

Department of External Affairs

**CLASSIFIED**

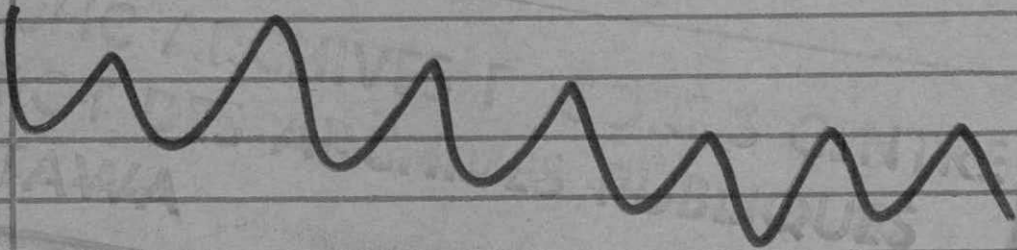
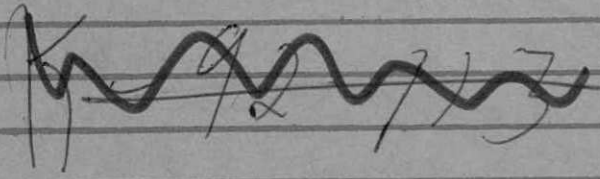
File No. 20-3-1-6

Subject: POLITICAL AFFAIRS -  
TREATIES & AGREEMENTS -  
TREATY MAKING POWERS -  
LAW OF TREATIES -

Vol. 4-NA  
From MAR 7/68  
To APR 30/68

I.L.C. CODIFICATION PROJECT  
REPLACES FILE 5475-AX-8-40

**References to Related Files**

File No.	Subject
20-5-2-2	I.L.C.
	
	
PAC	

PUBLIC RECORDS ORDER

P.C. 1966 - 1749 - AUTHORITY

PUBLIC ARCHIVES APPROVALS

NOS 68/001 & 69/063

RETENTION PERIOD AND DISPOSITION

10 yrs 2A-8D

AND... THEN TRANSFER TO P.A.C.

F.R. 2001-10-10

DIVISIONAL SYMBOL

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DATED FROM MAR/66 FILE No. 20-3-1-6  
TO APR 30/68 VOLUME No. 4-13

# CLOSED VOLUME

DO NOT PLACE ANY CORRESPONDENCE ON THIS FILE

FOR SUBSEQUENT CORRESPONDENCE SEE:

FILE No. 20-3-1-6 VOLUME No. 5

PLEASE KEEP ATTACHED TO TOP OF FILE



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ACTION COPY

*Keesley*

OTT128

L

*file*  
*gs*

PARI38

VNAB/30

RR OTT RR NYK

DE VNA

R301359Z

FM VIENN APR30/68

TO EXTER 365

INFO PRMNY

REF YOURTEL L390 APR26

*For present no this*  
*gs*

20-3-1-6  
321 2)

LAW OF TREATIES TELS COPIES FOR PRMNY

WE WILL CONTINUE TO MARK MOST OF OURTELS INFO PRMNY. SHOULD WE SAY

QUOTE BAG DE OTT UNQUOTE OR DOES IT NOT/NOT MATTER

CANDEL

OTT124

ACTION COPY

*Deerly*  
*W. J. G.*

VNA7/30

RR OTT

DE VNA

R301359Z

FM VIENN APR30/68

TO EXTER 366

LAW OF TREATIES ARTS 55 AND 56

CANDEL HAS TABLED AMENDMENTS L286 AND L285 AS SUGGESTED IN INSTRS.

COPIES IN TODAYS DOCU PACKAGE

CANDEL

20-3-1-6  
321 27

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM Head of Canadian Delegation to the Law of Treaties  
De Conference - VIENNA

REFERENCE Our Telegrams 247 of Apr. 4, 256 of Apr. 5, 307 of Apr. 18  
Référence and 312 of Apr. 19, 1968.

SUBJECT Law of Treaties - Article 5 (Federal States)  
Sujet

SECURITY  
Sécurité

CONFIDENTIAL

DATE April 30, 1968

NUMBER  
Numéro

254

FILE	DOSSIER
OTTAWA	
26-3-1-6	
MISSION	32 - 2

ENCLOSURES  
Annexes

DISTRIBUTION

Received

MAY 10 1968

In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY

MAY 9 1968

FILE CHARGED OUT

TO: MR STANFORD

In our telegrams under reference, we gave our preliminary comments on the debate and on the two votes which took place in the Committee of the Whole on paragraph 2 of Article 5, concerning the capacity of a member of a Federal Union to conclude treaties. Although next year's Plenary Conference is still a long way off, we thought that you might find it useful in preparation for that Conference to have our views on what we consider to have been the main factors in the decision reached this year by the Committee of the Whole and on the tactics that Canada might follow prior to and in the 1969 Plenary, in the hope of reversing this decision. In so doing we realize, of course, that not all the elements which will have to be taken into consideration in determining the Canadian Government's position and tactics concerning Article 5 at next year's Plenary are fully known at present, especially to us in Vienna. With this in mind, we propose in this letter to restrict ourselves to dealing exclusively with those aspects of the question connected with our recent experience here in the Committee of the Whole.

As indicated in our telegram 247 of April 4 we continue to believe that the main reason why paragraph 2 of Article 5 was upheld by the Committee of the Whole this year was the U.S.S.R.'s resolve to maintain that provision. As already reported, the U.S.S.R. delegation conducted an intensive lobbying campaign, in favour of retention of that part of the Article. To a great extent this campaign, in our view, was successful with some countries only because these countries had not been approached by anyone else before the U.S.S.R. with reasoned arguments in favour of deletion. Since most of the countries present at the Conference had no strong feeling one way or the other on that particular provision of the Articles, it was thus relatively easy for the Soviet Union to obtain support for their position by stressing the importance which attached, from the Soviet Union's point of view, to the retention of the Article in the light of their particular constitutional set-up and of the

...2

positions of the Ukraine and of Byelorussia. ( I do not myself believe that Article 5(2) is necessary to the protection of these positions but the Soviet Delegation either believes it is or pretends to believe it). While it is obvious that advanced lobbying by the Canadian Government would not have succeeded in changing the attitude of those countries which make a habit of voting with the Soviet Union or are reluctant to offend the Soviets, the fact remains that a number of other countries voted in favour of retention this time because they were approached only by the Soviet Union and given one side of the argument in a very forceful and urgent manner.

3. Another factor was of course the position adopted by France in relation to French-speaking African countries. In the light of your instructions there was very little that could be done by us about this situation this year. We know, however, from conversations with delegates from some French-speaking African countries that a number of them only voted in favour of retention because they were "instructed" to do so by the French delegation. We also know that these "instructions" were passed around by the French delegation here only one or two days before the first vote on Article 5 took place on April 4. Thus it is safe to assume that the vote of at least some of the French-speaking African countries did not reflect considered positions taken by their governments in their respective capitals in advance of the Conference. In these cases also delegates from French-speaking African countries were given a one-sided argument by France and, in the absence of any representations from the other side, they naturally voted with France. In these circumstances, we think that a well-argued approach to French-speaking African countries through diplomatic channels before next year's Plenary might be successful, with at least a few of these countries, in bringing them to reconsider the position they adopted this year.

4. In our view there was a third main contributing factor to our failure to obtain deletion of paragraph 2 of Article 5 this year. Ever since proceedings have started here, it has become increasingly evident that, for a great number of African and Asian delegations, any substantial departure from the text of the I.L.C. draft is almost blasphemous. We have indeed been told by some African delegates that their only instructions on coming here were to the effect that they should endeavour to maintain the I.L.C. text as drafted. Thus anyone proposing an amendment to delete part of any article has had to fight an uphill battle to get the Africans and Asians to depart from their favorable attitude towards the I.L.C. text. Although there have been quite a number of amendments to delete the whole or part of Articles, only one or two such amendments had any measure of support from the African and Asian delegations

5. For ease of reference we are attaching, in an Annex to this letter, a record of the manner in which countries voted on the proposal to delete paragraph 2 of Article 5 on April 4 and on April 18 respectively. We would like to submit that this voting record, together with the reasons given above to explain some of the votes against deletion, suggest the tactics which the Canadian Government might consider if it is to succeed in obtaining the deletion of paragraph 2 of Article 5 at next year's Plenary. It is our view that, if it remains the aim of the Canadian Government to obtain such a deletion, a decision in this regard should be arrived at as early as possible. This then should be followed by concerted approaches (accompanied by full written explanations) through diplomatic channels, well in advance of the Conference, to most countries with which we have diplomatic relations except for the Communist countries and France. It must be assumed that the Soviet Union, will, on its part, again conduct an intensive campaign in order to muster support for its own position. This argues in favour of our making our bid early, so



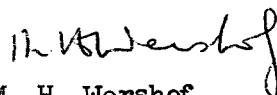
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as not to be faced with a situation where a number of countries will already have committed their support to the U.S.S.R. position. (When we ask countries for support in obtaining deletion, we might in addition ask for support in obtaining a procedural vote in favour of having a separate vote on paragraph 2. Indeed, some countries might promise the latter even if they refuse to vote for deletion of paragraph 2. It must be assumed that the Russians will object at the Plenary to our request for a separate vote on paragraph 2.)

