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Subject: POLITICAL AFFAIRS
TREATIES & AGREEMENTS
TREATY MAKING POWERS
LAWS OF TREATIES
I.L.C. CODIFICATION PROJECT

Vol. 12
From MAY 21/69
To Oct 31/69

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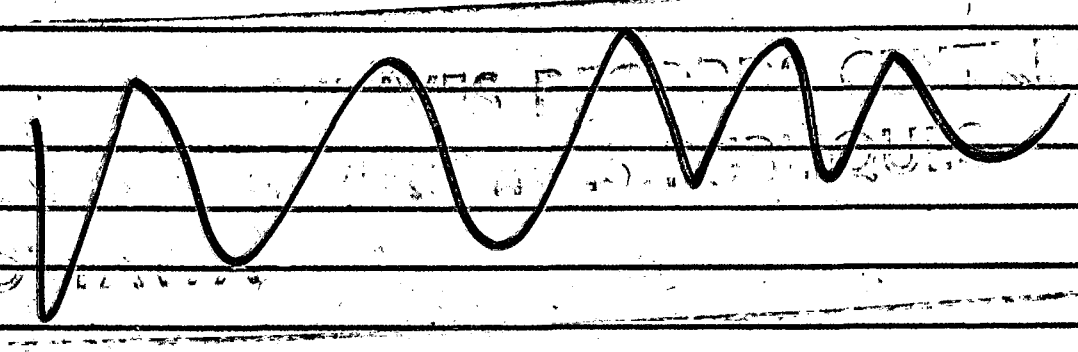

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REPORT

OF THE

CANADIAN DELEGATION

TO THE

UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

Vienna, 1968 and 1969

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REPORT OF THE CANADIAN DELEGATION TO THE SECOND SESSION OF THE UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES HELD AT VIENNA FROM APRIL 9 TO MAY 23, 1969

Part I - INTRODUCTION

1 - Origin of the Conference

1. The Resolutions of the General Assembly (2166 (XXI) of 5 December, 1966 and 2287 (XXII) of 6 December, 1967) convening the U.N. Conference on the Law of Treaties called for the Conference to meet in two sessions. The first session took place in Vienna from March 26 to May 24, 1968 and is the subject of a separate report by the Canadian delegation. The present report deals with the work of the second session, which concluded with the adoption and opening for signature of the 1969 Vienna Convention on the Law of Treaties (hereafter referred to as "the treaties Convention"). Representatives of 110 States participated in the second session of the conference.

2 - The Canadian Delegation

2. The Head of the Canadian Delegation to the second session of the Conference was Max H. Wershof Q.C., Canadian Ambassador to Denmark. J. Alan Beesley, Head of Legal Division was Alternate and Vice-Chairman of the Delegation. Advisers to the Delegation were A.W. Robertson, First Secretary at the Permanent Mission of Canada to the U.N. in New York, J.S. Stanford, Head of Treaty and Economic Section of the Legal Division and J-C Tremblay, Third Secretary at the Canadian Embassy, Vienna.

3 - Preparatory Meetings

3. As was the case prior to the first session of the Conference, preparatory meetings were held among representatives of the U.S.A., the United Kingdom, Australia, Canada and New Zealand, followed by meetings of the WEO Group as a whole. The first group met in London on February 4, 1969, and the WEO Group met in Paris on February 6 and 7 under the auspices of the Council of Europe. Mr. Wershof and Mr. Stanford represented Canada at both of these meetings.

4. The purpose of the preparatory meetings was to enable friendly governments to exchange views on the issues of major importance to come before the second session. The two topics to which both meetings devoted

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most attention were disputes settlement procedures and universal participation in general multilateral treaties (the "all States" issue). Closely related to the latter was the question of the signature and accession clauses of the treaties Convention itself. Additional questions considered included the reservations articles, the invalidity and termination articles (Part V), the retroactivity of the treaties Convention, and the final clauses of the treaties Convention, in particular those relating to reservations and to the number of ratifications required for entry into force. Detailed reports of these meetings appear in the files.

4 - Articles of Particular Concern to Canada

5. The provision in the ILC draft articles provisionally adopted in Committee of the Whole which was of greatest importance for Canada was paragraph 2 of Article 5 (Article 6 in the Convention as finally adopted)* concerning the capacity of members of a federal state to conclude treaties. Other articles which were of particular concern to Canada were those which were of concern to the western group generally. These included the major political issues which had not been resolved in Committee of the Whole i.e. Article 5 bis on universal participation in general multilateral treaties, Article 62 bis (66) on procedures for establishing claims of invalidity, termination and suspension, provisions in the final clauses concerning signature and accession (Articles 81 and 83 respectively) and retroactivity (removed from the final clauses to Article 4 in the Convention).

5 - Officers of the Conference

6. The Conference Officers for the second session were the same as those for the first session and are set out in the Report of the Canadian Delegation on the first session. As reported there, the representative of Guatemala replaced the representative of Spain for the second session as one of the 23 Vice Presidents.

6 - Organization of the Work of the Second Session

7. The plan of work of the second session called for the conference to meet in Committee of the Whole for the first two weeks to deal with those matters which had not been disposed of in Committee of the Whole at the first session and to devote the remaining four weeks to Plenary meetings, leading to the adoption of a convention

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*Where an Article number is followed by a second number in brackets, the former is the number under which the article was considered by the Conference and the latter is the number in the Convention as finally adopted. A concordance of all articles is attached as Annex I to this report.

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by May 24, the last scheduled day of the Conference.

8. Immediately prior to the opening of the second session U.N. Legal Counsel Stavropoulos called an informal meeting of twenty representative delegations, including Canada, to discuss the work schedule of the session. He expressed the view that the six weeks available to the second session would not be sufficient to enable the conference to complete its work unless it adhered strictly to its timetable and unless representatives were willing to compromise on the more contentious political issues. This meeting agreed upon a timetable for the work of the Committee of the Whole, subsequently approved by the conference, which extended the Committee stage to two and a half weeks (i.e. until April 25) and which, within that period, deferred consideration of the more contentious articles until the end of the Committee's deliberations.

9. The procedures followed by the Committee of the Whole at the second session were similar to those followed at the first session, namely initial consideration of each article by the Committee of the Whole, at which substantive amendments were voted upon, followed by consideration by the Drafting Committee of the article together with any drafting amendments and those substantive amendments adopted by the Committee of the Whole. This was followed in turn by consideration by the Committee of the Whole of the text adopted by the Drafting Committee and final adoption by the Committee of the Whole of a text to be recommended to the Plenary.

10. The procedure adopted in Plenary was for the Drafting Committee first to consider the text of each article recommended by the Committee of the Whole, adopt a title, make any necessary drafting changes, and then to submit the article to the Plenary for consideration and adoption. In almost all cases the Drafting Committee text was adopted in Plenary without change. In those cases where amendments to the Drafting Committee text were adopted in Plenary, the Plenary then proceeded immediately to vote on adoption of the article as amended without an intervening reference to the Drafting Committee. In a few cases, however, the Drafting Committee was asked by the Plenary to review an article which the latter had adopted. In such cases, the article was referred back to Plenary only if, as a result of its review, the Drafting Committee had decided to recommend changes in the text already adopted by Plenary.

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Part II - THE WORK OF THE COMMITTEE OF THE WHOLE

1 - The Rapporteur's Report

11. The Report of the Committee of the Whole on its Work at the Second Session of the Conference (A/CONF. 39/15 of 1 May, 1969) records in detail the work of the Committee of the Whole at the second session and should be considered as an Annex to this report.

2 - Articles Considered in Committee of the Whole

12. The Conference met in Committee of the Whole from April 10 to April 25 and disposed of those articles on which it had not reached a decision at the first session (Articles 2, 5 bis, 8(9), 12(15), 17(20), 26(30), 36(40), 37(41), 55(58), 62 bis (66), 66(70) and 76). In addition it dealt with proposed articles 62 ter and 62 quater and the final clauses. These articles were not dealt with in numerical order but rather according to a timetable designed to delay consideration of the most contentious articles (5 bis, 62 bis (66) and the signature and accession clauses) in order to permit the greatest possible time for negotiation and compromise. The schedule adopted by the Conference for Committee of the Whole and followed reasonably closely was the following: 10-17 April, Arts. 8(9), 17(20), 26(30), 36(40), 37(41), 55(58), 66(70) and 2, in that order; 18-25 April, Arts. 5 bis, 12(15), 62 bis (66), final clauses (including 76) and adoption of reports. The Committee of the Whole did not deal with the preamble or final act.

13. The withdrawal by France early in the second session of its various amendments designed to introduce into the Convention the concept of a "restricted multilateral treaty" removed one of the outstanding issues facing the second session. In addition, the advocates of universal participation in treaties decided to focus their efforts on Article 5 bis and the proposed definition of "general multilateral treaty" was also withdrawn. These two steps removed the obstacles to adoption of most of the outstanding articles, leaving only the politically controversial articles for extensive discussion in Committee of the Whole.

3 - Action Taken in Committee of the Whole on Articles of Particular Concern to Canada

14. Articles 5 bis and 12(15) The delegation was instructed to vote against the "all States" package consisting of proposed Article 5 bis and the Czech

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amendment to Article 12(15). The Czech amendment was withdrawn. Article 5 bis was defeated on a roll-call vote 32-52(Canada)-19.

15. Articles 62 bis. 62 ter. 62 quater and 76

The delegation was instructed to support proposals for compulsory third-party adjudication of disputes arising out of the application of the articles in Part V establishing grounds for the invalidity, termination or suspension of a treaty. The settlement of disputes question was the subject of extensive debate and a great many proposals. The principal proposal before the Committee was a revised form of the 13 power proposal at the first session, with 6 additional co-sponsors, calling for compulsory conciliation followed, if necessary, by compulsory arbitration. This proposal was strongly supported by most western representatives as an acceptable compromise on the disputes settlement issue.

16. Other proposals before the Committee of the Whole included: a Japanese proposal for compulsory reference to the ICJ of disputes arising under Articles 50(53) and 61(64) dealing with jus cogens, and compulsory arbitration for other articles in Part V; an amendment by India, Indonesia, Tanzania and Yugoslavia to the 13 power proposal which would have had the effect of turning 62 bis into an optional protocol to be explicitly accepted in whole or in part by each party to the Convention; a Swiss proposal requiring a State invoking an Article in Part V as a ground for invalidity or termination to agree to submit its claim either to the ICJ or to arbitration; and a Spanish proposal establishing a United Nations Commission for Treaties which would function as a conciliation body and could refer unresolved disputes of a legal nature to arbitration.

17. When it became clear that it had almost no support in the conference, the Spanish proposal was withdrawn. The Swiss proposal was defeated 28(Canada)-47-27. The Japanese proposal was also defeated, 31(Canada)-51-20, as was the India et al amendment 37-47(Canada)-19. The 19 power proposal was then adopted by a simple majority, 54(Canada)-34-14. The fact that it was adopted in Committee of the Whole by only a simple majority indicated that the 19 power proposal would have difficulty obtaining the two-thirds majority required for adoption in Plenary (see page 12)

18. There were three proposals for an Article 62 ter. A Thai proposal in effect authorizing states to enter a reservation on Article 62 bis was withdrawn. A Ceylonese

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proposal authorizing parties to a treaty to opt out of 62 bis was rejected on a tie vote 28(Canada)-28-46. A Luxembourg proposal authorizing parties to the treaties Convention not to apply Part V with respect to any state which had not agreed to accept compulsory settlement of claims under Part V was also withdrawn. A Swiss proposal for Article 62 quater providing that the provisions of Article 62 bis would not affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes was adopted and incorporated in Article 62 bis as paragraph 2.

19. The Swiss proposal for an article 76 submitting the whole of the Convention to the compulsory jurisdiction of the ICJ was defeated 37(Canada)-48-20. A Spanish proposal designed to extend the settlement procedures in Article 62 bis to the whole of the Convention was withdrawn.

20. Final Clauses. Two important issues of substance arose in connection with consideration of the final clauses. The first of these was the temporal application of the Convention. The delegation had been instructed to support any initiative for a specific non-retroactivity article if the initiative obtained significant support in the western and non-aligned groups. Such an initiative did take place, leading to a proposal by Brazil, Chile, Kenya, Iran, Sweden, Tunisia and Venezuela that, without prejudice to the application of any rules set forth in the Convention to which treaties would be subject under international law independently of the Convention, the Convention would apply only to treaties concluded after the entry into force of the Convention. This proposal was adopted 71(Canada)-5-29 and was eventually incorporated in the Convention as Article 4.

21. The second substantive issue arising in connection with the final clauses was the question whether the signature and accession clauses would be in the traditional "Vienna formula", the "all States" formula or some new form. (The "Vienna formula", in itsusual form provides that "The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention". The "all States" formula provides simply that "This treaty shall be open to all States for signature". Both formulae are followed by provisions authorizing States which were entitled to sign but did not sign while the treaty was open for signature to accede to the treaty.) The delegation had been instructed to

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oppose the "all States" formula. The United Kingdom and Brazil proposed the Vienna formula; Hungary, Poland, Romania and the USSR proposed the "all States" formula and Ghana and India proposed the Vienna formula amended by the addition of two further categories, namely parties to the Partial Test Ban Treaty and parties to the Outer Space Treaty. Both the Partial Test Ban Treaty and the Outer Space Treaty contain signature and accession clauses in the "all States" form. Both of these treaties also have multiple depositaries, the UK, the USA and the USSR in each case, so that in the case of East Germany, for example, although the USA and UK refused to accept the DDR signature and ratification, DDR signature and ratification were accepted by the USSR. The DDR may consequently claim to be a party to each of these treaties even though this claim is rejected by States which do not recognize the DDR as a sovereign State. The Ghana-India proposal did not provide for multiple depositaries but only for an initial depositary (Austria) and a final depositary (the U.N. Secretary General). It also provided that instruments of ratification and accession, whenever deposited, would be deposited with the Austrian Government and transmitted by Austria to the Secretary General. At present East Germany is the only one of the "unrecognized States" which has sought to adhere to the Partial Test Ban Treaty and the Outer Space Treaty and is thus the only entity which might have benefitted immediately from the Ghana-India proposal. Any of the other "unrecognized States" however (e.g. North Vietnam, North Korea) which purported to adhere to the Partial Test Ban Treaty or the Outer Space Treaty could thereupon claim the right to adhere to the treaties Convention. The effect of the Ghana-India proposal would therefore have been substantially the same as that of an "all States" formula in that it would have allowed East Germany and possibly other "unrecognized States" as well, to go through the motions of adhering to the treaties Convention, thus at least raising a doubt as to whether they were parties to the Convention. Had the Ghana-India proposal been adopted, western States would, of course, still have been free to take the same position in respect of a purported accession by the DDR to the treaties Convention as they have taken under the "all States" formula, namely that as the DDR is not a State it lacks the capacity to adhere to the Convention. At least one difficulty, however, would not have been capable of subjective resolution in this way. The Ghana-India proposal called on the Secretary General, as Final Depositary, to notify signatories and Contracting Parties of the entry into force of the Convention following the deposit of a specific number of instruments of ratification or accession. Had the DDR purported to ratify or accede to the treaties Convention before its entry into force, the Secretary General would have been obliged

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to take a position on the validity or otherwise of the DDR instrument in determining whether it counted as one of the number required for entry into force.

22. The "all States" proposal was defeated 32-56 (Canada)-17. The Ghana-India proposal, which took the form of an amendment to the UK-Brazil Vienna formula proposal, was defeated 32-48(Canada)-25. The Vienna formula was then adopted 60(Canada)-26-19.

The Committee of the Whole could not reach agreement on the number of ratifications and accessions required to bring the treaty into force, consequently the text of the article on entry into force recommended by the Committee of the Whole to the Plenary left this number blank. (The number was fixed in Plenary at 35).

Part III - THE WORK OF THE PLENARY

1 - Modifications by Plenary to the Text Adopted in Committee of the Whole

24. The Plenary met from April 28 to May 22, with the signature of the Final Act and the opening for signature of the Convention taking place on May 23.

25. The overwhelming majority of articles adopted by the Committee of the Whole were adopted unchanged or with only minor drafting amendments in Plenary, often by unanimous or near-unanimous votes. However, important substantive discussions, in some cases leading to amendment of the texts adopted by the Committee of the Whole, took place on the following articles:

Article 5(6) (Capacity of States to conclude treaties) As a result of a Canadian initiative on this question, supported by Australia, Malaysia, Mexico and India, the Plenary deleted paragraph 2 of this Article, dealing with the capacity of members of a federal state to conclude treaties. The work of the Canadian delegation on this issue is more fully reported in paragraphs 26-29.

Article 5 bis This general "all-States" article, defeated in Committee of the Whole, was re-submitted to Plenary and was again defeated, 34-50(Canada)-22.

Article 8(9) (Adoption of the text) Adoption of the text of a treaty at an international conference is to be by "two-thirds of the States present and voting" rather than by "two-thirds of the States participating in the conference" as had been proposed by the ILC and adopted in Committee of the Whole.

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Article 17(20) (Acceptance of and objection to reservations) The text adopted in Committee of the Whole provided, in paragraph 4(b), that where one state objected to a reservation made by another State, the treaty did not enter into force between the reserving and objecting state unless the latter expressed a contrary intention. As the result of an initiative by the USSR, this presumption was reversed. Under the present text, the treaty will enter into force between the two states in such circumstances unless the objecting state explicitly states a contrary intention.

Article 19(21) (Legal effects of reservations and of objections to reservations) There was considerable discussion of the effect of an objection when the objecting state accepted the entry into force of the agreement between itself and the reserving state. While the discussion was not always entirely clear, the issue appeared to be whether, when the reservation modifies a provision of the treaty, that provision is considered (a) to be in force between the two states as modified by the reservation, which would be the case if the reservation had been accepted, or (b) not to be in force between the two states. The Drafting Committee proposed to Plenary a text which, in paragraph 3, followed (a) above. India, Japan, the Netherlands and the USSR proposed to restore the original ILC wording, which had been accepted in Committee of the Whole. Upon further study, the Drafting Committee agreed to restore the original wording. It should be noted, however, that the extent to which this wording has the result in (b) above appears to depend upon the effect to be given to the closing words of paragraph 3, "to the extent of the reservation".

Article 22(25) (Provisional application) Iran led an attack on paragraph 2 which provides for the termination of the provisional application of a treaty. This paragraph had been added by the Committee of the Whole on the initiative of Canada, among others, and in accordance with its instructions the Canadian delegation defended the paragraph, which was retained without alteration following reconsideration by the Drafting Committee.

Article 26(30) (Application of successive treaties relating to the same subject matter) Discussion of this article established that, in determining which of several successive treaties are earlier and which later, the relevant dates are the dates of adoption of the texts rather than the dates of entry into force.

Article 32(36) (Treaties providing for rights for third States) Hungary and the USSR proposed adding a paragraph to provide that paragraph 1 would not prejudice the position of states enjoying MFN treatment. This initiative, which

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the delegation was informed is related to efforts by the USSR and its client states to secure for themselves, more or less unilaterally and on the basis of MFN clauses in certain early bilateral trade agreements, the benefits of the GATT, EFTA, EEC and other special customs arrangements, was opposed by most Western European and Latin American states. The amendment was withdrawn after the President of the Conference made a statement to the effect that nothing in this article was intended to prejudice MFN rights under bilateral treaties.

Article 41(44) (Separability of treaty provisions) Paragraphs 1 and 5 of this Article as finally adopted provide:

> "1. A right of a party, provided for in a treaty or arising under Article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
>
> 5. In cases falling under Articles 51, 52 and 53, no separation of the provisions of the treaty is permitted."

Finland supported by the United Kingdom sought deletion of the reference to Article 50(53) in paragraph 5. The effect of this deletion would have been to permit separability in the case of conflict of a treaty provision with a norm of jus cogens. It was urged in support of the Finnish-UK proposal that the fact that one provision in a treaty is contrary to jus cogens does not necessarily mean that all provisions of the treaty should be terminated. In a procedurally confused debate, the words "and 50" first failed to obtain the necessary two-thirds majority and then, in a subsequent roll call vote, were retained 66-30(Canada)-9. The effect of this decision of the conference is that separability is not permitted when a treaty is deemed void pursuant to Article 50(53).

Article 42(45) (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty) Venezuela sought deletion of subparagraph (b), providing that a state may, by its conduct, be estopped from claiming invalidity, termination or suspension. This effort was opposed by Guyana and Switzerland. The Guyanese had requested Canadian support for their opposition to Venezuela's request for a separate vote on this subparagraph. However, because of the strong position we had taken on the principle of permitting a separate vote on the second paragraph of Article 5(6), we

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could not reasonably vote against the request for a separate vote. The Guyanese delegation understood our problem and acquiesced in our decision to abstain on this procedural vote. The motion for a separate vote was defeated and the article was then adopted without change.

Article 49(52) (Coercion of a State by the threat or use of force) The Plenary debate on this article focussed on the same issue that had been raised in Committee of the Whole, namely whether "force" meant military force only or included political and economic pressure. Afghanistan sought to obtain, in the form of a resolution supplementary to the declaration condemning any form of pressure which was recommended to the Plenary by the Committee of the Whole at the first session of the Conference in 1968, a statement by the conference that political and economic pressure was "force" within the meaning of the U.N. Charter and Article 49(52) of the treaties Convention. This effort failed to acquire the necessary support and instead, as a compromise, the Plenary adopted a supplementary resolution merely requesting the Secretary General of the U.N. and Member States to publicize the declaration recommended by the Committee of the Whole in 1968 and adopted by the Plenary in 1969. The texts of the declaration and resolution adopted in Plenary appear in the Final Act of the conference, which is attached to this report as Annex II.

Article 57(60) (Termination or suspension of the operation of a treaty as a consequence of its breach) The UK proposed extensive amendments to the text of paragraph 2 of this article as adopted by the Committee of the Whole. Paragraph 2 relates to the breach of a multilateral treaty. These amendments were dealt with as follows: With respect to paragraph 2(a), which concerns the right of other parties acting by agreement to suspend or terminate in the event of a breach, the Plenary adopted the words "in whole or in part" with respect to suspension. On the same subparagraph, however, the Plenary did not adopt the proposal that the words "to suspend" be replaced by "to invoke the breach as a ground for suspending" which would have implied some restriction upon the right of the parties alleging breach to act unilaterally (although the nature of the restriction was not clearly defined in the debate). Both the "in whole or in part" and the "invoke the breach as a ground for suspending" formulae were accepted, however, for paragraph 2(c), which relates to the right of other parties to a multilateral treaty to act individually in the event of a breach.

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The conference also accepted a Swiss proposal, incorporated in a new paragraph 5, to provide that a right to terminate or suspend a treaty in whole or in part does not apply to provisions relating to the protection of the human person in humanitarian treaties.

Article 62 bis (66) The nineteen-power proposal on disputes settlement, supported by the most western states and adopted by a simple majority in Committee of the Whole, failed to obtain the necessary two-thirds majority for adoption in Plenary. Extensive consultations followed during which the initiative for proposing a compromise solution passed to the Afro-Asian Group since the support of a majority of that group was necessary to secure acceptance of any compromise. Two elements figures prominently in the Afro-Asian approach. The first was that any concession to the west on disputes settlement should be accompanied by a concession to the Soviet bloc on the issue of universal participation in the treaties Convention. The second was a realization that a Convention which was not supported by at least most of the major western States, which are also the world's most active treaty makers, would in effect constitute an unsuccessful outcome of the conference. The compromise "package" which eventually resulted from the Afro-Asian deliberations was sponsored by Nigeria and Ghana and consisted of two parts. The first, relating to disputes settlement, provided for the compulsory jurisdiction of the International Court of Justice in respect of any claims for invalidity based upon an alleged conflict with a norm of jus cogens (Articles 50(53) and 61(64)) but only for compulsory conciliation for disputes arising out of the application of any other articles in Part V. The second part of the package, designed to provide at least some satisfaction to the Soviet bloc on the question of universal participation in the treaties Convention, took as its point of departure the last of the five categories of States entitled to become parties to the treaties Convention under the Vienna formula, i.e. "any other State invited by the General Assembly of the United Nations to become a party to the Convention". It consisted of a Declaration on Universal Participation in the Vienna Convention on the Law of Treaties. The essential provisions of the Declaration, the full text of which appears in the Final Act of the Conference annexed to this report, consisted of a statement in the preamble that treaties codifying and developing international law or of interest to the international community as a whole should be open to universal participation and, in the operative paragraphs, an invitation to the General Assembly "to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Convention on the Law of Treaties". Although the

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Declaration itself and the western speeches in the debate on the Declaration made no reference to any particular country, it was clearly understood that the real subject of the debate was East Germany. The delegation of the Federal Republic of Germany indicated that, while it would abstain on the vote on the package, it would not object to its friends supporting the package including the Declaration. This position was based upon the understanding that a vote in favour of the package did not imply support in the General Assembly for an invitation to any particular entity to accede to the Convention. At the request of the delegation of the Federal Republic of Germany a number of Western delegations, including Canada, made statements to this effect in the debate on the package.

The compromise "package" which also included a resolution requesting the General Assembly to note and approve the provisions in the Annex concerning the costs of conciliation, was accepted by most Western States (including Canada) with great reluctance because of the failure of the disputes settlement procedures to provide for the compulsory independent adjudication of disputes arising out of the application of the articles in Part V other than those relating to jus cogens. On the other hand it should be noted that the provision for settlement of jus cogens disputes by the International Court of Justice, as provided for in the compromise package, was preferable to the settlement of such disputes by an arbitration tribunal in view of the fact that the question whether a treaty contravenes a norm of jus cogens is essentially a question of law. The Soviet bloc rejected both elements of the package because it failed to provide any assurance that East Germany would be permitted to become a party to the Convention and because it could not accept the provisions for compulsory settlement of jus cogens disputes. Thus the package was, in effect, a compromise between the Western States and the Afro-Asian States only. The compromise package was adopted 61(Canada)-20-26, with France voting against the package because it regarded the disputes settlement provisions as inadequate.

Article 76 Switzerland proposed a new article 76 providing for the jurisdiction of the International Court in respect of disputes arising out of the interpretation or application of any provision of the Convention. The vote on the Swiss proposal was 41(Canada)-36-27 and, while the proposal did not secure the two-thirds majority necessary for adoption, it is noteworthy that it did receive a simple majority.

Final Clauses Soviet efforts to secure adoption of the "all States" formula in the articles on signature and accession were defeated and the Vienna formula clauses were adopted. It should be noted that this occurred

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following the adoption of the declaration on universal participation in the treaties Convention referred to above in connection with Article 62 bis.

The Conference adopted a Nigerian proposal to fix 35 as the number of ratifications or accessions necessary to bring the Convention into force.

2 - Activities of the Canadian Delegation and Regional Groupings

26. The most important activity of the Canadian delegation relating to the work of the Plenary was its drive to secure the deletion of paragraph 2 of Article 5(6). Following up representations made in over 70 capitals during the period September 1968 to March 1969, the delegation, immediately upon its arrival in Vienna, formed a federal-state group consisting of representatives of Australia, India, Malaysia and Mexico to carry out lobbying in support of the common objective of deleting paragraph 2 of Article 5(6). The assistance of these delegations was of great value, particularly in dealing with those delegations which at first considered the Canadian initiative to delete paragraph 2 as being related solely to Canadian domestic political considerations. Nevertheless, the main burden of the lobbying fell upon the Canadian delegation, the members of which met with representatives from over 80 other delegations during the less than three weeks of the conference which preceded the vote on Article 5(6). In many cases these delegates had arrived at the conference uncommitted; in other cases delegates had not been informed of the promises of support given by their governments to our Embassies; and in some cases, delegates simply didn't understand the issue or were confused about their instructions. As a result there was a significant educational process to be carried out even among delegations whose governments had promised to support the Canadian position. One measure taken by the delegation in this process was to circulate to delegations which had promised support for the Canadian position, a confidential procedural memorandum in English, French and Spanish outlining the votes to be taken and the position of the Canadian delegation in respect of each vote. Annexed to this procedural memorandum was an Aide Memoire setting out the Canadian position on the substantive issues involved. Copies of the procedural memorandum and substantive Aide Memoire are attached as Annex III to this report.

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27. Representations made in capitals and during lobbying at the conference stressed the importance not only of the substantive vote on paragraph 2 but also of the vote on the procedural request for a separate vote on the paragraph. By the time Article 5(6) came before the Plenary the delegation had been assured of well over the required simple majority in favour of a separate vote and the French and Soviet delegations, presumably aware of this fact, did not object to the request for a separate vote. (The wisdom of having secured the position in respect of a separate vote was later demonstrated, however, when the Plenary refused requests for separate votes on parts of other Articles).

28. The results of the roll-call vote on paragraph 2 were 28-66(Canada)-18. The following is a detailed list of the votes by country:

Voting to Retain Paragraph 2: Afghanistan, Algeria, Bulgaria, Byelorussian S.S.R., Central African Republic, Cuba, Czechoslovakia, Ecuador, France, Gabon, Hungary, Indonesia, Iraq, Ivory Coast, Kuwait, Madagascar, Monaco, Mongolia, Morocco, Nepal, Poland, Romania, Syria, Turkey, Ukrainian S.S.R., U.S.S.R., U.A.R., Yugoslavia; Total 28.

Voting to Delete Paragraph 2: Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Burma, Cameroon, Canada, Ceylon, Chile, China, Colombia, Congo (Kin), Costa Rica, Cyprus, Denmark, Dominican Republic, El Salvador, Ethiopa, Federal Republic of Germany, Ghana, Greece, Guatemala, Guyana, Holy See, Honduras, India, Iran, Ireland, Israel, Italy, Jamaica, Japan, Liberia, Liechenstein, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Phillipines, Portugal, Republic of Korea, Republic of Vietnam, San Marino, Singapore, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Uganda, United Kingdom, United States of America, Uruguay, Venezuela, Zambia; Total 66.

Abstentions: Cambodia, Congo (Brazz), Finland, Kenya, Lebanon, Libya, Saudi Arabia, Senegal, Sierra Leone, Sudan, Thailand, Tunisia, United Republic of Tanzania; Total 13.

29. It will be noted that, while only a one-third blocking vote was required to defeat the paragraph, in the event a majority of more than two-thirds voted against the paragraph. The overwhelming majority against the paragraph was significant in that it not only resulted in the removal of the paragraph from the text of the Convention but constituted a clear rejection by the inter-

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national legal community of the possibility, implicit in paragraph 2, that outside states may decide for themselves whether the constitution of a federal state allows its component parts to make treaties. The speeches made in Plenary in opposition to the paragraph clearly established the illegal character of any attempt by one State to intervene in the affairs of another by purporting to interpret its constitution. All federal states represented at the Conference, except for the U.S.S.R., Czechoslovakia and Yugoslavia, voted against the paragraph. Particularly noteworthy in the voting on paragraph 2 is the fact that both Nigeria and Switzerland, which had supported paragraph 2 at the first session in Committee of the Whole, voted against the paragraph in Plenary as a result of Canadian representations made to them (in the case of Switzerland, by the Minister to the Swiss Ambassador). Moreover Switzerland intervened in the debate to speak against the paragraph while Nigeria conducted some low-key lobbying among the Afro-Asian group. The vote to delete paragraph 2 was a highly favourable conclusion to a Canadian diplomatic initiative which extended over several months involving instructions to and representations in capitals by Canadian missions accredited to over 70 states, to foreign representatives in Ottawa by the Secretary of State for External Affairs, the Under Secretary, the Legal Adviser and other officers, all leading up to the extensive lobbying activities of the Canadian delegation in Vienna. Following the vote many delegates from other States observed that it represented a considerable achievement for Canadian diplomacy.

30. With respect to the remainder of the Plenary, the Canadian delegation participated in the general western effort to secure acceptable provisions in the invalidity articles, on peaceful settlement of disputes and on the "all States" issue. In addition, the delegation intervened as required to support other provisions which it had successfully supported in Committee of the Whole (see, for example the comment in Part III:1 on Article 22(25)). Statements by the Canadian delegation are attached as Annex IV to this Report. The voting record of the Canadian delegation on certain articles adopted in Plenary appears an Annex V.

31. The Western European and Others group functioned with considerably more cohesion and effectiveness at the second session than at the first. This was particularly evident in respect of the "all States" and disputes settlement issues. Although, in respect of the latter, the article finally adopted provided only a small part of the western objective of compulsory arbitration for the whole of Part V, it is unlikely that even a compulsory

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conciliation provision would have been adopted had the majority of the Afro-Asian group not been convinced that failure to make some concession towards western views on the disputes settlement procedure would have led to a near-unanimous boycott of the Convention by western states. The Afro-Asian group, for its part, showed a greater willingness to compromise on political issues than was evident at the first session, no doubt attributable in large part to a greater awareness of the importance which western states attached to the disputes settlement question in particular. Much of this awareness was doubtless due to the extensive intersessional lobbying carried on by the U.S.A. and the U.K. The Soviet-bloc group adopted a rather uncompromising attitude on the major political issues before the conference. While eastern representatives stated on a number of occasions that a compromise solution to the disputes settlement and "all States" issue was possible, they put forward no serious compromise proposal, similar to the nineteen power proposal which the western group supported as a compromise position, which made any concession to the Western positions on either disputes settlement or universality.

Part IV - CONCLUSION OF THE CONFERENCE

1 - Adoption and Signature of the Convention

32. The Convention as a whole was adopted by a vote of 79(Canada)-1-19. The lone opposing vote was that of France, which considered the disputes settlement provisions inadequate. The abstainers were Australia, Burma, Cameroon, Central African Republic, Congo (Brazzaville), Gabon, Monaco, South Africa, Switzerland, Turkey, U.A.R. and 8 Soviet bloc states.

33. The Convention was signed on May 23, 1969, by the following thirty-two States: Afghanistan, Argentina, Barbados, Bolivia, Brazil, Cambodia, Chile, Colombia, Congo (Brazzaville), Costa Rica, Ecuador, Finland, Ghana, Guatemala, Guyana, Honduras, Iran, Jamaica, Kenya, Liberia, Madagascar, Mexico, Morocco, Nepal, Nigeria, Peru, Phillipines, Sudan, Trinidad and Tobago, Uruguay, Yugoslavia and Zambia. Representatives of 104 States signed the Final Act of the conference, which is attached as Annex II to this report.

2 - Prospects for Entry into Force of the Convention

34. The Soviet-bloc states indicated, following adoption of the "package" including the disputes settlement article, that the Convention was inacceptable to

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them and they would not adhere to it. It would appear that the Soviet bloc objection in principle to Article 62 bis (66) is confined to the provision for compulsory reference to the ICJ of jus cogens disputes. In the absence of a final clause on reservations the matter of reservations to the Convention will be governed by the very permissive regime established by Articles 16(19) and 17(20) of the Convention. This would permit the eastern-bloc states to formulate reservations in respect of the compulsory jurisdiction of the ICJ and will likewise enable other States to formulate reservations in respect of individual articles which they cannot accept. It is likely, therefore, that the inertia of States, rather than the specific provisions of the Convention, will constitute the most significant obstacle to its early entry into force and, although ratifications and accessions may be accompanied by numerous reservations, the Convention is likely in time to acquire the status of customary international law.

Part V - GENERAL COMMENTS

1 - Universal Participation in Treaties

35. The debates in Committee of the Whole and in Plenary on Article 5 bis and the final clauses disclosed that it is becoming increasingly difficult for western States to appear reasonable in insisting on adoption of the Vienna formula, in the light of the arms control treaties which do contain "all States" accession clauses. (This difficulty was highlighted by the Ghana-India proposal referred to in Part II paragraph 14 (final clauses) above). While the Federal Republic of Germany was able, through effective lobbying, to secure comfortable majorities for the Vienna formula, the adoption by the Conference of the declaration on universal participation in the treaties Convention means that this matter will now come before the next U.N. General Assembly where, it may be expected, there will be considerable difficulty in maintaining the position that entities which are States parties to the arms control treaties ought not to be permitted to accede to the U.N. codification treaties. In the past western states have opposed proposals in conferences for "all States" accession clauses on the ground that the question whether a given entity is a State is a political matter and should therefore be dealt with in the General Assembly. Adoption of the declaration on universal participation ensures that the political issue of the status of East Germany and other unrecognized states will have to be re-argued in the General Assembly on its merits.

