The adoption of Article 5, para. 2 in its present version would not entail constitutional difficulties for the Federal Republic, as Article 32, para. 3 of the Basic Law of the Federal Republic of Germany lays down the extent, to which the Länder can conclude treaties with foreign countries. Article 32, para. 3 reads as follows: "In so far as the Länder are responsible for legislation, they can, with the approval of the Federal Government, conclude treaties with foreign countries."
2. However the Federal Government would have reservations regarding the inclusion of Article 5, para. 2 in the Law of Treaties Convention, which is at present under study. For the Federal Government shares the Canadian Government's opinion, that Article 5, para. 2 would be beyond the scope of the Convention as laid down in Article 1 of the draft Convention. Therefore, the Federal Government would have reservations in this respect because the component parts of a federal state, even though they are given treaty-making capacity, cannot be equated with sovereign states. The Federal Government is of the opinion that there is no necessity to exceed the scope of the intended Convention, laid down in Article 1, for the benefit of the component parts of federal states, since Article 3 of the draft Convention explicitly stipulates that the validity of treaties outside the Convention on the Law of Treaties is not affected by this Convention. Moreover, Article 3 expressly allows for the possibility of applying certain articles of the Convention to such treaties, as are not covered by the Convention.

The Federal Government also shares the Canadian Government's fear that the retention of Article 5, para. 2 could lead to the interpretation of national constitutions becoming the subject of international dispute to a greater extent than has so far been possible. Moreover, it holds the opinion that Article 5, para. 2 is, in fact, so defined that it covers the traditional types of federal structure, but on the other hand it is not certain whether it covers all conceivable forms of federal structure.

...2

- 2 -

For all these reasons the German delegation criticised Article 5, para. 2 and advocated its deletion at the 11th session of the Committee of the Whole on April 3, 1968, during this year's session of the Law of Treaties Conference in Vienna (conference document A/Conf.31/C.1/SR 11, page 9/10); at the voting during the 12th session of the Committee of the Whole on April 4, 1968 and during the 28th session of the Committee of the Whole on April 18, 1968 the German delegation on both occasions declared itself against the retention of Article 5, para. 2. After it had been decided by simple majority to retain the paragraph, the German delegation, in the final voting on Article 5, which took place also during the 28th session of the Committee of the Whole on April 18, 1968, voted against the Article as a whole (comp. to conference document A/Conf.31 C.1/L.37c, p. 36-39). The analysis which was made of the stage reached in the preparation of the Law of Treaties Convention, after the first part of the conference has not prompted the Federal Government to change its opinion on Article 5, para. 2; therefore (in the second part of the conference) the Federal Government intends to declare itself against the retention of Article 5, para. 2. It will also vote negatively (on whole Article) should it not be possible to vote separately on para. 2. As Article 5, para. 1 makes a correct but at the same time empty statement, due to the lack of objective criteria for the determination of the national quality of a territorial unit, the Federal Government does not intend to give its consent to the inclusion of Article 5, para. 1; that is to say, that in a vote on Article 5, para. 1 it would abstain from voting.

3. The Austrian compromise proposal, contained in conference document A/Conf. 31/C.1/L.2, according to which the federal state has explicitly to affirm the treaty-making capacity of its member states, would not on the other hand be acceptable to the Federal Government. This proposal, which was rejected at the 12th session of the Committee of the Whole on April 4, 1968 by 35:29:21 votes, and whose re-introduction into the next part of the conference therefore seems doubtful, would entail constitutional difficulties for the Federal Republic of Germany. The approval, which is mentioned in Art. 32, para. 3 of the Basic Law of the Federal Republic of Germany, is only stated with reference to internal affairs, not with reference to the foreign partner (cp. Th. Maunz and G. Dürig, Basic Law, Commentary, 2nd edition 1966, Note 56 to Article 32).

Bonn, 28th October, 1968.

EXTERNAL AFFAIRS



MAJ 20 1968
AFFAIRES ÉTÉRIEURES

FILE CHARGED OUT

TO
A The Under-Secretary of State
for External Affairs, Ottawa

FROM
De The Canadian Embassy, Santiago, Chile

REFERENCE
Référence Our Telegram (284) of October 9, 1968

SUBJECT
Sujet Law of Treaties Conference

TO: UNCLASSIFIED
SECURITY Sécurité

DATE November 12, 1968

NUMBER 311
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	24-1 11

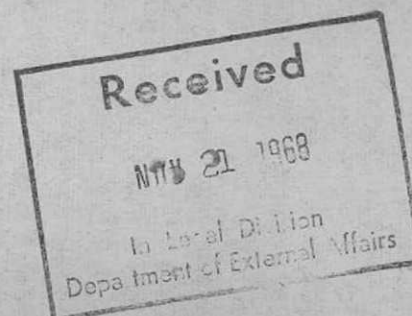
ENCLOSURES
Annexes

DISTRIBUTION

... We are attaching the reply of the Chilean Ministry of External Relations and an office translation confirming that the Chilean delegation shall be instructed to vote against the inclusion of paragraph 2 of article 5 of the draft convention of the law treaties at the second session of the International conference on this subject.

Christopher St. J. Austin

The Embassy
fr



REPUBLICA DE CHILE

MINISTERIO DE RELACIONES EXTERIORES

" AIDE - MEMOIRE "

El Ministerio de Relaciones Exteriores se ha impuesto con el mayor interés y considerado con detención el Aide-Memoire de la Embajada del Canadá, que consigna las razones aducidas por su Gobierno para oponerse a la inclusión en la Convención sobre Derecho de los Tratados del párrafo segundo del Art. 5º del proyecto, que se refiere a la capacidad para celebrar tratados de los miembros de una unión federal si esa capacidad está admitida por la constitución federal y dentro de los límites indicados en ésta.

De acuerdo con la posición y argumentos del Gobierno del Canadá en esta materia, y consecuente con la actitud mantenida por Chile en el primer período de sesiones de la Conferencia de las Naciones Unidas sobre Derecho de los Tratados, la Delegación de Chile al segundo período de sesiones de la Conferencia llevará instrucciones de no favorecer la inclusión en la Convención sobre Derecho de los Tratados de una disposición como la contemplada en el párrafo segundo del Art. 5º del proyecto.

Santiago, 5 de noviembre de 1968.

(Office Translation)

REPUBLIC OF CHILE
Ministry of Foreign Affairs

"AIDE-MEMOIRE"

The Ministry of Foreign Affairs has received the Embassy's Aide-Memoire with great interest, and has given lengthy consideration to this document which states the reasons of the Canadian Government to oppose the inclusion in the Convention on the Law of Treaties of the second paragraph of article 5 of the draft relevant to the ability of members of a federal union to sign treaties if that power is contemplated in the federal constitution and within the scope of the constitution.

In accordance with the position and reasons of the Canadian Government on this matter, and with the position sustained by Chile in the first period of sessions at the U.N. Conference on the Law of Treaties, the Chilean Delegation to the second session of the Conference, shall carry instructions not to favour the inclusion of a provision such as that set forth in the second paragraph of Article 5 of the draft Convention on the Law of Treaties.

Santiago, November 5, 1968.

IR INTERNATIONALE DE JUSTICE

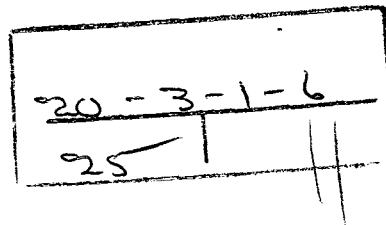
PALAIS DE LA PAIX LA HAYE PAYS-BAS
TÉLÉGR. INTERCOURT LAHAYE TÉLÉPHONE 392344

INTERNATIONAL COURT OF JUSTICE

PEACE PALACE THE HAGUE NETHERLANDS
CABLES: INTERCOURT THEHAGUE TELEPHONE 392344

Le 11 novembre 1968,

Legal Dir.
ne



*prepara
reply to
a highly
given the
unbalance
of facts
article on
Jensen
js*

Cher ami,

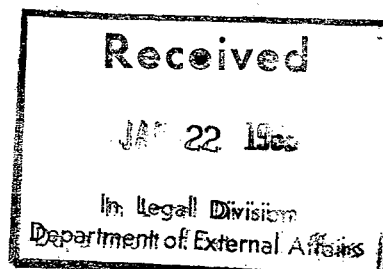
Je me permets de vous envoyer mon article paru récemment sur le droit des traités. Je vous l'envoie comme témoignage de nos derniers travaux communs au sein de la Commission de droit international, travaux dont je suis très fier et qui, je crois, ont produit des résultats d'une valeur durable.

Je profite de cette occasion pour vous envoyer aussi le rapport de la Cour internationale de Justice présenté à l'Assemblée générale des Nations Unies. C'est le premier rapport dans l'histoire de la Cour. Comme vous le verrez dans son contenu, un effort a été commencé pour établir des liens plus étroits entre les organisations internationales, la vie internationale et la Cour (Chapitre E du Rapport). *Voilà les véritables ab-
sinitives que vous avez discutées, à l'année précédente, le fait bien
intuitif!*

J'espère que tout va bien chez vous et je vous prie, mon cher ami, d'accepter mes meilleurs sentiments et souvenirs.

Manfred LACHS

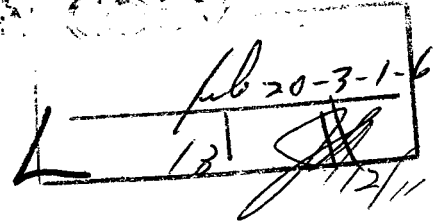
Monsieur Marcel CADIEUX
Sous-secrétaire d'Etat,
Ministère des Affaires étrangères,
OTTAWA,
CANADA.



20.22.1

22.1.19/05)

ACTION COPY



FM NROBI NOV11/68 CONFD

TO EXTER 976

REF YOURTEL L954 OCT18

LAW OF TREATIES CONFERENCE

BHOI, HEAD OF LEGAL DIV FOREIGN MINISTRY, IS ABSENT ON MONTHS
LEAVE. BEFORE DEPARTING HE ASSURED US THAT POINTS RAISED
IN OUR AIDE MEMOIRE WERE RECEIVING CAREFUL CONSIDERATION,
BUT HE WAS NOT/NOT YET IN POSITION TO REPLY. HE SAID
HE WOULD BE GLAD TO DISCUSS THEM ON HIS RETURN. AS HE IS KEY
OFFICIAL CONCERNED WE WILL SEEK APPOINTMENT ON HIS
RETURN IN DEC.

*He should
be disappointed to help us.*

1. 12. 11

002676

20-3-1-6
13 11

Brinkley / Marjorie
Feb 20-3-1-6
13 11/12/11

L

FM BERN NOV11/68 CONFD

TO EXTER 660 PRIORITY

INFO TT PRMNY PRIORITY DE OTT

REF YOURTEL L1043 NOV8

LAW OF TREATIES CONFERENCE-ARTICLE 5

PARA3 OURTEL 652 NOV5 SAID BINDSCHEDLER WOULD BE IN NY FROM NOV11
TO NOV21.WE HAVE CHECKED WITH HIS SECRETARY TODAY WHO SAYS HE
LEFT YESTERDAY FOR NY AND WILL NOT/NOT BE RETURNING BEFORE NOV25.
WE STILL BELIEVE LAWYER TO LAWYER TALK IN NY IS OUR BEST NEXT
STEP.WE WOULD BE HAPPY TO PURSUE IN BERN AFTER OUTCOME OF NY
TALKS ASSESSED.

7. 12.11

Feb 20-3-1-6
ACTION DIV
20-3-1-6
3 11

cc sent to Perm NY
7/12/68

FM LIMA NOV8/68 CONF D

TO EXTER 612 PRIORITY

REF MYTEL 448 SEP25

LAW OF TREATIES CONFERENCE

IN COURSE OF VISIT TO LAPAZ LAST WEEK SECOND COMMERCIAL SECRETARY PRESENTED AIDE-MEMOIRE TO BOLIVIAN MINISTRY OF EXTER RELATIONS. CONTENTS OF AIDE-MEMOIRE WERE DISCUSSED IN GENERAL TERMS WITH HEAD OF LEGAL DIV AND WITH DEPUTY HEAD OF INTERNATL ORGANIZATIONS DIV. IT WAS LEARNED THAT OFFICIAL RESPONSIBLE FOR TAKING A DECISION ON CONTENTS OF AIDE-MEMOIRE IS DR JULIO EGUINO LEDO, HEAD OF INTERNATL ORGANIZATIONS DIV, WHO IS PRESENTLY IN NY ATTENDING UNGA. MR EGUINO IS EXPECTED TO RETURN TO BOLIVIA SOME TIME DURING NOV WHEN THIS MATTER WILL BE BROUGHT TO HIS ATTN. IF THERE IS URGENCY IN THIS MATTER YOU MAY WISH TO ASK PRMNY TO DISCUSS AIDE-MEMOIRE WITH MR EGUINO.

2. OFFICIALS IN LAPAZ INDICATED THAT THEY APPRECIATED CDAS POINT OF VIEW AND THAT BOLIVIA, AS A FRIENDLY NATION, WOULD GIVE IT DUE CONSIDERATION, AND THEY PROMISED TO ADVISE EMB OF BOLIVIAN POSITION AS SOON AS A DECISION HAS BEEN MADE.

3. IN GENERAL DISCUSSIONS WITH BOLIVIAN FOREIGN MINISTRY, SECOND COMMERCIAL SECRETARY GAINED DISTINCT IMPRESSION THAT AN AIDE-MEMOIRE PERTAINING TO THE LAW OF TREATIES CONFERENCE HAD ALSO BEEN PRESENTED BY FRENCH EMB IN LAPAZ. THIS IS NOT/NOT HOWEVER MORE THAN AN IMPRESSION AND NO/NO DETAILS COULD BE OBTAINED REGARDING THE SUBJ MATTER OF THE FRENCH PRESENTATION.

Art 5??

3.12.11

File
Diary
Div.Diary

Tel File
JSS

MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER		SECURITY SECURITE	
		8 NOV./68	20-3-1-6		CONFID	
			13	✓		
			NO		PRECEDENCE	
TO/A			L- 1043		PRIORITY	
INFO						
PERMISNY						

REF YOURTEL 652 NOV5/68 AND OURTEL L1031 NOV. 6/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE FIVE

PERMISNY INFORMS US BINDSCHEDLER HAS ALREADY LEFT NEW YORK TO RETURN
TO SWITZERLAND. PLEASE SEEK AN EARLY OPPORTUNITY TO DISCUSS QUESTION
WITH HIM.

DISTRIBUTION
LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....J.S.STANFORD:ZS.....	LEGAL	2-5406	SIG.....D.M.MILLER.....D.M.MILLER.....