6. The proceedings this year have shown that, apart from moving for deletion of paragraph 2 of Article 5, there might be another possible course of action open to the Canadian Government at or prior to next year's Plenary, if it came to the conclusion that such a course of action would be advisable. Given the closeness of the two votes this year on paragraph 2 of Article 5 and the alleged importance attached by the U.S.S.R. to its retention, we feel that the Canadian Government would be in an excellent bargaining position to obtain the inclusion in Article 5 (2) of provisions which it considered indispensable to meet its own requirements. Such an eventuality would first involve, on our part, a decision as to what type of provision should be included in Article 5 in order to meet Canada's requirements. Then it would involve early consultations with the U.S.S.R. with a view to determining whether they would be prepared to go along with the inclusion of such provisions in Article 5. There have been informal indications here from the U.S.S.R. delegation that they would like to exchange views with us on the type of modifications which the Canadian authorities would consider necessary to Article 5 to render it acceptable. Naturally, the Soviets realize that the alternative to an accommodation with us might be the deletion of paragraph 2, since we are in a good position to muster a blocking one-third vote against that paragraph at the Plenary next year. If the Canadian Government were to decide on such a course of action and if it became apparent, after preliminary consultations with the U.S.S.R., that some sort of an agreement could be reached with them, then of course our position would have to be explained to some of our friends, particularly the Australians, who helped us considerably by taking the lead in the drive for deletion of paragraph 2. We would not, we believe, have too much difficulty in convincing our friends to accept any solution on Article 5 which Canada would consider satisfactory, since most of them have in any event favoured deletion out of friendship for Canada rather than because of any worries about the effect of the paragraph in their own countries.

7. If you consider it useful, would you please send a copy of this to Permis, NY.

  
M. H. Wershof,  
Head of Canadian Delegation

P.S. This was drafted prior to Mr. McKinnon's departure.

  
M.H.W.

A N N E X

VOTING ON PARAGRAPH 2 OF ARTICLE 5

<u>COUNTRY</u>	<sup>12th meeting</sup> <u>APRIL 4</u>	<u>APRIL 18</u> (28th meeting)
AFGHANISTAN	Retention	Retention
ALGERIA	Retention	Retention
ARGENTINA	Deletion	Retention
AUSTRALIA	Deletion	Deletion
AUSTRIA	Deletion	Retention
BELGIUM	Deletion	Deletion
BOLIVIA	Deletion	Abstention
BRAZIL	Deletion	Deletion
BULGARIA	Retention	Retention
BYELORUSSIA	Retention	Retention
CAMBODIA	Retention	Retention
CANADA	Deletion	Deletion
CENTRAL AFRICAN REPUBLIC	Retention	Retention
CEYLON	Deletion	Deletion
CHILE	Abstention	Deletion
CHINA	Deletion	Deletion
COLOMBIA	Retention	Absent
CONGO (BRAZZAVILLE)	Retention	Retention
CONGO (DEMOCRATIC REPUBLIC)	Retention	Abstention
COSTA RICA	Absent	Absent
CUBA	Retention	Retention
CYPRUS	Deletion	Absent
Czechoslovakia	Abstention	Retention
DAHOMY	Retention	Absent
DENMARK	Abstention	Deletion
DOMINICAN REPUBLIC	Deletion	Deletion
ECUADOR	Abstention	Retention
ETHIOPIA	Deletion	Deletion

2.

<u>COUNTRY</u>	<u>APRIL 4</u>	<u>APRIL 18</u>
FED. REPUBLIC OF GERMANY	Deletion	Deletion
FINLAND	Retention	Abstention
FRANCE	Retention	Retention
GABON	Retention	Retention
GHANA	Abstention	Abstention
GREECE	Deletion	Deletion
GUATEMALA	Deletion	Retention
GUINEA	Retention	Retention
HOLY SEE	Abstention	Retention
HONDURAS	Retention	Absent
HUNGARY	Retention	Retention
INDIA	Deletion	Deletion
INDONESIA	Retention	Retention
IRAN	Retention	Retention
IRAQ	Retention	Retention
IRELAND	Deletion	Deletion
ISRAEL	Deletion	Deletion
ITALY	Deletion	Deletion
IVORY COAST	Retention	Retention
JAMAICA	Abstention	Deletion
JAPAN	Deletion	Deletion
JORDAN	Absent	Retention
KENYA	Retention	Retention
KUWAIT	Retention	Retention
LEBANON	Abstention	Retention
LIBERIA	Retention	Retention
LIECHTENSTEIN	Absent	Retention
MADAGASCAR	Retention	Retention
MALAYSIA	Deletion	Deletion

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<u>COUNTRY</u>	<u>APRIL 4</u>	<u>APRIL 18</u>
MALI	Retention	Retention
MAURITANIA	Absent	Absent
MAURITIUS	Absent	Deletion
MEXICO	Deletion	Deletion
MONACO	Absent	Retention
MONGOLIA	Retention	Retention
MOROCCO	Absent	Retention
NEPAL	Deletion	Absent
NETHERLANDS	Deletion	Deletion
NEW ZEALAND	Deletion	Deletion
NIGERIA	Retention	Retention
NORWAY	Deletion	Deletion
PAKISTAN	Retention	Abstention
PANAMA	Absent	Absent
PERU	Absent	Deletion
PHILIPPINES	Absent	Deletion
POLAND	Retention	Retention
PORTUGAL	Deletion	Deletion
REPUBLIC OF KOREA	Deletion	Deletion
REPUBLIC OF VIETNAM	Deletion	Deletion
ROMANIA	Retention	Retention
SAN MARINO	Deletion	Deletion
SAUDI ARABIA	Retention	Retention
SENEGAL	Retention	Retention
SIERRA LEONE	Abstention	Deletion
SINGAPORE	Deletion	Deletion
SOMALIA	Retention	Absent
SOUTH AFRICA	Deletion	Retention
SPAIN	Abstention	Deletion



4.

<u>COUNTRY</u>	<u>APRIL 4</u>	<u>APRIL 18</u>
SWEDEN	Delet ion	Delet ion
SWITZERLAND	Retenti on	Retention
SYRIA	Retention	Retention
THAILAND	Retention	Abstenti on
TRINIDAD AND TOBAGO	Retenti on	Abstenti on
TUNISIA	Retenti on	Retention
TURKEY	Retention	Retention
UGANDA	Absent	Absent
UKRAINE	Retenti on	Retention
USSR	Retenti on	Retenti on
UNITED ARAB REPUBLIC	Retenti on	Retenti on
UNITED KINGDOM	Deleti on	Deleti on
UNITED REPUBLIC OF TANZANIA	Retention	Abstenti on
UNITED STATES OF AMERICA	Deleti on	Deleti on
URUGUAY	Deleti on	Deleti on
VENEZUELA	Deleti on	Deleti on
YEMEN	Absent	Absent
YUGOSLAVIA	Retention	Retention
ZAMBIA	Deleti on	Deleti on

~~ACTION COPY~~  
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~~Mr. Barclay~~  
JL

cc: "L" Div only

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TO TT VIENN 1176 DE PARIS PRIORITY

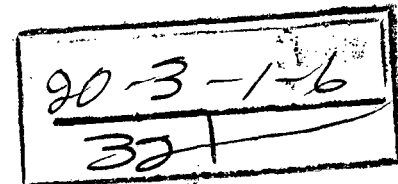
INFO EXTER GENEV

REFEXTERTEL L390 APR26

CONFERENCE ON LAW OF TREATIES.DOCUS AND TELS.

WE AGREE WITH SUGGESTION MADE BY ROBERTSON IN REFTEL.

Just what was this tel?  
JRB



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ACTION COPY

FM VIENN APR23/68 RESTR

TO EXTER 352

INFO TT WLGTN PRMNY DE OTT

BAG GENEV DE VIENN

REF OURTEL 319 APR21

LAW OF TREATIES CONFERENCE 4TH PROGRESS SUMMARY APR22-27

ARTS 27 AND 28:-USA AMENDMENT L156 TO ARTS 27 AND 28 RELATING TO TRAVAUX PREPARATOIRES WAS DEFEATED IN CTTEE OF WHOLE(CW)BY 8-66 (CDA UK)-10.SO WAS SIMILAR AMENDMENT L199 PROPOSED BY VIETNAM.ONLY OTHER AMENDMENTS VOTED UPON WERE CEYLON L212 DEFEATED 9-29-49(CDA) AND TANZANIAN L215 DEFEATED 8-54(CDA)-25.ALL REMAINING AMENDMENTS WERE REFERRED TO DRAFTING CTTEE(DC)TOGETHER WITH ARTS.

ART 29:-ALL AMENDMENTS TO THAT ART REFERRED TO DC TOGETHER WITH ART.

ART 30:-AFTER SHORT DEBATE VENEZUELAN AMENDMENT L205/REV1 WAS WITHDRAWN AND TANZANIAN AMENDMENT L211 WAS REFERRED TO DC.

ARTS 31 AND 32:-ONLY AMENDMENT VOTED ON WAS THAT OF FINLAND L141 CALLING FOR DELETION OF 2ND SENTENCE OF PARA1 OF ART 32.THIS WAS REJECTED BY 25(CDA FRANCE)-46(USA UK)-17.ALL OTHER AMENDMENTS REFERRED TO DC EXCEPT FOR L224 WHICH WAS WITHDRAWN.

ART 33:-ONLY AMENDMENT TO THAT ART NOT/NOT WITHDRAWN L211 WAS REFERRED TO DC.