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36. Proponents of the Vienna formula (including Canada) have in the past raised two basic objections to the "all States" formula. One is procedural and is based upon the U.N. Secretary General's statement of 18 November 1963, that "I would not wish to determine on my own initiative the highly political and controversial question whether or not the areas, the status of which was unclear, were States within the meaning of [the "all States" formula]. Such a determination, I believe, falls outside my competence ....if the "any State" formula were to be adopted, I would be able to implement it only if the General Assembly provided me with the complete list of the States coming within that formula, other than those which are Members of the United Nations or the specialized agencies, or parties to the statute of the International Court of Justice". This objection to the "all States" formula (i.e. that it creates difficulties for the Secretary General as depositary), was overcome in the case of the arms control treaties by the system of multiple national depositaries (described in paragraph 21 above) in place of the Secretary General. Moreover, the Ghana-India proposal indicates a possible means of enabling the "all-States" formula to be used even in treaties for which the Secretary General is depositary. The second basic objection to the "all-States" formula is substantive. It is accepted that East Germany (or any other "unrecognized State"), could not by purporting to accede to a treaty automatically place all other parties to the treaty (even those which deny it recognition) in the position of recognizing East Germany as a sovereign state and as bound to it by the treaty. However it is also realized that by purporting to accede to treaties and otherwise conducting itself as a sovereign state East Germany acquires greater credibility for its claim to be a separate sovereign state and a full member of the international community.

37. In considering whether the same factors which led to the acceptance of the "all-States" formula in the arms control treaties ought also to apply to general multilateral treaties adopted within the U.N. framework, several points might be mentioned. The arms control treaties, although multilateral, were to a very large degree negotiated bilaterally by the U.S.A. and the U.S.S.R. and, in these negotiations, concession was made to the Soviet position on "all States" as part of the political price to be paid for Soviet agreement to the treaties. The multiple depositary practice was adopted in each case to overcome the procedural difficulty referred to above. Moreover, in the case of the Partial Test Ban Treaty and the Outer Space Treaty, which set the pattern of an "all-States" accession clause in arms control treaties, not only the negotiation but also the application of the treaties is largely bilateral,

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given the great predominance of the U.S.A. and the U.S.S.R. at the time the treaties were negotiated in the fields of space activities and, to a lesser extent, nuclear weapons testing. On the other hand it may be considered that there is some merit in permitting regimes not recognized as sovereign states to bind themselves by civilized rules of conduct. The relevance of this factor is recognized in the U.S.A. statement concerning the purported signature and ratification by East Germany of the Partial Test Ban Treaty and the Outer Space Treaty in which the U.S.A. after rejecting the signature and ratification, in each case adds that "Bearing in mind, however, the purposes of the Treaty, the Government of the United States of America notes that the East German regime has signified its intention with respect to the matters dealt with in the Treaty". The same principle may apply also to other treaties which seek to introduce or maintain order in the conduct of the affairs of the international community in general.

2 - The International Law Commission Draft Articles

38. The ILC draft articles stood up well, on the whole, during the conference. On controversial doctrinal issues such as reservations, interpretation and grounds of invalidity they emerged virtually untouched. The principal deletions were paragraph 2 of Article 5(6) (treaty making capacity of members of a federal state); subparagraph (a) of Article 15(18) which would have obliged states to refrain from acts tending to frustrate the object of a proposed treaty while negotiations were in progress; and Article 38 on the modification of treaties by subsequent practice.

39. The principal additions by the conference to the ILC text were Articles 9 bis (11) on means of expressing consent to be bound by a treaty; 10 bis (13) on consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty; paragraph 2 of Article 22(25) on the termination of the provisional application of treaties; 23 bis (27) on internal law and observance of treaties; paragraph 5 of Article 57(60) limiting the right to terminate or suspend humanitarian treaties as a result of a breach; 62 bis (66) on procedures for judicial settlement and conciliation; and Article 77(4) on the temporal scope of the Convention.

40. To some extent at least the preservation of the ILC text is attributable to the fact that for many, perhaps even a majority, of the developing states, particularly those with little experience or expertise in the practice of international law, the ILC text was regarded as almost infallible and proposals to alter it, particularly if put forward by a major power, were suspected of being politically

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motivated. Delegations from such states did not usually have detailed instructions and their basic position appeared to be to support the original ILC text whenever possible.

Part VI - CONCLUSIONS

41. The adoption and opening for signature of the 1969 Vienna Convention on the Law of Treaties is undoubtedly a high water mark in the process of the codification and progressive development of international law. If the treaty attracts, within a reasonable period of time, sufficient ratifications and accessions to bring it into force, the contents of the Convention will probably acquire, in due course, the status of customary international law. If, on the other hand, the Convention does not enter into force within a reasonable period the result may well be to deprive the Convention of any unofficial status it may now enjoy as a codification of existing law and, in the process, lessen the stability of treaty relations. Because the Convention is based to a large extent on the results of several years of work by the ILC, its failure to enter into force may also call into question the usefulness of much of the future work of the ILC.

42. Because the Convention does not contain provisions of immediate and direct benefit to large numbers of states, there may be a risk that it will fail to attract the ratifications and accessions necessary to bring it into force since there is a certain amount of inertia on the part of states in respect of treaties which are merely good in the abstract, but which confer no immediate concrete benefit. It is to be hoped that Canada will not be guilty of this inertia and that the question of Canadian accession to the Convention will be studied and a recommendation made within a reasonable period. A study of the implications for Canada of the Convention will, of course, involve a number of factors, among the most important of which will be an assessment of the articles on invalidity and termination and of the extent to which the disputes settlement procedures provided for in the Convention afford protection against the possible abusive application of these articles. No doubt the Department will wish, during the course of such studies, to consult with friendly governments.

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ANNEX I

CONCORDANCE OF ARTICLE NUMBERS AS ADOPTED BY PLENARY AND AS APPEARING IN FINAL TEXT

Plenary No.	Final Text No.	Final Text No.	Plenary No.
1	1	1	1
2	2	2	2
3	3	3	3
4	5	4	77
5	6	5	4
6	7	6	5
7	8	7	6
8	9	8	7
9	10	9	8
9 bis	11	10	9
10	12	11	9 bis
10 bis	13	12	10
11	14	13	10 bis
12	15	14	11
13	16	15	12
14	17	16	13
15	18	17	14
16	19	18	15
17	20	19	16
18	23	20	17
19	21	21	19
20	22	22	20
21	24	23	18
22	25	24	21
23	26	25	22

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Plenary No.	Final Text No.	Final Text No.	Plenary No.
23 bis	27	26	23
24	28	27	23 bis
25	29	28	24
26	30	29	25
27	31	30	26
28	32	31	27
29	33	32	28
30	34	33	29
31	35	34	30
32	36	35	31
33	37	36	32
34	38	37	33
35	39	38	34
36	40	39	35
37	41	40	36
38 (ILC)	deleted	41	37
39	42	42	39
40	43	43	40
41	44	44	41
42	45	45	42
43	46	46	43
44	47	47	44
45	48	48	45
46	49	49	46
47	50	50	47
48	51	51	48
49	52	52	49

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Plenary No.	Final Text No.	Final Text No.	Plenary No.
50	53	53	50
51	54	54	51
52	55	55	52
53	56	56	53
54	57	57	54
55	58	58	55
56	59	59	56
57	60	60	57
58	61	61	58
59	62	62	59
60	63	63	60
61	64	64	61
62	65	65	62
62 bis	66	66	62 bis
63	67	67	63
64	68	68	64
65	69	69	65
66	70	70	66
67	71	71	67
68	72	72	68
69	73	73	69
69 bis	74	74	69 bis
70	75	75	70
71	76	76	71
72	77	77	72
73	78	78	73
74	79	79	74

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Plenary No.	Final Text No.	Final Text No.	Plenary No.
75	80	80	75
76 (proposed by Switz. - not adopted)		81	A
77	4	82	B
A	81	83	C
B	82	84	D
C	83	85	E
D	84		
E	85		

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ANNEX II

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.39/26
23 May 1969

ENGLISH
Original: CHINESE/ENGLISH/
FRENCH/RUSSIAN/SPANISH

UNITED NATIONS CONFERENCE
ON THE LAW OF TREATIES

FINAL ACT OF THE UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

1. The General Assembly of the United Nations, having considered chapter II of the report of the International Law Commission on the work of its eighteenth session, which contained final draft articles and commentaries on the law of treaties (A/6309/Rev.1), decided, by its resolution 2166 (XXI) of 5 December 1966, to convene an international conference of plenipotentiaries to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. By the same resolution, the General Assembly requested the Secretary-General to convoke the first session of the conference early in 1968 and the second session early in 1969. Subsequently, the General Assembly, noting that an invitation had been extended by the Austrian Government to hold both sessions of the conference at Vienna, decided, by resolution 2287 (XXII) of 6 December 1967, that the first session should be convened at Vienna in March 1968. At its fifth meeting, held on 24 May 1968, at the conclusion of the first session, the Conference adopted a resolution requesting the Secretary-General to make all the necessary arrangements for the Conference to hold its second session at Vienna from 9 April to 21 May 1969.

2. The first session of the United Nations Conference on the Law of Treaties was held at the Neue Hofburg, Vienna, from 26 March to 24 May 1968. The second session of the Conference was also held at the Neue Hofburg, from 9 April to 22 May 1969.

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3. One hundred and three States were represented at the first session of the Conference, and one hundred and ten States at the second session, as follows: Afghanistan, Algeria, Argentina, Australia, Austria, Barbados (second session only), Belgium, Bolivia, Brazil, Bulgaria, Burma (second session only), Byelorussian Soviet Socialist Republic, Cambodia, Cameroon (second session only), Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador (second session only), Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea (first session only), Guyana, Holy See, Honduras, Hungary, Iceland (second session only), India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Lesotho (second session only), Liberia, Libya (second session only), Liechtenstein, Luxembourg (second session only), Madagascar, Malaysia, Mali (first session only), Malta (second session only), Mauritania (first session only), Mauritius, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama (second session only), Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia (first session only), South Africa, Spain, Sudan (second session only), Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda (second session only), Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen (first session only), Yugoslavia and Zambia.

4. The General Assembly invited the specialized agencies and interested intergovernmental organizations to send observers to the Conference. The following specialized agencies and interested intergovernmental organizations accepted this invitation:

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Specialized and related agencies

International Labour Organisation

Food and Agriculture Organization of the United Nations

United Nations Educational, Scientific and Cultural Organization

International Civil Aviation Organization

International Bank for Reconstruction and Development and International Development Association

International Monetary Fund

World Health Organization

Universal Postal Union

Inter-Governmental Maritime Consultative Organization

International Atomic Energy Agency

Intergovernmental organizations

Asian-African Legal Consultative Committee

United International Bureaux for the Protection of Intellectual Property

Council of Europe

General Agreement on Tariffs and Trade

League of Arab States

5. The Conference elected Mr. Roberto Ago (Italy) as President.

6. The Conference elected as Vice-Presidents the representatives of the following States: Afghanistan, Algeria, Austria, Chile, China, Ethiopia, Finland, France, Guatemala (for 1969), Guinea, Hungary, India, Mexico, Peru, Philippines, Romania, Sierra Leone, Spain (for 1968), Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

7. The following committees were set up by the Conference:

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee.

Committee of the Whole

Chairman: Mr. Taslim Olawale Elias (Nigeria)

Vice-Chairman: Mr. Josef Šmejkal (Czechoslovakia)

Rapporteur: Mr. Eduardo Jiménez de Aréchaga (Uruguay)

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Drafting Committee

Chairman: Mr. Mustafa Kamil Yasseen (Iraq)

Members: Argentina, China, Congo (Brazzaville), France, Ghana, Japan, Kenya, Netherlands, Poland, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and, ex-officio in accordance with rule 48 of the Rules of Procedure, Mr. Eduardo Jiménez de Aréchaga (Uruguay), Rapporteur of the Committee of the Whole.

Credentials Committee

Chairman: Mr. Eduardo Suárez (Mexico)

Members: Ceylon, Dominican Republic, Japan, Madagascar, Mali (first session), Mexico, Switzerland, Union of Soviet Socialist Republics, United Republic of Tanzania (second session) and United States of America.

8. Sir Humphrey Waldock, Special Rapporteur of the International Law Commission on the law of treaties, acted as Expert Consultant.

9. The Secretary-General of the United Nations was represented by Mr. C.A. Stavropoulos, Under-Secretary-General, The Legal Counsel. Mr. A.P. Movchan, Director of the Codification Division of the Office of Legal Affairs of the United Nations, acted as Executive Secretary.

10. The General Assembly, by its resolution 2166 (XXI) convening the Conference, referred to the Conference, as the basis for its consideration of the law of treaties, chapter II of the report of the International Law Commission on the work of its eighteenth session, containing the text of the final draft articles and commentaries on the law of treaties adopted by the Commission at that session (A/6309/Rev.1).

11. The Conference also had before it the following documentation:

(a) the relevant records of the General Assembly and of the International Law Commission relating to the law of treaties;

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(b) comments and amendments relating to the final draft articles on the law of treaties submitted by Governments in 1968 in advance of the Conference in accordance with General Assembly resolution 2287 (XXII) (A/CONF.39/6 and Add.1-2);

(c) written statements submitted by specialized agencies and inter-governmental bodies invited to send observers to the Conference (A/CONF.39/7 and Add.1-2 and Add.1/Corr.1);

(d) a selected bibliography on the law of treaties (A/CONF.39/4), an analytical compilation of comments and observations made in 1966 and 1967 on the final draft articles on the law of treaties (A/CONF.39/5, Vols. I and II), standard final clauses (A/CONF.39/L.1), a guide to the draft articles on the law of treaties (A/C.6/376) and other pertinent documentation prepared by the Secretariat of the United Nations.

12. The Conference assigned to the Committee of the Whole the consideration of the final draft articles on the law of treaties adopted by the International Law Commission and the preparation of the final provisions and of any other instruments it might consider necessary. The Drafting Committee, in addition to its responsibilities for drafting, and for co-ordinating and reviewing all the texts adopted, was entrusted by the Conference with the preparation of the preamble and the Final Act.

13. On the basis of the deliberations recorded in the records of the Conference (A/CONF.39/SR.1 to SR.36) and the records (A/CONF.39/C.1/SR.1 to SR.105) and reports (A/CONF.39/14, Vols. I and II and A/CONF.39/15 and Corr.1 (Spanish only) and Corr.2) of the Committee of the Whole, the Conference drew up the following Convention:

Vienna Convention on the Law of Treaties

14. The foregoing Convention was adopted by the Conference on 22 May 1969 and opened for signature on 23 May 1969, in accordance with its provisions, until 30 November 1969 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 30 April 1970 at United Nations Headquarters in New York. The same instrument was also opened for accession in accordance with its provisions.

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15. After 30 November 1969, the closing date for signature at the Federal Ministry for Foreign Affairs of the Republic of Austria, the Convention will be deposited with the Secretary-General of the United Nations.

16. The Conference also adopted the following declarations and resolutions, which are annexed to this Final Act:

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Declaration on universal participation in the Vienna Convention on the Law of Treaties

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

Resolution relating to the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

Tribute to the International Law Commission

Tribute to the Government and people of the Republic of Austria

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE AT VIENNA this twenty-third day of May, one thousand nine hundred and sixty-nine, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. By unanimous decision of the Conference, the original of this Final Act shall be deposited in the archives of the Federal Ministry for Foreign Affairs of the Republic of Austria.

The President of the Conference:

The Executive Secretary of the Conference:

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ANNEX

Declarations and resolutions adopted by
the United Nations Conference on the Law of Treaties

DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of the sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,

Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent;

2. Decides that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

DECLARATION ON UNIVERSAL PARTICIPATION IN THE VIENNA CONVENTION ON THE LAW OF TREATIES

The United Nations Conference on the Law of Treaties,

Convinced that multilateral treaties which deal with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole, should be open to universal participation,

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Noting that articles 81 and 83 of the Vienna Convention on the Law of Treaties enable the General Assembly to issue special invitations to States which are not Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency, or parties to the Statute of the International Court of Justice, to become parties to the Convention,

1. Invites the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Vienna Convention on the Law of Treaties;

2. Expresses the hope that the States Members of the United Nations will endeavour to achieve the object of this Declaration;

3. Requests the Secretary-General of the United Nations to bring this Declaration to the notice of the General Assembly;

4. Decides that the present Declaration shall form part of the Final Act of the United Nations Conference on the Law of Treaties.

RESOLUTION RELATING TO ARTICLE 1 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES

The United Nations Conference on the Law of Treaties,

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Cognizant of the varied practices of international organizations in this respect, and

Desirous of ensuring that the extensive experience of international organizations in this field be utilized to the best advantage,

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Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study, in consultation with the principal international organizations, of the question of treaties concluded between States and international organizations or between two or more international organizations.

RESOLUTION RELATING TO THE DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Having adopted the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties as part of the Final Act of the Conference,

1. Requests the Secretary-General of the United Nations to bring the Declaration to the attention of all Member States and other States participating in the Conference, and of the principal organs of the United Nations;

2. Requests Member States to give the Declaration the widest possible publicity and dissemination.

RESOLUTION RELATING TO ARTICLE 66 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES AND THE ANNEX THERETO

The United Nations Conference on the Law of Treaties,

Considering that under the terms of paragraph 7 of the Annex to the Vienna Convention on the Law of Treaties, the expenses of any conciliation commission that may be set up under article 66 of the Convention shall be borne by the United Nations,

Requests the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of this Annex.

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TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission,

Resolves to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and progressive development of the law of treaties.

TRIBUTE TO THE FEDERAL GOVERNMENT AND PEOPLE OF THE REPUBLIC OF AUSTRIA

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties,

Expresses its deep appreciation to the Federal Government and people of the Republic of Austria for making possible the holding of the Conference in Vienna and for their generous hospitality and great contribution to the successful completion of the work of the Conference.

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ANNEX III

CONFIDENTIAL

Memorandum from the Canadian Delegation April , 1969.

to the Delegation of . . . . . .

Article 5(2): Procedures to be followed by the Canadian Delegation

The Canadian Delegation expresses its appreciation for the support of your Delegation and your Government for the position of the Canadian Government and of many other federal states on Article 5(2). Your delegation may be interested to know exactly what procedures the Canadian Delegation proposes to follow.

The objective is to delete para.(2) of Article 5. The Canadian Delegation would prefer not to oppose or delete para. 1 because many delegations are anxious to retain that paragraph.

The basic rule underlying the procedures outlined below is that each article that has been approved by the Committee of the Whole must be adopted by a 2/3 majority in Plenary (Rule 36).

When the Canadian Delegation speaks in the debate on Article 5 we will ask, under Rule 40, that para. 2 be voted on separately (as was done in the I.L.C. and at the First Session of this Conference). If objection is made by some delegation to the Canadian request for a separate vote, the rules require that the President--when the debate is finished and the time for voting arrives -- call for a procedural vote under Rule 40 on the Canadian request. To win this procedural vote requires a simply majority in favour of a separate vote.

If a simple majority approves the request for division, a separate vote will be taken on para. 2. This paragraph will be deleted unless it wins a 2/3 majority. It is clear from the 1968 votes and from the consultations held since then by the Canadian Government that no such majority exists in favour of para. 2.

If the Canadian request for a separate vote should fail to win the necessary simple majority, Article 5 as a whole will be put to the vote. In this situation the Canadian Delegation will vote "No" to Article 5 and hopes that the Article will fail to win the necessary 2/3 majority.

There are therefore 3 votes that may take place:

(1) Procedural vote on Canadian request for separate vote

-- we request "Yes" votes.

(2) Separate substantive vote on adoption of para. 2

-- we request "No" votes.

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(3) If a separate vote on para. 2 is refused, we request "No" votes on the substantive vote on Article 5 as a whole.

There will be a request for roll-calls on all these votes.

The Canadian Government and the Canadian Delegation are grateful for the assurances of support in this matter that have been received from your Government and from your Delegation.

M.H. Wershof
(Ambassador)
Head of Canadian
Delegation.

P.S. The foregoing deals only with procedure. Attached for convenient reference is a summary of the Canadian Government's position on the substance of the question.

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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 is 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 confirms that certain Federal States permit, within the limits of their constitutions and subject to various forms of federal control, the conclusion of certain types of international agreements by their member units. The Canadian Government does not question the legality nor the desirability of these practices. (Canada, whose constitution does not provide for such action by its provinces, has nonetheless authorized, by means of umbrella agreements between Canada and other sovereign States, the

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conclusion of various agreements between its provinces and such states). These practices are long since accepted under international law and their continuance is not dependent upon the retention of para. 2 of Article 5.

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 other Governments for the omission of paragraph 2 of Article 5 from the Convention on the Law of Treaties to be adopted in Vienna.

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ANNEX IV

STATEMENTS MADE AT THE SECOND SESSION BY THE CANADIAN DELEGATION

The following are the texts of statements made by the Canadian Delegation during discussions in the Committee of the Whole and in Plenary at the Second Session on the following articles:

Committee of the Whole

Article 62 bis (66) - Procedures for Judicial Settlement, Arbitration and Conciliation

Plenary

Article 5(6) - Capacity of States to Conclude Treaties

Article 43(46) - Provisions of Internal Law Regarding Competence to Conclude A Treaty

Article 49(52) - Coercion of a State by the Threat or Use of Force - Declaration

Article 62 bis (66) - Disputes Settlement Procedures and Universality

and

Final Clauses

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COMMITTEE OF THE WHOLE, APRIL 18, 1969, 94th MEETING

STATEMENT BY MR. WERSHOF (CANADA) ON ARTICLE 62 BIS

Mr. Chairman. The views of my delegation on the principle raised by proposed Article 62 bis were made known at length at the first session of this conference. I shall not, therefore, repeat them in detail. I do wish, however, to refer briefly to some of the considerations which my delegation believes are particularly relevant to this issue.

In our view the ideal method of dealing with disputes arising in the application of Part V of the proposed convention is that found in the proposals submitted by Switzerland (L.377) and Japan (L.339). We consider it particularly appropriate that a convention as fundamental to the law of nations as that which we are now preparing should recognize the role of the International Court of Justice as the judicial organ of the United Nations family. For this reason we shall support these proposals if they are submitted to a vote.

We also consider that the Spanish proposal (L.391) has a number of features to commend it. We consider the 18 power proposal (L.352 Rev.3), however, to be the most suitable of the proposals for Article 62 bis which provide for ad hoc arbitration, as opposed to adjudication by the International Court of Justice. In the event the Swiss and Japanese proposals do not obtain acceptance by this conference, it is the intention of my delegation to support the 18 power proposal. Moreover the broadly representative group of sponsors of that proposal leads us to believe that it may enjoy the support of the conference generally.

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The essential point, Mr. Chairman, which in the view of my delegation cannot be stressed too much, is that a procedure for automatically available third party adjudication is an essential companion to the provisions of Part V of the Convention establishing the grounds for the invalidity, termination and suspension of treaties. In my opinion, My Government would find some difficulty in accepting a convention which included a Part V along the lines provisionally approved by this Committee at the first session but which did not include satisfactory procedures for its application, namely automatic independent adjudication of disputes concerning invalidity and termination. In this connection may I remind distinguished representatives that during the first session many delegations, including my own, expressly noted that their acceptance of certain articles in Part V was conditional upon the acceptance by the conference of satisfactory adjudication procedures.

May I refer to two other amendments. We think that the Swiss amendment in L.393 would be very useful, assuming that 62 bis as proposed by the 18 powers is approved. L.393 is similar to the provision already adopted by this Committee in para. 4 of Article 62. Also we think that the Ceylon amendment in L.395 is useful and reasonable and we will be glad to support it.

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PLENARY, APRIL 28, 1969 - SEVENTH MEETING

STATEMENT BY MR. WERSHOF (CANADA) ON ARTICLE 5

Mr. President

The Canadian delegation has grave reservations concerning paragraph 2 of Article 5 which, in our view, deals inadequately with the treaty-making capacity of members of a federal state, both from a political and from a strictly legal viewpoint. The reasons for my delegation's concern were made known to distinguished representatives at the first session last year. Now, however, the conference must take its final decision on whether or not a provision of the kind proposed in the second paragraph of this Article is to be included in the convention we are to adopt. It is the view of my delegation that the implications and possible consequences of the adoption of this paragraph are sufficiently serious to warrant further consideration by this conference at this time. It is for this reason, Mr. President, that I propose to deal in some detail with the issues raised by this paragraph since, although these issues were discussed at the Committee stage of our deliberations, they were not resolved at that time.

It would be helpful, I believe, to review briefly the history of paragraph 2 of this Article, because such a review reveals that there has never, at any stage of the consideration of this question, been a consensus in favour of the desirability of including paragraph 2. The first draft articles (including an article on capacity to conclude treaties) were considered by the International Law Commission as early as 1950. In 1958 the then Special Rapporteur, Sir Gerald Fitzmaurice, included, in what was then proposed as a code rather than a convention, the proposition that "The component states of a federal union, not possessing any international

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personality apart from that of the union, do not possess treaty-making capacity". It is not until 1962 that we find, in draft Article 3 dealing with capacity generally to conclude treaties, a specific provision relating to treaty-making by members of a federal state. I should like particularly to draw the attention of distinguished representatives to the fact that this provision, which was paragraph 2 of Article 3, was formulated by the I.L.C. at a time when the Commission had not yet decided to limit the scope of its draft articles to treaties between States. Thus the proposed Article 3 also contained a paragraph on the treaty-making capacity of international organizations.

Paragraph 2 was at that time the subject of prolonged and deep controversy within the Commission, with a number of its most distinguished members expressing serious reservations about its provisions. At the 779th meeting of the Commission, the Special Rapporteur, in suggesting that the whole of the proposed article on capacity be deleted, noted that the article (and I quote now from the Summary Record) "had given rise to considerable difficulty in the Commission, which had been almost equally divided on the issues it raised; in the truncated form in which it had finally emerged, it was not very useful and the best course would probably be to drop it altogether". End of quotation.

Finally, however, after considerable redrafting and continued controversy, what is now paragraph 2 of Article 5 was adopted by a vote, in a Commission consisting of 25 members, of only 7 in favour, with three opposed and four abstentions. In other words, only 7 out of 25 members actually recorded approval of the paragraph.

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Distinguished representatives will recall that when Article 5 was considered by the Committee of the Whole at the first session of this conference, paragraph 2 of the article was the subject of two votes. In both cases the paragraph was retained by only a narrow majority. The result of the first vote was 45 in favour and 38 opposed, with 10 abstentions. On the second vote 46 voted in favour, 39 against, with 8 abstentions.

The conclusion to be drawn from the foregoing is that the desirability of including in this convention a provision incorporating the principle contained in the second paragraph of draft Article 5 has been the subject of serious controversy among eminent jurists and, on those occasions on which it has been voted upon, paragraph 2 has failed to attract the support of even a simple majority of the members and representatives who considered it.

I turn now, Mr. President, to the considerations which lead my delegation to believe that the proposed formulation of the rule found in paragraph 2 is unsatisfactory from a legal viewpoint and, moreover, is beyond the scope of the convention which we are now drafting.

First, I should like to reiterate that the paragraph was originally proposed when the I.L.C. draft articles were intended to cover treaty-making not only by States but also by other subjects of international law, including international organizations. Subsequently however, the Commission decided to confine the draft articles to treaties between States and, in consequence, the third paragraph dealing with treaty-making by international organizations was deleted from the article on capacity. The paragraph on treaty-making by members of a federal union was retained, however. It

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will be recalled that the word "State" was used in two quite different senses in the two paragraphs of Article 5, as adopted by the I.L.C. When this article was considered last year by the Committee of the Whole and by the Drafting Committee of this conference, it was recognized that the word "States" in Article 1, on the scope of the convention, and in paragraph 1 of Article 5, meant independent sovereign States. Recognizing that members of a federal State are not themselves independent sovereign States in that sense, the Committee deleted the word "States" from paragraph 2 of Article 5. Thus a provision dealing with the capacity of these entities to conclude treaties is as much beyond the scope of the present convention, as defined in Article 1, as would be a provision on the treaty-making capacity of an international organization or of any other entity which is not a sovereign State.

Quite apart from the question whether paragraph 2 falls outside the scope of this convention, the question arises whether paragraph 2 formulates a desirable legal principle which ought to be adopted in the interest of orderly treaty relations. I wish to make clear that my delegation is not questioning the relevance of the provisions of the federal constitution to the practice whereby certain federal states permit, within the limits of their constitutions and subject to various forms of federal control, component parts of the federation to conclude agreements with sovereign states. We are concerned however, that this formulation, as expressed in paragraph 2, is dangerously incomplete. There are clearly at least two prerequisites, both of which must exist together, if a component unit of a federal state is to have effective treaty-making capacity. One is the conferring on it of such

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capacity by the federal State, the other is the recognition by other sovereign States of the capacity so conferred. With respect to the first element, the paragraph assumes, quite incorrectly, that the constitution speaks for itself and is alone determinative. It ignores the state practice of federal states both on the municipal and international plane, in particular, for example, the process whereby the constitution is continuously amended in certain states by means of judicial decision.

A further problem is that the proposed formulation also says nothing about who is to be responsible for any breach by a member of a federal State of its treaty obligations. One may answer that the present convention expressly excluded from its ambit all questions of state responsibility. There nevertheless exists, independent of the present convention, a body of international law governing the responsibility of sovereign States for the breach of their treaty obligations. No similar rules exist, however, in respect of treaties concluded by members of a federal state. A review of the discussion of this issue in the I.L.C. quickly reveals the absence of any consensus among jurists on this issue.

There is a further consideration, Mr. President, of considerable practical significance, which serves to underline the inadequacy of paragraph 2 as a formulation of the rule of international law relating to the treaty-making capacity of members of a federal state. The paragraph proposes that such a capacity may exist if it is admitted by the federal constitution and within the limits there laid down. As distinguished representatives will readily realize, the constitution forms part of the municipal law of the federal states and its interpretation falls exclusively within the internal jurisdiction of that state. This is particularly

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obvious when one considers that the constitution of a state is an organic statute interpreted and developed by the appropriate internal organs of the state. Paragraph 2 contains no provision, however, recognizing that only the federal state itself may interpret its own constitution. Thus the paragraph may lead to the totally unacceptable practice of one member state of the U.N. presuming to interpret the constitution of another member state which happens to be a federal state. In federations where the constitution is entirely written and deals expressly with treaty-making, there may be relatively little danger of this practice arising. The paragraph seems to ignore, however, situations like that of Canada where the constitution is in large part unwritten. Constitutional practice, in such cases, is as important as the written documents. But our experience confirms that, in a country like Canada, which gained its independence through the gradual evolution of constitutional practice, not all of which was reduced to written form, the possibility of one state purporting to interpret the constitution of another federal state is all too real. The failure of paragraph 2 to deal with this problem is probably its most important defect.

In discussing the question whether a provision such as paragraph 2 should be included in the present convention, the observation is occasionally made that the practice of treaty-making by members of certain federal states exists and should therefore be mentioned. An examination of state practice confirms that certain federal states do permit, within the limits of their constitutions and subject to various forms of federal control, the conclusion of certain types of international agreements by their member units.

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These practices have been going on for years, they have long since been accepted under international law and their continuance is not dependent upon the adoption of paragraph 2 of Article 5. I should like to make clear, Mr. President, that the Canadian delegation does not question either the legality or the desirability of these practices. Indeed Canada, whose constitution does not provide for such action by its provinces, has nonetheless authorized, by means of umbrella agreements between Canada and other sovereign States, the conclusion of various agreements between its provinces and such states. We do not believe, however, that state practice supports the particular and defective formulation of the relevant rule of law as proposed in paragraph 2, leaving it open to other States to interpret the constitutions of federal States.

My delegation considers that the only satisfactory remedy for the dangerous inadequacies of paragraph 2 is the deletion of the paragraph. We consider that the conference should take into account the fact that, at the first session, paragraph 2 was opposed by the large majority of federal states represented here. I would hope, Mr. President, that non-federal states will not seek to impose upon federal states a rule which particularly concerns federal states and to which the large majority of such states are opposed. There is no suggestion that the omission of paragraph 2 of Article 5 would in any way impair the existing rights of the members of any federal State, whereas many federal States have indicated that its inclusion is unnecessary and undesirable.

Distinguished representatives will have noted that my delegation's concern relates only to paragraph 2 of Article 5. My delegation recognizes that many other delegations attach considerable importance to paragraph 1 of Article 5 and we have no desire

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whatever to interfere with that paragraph. Distinguished representatives will be aware that on all occasions upon which this Article has been submitted to a vote, both in the I.L.C. and twice during consideration of this article in Committee of the Whole, paragraph 2 was voted upon separately. This reflects the fact that the two paragraphs in fact stand independent of each other anddeal with quite different matters. Paragraph 1 deals with the capacity of sovereign states whereas paragraph 2 deals with the capacity of entities which this conference has already determined (when it deleted "States" from paragraph 2 last year) are something other than sovereign states.

My delegation therefore requests, Mr. President, that there be a separate vote on paragraph 2 of Article 5. I assume that all distinguished representatives, even those whose substantive views on that paragraph differ from those of my delegation, will recognize that because the two paragraphs of the Article deal with quite distinct issues, it is not only important, but proper and fair, that there be a separate vote on paragraph 2 in order to determine whether that paragraph enjoys the support necessary for its inclusion in the proposed convention.

I have already stressed, Mr. President, that my delegation has no wish to interfere with paragraph 1 of Article 5. In the unlikely event, however, that a separate vote on paragraph 2 should be refused, then it would be the view of my delegation that, since the dangers of paragraph 2 greatly outweigh any advantages to be found in paragraph 1, the entire Article should then be deleted. I would hope, however, Mr. President, that this conference will agree to allow a separate vote on paragraph 2 and that paragraph 1 will not be unnecessarily jeopardized by the refusal of a separate vote.

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PLENARY - MAY 9, 1969 - 18th MEETING

STATEMENT BY MR. WERSHOF (CANADA) ON ARTICLE 43

The Canadian Delegation wishes to make a general statement applicable to many of the articles in Sections 2 and 3 of Part V of the draft Convention.

Quite apart from our doubts about the substance of some of the articles in these sections, the Canadian Delegation considers that certain of these articles would be inacceptable to the Canadian Government in the absence of a satisfactory settlement of disputes clause such as Article 62 bis as recommended recently by the Committee of the Whole.

Therefore, if the Canadian Delegation votes in favour of all or most articles in Sections 2 and 3 of Part V, we do so on the assumption that this Conference will adopt a satisfactory settlement of disputes clause.

If that assumption proves to be incorrect, the Canadian Delegation reserves the right to reconsider its position on the question of the adoption of the Convention as a whole. Similar declarations were made by the Canadian Delegation at the 1st Session in Committee of the Whole during the examination of Part V of the Convention.

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PLENARY - MAY 12, 1969 - 20th MEETING

STATEMENT BY MR. WERSHOF (CANADA) IN EXPLANATION OF VOTE ON DECLARATION CONCERNING USE OF FORCE

The Canadian Delegate, Mr. Wershof, spoke in Plenary in explanation of vote after the votes on Article 49, on the draft declaration adopted at the First Session by the Committee of the Whole (A/CONF.39/14/VOL. II Para 459) and on the draft resolution concerning broad dissemination proposed by Afghanistan (A/CONF.39/L.32/Rev.1).

Mr. Wershof stated that although Canada had voted in favour of the draft declaration, he wanted to make clear that in the view of the Canadian Government, a view which had been maintained for many years and had been stated in the General Assembly and at many conferences of a legal nature, the word "force" appearing in Article 2.4 of the United Nations Charter, and as well the same word as employed in Article 49 of the draft convention, referred only to military (armed) force. It did not, in the view of the Canadian Government, have the wider connotations of a political and economic nature which other delegations had suggested. The Canadian Government agreed wholeheartedly with other delegations supporting the declaration that the use of any kind of force against a state, not only military, but also political and economic, to coerce it to perform any act relating to the conclusion of a treaty, was thoroughly reprehensible. This attitude, however, was quite independent of the Canadian opinion concerning the meaning of "force" as it appears in Article 2.4 of the Charter.