CANADA

PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee
of the Privy Council, approved by His Excellency the Governor
General on the 7th November, 1968

File
20-3-4-3
13/11

The Committee of the Privy Council, on the recommendation of the Acting Secretary of State for External Affairs, advise that authority be granted for Canadian financial participation in the Prek Thnot Power and Irrigation project in Cambodia by means of a pledge of US \$2 million in grant aid funds for the purchase of Canadian goods and services, and that the Secretary of State for External Affairs be authorized to execute and issue an Instrument of Full Powers authorizing George Ignatieff, Canadian Ambassador to the United Nations, to sign on behalf of the Government of Canada an agreement between the Governments of Australia, Canada, Federal Republic of Germany, India, Italy, Japan, the Kingdom of the Netherlands, Pakistan, the Philippines, the United Kingdom of Great Britain and Northern Ireland, ~~(and the Royal Government of)~~ Cambodia, concerning the administrative arrangements for the Prek Thnot (Cambodia) Power and Irrigation Development Project.

REGISTERED IN AUTH. INDEX & REFERRED FOR ACTION TO:
<i>Aid & Development</i>
COPIES REFERRED FOR INFO TO: CHIEF TREASURY OFFICER
<i>Legal</i>

Received
NOV 12 1968
In Legal Division Department of External Affairs

Received from T.B. *8-11-68*

CERTIFIED TO BE A TRUE COPY

W. J. P. Hutton

CLERK OF THE PRIVY COUNCIL

002680

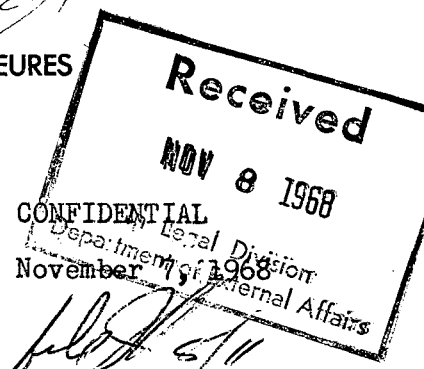
29/12/11

Legal Div./J.S.Stanford/zs

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES



TO
A
MR. A.E. GOTTLIEB

FROM
De
Legal Division

REFERENCE
Référence
Bern Telegram 652 of November 5, 1968

SUBJECT
Sujet
Law of Treaties Conference - Article 5

SECURITY
Sécurité

DATE
November 7, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	18

ENCLOSURES
Annexes

- 5 -

DISTRIBUTION

In accordance with your request, we attach the following documentation for your use in your discussions with Dr. Rudolf Bindschedler, Legal Adviser in the Federal Political Department of the Swiss Government:

- a) a copy of our numbered letter L-737(M) of September 10, 1968 containing instructions sent to all posts. Attached to this numbered letter is the English text of the Aide-Memoire submitted to governments;
- b) a copy of our telegram L-766 of 12 September, 1968 containing supplementary instructions for representations to the Swiss Government;
- c) A French version of the Aide-Memoire prepared in final form which you may wish to leave with Dr. Bindschedler. This document is identical to the Aide-Memoire delivered by our Embassy in Bern to Mr. Micheli, Secretary General of the Federal Political Department;
- d) a copy of Bern telegram 652 of November 5 reporting on their rather unsatisfactory discussions with Micheli and recommending that you speak to Bindschedler;
- e) a copy of our telegram L-1031 of November 6 to Bern replying to the above telegram.

2. Liechtenstein was represented at the first session of the Conference and will presumably be represented at the second session. The Liechtenstein representative did not vote on the first vote on paragraph 2 but voted with Switzerland on the second vote on paragraph 2 and on the vote on Article 5, voting in favour of the paragraph and Article respectively. You may wish to express to Dr. Bindschedler, in passing, the hope that our representations to the Swiss Government will be transmitted to the Liechtenstein authorities as well.

J. M. Miller

Legal Division.

7.11.46(us)

File
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A MR. A.E. GOTLIEB

FROM
De Legal Division

REFERENCE
Référence Bern Telegram 652 of November 5, 1968

SUBJECT
Sujet Law of Treaties Conference - Article 5

SECURITY
Sécurité CONFIDENTIAL

DATE November 7, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 17	

ENCLOSURES
Annexes

- 5 -

DISTRIBUTION

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D. M. MILLER

Legal Division.

A I D E - M E M O I R E

Le Gouvernement canadien estime que l'inclusion de l'Article 5, paragraphe 2, dans la Convention internationale proposée sur le droit des traités irait à l'encontre de la pratique en matière de conclusion des traités, tant pour les Etats fédéraux que pour les autres Etats qui cherchent à conclure des traités avec les Etats fédéraux.

La Constitution fédérale est une loi interne

Le paragraphe 2 de l'Article 5 stipule que les moyens dont dispose un membre d'un Etat fédéral pour conclure des traités doivent être déterminés par rapport à la constitution fédérale. Le paragraphe ne renferme toutefois aucune disposition qui reconnaisse que la constitution fédérale est une loi interne de l'Etat fédéral et que son interprétation est donc du ressort exclusif du tribunal intérieur de l'Etat fédéral qui est compétent en matière constitutionnelle. Si le paragraphe était adopté sous sa forme actuelle, les Etats de l'extérieur pourraient prendre sur eux-mêmes d'interpréter les constitutions des Etats fédéraux, pratique qui ne serait jugée acceptable en principe par aucun Etat. Particulièrement dans les cas où les dispositions constitutionnelles relatives à la conclusion des traités sont matière à controverse, cette pratique équivaldrait nettement à une ingérence de la part de l'Etat de l'extérieur dans les affaires intérieures de l'Etat fédéral.

La Constitution fédérale selon le droit international

L'alinéa 2 de l'Article 5 à l'étude semble poser en principe que la constitution fédérale en soi peut définir un statut devant le droit international, alors qu'en réalité une constitution fédérale, du fait qu'elle est une législation intérieure de l'Etat fédéral, ne peut d'elle-même régler des questions qui sont du ressort du droit international. Ce fait de ne pas prendre en considération d'autres éléments qui sont également importants en droit international, tels que la reconnaissance formelle, a des incidences qui sortent des cadres du droit des traités. Par exemple, si l'alinéa 2 actuel, qui se rapporte à la constitution fédérale, était adopté et considéré comme loi, il serait alors possible de soutenir que les membres des Etats fédéraux ont droit, selon le droit international, de devenir membres d'organisations internationales au même titre que les Etats souverains reconnus, à la seule condition que la constitution fédérale garantisse le statut international nécessaire à une telle affiliation. Il est évident qu'une telle situation entraînerait une déformation de la représentation des pays au sein des organismes internationaux. De fait, il n'existe aucun exemple où la pratique

- 2 -

des Etats appuie l'opinion selon laquelle une constitution fédérale en soi accorde un statut quelconque en droit international.

Pratique des Etats

Un examen de la pratique des Etats révèle qu'aucune constitution fédérale n'autorise les parties constituantes de la fédération à conclure en toute liberté et indépendance des accords internationaux. Les constitutions de la grande majorité des Etats fédéraux réservent au gouvernement fédéral le droit de conclure des accords internationaux et établissent clairement que les membres constituants ne jouissent pas de ce droit. Même dans les cas où, pour des raisons particulières d'ordre historique ou politique, la pratique constitutionnelle des Etats fédéraux semble permettre aux parties constituantes de conclure certains genres d'accords avec des Etats étrangers, toutes ces constitutions stipulent que cette autorité doit être exercée par l'intermédiaire du gouvernement fédéral ou sujette en dernier lieu à l'approbation ou au contrôle du pouvoir fédéral. On ne peut pas dire que ces pratiques constitutionnelles aient donné naissance à une pratique des Etats suffisamment répandue pour permettre la codification de principes de droit d'application universelle.

Personne n'a exprimé la crainte que l'omission de l'alinéa 2 de l'Article 5 porterait atteinte aux droits des membres d'un Etat fédéral quelconque, alors que de nombreux Etats fédéraux ont fait remarquer que l'adoption de cet alinéa leur créerait des difficultés.

Portée de la Convention

L'Article 1 adopté à la première session de la Conférence sur le droit des traités stipule que "La présente Convention se réfère aux traités conclus entre Etats". Les membres d'une union fédérale ne sont pas des Etats au sens donné à ce mot dans l'Article 1. Cela a été confirmé par la suppression du mot "Etats" à l'alinéa 2 de l'Article 5 au cours de la première session. Un alinéa qui porte sur le pouvoir de traiter des membres des Etats fédéraux se situe donc en dehors des cadres de la convention proposée.

Conclusion

En raison des questions d'ordre juridique décrites plus haut et parce qu'il attache beaucoup d'importance à cette affaire, le Gouvernement du Canada prie le Gouvernement de la Suisse de lui accorder son appui dans sa requête visant à faire omettre l'alinéa 2 de l'Article 5 de la Convention sur le droit des traités qui doit être adoptée à Vienne.

MESSAGE

		DATE		FILE/DOSSIER		SECURITY SECURITE	
		6 NOV/68		20-3-1-6		CONFID.	
FM/DE		EXTERNAL OTT		13			
TO/A				NO		PRECEDENCE	
				L-1031		PRIORITY	
INFO				PERMISNY			

REF YOURTEL 652 NOV. 5/68

SUB/SUJ LAW OF TREATIES CONF.-ART.5

SHOULD YOU HAVE OCCASION TO DISCUSS THIS QUESTION AGAIN WITH MICHELI, YOU SHOULD STRESS THAT WE ARE NOT RPT.NOT SEEKING TO EVADE SUBSTANTIVE PROBLEM IN CONVENTION BUT RATHER TO REMOVE FROM CONVENTION A PROVISION WHICH, BECAUSE IT IS INADEQUATE, CREATES MANY MORE PROBLEMS THAN IT RESOLVES AND WHICH IS IN ANY EVENT BEYOND SCOPE OF CONVENTION.

2. STATE PRACTICE IN THE FIELD OF TREATIES BY MEMBERS OF A FEDERAL STATE IS CONFINED ALMOST ENTIRELY TO GERMANY (WHICH OPPOSES PARA 2), SWITZERLAND AND USSR. IN EACH CASE PRACTICE ARISES FROM SPECIAL HISTORICAL OR POLITICAL CIRCUMSTANCES. PRACTICE OF ONLY THREE STATES FAILS TO PROVIDE ADEQUATE BASIS FOR FORMULATION OF A RULE OF LAW WHICH IS TO APPLY TO ALL FEDERAL STATES. IT HAS NOT RESOLVED, FOR EXAMPLE, QUESTION OF STATE RESPONSIBILITY FOR BREACH OF SUCH TREATIES. MOREOVER PARA. 2, IN FAILING TO TAKE INTO ACCOUNT QUESTION OF STATE RESPONSIBILITY AND ROLE OF RECOGNITION, IS A DANGEROUSLY INADEQUATE STATEMENT OF EXISTING INTERNATIONAL LAW.

~~FOR X X X X X G S A X X X X X P E N) X X X X X I N V I E W O F I M P O R T A N C E O F S U B J E C T S A D S T R I K Y O U X X X X X~~

~~I S S U E X X X X X G R A T I E U X X X X X C O U L D X X X X X A R R I V E X X X X X T O X X X X X B I N D X X X X X I N H A S H X X X X X~~

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DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

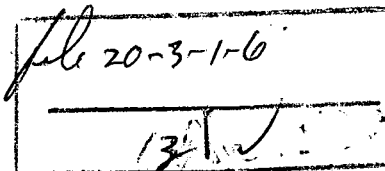
ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. STANFORD:ZS.....	LEGAL	2-5406	SIG..... D. M. MILLER..... D. M. MILLER

- 2 -

CONFED.

FOR PERMIS N.Y. GOTLIEB WILL DISCUSS QUESTION WITH BINDSCHEDLER IN
NEW YORK NEXT WEEK.

CC TO "L" ONLY



*Smith
Stanford*

FM TERAN NOV6/68 CONFD NO/NO STANDARD

TO EXTER 675

REF YOURLET 904 OCT7 AND OURLET 298 SEP21

LAW OF TREATIES

WHEN SAW DR KAZEMI, HEAD IMFA LEGAL DIV TODAY ON OTHER MATTERS
(REF OURTEL 674 NOV6) ASKED WHETHER THERE WERE ANY DEVELOPMENTS RE
IRANIAN POSITION ON THIS MATTER. KAZEMI REITERATED THEY WERE
SYMPATHETIC TO OUR VIEWS AND WENT SO FAR AS TO SAY THEY WERE
INCLINED SUPPORT OUR POSITION. HOWEVER HE INDICATED THEY WISHED
STUDY LEGAL QUESTIONS FULLY (WHICH THEY HAD NOT/NOT YET HAD TIME

*ie, we
won't get
a prior
commitment*

TO DO). HE INDICATED THEY WOULD ALSO WANT TAKE INTO ACCOUNT
DEVELOPMENTS LEADING UP TO AND DURING EARLY STAGES OF RESUMED
CONFERENCE. EXPLAINED YOUR VIEWS ON AMENDMENTS AS SET OUT PARAS
2 AND 3 YOUR REFLET.

2. COPY OF LET TO FARTASH FORWARDED UNDER TS NOV2. REGRET OVER-
SIGHT.

PD LEE

6.7.11

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Stallard
Jul 20-3-1-6
M 2015

TO
A

Legal Division

FROM
De

Staff Relations & Compensation Division

REFERENCE
Référence

Your memorandum of 24 October 1968
to the Finance Division

SUBJECT
Sujet

U.N. Conference on the Law of Treaties -
Secretarial Assistance (Allowances)

SECURITY
Sécurité

UNCLASSIFIED

DATE 6 November 1968

NUMBER
Numéro

FILE	20-3-1-6	DOSSIER
OTTAWA	3-10-3-10-3	
MISSION	37	

ENCLOSURES
Annexes

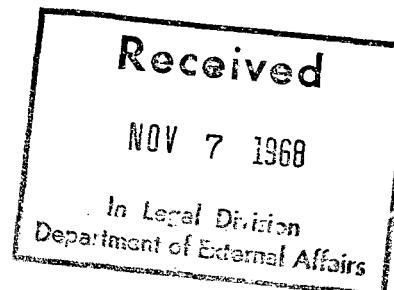
DISTRIBUTION

Finance Div.
Pers. Ops. Div.
Pay Section
Accommodation
Sect. (Mr. J.
Zoubie)

The short answer to the query in your last paragraph is No, unless or until the existing regulations are changed. To seek an exception in this case, by a submission to Treasury Board, would be to court failure, because in a policy area as significant as this they will not accept a piecemeal approach.

David Wilson

David Wilson



14.7.11

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
A Legal Division (Mr. J.S. Stafford)

FROM
De Finance Division

REFERENCE
Référence

SUBJECT
Sujet U.N. Conference on the Law of Treaties -
Second Session

SECURITY
Sécurité

UNCLASSIFIED

DATE October 30, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	1-12-
MISSION	

ENCLOSURES
Annexes

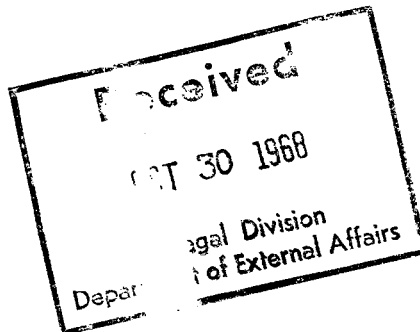
DISTRIBUTION

Pers Ops Div.