ART 34:-AMENDMENTS BY FINLAND L142 AND VENEZUELA L223 PROPOSING TO DELETE ART WERE REJECTED BY ROLL CALL VOTE 14-63(CDA)-18.MEXICAN AMENDMENT L226 ADDING REF TO GENERAL PRINCIPLES OF LAW WAS ADOPTED

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PAGE TWO 352 RESTR

38(CDA USA)-28(UK FRANCE)-28.SYRIAN AMENDMENT L106 ADOPTED 59-15  
(CDA)-17.OTHER AMENDMENTS REFERRED TO DC.

ART 35:-CHILEAN L235 AND CEYLON L153 AMENDMENTS WERE WITHDRAWN AND  
ART 35 SENT TO DC.

ART 36:-FRANCE AMENDMENT L45 AND NETHERLANDS L232 WERE REFERRED TO  
DC WITHOUT PREJUDICE TO DECISION ON SUBSTANCE OF L45 WHICH CW WILL  
TAKE LATER ON.L45 IS ONE OF SERIES OF FRENCH AMENDMENTS DESIGNED  
TO GIVE SPECIAL STATUS TO QUOTE RESTR MULTILATERAL TREATIES UNQUOTE.  
THIS CONTROVERSIAL PROPOSAL AS WELL AS COMMUNIST PROPOSAL FOR NEW  
ALLSTATES ART 5B1S ARE BEING KEPT IN COLD STORAGE WITH ACQUIESCENCE  
OF PRINCIPAL DELS.

ART 37:-FRENCH L46(SIMILAR TO L45)AND AUSTRALIAN L237 AMENDMENTS  
WERE SENT TO DC WITHOUT PREJUDICE TO LATER DECISION BY CW ON POINTS  
OF SUBSTANCE TO WHICH THEY RELATED.OTHER AMENDMENTS REFERRED TO DC.

ART 38:-AMENDMENTS CALLING FOR DELETION OF THIS ART(L143 L200 L206  
L220)WERE ADOPTED BY CW 53(CDA USA UK USSR)-15-26.THIS WAS FIRST  
TIME AN ART HAS BEEN DELETED BY CW.

ART 39:-DEBATE ON THIS OPENING ART OF PART V WAS IN NATURE OF  
GENERAL DEBATE ON RELATIONSHIP BETWEEN THIS ART AND CONTROVERSIAL  
SUBSTANTIVE ARTS OF PART V AND ART 62 RE DISPUTES.BY PREARRANGEMENT  
CHAIRMAN SAID AT END OF DEBATE THAT ART 39 AND AMENDMENTS THERETO  
WOULD BE PUT ASIDE FOR LATER DECISION.AMENDMENTS ARE L121 227 233  
AND 245;L242 WAS WITHDRAWN.

ART 40:-AFTER SHORT DEBATE THIS ART AND AMENDMENTS L183 243 AND 262

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PAGE THREE 352 RESTR

WERE SENT TO DC.

ART 41: -DEBATE OPENED APR27 BUT NOT/NOT CONCLUDED.MAIN ISSUE IS WHETHER TO PERMIT POSSIBILITY OF SEPARABILITY IN CASES FALLING UNDER ARTS 48 49 AND 50-WHICH UK AMENDMENT L257 WOULD DO BY DELETED PARA5.ON OTHER HAND ARGENTINE AMENDMENT L244 WOULD RESTRICT POSSIBILITY OF SEPARABILITY TO ART 57 AND FORBID IT IN ALL OTHER CASES.

ARTS 6 AND 7: -(SEE OURTEL 259 APR7)DC TEXT OF ARTS 6 AND 7 CONTAINED IN A/CONF39/C1/4 WERE CONSIDERED BY CW ON APR23.USSR DEL CHALLENGED RIGHT TO HAVE VOTES ON SEPARATE PARTS OF ARTS ON GROUND THAT THEY HAD BEEN SUBSTANTIVELY ADOPTED BY CW BEFORE BEING SENT TO DC.HOWEVER,GIVEN PRACTICE FOLLOWED BY CHAIRMAN OF REFERRING TO DC SOME AMENDMENTS CONTAINING POINT OF SUBSTANCE THAT HAVE NOT/NOT BEEN DECIDED BY CW,WE TOGETHER WITH A NUMBER OF OTHER DELS SUPPORTED VIEW THAT CW SHOULD HAVE RIGHT TO EXPRESS OPINION BY VOTING ON WAY IN WHICH DC HAD DEALT WITH MATTERS REFERRED TO IT TY CW. CHAIRMAN ACCEPTED OUR POSITION AND SEPARATE VOTES WERE TAKEN ON PARA1(B)AND2(C)OF ART 6.PARA1(B)WAS ADOPTED 83(CDA)-3-5.PARA2(C) ADOPTED 84(CDA)-1-3.TEXT OF ART 7 PROPOSED BY DC WAS ALSO ADOPTED BY 87(CDA)-2-1

WERSHOF

ACTION COPY *M Bessley*

L

*free  
gs*

FM VIENN APR28/68 CONFID

TO EXTER 355

INFO IT CRCAS GRGTN DE OTT

REF OURTEL 339 APR25

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32	27

LAW OF TREATIES VENEZUELA-GUYANA BOUNDARY

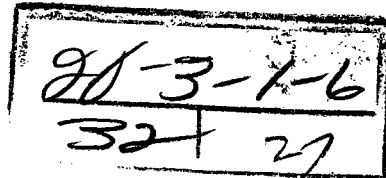
VENEZUELA(WITH BOLIVIA COLOMBIA DOMINICAN GTMLA AND USSR)HAVE  
TABLED L251 WHICH WOULD MAKE ART 42 READ AS FOLLOWS: BEGINS: A  
STATE MAY NO/NO LONGER INVOKE A GROUND FOR INVALIDATING, TERMINAT-  
ING, WITHDRAWING FROM OR SUSPENDING THE OPERATION OF A TREATY  
UNDER ARTS 43 TO 45 INCLUSIVE, IF, AFTER BECOMING AWARE OF THE  
FACTS, IT SHALL HAVE EXPRESSLY AGREED THAT THE TREATY, AS THE CASE  
MAY BE, IS VALID OR REMAINS IN FORCE OR CONTINUES IN OPERATION. ENDS.  
THIS PROPOSAL IS RELATED TO BOUNDARY DISPUTE.

2. GUYANA(WHICH NOW HAS DEL) HAS TABLED L286 TO CHANGE QUOTE MAY  
UNQUOTE IN FIRST LINE OF ART 42 TO QUOTE SHALL UNQUOTE

WERSHOF

*My [unclear]*  
*[unclear]*

WVWV



OTT043

PAR152

VNA4/29

RR OTT

DE VNA

R290823Z

FM VIENN APR28/68

TO EXTER 354

REF OURTEL 338 APR25 PARA4

LAW OF TREATIES SETTLEMENT OF DISPUTES

SWISS HAVE TABLED L250 PROPOSAL FOR NEW ART 76. THIS PROVIDES, IN  
RELATION TO WHOLE CONVENTION, FOR COMPULSORY SETTLEMENT OF DISPUTES  
BY ARBITRAL TRIBUNAL OR ICJ. THIS PROPOSAL IS NOT/NOT LIKELY TO  
BE REACHED DURING CURRENT SESSION OF CONFERENCE

CANDEL

*M. B. B.*

**ACTION COPY**

*L*

*Mr. W. H. H. H.*

20-3-1-6  
321 27

*file*

FM VIENN APR28/68 RESTR

TO EXTER 353 PRIORITY

INFO TT PRMNY DE OTT

LAW OF TREATIES ART 49

GROUP OF AFROASIAN DELS PLUS BOLIVIA HAVE TABLED L67 WHICH WOULD

ADD QUOTE INCLUDING ECONOMIC PRESSURE UNQUOTE AFTER WORD FORCE.

PLEASE ADVISE BRIEFLY STATE OF PLAY ON SIMILAR PROPOSAL IN FRIENDLY

RELATIONS CTTEE AND CONFIRM CDN POSITION IN THAT CTTEE

WERSHOF



16-20-3-1-6  
28/5  
ACTION COPY

*Allen:*  
This seems to ignore the kind of  
situation where the federal government  
continues to claim the sole treaty-making  
power, while, hypothetically, Quebec makes a  
treaty. In such case, which entity would  
be internationally responsible?