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Thus, while the Canadian Delegation fully respected the views of other states which had expressed a contrary opinion, it was unable to share their views and its support for the declaration should be construed in that light.

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PLENARY - MAY 21, 1969 - 34th MEETING

STATEMENT BY MR. WERSHOF (CANADA) IN EXPLANATION OF VOTE ON L.47/Rev.1 (DISPUTES SETTLEMENT AND UNIVERSALITY)

We wish to explain our vote which will be a vote in favour of L.47/Rev.1 if it is put to the vote as one package.

Like others who have spoken, the Canadian Delegation appreciates the great efforts made by the sponsors and especially those of the representative of Nigeria, Dr. Elias.

In voting for the package, we understand that the new preambular paragraph of the Declaration does not affect the obligation and right of each member State of the UN to treat on its merits each proposal that may be made in the General Assembly pursuant to the Declaration.

Referring to the revised version of sub-paragraph 1 of the proposed new article, we understand it to mean, and that the sponsors intend it to mean, compulsory jurisdiction of the International Court of Justice unless the disputing parties agree to submit instead to arbitration.

Finally, in voting for this compromise package, while we do not consider the new article to provide a fully satisfactory method of settling disputes under Part V, it is much better than Article 62 by itself.

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VOTING RECORD OF THE CANADIAN DELEGATION ON CERTAIN ARTICLES CONSIDERED IN PLENARY

The majority of Articles recommended by the Committee of the Whole were adopted by the Plenary by unanimous or near-unanimous votes. On certain of the Articles, however, discussions of substance took place and substantive amendments were proposed. The following is a list of the results of the voting, indicating how Canada voted, on the more significant Articles and amendments which were the subject of substantive discussion in Plenary.

Draft Art. No.	Convention Art. No.	Subject	Vote
5	6	Paragraph 2. Capacity of members of a federal state to conclude treaties	28-66(Canada)-13
5 bis	--	General "all States" participation article	34-50(Canada)-22
8	9	Adoption of text - UK-Mexico Amendment to replace "participating" with "present and voting"	73(Canada)-16-10
12	15	Accession to treaties	73(Canada)-14-8
17	20	Objections to reservations USSR amendment A/CONF.39/L.3 Article as a whole	49-21(Canada)-30 83-0-17(Canada)
22	25	Provisional application of a treaty	87(Canada)-1-13
34	38	Treaties becoming customary international law. Separate vote on words "or a general principle of law" Article as a whole	27(Canada)-50-19 83(Canada)-13-7
41	44	Separability-separate vote on reference to Article 50(53) in para 5	66-30(Canada)-9
47	50	Corruption of a representative	84-2-14(Canada)
49	52	Coercion of a State vote on article vote on Declaration vote on Resolution	98(Canada)-0-5 102(Canada)-0-4 99-0-4(Canada)

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50	53	Jus cogens	87(Canada)-8-12
57	60	Termination as a consequence of breach.	
		UK amendment A/CONF.39/L.29 re para 2(a)-"in whole or in part"	56(Canada)-6-33
		re para 2(a)-"invoke the breach..."	42(Canada)-24-32
		re para 2(c)	45(Canada)-17-34
		article as a whole	88(Canada)-0-7
61	64	New rule of jus cogens	84(Canada)-8-16
62 bis	66	19 power proposal "package" proposal in A/CONF.39/L.47/Rev.1 including Declaration on universality and resolution on expenses of conciliation	62(Canada)-37-10 61(Canada)-20-26
67	71	Consequences of conflict with jus cogens	87(Canada)-5-12
76	--	Compulsory jurisdiction of ICJ over disputes arising from treaties Convention	41(Canada)-36-27
77	4	Non-retroactivity of treaties Convention	81(Canada)-5-17
A	81	Signature-"all States" formula	33-43(Canada)-17
		-Vienna formula	84(Canada)-11-5
C	83	Accession-"all States" formula	32-45(Canada)-20
		-Vienna formula	83(Canada)-13-6
C bis	--	Prohibition of reservations	9-62(Canada)-33
		Convention as a whole	79(Canada)-1-19

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TO: M. Wershof
FROM REGISTRY
OCT 20 1969
FILE CHARGED OUT
TO:

CANADIAN EMBASSY AMBASSADE DU CANADA

Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,
October 16, 1969.

20-3-1-6
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Dear Joe, Re: Law of Treaties Conference

Thank you very much for your letter of October 3 enclosing the final report of the Canadian Delegation. I think that it is very good indeed.

With reference to Annex IV, I no longer have the notes on the extemporaneous statements I made during the second session. However, I did keep a personal copy of the summary records of the meetings at which I made such statements. Enclosed are five summary records (listed below). I doubt that any of these statements are significant enough to be added to all the copies of the report. However, it probably would be useful for future reference to assemble these statements in an annex which could be attached to the master copy of the report in the Legal Division Library. Following is a list of the enclosures:

	Page	Article
1. 10th Plenary Mtg - Apr. 29	11 & 18	16 & 17
2. 13th Plenary Mtg - May 6	8	New Article proposed by Luxembourg
3. 16th Plenary Mtg - May 8	16	41
4. 24th Plenary Mtg - May 14	11	72
5. 32~~th~~ " " - May 20	10	Draft Resolution
6. 32~~th~~ " " - May 20	13	21

Yours sincerely,

M. H. Wershof

J. S. Stanford, Esq.,
Legal Division,
Department of External Affairs,
OTTAWA

5-22-10

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Legal Division / J.S. Stanford / mm

C.C. Pierre Charpentier, 1245, rue Joseph Vézina, Gillery, Québec 6, Qué.
Direction de l'Information (Relation avec le Monde Universitaire).
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Diary
Div. diary

released through Legal division

OTTAWA 2, 15 octobre 1969.

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Monsieur le Professeur,

M. Pierre Charpentier m'informe que vous aimeriez recevoir des renseignements et de la documentation concernant le paragraphe 2 de l'article 5 du projet de convention sur le droit des traités.

La Conférence de Vienne sur le droit des traités a supprimé le paragraphe 2 à sa deuxième session par un vote de 28 voix pour, 66 voix contre, et 13 abstentions.

Je joins à la présente le texte de l'intervention canadienne lors du débat sur cet article en séance plénière de la conférence. Je joins aussi un extrait du compte rendu analytique provisoire des septième et huitième séances plénières de la conférence. Ces documents contiennent un sommaire des autres discours prononcés lors de ce débat ainsi que les détails du vote par appel nominal sur le paragraphe 2. Je m'excuse du fait que le compte rendu analytique provisoire de la huitième séance plénière est en anglais; malheureusement, la version française de ce compte rendu ne m'est pas disponible dans le moment.

En espérant que ces renseignements vous seront utiles, je vous prie d'agréer, monsieur le Professeur, l'assurance de mes sentiments les meilleurs.

J. S. STANFOR

J. S. Stanford,
Chef du Service des Traités,
Direction des affaires juridiques.

Professeur Ivan Bernier,
Faculté de Droit, Chambre 7119,
Pavillon de Konench,
Université Laval,
Québec 10, Qué.

15.10.34(05)

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Done Oct 15/69

cc U.N. Div
European Div.
~~NATO~~ NATO Div

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TO TT EXTER 2784 DE LDN

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DE CANDELNATO

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UNGA ITEM 94 VIENN CONVENTION

PAC TOOK QUESTION UP AGAIN AS INDICATED IN REFTEL.

NORWEGIAN REP AGREED IN PRINCIPLE WITH FGR VIEW REPORTED LAST WEEK

ON HOW MATTER SHOULD BE HANDLED IN NY.HIS UN DEL WOULD VOTE

AGAINST INCLUSION OF BDR BUT IF OUTCOME LOOKED IN DDRS FAVOUR

NORWEGIANS WOULD VOTE FOR POSTPONEMENT OF QUESTION.USA REP MADE

FOLLOWING THREE POINTS(1)USA WAS CONFIDENT THAT THERE WOULD BE

AGREEMENT ON VIENN FORMULA AT THIS UNGA SESSION BUT THAT IT WOULD

TAKE HARD CORRIDOR WORK IN NY(2)USA SUPPORTS VIENN FORMULA

(3)FORMULATION OF ALTERNATIVE APPROACHES WAS PREMATURE.BELGIAN REP

WHILE NOT/NOT INSISTING ON FURTHER CONSULTATION NOTED THAT

WESTERN POSITION ON DDR PUT WEST IN UNFAVOURABLE POSTURE.HE THOUGHT

THAN MOVE TO INCLUDE DDR WOULD BE DEFEATED BUT THERE WOULD BE

MANY ABSTENTATIONS AND FEEBLE MAJORITY.EROSION OF WESTERN POSITION

WAS TAKING PLACE.HIS AUTHORITIES WONDERED WHETHER UN MEMBERS

MIGHT NOT/NOT BE FAVOURABLE TO STATEMENT SAYING(1)NOTHING

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Received
OCT 14 1969
Department of External Affairs
Ministère des Affaires extérieures

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PRECLUDED POLITICAL ENTITY APPLYING TREATY IN PRINCIPLE(2)SIGNATURE OF OR ADHERENCE TO TREATY WAS NOT/NOT NECESSARY FOR ABOVE.WE DID NOT/NOT SAY SO BUT THIS SEEMS TO US TO BE NON/NON STARTER SINCE PRESUMABLY DDR IS NOT/NOT SO MUCH INTERESTED IN APPLYING TREATIES AS IN BEING RECOGNIZED.

2.FGR REP URGED WESTERN GOVTS TO SHOW SOLIDARITY ON ISSUE.SUCH SOLIDARITY WOULD MAKE FAVOURABLE IMPRESSION ON OTHERS AT UN.

3.IT IS UNLIKELY THAT MATTER WILL BE PURSUED FURTHER AT NATO.

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20-3-1-6

UNIVERSITÉ LAVAL
CITÉ UNIVERSITAIRE
QUÉBEC 10e. CANADA

DEO FAVENTE HAUD PLURIBUS IMPAR

No. Que-2, October 6,1969

MEMORANDUM for Legal Division (Mr. Stanford)

from Pierre Charpentier, Academic Relations Section

Prof. Ivan Bernier, who teaches here at the Law Faculty after taking his Ph.D. at London University, is in the process of bringing up to date his thesis on the "International Legal Aspects of Federalism" toward its publication by Longmans. He would be grateful for your assistance in learning what happened at the second session which prepared the 1969 Vienna Convention on the Law of Treaties to Article 5, para. 2 of the draft conventionwhich read:

> " 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."

In the present version of his thesis, he is up to the information provided in the article which you wrote for 19 U. of Toronto Law Journal (1969).

2. The thesis relies on Article 5, para. 2 in many places: the discussion of the international personality of member states of a federation, the public debate between the Canadian and the Quebec Governments (on which I will send you excerpts separately for your own info), the international capacity of member states (he acknowledges that constitutional provisions can give only potential international status).

3. Bernier could go to Ottawa at the end of October or early November and would welcome an opportunity to exchange views with you onthis point and perhaps also on the general treatment of the federal clause in U.N. fora. In the meantime, he would be grateful to receive a copy or photocopy of the official working papers and documents relating to the discussion of Article 5, 2° at the second session. His address is: Faculté de Droit, Chambre 7119, Pavillon de Koninck, Université Laval. I recommend him very warmly.

P. Ch.
Pierre Charpentier

c. Academic Relations Section

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Legal Division/J.S. Stanford/dl

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cc: Mr. A.W. Robertson
Permis, New York

Mr. J.C. Tremblay
Cdn. Embassy Vienna

CONFIDENTIAL

October 3, 1969

Dear Mr. Wershof:

I was very disappointed that I missed seeing you when you were in Ottawa earlier this week. I hope we shall have another chance to meet before too long.

I enclose a copy of the Report of the Canadian Delegation to the U.N. Conference on the Law of Treaties. You will note that I have combined the reports of the first and second session into a single volume. The master copy of the report, to which will be attached the Rapporteur's Reports on the work of the Committee of the Whole at the first and second sessions will be kept in our Legal Division library.

I am sending copies of the report to all members of the delegation, including Mr. Tremblay in Vienna, as well as to Mr. Cadieux, Mr. Bissonnette and U.N. Division. I will also provide copies to interested geographical divisions.

You will note that Annex IV to the Report on the Second Session includes only the prepared speeches which you made at that session. These were the only speeches contained in the folder which you provided to me before we left Vienna. If you have notes on the extemporaneous statements which you made during the second session and if you wish these notes included in the report, you might send the notes to me and I will arrange to see that they are added to all copies of the report.

Warm personal regards to you and Mrs. Wershof.

Yours sincerely,

J. S. STANFORD

J.S. Stanford.

Max H. Wershof, Q.C.
Ambassador
Canadian Embassy
Copenhagen, Denmark

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done OCT 6 Mr Hayward
legal
Coordination
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TEXTE DE LA DECLARATION DE LA DEL BELGE SUR LA PARTICIPATION UNIVERSELLE A LA CONVENTION DE VIENN SUR LE DROIT DES TRAITES CIT

LA CONFERENCE DES NATIONS-UNIES SUR LE DROIT DES TRAITES, DONT LES TRAVAUX ONT PRIS FIN EN MAI, A ADOPTE, ENTRE AUTRES, UNE CIT DECLARATION SUR LA PARTICIPATION UNIVERSELLE A LA CONVENTION DE VIENN SUR LE DROIT DES TRAITES FINCIT, QUI FAIT PARTIE DE SON ACTE FINAL.

CETTE DECLARATION SE REFERE AUX ARTICLES 81 ET 83 DE LA CONVENTION SUR LE DROIT DES TRAITES.

REPRENANT LA CIT FORMULE DE VIENN FINCIT EN MATIERE DE PARTICIPATION AUX TRAITES INTERNATIONAUX, LARTICLE 81 STIPULE QUE: CIT LA PRESENTE CONVENTION SERA OUVERTE A LA SIGNATURE DE TOUS LES ETATS MEMBRES DE LORGANISATION DES NATIONS-UNIES, OU MEMBRES DUNE INSTITUTION SPECIALISEE OU DE LAGENCE INNATLE DE LENERGIE ATOMIQUE, AINSI QUE DE TOUT ETAT PARTIE AU STATUT DE LA COUR

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INNATLE DE JUSTICE ET DE TOUT AUTRE ETAT INVITE PAR LASSEMBLEE GENERALE DES NATIONS-UNIES A DEVENIR PARTIE A LA CONVENTION..FINCIT.

SUIVANT LA MEME FORMULE,LARTICLE 83 DECLARE QUE LA CONVENTION SERA OUVERTE A LADHESION DE TOUT ETAT APPARTENANT A LUNE DES CATEGORIES CITEES A LARTICLE 81.

DANS LE PREMIER PARA DE SON DISPOSITIF,LA CIT DECLARATION FINCIT SUR LA PARTICIPATION UNIVERSELLE INVITE DAUTRE PART LASSEMBLEE GENERALE DES NATIONS-UNIES CIT..... A EXAMINER A SA VINGT-QUATRIEME SESSION LA QUESTION DE LENVOI DES INVITATIONS DE FACON A ASSURER LA PARTICIPATION LA PLUS LARGE POSSIBLE A LA CONVENTION DE VIENN SUR LE DROIT DES TRAITES FINCIT.

SUR CETTE BASE,LA SUITE A DONNER A LA DECLARATION FAIT LOBJET DU POINT 94A)DE LORDRE DU JOUR DE LA VINGT-QUATRIEME SESSION ORDINAIRE DE LASSEMBLEE GENERALE DO LONU.

LON PEUT SATTENDRE A CE QUE USSR SAISISSE LOCCASION OFFERTE PAR LA DISCUSSION DU POINT 94A)A LASSEMBLEE,DANS LE CADRE DUNE CAMPAGNE GENERALE QUELLE SEMBLE VOULOIR MENER POUR FAIRE ADMETTRE DANS LE CONCERT INNATLE CERTAINES ENTITES NON RECONNUES EN TANT QUETATS PAR UN GRAND NOMBRE DE PAYS MEMBRE DE LONU.,-(DONT LA CIT REPUBLIQUE DEMOCRATIQUE DALLEMAGNE)FINCIT.

DEVANT CETTE PERSPECTIVE IL FAUT DABORD RELEVER QUE LA QUESTION DE LA CIT DECLARATION FINCIT PRESENTE DE NOMBREUX ASPECTS DORDRE POLITIQUE,JURIDIQUE ET PROCEDURAL.CEUX-CI MERITENT UNE ETUDE APPROFONDIE AVANT QUE LASSEMBLEE NE SE PRONONCE SUR LE FOND DE LAFFAIRE.LON NOTERA DAILLEURS QUE LA CIT DECLARATION FINCIT

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DEMANDE A LASSEMBLEE GENERALE DES NATIONS-UNIES CIT
DEXAMINER FINCIT LA QUESTION DE LENVOI DES INVITATIONS.
A CETTE FIN, LASSEMBLEE POURRAIT, LE CAS ECHEANT, DECIDER DETABLIR UN COMITE SPECIAL CHARGE DE PROCEDER A UNE ETUDE COMPLETE DU PROBLEME ET DE LUI FAIRE RAPPORT A SA VINGT-CINQUIEME SESSION.
SI LA MAJORITE DE LASSEMBLEE NETAIT PAS FAVORABLE A CETTE FORMULE, ET SI UN DEBAT SUR LA SUBSTANCE DU PROBLEME SENGAGEAIT DES LA VINGT-QUATRIEME SESSION, DEUX EVENTUALITES POURRAIENT SE PRESENTER.
-IL SE POURRAIT QUUN PROJET DE RESLN SOIT DEPOSE PAR LEQUEL LASSEMBLE GENERALE INVITERAIT CERTAINES ENTITES NOMMEMENT CITEES A SIGNER LE CONVENTION DE VIENN OU A Y ADHERER.
DANS LA MESURE OU UN VOTE FAVORABLE A UN TEL TEXTE QUIVAUDRAIT A LA RECONNAISSANCE EN TANT QUETATS DES ENTITES AUXQUELLES IL SE REFERE, LES PAYS NETANT PAS DISPOSES A RECONNAITRE CELLES-CI NE SERAIENT PAS EN MESURE DACCEPTER UN TEXTE DE CETTE PORTEE.
-DAUTRE PART UN PROJET DE RESLN POURRAIT ETRE PRESENTE EN VERTU DUQUEL LASSEMBLEE INVITERAIT CIT TOUS LES ETATS FINCIT A SIGNER LA CONVENTION DE VIENN OU A Y ADHERER.
UN RECOURS A CETTE FORMULE, QUI FUT ECARTEE A VIENN, POSERAIT DE SERIEUSES DIFFICULTES SUR LE PLAN DE LA PROCEDURE, NOTAMMENT POUR LE SECGEN DES NATIONS-UNIES QUI POURRAIT ETRE APPELE A SE PRONONCER SUR LA POSSESSION DE LA QUALITE DETAT DE DIVERSES ENTITES POLITIQUES DONT LE STATUT EST CONTROVERSE.

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SUR LE PLAN JURIDIQUE ET POLITIQUE, IL FAUT SE DEMANDER, ENTRE AUTRES, DANS QUELLE MESURE LACCEPTATION DUN TEL TEXTE POURRAIT ETRE CONSIDEREE COMME IMPLIQUANT UNE RECONNAISSANCE EN TANT QUETATS DENTITES QUI NE SONT PAS RECONNUES COMME TELS PAR UN GRAND NOMBRE DE PAYS MEMBRES DES NATION-UNIES.

DANS LHYPOTHESE OU LA FORMULE DE CIT TOUS LES ÉTATS FINCIT RENCONTRERAIT UN ACCUEIL FAVORABLE AUPRES DE LA MAJORITÉ DE LASSEMBLE GENERALE, IL CONVIENDRAIT DEXAMINER LES POSSIBILITES DE FORMULER DES RESERVES QUI, LE CAS ECHEANT, PERMETTRAIENT DEVITER TOUTE RECONNAISSANCE TACITE JUGEE INACCETABLE.

IL PARAIT INDIQUE DE PROCEDER, AUSSITOT QUE POSSIBLE, A UN ECHANGE DE RENSEIGNEMENTS SUR LA SITUATION DE FAIT QUI SEMBLE DEVOIR SE PRESENTER A NY, AINSI QUE SUR LES MESURES A PRENDRE POUR Y FAIRE FACE. FINCIT

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cc NA Def/NATO div. M Raynol
Legal
European
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REF OURTEL 2403 SEP10 PARA14

PAC SEP29: UNGA AGENDA ITEM 94

BELGIAN DEL CIRCULATED STATEMENT ON UNIVERSAL PARTICIPATION IN VIENN CONVENTION ON LAW OF TREATIES. TEXT IN IMMEDLY FOLLOWING TEL.

2. IN SAME CONTEXT FGR REFERRED TO AIDE MEMOIRE FROM HIS GOVT WHICH HAD ALREADY BEEN CIRCULATED TO LARGE NUMBER OF UN MEMBERS AND WHICH DEALT GENERALLY WITH GERMAN QUESTION AT UN. (GERMAN DEL INFORMS US AIDE MEMOIRE ALREADY DELIVERED IN OTT). FGR HAD HAD QUOTE VERY FAVOURABLE REACTION UNQUOTE FROM RECIPIENTS OF AIDE MEMOIRE, ONLY SEVEN OF WHOM (BURMA CEYLON ETHOPIA FINLAND INDIA MALI AND UGANDA) HAD STATED THEY WOULD ABSTAIN ON THIS QUESTION. ON ADVICE OF UK DEL FGR HAD DECIDED TO DROP POINT RELATING TO ARTICLE THREE OF CONVENTION ON LAW OF TREATIES WHICH APPEARS IN LAST PARA OF ANNEX ONE TO AIDE MEMOIRE.

3. UK AND FGR WERE OPPOSED TO IDEA CONTAINED IN BELGIAN PAPER TO TURN OVER CONSIDERATION OF QUESTION OF UNIVERSAL PARTICIPATION IN VIENN CONVENTION TO A SPECIAL CTTEE. THIS WOULD ONLY BE ACCEPTABLE AS FALL BACK POSITION.

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4. FRENCH AND USA REPS QUESTIONED CONSULTATION WITHIN NATO AT THIS TIME ON THIS QUESTION. FRENCH THOUGHT COORDINATION COULD BETTER BE DONE AT UN ITSELF WHILE USA WAS RELUCTANT TO CONSIDER PROBLEM BEFORE ALL FACTS IN. NOTWITHSTANDING THESE OBJECTIONS SUBJ WILL BE DISCUSSED AT NEXT PAC MTG.

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EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

FROM REGISTRY
OCT 2 1969
FILE CHARGED OUT
TO:

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

FROM / De: Office of High Commissioner for Canada, CANBERRA,

REFERENCE / Référence:

SUBJECT / Sujet: RECOGNITION OF EAST GERMANY - DECLARATION OF UN CONFERENCE ON LAW OF TREATIES.

SECURITY / Sécurité: RESTRICTED.

DATE: September 23, 1969.

NUMBER / Numéro: 1975

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

ENCLOSURES / Annexes: 1

DISTRIBUTION

On receipt in mid-June of a copy of Legal Division's Memorandum of June 3 to European and United Nations Divisions concerning the Declaration of the U.N. Conference on the Law of Treaties, I asked the Head of the Treaties Section of the Australian Department of External Affairs to provide me with an outline of the instructions which would go to the Australian Delegation in New York on this subject, prior to the opening of the 24th Session of the General Assembly. I subsequently wrote to Mr. Bray confirming this request.

2. Attached is a copy of Mr. Bray's self-explanatory reply of September 18, from which it will be noted that full discretion has been left to the Australian Delegation in New York to deal with this question after consulting other Western delegations, "with the object of opposing invitations of the type envisaged in the declaration". Presumably, therefore, the Australian Delegation may be expected to stand with our own in opposing such invitations to ~~such~~ entities as East Germany.

Acting High Commissioner.

Ext. 407B/Bil. (Admin. Services Div.)

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garbled print is a result of print showing through the paper from previous page

Received
OCT 2 1969
Consular Division
External Affairs

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RESTRICTED

DEPARTMENT OF EXTERNAL AFFAIRS,

CANBERRA, A.C.T.

18th September, 1969.

On the 24th of June you wrote to me about the handling in the General Assembly of the item dealing with the Declaration on the Law of Treaties. You asked whether we could give you some indication of the instructions to our delegation.

As the note prepared by your Legal Division points out, western countries voting in favour of the package deal were not committed to adopt any specific attitude when the matter was considered in the General Assembly. Australia did not vote for the Declaration: we abstained. But we will of course work with other delegations to oppose any invitations to entities such as East Germany.

Pat Brazil, because of the part he played in the Law of Treaties conference, drafted the brief on this item. The portion dealing with the Declaration is short and general and to the effect that the delegation should consult with other western delegations with the object of opposing invitations of the type envisaged in the Declaration.

We had an enquiry from the Belgian Foreign Ministry through our Embassy in Brussels about the handling of this item in the Assembly and in reply we made the points I have mentioned. We added, however, that one point of tactics could be to insist that this is an important question requiring a two-thirds majority vote.

I am sorry it has taken so long to reply to your query on this but, as sometimes happens, full consideration was not given to this item until shortly before the Assembly opened.

Yours sincerely,

(W.H. Bray)

Mr A.B. Roger,
Acting High Commissioner,
Office of the High Commissioner for Canada,
Commonwealth Avenue,
CANBERRA. A.C.T. 2600

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Diary
Div. Diary
File

Legal Div./E.G. Haythorne/nb

Mr. J.S. Stanford

CONFIDENTIAL

E.G. Haythorne

September 15, 1969

20-3-1-6
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Terms of Reference for Summer Research Project on State Succession

You asked me for possible terms of reference for a summer research project on State Succession. The memorandum which you and Mr. Copithorne wrote on June 12, 1968 on the same subject outlined what was then felt to be the three most important areas of study, in order of priority. Both the first and third areas have not been dealt with and since the passage of time has, if anything, increased their importance, I would suggest that a project should begin with these topics. As you will recall, they were:

> "(1) to indicate the general principles which <u>should</u> govern the Canadian approach to the question of state succession (a) in treaty matters, and (b) in matters other than treaties, for the guidance of Canadian official commentators on the material produced by the I.L.C. in its study of state succession. This aspect of the sutdy should include an assessment of Soviet theory in both the treaty and non-treaty aspects of state succession. The principles formulated should seek to take into account, on the one hand, the desirability of stability in treaty relationship, and on the other, the legitimate views of new states on problems relating to state succession."
>
> "(3) to identify the principles which have governed Canadian practice in respect of the succession by Canada to Empire treaties, as well as the principles which governed treaty succession in respect of Newfoundland."

2. Under heading (1) in relation to (b) i.e. "matters other than treaties", it would be advisable to follow the I.L.C.'s lead and deal with the economic and financial aspects of the topic first.

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Specifically, this would mean focusing on the questions of public property, public debts, government contracts and concession rights.

3. After these topics have been looked at, it would be helpful for Canadian commentators to have the Division's views on the general subject of succession in respect of membership of international organizations. Although, the I.L.C. have left aside this topic for the time being, it seems likely that the Commission will be studying this matter in the future. However, regardless of the I.L.C.'s specific agenda, the topic is related both to succession in respect of treaties and to relations between States and inter-governmental organizations and for these reasons alone, the Division should prepare an analysis of past practice as well as recommendations for future policy.

4. All of the above areas relate to succession of States and this reflects the general priority given the matter by the I.L.C. Undoubtedly, however, when this part of the Commission's work is more or less complete, it will be dealing with succession of Governments under the three headings:

(1) succession in respect of treaties;

(2) succession in respect of rights and duties resulting from sources other than treaties; and

(3) succession in respect of membership of international organizations.

A thorough study of Canadian, British, Soviet, etc., practice and future policy alternatives in this regard would not only aid the work of the Commission, but also benefit the Department.

E.G. Haythorne

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file ✓
div. diary
J.S.S.
[redacted]ary

Legal Division/U.S. Stanford/el

U.N. Division

Confidential

September 15, 1969

Legal Division

Sharpe--Stanford telephone conversation
September 12, 1969

24th UNGA Commentary and Instructions
Item 94-Declarations and Resolutions Adopted
by the U.N. Conference on the Law of Treaties

20-3-1-6
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Mr. Lee

-- As requested, we attach a commentary and instructions concerning Item 94 on the provisional agenda of the 24th Session of the U.N. General Assembly - Declarations and Resolutions Adopted at the U.N. Conference on the Law of Treaties.

J.A. BEESLEY

Legal Division.

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TWENTY-FOURTH SESSION
SIXTH COMMITTEE
PROVISIONAL AGENDA
ITEM 94

CONFIDENTIAL

DECLARATIONS AND RESOLUTIONS ADOPTED BY THE U.N. CONFERENCE ON THE LAW OF TREATIES

Background References

1 - Final Act of the United Nations Conference on the Law of Treaties (A/CONF.39/26 of 23 May 1969)

Introduction

The United Nations Conference on the Law of Treaties was held in Vienna from 26 March - 24 May 1968 and from 9 April - 22 May 1969. This Conference adopted and opened for signature the Vienna Convention on the Law of Treaties. It also adopted two Declarations and three Resolutions. These were:

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Declaration on universal participation in the Vienna Convention on the Law of Treaties

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

Resolution relating to the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

Issues Facing the Session

Declaration and related Resolution on the prohibition of military, political or economic coercion in the conclusion of treaties

Article 52 of the Vienna Convention on the Law of Treaties provides that "a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations". At the conference a number of African, Asian and Latin American states sought to amend this Article to include a reference to economic or political pressure. Such an amendment would have had the effect not only of voiding treaties concluded through the use of economic or political pressure, but also of implying that economic or political pressure constituted "force" within the meaning

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of Article 2 Paragraph 4 of the U.N. Charter. The proposed amendment was opposed by a large number of states, including the western states, on the ground that Article 2 Paragraph 4 of the Charter applies only to military force. As a result of the opposition to the proposed amendment, a compromise was agreed upon which consisted of a Declaration in which the Conference "solemnly condemned the threat or use of pressure in any form, whether military, political or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the sovereign equality of states and freedom of consent". The related Resolution "requests the Secretary General of the U.N. to bring the Declaration to the attention of all Member States and other States participating in the Conference and of the principle organs of the U.N.".

Declaration on universal participation in the Vienna Convention on the Law of Treaties

The Soviet bloc attempted at the U.N. Conference on the Law of Treaties to have included in the treaties Convention (a) an article stating that, as a matter of law, "all States" are entitled to accede to general multilateral treaties and (b) a provision that "all States" are entitled to sign and ratify or accede to the treaties Convention. These efforts did not succeed, and the signature and accession articles of the treaties Convention are in what is known as the "Vienna formula", which provides that only "states members of the U.N. or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the statute of the International Court of Justice, and any other state invited by the General Assembly of the U.N. to become a party to the Convention" may sign and ratify or accede to the Convention. This formula precludes entities which are not generally recognized as sovereign states (of which the prime example is East Germany) from purporting to adhere to international Conventions and thereby enhance their claim to international recognition as sovereign states. A compromise package, developed at the Conference by the Afro-Asians in an effort to settle outstanding political issues raised in the course of the Conference, included a Declaration which expressed the view of the Conference "that multilateral treaties which deal with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole, should be open to universal participation" and which invited the General Assembly "to give consideration at its 24th Session, to the matter of issuing invitations in order to ensure the widest possible participation in the Vienna Convention on the Law of Treaties" ~~The issue facing the 24th Session as a result of this Declaration is therefore whether the General Assembly is~~ was faced with this issue to formally invite states (or entities

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not recognized as states) which don't fall within any of the four categories in the "Vienna formula", to become parties to the treaties Convention.

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties applies only to treaties between States. It does not apply to the treaty-making activities of international organizations. At the Conference many States stressed the importance of codifying and developing the law concerning treaty-making by international organizations, but the Conference was of the view that articles on this subject could not be formulated without further study by the International Law Commission. The conference therefore adopted a Resolution recommending to the General Assembly "that it refer to the International Law Commission the study, in consultation with the principal international organizations, of the question of treaties concluded between States and international organizations or between two or more international organizations".

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

Article 66 of the treaties Convention and the Annex to the Convention establish the procedure for dealing with disputes arising out of the interpretation or application of the articles in the treaties Convention which deal with the invalidity, suspension and termination of treaties. These procedures consist of compulsory conciliation and, in certain cases, reference to the International Court of Justice. The Annex provides that, when a request has been made to the Secretary General of the United Nations for conciliation, the dispute shall be brought before a conciliation commission constituted in accordance with the Annex. Paragraph 7 of the Annex provides that the expenses of the conciliation commission shall be borne by the United Nations. T he General / pprove t ould be n th con- t of which will be only those relating to particular disputes brought before it.

Likely Course of Events and Attitudes of Interested Parties

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

The Secretary General has already circulated the text of the Declaration to the U.N. Member States, as requested in paragraph 1 of the Resolution. No further action is therefore required either by the Secretary General or by the General Assembly.

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Declaration on universal participation in the Vienna Convention on the Law of Treaties

The Soviet bloc will almost certainly seek to have the General Assembly formally invite East Germany (and possibly other "unrecognized States" e.g. North Korea and North Vietnam) to be parties to the treaties Convention. This effort will doubtless be made notwithstanding the fact that the Soviet bloc voted against the compromise package which included this Declaration. This effort may well have the support of a limited number of African and Asian states.

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

Presumably the General Assembly will be called upon to approve the provision in the Annex that the expenses of any conciliation commission that may be set up under Article 66 be borne by the United Nations. This would appear to be an uncontroversial question. However, the Soviet bloc opposed the disputes settlement procedures adopted by the Conference and, although their opposition was directed towards the provisions for compulsory reference of certain disputes to the International Court of Justice rather than to the provisions on conciliation, it is conceivable that the Soviet bloc will seek to oppose approval by the General Assembly of the provision in the Annex concerning the costs of the conciliation commission.

Policy Considerations

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

The Canadian delegation supported the Declaration and Resolution at the United Nations Conference on the Law of Treaties. Along with other western states, however, it expressed the view that "force" in Article 2 paragraph 4 of the U.N. Charter means only military force and does not include political or economic pressure. This is in accordance with the position taken by Canada and other western states when this issue has arisen in a number of contexts in the U.N. in recent years.

Declaration on universal participation in the Vienna Convention on the Law of Treaties

The "Vienna formula" authorizes the General Assembly to invite states to become parties to the Convention. Consequently the issuing of an invitation by the General Assembly to East Germany (or any other similar entity) would imply, in effect, that the General Assembly recognizes that entity to be a State. Canada, in common with all other members of the western group and a large number of States outside the western group, does not recognize East Germany as a separate sovereign state and consequently takes the

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view that East Germany lacks the capacity to adhere to the treaties Convention or any other international agreement among states. Although Canada voted in favour of the compromise package which included the Declaration, the Canadian delegation along with a number of other western delegations clearly stated during the course of the debate at the Conference that a vote in favour of the compromise package did not imply support in the General Assembly for an invitation to any particular entity to accede to the Convention. During the course of the debate the Soviet delegate recognized that support for the Declaration did not imply support for the issuing of an invitation to any particular entity and cited this fact as a principal reason why the compromise package was unacceptable to the Soviet Union.

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

While Canada would have preferred the Convention to provide for compulsory arbitration of all disputes relating to the invalidity and termination articles of the Convention, rather than for compulsory conciliation only in respect of all but two of the articles, Canada and most other western states did, with considerable reluctance, support the disputes settlement provisions of the Convention and registered no objection to the proposal that the costs of the conciliation commission be borne by the U.N. A great many of the developing countries are known to attach considerable importance to the principle that the costs of the conciliation commission be borne by the U.N. rather than by the parties to the dispute because the latter arrangement might involve a financial burden for less developed states in a particular dispute situation which would prevent them from availing themselves of the conciliation procedure provided for in the Convention.

Instructions

Declaration and Resolution on the prohibition of military, political or economic coercion in the conclusion of treaties

The Canadian delegation should resist any effort to use the consideration of this Declaration and Resolution as a basis for seeking to expand the meaning of "force", either in the Charter or in the Vienna Convention on the Law of Treaties, beyond military force.