Staff Relations
& Compensation
Division.

Since your memorandum under reference deals primarily with the question of allowances for the secretary to be assigned to the Conference we have referred a copy to Staff Relations and Compensation Division for reply.

2. We have noted your telegram asking Vienna to arrange hotel accommodation and should like to remind you that any changes in dates or number of rooms should be brought to our attention and to the attention of the post so that no "no show" charges will be incurred.



[Signature]
Finance Division.

15-30-10

EXTERNAL AFFAIRS



13/11
AFFAIRES EXTERIEURES 107 12 1968

TO: M. Stumpf
FROM: REGISTRY

FILE CHARGED OUT

TO:

SECURITY UNCLASSIFIED
Sécurité

DATE November 6, 1968

NUMBER 478
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	13

TO
A The Under-Secretary of State
for External Affairs, OTTAWA

FROM
De The Canadian Embassy, SANTO DOMINGO

REFERENCE
Référence Your Letter No. L-737(M) of September 10, 1968

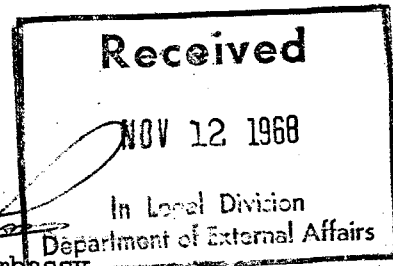
SUBJECT
Sujet Law of Treaties Conferences -- Article 5

ENCLOSURES
Annexes

DISTRIBUTION

Although we recollect having received copies
of the white paper, "Federalism and International Relations,"
copies cannot now be located. We should be most grateful
to receive three (3) additional copies by air.

done
Nov 13/68



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À

The Under-Secretary of State
for External Affairs, OTTAWA

FROM
De

The Canadian Embassy, SANTO DOMINGO

REFERENCE
Référence

Your Letter No. L-737(M) of September 10, 1968

SUBJECT
Sujet

Law of Treaties Conferences -- Article 5

SECURITY
Sécurité

UNCLASSIFIED

DATE

November 6, 1968

NUMBER
Numéro

478

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES
Annexes

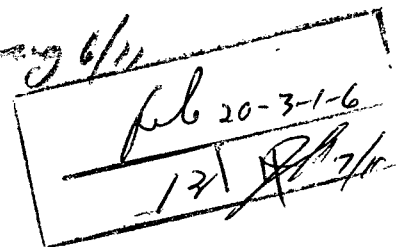
DISTRIBUTION

Although we recollect having received copies
of the white paper, "Federalism and International Relations,"
copies cannot now be located. We should be most grateful
to receive three (3) additional copies by air.

A.D. ROSS

The Embassy

ready to info msg 6/11



FM BERN NOV5/68 CONFD NO/NO STANDARD

TO EXTER 652 PRIORITY

INFO TT PRMNY DE OTT

REF YOURLET L(M)737 SEP10

LAW OF TREATIES CONFERENCE ARTICLE 5

AFTER BINDSCHEDLERS RETURN FROM MILITARY SERVICE(OURLET 340 OCT3
REFERS) HE LEFT IMMEDIATELY FOR NY. WE THEREUPON HAD A WORD WITH CHIEF
OF PROTOCOL ABOUT SEEING PRESIDENT(FOREIGN MINISTER) EVEN THOUGH
SUBJ WAS TECHNICAL. CHIEF OF PROTOCOL SUGGESTED WE SEE SEC GEN OF
FPD. LATTER WAS AWAY ON HOLIDAY BUT AGREED TO SEE US IMMEDIATELY ON HIS
RETURN YESTERDAY. WE LEFT WITH HIM AIDE MEMOIRE AND MADE ORAL
PRESENTATION IN ACCORDANCE WITH INSTRUCTIONS IN OUR REFLET.
SURPRISINGLY AND IN CONTRAST TO COMPLETE UNDERSTANDING FOR AND
SYMPATHY WITH CDN POSITION IN POLITICAL SECTION OF FPD, SEC GEN
MICHELI DID NOT/NOT SEEM TO US PARTICULARLY IMPRESSED WITH CDN
ARGUMENTATION. HE TAXED US ABOUT EFFECTIVELY SEEKING TO EVADE A
SUBSTANTIVE PROBLEM IN CONVENTION, IE THE POWERS, IF ANY, OF MEMBERS
OF A FEDERAL STATE TO CONCLUDE TREATIES. THERE WOULD BE A LACUNA
IN CONVENTION IF SOMETHING ON THIS SUBJ WERE NOT/NOT INCLUDED.
FOR OUR PART WE LAID STRESS UPON ARGUMENTS THAT ADOPTION OF
ARTICLE 5(2) WOULD GIVE THIRD STATES A LEGAL HANDLE WITH WHICH
THEY MIGHT TRY TO INTERPRET FEDERAL CONSTITUTIONS WHICH WAS AN
INTERNAL MATTER OF THE FEDERAL COUNTRY CONCERNED(YOUR PARA4). WE ALSO
EMPHASIZED THAT IN OUR VIEW NOTHING WOULD REALLY BE LOST IF
ARTICLE 5 WERE OMITTED IN ITS ENTIRETY AS THE RIGHT OF STATES TO
MAKE TREATIES IS CLEAR FROM CONVENTIONS AS A WHOLE(YOUR PARA10).

...2

1.6.11

1 E TWO 652 CONF D

FINALLY WE LEFT WITH MICHELI A COPY OF FEDERALISM AND INTERNATIONAL RELATIONS AND FEDERALISM AND INTERNATIONAL CONFERENCES ON EDUCATION.

2. WE ARE NOT/NOT ENTIRELY OPTIMISTIC HOWEVER THAT WE GOT THROUGH TO SEGEN. IN THE END HE MERELY SAID QUOTE THIS IS A MATTER FOR LEGAL EXPERTS. WE SHALL LET YOU KNOW OUR POSITION IN DUE COURSE UNQUOTE.

3. BINDSCHEDLER LEGAL ADVISER IS NOW IN STKM FROM WHENCE HE WILL BE FLYING TO NY TO REPRESENT HIS COUNTRY ON THE SIXTH CTTEE OF UNGA DURING DISCUSSION OF CONVENTION ON SPECIAL MISSIONS. WE UNDERSTAND THAT HE WILL BE IN NY FROM NOV11 TO 21. IN VIEW OF OUR OWN RATHER UNSATISFACTORY TALK WITH MICHELI, WE WOULD URGE THAT OUR SENIOR LEGAL OFFICER IN NY SEEK OUT A SPECIAL INTERVIEW WITH BINDSCHEDLER AND EMPHASIZE IMPORTANCE WE ATTACH TO THIS MATTER. IN NORMAL

WAY WE ARE CONVINCED THAT BINDSCHEDLERS RECOMMENDATION ON THIS SUBJ WILL DETERMINE SWISS POSITION. IF OUR REP IN NY ACHIEVES RAPPORT IN A LAWYER TO LAWYER TALK, WE THINK WE COULD LET MATTER STAND. IF TALK IN NY DOES NOT/NOT APPEAR TO BE WHOLLY SATISFACTORY THERE MIGHT BE A GOOD REASON FOR ROBERTS TO TAKE MATTER UP WITH HEAD OF POLITICAL DEPT (FOREIGN MINISTER) HERE. AS YOU KNOW IN SWISS COLLEGIAL SYSTEM FEDERAL COUNCIL ELECT A NEW PRESIDENT AND VICE PRESIDENT AMONGST THEMSELVES EVERY JAN1 AND PORTFOLIOS ARE OFTEN SHIFTED AROUND. SPUHLER WILL NO/NO LONGER BE PRESIDENT BUT WE MAY HOPE THAT HE WILL REMAIN HEAD OF FPD SINCE, AS YOU KNOW HE IS WELL DISPOSED TOWARDS CDA.

4. COPY OF AIDE MEMOIRE WE LEFT WITH MICHELI AND OTHER PAPERS GOING FORWARD BY BAG NOV7.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES 14 1968

FROM REGISTRY

FILE CHANGED OUT

TO:

SECURITY
Sécurité

CONFIDENTIAL

DATE

November 5, 1968

NUMBER
Numéro

401

FILE
OTTAWA

DOSSIER

MISSION

20-3-1-6
13

TO
A

Under-Secretary of State for External
Affairs, Ottawa

FROM
De

Canadian Embassy, Bern, Switzerland

REFERENCE
Référence

Our Telegram 652 of November 5, 1968

SUBJECT
Sujet

Law of Treaties Conference - Article 5, 1968

ENCLOSURES
Annexes

2

DISTRIBUTION

Permisny

You will recall that, in accordance with the procedure proposed in our telegram 526 of September 19, and agreed to in your telegram L-849 of September 20, we were to see the Legal Adviser of the Federal Political Department and have a preliminary discussion of the Law of Treaties Convention with him, after which we were to seek an audience with the Head of the Political Department, Mr. Spühler who is also President of the Helvetic Confederation, with a view to emphasizing the importance which we attach to the Swiss position on Article 5. This plan went awry for the reason set out in our letter No. 340 of October 3, and in the end, as described in our telegram under reference, we saw Mr. Micheli, the Secretary General of the FPD. We left with him the Aide Memoire attached, marked "A". We also described our attempts to see Mr. Bindschedler and, after presenting our oral argumentation to Mr. Micheli, left with him, as a "bout de papier" without official status but to remind him of the principal points, the paper marked "B" attached. The portions stroked out in red, we explained, had been inserted in the light of our original plan to see Mr. Bindschedler before seeing the President.

2. We trust that you will let us know, in due course, your reaction to the suggestions set out in our telegram under reference.

The Embassy

Received

NOV 14 1968

In Legal Division
Department of External Affairs

A I D E - M E M O I R E

Le Gouvernement canadien estime que l'inclusion de l'Article 5, paragraphe 2, dans la Convention internationale proposée sur le droit des traités irait à l'encontre de la pratique en matière de conclusion des traités, tant pour les Etats fédéraux que pour les autres Etats qui cherchent à conclure des traités avec les Etats fédéraux.

La Constitution fédérale est une loi interne

Le paragraphe 2 de l'Article 5 stipule que les moyens dont dispose un membre d'un Etat fédéral pour conclure des traités doivent être déterminés par rapport à la constitution fédérale. Le paragraphe ne renferme toutefois aucune disposition qui reconnaisse que la constitution fédérale est une loi interne de l'Etat fédéral et que son interprétation est donc du ressort exclusif du tribunal intérieur de l'Etat fédéral qui est compétent en matière constitutionnelle. Si le paragraphe était adopté sous sa forme actuelle, les Etats de l'extérieur pourraient prendre sur eux-mêmes d'interpréter les constitutions des Etats fédéraux, pratique qui ne serait jugée acceptable en principe par aucun Etat. Particulièrement dans les cas où les dispositions constitutionnelles relatives à la conclusion des traités sont matière à controverse, cette pratique équivaldrait nettement à une ingérence de la part de l'Etat de l'extérieur dans les affaires intérieures de l'Etat fédéral.

La Constitution fédérale selon le droit international

L'alinéa 2 de l'Article 5 à l'étude semble poser en principe que la constitution fédérale en soi peut définir un statut devant le droit international, alors qu'en réalité une constitution fédérale, du fait qu'elle est une législation intérieure de l'Etat fédéral, ne peut d'elle-même régler des questions qui sont du ressort du droit international. Ce fait de ne pas prendre en considération d'autres éléments qui sont également importants en droit international, tels que la reconnaissance formelle, a des incidences qui sortent des cadres du droit des traités. Par exemple, si l'alinéa 2 actuel, qui se rapporte à la constitution fédérale, était adopté et considéré comme loi, il serait alors possible de soutenir que les membres des Etats fédéraux ont droit, selon le droit international, de devenir membres d'organisations internationales au même titre que les Etats souverains reconnus, à la seule condition que la constitution fédérale garantisse le statut international nécessaire à une telle affiliation. Il est évident qu'une telle situation entraînerait une déformation de la représentation des pays au sein des organismes internationaux.

...

- 2 -

De fait, il n'existe aucun exemple où la pratique des Etats appuie l'opinion selon laquelle une constitution fédérale en soi accorde un statut quelconque en droit international.

Pratique des Etats

Un examen de la pratique des Etats révèle qu'aucune constitution fédérale n'autorise les parties constituantes de la fédération à conclure en toute liberté et indépendance des accords internationaux. Les constitutions de la grande majorité des Etats fédéraux réservent au gouvernement fédéral le droit de conclure des accords internationaux et établissent clairement que les membres constituants ne jouissent pas de ce droit. Même dans les cas où, pour des raisons particulières d'ordre historique ou politique, la pratique constitutionnelle des Etats fédéraux semble permettre aux parties constituantes de conclure certains genres d'accords avec des Etats étrangers, toutes ces constitutions stipulent que cette autorité doit être exercée par l'intermédiaire du gouvernement fédéral ou sujette en dernier lieu à l'approbation ou au contrôle du pouvoir fédéral. On ne peut pas dire que ces pratiques constitutionnelles aient donné naissance à une pratique des Etats suffisamment répandue pour permettre la codification de principes de droit d'application universelle.

Personne n'a exprimé la crainte que l'omission de l'alinéa 2 de l'Article 5 porterait atteinte aux droits des membres d'un Etat fédéral quelconque, alors que de nombreux Etats fédéraux ont fait remarquer que l'adoption de cet alinéa leur créerait des difficultés.

Portée de la Convention

L'Article 1 adopté à la première session de la Conférence sur le droit des traités stipule que "La présente Convention se réfère aux traités conclus entre Etats". Les membres d'une union fédérale ne sont pas des Etats au sens donné à ce mot dans l'Article 1. Cela a été confirmé par la suppression du mot "Etats" à l'alinéa 2 de l'Article 5 au cours de la première session. Un alinéa qui porte sur le pouvoir de traiter des membres des Etats fédéraux se situe donc en dehors des cadres de la convention proposée.

Conclusion

En raison des questions d'ordre juridique décrites plus haut et parce qu'il attache beaucoup d'importance à cette affaire, le Gouvernement du Canada prie le Gouvernement de la Suisse de lui accorder son appui dans sa requête visant à faire omettre l'alinéa 2 de l'Article 5 de la Convention sur le droit des traités qui doit être adoptée à Vienne.