*A state cannot hide behind its constitution (under Art 43)*

FM VIENN APR28/68 CONF D

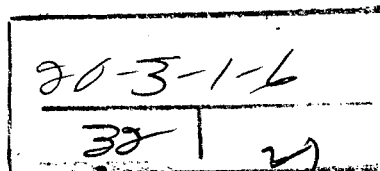
*well to caught in the middle.*

TO EXTER 356

*Done*  
~~FOR GOTTLIEB~~ AND LEGAL DIV

REF YOURTEL L359 APR24

LAW OF TREATIES ART 43



I DISCUSSED PROBLEM IN CONFIDENCE WITH ROSENNE (ISRAEL) WHO IS AS  
YOU KNOW TRUSTWORTHY FRIEND OF CDA AS WELL AS HIGHLY EXPERT MEMBER  
OF ILC. HE AGREED THAT WORD STATE IN ART 43 COULD ONLY MEAN AND WAS  
INTENDED TO MEAN SOVEREIGN STATE AS IT DOES IN PARA 1 OF ART 5. HE  
ALSO FELT THAT IN HYPOTHETICAL CASE YOU DESCRIBE IT WOULD BE IM-  
POSSIBLE FOR ANYONE TO SAY THAT STATE CDA HAD CONSENTED TO BE BOUND  
BY TREATY WITH FOREIGN STATE, AND CONSEQUENTLY SITUATION FOR WHICH  
ART 43 WAS DESIGNED WOULD NOT/NOT EXIST. CASE MIGHT BE DIFFERENT IF  
EG SWISS GOVT SANCTIONED (AS CONTEMPLATED BY CONSTITUTION) A TREATY  
BETWEEN A CANTON AND A FOREIGN STATE; IN THIS SITUATION QUESTION OF  
SWISS GOVTS RESPONSIBILITY TO FOREIGN STATE FOR EXECUTION OF TREATY  
WOULD ARISE AND ART 43 MIGHT COME INTO PLAY. IN THIS HYPOTHETICAL  
CASE IT WOULD BE SWISS GOVT THAT IS THE STATE WHICH CONSENTED TO  
BE BOUND. ROSENNE CANNOT/NOT SEE ANY MORE THAN I CAN HOW COMPARABLE  
LEGAL PROBLEM COULD ARISE FOR CDA IF A PROVINCE PURPORTS TO MAKE  
A TREATY WITH A FOREIGN STATE IN THE ABSENCE OF DELEGATED AUTHORITY  
OR COVER PROVIDED BY CDN GOVT AND INDEED IN THE FACE OF THE WELL-  
KNOWN DENIAL BY CDN GOVT THAT THE PROVINCE HAS ANY AUTHORITY TO DO  
ANYTHING OF THE KIND.

2. ROSENNE ALSO FELT THAT ANY EFFORT BY CDA TO RAISE THIS PROBLEM

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*If Canada denied responsibility because it was no treaty this would  
be consistent with the federal position. If Canada attempted to shy  
responsibility to Quebec, this would presumably be inconsistent with the federal  
position.*

001702

PAGE TWO 356 CONFD

IN THE DEBATE ON ART 43 COULD BACKFIRE AND HURT OUR GOOD CHANCES  
OF OBTAINING DELETION OF ART 5(2)AT 1969 PLENARY

WERSHOF

001703

# MESSAGE

DATE APRIL 25/68		FILE/DOSSIER 20-3-1-6 35		SECURITY SECURITE
				UNCLAS.
FM/DE	EXTERNAL OTT			
TO/A PERMIS N.Y.			NO	PRECEDENCE
			L-390	IMMEDIATE
INFO MR. WERSHOF (VIENNA)				

REF

SUB/SUJ

GENEVA TEL 340 TO PERMIS N.Y.  
CONFERENCE ON LAW OF TREATIES DOCUS AND TELS

IN VIEW OF FACT THAT WORK OF CONFERENCE WILL  
AT LEAST CONTINUE NEXT YEAR (IF NOT EVEN INTO 1970) AND  
THAT CONSULTATIONS WILL PROBABLY TAKE PLACE IN NEW YORK  
BETWEEN CONFERENCE SESSIONS I BELIEVE IT WOULD BE USEFUL FOR  
US TO HAVE ON OUR FILES AS FULL A RECORD OF CONFERENCE  
PROCEEDINGS AS POSSIBLE. I THEREFORE RECOMMEND THAT MR.  
WERSHOF BE ASKED TO CONTINUE TO SEND / COPIES OF TELS TO  
PERMIS (THOUGH BY BAG IF THAT WOULD BE LESS COSTLY OR  
ENTAIL LESS WORK).

ROBERTSON

DISTRIBUTION  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....A.V. ROBERTSON.....			SIG.....J.S. STANFORD.....
			J.S. STANFORD

2

INFO ONLY

h

mlf Beresley  
Stanford

Gene. tel

OTT144

OV

PAR132

VNA14/25

RR NYK RR OTT RR GVA

DE VNA

R 251336Z

FM VIENN APR25/68

TO PRMNY 340

INFO EXTER GENEV

CONFERENCE ON LAW OF TREATIES DOCUS AND TELS

WE PRESUME THAT PRMNY DOES NOT/NOT NEED INFO COPIES OF OUR FUTURE  
TELS NOW THAT ROBERTSON IS COMING TO VIENN AND WE WILL DISCONTINUE  
MARKING INFO PRMNY

2. AT MCKINNON'S REQUEST WE WILL MARK BAG GENEV OUR FUTURE TELS  
AFTER HIS DEPARTURE SAT

WERSHOF

In view of fact that work of conference will continue <sup>at least until</sup> next year (if not even  
into 1970) and that consultations will probably take place in New York between conference  
sessions I believe it would be useful for us to have on our files as full a record of  
conference proceedings as possible. I therefore recommend that Mr. Wershof be  
asked to continue to send ~~copies~~ copies of tels to PRMNY (though by bag if that would be  
more readily or contact was work)

001705

FILE 20-3-1-6  
m 17  
**ACTION COPY**  
L

FM VIENN APR25/68 CONFD

TO EXTER 338 PRIORITY

REF OURTEL 266 APR8

LAW OF TREATIES-PART 5

TEMPO OF CONFERENCE HAS PICKED UP IN RECENT WEEKS TO EXTENT THAT DEBATE ON PART 5 IS NOW SCHEDULED TO START TODAY OR AT LATEST TOMORROW.

2. MEMBERS OF WEO GROUP HAD HOPED THAT ARTICLE BY ARTICLE CONSIDERATION OF PART 5 COULD BE PRECEDED IN CW BY GENERAL DEBATE. HOWEVER AT INFORMAL MTG HELD YESTERDAY BETWEEN HEADS OF LEADING DELS OF VARIOUS GROUPS AND CHAIRMAN TO DISCUSS PROCEDURE TO BE FOLLOWED ON PART 5, IT APPEARED THAT IT WOULD NOT/NOT BE POSSIBLE TO HAVE SUCH GEN DEBATE BECAUSE OF OPPOSITION OF CHAIRMAN AND OTHER GROUPS. IT ALSO BECAME CLEAR FROM THAT MTG THAT ONLY VERY LTD NUMBER OF ARTICLES IN PART 5 WOULD EVENTUALLY BE REFERRED TO WORKING GROUP, INDEED THERE IS NO/NO FIRM ASSURANCE OF ANY WORKING GROUP. IN ANY EVENT CHAIRMAN DOES NOT/NOT PROPOSE TO CONSIDER CONSTITUTING SUCH A GROUP BEFORE ARTICLE 49 AND 50 ARE DISCUSSED. AN UNDERSTANDING APPEARS TO HAVE BEEN REACHED THAT NO/NO VOTE WOULD BE TAKEN IN CW ON QUOTE DIFFICULT UNQUOTE ARTICLES IN PART 5 UNTIL DECISION ON CONSTITUTION OF WORKING GROUP HAS BEEN TAKEN.

3. AT WEO MTG HELD YESTERDAY TO CONSIDER TACTICS ON PART 5 CONSENSUS WAS THAT WEO MEMBERS SHOULD PRESENT UNITED FRONT IN ATTEMPTING TO HAVE FOLLOWING ARTICLES 39, 40, 41, 49, 50, 59, 61, 62 AND 63 REFERRED TO

PAGE TWO 338 CONF D

WORKING GROUP.THESE WERE ARTICLES CONSIDERED BY MTG TO BE OF A HIGHLY CONTROVERSIAL AND FUNDAMENTAL NATURE.WEO MEMBERS ALSO AGREED TO MEET MORE REGULARLY FROM NOW ON TO CONSIDER AMENDMENTS BEING PROPOSED BY MEMBER OF GROUP TO PART 5 IN ADVANCE OF THEIR BEING FORMALLY TABLED IN ATTEMPT TO REACH WIDEST POSSIBLE AGREEMENT WITHIN GROUP ON AMENDMENTS TO MORE IMPORTANT ARTICLES.

4.WITH REGARD TO SETTLEMENT OF DISPUTES,WORKING PARTY SET UP BY WEO GROUP HAS NOT/NOT AS YET REACHED FIRM CONCLUSIONS BUT IS EXPECTED TO REPORT IN NEXT FEW DAYS.IN MEANTIME SWISS INTEND TO TABLE TWO PROPOSALS FOR COMPULSORY SETTLEMENT(BY ICJ OR ARBITRATION)OF DISPUTES;ONE PROPOSAL WILL RELATE ONLY TO PART 5 WHILE OTHER PROPOSAL WILL RELATE TO ALL OTHER PARTS OF DRAFT CONVENTION

WERSHOF...

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*13*

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FM VIENN APR25/68 CONFID

TO EXTER 339

INFO IT GRGTN CRCAS DE OTT

REF GRGTN TEL 347 APR20

CONFERENCE ON LAW OF TREATIES-VENEZUELA-GUYANA BOUNDARY

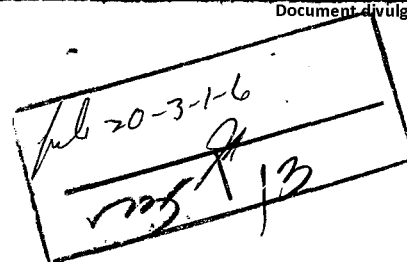
SINCLAIR OF UK DEL HAS BEEN BRIEFED ON THIS BY FO.HE SAYS GUYANA  
DEL IS EXPECTED VIENN SOON.