Declaration on universal participation in the Vienna Convention on the Law of Treaties

The Canadian delegation should support the western group position in opposing any proposal that the General Assembly extend an invitation to accede to the treaties

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Convention to any entity which Canada does not recognize as a sovereign state, and in particular, to East Germany, but should not take a leading role on this question.

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

The Canadian delegation should support a proposal to refer to the International Law Commission the question of treaty-making by international organizations.

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

The Canadian delegation should support a proposal that the General Assembly approve the provisions of paragraph 7 of the Annex to the Convention.

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Legal Division/M.D.Copithorne/pb

EXTERNAL AFFAIRS **AFFAIRES EXTÉRIEURES**

TO / À: Mr. J.A. Beesley (on return)

FROM / De: M.D. Copithorne

REFERENCE / Référence:

SUBJECT / Sujet: Hague Academy of International Law: Law of Treaties

SECURITY / Sécurité: CONFIDENTIAL

DATE: August 21, 1968

NUMBER / Numéro:

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES / Annexes:

DISTRIBUTION:
A. Gotlieb
J.S.Stanford

I attach a personal letter dated August 5 from Ted Lee concerning the first week of the Academy course, particularly the lectures given by Professor Lissitzyn entitled "Territorial Entities other than Independent States in the Law of Treaties". In view of the importance of this subject for us at the present time, I have circulated copies of Ted's letter and attachments to Alan Gotlieb and Joe Stanford.

2. I have not distributed the material on human rights or the general course on public international law, nor have I acknowledged Ted's letter as I thought these might wait your return.

M.D. Copithorne

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Legal/J.A.Beesley/sm

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20-3-1-6
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Ottawa, August 15, 1969

Dear Mr. Sen

Thank you for your kind letter of July 10 and your thoughtfulness in making available to us the report of the Ninth Session of the Committee on the Asian Constitutions. These legal material will be of interest not only to those of us concerned with legal matters but also those particularly concerned with Asian studies.

I hope to have the opportunity of meeting you again one of these days.

Yours sincerely,

J. A. Beesley.

(Mr. B. Sen,
Secretary,
Asian-African Legal Consultative Committee,
20, Ring Road, Lajpat Nagar IV,
New Delhi 24,
INDIA.

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Bentley / Mewburn
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FACULTY OF LAW

McGILL UNIVERSITY
MONTREAL

CHANCELLOR DAY HALL
3644 PEEL STREET
MONTREAL 112, QUEBEC
CANADA

August 1, 1969.

Mr. J.S. Stanford
Department of External Affairs
Ottawa, Ontario.

Dear Mr. Stanford:

Thank you very much indeed for your kindness in sending me all the documents from the U.N. Conference on the Law of Treaties which shall be returned to you as soon as the Library has made use of them.

With all good wishes,

Sincerely yours,

Maxwell Cohen
Macdonald Professor of Law

13/7/18

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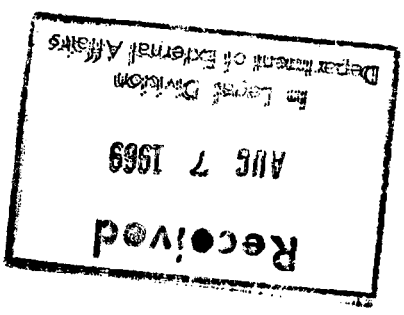

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TO: M.H. Wershof
FROM REGISTRY
AUG 14 1969
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V-16 22/10

CANADIAN EMBASSY AMBASSADE DU CANADA

CONFIDENTIAL

Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,

July 31, 1969

20-3-1-6
371 25

Dear Joe,

Re: Report on Second Session of Law of Treaties Conference.

As you know, Ron Robertson sent me and I enclose herewith his ~~report~~ of your draft report, on which he endorsed various suggested changes.

Almost all of the changes are of a minor drafting character and I leave it to you to decide which of them to accept.

On Page 19 Ron suggests, and I agree with him, that both our procedural memorandum (relating to deletion paragraph 2 of Article 5(6)) and the substantive Aide Memoire also should if possible form part of the annexes to the report.

Referring to paragraph 35 on the subject of universal participation in treaties, Ron says that he is not impressed by the argument relating to what will happen at the next General Assembly. My own feeling is that the argument is worth making in the report but that it would be clearer if it were expanded. I think that a reader of paragraph 35 as it now stands would have difficulty understanding it unless he is an expert on the history of the "all states" problem.

Yours sincerely,

M.H. Wershof

Mr. J.S. Stanford,
Legal Division,
Department of External Affairs,
OTTAWA.

P.S. Congratulations on your promotion.

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

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FROM REGISTRY
AUG 7 1969
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TO: J-77

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO / À: Under-Secretary of State for External Affairs
OTTAWA

FROM / De: Office of the High Commissioner for Canada in India
NEW DELHI

REFERENCE / Référence:

SUBJECT / Sujet: Asian-African Legal Consultative Committee

SECURITY / Sécurité: UNCLASSIFIED

DATE: July 29, 1969

NUMBER / Numéro: 696

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

ENCLOSURES / Annexes: 2

DISTRIBUTION

We have been asked to send the attached letter from Mr. B. Sen, Secretary of the Asian-African Legal Consultative Committee addressed to Mr. J. Alan Beesley, forwarding to him the publication of the Committee on the Asian Constitutions, the report of the 9th session of the Committee and the text of the statement Mr. Sen made in Vienna at the Plenary Session of the U.N. Conference on the Law of Treaties on the 8th of May 1969. We are sending you by air freight, under separate envelope the two above mentioned volumes.

Received 14/8/69

C. A. V. Pearson
High Commission

8/13/6

Ext. 407B/Bil.
(Admin. Services Div.)

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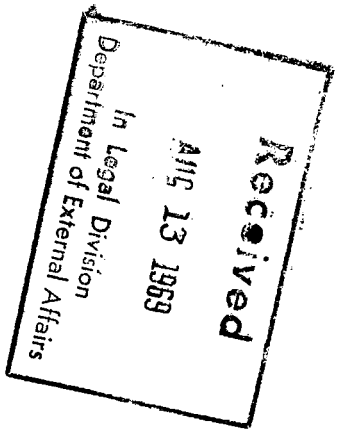

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ASIAN-AFRICAN LEGAL
CONSULTATIVE COMMITTEE

20, Ring Road,
Lajpat Nagar IV,
New Delhi 24.

July 10, 1969

Dear Mr Beesley,

I recall with pleasure the opportunity I had of meeting you at Vienna during the Conference on the Law of Treaties last May.

I am taking the liberty of sending herewith a copy of our publication on the Asian Constitutions, the Report of the Ninth Session of this Committee and the text of the statement which I made at the Vienna Conference.

With kind regards,

Yours sincerely,

B. Sen

(B. Sen),
Secretary

Mr. J. Alan Beesley,
Head of the Legal Division,
Department of External Affairs,
Ottawa.
Canada

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

Text of the statement made by Mr. B. Sen, Secretary, Asian-African Legal Consultative Committee, at the Plenary Session of the U.N. Conference on the Law of Treaties at Vienna on 8.5.69.

.....

Mr. President,

I am grateful to you, Sir, for giving me this opportunity of saying a few words at the Plenary Session of this momentous Conference on the Law of Treaties. I particularly welcome this opportunity as the Law of Treaties and this conference is of great significance to the Asian-African Legal Consultative Committee and its member States. When the Asian African Legal Consultative Committee was brought into being in November 1956 by its sponsoring States one of the primary objects, as envisaged in its Statutes, was to enable the member States to consult one another and exchange views and information on vital questions of International Law which affect the international community as a whole and Asian African states in particular. With this object in view one of the functions of the Committee, as set out in its Statutes, is to examine the Reports of the International Law Commission and make recommendations thereon to the Governments of the member Countries of the Committee. Shortly after its formation the Committee was called upon by its member States to advise them on the International Law Commission's Report on Diplomatic Relations in preparation for the United Nations Conference of Plenipotentiaries on the subject which was then due to be held in this historic city. In conforming with the wishes of its member States the Committee made certain recommendations on the subject which was placed before the Diplomatic Conference of 1961 as a Conference Document, and I am happy to say that the Conference was pleased to accept some of our recommendations.

As a regional inter-Governmental body we have been giving consideration to the various subjects which are before the International Law Commission and legal questions which are being considered by other United Nations Organs such as the UNCTAD, and the UNCITRAL. Recognising the usefulness of our work, the International Law Commission and various other United Nations agencies and organs have entered into official relations with us.

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The Law of Treaties was first placed on the agenda of the Seventh Session of the Asian-African Legal Consultative Committee held in Baghdad in 1965 as a matter arising out of the work of the International Law Commission. Prof Roberto Ago, the distinguished President of this Conference, who attended our Session on behalf of the International Law Commission, was pleased to suggest that Asian African Legal Consultative Committee should concentrate on the Law of Treaties having regarding to its vital importance to the international community and attempt to assist the Commission by placing before it the views of the Asian African region. When we met in Bangkok the following year for our Eighth Session we had before us the Report of the International Law Commission on the subject which had just been adopted. Ambassador Yassen, the Chairman of the Drafting Committee of this Conference, who attended our Session on behalf of the International Law Commission called upon the Committee to give its careful attention to the Draft articles adopted by the International Law Commission and advise the member States of the Committee in preparation for the United Nations Conference on the Law of Treaties which was then under contemplation.

In response to this suggestion the Committee decided to utilise its next Session for a discussion on the Law of Treaties on the basis of preparatory material collected by the Secretariat of the Committee. At the New Delhi Session held in December 1967 we had with us representatives of eighteen Asian African States who participated in the discussions. We had also the benefit of the distinguished presence of Ambassador Yassen on behalf of the International Law Commission who to a large extent guided our deliberations. We prepared some tentative recommendations on the basis of our deliberations at that Session, and this was placed before this Conference during its first Session as a Conference document. We also prepared a special Brief for the use of Asian African delegations and had arranged for our representatives to attend the first Session in the capacity as Observers. I myself had the privilege of being present during a part of the Session and addressing a meeting of the Afro Asian Group. It was during the meetings of that

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group that certain suggestions were made by some delegations that the Asian African Legal Consultative Committee might assist Afro Asian countries in preparing for the Second Session of the Conference by providing appropriate documentation and a forum for mutual consultations among these States. In pursuance of these suggestions the member States of the Asian African Legal Consultative Committee decided to utilise its Tenth regular Session in Karachi for the purpose. Invitations to attend this Session which was held in January of this year, were sent out not only to member countries of the Committee but also to non-member Asian African Countries with assurances of full participation in the discussions on the Law of Treaties on the basis of equality with the member States of the Committee. The invitations were sent to the various Governments through their Ministries of Foreign Affairs which we considered to be the proper channel of communication. Twenty six Asian and African States accepted our invitation to attend the Karachi Session and twenty four States sent their representatives to the Session. Ten other States informed us that they would carefully consider any recommendations that may come out of the Karachi meeting. We had the privilege of having you Sir, Mr. President, at Karachi in your capacity as the representative of the International Law Commission. We also had as Observers certain distinguished jurists from other regions representing the American Society of International Law, the German Section of the International Law Association and the International Law Association of the U.S.S.R.

During discussions in the plenary at our Karachi meeting it was agreed that we should concentrate only on certain issues i.e. Articles 2, 5 bis, 12 bis, 16, 17, 62 bis, 69 bis, 76 and the final clauses; and two working Groups were set up for detailed consideration of the topics. The representatives of all States present at the Karachi meeting whether or not members of the Committee fully participated in the discussions at all stages.

I ought to make it clear that the purpose of the Karachi meeting was to promote an exchange of view on the crucial issues so that the Governments could take their own decisions after considering all possible view points. We had a very full and fair discussions on all

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crucial questions and controversial issues. For example on Article 62 bis the meeting considered as many as five possible views on the solution of the problem which included the suggestion of an optional protocol, choice of one compulsory method of settlement, the possibility of contracting out or opting out of the provisions of article 62 bis, and compulsory jurisdiction of the International Court. The Reports of the Karachi meeting were circulated to the Governments of Asian and African countries for information and their consideration, we are sure that the views formulated by these Governments and expressed through their delegations in this conference has been the result of full and mature deliberations on the part of the Governments after taking into account the various view points.

We as a Consultative body, confine our activities to scientific examination of legal problems and in assisting our member Countries and such non-member countries as desire our assistance, to consider these problems by collection of materials and documentation as also by providing a forum for exchange of views. It is then upto the Governments to arrive at their own decisions in the light of their own experience and in the context of the interest of the world community.

Our present programme of work now extends not only to examination of questions of public international law but also to legal issues concerning Economic questions including trade and commerce which are assuming increasing importance in the light of establishment of U.N. organs like the UNCTAD and the UNCITRAL. We hope to discuss some of these problems at our Accra Session which will be held early next year.

Mr. President, we remain at the service of all Asian and African States and we would be prepared to assist all such states which desire our assistance. I would like to emphasise that the membership of the Asian African Legal Consultative Committee is open to all States of the region. It would be our endeavour to ensure that invitations to attend future meetings of our Committee are sent to all Governments who may be interested in our work.

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Finally, I would like to extend to the Conference felicitations and best wishes from the Asian African Legal Consultative Committee expressing the hope that the deliberations of the conference will meet with a crowning success. This is the first time that the Asian African community is fully participating in evolving an instrument concerning fundamental law in the relations between nations and it is our fervent hope that your efforts will usher in a new era in the history of mankind.

Thank you. Mr. President.

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CONFIDENTIAL WITH ENCLOSURES

UNCLASSIFIED WITHOUT

866 United Nations Plaza,
Suite 250,
New York, N.Y. 10017.

July 22, 1969.

Dear Mr. Wershof,

I am today sending to you by bag, my copy of the first draft of the report of the Canadian Delegation to the Second Session of the United Nations Conference on the Law of Treaties. I received a text from Joe together with a copy of his letter to you of July 8 at the beginning of last week. I think it an excellent piece of work and, as was the case last year, with one or two exceptions the majority of the changes I have suggested are essentially editorial in nature.

I apologize for the format of these suggestions, which I have merely pencilled in to my copy. I had originally planned to have them put into more permanent form but in the end decided that it would save time to leave them as is. I, myself, leave for Geneva at the end of this week and therefore want to get them into our Wednesday bag. Since I have no idea when they will actually reach Copenhagen, I am sending a copy of this letter to you direct by air mail.

With the exception of the first two weeks, I have been kept fairly busy since my return from Geneva principally in connection with the forthcoming Geneva Session of the Working Group on Direct Broadcasts from Satellites and a concurrent series of meetings here in New York relating to the elaboration of legal principles for the Peaceful Uses of the Seabed. Added to that, because of annual leave and personnel change overs, we have, for most of the last six weeks, been down to a total officer staff of only four or five .

Rochelle joins me in sending our warmest regards both to you and Mrs. Wershof. With best wishes,

Yours sincerely,

A.W.J. Robertson,
First Secretary.

Ambassador M.H. Wershof, Q.C.,
Canadian Embassy,
Prinsesse Maries Allé 2,
Copenhagen V, Denmark.

cc: Mr. J.S. Stanford,
Treaty Section, Legal Division.

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

FROM REGISTRY
JUL 25 1969
FILE CHARGED OUT
TO:

CANADIAN EMBASSY

AMBASSADE DU CANADA

Prinsesse Maries Allé 2,
1908 COPENHAGEN V, Denmark,
July 18, 1969.

20-3-1-6
37

Dear Joe,

Thank you for your letter of July 8 enclosing the draft report on the Law of Treaties Conference. I think it is a very good and clear report. If you ~~have~~ had nothing else to do, there might have been an advantage in making it considerably longer for the benefit of officers concerned in future years. However, considering the practical difficulties,* I repeat that I think that your report is very good.

I have a number of small comments and suggestions which are set forth in the enclosed memorandum.

There is no need to send me Alan Beesley's comments prior to production of the final report, unless some of his comments seem to you to be so important that I should have a chance to see them before you act upon them.

Yours sincerely,

M. H. Wershof

Mr. J.S. Stanford,
Legal Division,
Department of External Affairs,
OTTAWA, Ontario,
C A N A D A.

RECEIVED
JUL 28 1969
LEGAL DIVISION
DIVISION JURIDIQUE

30/28/7

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

Received
JUL 28 1969
In Legal Division
Department of External Affairs

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

FROM REGISTRY
JUL 25 1969
FILE CHARGED OUT
TO:

CONFIDENTIAL WITH ENCLOSURES

UNCLASSIFIED WITHOUT

866 United Nations Plaza,
Suite 250,
New York, N.Y. 10017.

July 22, 1969.

20-3-1-6
37

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I apologize for the format of these suggestions, which I have merely pencilled in to my copy. I had originally planned to have them put into more permanent form but in the end decided that it would save time to leave them as is. I, myself, leave for Geneva at the end of this week and therefore want to get them into our Wednesday bag. Since I have no idea when they will actually reach Copenhagen, I am sending a copy of this letter to you direct by air mail.

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Rochelle joins me in sending our warmest regards both to you and Mrs. Wershof. With best wishes,

Yours sincerely,

A.W.J. Robertson,
First Secretary.

Ambassador M.H. Wershof, Q.C.,
Canadian Embassy,
Prinsesse Maries Allé 2,
Copenhagen V, Denmark.

2.28.7

cc: Mr. J.S. Stanford,
Treaty Section, Legal Division.

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Received
JUL 28 1969
In Legal Division
Department of External Affairs

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

D.A. BEESLEY

TO:
FROM REGISTRY
JUL 25 1969
FILE CHARGED OUT
TO:
L

FACULTY OF LAW

McGILL UNIVERSITY
MONTREAL

CHANCELLOR DAY HALL
3644 PEEL STREET
MONTREAL 112, QUEBEC
CANADA

July 21, 1969.

Mr. J.S. Stanford
Legal Division
Department of External Affairs
Ottawa, Ontario.

20-3-1-6
37

Dear Mr. Stanford:

Thank you for phoning long distance about the set of documents of the Second Vienna Treaties Meeting.

I would be very grateful if you could lend us a set for xeroxing here and we will return them, as we have done before.

Sincerely yours,

Maxwell Cohen

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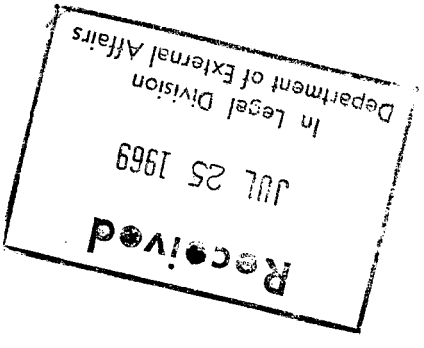

Document disclosed under the ...
Document divulgué en vertu de la *Loi sur l'accès à l'information*

TRANSMITTAL SLIP

31/7

TO: Under-Secretary of State for External Affairs, Ottawa

FROM: Canadian Embassy, The Hague

Security: CONFIDENTIAL

Date: July 16, 1969

Air or Surface: Courier

No. of enclosures: 1

20-3-1-6

The documents described below are for your information. J-76

Despatching Authority: A.J. Phick/dc

Copies	Description	Also referred to:
1	Copy of letter of July 14 from Mr. E.L.C. Schiff, Secretary-General, Ministry of Foreign Affairs, The Hague ref: Your letter L(M)-559 of May 2, 1969 - Law of Treaties Conference, Article 5	Mr. M. Wershof, Copenhagen

TO: M. Wershof
FROM REGISTRY
JUL 30 1969
FILE CHARGED OUT
TO:

L

004097

Ext. 250 (Rev. 10/51) *(Instruction on Reverse Side)*

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INSTRUCTIONS

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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.

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Mr E.L.C. Schiff

MINISTERIE VAN BUITENLANDSE ZAKEN

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6 MTHS		

The Hague, July 14, 1969.

JURA-125085

CONFIDENTIAL 20-4

Dear Mr. Ambassador,

I received your kind letter of July 4 in which you expressed your Government's thanks for the support received from the Netherlands at the Vienna Conference in April of this year.

I was particularly glad to convey to Professor Riphagen and to the Netherlands delegation to the Conference your Government's specific reference to their cooperation in this matter.

Allow me to convey to you the real satisfaction of all concerned at finding themselves in a position to be of some help in a matter of importance to your Government.

I am, dear Mr. Ambassador,

very sincerely yours,

(E.L.C. Schiff)

His Excellency
Mr. A.J. Pick,
Ambassador of Canada.

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

MEMORANDUM

July 18, 1969

TO: Mr. J.S. Stanford

FROM: Ambassador Wershof

SUBJECT: Comments on the Draft Report of the Canadian Delegation to the second session of the UN Law of Treaties Conference, Vienna, April-May, 1969.

Paragraph 16

Suggest adding a few words as follows:" a Japanese proposal for compulsory reference to the ICJ of disputes arising under Article 50, etc."

The closing words dealing with the Indian amendment might be expanded as follows: "accepted in whole or in part by each party to the Convention".

Paragraph 20

I suggest substituting for the phrase "subject to existing rules of international law", the phrase "without prejudice to the application of any rules set forth in the Convention to which treaties would be subject under international law independently of the Convention".

Paragraph 21

I think it would be desirable to spell out the "Vienna formula" to some extent e.g. "States members of the UN or of any specialized agency and any other state invited by UNGA".

As the Ghana-India amendment was a very interesting one, I think it would be useful to describe it in slightly more detail than has been done.

Page 13, Article 41

In view of the importance of this Article, I think that a little more explanation is desirable. Perhaps quote paragraphs 1 and 5 of Article 41 before referring to the Finland amendment. At the end of the note regarding Article 41, I suggest adding a sentence saying that the effect of the vote is that separability is not permitted when a treaty is deemed void pursuant to Article 50.

...2

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Page 13, Article 42

I suggest the following rewording beginning with the word "however" in the fifth last line on this page:"However, because of the strong position we had taken on the principle of permitting a separate vote on the second paragraph of Article 5(6), we could not reasonably vote against the request for a separate vote. The Guyana delegation understood our problem and acquiesced in our decision to abstain on this procedural vote. The motion for a separate vote was defeated and the article was then adopted without change."

Page 14, Article 49

There is a misprint in the first line which should say "threat OR use of force".

Perhaps the reference in the seventh line to the "declaration" should mention that this declaration was recommended by the Committee of the Whole at the First Session in 1968.

Later on in this paragraph the reference to the supplementary resolution "calling on the Secretary-General", might be expanded a little to make it clear that this is merely a request to publicize the declaration that the Committee of the Whole had recommended in 1968 and that Plenary adopted in 1969.

Pages 16 and 17

I think that a few points should be clarified or spelled out a bit.

The reference to the "second part of the package" on page 16 could be expanded and made more precise.

The word "block" in the second last line on page 16 should be "bloc".

Still on page 16, I think it should be mentioned that the package was accepted with great reluctance by Western States including Canada; the present wording on page 16 might be taken to imply that the package is a satisfactory one.

Would it not be useful to explain that what we were all talking about was East Germany although none of the Western speeches made any reference to any particular country. Furthermore in view of the reference to this package as a "compromise", I think it is necessary to point out that it was a compromise between the Western Group

...3

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and the Afro-Asians and not a compromise so far as the Russians were concerned, who rejected both elements in the package as unsatisfactory.

Page 17, Article 76

Perhaps expand the opening sentence on the following lines: "compulsory jurisdiction of the International Court in respect of disputes arising out of the interpretation or application of any provision of the Convention."

Paragraph 27

I suggest expanding the last sentence to read: "when the Plenary refused requests for separate votes on parts of other Articles".

Paragraph 31

The statement in the third sentence that the disputes settlement article finally adopted "fell short of the western objective" seems too mild. The Article as finally adopted provided only a small part of the western objective.

Paragraph 35

The reference to "the FRG" may not be understood by all readers and it may be worthwhile to spell out the "Federal Republic of Germany".

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should C's secy 31/7 — she will then verify & begin
392-4374 & call me back.

392-5125

reply dictated 28/7

20-3-1-6

31/7

FACULTY OF LAW

McGILL UNIVERSITY
MONTREAL

CHANCELLOR DAY HALL
3644 PEEL STREET
MONTREAL 112, QUEBEC
CANADA

July 15, 1969.

Mr. J.S. Stanford
Legal Division
Department of External Affairs
Ottawa, Ontario.

Dear Mr. Stanford:

I wonder if I might impose on you to ask if I might get a complete set of the Treaty Conference Documents for the Second Vienna Conference on the Law of Treaties. Max Wershof suggested I might right to you. I would be very grateful for any help you could give me in the matter.

Sincerely yours,

Maxwell Cohen

1 P.S.R. - C.W. - plenary

2 - Report of C.W. on work at Second Session

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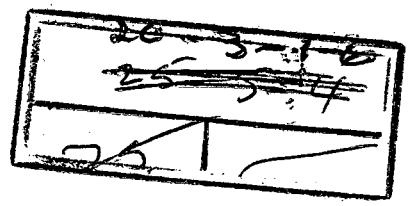
A.W. Robertson
J.A. Beesley
File
Div. Diary
Diary
J.S.S.



CONFIDENTIAL

July 8, 1969

Dear Mr. Wershof,

Better late than never. Enclosed for your comments is a first draft of the Report of the Canadian Delegation to the Second Session of the United Nations Conference on the Law of Treaties. I hope that this draft does not suffer too much from the lapse of time between the conclusion of the conference and the preparation of the report. In preparing the report I have tried to follow as closely as possible the outline which we prepared in Vienna and the form of the report on the First Session. Under cover of a copy of this letter, I am forwarding a copy of the draft to Ron Robertson in New York with the request that he note his comments on his copy and forward it to you. I am also providing a copy to Alan Beesley for his comments. Alan has just begun two weeks annual leave and it is therefore unlikely that his comments on the draft will be available for a few weeks. Please let me know if you wish to see Alan's comments before they are incorporated in the final report.

Best regards to you and Mrs. Wershof.

J. S. STANFORD

J.S. Stanford

M.H. Wershof, Q.C.
Canadian Embassy
Copenhagen, Denmark

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A.W. Robertson
J.A. Beesley
File
Div. Diary
Diary
J.S.S.

Eric Hankey
Here is a new
final report (five
weeks after your comments
were made at the
Vienna session)

CONFIDENTIAL

July 8, 1969

Dear Mr. Wershof,

Better late than never. Enclosed for your comments is a first draft of the Report of the Canadian Delegation to the Second Session of the United Nations Conference on the Law of Treaties. I hope that this draft does not suffer too much from the lapse of time between the conclusion of the conference and the preparation of the report. In preparing the report I have tried to follow as closely as possible the outline which we prepared in Vienna and the form of the report on the First Session. Under cover of a copy of this letter, I am forwarding a copy of the draft to Ron Robertson in New York with the request that he note his comments on his copy and forward it to you. I am also providing a copy to Alan Beesley for his comments. Alan has just begun two weeks annual leave and it is therefore unlikely that his comments on the draft will be available for a few weeks. Please let me know if you wish to see Alan's comments before they are incorporated in the final report.

Best regards to you and Mrs. Wershof.

J. S. STANFORD

J.S. Stanford

M.H. Wershof, Q.C.
Canadian Embassy
Copenhagen, Denmark

004105

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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 L(M)559 of May 2

SUBJECT / Sujet: Law of Treaties Conference--Article 5

16/7

SECURITY / Sécurité: CONFIDENTIAL

DATE: June 25, 1969

NUMBER / Numéro: 259

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION 25	20-3-Cda

ENCLOSURES / Annexes: 1

DISTRIBUTION

... Attached is a copy of a Note sent to the Ministry of Foreign Affairs on May 27, expressing our formal thanks for Dominican support in our initiative in seeking the deletion of paragraph two, Article 5, of the draft Law of Treaties.

TO: Mrs. Stanford
FROM REGISTRY
JUL 10 1969
FILE CHARGED OUT
TO:
L

The Embassy

004106

Ext. 407B/Bil.
(Admin. Services Div.)

14.16.7

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Received
JUL 16 1969
In Legal Division
Department of External Affairs

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No. 79

Santo Domingo, 27 de mayo de 1969

Excelencia,

Tengo el honor de referirme a nuestra conversación del 19 de diciembre de 1968, en la cual usted acordó que el Gobierno Dominicano apoyaría, en la Conferencia de Viena sobre la Ley de Tratados, la opinión canadiense en el sentido de que el párrafo 2 del Artículo 5 del anteproyecto de la Leydde Tratados, debía ser suprimido.

Se me ha pedido trasmitir a Su Excelencia el agradecimiento formal y el aprecio del Gobierno Canadiense por el apoyo que la Delegación Dominicana dió a la partida que trataba sobre el Artículo 5 (párrafo 2) en la sesión plenaria de la Conferencia. Este párrafo fué suprimido por mayoría abrumadora (66-28-13).

Acepte, Excelencia, las seguridades de mi más distinguida consideración.

A. D. Ross
Encargado de Negocios a.i.

Su Excelencia
Dr. Fernando Amiama Tió
Secretario de Estado de Relaciones Exteriores
Ciudad.

004108

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Legal/J.A.Beesley/js

20-3-1-6
25

UNCLASSIFIED

June 25, 1969

Finance Division
Att: Miss Patterson

Legal Division, J.A.Beesley

Law of Treaties Conference - Hospitality

...

Mr.Wershof
Mr.Stanford

As requested I am attaching a copy of the memorandum dated April 29 to the Canadian Embassy in Vienna from Stanford and me relating to entertainment expenditures incurred during the Law of Treaties Conference during the period April 10 - 22. As you will note, I have indicated against the items which you queried the numbers of guests entertained.

2. As you know I was alternate and vice-chairman of the delegation and since neither the head of delegation (Mr. Wershof) nor another member of the delegation (Mr. Robertson) were able to claim against the entertainment account, Mr. Stanford and I paid for the official entertainment of delegates. As you may know, the circumstances were somewhat unusual in that there was an issue of great importance to Canada (involving the right of the provinces to make treaties) and it was necessary to lobby some 80 delegations to obtain their support for the Canadian position. My own participation in the conference was for the sole purpose of lobbying and coordinating tactics on this issue. It was possible to do much of this lobbying in informal social contacts involving little expenditure other than payment of our own share of meals or drinks, etc., but it was necessary to do a good deal of it over tea or coffee in the restaurant adjacent to the conference room in the Hofburg. This proved expensive as tea or coffee cost 14 shillings plus a tip. I am not good at keeping track of this kind of expenditure and the result is that the vouchers submitted on this category of function represent a mere fraction of what I actually spent out of my own pocket.

3. In the event, we were able to obtain more than a two-thirds majority of votes for the Canadian position (although only a blocking third was necessary) and so on the basis of programme budgeting, I consider that we obtained good value for the money and efforts expended on this matter.

J. A. BEESLEY

Legal Division

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Entertainment Expenditures Law of Treaties Conference for period April 10 - 22

b) April 16 - Coffee & Tea

2 foreign diplomats and 1 federal government employee

c) April 16 - Luncheon Hotel Bristol

2 foreign diplomats and 2 federal government employees

e) April 17 - Luncheon

1 foreign diplomat and 1 federal government employee

f) April 18 - coffee

2 foreign diplomats and 1 federal government employee

April 18 - Drinks

2 foreign diplomats and 1 federal government employee

g) April 19 - Luncheon

2 foreign diplomats and 2 federal government employees

i) April 22 - Coffee

2 foreign diplomats and 1 federal government employee

j) April 22 - Drinks

1 foreign diplomat and 1 federal government employee

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

Legal/J.A.Beesley/js

United Nations Division

CONFIDENTIAL

June 19, 1969

Legal Division

20-3-1-6
37

24th UNGA: Indonesian Candidature for Vice-Presidency

I am attaching the original of a letter no. 997-11/104/69 dated June 15 from the Indonesian Ambassador to Mr. Sharp requesting Canada's support for the candidature of Indonesia for one of the 17 vice-presidencies of the 24th UNGA.

Far Eastern

2. I assume the Minister's Office sent the letter to Legal Division for action because of the references in it to our request for Indonesian support on Article 5 (2) (the Federal state clause) of the Convention on the Law of Treaties. (I am not sure how relevant it is, but we were not able to obtain from the Indonesian Delegation in Vienna the kind of support the kind of support that the Ambassador seems to think his government authorized; although a number of other delegations changed their vote from opposition or abstention to support of the Canadian position, the Indonesian Delegate (Miss Laurens) was not prepared to go that far on the substantive vote; she did, however, agree that if a procedural vote occurred on the issue of a separate vote on the part of the paragraph of concern to Canada she would vote in favour of permitting a separate vote - a point of some importance to Canada, in the event, no procedural vote was necessary, so Indonesia voted against CCanada on the only point in issue.)

3. We assume you wish to take the necessary action on the attached letter.

J. A. BEESLEY

Legal Division

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

J. A. BEESLEY

KEDUTAAN BESAR INDONESIA
EMBASSY OF INDONESIA
OTTAWA

No: 997-II/104/69

June 13, 1969

The Honourable Mitchell Sharp,
Secretary of State for External Affairs,
East Block,
Parliament Buildings,
Ottawa, Ontario.

Honourable Mr. Sharp:

I would like to inform you that some time at the end of March 1969, I received an aide-memoire from your Legal Division regarding the International Convention on the Law of Treaties to be adopted in Vienna beginning April 9, 1969.

On the occasion of my personal visit to Mr. P.A. Bissonnette and in the presence of Mr. Stanford I received further detailed clarification; the essence of which was that the Government of Indonesia support the Canadian request for a separate vote on proposed paragraph 2 of Article 5.

When negotiations were finalized I received the confirmation from our Foreign Office informing that the Indonesian Government had no objection against this request and that the Indonesian Delegation to the Convention had been given the necessary instructions. This confirmation was then forwarded to Mr. Bissonnette.

In the meantime, Honourable Mr. Sharp, the Government of the Republic of Indonesia is not content with the present condition in which both the People and the Government of Indonesia do not feel that they have the proper burden in regard to the world responsibility. Based upon this feeling the Indonesian Government has decided to become a candidate for one of the 17 Vice-Presidents of the coming 24th session of the United Nations General Assembly, and we are certain that this position will meet this responsibility.

In connection herewith, Honourable Mr. Sharp, the Government of Indonesia earnestly requests the support of the Canadian Government for the successful outcome of the above mentioned candidacy and accordingly I would like to express my sincere gratitude

1/19/L

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for your highly appreciated understanding and cooperation.

Please accept, Honourable Mr. Sharp, the assurances of my highest consideration. I remain,

Yours sincerely,

R. Darmo Bandoro,
Ambassador of Indonesia.

c.c. United Nations Division, External Affairs

Far Eastern Division, External Affairs

KEDUTAAN BESAR REPUBLIK INDONESIA
OTTAWA

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B. M. MAWHINNEY

Privy Council Records
P.C.R JUL 8 1969
File charged out
To: J13

EXTERNAL AFFAIRS | AFFAIRES EXTÉRIEURES

20-3-1-6 #1818

SECURITY Sécurité: Unclassified

DATE: June 19, 1969

NUMBER Numéro: 232

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

FROM De: The Canadian High Commission Nicosia

REFERENCE Référence:

SUBJECT Sujet: Cyprus - Validity of Zurich and London Agreements

FILE	DOSSIER
OTTAWA	20-CYP-1-4
MISSION	20-3-CYP

ENCLOSURES Annexes:

DISTRIBUTION

Legal Div
Europ Div
D. L. (2)
and file plus

On June 16, 1969 the Attorney-General, Mr. Criton Tornaritis, was questioned by the press on his return from a long absence abroad during which he represented Cyprus at the Law of Treaties Conference in Vienna. His interview was reported by the Cyprus Public Information Office as follows:

"Mr. Tornaritis said that in Vienna he had signed the final act of the Convention on the Law of Treaties and that Cyprus had a lot to gain from the Convention, as it formally recognized Compulsory Law (jus cogens), which meant that any Treaty that was contrary to International Law was null and void.

"Asked whether the decisions taken during the Vienna Conference affected the Agreements on Cyprus, Mr. Tornaritis said they might, explaining that any provision in the Agreements that was contrary to International Law was regarded as null and void."