En 1966 la Commission de Droit International des Nations Unies a adopté 75 projets d'articles sur le droit des traités. La 21e et la 22e Assemblées Générales des Nations Unies ont recommandé qu'une conférence internationale soit tenue en deux sessions pour rédiger une convention sur le droit des traités. La première session de cette Conférence, qui a eu lieu à Vienne du 26 mars au 24 mai de cette année, a revu la totalité des 75 articles en question, dont la majorité ont été approuvés provisoirement. La deuxième session, durant laquelle la convention doit être adoptée, aura lieu à Vienne du 9 avril au 21 mai 1969.

L'Article 5 à l'étude, ayant trait à la capacité des Etats de conclure des traités se lit comme suit (traduction à l'Ambassade du texte anglais) :

- (1) Chaque Etat possède la capacité de conclure des traités ;
- (2) (Les Etats) membres d'une union fédérale peuvent avoir la capacité de conclure des traités si celle-ci est admise par la constitution fédérale et dans les limites prévues par la constitution fédérale en question.

A la première session de la Conférence, le texte de la commission de droit international a été amendé en biffant le mot "Etats" au paragraphe (2) ci-haut mentionné. A part cet amendement le paragraphe (2) a été adopté par une simple majorité du comité. A la deuxième session, alors que tous les articles seront de nouveau examinés en session plénière, chaque article devra être adopté par une majorité des deux-tiers pour être inclus dans la convention.

L'inclusion du paragraphe (2) de l'Article 5 de la convention tel que cité ci-dessus pourrait avoir des implications sérieuses pour le Canada car il pourrait entamer un processus par lequel des Etats tiers prétendraient interpréter la Constitution du Canada et les Constitutions d'autres Etats fédéraux. Le Canada, comme tout autre pays fédéral, est d'avis que la Constitution fédérale est une affaire de droit interne de l'Etat fédéral et ne peut être interprété que par un tribunal de l'Etat concerné qui a juridiction dans les affaires constitutionnelles. Les problèmes créés par l'Article 5 sont plus difficiles pour le Canada que pour la majorité d'autres Etats fédéraux vu le fait que la Constitution du Canada est en partie écrite (Acte de l'Amérique Britannique du Nord), et en partie basée sur des pratiques et des traditions, donc non-écrite.

~~L'Aide-Mémoire ci-joint, que je désirerais laisser entre les mains du Président de la Confédération en sa qualité de Chef du Département Politique Fédéral, et que je vous passe à titre officieux, énonce les considérations qui sont les plus troublantes pour mon Gouvernement.~~

La Suisse a voté en faveur du paragraphe (2) de l'Article 5 ci-haut mentionné aux deux occasions de vote au cours de la première session. Nous attachons une importance primordiale à la position de la Suisse dans cette matière parce que ce pays est l'un des rares Etats fédéraux dont les unités fédératives peuvent exercer le droit de conclure des traités, bien que celui-ci soit borné. Nous comprenons que le paragraphe (2) puisse être acceptable pour la Suisse en ce qui concerne sa propre Constitution, mais ce paragraphe établirait des règles qui s'appliqueraient à tous les Etats fédéraux, non seulement à la Suisse. Par conséquent la Suisse en déterminant sa position sur le paragraphe (2) considérera, espérons-nous, si cette disposition donnera satisfaction aux pays fédéraux en général. Un très grand nombre d'Etats fédéraux (Mexique, Brésil, République Fédérale d'Allemagne, Australie, Etats-Unis d'Amérique, Malaisie, Vénézuéla, Inde, Autriche) tout comme le Canada ont indiqué que le paragraphe (2) laissait à désirer. Bien qu'une abstention suisse ne serait pas idéale du point de vue canadien, ceci serait naturellement préférable à un vote en faveur du paragraphe (2).

La position canadienne vis-à-vis de l'Article 5 du projet de traité peut se résumer comme suit :

- (a) Nous tenons beaucoup à ce qu'un vote séparé soit pris sur le paragraphe (2) de l'Article 5 et que ce vote soit négatif.
- (b) Si un vote séparé sur le paragraphe (2) est refusé, le Canada considère que l'Article 5 dans sa totalité devrait être supprimé car le droit stipulé dans le paragraphe (1) peut être pris pour acquit. La Convention de Vienne de 1961 sur les relations diplomatiques et la Convention de Vienne de 1963 sur les relations consulaires n'incluent pas, par exemple, des articles ayant trait au droit des Etats d'envoyer ou de recevoir des diplomates ou des consuls. Ces droits sont clairement établis par l'envergure générale de ces Conventions. Il pourrait en être de même en ce qui concerne la conclusion des traités.
- (c) La Suisse étant responsable pour les affaires étrangères du Liechtenstein, le Canada serait reconnaissant si son point de vue concernant cette question pouvait être transmis aux autorités compétentes de cette Principauté.
- (d) Le Gouvernement canadien apprécierait vivement que le Gouvernement suisse lui fasse part de la position de la Suisse et du Liechtenstein et le point de vue de ces deux Gouvernements
 - (i) sur le paragraphe (2) en général
 - (ii) sur la question d'un vote séparé sur le paragraphe (2)
 - (iii) sur l'attitude qui sera adoptée vis-à-vis de l'Article 5 dans sa totalité si un vote séparé sur le paragraphe (2) est nié par la Conférence.

- 3 -

Vu l'importance que mon Gouvernement attache à cette question, j'ai reçu instruction de faire des représentations auprès de M. Spühler en sa qualité de Chef du Département Politique Fédéral. Cependant, parce que la question est tellement technique, et est de votre ressort, j'ai cru bon de vous l'exposer à l'avance, dans l'espoir que M. Bindschedler ou vous-même pourriez obtenir l'audience désirée et que vous pourriez vous-même y assister. Je propose cette procédure vu que la session en cours du Conseil National et du Conseil des Etats doivent sans doute imposer des obligations taxant le temps précieux de votre Président et ajoutant à ses tâches ordinaires déjà lourdes.

ACTION COPY

pl 20-3-1-6
131 7/11

FM CLMBO NOV5/68 CONFD NO/NO STANDARD DISTR

TO EXTER 625 PRIORITY

INFO TT PRMNY DE OTT

REF YOURLET L-737(M)SEP10

LAW OF TREATIES CONFERENCE-CEYLON

DELAY IN ACTING ON REQUEST IN YOUR REFLET HAS BEEN DUE TO
DIFFICULTY WE HAVE HAD IN OBTAINING A DEFINITE
INDICATION ON TIMING OF RETURN OF CHRISTOPHER PINTO,
SENIOR LEGAL ADVISER IN DEA,WHO IS A MEMBER OF CEYLON DEL
TO 23RD UNGA AND WHO,ACCORDING TO OFFICIALS IN BOTH
DEA AND JUSTICE,IS ONLY KNOWLEDGEABLE CEYLONESE OFFICIAL
ON THIS QUESTION.

2.AS PINTOS TRAVEL PLANS ARE NOT/NOT DEFINITELY KNOWN AND AS
THERE IS A CHANCE THAT HE WILL NOT/NOT RETURN TO CLMBO
PRIOR TO END OF YEAR,LEAVING ONLY A SHORT TIME BEFORE HE
GOES ON TO MTG OF AFRICAN-ASIAN LEGAL CONSULTATIVE GROUP,
YOU MAY WISH TO CONSIDER DESIRABILITY OF ARRANGING FOR A
MEMBER OF CANDEL NY TO DISCUSS DRAFT ARTICLE FIVE WITH
PINTO IN NY.BEN FONSEKA,DIRECTOR,FOREIGN RELATIONS,
AGREED THAT THIS SEEMED BEST COURSE TO FOLLOW IF CDA ATTACHED
URGENCY TO OBTAINING EARLY CEYLONESE VIEWS.WE HAVE AS REQUESTED BY
YOU LEFT AIDE MEMOIRE WITH MINISTRY,AND SPOKE ALONG LINES OF YOUR

...2

PAGE TWO 625 CONFD NO/NO STDR

HELPFUL REFLECT, EXPRESSING APPRECIATION FOR CEYLONESE SUPPORT IN FIRST SESSION. WE REQUESTED THEIR VIEWS AS EARLY AS POSSIBLE ON OMISSION OF A SEPARATE VOTE ON PARA 2.

WE SUGGESTED AT SAME TIME THAT MR PINTO MIGHT BE INFORMED OF OUR APPROACH AND THAT IT MIGHT BE USEFUL IF A MEMBER OF OUR DEL IN NY DISCUSSED THIS QUESTION WITH HIM. CEYLONESE REPLY COULD BE COORDINATED WITH PINTO AND DELIVERED EITHER HERE OR IN NY.

3. FONSEKA AGREED THAT, IN CIRCUMSTANCES, THIS SEEMED BEST PROCEDURE AND WOULD NOTIFY PINTO ALONG ABOVE LINES. HUSSAIN, ASST SEC, RESPONSIBLE FOR CONFERENCE MATTERS, SAID HE SAW QUOTE NO/NO REASON WHY THERE SHOULD BE ANY CHANGE IN CEYLON'S POSITION. UNQUOTE.

4. ALTHOUGH WE HAVE NOTHING TO GO ON OTHER HUSSAIN'S REMARK, IT STRIKES US THAT CEYLON IS UNLIKELY TO ALTER POSITION TAKEN BY SIR LALIT RAJAPAKSE AT FIRST SESSION. IN CONTEXT OF DOMESTIC POLITICAL AFFAIRS TERM FEDERALISM IS AN ANATHEMA TO CEYLON GOVT. COMMUNAL DIFFERENCES ON ISLAND HAVE BEEN CONSTANTLY AGGRAVATED BY EFFORTS OF MINORITY TAMIL FEDERAL PARTY TO OBTAIN FROM GOVT, IN RETURN FOR ITS SUPPORT, CONCESSIONS WHICH WOULD IN EFFECT PERMIT CEYLON TAMILS, WHO CONSTITUTE 10 PERCENT OF POPULATION, A GREATER DEGREE OF AUTONOMY IN MANAGEMENT OF THEIR OWN AFFAIRS. SINHALA EXTREMISTS ARE CONSTANTLY ALERT FOR ANY DEVELOPMENTS WHICH MIGHT INDICATE EVEN SLIGHTEST SHIFT TOWARDS DECENTRALIZATION

...3

17.6.11

002701

PAGE THREE 625 CONFD NO/NO STDR

ALLOWING ANYTHING WHICH REMOTELY SMACKS ON FEDERALISM TO GAIN A
FOOTHOLD. SIR LALIT RAJAPAKSE MAY IN PART, HAVE HAD DOMESTIC
UNCERTAINTIES IN MIND IN HIS STATEMENT AT FIRST SESSION THAT
QUOTE STATE PRACTICE IS NOT/NOT YET SUFFICIENTLY DEVELOPED
TO PERMIT CODIFICATION OF INTERNATL LAW UNQUOTE ON ARTICLE FIVE,
PARA2. IN ANY CASE GOVT, IN PREVAILING ATMOSPHERE OF DISTRUST,
SEEMS UNLIKELY TO LEND ITS SUPPORT TO A PARA IN AN INTERNATL
CONVENTION, WHICH, UNLIKELY AS IT MAY AT PRESENT SEEM,
COULD CONCEIVABLY HAVE IMPLICATIONS FOR CEYLON IN UNFORE-
SEABLE FUTURE.

TRANSMITTAL SLIP

TO: **Secretary of State for External Affairs**
Legal Division
Canadian Embassy
Tehran

Security... For official use only.
 Date... November 2, 1968
 Air or Surface... Air
 No. of enclosures... 1

20-3-1-6
 13 | ✓

The documents described below are for your information.

Despatching Authority... P.D. *LEE*

Copies	Description	Also referred to:
1	Letter from Embassy to Ministry of Foreign Affairs Ref: Your letter L-904 of October 7, 1968	<i>Sum</i> <div data-bbox="981 725 1351 984"> <p>Received</p> <p>NOV 8 1968</p> <p>In Legal Division Department of External Affairs</p> </div>

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2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

Tehran, September 21, 1968.

Excellency,

I have the honour to inform you that, on instructions from my Government, I am today calling on the Head of the Treaties and Legal Affairs Division of the Imperial Ministry of Foreign Affairs, Dr. Ezzeddin Kazemi, to explain to him, as the official directly concerned with legal matters, the views of the Canadian Government regarding draft Article 5, paragraph 2, of the draft International Convention on the Law of Treaties which will come up for a decisive vote at the Second Session of the Law of Treaties Conference in Vienna, April 9 to May 21, 1969. I am leaving an Aide Memoire with Dr. Kazemi, who will no doubt be considering especially the legal questions involved.

... In view of the importance of this matter to Canada, it seems both appropriate and desirable to draw the matter to your attention also, as Director General concerned inter alia with Canadian affairs. Attached, for ease of reference, is the text of draft Article 5 and a copy of the Aide Memoire being left with Dr. Kazemi.

The question at issue is whether this particular paragraph -- paragraph 2 of Article 5 -- should be omitted or included in the final Convention. Without going into all the details, briefly there are two points on which the Canadian Government is seeking the support of the Imperial Government of Iran. The first has to do with the manner of voting on Article 5. We realize that a number of states attach importance to paragraph 1 of Article 5. As Canada has no wish to interfere with paragraph 1 and in view of the importance of the considerations relating to paragraph 2, it would be our hope that Iran would agree to support at the Conference a request for a separate vote on paragraph 2 of Article 5. (For adoption, such a procedural request would require a simple majority of those voting for or against.)

More importantly, on the substantive issue of the vote on paragraph 2, and quite apart from the legal questions referred to above, even if the Imperial Government should find it does not fully share Canada's apprehensions over all of the possible consequences of adopting paragraph 2, the Canadian Government earnestly hopes that the Imperial Government will after careful consideration nevertheless agree to oppose the adoption of paragraph 2 in view of the importance which Canada attached to this question. Indeed, in our view the disadvantages of paragraph 2 are such that they outweigh the advantages of paragraph 1 to the extent we would hope that, should a separate vote on paragraph 2 be refused and the only vote taken be on Article 5 as a whole, the

.../2

H.E. Dr. Manoutchehr Fartash,
Political Director General,
Imperial Ministry of Foreign Affairs,
Tehran.

- 2 -

Iranian Government would agree that the whole Article should be deleted. (The rules of procedure for the Law of Treaties Conference require that for a paragraph or Article to be included in the Convention it must obtain a two-thirds majority of those present and voting for or against.)

My Government will be most interested to learn in due course of the view which the Imperial Iranian Government authorities will decide to take on these two points. Naturally, should you or your colleagues wish to discuss the matter further, I am at your disposal.

Accept, Excellency, the renewed assurances of my highest consideration.

(R.S. Lee)
Chargé d'Affaires.

File
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A
The Canadian Embassy,
DJAKARTA, Indonesia

FROM
De
Under-Secretary of State for External Affairs
OTTAWA.