2.UK DOES NOT/NOT KNOW WHAT AMENDMENT IF ANY VENEZUELA IS PLANNING  
IN RELATION TO THIS QUESTION.IT COULD HAVE BEEN ITS PROPOSAL L.223  
TO DELETE ARTICLE 34 BUT THIS AMENDMENT WAS REJECTED TODAY 14-63-  
(CDA)-18.IT MIGHT BE AN AMENDMENT TO 42(B)BUT NONE HAS YET BEEN  
TABLED.IT COULD BE THAT VENEZUELA HAS IN MIND USING(WITH OR WITHOUT  
AMENDMENTS)ARTICLE 49 OR 59.

3.REST ASSURED THAT UK DEL IN PARTICULAR IS WATCHING THIS AND OUR  
HELP IS AVAILABLE

WERSHOF...



**ACTION COPY**

L

OTT 74

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VNA8/23

PP OTT

DE VNA

P 231208Z

FM VIENN APR23/68

TO EXTER 326 PRIORITY

LAW OF TREATIES-ARTICLES 30 TO 33

IN ORDER TO CLARIFY FUTURE TELS REFERRING TO THESE ARTICLES  
FOLLOWING ARE TEXTS OF AMENDMENTS FILED UP TO THIS A.M.

L.205/REV.1 VENEZUELA

COMBINE ARTICLES 30,31,32 AND 33 IN A SINGLE ARTICLE READING AS  
FOLLOWS: 1. TREATIES DO NOT/NOT CREATE OBLIGATIONS AND RIGHTS FOR  
THIRD STATES EXCEPT WITH THEIR EXPRESS CONSENT AND UNDER THE  
also? CONDITIONS THEY ESTABLISH.

2. THE MODIFICATION OR REVOCATION OF THE RIGHTS AND OBLIGATIONS  
REFERRED TO IN THE FOREGOING PARA SHALL REQUIRE THE EXPRESS CONSENT  
OF THE PARTIES AND OF THE THIRD STATE, UNLESS THE TREATY OTHERWISE  
PROVIDES OR IT CLEARLY OTHERWISE APPEARS FROM ITS NATURE AND PROV-  
ISIONS.

L.221 TANZANIA

REPLACE THE WHOLE ARTICLE 30 BY THE FOLLOWING: EXCEPT AS PROVIDED  
IN ARTICLES 31,32 AND 34, A TREATY DOES NOT/NOT CREATE EITHER  
OBLIGATIONS OR RIGHTS FOR A THIRD STATE.

L.168 MONGOLIA

TRANSPOSE ARTICLES 31 AND 32 SO THAT THE ARTICLE CONCERNING RIGHTS  
FOR THIRD STATES COMES FIRST.

✓ L.141 FINLAND

DELETE SECOND SENTENCE OF PARA 1 OF ARTICLE 32.

L.218 JPN

...2

PAGE TWO 326

PARA1 OF ARTICLE 32 ADD QUOTE UNLESS THE TREATY OTHERWISE PROVIDES,  
UNQUOTE AT THE BEGINNING OF THE LAST SENTENCE.

L211 PHILIPPINES

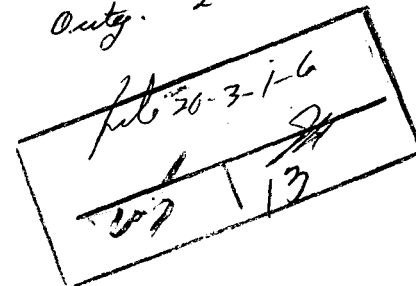
THIS IS A DRAFTING AMENDMENT TO ARTICLE 33

NNNN

001710

*repeated to Kenna 24/4*  
*filed 24/4*  
*M. Stapp*  
**ACTION COPY**

*Inc 24698*  
*Outg. 22920*



FM CRCAS APR23/68 CONF D

TO EXTER119

INFO TT GRGTN DE OTT

REF GRGTN TEL347 APR20

VIENNA CONFERENCE ON TREATIES

YOU WILL BE INTERESTED TO LEARN THAT NEW GUYANA AMBASSADOR  
TO VENEZUELA PRESENTS CREDENTIALS TODAY. IN THESE CIRCUM-  
STANCES PERHAPS AMBASSADOR BRAITHWAITE IS APPROPRIATE  
CHANNEL IN ANY FUTILE ATTEMPT TO GAIN HERE INFO REQUESTED  
BY MINISTER RAMPHAL.

DIARY  
DIV. DIARY  
FILE  
TEL FILE

# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER		SECURITY SECURITE
		APR 22 1968	20-3-1-6		
TO/A	VIENNA		32		CONF
			NO		PRECEDENCE
			L-359		PRIORITY
INFO					

REE YOURTEL 316 APR 21/68

SUB/SUJ LAW OF TREATIES - ARTICLE 43

SITUATION IN WHICH WE SEE POSSIBILITY OF CONFLICT ARISING IS WHERE E.G. QUEBEC PURPORTS TO CONCLUDE TREATY WITH FRANCE. WHETHER SUCH A TREATY ENGAGES RESPONSIBILITY OF WHOLE OF CANADA OR ONLY QUEBEC DEPENDS UPON ANSWER TO STILL UNRESOLVED QUESTION OF APPLICATION OF DOCTRINE OF STATE RESPONSIBILITY TO TREATY MAKING BY MEMBERS OF FEDERAL STATES. PROBLEM OF CONCERN TO US WOULD ARISE IN THE EVENT OF DEFAULT BY QUEBEC IF FRANCE SOUGHT TO PLACE UPON CANADA STATE RESPONSIBILITY FOR BREACH. WE WOULD PLEAD ARTICLE 5 AND FRANCE WOULD PLEAD ARTICLE 43. IF IT IS CLEAR THAT ARTICLE 43 DOES NOT APPLY TO TREATY MAKING BY MEMBERS OF FEDERAL STATES THEN WE AGREE THERE IS NO PROBLEM, BUT PRESENT TEXT IS NOT IN OUR VIEW CLEAR ON THIS POINT.

2. IT WOULD APPEAR DESIRABLE TO RAISE IN DISCUSSION OF ARTICLE 43 THE QUESTION OF ITS RELATIONSHIP TO ARTICLE 5, HOWEVER WE AGREE THAT IN DISCUSSION OF ARTICLE 43 YOU SHOULD TAKE NO ACTION WHICH WOULD IN YOUR VIEW PREJUDICE FUTURE CDN EFFORTS TO AMEND OR DELETE ARTICLE 5.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD DONE IN DIV.

MR. YALDEN (O/USSEA)  
CO-ORDINATION DIV.

U.N. DIV.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.E. STANFORD/41	LEGAL	2-5406	SIG..... A.E. GOLLIER

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
  
FROM  
De  
  
REFERENCE  
Référence  
  
SUBJECT  
Sujet

Finance Division  
(Travel Section)  
  
J.S. Stanford - Legal Division

SECURITY  
Sécurité

DATE

April 22, 1968

NUMBER  
Numéro

ATTENDANCE AT LAW OF TREATIES CONFERENCE -  
VIENNA

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32

ENCLOSURES  
Annexes

DISTRIBUTION

I will require to bring with me to Vienna, in addition to clothing for a four week period, a large number of documents relating to the Conference. As I will require these documents in Ottawa up to the time of my departure and immediately upon my arrival in Vienna, it will not be possible to send them to Vienna by diplomatic bag.

2. I should be grateful, therefore, for authority to carry up to ten pounds excess baggage.

J. S. STANFORD

J.S. Stanford

FM VIENN APR21/68 CONFD LTD DISTR

TO EXTER 317

REF OURTEL 312 APR19, PARA2

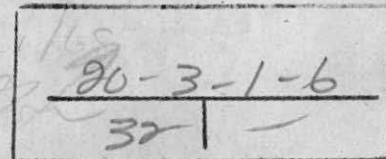
LAW OF TREATIES-ARTICLE 5(2)-VOTING ON APR18

ONLY FOR GOTLIEB AND LEGAL DIV FROM WERSHOF

IN REFTTEL I GAVE EXPLANATION OFFERED BY VEROSTA(HEAD OF AUSTRIAN DEL)FOR VOTING ON APR18 FOR RETENTION OF 5(2)WHEREAS ON APR4 THEY VOTED FOR DELETION;INCIDENTALLY VEROSTA VOLUNTEERED THE REMARK THAT HIS COLLEAGUE ZEMANEK(DEPUTY HEAD OF DEL)HAD ERRED IN VOTING FOR DELETION ON APR4.

2.ON APR19 ZEMANEK RAISED THE SUBJ WITH ME.BELIEVE IT OR NOT/NOT HE SAID THAT VEROSTA HAD MISUNDERSTOOD HIS INSTRUCTIONS;THAT AUSTRIAN DEL HAD FIRMLY DECIDED PRIOR TO APR18 TO VOTE AGAIN FOR DELETION OF PARA2 OF ARTICLE 5 IF A SUBSTANTIVE SEPARATE VOTE ON THAT ISSUE CAME UP.ZEMANEK MADE NO/NO MENTION OF THE PROBLEM WITH AUSTRIAN LANDER CITED BY VEROSTA AS THE REASON FOR AUSTRIAN FLIP-FLOP. ZEMANEK IMPLIED ALL WOULD HAVE BEEN WELL IF HE AND NOT/NOT VEROSTA HAD BEEN PRESENT ON APR18.