PK&MA/M. Godfrey

The treaties convention cannot of itself affect the Cyprus agreements since it applies only to subsequent treaties JH 18/8

Received
AUG 12 1969
In Legal Division
Department of External Affairs

High Commission

D 1

Ext. 407B/Bil.
(Admin. Services Div.)

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

Copy to Ottawa

c.c. External Affairs.

New York, June 18, 1969.

20-3-1-6

Excellency,

You will recall that earlier this year and prior to the Second Session of the United Nations Law of Treaties Conference, which took place in Vienna during the months of April and May, the Canadian Government sought the support of your Government, through your Mission, for the deletion of paragraph 2 of Article 5 of the proposed Convention on the Law of Treaties. This paragraph, which concerned the matter of the capacity of members of federal unions to conclude treaties, was of particular concern to Canada since it was our view that, had it been retained in the final text, it could have led to the practice of other states purporting to interpret for themselves the constitutions of federal states, which in the Canadian view would have constituted an unacceptable interference in the internal affairs of such federal states.

The plenary session of the Law of Treaties Conference, on April 28, voted by an absolute majority of over two-thirds to delete paragraph 2. The Korean Delegation was among those opposed to the inclusion of this paragraph.

On behalf of the Canadian Government, I would like to take this opportunity to extend to your Government, to you personally and to the members of your Mission, and of the Korean Delegation to the Law of Treaties Conference who were concerned with this matter, the Canadian Government's thanks and appreciation for support in the vote on paragraph 2 of Article 5.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

YVON BEAULNE

Yvon Beaulne,
Ambassador and
Permanent Representative.

H. E. Mr. Yong Shik Kim,
Permanent Observer of the
Republic of Korea to the United Nations,
NEW YORK, N.Y.

TO: Stanford
FROM REGISTRY
JUL 2 1969
FILE CHARGED OUT
TO:

12/7/7

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Received
JUL 7 1969
In Legal Division
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Document divulgué en vertu de la Loi sur l'accès à l'information

Jul 8 7/7

c.c. External Affairs.

New York, June 18, 1969.

20-3-1-6
25 | 25

Excellency,

You will recall that earlier this year and prior to the Second Session of the United Nations Law of Treaties Conference, which took place in Vienna during the months of April and May, the Canadian Government sought the support of your Government, through your mission, for the deletion of paragraph 2 of Article 5 of the proposed Convention on the Law of Treaties. This paragraph, which concerned the matter of the capacity of members of federal unions to conclude treaties, was of particular concern to Canada since it was our view that, had it been retained in the final text, it could have led to the practice of other states purporting to interpret for themselves the constitutions of federal states, which in the Canadian view would have constituted an unacceptable interference in the internal affairs of such federal states.

The plenary session of the Law of Treaties Conference, on April 28, voted by an absolute majority of over two-thirds to delete paragraph 2. The Liberian Delegation was among those opposed to the inclusion of this paragraph.

On behalf of the Canadian Government, I would like to take this opportunity to extend to your Government, to you personally and to the members of your Mission, and of the Liberian Delegation to the Law of Treaties Conference who were concerned with this matter, the Canadian Government's thanks and appreciation for support in the vote on paragraph 2 of Article 5.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

YVON BEAULNE

Yvon Beaulne,
Ambassador and
Permanent Representative.

H.E. Mr. Nathan Barnes,
Permanent Representative of Liberia
to the United Nations,
NEW YORK, N.Y.

TO: Stanford
FROM REGISTRY
JUL 2 1969
FILE CHARGED OUT
TO:
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004117

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

C.C. Regional Office

[redacted]

YVON BEAULNE

RECEIVED
JUL 7 1969
Legal Division

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PERMANENT MISSION OF CANADA
TO THE UNITED NATIONS

MISSION PERMANENTE DU CANADA
AUPRÈS DES NATIONS UNIES

866 United Nations Plaza
Suite 250
New York, New York 10017

June 18, 1969

20-3-1-6
25

Dear Sirs,

I refer to your letter of June 9, 1969, asking where you can contact the Canadian Delegates to the Law of Treaties Conference. The information is as follows:

H.E. Mr. M. H. Wershof - The Canadian Ambassador,
Prinsesse Maries Allé 2,
Copenhagen V, Denmark.

Mr. J. Alan Beesley - C/O Mail Room,
Department of External Affairs,
Ottawa, Canada.

Mr. J. S. Stanford - (same as above)

Mr. J. C. Tremblay - The Canadian Embassy,
Obere Donaustrasse 49-51,
1020 Vienna 2, Austria.

My own address is at the top of this letter.

Yours truly,

A. W. Robertson

Oceana Publications, Inc.
Dobbs Ferry,
N.Y. 10522

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WITH THE COMPLIMENTS OF

THE PERMANENT MISSION OF CANADA

TO THE UNITED NATIONS

004120

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c.c. UN Div
Commercial Pol Div
done

J. A. BEESLEY

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FROM REGISTRY
JUN 24 1969
FILE CHARGED OUT
TO: M Stanford
L

REFERENCE:

to: External Affairs
Ottawa, Ontario

LE 113(5)

9-F-74

20-3-1-6
37

COPY

The Secretary-General of the United Nations presents his compliments to the Secretary of State for External Affairs of Canada and has the honour to refer to the United Nations Conference on the Law of Treaties, which completed its work on 22 May 1969. The Conference adopted inter alia a resolution requesting the Secretary-General to bring to the attention of all Member States and other States participating in the Conference, a Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties. The texts of the ..... resolution and the Declaration are annexed.

12 June 1969

BK

Received
JUN 25 1969
In Legal Division
Department of External Affairs

19/25/6

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

UNITED NATIONS NATIONS UNIES

ANNEX

RESOLUTION RELATING TO THE DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Having adopted the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties as part of the Final Act of the Conference,

1. Requests the Secretary-General of the United Nations to bring the Declaration to the attention of all Member States and other States participating in the Conference, and of the principal organs of the United Nations;

2. Requests Member States to give the Declaration the widest possible publicity and dissemination.

DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of the sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,

Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent;

2. Decides that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

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

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: LE 113(5)

Le Secrétaire général de l'Organisation des Nations Unies présente ses compliments au Secrétaire d'Etat aux affaires extérieures du Canada et a l'honneur de se référer à la Conférence des Nations Unies sur le droit des traités, qui a terminé ses travaux le 22 mai 1969. La Conférence a notamment adopté une résolution par laquelle elle a prié le Secrétaire général de porter à l'attention de tous les Etats Membres et des autres Etats participant à la Conférence, une Déclaration sur l'interdiction de la contrainte militaire, politique ou économique lors de la conclusion des ..... traités. Le texte de la résolution et de la Déclaration est reproduit en annexe.

Le 12 juin 1969

BK

COPY

004123

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

UNITED NATIONS NATIONS UNIES

RESOLUTION RELATIVE A LA DECLARATION SUR L'INTERDICTION DE LA CONTRAINTE MILITAIRE, POLITIQUE OU ECONOMIQUE LORS DE LA CONCLUSION DE TRAITES

La Conférence des Nations Unies sur le droit des traités,

Ayant adopté, en tant que partie de l'Acte final de la Conférence, la Déclaration sur l'interdiction de la contrainte militaire, politique ou économique lors de la conclusion de traités,

1. Prie le Secrétaire général des Nations Unies de porter la Déclaration à l'attention de tous les Etats Membres et des autres Etats participant à la Conférence, ainsi que des organes principaux des Nations Unies;

2. Prie les Etats Membres de donner à la Déclaration la plus large publicité et la plus large diffusion possibles.

DECLARATION SUR L'INTERDICTION DE LA CONTRAINTE MILITAIRE, POLITIQUE OU ECONOMIQUE LORS DE LA CONCLUSION DE TRAITES

La Conférence des Nations Unies sur le droit des traités,

Maintenant le principe que tout traité en vigueur lie les parties et doit être exécuté par elles de bonne foi,

Réaffirmant le principe de l'égalité souveraine des Etats,

Convaincue que les Etats doivent jouir d'une totale liberté pour l'exécution de tout acte relatif à la conclusion d'un traité,

Déplorant le fait que, dans le passé, des Etats aient parfois été forcés de conclure des traités sous l'effet de pressions, de formes diverses, exercées par d'autres Etats,

Désireuse d'assurer que dans l'avenir pareilles pressions ne puissent être exercées, sous quelque forme que ce soit, par aucun Etat, en liaison avec la conclusion de traités,

1. Condamne solennellement le recours à la menace ou à l'emploi de toutes les formes de pression, qu'elle soit militaire, politique ou économique, par quelque Etat que ce soit, en vue de contraindre un autre Etat à accomplir un acte quelconque lié à la conclusion d'un traité, en violation des principes de l'égalité souveraine des Etats et de la liberté du consentement;

2. Décide que la présente Déclaration fera partie de l'Acte final de la Conférence sur le droit des traités.

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Mr Sharpe
M. Gagnon
for reply in consultation with Legal (Stanford)
file
JBB
done - JBB
c.c. Ian Cliffe Bur

KEDUTAAN BESAR INDONESIA
EMBASSY OF INDONESIA
OTTAWA

No: 997-II/104/69

June 13, 1969

20-3-1-6

The Honourable Mitchell Sharp,
Secretary of State for External Affairs,
East Block,
Parliament Buildings,
Ottawa, Ontario.

Honourable Mr. Sharp:

I would like to inform you that some time at the end of March 1969, I received an aide-memoire from your Legal Division regarding the International Convention on the Law of Treaties to be adopted in Vienna beginning April 9, 1969.

On the occasion of my personal visit to Mr. P.A. Bissonnette and in the presence of Mr. Stanford I received further detailed clarification; the essence of which was that the Government of Indonesia support the Canadian request for a separate vote on proposed paragraph 2 of Article 5.

When negotiations were finalized I received the confirmation from our Foreign Office informing that the Indonesian Government had no objection against this request and that the Indonesian Delegation to the Convention had been given the necessary instructions. This confirmation was then forwarded to Mr. Bissonnette.

In the meantime, Honourable Mr. Sharp, the Government of the Republic of Indonesia is not content with the present condition in which both the People and the Government of Indonesia do not feel that they have the proper burden in regard to the world responsibility. Based upon this feeling the Indonesian Government has decided to become a candidate for one of the 17 Vice-Presidents of the coming 24th session of the United Nations General Assembly, and we are certain that this position will meet this responsibility.

In connection herewith, Honourable Mr. Sharp, the Government of Indonesia earnestly requests the support of the Canadian Government for the successful outcome of the above mentioned candidacy and accordingly I would like to express my sincere gratitude

EXTERNAL AFFAIRS — AFFAIRES EXTÉRIEURES

TRANSMITTAL AND RECEIPT NOTE — NOTE D'ENVOI ET DE RÉCEPTION

Document Disclosed Under the Access to Information Act
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TO / À: Department of External Affairs, Ottawa

WITH / AVEC: Confidential

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

NO. Copy/Mail July 20-3-1-6 11/27/6

QUANTITY / QUANTITÉ	REFERENCE — RÉFÉRENCE	DESCRIPTION — DESCRIPTION
1	Law of Treaties Conference- Article 5	Copy of our letter dated June 11, 1969 to Special Legal Adviser, Royal Ministry for Foreign Affairs, Stockholm.

File: 20-3-1-6

37

TO: M Stanford
FROM REGISTRY
JUN 26 1969
FILE CHARGED OUT
TO:
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RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

DATE

SIGNATURE

RETURN TO / RETOURNER À

FOR SIGNATURE AND RETURN TO ORIGINATOR — SIGNER ET RETOURNER AU BUREAU D'ORIGINE

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Received
Jul 27 1969
In Local Division
Department of External Affairs

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EXTERNAL AFFAIRS — AFFAIRES EXTÉRIEURES

TRANSMITTAL AND RECEIPT NOTE — *NOTE D'ENVOI ET DE RÉCEPTION*

SECURITY / SÉCURITÉ: Confidential

WITH ATTACHMENT(S) / AVEC ANNEXE(S)

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

TO / À: Department of External Affairs, Ottawa

NO.

QUANTITY / QUANTITÉ	REFERENCE — RÉFÉRENCE	DESCRIPTION — DESCRIPTION
1	Law of Treaties Conference-Article 5 File: 20-3-1-6	Copy of our letter dated June 11, 1969 to Special Legal Adviser, Royal Ministry for Foreign Affairs, Stockholm.

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

DATE

SIGNATURE

RETURN TO / RETOURNER À

RECIPIENT'S COPY — *COPIE DU DESTINATAIRE*

004128

EXT 34/BIL

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

nioo: Department of External Affairs,
Ottawa

File: 20-3-1-6

104 40 Stockholm 14,
June 11, 1969.

Dear Dr. Blix,

You will recall that, on October 2 last year, we had a discussion about Article 5, paragraph 2, of the then draft Convention on the Law of Treaties. As you are well aware, participants in the Law of Treaties Conference at Vienna, at its plenary session on April 28, voted by a two-thirds majority to delete Paragraph 2.

In this connection, I have been asked to convey to you and, through you, to the Swedish Government, the appreciation of the Canadian authorities for the support which the Canadian Delegation received from the Swedish Delegation at the recent Conference. The Swedish Government's decision to vote affirmatively for the deletion of this paragraph, a matter of some consequence for a federal state such as Canada, while no doubt taken on purely objective grounds, was nevertheless very gratifying to us. I should also like to thank you personally for your patience and kindness in receiving our representations on this subject.

Yours sincerely,

A. J. Andrew,
Ambassador.

Dr. Hans Blix,
Special Legal Adviser,
Royal Ministry for Foreign Affairs,
S t o c k h o l m.

18/27/L

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

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diary
J.S.S.

Legal Division/J.S. Stanford/bp

20-3-1-6
37

PERSONAL

OTTAWA, June 6, 1969

E.G. Lee, Esq.
Counsellor
Office of the High Commission for Canada
London, England

Dear Ted,

Thanks for your Note of May 28, which I have shown to Alan Beesley.

After consideration, we decided not to send a circular document or multiple numbered letter as Mr. Wershof had suggested. You will receive, however, a copy of the memorandum which we sent to European and U.N. Divisions concerning the two major political issues at the Second Session. The text of the Final Act is attached to this memorandum. Copies of the convention itself are being made in Production Services and I will send one to you as soon as they are available.

For the record, and to correct a misunderstanding which appears from your letter, the Soviet bloc abstained in the vote on the Convention as a whole although the USSR and a number of other bloc representatives made it clear that the Convention would be unacceptable to their governments. France was the only country to vote against the Convention as a whole.

We all look forward to your return to Ottawa this summer.

Best personal regards,

A. BEESLEY

J.S. Stanford

Legal Division/J.S. Stanford/hp
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J.S.S.

20-3-1-6
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OTTAWA, June 6, 1969

Mr. A.W. Robertson
First Secretary
Permanent Mission of Canada to the United Nations
New York

Dear Ron,

I enclose as you requested, a copy of Vienna telegram 352 of April 29 showing the results of the role call vote Article 5 paragraph 2. I also enclose a copy of the role call voting sheet. The marks in the centre of each column show how the country actually voted. (The marks in the left side of each column indicate how we expected each country to vote.)

I have received from Mr. Wershof the copies of the photograph taken at the time of the signing of the Final Act. One copy of the photograph is enclosed for you toretain. When next we meet, you may buy me a drink for the equivalent, in the currency of wherever we happen to be, of 20 Austrian schillings.

Best regards,

J.S. Stanford

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

Feb 11/18/6

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO: W. Stafford
FROM REGISTRY
JUN 16 1969
FILE CHARGED OUT
TO:
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TO / À: The Under-Secretary of State for External Affairs, Ottawa.

FROM / De: The Canadian Embassy, Guatemala.

REFERENCE / Référence: Your Letter L-(M)-559

SUBJECT / Sujet: Law of Treaties Conference - Article 5

SECURITY / Sécurité: CONFIDENTIAL

DATE: June 6, 1969

NUMBER / Numéro: 61

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	E.9

37

ENCLOSURES / Annexes

DISTRIBUTION

Cdn Embassy, Mexico

As instructed, appreciation has been conveyed to the appropriate Ministry of Foreign Affairs officials for Guatemala's support of our position on the deletion of Paragraph 2 of Article 5.

The complexities of a federal system are not something that Guatemala faces. Thereby, up to the time our views on the point were made known, they had little knowledge of the potential problems. With the information provided in the Aide Memoire, they had no trouble appreciating our position.

After conveying our thanks, the Guatemalans noted that they believed that Canada had not yet ratified the Treaty, though most Latin American countries had. Lacking any details, we were unable to comment. Additional details would be appreciated.

S. G. Tregaskes,
Charge d'Affaires a.i.

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Ext. 407B/Bil.
Admin. Services Div.)

004132

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file

European Division and U.N. Division

RESTRICTED

June 3, 1969

Legal Division

20-3-1-6
32

Recognition of East Germany - Declaration of the U.N. Conference on the Law of Treaties

Permiony
Bonn
London
Paris
NATO(Brussels)
Washington
Copenhagen
Oslo
Canberra
Wellington
New Delhi

The second session of the U.N. Conference on the Law of Treaties took place in Vienna from April 9 to May 23, 1969 and concluded by adopting and opening for signature the 1969 Vienna Convention on the Law of Treaties.

2. Two of the major political issues at the second session were (a) western insistence that the application of the articles in the proposed convention which establish grounds for the invalidity and termination of treaties should be subject to compulsory third-party adjudication, and (b) Soviet-bloc efforts to establish the principle that "all States" (i.e. any entity claiming to be a State, and more particularly East Germany) are entitled to sign (i) all general multilateral conventions or, failing that, (ii) at least the Law of Treaties Convention.

3. The western group as a whole, led on this issue by the FRG, was successful (by votes of 32 for, 52 opposed and 19 abstentions in Committee of the Whole and 34-50-22 in Plenary) in opposing Soviet efforts to include in the treaty an article establishing that all states may sign general multilateral treaties (b(i) above) and were, in addition, able to secure (by votes of 60-25-19 in Committee of the Whole and 84-11-5 in Plenary) adoption of an article governing participation in the Law of Treaties Convention in what has come to be known as the "Vienna formula". This article, which reads in part:

> "The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention...".

prevents East Germany from becoming a party to the Convention in the absence of a specific invitation from the General Assembly.

.../2

Document disclosed under the *Access to Information Act* -
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4. In order to obtain provisions concerning the settlement of disputes, however, it was necessary for the Western group to accept an Afro-Asian "package" proposal which included a "Declaration on Universal Participation in the Vienna Convention on the Law of Treaties". The text of this Declaration appears in the Final Act of the Conference, which is attached. The elements of the package, which consisted of the Declaration, an article (Article 66) on disputes settlement procedures and a resolution concerning that article (see the "Resolution Relating to Article 66" which also appears in the Final Act), were not put to the vote individually but were voted upon collectively. Canada, together with most other Western representatives, voted in favour of the package. Western support on the package was given only after the FRG had indicated that the declaration on universal participation was acceptable to it and that it would not object to its friends supporting the package including the declaration. The FRG itself abstained in the vote on the package.

5. You will note that operative paragraph 1 of the Declaration "Invites the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Vienna Convention on the Law of Treaties". Mr. Wershof, the Head of the Canadian delegation, was one of a number of representatives who intervened in the debate on this issue, at the request of the FRG delegation, to make clear that a vote in favour of the package including the Declaration did not in any way prejudge the position which the Canadian representative might take in the General Assembly should a proposal be made, pursuant to the Declaration, to invite any particular entity (e.g. East Germany) to adhere to the Convention. Indeed the non-binding nature of the Declaration in this respect was heavily underlined by the Soviet representative himself, who opposed the package on this very ground.

6. As a result of the Declaration, however, it may be expected that the question of East German participation in the Convention on the Law of Treaties will come before the 24th UNGA and appropriate instructions will have to be prepared for the Canadian delegation.

J. A. BEESLEY

Legal Division

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T. A. BEESLEY

TO: M. Bonfield
FROM REGISTRY
JUN 18 1969
FILE CHARGED OUT
TO:

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO / À: The Under-Secretary of State for External Affairs, Ottawa.

FROM / De: The Canadian Embassy, Buenos Aires.

REFERENCE / Référence: Your Letter L-(M)-559 of May 2, 1969.

SUBJECT / Sujet: Law of Treaties Conference - Article 5.

SECURITY / Sécurité: UNCLASSIFIED

DATE: June 3, 1969.

NUMBER / Numéro: 564

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	39 20-3

ENCLOSURES / Annexes: 1

DISTRIBUTION

We have today sent a note to the Argentine Ministry of Foreign Affairs expressing the Canadian Government's gratitude for their support of our position on Paragraph 2 of Article 5 of the Law of Treaties Convention and for the speech delivered by their representative on this question at the plenary session of the ... Conference. A copy of our note is attached.

David P. Wilgress
The Embassy.

NO ENCLOSURE

2/20/6

Ext. 407B/Bil.
(Admin. Services Div.)

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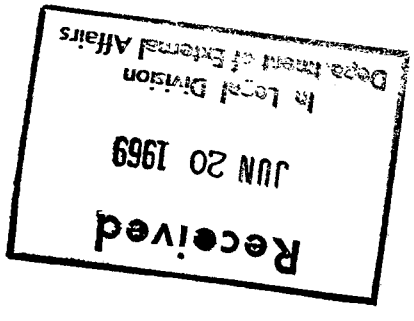

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sir john carter ambassadorhotel vienna

38 please convey following message to ambassador wershop , leader of canadian delegation begins : as final session of , vienna conference draws to a close i wish as leader of guyana delegation and on behalf of guyana government to express thanks to you and

col 38

page2/23

your delegation for the general support given to our delegation and for your special help to and co-operation with sir john carter and duke pollard . np i look forward to our continuing work together in these important areas of mutual interest and concern .
np warmest personal regards
external shridath s ramphal ends

col 5

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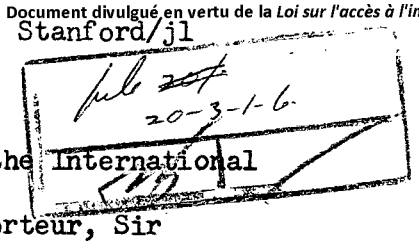
DRAFT Legal Division/J.S. Stanford/jl



The Government of Canada congratulates the International Law Commission and in particular its Special Rapporteur, Sir Humphrey Waldock, upon the preparation of the draft articles on the law of treaties. The burden of preparing an international convention on this question now passes to governments and, in anticipation of the forthcoming Conference on the law of treaties, the Canadian Government wishes to submit the following observations on certain of the draft articles.

Article 1 is ambiguous ~~on~~ with regard to whether the articles are intended to apply to the relations inter se between States which are parties to a convention to which a subject of international law other than a State is also a party. This ambiguity could be removed if the article were to provide that "The present articles do not apply to international agreements to which a subject of international law other than a State is a party."

Article 2(a), in defining a treaty as "governed by international law", does not specify the criteria or conditions necessary for determining whether the international agreement in question is subject to international law.

The provisions of Article 5(2) fail to take account of the relevance of recognition and State responsibility in determining treaty-making capacity, and require outside States to interpret the internal constitutional law of the federal State. The use of the term "State" in Article 5(2) appears inconsistent with its use in Articles 1 and 5(1). The expression "component members of a federal union" might be substituted.

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Many international conferences consisting of smaller groups of states require unanimity in the adoption of a treaty text. It therefore appears desirable to define with greater precision the sort of conference to which Article 8(2) is to apply.

Article 15 does not indicate whether a State which has expressed its consent to be bound by the treaty may withdraw its consent at will prior to the entry into force of the treaty. It appears desirable to deal with this question in this article or, alternatively, in Article 51.

Articles 16 and 17 should be revised to indicate whether a reservation which is incompatible with the object and purpose of the treaty is to have any legal effect at all. There appears to be some conflict between draft Article 17(4)(b) and paragraph 22 of the commentary to Article 17 on the one hand, and paragraphs 3 and 10 of the commentary on the other, over the question whether the existence of a treaty relationship between the reserving and objecting State depends upon (a) the compatibility of the reservation with the object and purpose of the treaty, or (b) the intention of the objecting State. If the operative factor is to be the intention of the objecting State, Canada agrees that there is considerable practical merit in raising a presumption concerning such intention, as is done in draft Article 17(4)(b), which the objecting State may rebut when making its objection.

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Article 22 makes no special provision for the termination of the application of a treaty which has been brought into force provisionally. Yet provisional entry into force by its very nature takes place at a time when, and precisely because of the fact that, a party is then unable to be bound definitively and may not in the future become able to be bound definitively. For this reason the provisions in the draft for termination of a treaty definitively in force are not, in themselves, adequate to cover the termination of a treaty provisionally in force. In the latter case there must exist, for a reasonable period after provisional entry into force, a right of denunciation.

Certain drafting changes to Article 41 appear desirable in the interests of clarity. In paragraph 1 the words "may only be exercised with respect to the whole treaty unless" might instead read "must, if exercised, be exercised in respect of the whole treaty unless". Similarly in paragraph 2 the words "may only be invoked with respect to the whole treaty except" might instead read "must, if invoked, be invoked with respect to the whole treaty except".

Article 43 provides that a State may not invoke its own constitutional incapacity to conclude the treaty unless the incapacity was "manifest". Nothing is said, however, about the right, if any, of the other negotiating States to invoke such capacity as invalidating such consent. For greater clarity it may be desirable to include in the articles

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an express provision that in no case may another negotiating State invoke the constitutional invalidity referred to in Article 43 as a ground for avoiding the provisions of the treaty. It might also be pointed out that, by providing for avoidance of treaties as a result of the internal constitutional provisions of one of the parties (even though limited to manifest violation), the articles give such provisions precedence over rules of international law and place upon each party negotiating a treaty an obligation, at least in certain cases, to interpret the internal constitutional law of the State with which it is negotiating.

While Canada accepts the concept of jus cogens, it considers that in the absence of provisions for independent adjudication in the application of Articles 50 and 61, ~~we strongly believe that, in the absence of provisions for independent adjudication in the application of these articles,~~ the Conference should accept responsibility for defining in clear and precise terms the manner in which a norm of jus cogens is to be interpreted. In the absence of such definition or, alternatively, a means of third party determination of the meaning and content of the rule as applied to a particular case, the security of treaty relationships may be substantially undermined. Similar considerations apply to the operation of Article 59 dealing with the effect of a fundamental change of circumstances.

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With respect to the application of Article 62, it may be noted that a number of Articles (10(2)(a); 11(1)(b); 12(b); 24; 25; 27(4); 33(1) and (2); 39(1); 53(1); 56(1)(a) and (2); 61) require that a certain fact or facts be "established" before the provision of the Article in question takes effect. In this respect Article 39 extends the requirement for establishing the fact in question to all articles dealing with the invalidity of treaties. The Articles clearly contemplate (cf paras. 5-7 of the commentary on Article 57) that the establishment of a fact means something more than its allegation by one party to the treaty. It implies some general acceptance of the existence of a fact or an objective determination of the fact to be established. The conference will therefore have to consider carefully the relationship between Article 62 and the other articles referred to above.

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Not for circulation
outside Study Group

4

Residual vs. Mandatory

Tab 20-3-1-6

Permitted Variations from the Convention on Treaties

A substantial number of the articles of the draft Treaties Convention contain specific permission for variations from the requirements contained therein. These variations are, for the most part, authorized under two rubrics - the treaty concerned provides for the variation or the parties to the treaty agree to it. Articles which do not contain any specific permission for variations would appear to have mandatory application if the commentary is to be relied on but might not have if the Convention is subject to its own provisions on reservations, amendments and modification.

The underlying concepts for dividing permissive clauses and mandatory clauses appear to stem from implicit distinctions between procedural and substantive clauses and conclusions on the content of customary law, blended with a concern to ensure that exotic blooms, such as jus cogens, remain in full flower.

The draft articles are listed with a shorthand note as to content. If required, the content of article paragraphs is referred to. Opposite each article reference, if variation from the article is permitted, is a statement of the scope of the exemption. If variation is not permissible, the following formulae are used:

None feasible.	-	The nature of the article does not permit variation.
None. Why not?	-	The permissibility of variation is a question of policy and there seems no overriding reason to exclude variation.
None.	-	Variations are technically feasible but politically dubious.

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I Introduction

Article		Permitted Variations
1.	Scope	None. Why not?
2.	Definitions	None, but effect is limited to this article.
3.	Agreements outside scope	None possible.
4.	International Organizations (Exclusion of constituent instruments, etc.).	Treaties subject to relevant rules of organizations.

II Conclusion and Entry into Force

5.	Capacity to conclude treaties	None possible.
6.	Need for full powers	
	Para. 1 Low level representation	Subject to intent of States concerned.
	Para. 2 High level representation	None. Why not?
7.	Confirmation of unauthorized act	None possible.
8.	Adoption of text	
	Para. 1 Adoption without conference.	None. Why not?
	Para. 2 Adoption in conference	Two-thirds majority decides.
9.	Authentication of text	May be determined in text or agreed by States who draw up.
10., 11.	Consent to be bound by signature, ratification, acceptance or approval	Treaty provisions or agreement of negotiating States or intention of State concerned is determinative.
12.	Consent to be bound by accession	Treaty provisions, agreement of negotiating States or subsequent agreement of parties.
13.	Consent of State to be bound established by deposit of instruments of ratification, etc.	Unless treaty otherwise provides, except (c) which permits notification "if so agreed."
14.	Consent to only part of treaty	Treaty permits or contracting States agree.

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15.	Obligation not to frustrate	None. Why not for (b) and (c)?
16.	Reservations	Provisions in treaty govern.
17.	Acceptance etc. of reservations	Unless treaty otherwise provides.
18.	Procedure on reservations	None. Why not?
19.	Legal effects of reservations	None. Why not?
20.	Withdrawal of reservations Para. 1 Right to withdraw Para. 2 Time withdrawal effective	Unless treaty otherwise provides Treaty otherwise provides or otherwise agreed.
21.	Entry into force 1. Of treaty 2. Consent of State to be bound after treaty in force	As treaty provides or negotiating States agree. Unless treaty otherwise provides.
22.	Provisional entry into force	As treaty prescribes or negotiating States agree.

III. Application and Interpretation of Treaties

23.	Pacta sunt servanda	None possible.
24.	Non-retroactivity	Unless different intention appears from treaty or is otherwise established.
25.	Application to territory	Unless different intention appears from treaty or is otherwise established.
26.	Successive treaties	Treaty provisions if any, govern.
27.	Interpretation	None - Unless 2 (a) and 3 (a) are given paramountcy.
28.	Supplementary means of interpretation	None. Why not?
29.	Interpretation in two or more languages	Para. 1 and 2. Unless treaty provides or parties agree. Para. 3. None (unless particular text prevails by agreement of parties).
30.	Third States rule	None possible.

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31.	Treaty providing third State obligations	None possible.
32.	Treaties providing third State rights	Para. 2 makes treaty provisions controlling.
33.	Revocation, etc. of (1) third party obligations and (2) rights	(1) Unless parties and third State otherwise agreed. (2) Treaty provisions, if any, or intention of parties would be controlling.
34.	International custom	None possible.
IV.	Amendment and Modification	
35.	Amendment of treaties - general rule	Rules on amendments apply unless treaty otherwise provides.
36.	Amendment multilateral treaties	Unless treaty otherwise provides.
37.	Modification of multilateral treaties between some of parties Para. 1 General rule Para. 2 Notification to other parties	Modification of any treaty (including the present treaty) by two or more parties if required conditions are met or treaty provides. Unless treaty otherwise provides.
38.	Modification by subsequent practice	None. Why not?
39.	Validity Para. 1 Validity and result of invalidity Para. 2 Termination, etc. by a party	None. Why not? Application of terms of treaty or of "present articles".
40.	Obligations under other rules of international law	None possible.
41.	Separability of right to denounce, etc. 1. Right to denounce in treaty 2.,3.,4.,5., Ground to denounce etc.	Unless treaty otherwise provides or parties otherwise agree. None. Why not?
42.	Loss of right to invalidate	None. Why not?
43.	Competence to conclude treaty under international law	None. Why not?
44.	Specific restrictions on authority to conclude treaty	None. Why not?

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45.	Error	None.
46.	Fraud	None.
47.	Corruption	None.
48.	Coercion	None.
49.	Threat or use of force	None
50.	Jus cogens	None possible.
51.	Termination or withdrawal by consent	Pursuant to treaty provisions or consent of all parties.
52.	Reduction of parties to less than number for bringing into force	Unless treaty otherwise provides.
53.	No denunciation of treaties without withdrawal or denunciation provision	Unless it is established parties intended to admit.
	2. Twelve months notice under 1.	None possible.
54.	Suspension by consent	In conformity with treaty provisions or by agreement of all parties.
55.	Temporary suspension by consent of some of parties	None possible.
56.	Termination of earlier treaty by subsequent treaty	Treaty provisions or intent of parties govern.
57.	Termination by breach	Provisions regarding breach in treaty are controlling.
58.	Impossibility of performance	None possible (?)
59.	Rebus sic stantibus	None. Why not?
60.	Severance of diplomatic relations	None but apparently treaty provisions could vary rule.
61.	New jus cogens	None possible.
62.	Procedure re invalidity, etc.	None (<u>but see</u> para. 4 which recognizes binding commitments on settlement of disputes).
63.	Declarations of invalidity, etc.	None. Why not?

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64.	Revocation of notification (62) and declarations (63)	None. Why not?
65.	Consequences of invalidity	None. Why not?
66.	Consequences of termination	Unless treaty otherwise provides or parties otherwise agree. (39.2)
67.	Consequences of jus cogens	None.
68.	Consequences of suspension of operation Para. 2 Refrain from acts rendering resumption impossible	1. Treaty otherwise provides or parties otherwise agree. None possible (?)
69.	State succession and State responsibility	None possible.
70.	Aggressor State	None possible.
VII.	Depositaries, etc.	
71.	Depositary 1. Designations 2. Performance	Designated by negotiating States in treaty or in some other manner. None. (International Public Policy)
72.	Functions of depositaries 1. Particular functions 2. Difference between depositary and State	Unless treaty otherwise provides. None. Why not?
73.	Notifications	Except as treaty otherwise provides.
74.	Correction of errors in texts	Unless contracting States otherwise decide.
75.	Registration	None possible.

Certain of the "none feasible" findings are based upon the exclusionary nature of the articles concerned. Thus, the parties to an oral agreement could not vary the rule in Article 3 that the legal force of the oral agreements is not affected by the fact the oral agreement is not subject to the Convention unless the agreement were subject to the Convention. But if the agreement were subject to

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As appears from the list three formulae are used in articles from which variation is permitted:

a) if the parties agree
b) if the treaty provides
c) if either the parties agree or the treaty provides

The choice among the alternatives follows a general pattern. Where a modicum of formality is required, there is an inclination to exclude agreement of the parties, e.g. Articles 13 (except c.), 16, 17, 26, 35, 36, 37 (2), 72, 73. Reference is made solely to agreement of the parties in a number of instances when reference to treaty provisions could be nugatory, e.g. Articles 6, 33 para. 1, and 53. There appears to be no reason why formula a) is used in paragraph 1 of Article 20 instead of formula c), particularly as formula c) is used in paragraph 2 of the article. In Article 74, there appears no reason why the parties may not provide in the treaty for methods of correcting an error at variance with those contained in the text and formula c) should be used. Decision on the Why not? articles requires also a decision on which formula should be used.

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the Convention then Article 3 could not apply. Articles 34, 40, 69 and 70 raise similar problems. The remaining "none feasible" articles set forth a rule whose scope does not tolerate variations. The obstacle can be either substantive or procedural. Thus, to have Article 23 provide that a treaty in force is binding except as otherwise provided in the treaty leads only to sterile speculation whether the non-binding would be non-binding because it is binding non-binding or vice versa. Or in Article 30, if a treaty does not create obligations for a third party without its consent, there seems no room to permit the treaty to provide otherwise. Article 55 illustrates the procedural impossibility. Operation of the article depends upon there being no provision in a multilateral treaty regarding suspension, leaving no space for an "unless the treaty otherwise provides". There is no space for "agreement of the parties" because that contingency is covered in Article 54. Additional articles subject to this variety of limitation are 5, 31, 50, 53 (2), 58, 61 and 68.2.