REFERENCE
Référence
Your letter 468 of October 15, 1968

SUBJECT
Sujet
Law of Treaties Conference - Article 5

SECURITY
Sécurité
CONFIDENTIAL

DATE
October 29, 1968

NUMBER
Numéro
L- 992

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION / 2	

ENCLOSURES
Annexes

DISTRIBUTION

We enclose for your information a copy of a table which shows how the various countries represented at the first session voted on three votes related to paragraph 2. The first column indicates the separate vote on paragraph 2 prior to consideration in the Drafting Committee. The second column indicates the separate vote on paragraph 2 following the report of the Drafting Committee and the third column indicates the immediately subsequent vote on Article 5 as a whole. You will note that India and Malaysia were among the federal States which opposed paragraph 2.

2. As you know, Indonesia supported paragraph 2 on all three votes. While we would like to obtain Indonesian opposition to paragraph 2, or at least abstention, we appreciate the very real likelihood that Indonesia will maintain at the second session the position which it took at the first session on this question. In view of Indonesia's role as a supporter of paragraph 2, we will be particularly interested in learning whether the Indonesians would seek to prevent a separate vote on paragraph 2 at the second session. This question is of interest to us because, while we can almost certainly muster a blocking third against paragraph 2 if the paragraph is voted on separately, it will be considerably more difficult (though far from impossible) to muster a blocking third on Article 5 as a whole if a separate vote on paragraph 2 is refused. It is thus of particular importance to us to know whether the supporters of paragraph 2 will carry their efforts to the rather extreme measure of seeking to prevent a separate vote on paragraph 2. As the Indonesians will probably consult with the USSR and others on the question of Article 5, their position on the question of a separate vote will be particularly significant.

3. With respect to Miss Laurens' suggestion of an amendment to paragraph 2, such an amendment, to be satisfactory to us, must include a procedure to assure its effective application; a merely hortatory paragraph in the Article that federal States are to interpret their own constitutions would not remove the practical difficulties inherent in the present text of paragraph 2. At the first session the Austrian delegation introduced an amendment of a kind that would have been acceptable to us. This amendment was to add the following sentence to paragraph 2:

/ 2 -

CONFIDENTIAL

"For the purpose of concluding a treaty, the extent of such capacity is to be confirmed by an authority of the federal union competent under Article 6", i.e. the Head of State, Head of Government, or Minister of Foreign Affairs, of the Federal State or Government.

This amendment was defeated at the first session, which does not encourage us to believe that efforts to secure a similar amendment at the second session would be successful. Moreover, there is the tactical consideration that the support of only one-third of the representatives plus 1 is required to effect deletion of paragraph 2, whereas the support of two-thirds of the representatives present would be required to effect an amendment to the paragraph.

D. M. MILLER

Under-Secretary of State
for External Affairs.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES NOV 6 1968

TO: *m Stanford*
FROM: REGISTRY
FILE CHARGED OUT
TO:

TO
A The Under-Secretary of State for External Affairs,
OTTAWA.

SECURITY
Sécurité

CONFIDENTIAL

FROM
De The Canadian Embassy,
SAN JOSE.

DATE October 29th, 1968

REFERENCE
Référence Our Letter No. 296 of October 15th, 1968

NUMBER
Numéro 315

SUBJECT
Sujet LAW OF TREATIES

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
13	11

ENCLOSURES
Annexes

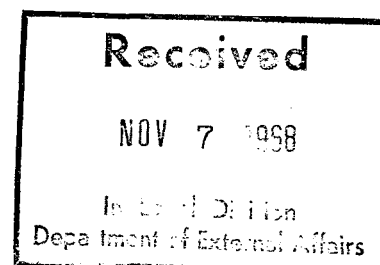
DISTRIBUTION

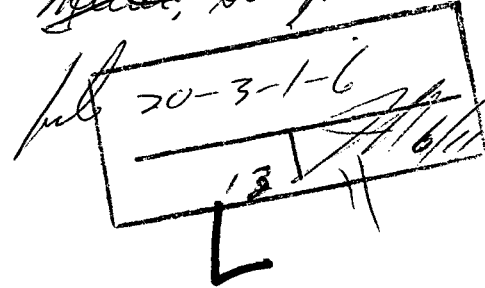
The Second Secretary, Mr. MacKinnon, was in Honduras last week and met with Mr. Herrera, Head of the International Organizations Division of the Ministry of External Relations, concerning our request that Honduras support the Canadian position on paragraph two of Article 5 of the Draft Convention of Law of Treaties. Spanish and English copies of the Aide Memoire attached to your letter No. L-737(M) of September 10th, 1968 were left with him.

2. Mr. Herrera said that no other representations on this subject had yet been received. He could not of course give a definite reply but did say that he saw no objection in principle to Honduras supporting the Canadian position. In this respect he noted that the issue involved was not of direct interest to his country and there was not, therefore, any reason why Honduras should not vote against the inclusion of paragraph two or, if necessary, against the whole of article 5.

3. Since Mr. Herrera was shortly leaving for the United Nations and would not have an opportunity to immediately discuss our request with his colleagues, Mr. MacKinnon said we would contact him again in about a month's time.

S. J. G. K.
Chargé d'affaires, a.i.





FM ISBAD OCT25/68 CONFD

ACTION! COPY!

TO EXTER 1053

REF MYTEL958 SEP27

LAW OF TREATIES CONFERENCE

AT SOCIAL EVENT LAST NIGHT SAMAD MFA LEGAL ADVISER WENT OUT OF HIS
WAY TO TELL ME THAT HE THOUGHT PAK WOULD BE ABLE TO GIVE US THE
SUPPORT WE SEEK IN THIS MATTER. IT WAS FAR TOO EARLY HOWEVER FOR
HIM TO GIVE ME ANYTHING FORMAL TO THIS EFFECT

MCGAUGHEY

19.28.10

002710

620-3-1-67
ms

25 October 1968

CONFIDENTIAL

United Nations Conference on the Law of Treaties
(second session)

..... Attached hereto are two papers prepared by the Secretariat and intended to serve as a basis of private discussions among delegations. They have been prepared in an effort to assist delegations in arriving at a generally acceptable solution of certain of the major outstanding problems which will face the Conference at its second session. The first paper contains draft provisions on settlement of disputes concerning invalidity and termination of treaties, and the second contains draft provisions on participation, entry into force and depositaries. In addition to these two problems, it would appear inevitable that the amendments relating to "general multilateral treaties" (articles 5 bis, 12 and 17) would be involved in a general solution of major outstanding problems.

Draft I

25 October 1968

DRAFT ARTICLES REGARDING PARTICIPATION,
ENTRY INTO FORCE AND DEPOSITARIES
FOR THE CONVENTION ON THE LAW OF TREATIES

Article A

1. This Convention shall be open for signature by all States until 30 April 1970, at any of the following: the Federal Ministry for Foreign Affairs of Austria, the Ministry for Foreign Affairs of the USSR and the Department of State of the USA. The Governments of Austria, the USSR and the USA, hereinafter called the "Initial Depositaries", shall promptly inform the Secretary-General of the United Nations of each signature and of the date thereof.

2. On 1 May 1970 the Initial Depositaries shall transmit the three signed originals of the Convention by the speediest means for final deposit to the Secretary-General of the United Nations. The Secretary-General of the United Nations is hereby designated as the Final Depositary, and shall be the depositary for the purposes of articles 72, 73, 74 and 75 of this Convention.

Article B

1. This Convention is subject to ratification by signatories. It shall remain open for accession by any non-signatory State.

- 2 -

2. Instruments of ratification and accession shall be deposited, in the first instance, with any of the Initial Depositories.

3. On receipt of an instrument of ratification or accession, an Initial Depositary shall promptly transmit it to the Final Depositary, who shall receive in deposit any instrument so transmitted to him.

4. Any notification relating to this Convention shall be addressed in the first instance to any of the Initial Depositories, which shall promptly transmit it to the Final Depositary.

Article C

1. This Convention shall enter into force on the ninetieth day following the date of receipt in deposit by the Final Depositary from the Initial Depositories, through the procedure provided in paragraph 3 of article B, of the instrument of ratification or accession of the twenty-second State.

2. For each State ratifying or acceding after the deposit of the instrument of ratification or accession of the twenty-second State, the Convention shall enter into force on the ninetieth day after the date of deposit with the Final Depositary of its instrument of ratification or accession, through the procedure provided in paragraph 3 of article B.

Article D

The Final Depositary shall inform all signatories and acceding States:

- 3 -

- a) of the date of each signature as notified to him pursuant to paragraph 1 of article A,
- b) of the date of deposit with him of each instrument of ratification of and accession pursuant to paragraph 3 of article B, and
- c) of the date of the entry into force of the Convention pursuant to paragraph 1 of article C, and
- d) of the date of receipt by him from an Initial Depositary and of the contents of any relevant notification.

Article E

The three originals of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall after receipt by the Final Depositary remain deposited in the archives of the United Nations. Duly certified copies of the text of this Convention shall be prepared by the Final Depositary. They shall be transmitted by him to the Members of the United Nations and to non-member States invited to attend the United Nations Conference on the Law of Treaties. Additional copies shall be provided to the Initial Depositaries for transmission as they consider appropriate.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

Done in triplicate at Vienna, this _____
day of May, One thousand nine hundred and sixty-nine.

CONFIDENTIAL

CONFIDENTIAL

Draft I

25 October 1968

DRAFT PROVISIONS REGARDING SETTLEMENT OF DISPUTES

UNDER THE CONVENTION ON THE LAW OF TREATIES

Article 62

[Add the underlined phrases to the text of article 62
as adopted by the Committee of the Whole:]

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties and the Secretary-General of the United Nations of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations. Such objections shall be notified to the other parties to the treaty and to the Secretary-General of the United Nations.

- 2 -

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 62 bis

1. If, after four months have elapsed from the date of the receipt of an objection by the Secretary-General as provided for in paragraph 3 of article 62, the party making the claim and the party or parties objecting to that claim have been unable to agree on the choice of one of the means of settlement indicated in Article 33 of the Charter, the party making the claim or any party objecting to that claim may notify the Secretary-General that it desires to have recourse to the procedures provided in Annex I to this Convention.

2. If, after twelve months have elapsed from the date of receipt of an objection by the Secretary-General as provided for in paragraph 3 of article 62, the means of settlement chosen by the parties has not led to a solution, the party making the claim or any party objecting to that claim may, subject to paragraphs 3 and 4, notify the Secretary-General that it desires to have recourse to the procedures provided in Annex I to this Convention.

3. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any other provisions

- 3 -

in force binding the parties with respect to the settlement of disputes.

4. Paragraph 2 shall not apply if the party making the claim and the party or parties objecting to that claim have agreed to have recourse to [conciliation pursuant to other provisions than those of Annex I of this Convention,] arbitration or judicial settlement.

5. The Secretary-General shall immediately notify the other parties to the treaty of the receipt of a request under paragraph 1 or 2 above.

Annex I

Article 1

1. The Secretary-General shall invite every State Member of the United Nations and every party to this Convention to nominate two conciliators, one of whom may be of its own nationality, and the other of whom shall not be of its own nationality, nor in its service nor resident in its territory. Conciliators shall be persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. ^{1/}

2. The Secretary-General shall draw up a list of the persons thus nominated. The term of office for conciliators shall be for five years. Any State may at any time replace a

^{1/} ICJ Statute, Article 2.

- 4 -

conciliator which it has nominated, provided, however, that though replaced, conciliators shall finish any cases which they may have begun,^{2/} and further provided that conciliators elected by the General Assembly to the Commission on Treaty Disputes in accordance with the following article shall continue to serve on that Commission for the balance of their terms. Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.^{3/} The term of office of conciliators appointed to fill vacancies shall be for five years.

Article 2

1. The General Assembly shall elect twenty-five conciliators from the list referred to in the preceding article to constitute the Commission on Treaty Disputes.

2. No two members of the Commission shall be nationals of the same State.^{4/}

3. At the election, the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.^{5/}

4. The members of the Commission shall be elected for five years. They shall be eligible for re-election.

^{2/} ICJ Statute, Article 13 (3).

^{3/} Revised General Act, article 4 (3).

^{4/} ILC Statute, Article 2.

^{5/} ILC Statute, Article 8.

- 5 -

5. Vacancies which may arise as a result of death, resignation or any other cause shall be filled from the list by the General Assembly at its next regular session. A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6. The Commission shall take its decisions by majority vote. A majority of its members shall constitute a quorum. Subject to the provisions of this Convention, the Commission shall establish its own procedure.

7. Subject to the approval of the General Assembly, the Commission shall be constituted as an organ of the United Nations and shall be authorized, subject to the provisions of article 10 below, to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities,^{6/} provided, however, that an advisory opinion on the merits of any dispute regarding which recourse is being had to the procedures provided for in this Annex shall be requested only if the parties to the proceedings agree thereto.

Article 3

1. When the Secretary-General receives a request pursuant to article 62 bis, he shall invite the parties to the dispute to appoint conciliators. Each party may appoint:

- (a) one conciliator who may have its own nationality chosen either from the Commission on Treaty Disputes, or from the list referred to in article 1, or from outside that list;

^{6/} c.f. Article 96 (2) of the Charter.

- 6 -

(b) one conciliator not of its own nationality chosen from the Commission on Treaty Disputes.

2. Should there be two or more parties in the same interest, they shall, for the purpose of the preceding paragraph, be reckoned as one party only, ^{7/} and may choose jointly two conciliators without limitation as to nationality. Any doubt upon this point shall be settled by the Commission on Treaty Disputes.

3. The conciliators chosen by the parties shall be appointed within a period of two months after the Secretary-General has received a request pursuant to article 62 bis.

4. The four conciliators so appointed shall, within a period of one month from the date of completion of their appointments, select a fifth member of the conciliation panel, who shall act as Chairman, from among the members of the Commission on Treaty Disputes.

5. If the appointment of the conciliators by the parties has not been made or completed within the time limit specified in paragraph 3 above, or if the appointment of the chairman has not been made within the time limit specified in paragraph 4 above, the Commission on Treaty Disputes shall fill any remaining vacancy or vacancies.

Article 4

1. The functions of the conciliation panel shall be to establish the facts, to collect with that object all necessary

^{7/} ICJ Statute, Article 31 (5).

- 7 -

information by means of enquiry or otherwise and to endeavour to promote a friendly settlement of the dispute. At the conclusion of its examination of the facts, the panel will attempt to define terms of settlement susceptible of being accepted by the parties who may be heard either together or separately. ^{8/} Once decided upon, the terms of the proposed settlement will be communicated by the chairman to the agents of the parties with a request to inform him within a stated period whether or not the parties accept the proposed settlement.

2. Decisions and recommendations of the conciliation panel shall be taken by majority vote.

3. Subject to the provisions of this Convention, the panel shall establish its own procedure. The Commission on Treaty Disputes may draw up model rules of procedure for the guidance of conciliation panels.

Article 5

Unless otherwise agreed among the parties in consultation with the Secretary-General, the conciliation panel shall meet at United Nations Headquarters. The Chairman shall convene the panel as soon as possible after a dispute has been brought before it.