3.THERE MUST BE A MORAL LESSON IN THEIR WEIRD STORY BUT WHAT IS IT?



cc Mr. Geller (10/55/81)  
2 Co-Ord. Div.  
H.W. Div.  
Done 22/4/68 JH

For info re: de-  
vied deep

Mr. B. G. G.  
Mr. S. G.  
L  
Seen  
Apr 21/68  
JH

M

FM VIENN APR21/68 CONF

TO EXTER 316 PRIORITY

FOR GOTLIEB AND LEGAL DIV DE WERSHOF

LAW OF TREATIES CONFERENCE-ARTICLE 43

MCKINNON AND I HAVE SERIOUS DOUBTS OF SOUNDNESS OF INSTRUCTIONS  
ON ARTICLE 43 AND ASK YOU TO RECONSIDER SOONEST (BY END OF WEEK  
IF POSSIBLE).

2. IT SEEMS TO US THAT ARTICLE 43 CANNOT/NOT POSSIBLY HAVE ANY  
CONNECTION WITH ILLEGAL OR UNAUTHORIZED TREATY ACTIONS BY A MEMBER  
(PROVINCE) OF A FEDERAL STATE. THE WORD QUOTE STATE UNQUOTE IN THIS  
ARTICLE CAN ONLY REFER TO SOVEREIGN STATES WHICH HAVE FURTHERMORE  
QUOTE EXPRESSED CONSENT TO BE BOUND UNQUOTE IN MANNER PRESCRIBED  
BY ARTICLE 6. IF QUEBEC PURPORTS TO MAKE A TREATY WITH FRANCE (WITHOUT  
ANY AUTHORIZATION OR COVER PROVIDED BY CDN GOVT) IT CANNOT/NOT BE  
SAID THAT THE STATE CDA HAS EXPRESSED ITS CONSENT TO BE BOUND IN A  
TREATY RELATION WITH FRANCE. WHATEVER ACTION CDN GOVT MIGHT TAKE TO  
MAKE CLEAR TO FRANCE AND THE WORLD THAT THE SO-CALLED TREATY IS AN  
INVALID PIECE OF PAPER WE SUBMIT THAT CDN GOVT SHOULD NOT/NOT WANT  
TO TAKE THE LINE THAT QUOTE ITS/ITS CONSENT TO BE BOUND UNQUOTE  
HAD BEEN EXPRESSED IN VIOLATION OF ITS INTERNAL LAW.

3. THERE MAY BE OTHER REASONS FOR OPPOSING DELETION OF QUOTE UNLESS  
THAT VIOLATION... WAS MANIFEST UNQUOTE (WHICH DELETION PROPOSAL HAS  
BEEN TABLED SO FAR ONLY BY PAK IN L.184) AND WE SEE NO/NO OBJECTION  
TO VOTING AGAINST IT

4. HOWEVER WE HOPE YOU WILL NOT/NOT MAINTAIN THE LAST PARA OF YOUR

...2

**ACTION COPY**

20-3-1-6  
32 | 21

I wonder the  
raises question  
of extent to which  
articles apply to  
treaties by members  
of federal states;  
it logically they  
should not apply  
at all but that is  
hardly effect of  
extending applic.

This is really  
a problem of  
state responsibility  
in federal states

It cannot  
happen  
strong

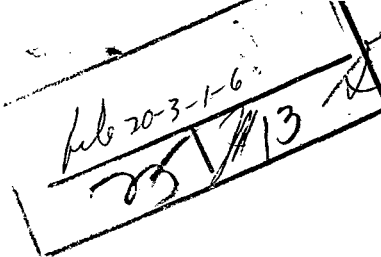
PAGE TWO 316 CONFD

*Didn't we mean a new (happily) not 5? Not necessary*

INSTRUCTIONS I.E. TO PROPOSE AN AMENDMENT TO ARTICLE 43 WHICH WOULD MAKE IT SUBJ TO ARTICLE 5. APART FROM FACT THAT WE RESPECTFULLY DISAGREE WITH LOGIC OF SUCH AN AMENDMENT, IT SEEMS TO US THAT THE CREDIBILITY OF CDN PAST AND FUTURE EFFORTS TO OBTAIN DELETION OF ARTICLE 5(2) WOULD BE GREATLY LESSENERED BY SUCH EFFORT TO AMEND ARTICLE 43. FURTHERMORE THE ONLY FEDERAL STATES WHICH HAVE REALLY CARED ABOUT THE EFFORT TO DELETE ARTICLE 5(2) ARE AUSTRALIA AND GERMANY, BOTH OF WHICH HAVE I THINK BEEN ACTUATED MORE BY DESIRE TO HELP FRIEND CDA THAN BY ANY WORRY (OF WHICH THEY HAVE NONE) ABOUT THEIR OWN POLITICAL SUBDIVS. FINALLY WE BELIEVE THAT BY RAISING AGAIN UNDER ARTICLE 43 QUESTIONS OF CAPACITY OF MEMBERS OF FEDERAL STATE WHERE IT DOES NOT/NOT IN OUR VIEW BELONG, WE WOULD NOT/NOT ONLY WEAKEN OUR CASE FOR DELETION OF PARA 2 OF ARTICLE 5 BUT ALSO RISK LOSING GAINS WE HAVE MADE FOR OUR CAUSE AS RESULT OF DEBATE ON ARTICLE 5.

WERSHOF'''





**ACTION COPY**

Seen Apr 21/68  
*[Signature]*

FM VIENN APR21/68 RESTR

TO EXTER 318 PRIORITY

INFO IT PRMNY PRIORITY DE OTT

LAW OF TREATIES-ARTICLE 51

IN VIEW OF FACT THAT CW APPROVED ON APR17 PRINCIPLE OF INCLUDING  
NEW PARA3 IN ARTICLE 22 CONCERNING TERMINATION OF PROVISIONAL  
ENTRY INTO FORCE WE ASSUME THAT NO/NO FURTHER ACTION WILL BE REQ-  
UIRED IN THAT CONNECTION PURSUANT TO YOUR INSTRUCTIONS UNDER ART-  
ICLE 51...

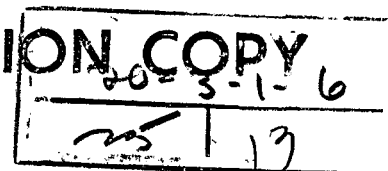
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cc J.S.S.  
U.N. Division

file 9/22/4  
Done 7/2/4

Feb 20-3-1-6  
J

ACTION COPY



FM VIENN APR21/68 RESTR

TO EXTER 319

INFO IT PRMNY WLGIN DE OTT

REF OURTEL 295 APR15

LAW OF TREATIES CONFERENCE; 3RD PROGRESS SUMMARY APR16-20

ARTICLE 16 AND 17(SEE REFTTEL)

AT CONCLUSION OF LENGTHY DEBATE IN CTTEE OF WHOLE(CW)CHAIRMAN

CHOSE TO CALL VOTE PARA BY PARA THUS ELIMINATING IN PROCESS AMEND-

MENTS CALLING FOR DELETION OF ALL OR PART OF THESE ARTICLES.FOR

SAKE OF CLARITY WE SHALL PROCEED IN SAME MANNER IN REPORTING BELOW

ON VOTING.DELETION OF PARA A OF 16 WAS DEFEATED 10-70(CDA)-3.

DELETION OF PARA B OF 16 DEFEATED 23-53(CDA)-12.ON PARA C OF 16

AMENDMENT BY JPN,PHILIPPINES AND KOREA L.133 CALLING FOR COLLEGIATE

SYSTEM FOR DETERMING COMPATIBILITY OF RESERVATION WAS REJECTED

14(CDA)-48-25.VIETNAMESE AMENDMENT L.125 WAS DEFEATED 7-54(CDA)-16.

AMENDMENT BY PERU L.132 ADDING NEW SUB PARA D TO THAT ARTICLE WAS

REJECTED 16-44(CDA)-26.DELETION OF QUOTE IMPLIEDLY UNQUOTE FROM

FIRST LINE OF ARTICLE 17 PROPOSED IN L.97,L.113 AND L.150 WAS ADOPTED

55(CDA)-18-12.DELETION OF PARA2 OF 17 WAS REJECTED 2-79(CDA)-5.

DELETION OF PARA3 OF 17 WAS REJECTED 26-50(CDA)-11.USA AMENDMENT

L.127 ADDING WORDS QUOTE BUT SUCH ACCEPTANCE SHALL NOT/NOT PRECLUDE

ANY CONTRACTING STATE FROM OBJECTING TO RESERVATION UNQUOTE TO END

OF PARA3 WAS ADOPTED 33(CDA)-22-29.PRINCIPLE OF PROPOSAL IN CZECH

AMENDMENT L.85 THAT TREATY ENTERS INTO FORCE BETWEEN RESERVING STATE

AND OBJECTING STATE UNLESS LATTER EXPRESSLY DECLARES TO CONTRARY

...2

PAGE TWO 319 RESTR

WAS REJECTED 28-48(CDA)-8.L.147 AND L.166 WERE WITHDRAWN.ALL OTHER AMENDMENTS TO ARTICLES 16 AND 17 NOT/NOT DISPOSED OF BY PREVIOUS VOTES WERE REFERRED TO DRAFTING CTTEE(DC) INCLUDING QUESTION WHETHER TWO ARTICLES SHOULD BE COMBINED INTO ONE.IN REPLY TO CDN QUESTIONS DURING DEBATE WALDOCK GAVE VERY USEFUL CLARIFICATIONS WHICH ARE FULLY RECORDED IN SUMMARY RECORD OF 25TH MTG.HE SAID THAT A CONTRACTING STATE COULD NOT/NOT PURPORT UNDER ARTICLE 17 TO ACCEPT A RESERVATION PROHIBITED UNDER 17(A)OR (B).ALSO HE AGREED THAT,WHERE A RESERVATION HAS NOT/NOT BEEN EXPRESSLY AUTHORIZED AND AT THE SAME TIME WAS NOT/NOT PROHIBITED UNDER 17(C),A CONTRACTING STATE COULD NEVERTHELESS OBJECT ON ANY GROUNDS.