There are a total of fourteen articles which are not subject to variation. There are five additional invalidity articles, 45-49 inclusive, and Article 59, as to which there will be substantial political problems to authorining variation. Given this line-up there appears little prospect of achieving a general article on variations. As it would have to contain a list of fourteen excluded articles its value as cover for permitting variations from the invalidity or rebus sic stantibus articles seems minimal. Accordingly it is suggested that decisions be made on the "Why not?" articles on an individual basis.

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LAW OF TREATIES

Summary of Comments in Sixth Committee and Written Commentary

U.S.A. - Sixth Committee - Interpretation articles too conservative (Arts. 27 & 28)
- Articles on invalidity too progressive, beyond existing practice and law. Arts. 45, 46 and 47 too vague. Unless they could be more precise, better to omit them.
- International Law provides no means of defining peremptory norms (Arts. 50-61)
- Rebus sic stantibus article (Art. 59) unsatisfactory
- Art. 62 provides no safeguards against abusive interpretation of the articles - of avoiding the uncertainties which are the main weakness of the draft. Convention must provide for mandatory means for impartial settlement of disputes.
- 1968 session must review all articles.

Written Commentary

- Articles should apply to agreements with international organisations
- U.S. opposes Article 4 - treaty law should apply generally
- Articles 16 and 17 on reservations seem to inhibit negotiators from specifying procedures and requirements regarding acceptability of reservations
- Relationship between Articles 16 and 17 confusing, better to combine in a single article - extensive comment on these articles
- Articles 27 and 28 on interpretation "ordinary meaning" should be just a starting point instead of the central point. Should be free access to preparatory work. Remove artificial separation between Articles 27 and 28, avoid fixed hierarchy of rules.
- Part V - must avoid undermining validity of treaty commitments. Articles lay down principles in the most general terms, criteria are highly subjective - extensive comment on these articles - how to determine peremptory norms - Art. 59 (rebus) similarly imprecise - U.S. opposed to article as drafted.
- must impose limitations to prevent abuse of articles - cannot be left to sole decision of one of the parties. Art. 62 of draft and Art. 33 of Charter are not mandatory. Art. 62 requires nothing other than 3 months notice - Art. 62 inadequate - U.S. fundamentally opposed to convention which omits effective provision for impartial settlement of disputes.

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United Kingdom - Sixth Committee - failure of conference could have serious adverse effect on development of international law - in certain areas of treaty law, there was insufficient practical experience and/or agreement of principles to permit codification at this time, e.g. Articles 30-34 (Third States) Article 41 (Separability) - essential to maintain treaty stability.
- Articles 16 to 20 (Reservations) unclear
- Part V - no general agreement on concept of jus cogens, may be insufficiently developed for codification
- require means of objective and independent interpretation
- convention should cover agreements with international organizations, but favours Art. 4
- inconsistency of use of "invalidity", "void", "without legal effect" in Part V.

Written Commentary - none

Australia - Sixth Committee - treaties are guarantee of freedom and security of small and medium sized States.
- must avoid unilateral arbitrariness in the termination of a treaty - Art. 62 safeguards inadequate.
- As a federal State, Australia concerned with Art. 5(2) - also concerned with Arts. 16 and 17 and Part V. Codification of jus cogens and rebus would be crowning achievement of Vienna Conference.

WRITTEN COMMENTARY - none

New Zealand - Sixth Committee - none

Written Commentary - none

France - Sixth Committee - abstained on vote to hold conference in '68. Too soon to permit adequate consultation
- Part V on invalidity, esp. Arts. 43,45, 46, 47 and 49, go beyond codification and constitute development - very subjective and must therefore be applied impartially.
- Art. 50 & 61, draft provides no means for determining principles of jus cogens, U.N.G.A. resolutions and U.N. multilateral conventions cannot create principles of a peremptory nature.

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- Art. 62 does not remove difficulty arising out of conflicts over formulae adopted on I.L.C. draft - no provision for impartial mandatory resolution of disputes. It might therefore be preferable to rely on the customary process of developing the law of treaties rather than to introduce uncertain innovations.

Written Commentary - none

Belgium - Sixth Committee - new countries generally find it preferable to modify rather than terminate treaties they inherit on independence - concept of jus cogens cannot yet be adopted into international law - draft articles do not specify objective criteria for identifying peremptory norms.

Written Commentary - Arts. 10, 15, 20(1) and 22.

Netherlands - Sixth Committee - Autonomy of the will of the parties remained overriding feature of treaty law. Two pillars of draft are consent and good faith. But existence of independent and objective authority to interpret law is what allows principle of good faith to play its preponderant part in national law. Rebus, error, fraud all require independent adjudication. Art. 62 inadequate, no protection against unilateral abuse of articles. Independent adjudication would merely bring principle of sovereignty under the rule of law.
- inconsistent use of "void" in Arts. 65, 67(1), 67(2), "nullity", "invalidity", "without legal effect" unclear Also arts. 8(2), 53.

Written Commentary - none

Denmark - Sixth Committee - none

Written Commentary - Art. 17(4) and (5) - a prohibited reservation should not be open to acceptance by any other party - no formal objection should be required - text is unclear. Express acceptance should be necessary for reservations to treaties between small groups of States (17(5)).

- Art. 59 (rebus) should include provision for independent adjudication of its application.

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Sweden - Sixth Committee - difficult to extend draft articles to international organizations without further consideration by ILC
- Art. 5(2) is it reasonable to equate the capacity of the State under international law with that under the federal constitution and to expect foreign states to master intricacies of such constitutions. Art. 43 might be extended to cover violations of internal law of a federal State.
- Arts 10 and 11. Sweden favours residuary rule whereby signature would be deemed method of expressing consent to be bound. There should be an express provision regarding termination of a treaty provisionally in force; unilateral termination without notice
- Art. 57 (separability) unclear.
- Draft rules on invalidity for fraud, coercion or corruption not of significant practical importance.
Procedures for impartial third-party settlement (e.g. ICJ) must be devised.

Written Commentary - none

Finland - Sixth Committee - 16(c) does not indicate when a reservation is incompatible with object and purpose.
- Part V contains new ideas in international law. Art. 61 has not been tested in practice. Arts 45, 46 and 47 open to abusive interpretation.
- Articles should include more precise provisions for the settlement of disputes - possibly an additional protocol. Finland favours judicial, arbitral or fact-finding procedures for settlement of disputes.

Written Commentary - Articles 58 and 59 make no provision for settlement of disputes over their application - suggest separate protocol.

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From Co-ordination Division

To Legal Division

DEPARTMENT OF EXTERNAL AFFAIRS

Subject Vu d'Ottawa — Décision de l'ONU à Vienne sur le droit des traités

Date May *Publication* LE SOLEIL

VU D'OTTAWA

Décision de l'ONU à Vienne sur le droit des traités

par Amédée GAUDREAULT

OTTAWA — Un événement d'une très grande portée internationale (particulièrement pour le Canada dont le "cas", dû aux attentions du général de Gaulle, a d'ailleurs joué un rôle prépondérant dans un net revirement de l'opinion mondiale) s'est produit à Vienne le 28 avril dernier, jour même où l'ancien président de la France quittait son poste incidemment.

Ce jour-là, dans la capitale autrichienne, au sein de la commission du droit international de l'ONU qui se penche depuis des années, des décennies même, sur la question de la conclusion des traités, on a éliminé, par un vote de 66 contre 28 et 13 abstentions, le 2e paragraphe de l'article 5 d'un projet de document portant sur "la capacité des Etats de conclure des traités".

L'article 5 disait ceci:

1—Tout Etat a la capacité de conclure des traités.

2—Les Etats membres d'une union fédérale peuvent avoir la capacité de conclure des traités si cette capacité est admise par la constitution fédérale et dans les limites indiquées dans la dite constitution.

Pourtant, ce paragraphe 2 avait été endossé l'an dernier à deux reprises par le même organisme international, soit par des votes de 45 contre 38 et 10 abstentions, puis 46 contre 39 et 8 abstentions.

Mais entre-temps, était survenu à Paris l'incident de la signature d'un document dont on ne sait trop s'il s'agit d'un accord ou d'un traité avec le Québec pour l'utilisation (ou peut-être ... l'étude pouvant mener à l'utilisation, puisque MM. Bertrand et Dozois ont soutenu qu'aucune dépense n'avait été autorisée) de satellites. En outre, un grand nombre de pays étaient sous l'impression qu'à part le fameux cri "séparatiste" du général de Gaulle en juillet 1967 à Montréal, le président français s'était tenu à l'écart des affaires canadiennes et maints diplomates n'ont que tout récemment appris comment le gouvernement de Gaulle a pu manipuler, depuis deux ans, certaines ficelles pour créer les ennuis que l'on sait au gouvernement canadien lors de la conférence des ministres de l'Education de la francophonie tenue à Libreville, au Gabon, l'an dernier, et plus récemment à la conférence de Niamey, au Niger. Pour que des "invitations" soient adressées directement au Québec dans ces deux cas, il fallut, en somme, que de l'étranger (de Niamey et Libreville, mais en réalité de l'Elysée, grâce surtout aux bons soins de MM. de Gaulle, maintenant parti, Foccart, homme ... d'oeuvres déjà limogé par M. Poher, Rossillon, Dorin, Desfosses et compagnie, sans oublier les exécutants officiels dévoués, Debré, de Lipkosky et de Murville) on interprétât la constitution canadienne. Ce qu'on essaya de faire aussi quand on tendit la plume, à Paris, à M. Jean-Guy Cardinal.

Car c'est là qu'est le hic. Si l'on lit bien le paragraphe 2 de l'article 5 du projet soumis à la Commission du Droit International sur la question des traités à Vienne, on constate que ce texte ne dit pas spécifiquement qui, lorsque ceci n'est pas indiqué dans une constitution, peut décider si un Etat membre d'une union fédérale peut conclure un traité avec un pays étranger. Pareil texte peut donc entraîner le risque "grave et inadmissible", ont affirmé plusieurs pays, de voir une capitale étrangère interpréter la constitution d'une union fédérale.

En somme, c'est ce qui a été tenté par la France avec le Québec, ce qu'Ottawa a refusé d'accepter, faisant même parvenir une note de "regrets" au gouvernement de Paris.

A Vienne, le mois dernier, les seuls pays qui ont épousé la thèse de Paris ont été ses anciennes colonies "libres" (pas toutes, certaines ont osé s'abstenir de voter), notamment le Gabon, la Côte-d'Ivoire (forcée de refuser du blé canadien gratuit il n'y a pas si longtemps), de même que les pays arabes, ce qui n'est pas... un mystère, dirait-on à Tel-Aviv. Les pays communistes étaient aussi de la même ... fournée mais pour une raison qui est du plus haut comique: Moscou voulait épauler la présence de deux "Etats" de l'URSS, l'Ukraine et la Biélorussie, aux Nations-Unies à titre d'Etats indépendants. On sait cependant ce que pareille indépendance vaut en pratique au sein d'une fédération du genre de l'URSS quand un pays voisin et "allié" comme la Tchécoslovaquie n'est même pas capable de modifier sa formule économique sans se faire amicalement envahir. Si les Ukrainiens apprennent un jour qu'ils ont le droit de conclure seuls des traités, ça va sûrement leur faire un velours historique sur l'épine dorsale.

Contre la thèse française (du moins celle qui prévalait jusqu'au 28 avril) et celle de Moscou, on assista à Vienne au rassemblement de toutes les grandes unions fédérales du monde: Etats-Unis, Grande-Bretagne, Inde, Canada, Mexique, Australie, Suisse, Brésil, Allemagne Fédérale, etc., tiens, pourquoi ne pas donner au complet cet éloquent alignement:

Pour le maintien du deuxième paragraphe de l'article 5: Afghanistan, Algérie, Bulgarie, Biélorussie, Afrique Centrale, Cuba, Tchécoslovaquie, Equateur, France, Gabon, Hongrie, Indonésie, Iraq, Côte-d'Ivoire, Kuwait, Madagascar, Monaco, Mongolie, Maroc, Népal, Pologne, Roumanie, Syrie, Turquie, Ukraine, URSS, République Arabe Unie et Yougoslavie.

Contre, Argentine, Autriche, Australie, Barbade, Belgique, Bolivie, Brésil, Birmanie, Cameroun, Canada, Ceylan, Chili, Chine (Formose), Colombie, Congo, Costa Rica, Chypre, Danemark, République Dominicaine, El Salvador, Ethiopie, République Fédérale Allemande, Ghana, Grèce, Guatemala, Guinée, Honduras, Inde, Iran, Irlande, Israël, Italie, Jamaïque, Japon, Libéria, Liechtenstein, Luxembourg, Malaysia, Malte, Mauritanie, Mexique, Hollande, Nouvelle-Zélande, Nigeria, Norvège, Pakistan, Panama, Pérou, Philippines, Portugal, Corée, Vietnam, San Marino, Singapour, Afrique-du-Sud, Espagne, Suède, Suisse, Trinidad et Tobago, Grande-Bretagne, Etats-Unis, Uruguay, Venezuela et Zambie.

Pareil vote constitue donc un désaveu d'une interprétation du droit international que tentait de mousser la France, ceci par la quasi-totalité des pays du monde libre et d'ailleurs, on se demande si de Gaulle parti, la France voudra continuer son petit jeu.

Ceci démontre également que la diplomatie canadienne a su éveiller l'opinion mondiale et bien plaider une cause qui n'intéressait que peu de pays il y a un an encore, comme par exemple la Suisse, qui a soudain saisi toutes les implications de la situation.

Le récent vote de Vienne ne cause aucun préjudice à des Etats membres d'unions fédérales qui auraient déjà, en vertu de *constitutions existantes ou encore de "traités parapluies"* comme Ottawa en a déjà conclu un avec Paris il y a quelques années dans les domaines de la culture et de l'éducation, la permission de signer certaines ententes. Incidemment, à Vienne, de nombreux pays ayant un système fédéral ont appris l'existence de l'accord-cadre signé par Paris et Ottawa il y a trois ans et se proposent de recourir à un tel mécanisme si l'occasion s'en présente, chez eux. Parmi les pays qui s'opposaient le plus au maintien de 2e paragraphe de l'article 5 se trouvaient des nouvelles unions fédérales qui redoutaient que l'on essaie, en recourant à des trucs du genre de ceux du général de Gaulle, de diviser et même de détruire un jour leurs fédérations.

Dans les discours qui ont précédé le vote, l'on s'en est tenu, à Vienne, à discuter strictement les points de droit international en cause, le Canada s'abstenant par exemple de donner des exemples précis d'interprétation "étrangère" d'une constitution et n'allant pas plus loin que de dire: ça peut arriver. Le chef de la délégation italienne, sans vouloir faire de l'humour a-t-on assuré, a noté que le seul (autre, sans doute...) précédent historique d'intervention connu remontait à quelque 400 ans, alors qu'une principauté italienne avait voulu signer un traité avec la France.

Le Canada, pour sa part, ne s'est pas opposé, à Vienne, au paragraphe 1 de l'article 5, signalant qu'il a déjà démontré, au moyen d'accords-cadres, qu'il est prêt à permettre la signature de certaines ententes entre ses provinces et d'autres pays, mais Ottawa a qualifié le paragraphe 2 de "dangereusement incomplet", surtout pour un pays comme le nôtre où "une bonne partie de la constitution n'est pas écrite" et où il y a un "danger réel" que tel paragraphe "mène à la pratique totalement inacceptable d'un pays étranger essayant de s'arroger le droit d'interpréter notre constitution", un "document qui ne peut s'interpréter qu'à l'intérieur du pays concerné". Les pays qui ont favorisé le maintien du paragraphe 2 ont commodément "oublié" cet argument de l'interprétation d'une constitution par des "étrangers".

L'Australie (comme le Canada) a indiqué que le texte proposé ne disait pas qui devrait être tenu responsable de toute violation d'un traité (l'Etat ou l'union fédérale) ou à qui on pourrait se plaindre en cas de litige. (Entre nous, supposons que M. Cardinal ait signé un vrai traité à Paris et qu'un jour, la France réclame vainement quelques dizaines de millions de dollars pour un programme de satellites, où devrait-on s'adresser, en dernier ressort?). Pour l'Inde, un membre d'une union fédérale peut signer des traités, mais sous la responsabilité fédérale car il s'agit d'une "question qui relève uniquement des lois internes de chaque fédération": Il serait donc "peu sage de codifier aussi prématurément (qu'on veut le faire avec le paragraphe 2) le droit international avec un texte qui peut permettre à un tiers pays d'interpréter la constitution d'une union fédérale, ce qui pourrait ouvrir la voie à des interventions très graves". L'Uruguay: "Il est impensable pour un pays de laisser à un autre le droit d'interpréter sa constitution."

Les Etats-Unis ont abondé dans le même sens, affirmant qu'on n'a "apporté aucun argument de valeur indiquant que le paragraphe 2 évitera des difficultés, mais qu'au "contraire on a démontré que cet article pourrait en créer à plusieurs pays dans sa forme actuelle" quand des tiers pays voudront interpréter une constitution, qui "est un document interne dont l'interprétation doit tomber exclusivement sous la juridiction des tribunaux des Etats fédéraux". La République Fédérale Allemande ne veut pas elle non plus d'intervention étrangère et n'accepterait le droit de signer des traités pour un membre d'une union fédérale que si la constitution de cette union le stipule ou si le pouvoir central y consent.

Pour revenir au Canada, celui-ci a soutenu que le paragraphe 2 assume "fort incorrectement" que la constitution de chaque pays parle par elle-même et que cela suffit à trancher la question. Il y a des cas où les constitutions sont amendées à la suite de décisions rendues par des tribunaux. Ailleurs, comme au Canada, une bonne partie de la constitution n'est pas écrite. La tradition constitutionnelle est alors aussi importante que les textes. Et "notre expérience confirme que dans un pays comme le Canada, qui a accédé à son indépendance au cours d'une évolution graduelle de sa tradition constitutionnelle, dont une partie n'est pas écrite, la possibilité qu'un autre pays puisse interpréter sa constitution comporte un réel danger."

Le vote du 28 avril à Vienne et les interventions dont j'ai donné ci-haut quelques résumés indiquent que le fameux paragraphe 2 de l'article 5 d'un projet de l'ONU sur les traités internationaux, qui est disparu, peut-être symboliquement, le jour où le général de Gaulle abandonnait la présidence française, n'est pas près de revenir à la surface.

Mais si MM. Debré et de Murville n'avaient été (sait-on jamais?...) que des opportunistes bientôt prêts à en suivre servilement "un autre" dans une direction totalement opposée, abandonnant ses "claques" (à tapis rouge) à la main, notre sém... M. Jean-Guy Cardinal, que devrait faire celui-ci ? Il pou... toujours s'adresser à Cuba, au Gabon ou encore à l'Ukraine, en toute indépendance...

004155

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Legal Division/J.S. Stanford/bp

file ✓
div. diary
diary
J.S.

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO / À: Mr. L.S. Clark

FROM / De: Mr. J.S. Stanford

REFERENCE / Référence: Your memorandum of April 22, 1969

SUBJECT / Sujet: ILC draft articles on Representatives of States to International Organizations

SECURITY / Sécurité: UNCLASSIFIED

DATE: May 28, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes

DISTRIBUTION

With respect to the references to the proposed treaties convention in the ILC draft articles and commentary on Representatives of States to International Organizations (articles 1 and 14), the texts of the relevant articles as finally incorporated in the 1969 Vienna Convention on the Law of Treaties are identical to those upon which ILC commentary was based. Certainly there is nothing in this aspect of the draft articles which requires substantive comment by the Canadian Government.

2. While the subject of the privileges and immunities of representatives of states to international organizations remains to be dealt with in further draft articles to be prepared by the ILC, much of the material in the first 21 draft articles is based upon the draft articles on special missions and on the 1961 and 1963 Vienna Conventions. You may wish to consider the special missions aspect yourself and to discuss the privileges and immunities aspect with Mr. Auger. You may also wish to provide copies of the ILC draft articles and commentary to our U.N. Permanent Missions in New York and Geneva and to our Permanent Representative to UNESCO in Paris for comments. The results of these studies should indicate whether it is desirable for Canada to submit substantive observations on the ILC draft articles.

J. S. STANFORD

J.S. Stanford

004156

Ext. 407D/Bil.
(Admin. Services Div.)

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20-3-1-6

FOR ACTION
POUR CONSIDÉRATION
IMMÉDIATE

SECURITY – SÉCURITÉ

DATE May 25/65

TO – À

Mr Stafford / Mr Rawlinson

☐ SIGNATURE
☐ SEE ME / ME VOIR
☐ DRAFT REPLY / PROJET DE RÉPONSE
☐ COMMENTS / COMMENTAIRES

I'm not sure if we need send out a report in addition to the letter sent on Bulletin 5(2) 7 (b) Comments on the Law of Treaties. I'm preparing a piece to the Bulletin at the request of the USSR. We should inform. What do you think?

JS Jaque

SIGNATURE

004157

EXT 574/BIL EXTERNAL AFFAIRS – AFFAIRES EXTÉRIEURES

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Mr. Beesley

Mr Stanford

I.6 I'm not as "hard
20-3-1-6
pressed" as everybody seems
to assume and can send out
a circular document along
the lines Wershof suggests
if you think it would be
worthwhile, though I am
inclined to share the doubts
expressed in your note.

Let's not

28/5

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20-3-1-6
37 | 2C

Reply / Stanford

Please put on hard priority. Perhaps Barry Carter could do this (We must send Wershof a Legal Division staff lawyer) JB done

file 20-3-1-6
JH 29/5

R E S T R I C T E D

FM LDN MAY28/69 NO/NO STANDARD

TO EXTER(FOR LEGAL DIV DE WERSHOF)2269 PRIORITY

INFO TT COPEN DE HAGUE

LAW OF TREATIES CONFERENCE

TED LEE REMARKED THAT IT WOULD BE USEFUL TO A NUMBER OF MISSIONS TO LEARN PROMPTLY RESULTS OF CONFERENCE. I REALIZE HOW HARD PRESSED STANFORD IS BUT PERHAPS YOU WOULD CONSIDER SENDING EITHER A CIRCULAR DOCU OR MULTIPLE LET ON FOLLOWING LINES. IT COULD ENCLOSE TEXT OF CONVENTION AND TEXT OF RESLN RE ALL-STATES(AND POSSIBLY FINAL PRESS RELEASE SUMMARIZING CONVENTION). COVERING LET COULD BE VERY SHORT AND PERHAPS UNCLAS; IT COULD SIMPLY REPORT ADOPTION OF CONVENTION AND SOVIET VOTE THEREON AND CALL ATTN TO RESLN LIKELY TO BE INTRODUCED AT UNGA. I RETURN TO COPEN TONIGHT.

3/28/5

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Mr Bradley
Stethem

20-3-1-6
37

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U N C L A S S I F I E D

FM VIENN MAY27/69 NO/NO STANDARD

TO EXTEROTT 468

INFO PRMNY

REF OURTEL 464 MAY22

LAW OF TREATIES CONFERENCE

FINAL ACT OF CONFERENCE SIGNED MAY23 BY ALL INCLUDING CDA.

CONVENTION ITSELF SIGNED BY 32 GOVTS NOT/NOT INCLUDING ANY

GREAT POWERS. ONLY WEO COUNTRY SIGNING CONVENTION WAS FINLAND

WERSHOF

004160

6.27.5

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J. A. BEESLEY

EXTERNAL AFFAIRS | AFFAIRES EXTÉRIEURES

TO: M. Bousfield
FROM REGISTRY
JUN 4 1969
FILE CHARGED OUT
L

TO / À: The Under-Secretary of State for External Affairs, OTTAWA, Canada.

FROM / De: The Office of the High Commissioner for Canada, GEORGETOWN, Guyana.

REFERENCE / Référence: Your Letter L-(M)-559 of May 2, 1969

SUBJECT / Sujet: Law of Treaties Conference--Article 5

SECURITY / Sécurité: CONFIDENTIAL

DATE: May 27, 1969

NUMBER / Numéro: 644

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

ENCLOSURES / Annexes: 2

DISTRIBUTION

As requested I conveyed to The Honourable S.S. Ramphal, Attorney General and Minister of State responsible for External Affairs the formal thanks and appreciation of the Canadian Government for Guyana's support on the vote of the Article 5(2) item in the plenary of the Law of Treaties Conference at Vienna.

2. I have been asked to convey to you the gratitude of the Government of Guyana for the assistance given to it by Mr. Wershof and the Canadian Delegation regarding Venezuela's attempts to secure the deletion of Article 42(b) of the draft convention.

3. Copies of the exchange of correspondence with Mr. Ramphal .... are attached.

High Commissioner.

Ext. 407B/Bil.

18.5.6

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Received
JUN 5 1969
In Legal Division
Department of External Affairs

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J. A. Dougan fonds

FILE: 20-3-1

CONFIDENTIAL

Georgetown, May 27, 1969.

(Dear Sonny,)

I wish to thank you for your letter of May 23 concerning Venezuela's efforts to secure the deletion of Article 42(b) of the Draft Convention on the Law of Treaties. I am conveying to my Government the gratitude of the Government of Guyana for the assistance given to Guyana by Ambassador Wershof and the Canadian Delegation.

As you may know, the Law of Treaties Conference at the Plenary Session on April 28 voted to delete Paragraph 2 of Article 5 of the Draft Convention on the Law of Treaties. This was of particular concern to us because if Paragraph 2 had been retained in the final text it could have led to the practice of outside states purporting to interpret for themselves the constitution of federal states.

I have been asked to convey to the Government of Guyana the formal thanks and appreciation of the Canadian Government for your support on the vote of Article 5(2) item in the Plenary.

With very best regards,

Yours sincerely,

J. A. DOUGAN

J.A. Dougan,
High Commissioner.

The Honourable S.S. Ramphal, Q.C., C.M.G., M.P.,
Attorney General and Minister of State,
Ministry of External Affairs,
Guyana House Annexe,
Georgetown.

004163

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Cable Address:
EXTERNAL GUYANA.

MINISTRY OF EXTERNAL AFFAIRS,
Carmichael Street,
Georgetown,
Guyana.

EA: 1/10/18 II

23 May, 1969.

Dear John,

The United Nations Conference on the Law of Treaties in Vienna is about to come to a close. You are aware of the grave problems that the Conference posed for Guyana as a result of Venezuela's efforts to secure the deletion of article 42(b) of the Draft Convention. I am sure that you also know that the Conference rejected the Venezuelan proposal by an overwhelming majority. This has been a matter of great importance to us, and our work in Vienna was greatly helped by the special assistance and support that we received from the Leader of the Canadian Delegation, Ambassador Wershof.

I have recently telegraphed Sir John Carter, who is leading our delegation in my absence, asking him to pass a message of thanks from me to Ambassador Wershof. The message was in the following terms -

> "AS FINAL SESSION OF VIENNA CONFERENCE DRAWS TO A CLOSE I WISH AS LEADER OF GUYANA DELEGATION AND ON BEHALF OF GUYANA GOVERNMENT TO EXPRESS THANKS TO YOU AND YOUR DELEGATION FOR THE GENERAL SUPPORT GIVEN TO OUR DELEGATION AND FOR YOUR SPECIAL HELP TO AND CO-OPERATION WITH SIR JOHN CARTER AND DUKE POLLARD. I LOOK FORWARD TO OUR CONTINUING WORK TOGETHER IN THESE IMPORTANT AREAS OF MUTUAL INTEREST AND CONCERN. WARMEST PERSONAL REGARDS."

I should be most grateful if you would convey to your Government the gratitude of the Government of Guyana for the assistance given to us by Ambassador Wershof and the Canadian Delegation.

With every good wish,

Yours sincerely,

(S.S. Ramphal)
Attorney General & Minister of State.

H.E. John A. Dougan,
Canadian High Commission,
Bank of Guyana Building,
GEORGETOWN.

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MAY 21 1969

FILE CHARGED OUT

TO:

CONFERENCIA INTERNACIONAL DE PLENIPOTENCIARIOS

SOBRE EL DERECHO DE LOS TRATADOS

DELEGACION DE MEXICO

INTERVENCION DEL LIC. SERGIO GONZALEZ GALVEZ, REPRESENTANTE ALTERNO DE MEXICO. 28-IV-69.

20-3-1-6

37

Señor Presidente:

Después de la clara explicación que ha hecho de los problemas que presenta el artículo 5 el distinguido Representante de Canadá, mi Delegación congruente con la posición que adoptó sobre el particular en la primera sesión, apoyará la eliminación del artículo 5 aunque no por las mismas razones en que se funda la muy comprensible actitud canadiense.

México considera que doctrinariamente no es necesario ni conveniente incluir una norma sobre la capacidad para celebrar tratados; parecería superfluo declarar expresamente esa capacidad que es más bien una consecuencia natural, por así decirlo, un atributo esencial y obligado de la personalidad internacional, sin olvidar que ese elemento está implícito en los artículos 1 y 2 del tratado.

Por otra parte, debemos reconocer el peligro que entraña para algunos Estados la inclusión del párrafo dos del artículo, aunque su eliminación no consideremos afecte la situación de aquellos países que sí permiten a sus entidades celebrar tratados bajo ciertas circunstancias.

Por esas razones, señor Presidente, México apoya la eliminación del artículo en su totalidad, sin embargo consideramos que el párrafo dos del artículo 5 tiene los más serios inconvenientes y, para tal efecto, secunda la propuesta para que los dos párrafos del mismo se voten en forma separada.

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DEPARTMENT OF THE SECRETARY OF STATE
TRANSLATION BUREAU
FOREIGN LANGUAGES DIVISION

CANADA

SECRÉTARIAT D'ÉTAT
BUREAU DES TRADUCTIONS
DIVISION DES LANGUES ÉTRANGÈRES

Jub 20-3-1-6a

YOUR NO. VOTRE N°	DEPARTMENT MINISTÈRE	DIVISION/BRANCH DIVISION/DIRECTION	CITY VILLE
memo May 22	External Affairs	B. MacWhinney Legal Div.	Ottawa
OUR NO. NOTRE N°	**LANGUAGE LANGUE**	**TRANSLATOR (INITIALS) TRADUCTEUR (INITIALES)**	**DATE**
0897	Spanish	J M F	27-5-69

INTERNATIONAL CONFERENCE OF PLENIPOTENTIARIES

ON THE LAW OF TREATIES

Mexican Delegation

Statements made by Sergio Gonzalez Galvez (lawyer), alternate representative of Mexico. 28-IV-69

Mr. Chairman:

Following the clear explanation made by the distinguished representative from Canada with respect to the problems presented by Art. 5, my delegation, in keeping with the position it had adopted in this connection ~~since~~ at the first session, will support the elimination of Art. 5 although not for the same reasons on which the understandable Canadian attitude is based.

Mexico considers that from a doctrinary point of view it is not necessary nor ~~suitable~~ advisable to include a standard with respect to the capacity to enter into treaties; it would appear superfluous to expressly ~~declare~~ state this capacity which is more of a natural consequence, that is, an essential attribute and obligation of the international parties, without disregarding that same is implicit in Arts. 1 and 2 of the treaty.

../2

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SOS-200-10-31

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On the other hand, we should recognize the danger involved for some states with regard to the inclusion of paragraph two of the article, although we do not consider its elimination would seriously affect the situations of those countries which do permit their ~~Governments~~ "entities"* to enter into treaties under certain circumstances.

For these reasons Mr. Chairman, Mexico supports the elimination of the article in its entirety, however we consider that paragraph two of Art. 5 has the most serious ~~inconveniences~~ objections, and to this effect, we second the motion that both paragraphs of same be voted on separately.

* **translator's note: this would refer to the Canadian Provinces.**

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TO — À: Legal Division

DATE: May 29, 1969

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SEEN BY THE MINISTER

File 20-3-1-6
37

CONFIDENTIAL

May 26, 1969

MEMORANDUM FOR THE MINISTER

U.N. Draft Convention on Law of Treaties: Settlement of Disputes

You will recall that in a Memorandum of May 20, 1969 we informed you of a compromise formula put forward by the Afro-Asian Group at the Law of Treaties Conference in Vienna which sought to resolve the three major issues arising at the Conference, namely: (a) the peaceful settlement of disputes problem; (b) the right to terminate or suspend treaties on the basis of provisions contained in Part 5 of the Treaty; and (c) the "all states" problem (essentially the East German question). As you are aware, we have been particularly concerned to ensure that effective procedures for the compulsory settlement of disputes by means of third party adjudication are incorporated in the final draft Convention on the Law of Treaties.

Our delegation to the Conference informed us yesterday (copy of telegram 458 from Vienna attached) that the Afro-Asian compromise formula was adopted with only slight revisions, and in the face of strong Communist objections, by a vote of 61 (Canada, U.K. and U.S.A.)--20--26 (France). The final proposal altered somewhat the two contentious elements of the original package: the declaration on universal participation in the Convention on the Law of Treaties and the provisions for compulsory adjudication and conciliation of disputes. On the first, the change was designed only to give greater encouragement to the idea that the United Nations General Assembly should consider inviting otherwise non-eligible states to become parties to the Convention. The German Delegation did not object to the declaration and most of the Western group of countries accepted it since it would not prejudice the rights of any states in the General Assembly to decide on the merits any specific proposal for an invitation. On the second, under the new formula compulsory arbitration by choice of parties would be an alternative to compulsory adjudication by the International Court of Justice of disputes under Articles 50 and 61 which you will recall provide that a treaty is void if it conflicts with peremptory norms of general international law.

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The Convention as a whole was adopted by a vote of 79-1-19. Among the States voting in the affirmative along with Canada were U.S.A., U.K. and Yugoslavia. Somewhat surprisingly France voted NO and abstentions included the Soviet bloc, Australia, South Africa, Turkey, U.A.R. and a few French African States. The U.S.S.R. said it would not sign the Convention in its present form. Given the substantial role played by the U.S.S.R. representative on the International Law Commission (Tunkin, the U.S.S.R. legal adviser) in the drafting of the Convention, this puts the U.S.S.R. in an embarrassing position.

While some western states also voted against the Convention, they did so because they did not consider that the Convention went far enough in laying down compulsory settlement procedures. Thus, while the final outcome on this issue was by no means a complete victory for the West, it was a substantial defeat for the Eastern Europeans on a matter to which they have attached great importance, namely their opposition to third party compulsory settlement procedures, which they look on as an infringement of sovereignty. It is to be hoped that the Eastern Europeans will find some way of accommodating themselves to the situation, as it is important for the West and the international community as a whole that the Eastern Europeans accept the same principles of international law as are accepted by the rest of the international community.

France was the only state to vote against the Convention as a whole.

M.C.

Document disclosed under the *Access to Information Act* -
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C O N F I D E N T I A L

FM VIENN MAY22/69

TO EXTEROTT 458 IMMED

INFO TT PRMISNY DE OTT

REF OURTEL 451 AND YOURTEL L631 MAY21

LAW OF TREATIES:DISPUTES SETTLEMENT PACKAGE DEAL

FROM WERSHOF:

WHAT HAPPENED YESTERDAY AFTERNOON WILL BE MORE READILY UNDERSTANDABLE TO COLLEAGUES OLD ENOUGH TO REMEMBER MOVIE SERIALS IN WHICH THE HEROINE IS TIED TO RAILWAY TRACK BUT IS RESCUED BY THE HERO ONE SECOND BEFOR THE ROARING LOCOMOTIVE WOULD KILL HER.

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3.LATE AFTERNOON ELIAS AND HIS REVISED GROUP(GHANA IVORY COAST KENYA KUWAIT LEBANON MOROCCO SUDAN TUNISIA AND TANZANIA) PRESENTED A REVISED VERSION(L.47/REV.1).THIS PLAN CHANGED SOMEWHAT TWO ELEMENTS OF PACKAGE(A)DECLARATION ON UNIVERSAL PARTICIPATION IN CONVENTION ON

...2 13/22/5

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LAW OF TREATIES AND(B) NEW ARTICLE RE PROCEDURES FOR ADJUDICATION AND CONCILIATION OF DISPUTES UNDER PART V.