Article 6

The work of the conciliation panel shall not be conducted in public unless a decision to that effect is taken by the panel with the consent of the parties.

^{8/} Based on Article 7 of resolution on procedure of international conciliation adopted by the Institut de Droit International in 1961: Annuaire de l'Institut, 49 (1961) Vol. II, page 232.

- 8 -

Article 7

A party to the treaty which has not participated in the formation of the conciliation panel has the right to intervene in the proceedings and to present written and oral statements to the panel.

Article 8 ^{2/}

The parties to the dispute shall facilitate the work of the conciliation panel, and, in particular, shall supply it to the greatest possible extent with all relevant documents and information. They shall use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts [and to visit the localities in question.]

Article 9

1. The panel shall, unless the parties agree otherwise, close its proceedings within twelve months of its constitution.

2. At the close of the proceedings, the panel shall draw up a procès-verbal stating, as the case may be, either that the parties have come to an agreement and, if the need arises, the terms of that agreement, or that it has been impossible to effect a friendly settlement of the dispute. The procès-verbal shall be communicated without delay to the Secretary-General, to the Commission on Treaty Disputes and to the parties to the dispute.

^{2/} Revised General Act, article 13; European Convention, article 14.

- 9 -

3. If the panel has succeeded in effecting a friendly settlement, the procès-verbal shall be confined to a brief statement of the facts and of the solution reached. If the panel has not succeeded in effecting a friendly settlement, the procès-verbal shall set out fully the factual elements of the dispute and shall have annexed to it a summary of the written and oral submissions of the parties.

4. Unless otherwise agreed by the parties, the Secretary-General shall publish the procès-verbal after a period of three months has elapsed from the date on which he received it.

Article 10

1. At any time during the course of the proceedings before the panel, the panel may, with the agreement of the parties as provided in article 2, recommend to the Commission on Treaty Disputes that the latter request an advisory opinion from the International Court of Justice.

2. In such a case, the time within which the panel must close its proceedings shall be extended to three months after the Court has delivered its advisory opinion.

Article 11

The proceedings of the panel shall take place in one or more of the official languages of the United Nations, selected by the parties to the dispute.

- 10 -

Article 12

1. The Secretary-General shall supply the conciliation panel with the necessary staff.

2. The United Nations shall provide the premises necessary for the work of the panel if it meets in New York or Geneva.

3. During the proceedings of the panel, the conciliators and the Chairman shall receive emoluments in the amount usually paid to Secretariat experts. In addition, the costs of their travel and their subsistence costs during the proceedings of the panel shall be defrayed in accordance with the applicable regulations of the United Nations.

4. If the conciliation panel meets away from United Nations Headquarters, the actual additional costs directly and indirectly involved ^{10/} shall be defrayed by the States which take part in the proceedings.

5. The costs of the conciliation panel other than those referred to in paragraphs 1, 2 and 4 of this article shall, unless otherwise agreed, be divided equally among the United Nations and the States which take part in the proceedings. The panel shall decide upon the share of these costs to be borne by States which intervene in the proceedings pursuant to article 7.

6. Each State which takes part in the proceedings shall pay its own expenses.

^{10/} Language from General Assembly resolution 2116 (XX).

- 11 -

Article 13

[Alternative A]

1. In the event that the conciliation panel has not succeeded in effecting a friendly settlement of the dispute, and if the parties themselves have not agreed, within three months of the receipt by the parties of the procès-verbal drawn up by the panel, upon recourse to judicial settlement or have not otherwise composed their differences, either party to the dispute may request that the dispute be referred to arbitration.

2. The arbitral tribunal shall consist of three members. One member shall be appointed by each party to the dispute. The third member, who shall act as chairman, shall be appointed by the two other members.

3. Should there be two or more parties in the same interest, they shall, for the purpose of the preceding paragraph, be reckoned as one party only, and shall choose jointly one member of the arbitral tribunal.

4. The members of the arbitral tribunal appointed by the parties shall be so appointed within a period of two months from the date of the request to the Secretary-General. The Chairman shall be appointed within a period of two months from the date of the appointment of the members of the arbitral tribunal appointed by the parties.

5. If the chairman or other members of the arbitral tribunal are not appointed within the time limits referred to in the preceding paragraph, the necessary appointments shall be made by the Secretary-General of the United Nations.

- 12 -

6. Vacancies which may occur in the composition of the arbitral tribunal as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the original appointments.

7. The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by majority vote. The award shall be final and binding.

8. The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require.

9. The provisions of article 12 shall apply mutatis mutandis to the arbitral tribunal, save that the remuneration of the chairman and other members of the tribunal, on a scale to be agreed by the parties, shall be borne by the parties in equal shares.

/Alternative B/

1. The parties to a proceeding may agree to ask the panel to decide the dispute as an arbitral tribunal. In that case, they shall so notify the panel and the Secretary-General at any time before the panel adopts its procès-verbal; the panel shall then render an arbitral award in the dispute.

2. If acting as an arbitral tribunal, the panel shall, subject to the provisions of the preceding articles and unless it decides unanimously to the contrary, act in accordance with the provisions of Part IV of The Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes.

3. The arbitral award shall be final and binding.

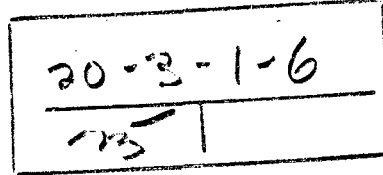
18

cc USS EA
Mr. Gattler
25/10/68

Confidential

pub 20-3-1-6

October 24, 1968



Give
Could we have
an updating?
JA

NOTE TO MR. J. A. BEESLEY

From: J. S. Stanford

Re: Law of Treaties - Article 5

On the basis of 36 replies, most of which are tentative, we have an indication of 33 votes against paragraph 2. To this may be added 13 States which opposed paragraph 2 at the first session but from which we have not yet received replies. This gives a projected total of 46 votes against paragraph 2. Allowing for only 3 abstentions (there were 8 abstentions at the first session and we already have replies indicating 3 abstentions) these 46 votes would constitute a simple majority against paragraph 2.

We have an indication of 36 votes in support of a separate vote on paragraph 2, with only one doubtful and none opposed among the replies received to date. To this may be added the 13 "friends" not yet heard from, which gives us a projected total of 49 votes in favour of a separate vote on paragraph 2, again a simple majority.

Of the 18 replies which indicate a position on Article 5 as a whole if a separate vote is refused, 17 have indicated that they will oppose Article 5. We need 24 votes to obtain a blocking third.

Of particular interest are the changes of position disclosed by the replies. Of the 4 States which voted once for and once against paragraph 2 at the first session, 3 have said they will oppose the paragraph. The fourth, Austria, is undecided. Of potentially greater significance is the fact that, of the 17 States which have indicated they would oppose Article 5 as a whole if necessary, 5 of these are States which ~~have~~ abstained on the vote on Article 5 as a whole at the first session.

J. S. Stanford.

MESSAGE

FM/DE		EXTERNAL OTT	DATE	FILE/DOSSIER		SECURITY SECURITE	
			24 OCT./68	20-3-1-6	13 ✓		
TO/A		VIENNA	NO L-973		PRECEDENCE		
					ROUTINE		
INFO		COPENHAGEN					

REF

SUB/SUJ U.N.CONFERENCE ON THE LAW OF TREATIES - SECOND SESSION

PLEASE RESERVE A SUITE AND THREE SINGLE ROOMS WITH BATH AT BRISTOL
FOR PERIOD APRIL 7 TO MAY 24, 1969 FOR USE OF CANADIAN DELEGATION ON
THE LAW OF TREATIES.

DISTRIBUTION
LOCAL/LOCALE

FINANCE DIVISION (TRAVEL SECTION:RECORD) DIVISION

Done in

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....
J.S. STANFORD:ZS.....

LEGAL

2-5406

SIG.....
J.A. BEESLEY.....
J.A. BEESLEY

ACTION REQUEST
FICHE DE SERVICE

TO — À

DATE

LOCATION — ENDROIT

FROM — DE

☐ ACTION
DONNER SUITE☐ APPROVAL
APPROBATION☐ COMMENTS
COMMENTAIRES☐ DRAFT REPLY
PROJET DE RÉPONSE☐ MAKE
FAIRE.....COPIES☐ NOTE AND FILE
NOTER ET CLASSER☐ NOTE & RETURN/OR FORWARD
NOTER ET RETOURNER/OU FAIRE SUIVRE☐ P. A. ON FILE
CLASSER☐ REPLY
RÉPONSE☐ SEE ME
ME VOIR☐ SIGNATURE☐ TRANSLATION
TRADUCTION☐ YOUR REQUEST
À VOTRE DEMANDE☐

I agree entirely with Mr. Cadieux's comment. Delbelle was against us right down the line at the first session and I just don't believe that he is "well disposed to our position". I suggest we not follow up this suggestion. The Indians & Malaysians will look after our interests. 002730
AAACC meeting

20-3-1-6
13 11

CONFIDENTIAL
(BY AIR BAG)
October 24, 1968.

Dear Mr. Wershof,

Re: Law of Treaties

Thank you for your letters of October 16 concerning the Law of Treaties. You will have received by now a copy of our telegram to Vienna asking them to make reservations at the Bristol. I have taken up with Finance Division the question of the allowances of the secretary assigned to the delegation and will let you know when their reply is received.

You have enquired about treaty making by constituent republics of the USSR other than Byelorussia and the Ukraine. The Soviet development of the three disarmament treaties to which you refer does not indicate that any member of the Soviet Union other than Byelorussia and the Ukraine has signed or acceded to any of these treaties. Byelorussia and the Ukraine have themselves not acceded to the Non-Proliferation Treaty.

We have no information here which would indicate that constituent republics of the Soviet Union other than Byelorussia and the Ukraine have become parties to treaties with other communist countries or joined international organizations consisting only of communist countries. It may be, however, that more detailed information on this point would be available to Ron in New York, to whom I am sending a copy of this letter.

I enclose for your information a copy of a note for Alan Beesley on the results to date of our canvass for support for the deletion of para. 2 of Article 5. I cannot emphasize too strongly that this information is based on replies most of which are tentative only. However the outlook is favourable.

/2

Mr. Max H. Wershof, Q.C.,
Canadian Ambassador,
COPENHAGEN, Denmark.

cc: Mr. A.W.J. Robertson, Permis, N.Y.

002731

- 2 -

CONFIDENTIAL

We have asked Ron Robertson to discuss with other representatives of the "old Commonwealth-USA group" and with the WEO generally the question of preliminary consultations on the Law of Treaties. I gather from Ron that everybody has had their hands full with Special Missions and other topics and that they have not yet really focused on the question of preliminary consultations concerning the Law of Treaties. As soon as we receive any definite information on this question we will, of course, pass it on to you.

Yours sincerely,

J. S. STANFORD

J. S. Stanford.

ACTION COPY

20-3-1-6

37

Copie à M. Gottlieb

m. mally
Stanford

G

I suggest
you have a
word with
L. J. J. J.
about replying
to this.
Jus
Oct 28/

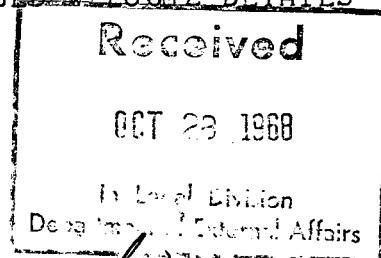
Mr Leguel Dev

FM CLMBOPLAN SEOUL OCT24/68 RESTR NO/NO STANDARD

TO TT EXTER 1454 PRIORITY DE TOKYO

FOR UNDERSEC OR GOTLEIB DE HADWEN

I AM SURE YOU ARE AWARE THAT AMBASSADOR TABIBI OF AFGHANISTAN IN
TOKYO IS PERHAPS THE LEADING AFRO-ASIAN LEGAL EXPERT WHO WILL BE
CONSIDERING LAW OF TREATIES AT THE APPROACHING AFRO-ASIAN AND OTHER
MTGS ON THE SUBJ. I HAVE SPOKEN TO HIM AT THE CP MTG IN KOREA AND HE
IS VERY WELL DISPOSED TO OUR POSITION BUT HE WOULD LIKE TO BE FURTHER
BRIEFED. WOULD YOU WISH TO CONSIDER PROVIDING EMB TOKYO WITH ANY
BACKGROUND IT DOES NOT/NOW HAVE FOR THE PURPOSE OF BRIEFING
TABIBI IN THE NEXT FEW WEEKS BEFORE THE AFRO-ASIAN MTG IS HELD.
MY JUDGEMENT IS THAT HE IS VERY RECEPTIVE AND WOULD WELCOME DETAILS
OF OUR LATEST POSITION.



yes. not that Tabibi 2 knew who
always supported the Soviet
Side in any question. He
wants to know what our "case"
is, possibly to brief Chinese side!

20

25.10.28(US)

6.28.10

File
Diary
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A

Finance Division - Travel Section (Mr. McCord)

SECURITY
Sécurité

UNCLASSIFIED

FROM
De

Legal Division

DATE

October 24, 1968

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet

U.N. Conference on the Law of Treaties - Second Session.

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	13

ENCLOSURES
Annexes

DISTRIBUTION

Personnel Opers.
Division.

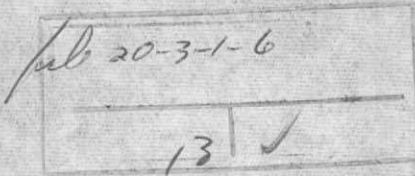
The second session of the U.N. Conference on the Law of Treaties will take place in Vienna from April 9 to May 21, 1969. It is anticipated that Canada which sent a delegation to the first session, will also send a delegation to the second session. We further anticipate that the delegation will consist of the Head of Delegation, two officers and one stenographer. Attached for your information is a copy of our telegram of October 24, No. L973, to the Canadian Embassy in Vienna requesting that hotel reservations be made for the delegation. We should like to refer briefly to a problem which arose in providing stenographic and secretarial services to the delegation at the first session.

The delegation was without secretarial services for the first two or three weeks of the first session. When it became evident, however, that this service would be required and could not be provided by the Embassy in Vienna, a secretary from the Embassy in Copenhagen was assigned to the delegation. She remained with the delegation for approximately one month. At the end of that period she was faced with the alternative of either returning to Copenhagen or losing the whole of her living allowances if she remained in Vienna for the concluding two weeks of the Conference. Faced with this choice, the lady in question returned to Copenhagen and had to be replaced, for the final two weeks of the first session, by another secretary who was assigned to the delegation from Geneva.

In the interests of the efficient operation of the delegation, it would be preferable if the same secretary could remain with the delegation for the whole of the second session. We should be grateful if you could inform us whether there is any way of arranging this without requiring the secretary assigned to the delegation to forfeit the whole of her allowances for the period of her assignment.

A. BEESLEY

Legal Division.