ARTICLE 19:

ALL AMENDMENTS INCLUDING CDAS MINOR L.159 WERE REFERRED TO DC EXPECT THAT L.86,L.95 AND L.117 WHICH WERE CONSEQUENTIAL ON DEFEATED AMENDMENTS TO ARTICLES 16 AND 17 WERE DROPPED.

ARTICLE 20:

ALL AMENDMENTS REFERRED TO DC.WE MADE SHORT STATEMENT STRESSING POINT RAISED IN INSTRUCTIONS AND ASKING DC TO EXAMINE IT.

ARTICLE 21:

CONGO AMENDMENT L.188 CALLING FOR DELETION OF PARA1 WAS DEFEATED 1-75(CDA)-12.CHILEAN AMENDMENT L.190 WAS REJECTED 9-64(CDA)-15. PRINCIPLE CONTAINED IN UK AMENDMENT L.186 WAS ADOPTED WITHOUT VOTE AND REFERRED TO DC AS WERE ALL REMAINING AMENDMENTS ON THAT ARTICLE INCLUDING CDAS L.123.LATTER WAS PROPOSED IN YOUR INSTRUCTIONS.

...3

PAGE THREE 319 RESTR

ARTICLE 22:

AFTER DEBATE SHOWED OPPOSITION TO IT USA WITHDREW ITS AMENDMENT L.154 WHICH WOULD DELETE THE ARTICLE. PHILIPPINE AMENDMENT L.165 TO DELETE PARA2 WAS REJECTED 11(CDA)-63-12. YUGOSLAV AMENDMENT L.185 WHICH WE CONSIDERED OF DRAFTING NATURE WAS NEVERTHELESS VOTED UPON AND ADOPTED 72-3-11(CDA). PRINCIPLE OF INCLUDING NEW PARA3 ON TERMINATION OF PROVISIONAL ENTRY INTO FORCE AS PROPOSED IN L.194 AND L.198 WAS ADOPTED 69(CDA)-1-20 AND REFERRED TO DC ALONG WITH REMAINING AMENDMENTS.

ARTICLE 23:

AMENDMENTS L.118, L.173 AND L.189 PROPOSED TO INTRODUCE IN THAT ARTICLE NOTION THAT THIS ARTICLE APPLIED ONLY TO QUOTE VALID UNQUOTE TREATIES; CHIEF SUPPORTERS WERE COMMUNISTS. AFTER PROTRACTED DEBATE ON THAT IMPORTANT POINT OF SUBSTANCE, THOSE THREE AMENDMENTS WERE NEVERTHELESS REFERRED TO DC WITHOUT DECISION BEING TAKEN IN CW THUS PROVIDING ANOTHER ILLUSTRATION OF SOMEWHAT QUEER PROCEDURE BEING FOLLOWED AT THIS CONFERENCE. USA AND UK ACQUIESCED IN THIS PROCEDURE BECAUSE THEY WERE CONFIDENT THAT THESE AMENDMENTS WOULD BE KILLED IN DC. PRINCIPLE THAT QUOTE NO/NO PARTY MAY INVOKE PROVISION OF ITS CONSTITUTION OR ITS LAWS AS EXCUSE FOR FAILURE TO PERFORM TREATY UNQUOTE CONTAINED IN PAK AMENDMENT L.181 WAS ADOPTED 55-0-30(CDA) AND REFERRED TO DC ALONG WITH REMAINING AMENDMENTS TO THAT ARTICLE. USA AND UK FAVOURED PRINCIPLE OF PAK AMENDMENT.

ARTICLE 24:

...4

PAGE FOUR 319 RESTR

AUSTRIAN AMENDMENT L.5 WAS DEFEATED 24(CDA)-46-18; IT WOULD HAVE DELETED OPENING 12 WORDS AND SUBSTITUTED QUOTE UNLESS THE TREATY SO PROVIDES UNQUOTE. USA AMENDMENT L.155 TO DELETE QUOTE OR ANY SITUATION WHICH CEASED TO EXIST UNQUOTE WAS REJECTED 23(CDA)-47-17. REMAINING AMENDMENTS REFERRED TO DC.

ARTICLE 25:

ONLY AMENDMENT TO THAT ARTICLE L.164 WAS PASSED TO DC.

ARTICLE 26:

DEBATE ON ARTICLE 26 CENTERED AROUND POINT RAISED IN YOUR COMMENTARY TO THAT ARTICLE. BIRPI REP MADE DECLARATION TO EFFECT THAT BIRPI WAS SATISFIED WITH TEXT OF ARTICLE 26 PARTICULARLY IN VIEW OF VERSION OF ARTICLE 4 PROPOSED BY DC(OURTEL 302 APR17). REF WAS MADE TO WRITTEN STATEMENT SUBMITTED BY BIRPI IN DOCU A/CONF.39/7 WHICH IN PARA3 AND 4 EXPLAINED BIRPI PRACTICE WHICH WILL NOT/NOT BE AFFECTED BY ARTICLE 26. ALL AMENDMENTS TO THAT ARTICLE INCLUDING THAT SUBMITTED BY FRANCE IN L.44(WHICH IN OUR VIEW RAISED POINT OF SUBSTANCE THAT SHOULD HAVE BEEN VOTED DOWN) WERE REFERRED TO DC.

ARTICLES 27 AND 28:

DEBATE ON THESE TWO ARTICLES HAS STARTED AND INDICATIONS ARE THAT IT WILL CENTRE AROUND USA AMENDMENT L.156(SEE OURTEL 289 APR11) AND MORE PARTICULARLY ON IMPORTANCE TO BE GIVEN TO TRAVAUX PREPARATOIRES. WE ARE SENDING BY MAIL LENGTHY STATEMENT MADE BY PROG.MCDOUGAL IN SUPPORT OF USA POSITION. AS INSTRUCTED WE WILL VOTE AGAINST THIS AMENDMENT BUT DO NOT/NOT PLAN TO SPEAK.

014  
...5

PAGE FIVE 319 RESTR

ARTICLES 3,4,AND 5(SEE OURTEL 259 APR7):

DC TEXT OF ARTICLE 3(OURTEL 302 APR17)WAS ADOPTED WITHOUT VOTE BY

CW.AS A RESULT OF QUESTION WE HAD RAISED IN ARTICLE 1 DEBATE

THE DC ADDED TO ARTICLE 3 A NEW PARA WHICH MAKES CLEAR THAT DRAFT

CONVENTION DOES APPLY TO RELATIONS OF STATES INTER SE UNDER AN

AGREEMENT TO WHICH AN INTERNATL ORGANIZATION IS ALSO A PARTY.DC

TEXT OF ARTICLE 4 WAS ADOPTED BY 84(CDA)-0-7.DC DID NOT/NOT DO ANY-

THING IN RELATION TO ARTICLE 4 TO MEET OUR QUESTION REGARDING GATT;

HOWEVER CHAIRMAN DC ADVISED ME TO RAISE THIS AGAIN WHEN CW REVERTS

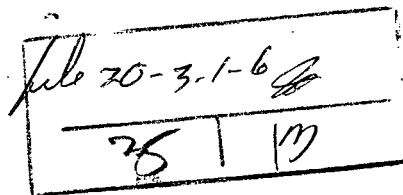
TO ARTICLE 2 WHICH INCLUDES DEFINITION OF QUOTE INTERNATL ORGAN-

IZATION UNQUOTE.WE HAVE REPORTED SEPARATELY ON VOTE IN CW ON DC TEXT

OF ARTICLE 5;YOU WILL HAVE NOTED THAT DC TEXT CONTAINS ONE IMPROV-

MENT NAMELY DELETION OF OPENING WORD QUOTE STATES UNQUOTE IN PARA2.

WERSHOF ...



L

Mr. [unclear]  
Mr. [unclear]  
Seen Apr 21/68  
[unclear]

FM VIENN APR21/68 CONFD LTD DISTR

TO EXTER 317

**A.E. GOTLIEB**

REF OURTEL 312 APR19, PARA2

LAW OF TREATIES-ARTICLE 5(2)-VOTING ON APR18

ONLY FOR GOTLIEB AND LEGAL DIV FROM WERSHOF

IN REFTTEL I GAVE EXPLANATION OFFERED BY VEROSTA(HEAD OF AUSTRIAN DEL)FOR VOTING ON APR18 FOR RETENTION OF 5(2)WHEREAS ON APP4 THEY VOTED FOR DELETION;INCIDENTALLY VEROSTA VOLUNTEERED THE REMAPK THAT HIS COLLEAGUE ZEMANEK(DEPUTY HEAD OF DEL)HAD ERRED IN VOTING FOR DELETION ON APP4.

2.ON APR19 ZEMANEK RAISED THE SUBJ WITH ME.BELIEVE IT OR NOT/NOT HE SAID THAT VEROSTA HAD MISUNDERSTOOD HIS INSTRUCTIONS;THAT AUSTRIAN DEL HAD FIRMLY DECIDED PRIOR TO APR18 TO VOTE AGAIN FOR DELETION OF PARA2 OF ARTICLE 5 IF A SUBSTANTIVE SEPARATE VOTE ON THAT ISSUE CAME UP.ZEMANEK MADE NO/NO MENTION OF THE PROBLEM WITH AUSTRIAN LANDER CITED BY VEROSTA AS THE REASON FOR AUSTRIAN FLIP-FLOP. ZEMANEK IMPLIED ALL WOULD HAVE BEEN WELL IF HE AND NOT/NOT VEPOSTA HAD BEEN PRESENT ON APR18.