4.THE CHANGE IN(B)WAS SIMPLY TO MENTION COMPULSORY ARBITRATION(BY CHOICE OF PARIES)AS AN ALTERNATIVE TO COMPULSORY ADJUDICATION BY ICJ OF DISPUTES UNDER ARTS 50 AND 61(ARTS RELATING TO JUS COGENS). FOR OTHER ARTS IN PART V THERE IS ONLY COMPULSORY CONCILIATION.

5.CHANGES IN(A)WERE DESIGNED TO GIVE GREATER IMPETUS AND ENCOURAGEMENT TO IDEA THAT UNGA SHOULD CONSIDER(PURSUANT TO QUOTE VIENN UNQUOTE SIGNATURE CLAUSE IN TREATIES CONVENTION)INVITING OTHERWISE NON-ELIGIBLE STATES TO SIGN.FULL TEXT OF REVISED DECLARATION IS GIVEN IN SEPARATE TEL.

6.GERMAN DEL DECIDED NOT/NOT TO OBJECT TO ITS FRIENDS VOTING FOR REVISED DECLARATION SO LONG AS THEY MADE CLEAR THAT DECLARATION DID NOT/NOT PREJUDICE RIGHT OF THEIR GOVTS TO DECIDE ON MERITS ANY SPECIFIC PROPOSAL FOR AN INVITATION THAT MAY BE PRESENTED TO UNGA.UK AND USA DECIDED TO ACCEPT REVISED PACKAGE AND MOST WEO INCLUDING CDA DID LIKEWISE.

7.COMMUNISTS SPOKE STRONGLY AGAINST COMPULSORY NATURE OF NEW ARTICLE AND NON-COMPULSORY NATURE OF DECLARATION BUT(FOR REASONS NOT/NOT YET CLEAR)EITHER FAILED TO RENEW VERY STRONG PRESSURES ON SPONSORS OR FAILED TO MAKE THEM EFFECTIVE.ELIAS IN PARTICULAR MUST HAVE DECIDED NOT/NOT TO SUBMIT AGAIN TO SOVIET PRESSURE.

8.PACKAGE WAS VOTED IN ONE PIECE AND ADOPTED 61-20-26.FRANCE VOTED NO/NO.COMPLETE VOTE LIST IN SEPARATE TEL.

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9.BEFORE VOTE CDA MADE SHORT EXPLANATION STRESSING(1)COMPLETE LIBERTY OF GOVTS TO DECIDE ATTITUDE TO ANY SPECIFIC PROPOSAL THAT MAY BE MADE TO UNGA TO INVITE A COUNTRY TO SIGN CONVENTION(OBVIOUSLY WHAT EVERYONE MEANT WAS EAST GERMANY);(2)COMPULSORY NATURE OF ADJUDICATION UNDER ARTS 50 AND 61;(3)INADEQUACY OF NEW ARTICLE AS REGARDS DISPUTES UNDER OTHER ARTS OF PART V.

10.FOLLOWING THESE SURPRISING DEVELOPMENTS REMAINING ITEMS IN DRAFT CONVENTION WERE DISPOSED OF AND THIS MORNING(THUR)CONVENTION AS A WHOLE WILL BE PUT TO VOTE.USA AND UK BOTH INTEND TO VOTE YES AND CDA WILL DO SO PURSUANT TO PARA 3 YOURTEL L625 MAY20.

11.REF PARA2 YOURTEL L625 ART SAYING CONVENTION IS NOT/NOT RETROACTIVE WAS ADOPTED BY PLENARY.•••••••••

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O/SSEA
O/USSEA
Parl. Sec.
Press Office
European Div.
U.N. Div.
File ✓
Diary
Div. Diary

Legal Division/J.A.Beesley/B.Mawhinney/ltl

File No. 20-3-1-6

RETURN TO LEGAL DIV. DCO

CONFIDENTIAL

May 26, 1969

20-3-1-6
371

MEMORANDUM FOR THE MINISTER

U.N. Draft Convention on Law of Treaties: Settlement of Disputes

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M. CADIEUX

M.C.

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CC

Pers Opp Copenhagen 16/6/69

TO: M Stanford
FROM REGISTRY
JUN 17 1969
FILE CHARGED OUT
TO:

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

RESTRICTED

TO / À	Under-Secretary of State for External Affairs, Ottawa	SECURITY / Sécurité	RESTRICTED
FROM / De	Office of the High Commissioner, Colombo, Ceylon	DATE	May 25, 1969
REFERENCE / Référence	Your Letter L-(M)-559 of May 2, 1969	NUMBER / Numéro	172
SUBJECT / Sujet	Law of Treaties Conference--Article 5	FILE / DOSSIER OTTAWA	20-3-1-6
		MISSION	20-3

ENCLOSURES / Annexes

DISTRIBUTION

We were pleased to learn of Canada's success at the Law of Treaties Conference at Vienna reported in your letter under reference. We are especially grateful for the account you provided us of the activities surrounding the outcome of the vote to delete Paragraph 2 of Article 5 of the draft convention on the Law of Treaties. More often than not, when a Mission's assistance has been sought in the past to make representations on a particular issue, no further information is received as to its ultimate disposal and it is gratifying to us in this case to have been kept fully informed.

Office of the High Commissioner

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Ext. 407B/Bil.
(Admin. Services Div.)

16.13.6

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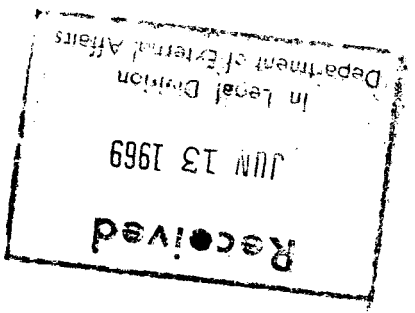

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For Bermuda Conference

ACTION COPY

File 20-3-1-6
37

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EXTERNAL OTTAWA

FROM EMBASSY IX VIENNA IMMEDIATE REF YOURTEL G 158 MAY 23

SUB CONSTITUTIONAL REFORM ~~STANDOXXX~~ STANFORD WILL SPEND ~~MXX~~ SUNDAY MAY 25 IBERN TO BRIEF WELD HE WILL RETURN OTT MONDAY ~~MXXX~~ MAY 26 AT 1725

COMCENTRE OTT PLEASE INFORM MRS TANFORD PHONE 224-7878 SOONEST OF STANFORDS NEW ARRIVAL TIME

Done - Mrs. Stanford phoned.

205P EDT

2/26/31

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Legal Division Machtung

AMBASSADE DE FRANCE
AU CANADA

Ottawa, le to be filed/Plebs

S/Sgd O.R.

00777

File 20-3-1-6

L'Ambassade de France présente ses compliments au Ministère des Affaires Extérieures et a l'honneur de lui confirmer que la délégation française à la Conférence des Nations Unies sur le droit des traités qui doit se tenir à Vienne du 9 avril au 21 mai présidera le groupe des pays occidentaux et autres Etats à la conférence pendant la première partie de celle-ci. La délégation française à l'honneur d'inviter les membres de la délégation canadienne à participer à une première réunion qui aura lieu le mercredi 9 avril à 11 heures du matin à la Hofburg (Rittersaal) à Vienne.

L'Ambassade de France saisit cette occasion pour renouveler au Ministère des Affaires Extérieures les assurances de sa très haute considération./.

Ministère des Affaires Extérieures
Hope Building
63, Sparks
OTTAWA

14/9/4 (Legal)

9.4.4 (US)

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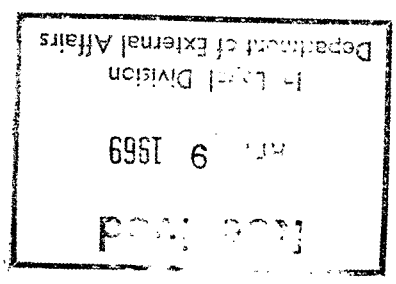

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Hope Building
63, Sparks
OTTAWA

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EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

MEMORANDUM

TO / À: File

FROM / De: J.S. Stanford

REFERENCE / Référence: Mr. Robertson's memorandum to file of May 19

SUBJECT / Sujet: Law of Treaties - Article 62 bis: Possible Compromises

SECURITY / Sécurité: RESTRICTED

DATE: May 23, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes

DISTRIBUTION

Following the failure of Article 62 bis to secure the necessary two-thirds majority when it was put to the vote on May 16, the western states principally concerned expressed to representatives of the Afro-Asian group the view that, as 62 bis had failed of adoption largely due to the absence of general Afro-Asian support, it was up to the representatives of that group to put forward a proposal for a compromise settlement if they wished to secure a Convention generally acceptable to the Western group. Extensive discussions among representatives of the various groups took place over the weekend of May 17-18 and within the Afro-Asian Group on May 19-20. The result was a package proposal put forward by Ghana, Ivory Coast, Kuwait, Lebanon, Nigeria, Senegal and Tanzania, and appearing in document A/CONF.39/L.47. This proposal contained three elements: first, a declaration on universality; second, a proposed new Article 62 bis; and third, a resolution on the expenses of conciliation procedures.

2. This proposal was discussed at length at a meeting of the Western group on Tuesday afternoon, May 20. With respect to the declaration on universality, the German (FRG) representative indicated that while his delegation had certain misgivings about the declaration, especially since "universality" had acquired a particular connotation in the context of the East German question, and would hope to secure some drafting changes, it was not opposed to the declaration in principle and would not object to its friends voting for it, although the FRG itself would abstain. It was stressed that the Chairman of the Western Group should make clear to the Chairman of the Afro-Asian group that support by Western governments for the declaration in no way implied an undertaking that these governments would support any measures which might be proposed to the General Assembly pursuant to the resolution.

3. With respect to the proposed new Article 62 bis the group was not unanimous. The French representative said he considered the package insufficient to make the Convention acceptable to France. The Netherlands representative, among others, suggested that efforts be made to extend the new article to Articles 49 and 59. The Chairman expressed his view, however, that the proposal went as far as the Afro-Asians would go. He reported that the Chairman of the Afro-Asian group had indicated about 25 votes from his

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Ext. 407A/Bil.
(Admin. Services Div.)

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group for the package. (This compares with 19 Afro-Asian votes, out of 47 members, for 62 bis in its earlier form.) It was generally agreed that operative paragraph 1 would have to be redrafted to make clear that the jurisdiction of the ICJ was compulsory and that certain other drafting changes were desirable. On the assumption, however, that the Afro-Asian proposal was intended to provide for compulsory jurisdiction of the ICJ on Articles 50 and 61, the USA and UK representatives indicated their views that the package was preferable to a Convention with no 62 bis and should therefore be supported. There appeared to be tacit acquiescence by a majority of the Western group in this position.

4. While the Canadian delegation was prepared to join the USA and UK in supporting the package, the question of how to vote on the Convention as a whole if the package were adopted involved additional considerations. Mr. Wershof therefore telephoned Mr. Beesley prior to the evening session on May 20 and spoke from the attached notes. Mr. Beesley's view was that Canada should support the package and, if it were adopted, vote for the Convention as a whole if either the USA or the UK did likewise. These instructions were subsequently confirmed in Ottawa's telegram L625 of
--- May 20 (copy attached).

5. The package did not come up for discussion at the evening meeting on May 20. Following that meeting, the Soviet delegate met with Afro-Asian representatives and, at the conclusion of that meeting at about 1 a.m., the Chairman of the Afro-Asian group informed Western representatives that the package proposal no longer had sufficient support from his group. The position on Wednesday morning, May 21, was therefore as described in our
--- telegram 451 of May 21 (copy attached).

6. Immediately prior to the commencement of the afternoon session, a group of French Africans circulated in draft form a new revised 62 bis
--- (text attached) which differed from the 62 bis contained in the "package" deal mainly in that it provided for arbitration rather than compulsory reference to the ICJ in respect of Articles 50 and 61, retaining compulsory conciliation for the other articles of Part V. This proposal was unacceptable to the major members of the Western group on the ground that, whereas the "package" 62 bis had given us compulsory reference to the ICJ in return for deletion of most articles in Part V from the compulsory settlement procedure, the French African proposal removed that element in the compromise 62 bis which had been a concession to the western position, namely reference to the ICJ on Articles 50 and 61. The views of the major western powers were made known to the French Africans and their proposal was never formally tabled.

7. Similarly, the efforts of the Latin American group, which met at length both before and after the morning session of the Plenary on May 21, did not produce any new compromise proposal.

8. Subsequently, during the course of the afternoon session, the Afro-Asian proposal which, as indicated above, had been considered in the

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morning to be dead, was revived by its principal sponsors with certain revisions (A/CONF.39/L.47/Rev.1) which, while significant, did not affect in any essential way the substance of the package. Hurried informal consultation during the course of the brief debate indicated the FRG could live with the revised resolution and that it would be supported by the USA and the UK, but opposed by France and the USSR. Details of the revision and of events during the course of the afternoon which led to the adoption of the proposed package are more fully set out in our telegram 458 of May 22 (copy attached), as is the Canadian declaration concerning the understanding upon which it supported the package.

J.S. Stanford

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NOTES FOR TELEPHONE CONVERSATION

WERSHOF - BEESLEY, MAY 20

With regard to Part V disputes and final clauses, Afro-Asians have tabled compromise package with following elements:

1. A new 62 bis that provides (a) compulsory reference to ICJ of disputes on Articles 50 and 61, and (b) compulsory conciliation on other articles in Part V.

2. A Conference Declaration calling attention of UNGA to provision in Vienna signature formula authorizing UNGA to invite other States to sign and inviting UNGA to consider the matter of issuing such invitations.

The USA and UK and at least half of WEO are willing to vote for this package. The alternative is to let Convention be adopted without any 62 bis and with about 20 WEOs abstaining on Convention as a whole.

Germans do NOT object to the Declaration although they themselves will abstain on it. Vallat has told Elias and it will be made clear that vote for Declaration is without prejudice to what Western countries will do at UNGA in event of a proposal being made there to invite a particular country (e.g., DDR).

Russians strongly oppose the package and are trying to wreck it.

Canadian Delegation thinks package is better than nothing and proposes to vote for it if both USA and UK stick to their intention to vote for it.

This leaves, however, one tricky question on which we need Department's decision by overnight Flash telegram. It is:- how to vote on Convention as a whole after the package has been adopted. Present intention of USA and UK in that event is to vote for Convention as a whole. Vallat says Elias has not so far asked for promise to do this as part of the deal but Vallat thinks it would be illogical and wrong to accept the package and then abstain on the Convention.

In Canadian Delegation, I and Stanford favour voting for Convention as whole if both USA and UK adhere to intention to vote for it as a whole. Robertson favours abstaining on Convention as a whole even though we have voted for the package deal.

My view is that Canada can live with the package and also with the Convention as a whole and that it would look odd of Canada abstained on Convention as whole while USA and UK voted for it. Robertson says why should we vote for a Convention that is unsatisfactory as regards settlement of disputes procedures just because UK and USA vote for it.

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Of course, voting for Convention as a whole does not bind Canada legally or morally to sign the Convention. On other hand, abstaining on vote would not prevent Canada from signing and ratifying it.

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MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAY22/69		CONFD

FM/DE VIENNA

NO	PRECEDENCE
458	IMMED

TO/A EXTERNAL OTT

INFO PERMISNY

REF OURTEL 451 AND YOURTEL 1631 MAY21

SUB/SUJ LAW OF TREATIES: DISPUTES SETTLEMENT PACKAGE DEAL

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DISTRIBUTION
LOCAL/LOCALE

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ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. M.H. WERSHOF/ajy			SIG. M.H. WERSHOF

EXT 18/BIL (REV 5/64)
(COMMUNICATIONS DIV)

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(A) DECLARATION ON UNIVERSAL PARTICIPATION IN CONVENTION ON LAW OF TREATIES AND (B) NEW ARTICLE RE PROCEDURES FOR ADJUDICATION AND CONCILIATION OF DISPUTES UNDER PART V.

4. THE CHANGE IN (B) WAS SIMPLY TO MENTION COMPULSORY ARBITRATION (BY CHOICE OF PARTIES) AS AN ALTERNATIVE TO COMPULSORY ADJUDICATION BY ICJ OF DISPUTES UNDER ARTS 50 AND 61 (ARTS RELATING TO JUS COGENS). FOR OTHER ARTS IN PART V THERE IS ONLY COMPULSORY CONCILIATION.

5. CHANGES IN (A) WERE DESIGNED TO GIVE GREATER IMPETUS AND ENCOURAGEMENT TO IDEA THAT UNGA SHOULD CONSIDER (PURSUANT TO QUOTE VIENNA UNQUOTE SIGNATURE CLAUSE IN TREATIES CONVENTION) INVITING OTHERWISE NON-ELIGIBLE STATES TO SIGN. FULL TEXT OF REVISED DECLARATION IS GIVEN IN SEPARATE TEL.

6. GERMAN DEL DECIDED NOT/NOT TO OBJECT TO ITS FRIENDS VOTING FOR REVISED DECLARATION SO LONG AS THEY MADE CLEAR THAT DECLARATION DID NOT/NOT PREJUDICE RIGHT OF THEIR GOVTS TO DECIDE ON MERITS ANY SPECIFIC PROPOSAL FOR AN INVITATION THAT MAY BE PRESENTED TO UNGA. UK AND USA DECIDED TO ACCEPT REVISED PACKAGE AND MOST WEO INCLUDING CDA DID LIKEWISE.

7. COMMUNISTS SPOKE STRONGLY AGAINST COMPULSORY NATURE OF NEW ARTICLE AND NON-COMPULSORY NATURE OF DECLARATION BUT (FOR REASONS NOT/NOT YET CLEAR) EITHER FAILED TO RENEW VERY STRONG PRESSURES ON SPONSORS OR FAILED TO MAKE THEM EFFECTIVE. ELIAS IN PARTICULAR MUST HAVE DECIDED NOT/NOT TO SUBMIT AGAIN TO SOVIET PRESSURE.

8. PACKAGE WAS VOTED IN ONE PIECE AND ADOPTED 61-20-26. FRANCE VOTED NO/NO. COMPLETE VOTE LIST IN SEPARATE TEL.

9. BEFORE VOTE CDA MADE SHORT EXPLANATION STRESSING (1) COMPLETE LIBERTY OF GOVTS TO DECIDE ATTITUDE TO ANY SPECIFIC PROPOSAL THAT MAY BE MADE TO UNGA TO INVITE A COUNTRY TO SIGN CONVENTION (OBVIOUSLY WHAT EVERYONE MEANT WAS EAST GERMANY); (2) COMPULSORY NATURE OF ADJUDICATION UNDER ARTS 50 AND 61; (3) INADEQUACY OF NEW ARTICLE AS REGARDS DISPUTES UNDER OTHER ARTS OF PART V.

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10. FOLLOWING THESE SURPRISING DEVELOPMENTS REMAINING ITEMS IN DRAFT CONV WERE DISPOSED OF AND THIS MORNING (THURS) CONVENTION AS A WHOLE WILL BE PUT TO VOTE. USA AND UK BOTH INTEND TO VOTE YES AND CDA WILL DO SO PURSUANT TO PARA 3 YOURTEL L625 MAY20.

11. REF PARA 2 TEL L625 ART SAYING CONVENTION IS NOT/NOT RETROACTIVE WAS ADOPTED BY PLENARY.

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MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
MAY21/69			CONFD ~~NO STANDARD~~

FM/DE VIENNA

NO	PRECEDENCE
451	IMMED

TO/A EXTERNAL OTT

INFO PRMNY — ROUTINE

REF YOURTEL L625 MAY20 (~~NOT/NOT CSHP WRCHF~~)

SUB/SUJ LAW OF TREATIES: PROPOSED PACKAGE: PEACEFUL SETTLEMENT; PART V PROVISIONS; AND ALL-STATES ISSUE

FROM WERSHOF:

REGRET TO REPORT THAT PACKAGE SETTLEMENT FELL APART DURING NIGHT. THIS WAS PARTLY AS A RESULT OF USSR PRESSURE ON VARIOUS AFRO-ASIANS WHO YESTERDAY (AS I REPORTED IN TELECON LAST EVENING) HAD AGREED TO SUPPORT IT. ANOTHER REPORTED REASON FOR COLLAPSE WAS THAT SOME FRENCH AFRICAN DELS DECIDED THAT THEY ARE FIRMLY OPPOSED TO REF TO INTNL COURT ALTHOUGH THEY WOULD ACCEPT COMPULSORY ARBITRATION ON ARTS 50 AND 61. I SHOULD ADD THAT AFRO-ASIAN BLOC WAS FAR FROM UNANIMOUS YESTERDAY WHEN ITS CHAIRMAN DR ELIAS (NIGERIA) PROPOSED PACKAGE TO WEO; HE WAS HOWEVER CONFIDENT AT THAT TIME THAT ENOUGH MEMBERS OF HIS GROUP ACCEPTED IT TO ENSURE ADOPTION WITH HELP OF WEO. ACTUAL SPONSORS OF PACKAGE (DOCU CONF.39/L.47) INCLUDED GHANA, NIGERIA AND TANZANIA BUT NOT/NOT INDIA WHOSE ATTITUDE WAS EQUIVOCAL. EARLY THIS MORNING ELIAS TOLD WEO REPS THAT L.47 WOULD BE WITHDRAWN SO FAR AS HE WAS CONCERNED AS HE NO/NO LONGER HAD ADEQUATE SUPPORT FROM HIS GROUP.

.../2

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2. AT TIME OF WRITING THIS (NOON) CONFUSION AND UNCERTAINTY REIGN. L.47 HAS NOT/NOT YET BEEN FORMALLY WITHDRAWN AND SOME OF ITS SPONSORS ARE TRYING TO REVIVE IT IN SOME FORM. PLENARY WAS SCHEDULED TO FINISH ITS WORK TODAY AND TOMORROW IS LATEST POSSIBLE WORKING DAY IF FINAL ACT IS TO BE READY FOR SAT (OR EVEN SUN) SIGNING. SOME DELS ARE STILL TALKING OF FINDING A NEW COMPROMISE PACKAGE ACCEPTABLE TO ALL GROUPS, WHICH SEEMS TO ME MOST UNLIKELY. FAILING A COMPROMISE THERE SEEM TO BE TWO PROCEDURAL POSSIBILITIES. (A) ADJOURN CONF WITHOUT ADOPTING A CONVENTION AND REPORT POSITION TO UNGA WITH PERHAPS A REQUEST THAT AN ADJOURNED SESSION OF CONF BE HELD LATER (IN NY IN AUTUMN OR ELSEWHERE IN 1970?). (B) COMPLETE the CONVENTION (MINUS AN ACCEPTABLE DISPUTES SETTLEMENT CLAUSE) AND HAVE IT ADOPTED BY TWO-THIRDS MAJORITY WITH ABOUT TWENTY WEO DELS ABSTAINING. WE WILL REPORT SOONEST ON OUTCOME.

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Mr. Stanford

C O N F I D E N T I A L

FM EXTEROTT MAY20/69

TO VIENN LS23 FLASH

REF WERSHOF-BEESLEY TELECON MAY20

PROPOSED PACKAGE:PEACEFUL SETTLEMENT;PART V PROVISIONS;AND ALL STATES ISSUE

FOLLOWING FOR WERSHOF

THIS WILL CONFIRM THAT YOU SHOULD VOTE IN FAVOUR OF PROPOSED COMPROMISE CONSISTING OF:(A)COMPULSORY REF TO INNATL COURT OF JUSTICE OF DISPUTES ARISING OUR OF ARTS 50 AND 61;(B)COMPULSORY CONCILIATION OF DISPUTES ARISING OUR OF OTHER ARTICLES IN PART V; (C)CONERENCE RESLN(PRESUMABLE IN DECLARATION FORM)CALLING ATTN OF GENERAL ASSEMBLY TO PROVISIONS IN VIENN SIGNATURE FORMULA(ALREADY ACCEPTED)AUTHORIZING GENERAL ASSEMBLY TO INVITE STATES OTHER THAN MEMBERS OF UN,SPECIALIZED AGENCIES AND IAEA TO SIGN CONVENTION AND INVITING GENERAL ASSEMBLY TO CONSIDER MATTER OF ISSUING SUCH AN INVITATION.

2.FOREGOING AUTHORITY IS GIVEN ON UNDERSTANDING:(A)THAT PROVISIONS OF CONVENTION WILL NOT/NOT BE REIROACTIE IN THEIR APPLICATION; AND(B)THAT EITHER USA AND UK WILL VOTE IN FAVOUR OF PROPOSED PACKAGE.

3.THIS WILL CONFIRM ALSO YOUR AUTHORITY TO VOTE IN FAVOUR OF CONVENTION AS WHOLE,ASSUMING COMPROMISE PACKAGE IS ACCEPTABLE AND THAT EITHER USA OR UK IS LIKEWISE PREPARED TO VOTE IN FAVOUR OF CONVENTION AS WHOLE

SHARP

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French African draft - circulated 2/15

Future A/CONF.39/L....

Proposed new article

Procedures for arbitration, judicial settlement and conciliation

If, under paragraph 3 of article 62, no solution has been reached within a period of twelve months following the date on which the objection was raised, the following procedures shall be followed:

1. Any one of the parties to a dispute concerning the application or the interpretation of article 50 or 61 may set in motion the procedure specified in Annex I by submitting a request to that effect to the Secretary-General of the United Nations.

Nevertheless the parties may agree by common consent to submit their dispute to the International Court of Justice.

2. Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in Annex II to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations.

ANNEX I

1. When a request has been made to the Secretary-General of the United Nations, an arbitral tribunal consisting of three arbitrators shall be constituted. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute and one other arbitrator shall be appointed by the State or States constituting the other party to the dispute.

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The two arbitrators chosen by the parties shall be appointed within sixty days counting from the date on which the request is received by the Secretary-General.

The two arbitrators shall, within sixty days following the date of the last of their own appointments, appoint a third arbitrator, who shall be the chairman; the chairman shall not be a national of any of the States parties to the dispute. If the appointment of the chairman or of either of the other arbitrators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period.

Any vacancy shall be filled in the manner specified for the initial appointment.

2. The arbitral tribunal shall decide its own procedure. The tribunal, with the consent of the parties to the dispute, may invite any party to the treaty to submit its views orally or in writing. Decisions of the tribunal shall be taken by majority vote.

3. The Secretary-General shall provide the tribunal with such assistance and facilities as it may require. The expenses of the tribunal shall be borne by the United Nations.

4. The Tribunal may, before taking a final decision on the question, and at the request of any party to the dispute, indicate such measures as may be appropriate and advisable in the particular case.

The award of the tribunal shall be binding and final.

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Annex II

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article....., the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

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3. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The report and conclusions of the Commission shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

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FROM REGISTRY
MAY 28 1969
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TO:
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20-3-1-6

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO / À: Under-Secretary of State for External Affairs
OTTAWA, CANADA

FROM / De: Canadian Delegation to Law of Treaties Conference
VIENNA, AUSTRIA

REFERENCE / Référence: Our telegram 439 May 19

SUBJECT / Sujet: Law of Treaties Conference: Second Session: Seventh (Final) Weekly Summary: May 19-22

SECURITY / Sécurité: UNCLASSIFIED

DATE: May 23, 1969

NUMBER / Numéro: 318

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

ENCLOSURES / Annexes

DISTRIBUTION

Plenary held 9 mtgs (29-36 incl) this week, on last of which Final Act of Conference, together with final text of Convention itself, were adopted. During this week plenary was completing remaining miscellaneous outstanding items on its agenda including questions of settlement of disputes and of universality of participation. In following paras articles, declarations, reslns and other matters dealt with are listed in chronological order in which they came before plenary, using original numbering.

Articles 18 and 20

At opening of 29th meeting Monday, May 19 after statements concerning Article 62 bis and explanations of vote on Article 22, chairman of Drafting Committee (DC) introduced revised texts of Articles 18 and 20 (on reservations)(39/16). Adopted without objection.

New Article 76

Switzerland then introduced new Article 76 (39/L.33)(Role for ICJ in settlement of disputes). Rejected on roll call vote 41(Cda, USA, UK)-36(USSR, India)-27 as it did not get 2/3 majority.

Article 77

At 30th meeting following explanations of vote on new Article 76, Chairman DC introduced revised text of Article 77 (39/13/ADD.16) on non-retroactivity. Adopted 81(Cda, UK, USA, France)-5-17(USSR).

Article 57

Chairman DC then introduced Article 57 (39/19) on termination or suspension as revised by DC. Adopted without objection.

Declaration and Resln re Article 49

31st meeting Tuesday, May 20 opened with introduction by Chairman DC of declaration and resln re Article 49 (39/20) dealing with prohibition of military, political or economic coercion. Adopted without objection.

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Preamble

Chairman DC then introduced revised text preamble (39/18). Amendments were introduced by Netherlands and Costa Rica (39/L.42 and Add. 1) re human rights; by Sweden (39/L.43) re settlement of disputes in conformity with principles of justice and international law; by Switzerland (39/L.45) re role of customary international law; and by Ecuador (39/L.44) re principle of good faith. At 32nd meeting following debate all these amendments were adopted by following votes: 39/L.42 by 93-0-3; 39/L.43 by 89-0-3; 39/L.45 by 77(Cda, UK, France)-6(USA)-11; 39/L.44 by 61(East Europeans)-1(Finland) -32(Cda, UK, USA, France). A proposed amendment that had been introduced during debate by USSR (Ref 39/18 page 2) on all-states question was rejected 42(Cda, France, UK, USA)-31-25. Preamble as amended was then adopted 86-0-11(East Europeans).

Draft Resln relating to Article 1

Sweden then introduced a draft amendment (39/L.46) to draft resln relating to Article 1 (39/C.1/L.370/Rev.1 Vol I PARA 32) concerning treaty practices of international organizations which would request ILC to consult with principal international organizations. Separate vote was requested by USSR on part of 39/L.46 relating to operative para of draft resln; adopted 47(Cda, USA, UK)-14(East Europeans)-30(France, Yugoslavia). Finally draft resln itself, as amended by 39/L.46 was adopted 85(Cda, UK, USA, USSR)-0-13(France, Japan).

Article 19 (Newly numbered 21)

India, Japan, Netherlands and USSR introduced proposed amendment (39/L.49) to Article 19 (39/22) concerning effect of objections to reslns. This highly technical proposal was referred to DC and meeting then adjourned following adoption 44-16-29 of proposal to do so by Mexico. At 33rd meeting Wednesday morning May 21 Chairman of DC introduced revised text of Article 19 incorporating 4-power amendment which was then adopted without a formal vote.

New Article re All-States

Ceylon then introduced a new Article (39/L.36) concerning right of all States to participate in certain categories of multilateral treaties. This proposal (identical with Article 5 bis which had been rejected by Committee of Whole and with similar co-sponsorship) was eventually rejected on a roll call vote 34(USSR)-50(Cda, France, FRG, USA, UK)-22.

Draft Resln re Countries eligible to sign Convention

Spain then introduced, but later withdrew, its proposed draft resln (39/L.38) recommending that General Assembly consider inviting states other than those covered by Vienna Formula to participate in multilateral treaties of interest to international community of States as a whole.

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Draft Declaration, proposed new Article and draft resln (package deal)

During earlier part of week consultations had been actively pursued on a possible compromise solution to questions of settlement of disputes under Part V and of universality of participation (ourtels 451 of May 21 and 458 of May 22 refer). During course of 34th meeting Wednesday afternoon May 21 Nigeria introduced a package proposal (39/L.47/Rev.1) including a draft declaration on universal participation, a draft new article with Annex providing procedures for adjudication and conciliation (with automatic access to International Court or by mutual agreement alternatively compulsory adjudication on disputes concerning Articles 50 and 61 and with compulsory conciliation for all other Part V disputes) and a draft resln requesting General Assembly to note request in annex to new article that expenses of conciliation be borne by UN. Following debate all three proposals in 39/L.47/Rev.1 were adopted by a single roll call vote 61(Cda, USA, UK)-20(France and East Europeans)-26.

Final Clauses

Chairman of DC then introduced text of final provisions (39/13/Add. 17) as revised by DC. Voting on these and on proposed amendments was as follows:

Article A (Signature). Amendment 39/L.41 re All-States participation, introduced by USSR, was rejected 33-43(Cda, USA, UK, France)-17. Article A was adopted 84-11(East Europeans)-5.

Article B (Ratification). Adopted 103-0-0.

Article C (Accession). Amendment 39/L.41 re All-States again rejected 32-45(Cda, USA, UK, France)-20. Article C then adopted 83-13(East Europeans) -6.

Article C bis. Spain introduced and revised orally a proposal prohibiting reservations to Part V (39/L.39). Following debate this was rejected on roll call vote 9-62(Cda, UK, USA, France)-33.

Article D (Entry into Force). Amendment 39/L.48 to require 35 ratifications or accessions to bring Convention into force was introduced by Nigeria. It was adopted 92-0-8(Australia, France) and Article D as amended was then adopted without vote.

Article E (Authentic Texts). Adopted 103-0-0.

Report of Credentials Committee

Chairman of Credentials Committee then introduced its report on Second Session of Conference (39/23/Rev.1). Following statements, principally by Eastern Europeans, report was adopted subject to reservations expressed in debate.

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Adoption of Text of Convention as a Whole

On May 22 afternoon the Convention as a whole was adopted 79(Cda, USA, UK, Yugoslavia)-1(France)-19(Soviet bloc, Australia, South Africa, Turkey, UAR, some French African dels). USSR said they would not sign Convention in its present form.

Final Act

The draft Final Act (Conf. 39/21) prepared by DC was then adopted without vote. It was signed May 23.

Canadian Delegation

P.S. This was originally drafted as a telegram - hence the "telegraph language".

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CANADIAN EMBASSY AMBASSADE DU CANADA

Mr. J. Alan Beesley,
Head, Legal Division,
Department of External Affairs,
Ottawa, Canada

Received
MAY 22 1969
In Legal Division
Department of External Affairs

WITH THE COMPLIMENTS

OF THE CANADIAN EMBASSY

DE LA PART DE

L'AMBASSADE DU CANADA

From: Canadian Delegation to
Law of Treaties Conference
Vienna

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Number – *Numéro*: 20-3-1-6

Date: May 22, 1969

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Blackburn Building, Ottawa

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J. A. BEESLEY

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U N C L A S S I F I E D

FM VIENN MAY22/69

TO EXTEROTT 464 PRIORITY

INFO PRMISNY

REF OURTEL 458 MAY22

LAW OF TREATIES CONFERENCE

CONVENTION AS A WHOLE ADOPTED TODAY THUR BY VOTE 79-1-19. YES VOTES INCLUDED CDA, USA, UK, YUGOSLAVIA. FRANCE VOTEDNO/NO. ABSTENTIONS INCLUDED SOVIET BLOCK AUSTRALIA SOUTH AFRICA TURKEY UAR AND A FEW FRENCH AFRICAN STATES. 15 DELS WERE ABSENT WHEN VOTE TAKEN. USSR SAID IT WOULD NOT/NOT SIGN CONVENTION IN ITS PRESENT FORM. SIGNATURE OF FINAL ACT OF CONFERENCE AND SIGNATURE OF CONVENTION BY THOSE READY TO SIGN IT SCHEDULED FOR FRI.

WERSHOF

9/23/69

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L.A. BEAULEY

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FM VIENN MAY22/69

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REF OURTEL 458 MAY22 PARA8

LAW OF TREATIES: PACKAGE DEAL VOTE

FOLLOWING IS VOTING LIST:

VOTED YES-61-ARGENTINA AUSTRIA BARBADOS BELGIUM CAMBODIA CDA CEYLON CHILE COLOMBIA CONGO(KINSHASA) COSTA RICA CYPRUS DENMARK ECUADOR EL SALVADOR FINLAND GHANA GREECE GUYANA HOLY SEE HONDURAS ICELAND IRAQ IRELAND ISRAEL ITALY IVORYCOAST JAMICA JPN KENYA KUWAIT LEBANON LIBERIA LIECHTENSTEIN LUXEMBOURG MALTA MEXICO MOROCO NEPAL NETHERLANDS NEW ZEALAND NIGERIA NORWAY PAK PANAMA PORTUGAL SAN MARINO SENEGAL SPORE SPAIN SUDAN SWEDEN SWITZERLAND TRINIDAD TUNISIA UK TANZANIA USA URUGUAY YUGOSLAVIA ZAMBIA

VOTED NO-23-BULGARIA BURMA BYELORUSSIA CAMEROON CENTRAL AFRICAN REPUBLIC CONGO(BRAZZAVILLE) CUBA CZECHOSLOVAKIA FRANCE GABON HUNGARY MADAGASCAR MALAYSIA MONGOLIA POLAND ROMANIA THAILAND UKRAINE USSR UAR

ABSENTIONS-26-AFGHANISTAN ALGERIA AUSTRALIA BOLIVIA BRAZIL CHINA DAHOMEY DOMINICAN REPUBLIC ETHIOPIA GERMANY GUATEMALA INDIA INDONESIA IRAN LIBYA MONACO PERU PHILIPPINES KOREA VIETNAM SAUDI ARABIA SIERRA LEONE SOUTH AFRICA SYRIA TURKEY VENEZUELA.