October 24, 1968

NOTE TO MR. J. A. BRESLEY

From: J. S. Stanford

Re: Law of Treaties - Article 5

On the basis of 36 replies, most of which are tentative, we have an indication of 33 votes against paragraph 2. To this may be added 13 States which opposed paragraph 2 at the first session but from which we have not yet received replies. This gives a projected total of 46 votes against paragraph 2. Allowing for only 3 abstentions (there were 8 abstentions at the first session and we already have replies indicating 3 abstentions) these 46 votes would constitute a simple majority against paragraph 2.

We have an indication of 36 votes in support of a separate vote on paragraph 2, with only one doubtful and none opposed among the replies received to date. To this may be added the 13 "friends" not yet heard from, which gives us a projected total of 49 votes in favour of a separate vote on paragraph 2, again a simple majority.

Of the 18 replies which indicate a position on Article 5 as a whole if a separate vote is refused, 17 have indicated that they will oppose Article 5. We need 24 votes to obtain a blocking third.

Of particular interest are the changes of position disclosed by the replies. Of the 4 States which voted once for and once against paragraph 2 at the first session, 3 have said they will oppose the paragraph. The fourth, Austria, is undecided. Of potentially greater significance is the fact that, of the 17 States which have indicated they would oppose Article 5 as a whole if necessary, 5 of these are States which have abstained on the vote on Article 5 as a whole at the first session.

J. S. Stanford.

cc: Mr. M. H. Wershof, Copenhagen.
Mr. A. W. J. Robertson, Permex, N.Y.

EXTERNAL AFFAIRS



AFFAIRES EXTERIEURES

TO: Mr. Stanford
OCT 31 1968
FILE CHARGED OUT
TO: Mr. Stanford

TO A Under-Secretary of State for External Affairs,
Ottawa.

FROM De Canadian Embassy, Montevideo.

REFERENCE My telegram 203 of October 17, 1968.

SUBJECT Law of Treaties Conference.

SECURITY CONFIDENTIAL
Sécurité

DATE October 23, 1968.

NUMBER 258
Numéro

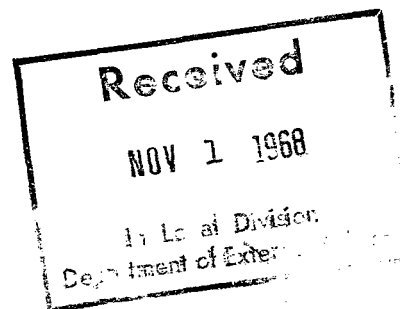
FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	13 71

ENCLOSURES
Annexes

DISTRIBUTION

The pessimism expressed in paragraph 2 of my telegram under reference was unfounded. Ambassador Ciasullo has telephoned me to say that the Uruguayan Delegation will firmly support the Canadian position on every point.

Chargé d'Affaires a.i.



file 20-3-1-6
13 | 23/10

FM TAVIV OCT23/68 CONFD NO/NO STANDARD

TO EXTER 916 PRIORITY

REF OURTEL 827 SEP27

ACTION COPY

LAW OF TREATIES CONFERENCE-ART5

I CALLED ON MERON YESTERDAY TO RECEIVE HIS FORMAL REPLY TO
OUR REPRESENTATIONS. HE SAID THAT HE COULD NOW TELL ME
OFFICIALLY WHAT HE HAD PREVIOUSLY SAID PERSONALLY. IE THAT
ISRAEL WOULD SUPPORT US IN OUR REQUEST FOR SEPARATE VOTE ON TWO
PARAS OF ART5 AND THAT ISRAEL WOULD VOTE AGAINST PARA2. HE SAID
THAT HE HAD NOT/NOT DEALT SERIOUSLY WITH POSSIBLE NEED FOR VOTE
AGAINST WHOLE OF ART5 BECAUSE HE WAS SURE THAT WE SHOULD GET
OUT SEPARATE VOTE AND HE WAS ALSO SURE THAT PARA2 WOULD NOT/NOT
GET NECESSARY TWO-THIRDS MAJORITY. HE BASED THIS OPINION ON
TABULATION OF VOTES AT FIRST CONF WHERE VOTE HAD BEEN 45 IN
FAVOUR OF RETENTION, 34 AGAINST AND 10 ABSTAINING. I FELT HE DID
NOT/NOT DEAL ADEQUATELY WITH MY OBJECTION THAT MANY STATES
WHICH HAD BEEN ABSENT FROM FIRST CONF MIGHT ATTEND SECOND OR THAT
SOME ILL-INTENTIONED GOVT MIGHT TRY TO ORGANIZE VOTES IN FAVOUR
OF PARA2. HE DID HOWEVER SAY THAT HE WAS SURE WE WOULD BE COUNTING
HEADS CLOSER TO TIME OF CONF AND THAT IF ON BASIS OF OUR COUNT
WE WERE STILL APPREHENSIVE HE WOULD BE PREPARED TO RECEIVE
FURTHER REPRESENTATIONS FROM US. HE ASSUMED THAT WE WERE DEVOTING
MOST OF OUR EFFORTS TO MAKING SURE THAT THOSE WHO VOTED NEGATIVE
LAST TIME WOULD CONTINUE TO DO SO AT SECOND CONF. HE ALSO NOTED
THAT IN DEFERENCE TO OUR VIEWS ISRAEL HAD ABSTAINED ON ART5 AS

...2

19.23.10

PAGE TWO 916 CONFD NO/NO STANDARD

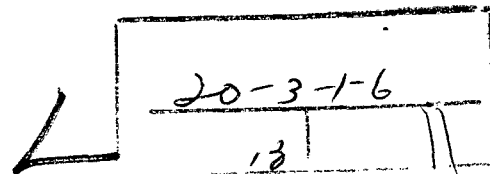
A WHOLE AT FIRST CONF AND STATED THAT ISRAEL HAD AT THAT CONF
PROPOSED THAT PARA2 BE VOTED ON BEFORE PARA1, WHICH IN ITSELF
IMPLIED SEPARATE PARA BY PARA VOTE.

2. IF IT DECIDED ON BASIS OF HEAD COUNT THAT FURTHER REPRESENT-
ATIONS ARE NECESSARY I HOPE YOU WILL GIVE ME DETAILED ARGUMENT-
ATION BECAUSE MERON OBVIOUSLY DOES HIS HOMEWORK VERY THOROUGHLY

ROGERS

File 20-3-1-6
9/24/10

ACTION COPY



FM PSPAN OCT22/68 CONFD NO/NO STANDARD

TO EXTER 1708

REF YOURTEL L945 OCT16

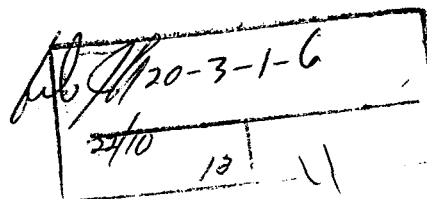
LAW OF TREATIES CONFERENCE: BARBADOS

I SPOKE TO PM BARROW IN BARBADOS YESTERDAY IN ACCORDANCE YOUR INSTRUCTIONS. HE SHOWED CONSIDERABLE FAMILIARITY WITH WORK OF CONFERENCE GENERALLY AND SAID HE WOULD DISCUSS WITH HIS ATTORNEY GEN POSSIBILITY OF BARBADOS ATTENDING PLENARY SESSIONS TO ADOPT ARTICLES OF CONVENTION. I OF COURSE IDENTIFIED ISSUE OF SPECIAL CONCERN TO CDA BUT DID NOT DELIVER AIDE MEMOIRE WICH PRESUMABLY YOU WOULD ONLY WISH ONE IF BARBADOS DECIDES TO ATTEND

MCKINNEY

1. 24. 10

002739



Mr. Beatty
Stamped

FM KLMPR OCT22/68 CONFD NO/NO STANDARD
TO EXTER 1240

ACTION COPY

REF YOURTEL L792 SEP16 AND OURTEL 1164 OCT8

LAW OF TREATIES CONFERENCE ARTICLE 5

FOLLOWING IS TEXT OF A NOTE RECEIVED FROM SPORE MFA DATED OCT14
REFERRING TO AID MEMOIRE WHICH HIGHCOM LEFT WITH MFA OCT1: TEXT
BEGINS: THE MINISTRY OF FOREIGN AFFAIRS PRESENTS ITS COMPLI-
MENTS TO THE OFFICE OF THE HIGHCOM FOR CDA AND HAS THE HONOUR TO
REFER TO THE LATTERS AID-MEMOIRE CONCERNING PARA 2 OF ARTICLE 5
OF THE PROPOSED INTERNATL CONVENTION ON THE LAW OF TREATIES TO BE
ADOPTED IN VIENNA.

THE MINISTRY OF FOREIGN AFFAIRS HAS THE HONOUR TO INFORM THE
OFFICE OF THE HIGHCOM FOR CDA THAT THE GOVT OF SPORE AGREES WITH
THE VIEWS OF THE GOVT OF CDA AND WILL GIVE EVERY SUPPORT FOR THE
OMISSION OF PARA 2 OF ARTICLE 5 FROM THE PROPOSED INTERNATL CONVENT-
ION ON THE LAW OF TREATIES. TEST ENDS

*cc UNADIS.
Rampal
of 6/11/10
Lone
Oct 21/68 38*

file 20-3-1-6

ACTION COPY

FM GRTN OCT 18/68 CONF NO/NO STANDARD

TO EXTER 926 PRIORITY

INFO IT PRMNY PRIORITY DE OTT

REF OURTEL 854 SEP 25

LAW OF TREATIES CONFERENCE-ARTICLE 5

20-3-1-6	
32	11

I CALLED ON RAMPHAL ATTORNEY GENERAL AND MINISTER OF STATE RESPONSIBLE FOR EXTER YESTERDAY AFTERNOON AND TOOK OPPORTUNITY OF RAISING WITH HIM QUESTION OF GUYANAS SUPPORT FOR OUR POSITION ON ARTICLE 5.

2. RAMPHAL SAID MATTER HAD NOT/NOT YET BEEN BROUGHT TO HIS ATTN BUT THAT UNLESS THERE WERE CONSIDERATIONS OF WHICH HE WAS NOT/NOT AWARE HE DID NOT/NOT FORESEE ANY PROBLEM IN SUPPORTING US.

3. HE MENTIONED THAT POLLARD LEGAL ADVISER TO MINISTRY OF EXTER PRESENTLY ON GUYANAS DEL TO UNGA WILL BE ATTENDING CONFERENCE IN VIENN AND THAT IT WOULD BE USEFUL IF OUR DEL AT UNGA COULD KEEP IN TOUCH WITH HIM

DOUGAN

6-21-10

002741

File ✓
Tel. File
Div. Diary

Diary
JSS

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Document divulgué en vertu de la Loi sur l'accès à l'information

MESSAGE

FM/DE EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
18 OCT/68	20-3-1-6 32	CONF

TO/A NAIROBI

NO
PRECEDENCE
L-954
ROUTINE

INFO

REF YOURTEL 836 OCTOBER 16

SUB/SUJ LAW OF TREATIES CONFERENCE

as reported by you

IN VIEW OF KENYA'S STRONG SUPPORT OF PARAGRAPH 2 OF ARTICLE 5, WE WILL BE PARTICULARLY INTERESTED IN LEARNING WHETHER KENYA WILL SEEK TO OPPOSE A MOTION FOR A SEPARATE VOTE ON PARAGRAPH 2 AT SECOND SESSION. IN DISCUSSING THIS POINT YOU SHOULD STRESS THAT CANADA HAS NO WISH TO INTERFERE WITH PARAGRAPH 1 OF ARTICLE 5 AND WE WOULD SEEK DELETION OF WHOLE OF ARTICLE 5 ONLY IF SEPARATE VOTE ON PARAGRAPH 2 WERE REFUSED.

2. ADDITIONAL COPY OF "FEDERALISM AND INTERNATIONAL RELATIONS" GOING FORWARD BY AIRMAIL

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....
I.S. STANFORD:ZS

LEGAL

2-5406

SIG..... J.A. DEESLEY.....
J.A. DEESLEY

ACTION COPY

20-3-1-6

Handwritten signature
21/10

Handwritten letter 'L'

FM MVDEO OCT17/68 CONFD NO/NO STANDARD

TO TT EXTER 203 DE NY

REFYOURTEL L800 SEP16

LAW OF TREATIES CONFERENCE

TODAY MADE APPROACH AS INSTRUCTED TO AMBASSADOR CAISULLO,
LEGAL ADVISER OF MINISTRY OF FOREIGN AFFAIRS. LATTER SEES NO/NO
POSSIBILITY THAT URUGUAY WILL CHANGE ITS OPPOSITION TO PARA2 OF
ARTICLE 5 AND IS QUOTE CERTAIN UNQUOTE IT WOULD SUPPORT SEPARATE
VOTE ON THAT PARA VOTING AGAINST. HE HAS PROMISED FIRM ANSWER
AFTER STUDYING AIDE MEMOIRE AT WHICH TIME HE HOPES TO TELL ME
URUGUAYS DEL MAY TAKE ON ARTICLE 5 AS WHOLE IF SEPARATE VOTE ON
PARAS DENIED. HIS PERSONAL VIEW IS THAT IN THAT CASE IT SHOULD
NOT/NOT VOTE AGAINST INCLUSION OF WHOLE ARTICLE.

2. EXPERIENCE HERE SUGGESTS THAT I MAY HAVE DIFFICULTY GETTING
ANYTHING MORE POSITIVE THAN THIS BUT I WILL TRY AND WILL REPORT
LANGILLE

80-3-1-6	
32	11

17.18.10

ACTION COPY

20-3-1-6
21/10

NNNN

FM DUBLIN OCT17/68 CONF NO/NO STANDARD

TO EXTER 292

RE MYTEL 271 SEP26

TREATY CONFERENCE-ART 5

AT THEIR INVITATION I CALLED ON WALDRON AND HAYES THIS MORNING.

2. WALDRON CONFIRMED IRISH WILL VOTE AGAINST PARA2 AND THAT IT
COULD QUOTE REASONABLY BE EXPECTED UNQUOTE THEY WOULD VOTE AGAINST
WHOLE ARTICLE IF A SEPARATE VOTE ON PARA2 WERE DENIED.

3. HAYES SAID HIS CHECK OF PREVIOUS VOTING LED HIM TO CONCLUSION
WE SHOULD HAVE NO/NO TROUBLE ELIMINATING PARA2.

4. IRISH REGARD THIS ORAL NOTICE AS QUOTE OFFICIAL UNQUOTE AND DO
NOT/NOT INTEND TO SEND NOTE

BUICK

(RECD COMCENTRE LDN 181628Z)

1. 21.10

002744

m. [unclear]
m. [unclear]

ACTION COPY

L *file*
20-3-1-6
32 *9/10*

FM NROBI OCT 16/68 CONF. NO/NO STANDARD DISTR
TO EXTER 836

REF YOURLET L737(M) SEP10 AND YOURTEL L802 SEP16

LAW OF TREATIES CONFERENCE

ACTING HIGHCOM CALLED ON BHOI, HEAD OF LEGAL DIV FOREIGN
MINISTRY, WHO HAD BEEN ABSENT ON LEAVE, AND MADE POINTS SET
OUT IN REFLET AND LEFT AIDE MEMOIRE AND COPY OF QUOTE FEDERAL -
ISM AND INTERNATL RELATIONS UNQUOTE. PLEASE SEND ANOTHER
COPY OF LATTER TO REPLACE.