5/22/69

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C O N F I D E N T I A L

FM VIENN MAY22/69

TO EXTEROTT 458 IMMED

INFO TT PRMISNY DE OTT

REF OURTEL 451 AND YOURTEL L631 MAY21

LAW OF TREATIES:DISPUTES SETTLEMENT PACKAGE DEAL

FROM WERSHOF:

WHAT HAPPENED YESTERDAY AFTERNOON WILL BE MORE READILY UNDERSTANDABLE TO COLLEAGUES OLD ENOUGH TO REMEMBER MOVIE SERIALS IN WHICH THE HEROINE IS TIED TO RAILWAY TRACK BUT IS RESCUED BY THE HERO ONE SECOND BEFOR THE ROARING LOCOMOTIVE WOULD KILL HER.

2.AS REPORTED IN 451 SENT NOON YESTERDAY THE AFRO-ASIAN PACKAGE PUT TOGETHER MAINLY BY ELIAS(NIGERIA) HAD BEEN PRONOUNCED DEAD-KILLED BY DEFECTIONS FROM HIS UNEASY GROUP OF SUPPORTERS AND BY ROUGH PRESSURE FROM USSR.ELIAS HIMSELF WAS REPORTED TO BE SO ANGRY AND HUMILIATED THAT HE DID NOT/NOT COME TO MORNING SESSION OF PLENARY UNTIL SHORTLY BEFORE LUNCH TIME.EARLY AFTERNOON HE AND MOST OF HIS CO-SPONSORS SURPRISINGLY DECIDED TO TRY AGAIN;MEANWHILE OTHER ATTEMPTS TO DEVISE DIFFERENT PACKAGE DEALS WERE BEING MADE IN OTHER ROOMS BY RESPECTIVELY A NUMBER OF LATIN AMERICANS AND A NUMBER OF FRENCH AFRICAN DELS.

3.LATE AFTERNOON ELIAS AND HIS REVISED GROUP(GHANA IVORY COAST KENYA KUWAIT LEBANON MOROCCO SUDAN TUNISIA AND TANZANIA)PRESENTED A REVISED VERSION(L.47/REV.1).THIS PLAN CHANGED SOMEWHAT TWO ELEMENTS OF PACKAGE(A)DECLARATION ON UNIVERSAL PARTICIPATION IN CONVENTION ON

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13/22/5

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LAW OF TREATIES AND(B)NEW ARTICLE RE PROCEDURES FOR ADJUDICATION AND CONCILIATION OF DISPUTES UNDER PART V.

4.THE CHANGE IN(B)WAS SIMPLY TO MENTION COMPULSORY ARBITRATION(BY CHOICE OF PARIES)AS AN ALTERNATIVE TO COMPULSORY ADJUDICATION BY ICJ OF DISPUTES UNDER ARTS 50 AND 61(ARTS RELATING TO JUS COGENS). FOR OTHER ARTS IN PART V THERE IS ONLY COMPULSORY CONCILIATION.

5.CHANGES IN(A)WERE DESIGNED TO GIVE GREATER IMPETUS AND ENCOURAGEMENT TO IDEA THAT UNGA SHOULD CONSIDER(PURSUANT TO QUOTE VIENN UNQUOTE SIGNATURE CLAUSE IN TREATIES CONVENTION)INVITING OTHERWISE NON-ELIGIBLE STATES TO SIGN.FULL TEXT OF REVISED DECLARATION IS GIVEN IN SEPARATE TEL.

6.GERMAN DEL DECIDED NOT/NOT TO OBJECT TO ITS FRIENDS VOTING FOR REVISED DECLARATION SO LONG AS THEY MADE CLEAR THAT DECLARATION DID NOT/NOT PREJUDICE RIGHT OF THEIR GOVTS TO DECIDE ON MERITS ANY SPECIFIC PROPOSAL FOR AN INVITATION THAT MAY BE PRESENTED TO UNGA.UK AND USA DECIDED TO ACCEPT REVISED PACKAGE AND MOST WEO INCLUDING CDA DID LIKEWISE.

7.COMMUNISTS SPOKE STRONGLY AGAINST COMPULSORY NATURE OF NEW ARTICLE AND NON-COMPULSORY NATURE OF DECLARATION BUT(FOR REASONS NOT/NOT YET CLEAR)EITHER FAILED TO RENEW VERY STRONG PRESSURES ON SPONSORS OR FAILED TO MAKE THEM EFFECTIVE.ELIAS IN PARTICULAR MUST HAVE DECIDED NOT/NOT TO SUBMIT AGAIN TO SOVIET PRESSURE.

8.PACKAGE WAS VOTED IN ONE PIECE AND ADOPTED 61-20-26.FRANCE VOTED NO/NO.COMPLETE VOTE LIST IN SEPARATE TEL.

...3

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

9.BEFORE VOTE CDA MADE SHORT EXPLANATION STRESSING(1)COMPLETE LIBERTY OF GOVTS TO DECIDE ATTITUDE TO ANY SPECIFIC PROPOSAL THAT MAY BE MADE TO UNGA TO INVITE A COUNTRY TO SIGN CONVENTION(OBVIOUSLY WHAT EVERYONE MEANT WAS EAST GERMANY);(2)COMPULSORY NATURE OF ADJUDICATION UNDER ARTS 50 AND 61;(3)INADEQUACY OF NEW ARTICLE AS REGARDS DISPUTES UNDER OTHER ARTS OF PART V.

10.FOLLOWING THESE SURPRISING DEVELOPMENTS REMAINING ITEMS IN DRAFT CONVENTION WERE DISPOSED OF AND THIS MORNING(THUR)CONVENTION AS A WHOLE WILL BE PUT TO VOTE.USA AND UK BOTH INTEND TO VOTE YES AND CDA WILL DO SO PURSUANT TO PARA 3 YOURTEL L625 MAY20.

11.REF PARA2 YOURTEL L625 ART SAYING CONVENTION IS NOT/NOT RETROACTIVE WAS ADOPTED BY PLENARY.••••••••

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J. A. BEESLEY

ACTION COPY

OTT087

PAR100

GVA238

VNA10/22

PP OTT RR NYK

DE VNA

PR 221134Z

U N C L A S S I F I E D

FM VIENN MAY22/69

TO EXTEROTT 459 PRIORITY

INFO PRMISNY

REF OURTEL 458 MAY22 PARA5

LAW OF TREATIES: DECLARATION ON UNIVERSAL PARTICIPATION

FOLLOWING IS TEXT OF DECLARATION ADOPTED BY CONFERENCE BEGINS:

DRAFT DECLARATION ON UNIVERSAL PARTICIPATION IN AND ACCESSION TO THE CONVENTION ON THE LAW OF TREATIES--CONVINCED THAT MULTILATERAL TREATIES WHICH DEAL WITH THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INNATL LAW OR THE OBJECT AND PURPOSES OF WHICH ARE OF INTEREST TO THE INNATL COMMUNITY AS A WHOLE, SHOULD BE OPEN TO UNIVERSAL PARTICIPATION,

AWARE OF THE FACT THAT ARTICLE.....OF THE CONVENTION ON THE LAW OF TREATIES AUTHORIZES THE GENERAL ASSEMBLY TO ISSUE SPECIAL INVITATIONS TO STATES NOT/NOT MEMBERS OF THE UN, THE SPECIALIZED AGENCIES OR PARTIES TO THE STATUTE OF THE INNATL COURT OF JUSTICE, TO ACCEDE TO THE PRESENT CONVENTION.

INVITES THE GA TO GIVE CONSIDERATION, AT ITS TWENTY-FOURTH SESSION, TO THE MATTER OF ISSUING INVITATIONS SO AS TO ENSURE THE WIDEST POSSIBLE PARTICIPATION IN THE CONVENTION ON THE LAW OF TREATIES.

EXPRESSES THE HOPE THAT THE STATES MEMBERS OF THE UN WILL ENDEAVOUR TO ACHIEVE THE OBJECT OF THIS DECLARATION.

REQUESTS THE SECGEN OF THE UN TO BRING THE PRESENT DECLARATION TO THE NOTICE OF THE GA.

...2 6/22/69

Document divulgué en vertu de la Loi sur l'accès

DECIDES THAT THE PRESENT DECLARATION SHALL FORM PART OF THE FINAL ACT OF THE CONFERENCE ON THE LAW OF TREATIES. ENDS.

004209

NMNNVVVVV

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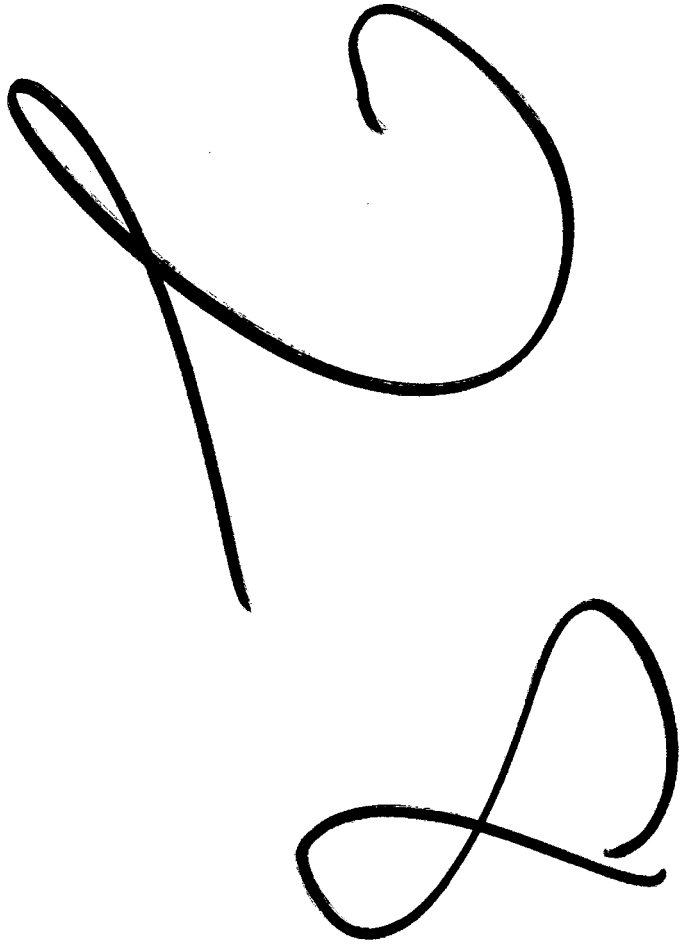

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20-3-1-6

CANADIAN EMBASSY

AMBASSADE DU CANADA

Ref: Our Telegram 462 of May 22, 1969

WITH THE COMPLIMENTS

OF THE CANADIAN EMBASSY

DE LA PART DE

L'AMBASSADE DU CANADA

From: Canadian Delegation to
Law of Treaties Conference
Vienna

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

Received
MAY 29 1969
In Legal Division
Department of External Affairs

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

EXTRACT FROM DELHI TELEGRAM OF MAY 16/69

J. A. BEESLEY

GOPAL APPLIED IN NORMAL WAY FOR IMMIG VISA LAST YEAR AND FAILED TO MEET NECESSARY CRITERIA. RAO RAISED POSSIBILITY OF GOPAL GOING TO UNIVERSITY IN CDA AND WE THEREFORE PROVIDED GOPAL WITH INFO ABOUT CDN UNIVERSITIES. GOPAL TOLD US RECENTLY THAT HE HAD APPLIED FOR ENTRY INTO CALGARY UNIVERSITY. IF HE OBTAINS ENTRY AND CAN MEET FINANCIAL REQUIREMENTS, WHICH HE SAYS HE CAN, HE CAN OBTAIN STUDENT VISA BUT THIS WILL NOT/NOT PERMIT HIM TO REMAIN IN CDA AS IMMIG. GOPAL ALSO RAISED RECENTLY POSSIBILITY OF HIS IMMIG APPLICATION BEING RECONSIDERED ON BASIS OF LETS FROM CDN FIRMS INDICATING THAT THEY MIGHT EMPLOY HIM IF HE SOUGHT JOB AFTER ARRIVAL IN CDA.

2. TELL KRISHNA RAO THAT GOPAL HAS BEEN IN TOUCH WITH US AGAIN AND THAT HIS APPLICATION FOR STUDENT VISA WILL BE GIVEN PROMPT ATTENTION AS SOON AS RECEIVED. YOU COULD ADD THAT WE RECENTLY ASKED HIM TO CONTACT SENIOR IMMIG ATTACHE ABOUT POSSIBILITY OF EMIGRANT VISA BEING RECONSIDERED. SINCE HE HAD FAILED TO DO SO WE SPOKE TO GOPAL AGAIN TODAY AND SENIOR IMMIG ATTACHE HAS JUST SEEN HIM. AFTER EXAM LETS FROM POSSIBLE EMPLOYERS IMMIG ATTACHE FOUND NOTHING TO JUSTIFY REVIEWING EARLIER DECISION. EMPHASIZE THAT WE HAVE GIVEN AND ARE GIVING HIS RELATIVE FULL CONSIDERATION AND FAIR TREATMENT IN ACCORDANCE WITH OUR OWN IMMIG REGS.

3. WE ARE TAKING ALL THE APPROPRIATE STEPS TO SEE THAT RAO'S NEPHEW GETS FULL INFO AND FAIR CHANCE TO GET TO CDA. NATURALLY WE CANNOT/NOT DO MORE THAN THAT.

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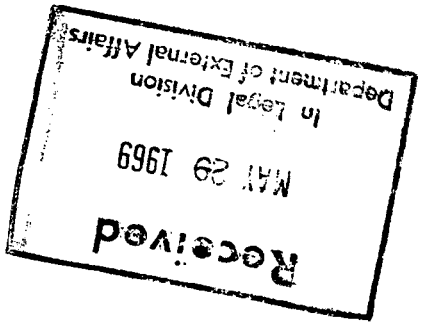

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File
Diary
Div. diary
Tel. diary

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAY 22/69	20-3-1-6 37	CONFD

FM/DE EXT OTT

NO	PRECEDENCE
L 635	ROUTINE

TO/A VIENNA (ROBERTSON)

INFO

REF DELHI'S TEL 1604 OF MAY 16

SUB/SUJ KRISHNA RAO'S NEPHEW GOPAL

IN LIGHT OF INFORMATION CONTAINED IN REF TEL, WE HAVE BEEN IN TOUCH WITH IMMIGRATION AUTHORITIES HERE WHO HAVE UNDERTAKEN TO LOOK INTO GOPAL'S CASE. WE WILL PROBABLY NOT HAVE ANY NEWS UNTIL THE END OF NEXT WEEK, BY WHICH TIME RAO WILL PRESUMABLY HAVE LEFT VIENNA BUT YOU MAY PASS ON FOREGOING INFO TO HIM.

DISTRIBUTION
LOCAL/LOCALE

NO STAND

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG S. APRIL / mm	Legal Division	6-1916	SIG J.A. BEESLEY J.A. BEESLEY

004215

BIL (REV 5/64)
MUNICATIONS DIV)

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20-3-1-6
37

T.A. BEESLEY

Mr. Maudemoy

INFO ONLY

R E S T R C T E D

FM VIENN MAY22/69 NO/NO STANDARD

TO TI DELHI 462 DE LDN

INFO EXTEROTT(BEESLEY) DE PARIS

REF DELHI TEL 1604 MAY16

LAW OF TREATIES CONFERENCE:KRISHNA RAOS RELATIVE

GRATEFUL PROMPT REPLY OUR 416 MAY15.SANITIZED VERSION YOUR REFTEL (COPY BY BAG)SHOWN RAO.HARD TO SAY WHETHER OR NOT/NOT HE WILL NEVERTHELESS PURSUE MATTER FURTHER.·····

11/23/5

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CC:-OTTAWA

TO:
FROM REGISTRY
JUN 4 1969
FILE CHARGED OUT
TO:

20-3-1-6
37

35 rue de la Science,
Bruxelles 4.

9/6

Le 21 mai 1969.

Cher monsieur Devaudor,

Vous avez sans doute appris la bonne nouvelle que, au cours de la session plénière du 28 avril dernier, la Conférence de Vienne sur le Droit des Traités a, par une majorité des deux-tiers y compris la Belgique et le Canada, voté en faveur de la suppression du paragraphe 2 de l'Article 5 de la Convention.

Mon Gouvernement se réjouit de ce vote qui pare à l'éventualité que des Etats étrangers interprètent pour eux-mêmes la constitution des Etats fédéraux et puissent ainsi s'ingérer dans les affaires internes de ces Etats.

Etant donné l'importance de ce vote pour l'avenir, le Gouvernement canadien est très reconnaissant au Gouvernement belge pour la décision qu'il a prise d'appuyer pendant la session plénière la position invoquée par le Gouvernement canadien au sujet de l'Article 5 (2) en votant pour la suppression de cette disposition.

De mon côté, je tiens à vous remercier, vous et vos collègues le professeur Suy et messieurs Fourdin, Denis et de Clerck, pour l'accueil sympathique que vous m'avez accordé à plusieurs reprises dans le pays ainsi que pour l'examen attentif que vous avez bien voulu faire des implications juridiques et politiques de cette importante question.

Le Conseiller,

(Signed) K. W. MacLELLAN

K.W. MacLellan

Monsieur Y. Devadder,
Directeur Général,
Service juridique,
Ministère des Affaires étrangères,
Bruxelles.

004217

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

J. A. BEESLEY

ACTION COPY

C O N F I D E N T I A L

FM VIENN MAY21/69

TO EXTEROTT 451 IMMED

INFO PRMNY DE OTT

REF YOURTEL L625 MAY20

20-3-1-6
37T 96

LAW OF TREATIES: PROPOSED PACKAGE: PEACEFUL SETTLEMENT; PART V PROVISIONS; AND ALL-STATES ISSUE

FROM WERSHOF;

REGRET TO REPORT THAT PACKAGE SETTLEMENT FELL APART DURING NIGHT. THIS WAS PARTLY AS A RESULT OF USSR PRESSURE ON VARIOUS AFRO-ASIANS WHO YESTERDAY(AS I REPORTED IN TELECON LAST EVENING)HAD AGREED TO SUPPORT IT. ANOTHER REPORTED REASON FOR COLLAPSE WAS THAT SOME FRENCH AFRICAN DELS DECIDED THAT THEY ARE FIRMLY OPPOSED TO REF TO INNATL COURT ALTHOUGH THEY WOULD ACCEPT COMPULSORY ARBITRATION ON ARTS 50 AND 61. I SHOULD ADD THAT AFRO-ASIAN BLOC WAS FAR FROM UNANIMOUS YESTERDAY WHEN ITS CHAIRMAN DR ELIAS(NIGERIA)PROPOSED PACKAGE TO WEO; HE WAS HOWEVER CONFIDENT AT THAT TIME THAT ENOUGH MEMBERS OF HIS GROUP ACCEPTED IT TO ENSURE ADOPTION WITH HELP OF WEO. ACTUAL SPONSORS OF PACKAGE(DOCU CONF. 39/L. 47) INCLUDED GHANA, NIGERIA AND TANZANIA BUT NOT/NOT INDIA WHOSE ATTITUDE WAS EQUIVOCAL. EARLY THIS MORNING ELIAS TOLD WEO REPS THAT L. 47 WOULD BE WITHDRAWN SO FAR AS HE WAS CONCERNED AS HE NO/NO LONGER HAD ADEQUATE SUPPORT FROM HIS GROUP.

2. AT TIME OF WRITING THIS(NOON)CONFUSION AND UNCERTAINTY REIGN. L. 47 HAS NOT/NOT YET BEEN FORMALLY WITHDRAWN AND SOME OF ITS SPONSORS ARE TRYING TO REVIVE IT IN SOME FORM. PLENARY WAS SCHEDULED TO FINISH

...2

16/21/69

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ITS WORK TODAY AND TOMORROW IS LATEST POSSIBLE WORKING DAY IF FINAL ACT IS TO BE READY FOR SAT(OR EVEN SUN)SIGNING.SOME DELS ARE STILL TALKING OF FINDING A NEW COMPROMISE PACKAGE ACCEPTABLE TO ALL GROUPS WHICH SEEMS TO ME MOST UNLIKELY.FAILING A COMPROMISE THERE SEEM TO BE TWO PROCEDURAL POSSIBILITIES.(A)ADJOURN CONFERENCE WITHOUT ADOPTING A CONVENTION AND REPORT POSITION TO UNGA WITH PERHAPS A REQUEST THAT ADJOURNED SESSION OF CONFERENCE BE HELD LATER(IN NY IN AUTUMN OR ELSEWHEJE IN 197Ø).(B)COMPLETE THE CONVENTION (MINUS AN ACCEPTABLE DISPUTES SETTLEMENT CLAUSE)AND HAVE IT ADOPTED BY TWO-THIRDS MAJORITY WITH ABOUT TWENTY WEO DELS ABSTAINING.WE WILL REPORT SOONEST ON OUT-COME.''''''''SSSS

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TO: M Bagley
FROM REGISTRY
MAY 21 1969
FILE CHARGED OUT
TO:

CONFERENCIA INTERNACIONAL DE PLENIPOTENCIARIOS
SOBRE EL DERECHO DE LOS TRATADOS
DELEGACION DE MEXICO

INTERVENCION DEL LIC. SERGIO GONZALEZ GALVEZ, REPRESENTANTE ALTERNO DE MEXICO. 28-IV-69.

20-3-1-6
37

Señor Presidente:

Después de la clara explicación que ha hecho de los problemas que presenta el artículo 5 el distinguido Representante de Canadá, mi Delegación congruente con la posición que adoptó sobre el particular en la primera sesión, apoyará la eliminación del artículo 5 aunque no por las mismas razones en que se funda la muy comprensible actitud canadiense.

México considera que doctrinariamente no es necesario ni conveniente incluir una norma sobre la capacidad para celebrar tratados; parecería superfluo declarar expresamente esa capacidad que es más bien una consecuencia natural, por así decirlo, un atributo esencial y obligado de la personalidad internacional, sin olvidar que ese elemento está implícito en los artículos 1 y 2 del tratado.

Por otra parte, debemos reconocer el peligro que entraña para algunos Estados la inclusión del párrafo dos del artículo, aunque su eliminación no consideremos afecte la situación de aquellos países que sí permiten a sus entidades celebrar tratados bajo ciertas circunstancias.

Por esas razones, señor Presidente, México apoya la eliminación del artículo en su totalidad, sin embargo consideramos que el párrafo dos del artículo 5 tiene los más serios inconvenientes y, para tal efecto, secunda la propuesta para que los dos párrafos del mismo se voten en forma separada.

004220

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TRANSMITTAL SLIP

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

FROM: The Canadian Embassy, Tel Aviv, Israel.

TO: M. Starkov
FROM REGISTRY
JUN 2 1969

Security: UNCLASSIFIED

Date: May 21, 1969

Air or Surface: Air

No. of enclosures: 1

The documents described below are for your information.

Despatching Authority: R. L. Rogers/fmc

20-3-1-6

Copies	Description	Also referred to:
2	Ref: Your letter L-(M)-559 of May 2 Letter from Canadian Ambassador, Tel Aviv to Legal Adviser, MFA, re Law of Treaties Conference, Vienna.	3-71

17.3.6

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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.

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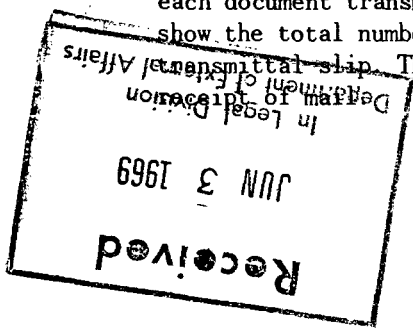
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and



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84 Hahashmonaim St.,
Tel Aviv, Israel.

May 21, 1969.

Dear Mr. Meron,

The Department of External Affairs in Ottawa has told me of the most agreeable result of the voting in Vienna on Paragraph 2 of Article 5 of the draft convention on the Law of Treaties. They have also asked me to express their gratitude to the Israeli Government for its vote in this matter which was of great interest to Canada. I am also to add our thanks to you, personally, for the sympathetic hearing you gave to our representations and for your part in bringing about this happy result.

Yours sincerely,

R. L. ROGERS
R. L. Rogers,
Ambassador.

Mr. Theodor Meron,
Legal Adviser,
Ministry for Foreign Affairs,
Jerusalem.

cc. External Affairs,
Ottawa.

004223

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MESSAGE

PHONED TO COMCENTRE
3:25 MAY21

DATE	FILE/DOSSIER	SECURITY SECURITE
MAY21	20-3-1-6	UNCLAS
	37	

	NO	PRECEDENCE
FM/DE EXT OTT	L-631	FLASH
TO/A VIENNA (CDN DEL LAW OF TREATIES CONF FOR MR. HEESHOP)		
INFO		

REF YOUR TEL 451 MAY21

SUB/SUJ

IN LIGHT OF INFO IN REFTEL INSTRUCTIONS CONTAINED IN OUR TEL L-2 OF MAY 19. STAND. AS TO PROCEDURAL POSSIBILITIES REFERRED TO IN PARA 2 YOUR REFTEL WE WOULD PREFER PROCEDURE (A) SINCE IT WOULD GIVE TIME TO STATES FOR RECONSIDERATION.

NO STD

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LOCAL/LOCALE

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SIG J.A. BEESLEY/JS	LEGAL	2-2728	SIG J.A. BEESLEY

004224

EXT 18/BIL (REV 5/64)

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File
Diary
Div. Diary

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAY 21/69	20-3-1-6	SANS
	37	

FM/DE EXTERNAL OTT

	NO	PRECEDENCE
TO/A VIENNA (CDN DEL LAW OF TREATIES CONFERENCE)	L-623	ROUTINE
INFO		

REF

SUB/SUJ LAW OF TREATIES CONFERENCE

USSEA HAS ASKED THAT WERSHOF, BEESLEY, ROBERTSON AND STANFORD BE NOTIFIED THAT PM HAS COMMENTED AS FOLLOWS UPON LEARNING OF VOTING RESULT ON ARTICLE 5(2): QUOTE GOOD WORK. CONGRATULATIONS TO OUR UN DELEGATION UNQUOTE.

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LOCAL/LOCALE (DONE IN DIV.)

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ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
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EXT 18/BIL (REV 5/64)
(COMMUNICATIONS DIV)

004225

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Legal/J.A.Beesley/js

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO / À: FILE

SECURITY / Sécurité: CONFIDENTIAL

DATE: May 21, 1969

FROM / De: J.A.Beesley, Legal Division

NUMBER / Numéro:

REFERENCE / Référence:

SUBJECT / Sujet: Telephone Conversation between Mr. Wershof and Mr. Beesley May 20, 3 p.m.
U.N. Draft Convention on Law of Treaties: Settlement of Disputes

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

ENCLOSURES / Annexes

DISTRIBUTION

Mr. Cadieux
Mr. Bissonnette

Mr. Wershof explained that he was calling concerning the question of peaceful settlement of disputes provisions, Part V and also the signature and accession provisions in the final clauses. The Afro-Asians have tabled a compromise package with the following two elements:

1. New Article 62 bis which provides: (a) compulsory reference to the International Court of Justice of disputes on Articles 50 and 61, (b) compulsory conciliation on other articles in Part V.

2. The second element of the package, a conference declaration or resolution calling the attention of the General Assembly in New York to the provisions in the Vienna signature formula (which we have already approved) which authorizes the General Assembly to invite any other state (that does not fit into the formula) to sign the convention. This declaration would go on to invite the General Assembly to consider the matter of issuing such invitations.

The U.S. and the U.K. and at least one-half of the WEO group are willing to vote for this package. The alternative would be to let the convention be adopted as it is now without any 62 bis and that about 20 members of the WEO abstain on the convention as a whole. The Germans do not object to the proposed declaration although they themselves will abstain on it. François Valatt has told Dr. Elias that it will be made clear in any debate that a vote in favour of this declaration will be without prejudice to what individual Western countries will do at the General Assembly in the event of a specific proposal being made at the Assembly to invite a particular country. The Russians are strongly opposed to this package and are trying to wreck it and talk some of the Africans out of it. Most of the Afro-Asians are pledged to it. The Canadian delegation like the Americans the British think that this package is better than nothing, and we would propose to vote in favour of it if both the U.S.A. and U.K. adhere to their intention to vote in favour of it. However, this leaves one tricky question on which we need the decision of the Department (which could be put in a flash telegram later today marked to be decyphered

...2

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

at 8 a.m. May 21). The question is, assuming that the package is adopted, how then should Canada vote on the convention as a whole afterwards. The present intention of the U.S.A. and U.K. in that event (once the package has been adopted) is to vote in favour of the convention as a whole. Valatt says that Dr. Elias has not so far raised this point. (He has not asked for a promise that Western countries will vote in favour of the convention as a whole as part of the package.) Valatt thinks it would be illogical and would make the Africans angry if we accepted the package and turned around and abstained on the convention as a whole. In the Canadian delegation two of us (Stanford and myself) are in favour of voting for the convention as a whole if both the U.S.A. and U.K. adhere to their intention to vote for the convention as a whole. Robertson favours abstaining on the convention as a whole even though we vote for the package deal. My view is that Canada can live with the package and we can live with the convention as a whole and it would look odd if Canada abstains while the U.S.A. and U.K. vote in favour. Robertson says why should we vote in favour of a convention that is unsatisfactory as regards settlement of disputes procedures just because the U.S.A. and U.K. are voting in favour of it. When considering an answer, a vote in favour of the convention as a whole does not bind Canada either legally or orally to sign and ratify the convention. On the other hand, abstaining on the convention as a whole would not prevent Canada from later on signing and ratifying.

Mr. Beesley said in reply as follows. He agreed that the compromise proposal was by no means ideal but considered it better than the alternative of no compulsory settlement procedures and that we should therefore vote in favour of the compromise package. The position of the U.S.A. and the U.K. was important not merely because of our close relationship with them but because they are two of the major treaty-making nations of the world. If such states could support the proposal, this is indicative. As to the position on the convention as a whole, he considered that the Africans and Asians might misunderstand the Western position if it appeared that the West had supported the package compromise in order to have it accepted by the conference and then did not support the convention as a whole. While Robertson's position was a logical one it would be preferable to vote for the convention as a whole like the U.S.A. and the U.K. While the compromise left much to be desired from the Western point of view, it gave very little to the Eastern Europeans even on the all states question and undoubtedly the Africans and Asians supporting the package considered that they had made great concessions and they might consider it some kind of trick if the West did not vote consistently with its position on the package. In his own view Canada should vote for the package and the convention if either the U.S.A. and U.K. is prepared to do likewise. He could not give any assurance that his view would be concurred in by the Under-Secretary or the Minister but Mr. Wershof should go ahead on the basis of the views outlined by Mr. Beesley unless a telegram stating the contrary was received by the 8 a.m. deadline on May 21.

Mr. Wershof requested that a telegram be sent in any event either confirming or disaffirming instructions and Mr. Beesley agreed to try and have this done. Mr. Beesley enquired as to the possibility, however, faint, of attempting to extract more from the Africans and Asians for inclusion in the compulsory settlement procedures. Mr. Wershof said in reply that a number of Western states had made the same enquiry to Valatt who had explained that it was absolutely impossible to get more than he had already achieved.

Mr. Beesley reported the foregoing very briefly to Mr. Cadieux who instructed that a memorandum be prepared for the Minister with appropriate telegrams of instructions attached to it.

004227

Legal Division

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TO: M. Copland
FROM REGISTRY
MAY 29 1969
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EXTERNAL AFFAIRS | AFFAIRES EXTÉRIEURES

TO / À: Le Secrétaire d'Etat aux Affaires extérieures, Ottawa

FROM / De: l'Ambassade du Canada, Rome

REFERENCE / Référence: Votre lettre L-(M)-559 du 2 mai 1969

SUBJECT / Sujet: Conférence sur le droit des traités, Article 5

SECURITY / Sécurité: Réservé

DATE: le 21 mai 1969

NUMBER / Numéro: 308

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION 37	20-5-2-5

ENCLOSURES / Annexes: 2

DISTRIBUTION

Tel que demandé dans votre lettre sous rubrique, nous avons remercié au nom du Gouvernement canadien les Gouvernements d'Italie et de Saint-Marin, pour l'appui que leurs représentants ont bien voulu nous accorder lors du scrutin relatif à l'omission du deuxième paragraphe de l'Article 5, le 28 avril dernier, durant la session plénière de la Conférence de Vienne sur le droit des traités. Vous trouverez en annexe copies des notes que nous avons adressées à ce sujet.

L'Ambassade.

Ext. 407B/Bil.
(Admin. Services Div.)

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cc Ministère des Affaires extérieures
Ottawa

N° 122

L'Ambassade du Canada présente ses compliments au Ministère des Affaires étrangères et a l'honneur de se référer à sa Note numéro 279, en date du 27 novembre 1968, relative à l'Article 5 du projet de Convention sur le droit des traités qui a été discuté le 28 avril dernier, au cours de la deuxième session plénière de la Conférence de Vienne.

Les autorités canadiennes n'ont pas manqué de noter avec grande satisfaction l'appui que la délégation d'Italie a bien voulu leur accorder lors du scrutin portant sur l'omission du deuxième paragraphe de l'Article 5 du projet de Convention sur le droit des traités.

A ce propos, le Gouvernement canadien désire exprimer sa vive gratitude au Gouvernement d'Italie, et remercier tout particulièrement le distingué représentant italien pour ses interventions, utiles et convaincantes à la fois, lors du débat sur cette question durant ladite Conférence de Vienne.

L'Ambassade du Canada saisit cette occasion pour renouveler au Ministère des Affaires étrangères les assurances de sa très haute considération.

Rome, mercredi le 21 mai 1969.

Canadian Embassy Ambasciata del Canada
PIERRE DUMAS
ROME

Ministère des Affaires étrangères,
La Farnesina,
Rome.

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Ministère des Affaires extérieures,
Ottawa

CANADIAN CONSULATE - CONSULAT DU CANADA
SAN MARINO

Via G.B. de Rossi, 27
Rome, Italie

le 21 mai 1969

Monsieur le Secrétaire d'Etat,

J'ai l'honneur de me référer à la Note numéro 0003/Aa/349 du Secrétariat d'Etat, en date du 2 avril 1969, ainsi qu'à la Note numéro 0002/69, en date du 21 mars 1969 du Consulat, toutes deux relatives à l'Article 5 du projet de Convention sur le droit des traités qui a été discuté le 28 avril dernier, au cours de la deuxième session plénière de la Conférence de Vienne.

Les autorités canadiennes n'ont pas manqué de noter avec grande satisfaction l'appui que la délégation de Saint-Marin a bien voulu leur accorder lors du scrutin portant sur l'omission du deuxième paragraphe de l'Article 5 du projet de Convention sur le droit des traités.

A ce propos, le Gouvernement canadien désire exprimer sa vive gratitude au Gouvernement de Saint-Marin, et remercier tout particulièrement le distingué représentant de Saint-Marin de l'attitude positive et constructive qu'il a bien voulu adopter à Vienne lors du débat sur cette question.

Je vous prie d'agréer, Monsieur le Secrétaire d'Etat, les assurances de ma très haute considération et de mes meilleurs sentiments.

Le Consul du Canada près Saint-Marin,

Pierre Dumas

Pierre Dumas

Son Excellence Monsieur le Professeur
Frederico Bigi,
Secrétaire d'Etat pour les Affaires étrangères,
Palais du Gouvernement,
San Marino,
République de San Marino.