2. BHOI WAS VERY FAMILIAR WITH CDN POSITION AND UNDERTOOK TO
CONSIDER MATTER VERY CAREFULLY PROMISING REPLY IN DUE COURSE.
HOWEVER HE IMPLIED THAT KENYA HAD BEEN STRONG SUPPORTER
OF CONFERENCE DECISIONS AND WAS UNLIKELY TO CHANGE VIEWS.
WE WILL OF COURSE FOLLOW UP.

done *oct 18/68*
38

Received
OCT 17 1968
In Legal Division
Department of External Affairs

002745

13.17.10

File
Diary
Div. Diary

JSS
Tel. File

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MESSAGE

EXTERNL OTT

FM/DE

PORT OF SPAIN

TO/A

INFO

DATE	FILE/DOSSIER	SECURITY SECURITE
16 OCT./68	20-3-1-6 32	CONFIDENTIAL

NO

PRECEDENCE

L-945

IMMEDIATE

REF YOURTEL 1648 OCTOBER 11

SUB/SUJ LAW OF TREATIES CONFERENCE: BARBADOS

ASSUMING HIGHCOM WILL BE CALLING ON P.M. BARROW TO DISCUSS OTHER MATTERS DURING HIS VISIT TO BARBADOS, HE SHOULD ALSO EXPRESS HOPE OF CANADIAN GOVERNMENT THAT BARBADOS WILL BE ABLE TO ATTEND AT LEAST THE LAST FOUR WEEKS OF CONFERENCE, I.E., APRIL 23 to MAY 21 WHEN CONFERENCE WILL BE MEETING IN PLENARY TO ADOPT ARTICLES TO BE INCLUDED IN CONVENTION. WE DON'T REPEAT DON'T CONSIDER IT DESIRABLE TO GO BEYOND THIS. *Cadieux*

Received

OCT 17 1968

In Legal Division
Department of External Affairs

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DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

J.S. STAMFORD/ZS

LEGAL

2-5406

SIG

M. CADIEUX

M. CADIEUX

Mr. [unclear]
ACTION COPY

20-3-1-6	
<i>[initials]</i>	11

FM BRU OCT16/68 CONFD

TO EXTER 1950

INFO HAGUE

REF YOURTEL L918 OCT11

LAW OF TREATIES CONFERENCE-LUXEMBOURG

AIDE-MEMOIRE PRESENTED AND ORAL REPRESENTATION MADE BY BEDARD 5 PM OCT14 TO RETTEL, HEAD OF PROTOCOL AND LEGAL ADVISER MFA, TO WHOM COPY OF WHITE PAPER QUOTE FEDERALISM AND INTERNATL RELATIONS UNQUOTE WAS ALSO GIVEN.

2. ALTHOUGH ACKNOWLEDGING LUXEMBOURGS PARTICULAR INTEREST IN CONFERENCE OF THIS KIND AIMED AT LAYING DOWN GENERAL PRINCIPLES OF INTERNATL LAW, RETTEL COULD NOT/NOT SAY FOR SURE WHETHER MFA WOULD BE IN POSITION TO SEND REP AT SECOND SESSION AS THIS WOULD TAKE PLACE AT TIME WHEN LUXEMBOURG WOULD BE DEEPLY INVOLVED IN EEC MTGS. AS THEIR NUMBER OF EXPERTS IS EXTREMELY LTD, THEY MIGHT NOT/NOT BE ABLE TO SPARE ANYONE FOR VIENN. HE NEVERTHELESS ASSURED US THAT HE PERFECTLY UNDERSTOOD AND APPRECIATED CDAS AS WELL AS THE LARGE MAJORITY OF FEDERAL STATES POSITION ON ARTICLE 5 OF DRAFT CONVENTION. ALTHOUGH HE COULD NOT/NOT COMMIT MFA AT THIS POINT HE WAS CONVINCED, SHOULD LUXEMBOURG SEND A REP TO VIENN, HE WOULD UNDOUBTEDLY WISH TO VOTE ALONG WITH OTHER TWO MEMBERS OF BENELUX, IN PARTICULAR BELGIUM. HE ASSURED US HE WOULD LET US KNOW EARLY NEXT YEAR WHAT DECISION MFA WOULD TAKE CONCERNING LUXEMBOURG EVENTUAL PARTICIPATION.

CANADIAN EMBASSY



AMBASSADE DU CANADA

CONFIDENTIAL

Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,
October 16, 1968.

Dear Joe,

Re: Law of Treaties

I am reporting in a numbered letter on the results of the representations we made to the Danish Foreign Ministry pursuant to your Circular Letter of September 10.

The following point occurred to me while I was talking with Professor Sørensen. The third paragraph of the draft Aide Memoire enclosed with the Circular Letter called attention to the danger, if paragraph 2 of Article 5 is retained, that "it would be possible to maintain that members of federal States are entitled in international law to join international organizations on the same basis as recognized sovereign States, provided only that the federal constitution purports to confer the international status which would be necessary to meet the conditions of membership".

I presume that some of the constituent republics of the Soviet Union other than Byelorussia and the Ukraine have become parties to treaties with other Communist countries and perhaps have even joined international organizations consisting only of Communist countries. It would be useful to have a little information on these points.

What would be even more interesting would be to know whether any of the republics other than Byelorussia and the Ukraine have signed in Moscow any of the three world-wide treaties that have been opened to "all States" and that have multiple depositaries. I refer of course to the Test Ban Treaty, the Outer Space Treaty and the Non-Proliferation Treaty. If any of the other constituent

....2

J.S. Stanford, Esq.,
Legal Division,
Department of External Affairs,
OTTAWA, Canada

cc: Ron Robertson,
PERMIS, N.Y.

Received

OCT 23 1968

In Legal Division
Department of External Affairs

TO: MR. STANFORD
FROM REGISTRY

OCT 22 1968

FILE CHARGED OUT

TO: MR. STANFORD

002748

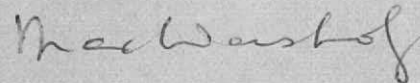
CONFIDENTIAL

2.

republics have signed any of these three treaties in Moscow, that fact would strengthen our argument that the retention of paragraph 2 would encourage the undesirable possibility quoted above.

This information, at least in relation to the three treaties, should be readily available in New York if it is not in Ottawa. I am therefore marking a copy of this letter for Ron Robertson in New York in case you decide to ask him to do a little discreet research.

Yours sincerely,



M.H. Wershof.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

23/10

TO The Under-Secretary of State
for External Affairs - OTTAWA

1-42

SECURITY CONFIDENTIAL
Sécurité

FROM The Canadian Ambassador, Canadian Embassy,
COPENHAGEN

DATE October 16, 1968

REFERENCE Our Letter No. 457 of September 23, 1968
Référence

NUMBER *496*
Numéro

SUBJECT Law of Treaties Conference - Article 5.
Sujet

FILE	DOSSIER
OTTAWA	<i>20-3-1-6</i>
MISSION	<i>32</i>

ENCLOSURES
Annexes

DISTRIBUTION

Helsinki
Oslo
Stockholm

I reported in my Letter No. 457 that I had left the Aide Memoire with the top political official of the Ministry of Foreign Affairs, Mr. Oldenburg, in the absence of Professor Sørensen, the Legal Adviser. Professor Sørensen returned briefly to Copenhagen on October 15 and I was able to discuss this subject with him.

2. He confirmed without hesitation that he personally and the Foreign Ministry are in complete agreement with the Canadian Government position. He said that Denmark will vote (if a procedural vote is required) in favour of taking a separate vote on paragraph 2 of Article 5. If a separate vote on paragraph 2 is taken, Denmark will vote for its deletion. Furthermore, if we fail to obtain a separate vote on paragraph 2, Denmark will vote against Article 5 as a whole.

3. Professor Sørensen volunteered the information that Mr. Oldenburg (whose position corresponds to that of the Deputy Under-Secretary in Ottawa) was in full agreement with the Canadian position.

4. I asked Professor Sørensen whether the approval of the Minister of Foreign Affairs would be required to confirm the Danish position. Professor Sørensen replied in the negative - the matter would not be submitted to the Minister, as the senior officials in the Ministry were in agreement and there is no reason to seek a Ministerial decision. Although I did not say so to Professor Sørensen, I suspect that the matter may end up on the Minister's desk in the event of the Soviet Government making formal representations in favour of the retention of paragraph 2 of Article 5.

5. I shall make a note to recheck with Professor Sørensen a few weeks prior to the opening of the Second Session of the Conference.

Received

OCT 23 1968

In Legal Division

TO: MR STANFORD
FROM REGISTRY

OCT 22 1968

FILE CHARGED OUT

MR STANFORD

M. A. Sørensen
Ambassador

002750

33.23.10

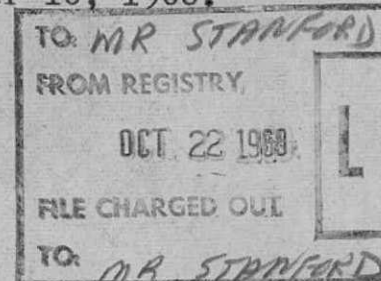
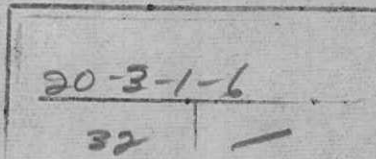
CANADIAN EMBASSY



AMBASSADE DU CANADA

Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,
October 16, 1968.

CONFIDENTIAL



Dear Joe,

Law of Treaties

I was glad to receive our Delegation's report some time ago. It seems to me to be pretty clear and helpful, although as you said a title-page should have been included. Why not add one even now?

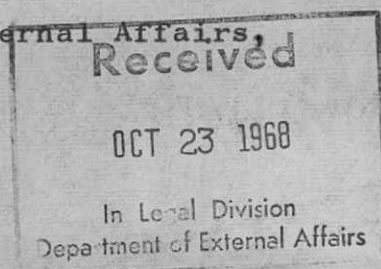
In raising the following points I am not assuming that I will again go to Vienna. It will no doubt be some time before that question is submitted to higher authority.

9000/1000
Are the dates fairly well settled as April 9 to May 21? I suggest that the Embassy could be asked any time to book rooms at the Bristol beginning Monday, April 7 and ending May 23 or 24. Hopefully there will be two officers and one stenographer in addition to the Head of Delegation. It would be helpful if Finance Division could so arrange matters that one lady from a European post could work for the whole period without losing the whole of her allowances.

Yes. And →
Vallat suggested in London Telegram 4538 of Sept. 17 that preconference consultations be held in London and Paris as was done early in 1968. My own view is that the "old Commonwealth-USA" meeting would be much more useful to us if it did not ^ximmediately precede the WEO meeting in Paris as was the case last time. If one month could separate the first meeting from the second, there would be time for reconsideration of important points in Ottawa after the Commonwealth-USA meeting and before going on to the WEO. Of course such a separation means more expense and inconvenience for some participants but

....2

J.S. Stanford, Esq.,
Legal Division,
Department of External Affairs,
OTTAWA.



x For practical purposes,
it was "immediately"

002751

CONFIDENTIAL

2.

I think it would be worth it. If there is to be a one month gap, the first meeting need not necessarily be in London - Washington might be favoured.

*And we
could have
more*

This brings me to the main substantive source of trouble (other than Article 5). Have you - and Beesley and Gotlieb - had a chance to review the sad story of Part V of the Draft Convention and the question of settlement of disputes? We need to decide of course how strongly Canada feels on these questions. What is even more difficult, if we don't feel too strongly as Canadians, is the question whether we are to stand firmly with the USA and UK if they are determined to battle to the end.

Yours sincerely,

Max Wershof
Max Wershof

reply dictated 28/10,
file 20-3-1-6
29/10
EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

OCT 25 1968

FILE CHARGED OUT

TO: Mr. Stanford

CONFIDENTIAL

TO
A The Under-Secretary of State
for External Affairs, OTTAWA

FROM
De The Canadian Embassy
DJAKARTA, Indonesia

REFERENCE
Référence Your letter L737(M) of September 10
and your telegram L777 of September 13.

SUBJECT
Sujet Law of Treaties Conference - Article 5.

SECURITY
Sécurité

DATE October 15, 1968

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
13	

ENCLOSURES
Annexes

DISTRIBUTION

In accordance with your instructions, I requested an appointment with the Secretary General of the Ministry of Foreign Affairs, Mrs. Artati Marzuki, who, because of her pre-occupation with the Sabah issue, asked me to see the Ministry's Legal Advisor, Miss E.H. Laurens. I therefore called on Miss Laurens on October 11.

2. I reviewed in detail with Miss Laurens the points set out in your letter and telegram under reference. Her preliminary reaction to our request for Indonesian support in favour of the omission of proposed paragraph 2 of Article 5 was that perhaps paragraph 2 was capable of amendment to meet Canada's apprehensions. I reiterated that, for the reasons set out in the aide-memoire, Canada was of the view that the present paragraph 2 should be omitted from the Convention to be adopted in Vienna. Miss Laurens made no further comment on this point and undertook to give us a considered reply after the Ministry had studied the aide-memoire. She expressed interest in knowing more about the practice of states concerning the treaty-making capacity of a member of a federal state and asked me to leave with her the publication "Federalism and International Relations".

3. I had an opportunity to mention to Miss Laurens in passing that the Soviet Union and its allies are the most active supporters of paragraph 2 as presently drafted. She evoked some surprise, but made no specific comment. She indicated that she intended to review the record of discussions of Article 5 at the First Session. She also said that the Ministry might wish to consult "other countries" on the subject, but she did not specify them. In this connection, it might be useful for us to know the voting pattern of countries on the Article in question at the first session. I think that it would also be helpful for background information to know which other federal states, particularly in Asia, support Canada's position on paragraph 2 of Article 5.

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4. We conveyed to Miss Laurens the sense of paragraph 11 of your letter concerning the African-Asian Legal Consultative Group, which is scheduled to meet in Karachi in January next. She thought that the Draft Convention was on the agenda, but was not certain that Article 5 was specifically listed for discussion. She suggested that this could be ascertained from the Pakistani authorities who are responsible for preparing the agenda. I reaffirmed that we were not seeking to have the matter raised at the meeting.

5. Miss Laurens promised to let us know in due course who will represent Indonesia at both the Karachi meeting and the Second Session of the Law of Treaties Conference.

R.E. Branscombe

R.E. Branscombe,
Chargé d'Affaires, a.i.

AIR MAIL BOND

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