3.THERE MUST BE A MORAL LESSON IN THEIR WEIRD STORY BUT WHAT IS IT?

# TRANSMITTAL SLIP

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

TO: Under-Secretary of State for External Affairs Security ..... UNCLASSIFIED.....  
 ...OTTAWA: ATTENTION: LEGAL DIVISION.....  
 FROM: Mr. M.H. Wershof, .....  
 ..... Law of Treaties Conference, VIENNA .....  
 Date .... April 22, 1968 .....  
 Air or Surface .... AIR ENVELOPE...  
 No. of enclosures .... 1 .....

The documents described below are for your information.

Despatching Authority.....: McKinnon/kt .....

20-3-1-6  
38

Copies

Description

Also referred to:

1

Statement delivered by Prof. McDougal  
for USA Delegation.

REFERENCE: Our Telegram 319 of April 21, 1968

16/5

Received

MAY 2 1968

In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY

MAY 1 1968

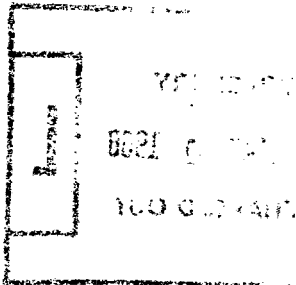
FILE CHARGED OUT

TO: MR STANFORD



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# MESSAGE

FM/DE EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
APR. 22/68	20-3-1-6	UNCLAS.
	32	

TO/A VIENNA

NO	PRECEDENCE
L-352	PRIORITY

INFO PERMIS N.Y.

REF YCUREBL 321 APRIL 21/68  
SUB/SUJ LAW OF TREATIES CONFERENCE

ROBERTSON AND STANFORD ARRIVE PARIS SATURDAY  
MORNING. STANFORD ARRIVES VIENNA VIA AIR FRANCE 12:10  
SATURDAY FROM PARIS. ROBERTSON ARRIVES VIENNA APPROX  
14:00 SUNDAY VIA LUFTHANSA FROM FRANKFURT. BOTH WILL BE  
AVAILABLE FOR 3:00 P.M. MEETING SUNDAY.

DISTRIBUTION  
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ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....J.S. STANFORD/TS.	Legal	2-5406	SIG.....J.A. BEESLEY

# MESSAGE

DATE		FILE/DOSSIER		SECURITY SECURITE
APR. 22/68		20-3-1-6 32		RESTRICTED
FM/DE	EXTERNAL OTT			NO
TO/A	VIENNA			L- 353
				PRECEDENCE
				PRIORITY
INFO				

REF

YOURTEL 318 APRIL 21/68

SUB/SUJ

LAW OF TREATIES - TERMINATION OF TREATIES  
PROVISIONALLY IN FORCE

YOUR ASSUMPTION IS CORRECT. ANY FURTHER  
DISCUSSION OF THIS QUESTION WILL PRESUMABLY TAKE  
PLACE IN CONNECTION WITH ARTICLE 22 AND IT WILL  
THEREFORE BE UNNECESSARY TO RAISE MATTER IN DISCUSSION  
ON ARTICLE 51.

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

## EXTERNAL AFFAIRS



## AFFAIRES EXTÉRIEURES

MEMORANDUM

TO The Legal Adviser  
A

FROM Legal Division  
De

REFERENCE Vienna telegram 316 of April 21  
Référence

SUBJECT Law of Treaties Conference - Article 43  
Sujet

SECURITY RESTRICTED  
Sécurité

DATE April 22, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	32

ENCLOSURES  
Annexes

DISTRIBUTION

Attached for your signature, if you approve, is a telegram in reply to Mr. Wershof's telegram 316 of April 21 requesting that we change the delegation's instructions on Article 43. The text, commentary and instructions to the delegation already in your possession provide the necessary background.

2. The problem raised by Mr. Wershof arises from the inconsistency of the Conference in, on the one hand, saying that the Convention will apply only to treaties between States (by which is meant fully sovereign States) and, on the other, referring in Article 5(2) to something which is not a fully sovereign State, namely a member of a federal State. Mr. Wershof's position is that "State" in Article 43 means only a fully sovereign State. But this is by no means clear, for because Article 5(2) refers to treaties by members of federal States, there may be a presumption that the Articles generally apply to such treaties.

3. We believe this point is worth raising in discussion of Article 43, if only to draw attention to some of the consequences of including Article 5(2). However we agree that nothing should be done on Article 43 which would prejudice our chances of success on Article 5(2). The attached telegram is intended to reflect this approach.

*JB*  
Legal Division

*Welan:*  
*If you wish to discuss*  
*this Joe and/or I could*  
*come over*  
*JB*

14

Statement delivered by  
Prof. McDougal for USA Delegation

April 19/68

(Uncorrected text)

Articles 27 & 28

Sent  
with  
transmittal

Mr. Chairman and distinguished colleagues:

In the note verbale of October 2, 1967 from its Permanent Representative to the United Nations, the United States Government indicated that it considered Articles 27 and 28 on the interpretation of treaties to lay down "overly rigid and unnecessarily restricted requirements."

It is the purpose of the amendment submitted by the United States Delegation in Document L.156 to suggest a simple and easy way of eliminating these difficulties in Articles 27 and 28 and of reestablishing the authority and viability of a process of interpretation which has served the peoples of the world well for several centuries.

The rigidities and restrictions of Articles 27 and 28 are by now the common knowledge of us all. In its separation of Articles 27 and 28 the Draft Convention establishes a hierarchical distinction between certain primary means of interpretation, described as a "general rule of interpretation", and certain allegedly "supplementary means of interpretation." Among the primary means a predominant emphasis is ascribed to the Verbal text of the treaty, which is to be interpreted "in accordance with the ordinary meaning to be given to the terms." The commentary to Article 27 insists that the reference in the Article to "context" is not to factual circumstances attending the conclusion of the treaty, but to the mere verbal texts, and, similarly, that the reference to "object and purpose"

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is not to the actual common intent of the parties, explicitly rejected as the goal of interpretation, but rather to mere words about "object and purpose" intrinsic to the text. Indeed, it is overwhelmingly evident (as noted by Messrs. Ago, Ruda, Rosenne, and others in the Commission) that the whole structure of Articles 27 and 28 is built about the famous *petitio principii* of Vattel that "it is not permissible to interpret what has no need of interpretation." The "supplementary means" which an interpreter is authorized to employ only after taking certain high, preclusionary hurdles - include "the preparatory work of the treaty and the circumstances of its conclusion." The high preclusionary hurdles - designed to foreclose automatic, habitual recourse to such "Supplementary means" - are a necessity "to confirm the meaning resulting from the application of Article 27" or a finding that an "interpretation according to Article 27" either "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable." In its commentary to Article 28, the Commission insists, despite its earlier protestations that it did not seek to establish an obligatory hierarchy, that the word "supplementary" emphasizes that Article 28 does not provide for alternative, autonomous means of interpretation but only for means to aid an interpretation governed by the principles contained in Article 27."

It is the respectful submission of the United States Delegation that these rigidities and restrictions in Articles 27 and 28 have never in the past been

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international law, cannot successfully be made international law in the future even if adopted in this Convention, and should not be made international law in the future even if we possessed the omnipotence so to make them.

Why do we say that these rigidities and restrictions have never been international law? The answer is written large in the history of interpretation in particular cases of controversy.

First, the principles of interpretation, taken as a whole, have seldom in the past been considered as mandatory rules of law, precluding examination of relevant circumstances; they have most often been considered permissive guidelines, facilitating examination of relevant circumstances.

Only very rarely, in the countless instances of interpretation which create ~~for~~ peoples realistic expectations about what the relevant law is, have even the principles about plain and natural meaning and about the admissibility of preparatory work been employed in a way to foreclose inquiry.



4.

Secondly, though judges and statesmen have sometimes purported to resolve disputes about interpretation by the application of simple dictionary definitions of the words of a text, they have much more frequently affirmed that a text is meaningless apart from the larger context of circumstances in which it was framed. The long historic trend in the great bulk of decisions is for an interpreter to take into account any circumstance which may effect the common intention which parties seek to express in a text. Thus, the Harvard Research, after an exhaustive study of the cases, summarized in a passage fully confirmed by subsequent decisions:

"The historical background of a treaty travaux préparatoires, the circumstances of the parties at the time the treaty was entered into, the change in these circumstances sought to be effected the subsequent conduct of the parties in applying the provisions of the treaty, and the conditions prevailing at the time, the interpretation is made, are to be considered in connection with the general purpose which the treaty is intended to serve."

In the vast majority of cases, "plain" and "ordinary" or dictionary, meanings have been regarded not as inexorable commands foreclosing further inquiry, but rather as one important index, among many other important indices, of the common intent of the parties. Interpreters have habitually employed many principles of interpretation, such for example as the principle of effectiveness which is not incorporated in the draft Convention, in canvass of all potentially relevant indices.

Thirdly, in more recent years the hoary maxim from Vattel, about which the hierarchy in Articles 27 and 28 is structured, has become generally recognized as an obscurantist tautology. It is a tautology because the determination of what text does or does not require interpretation is in itself an interpretation; it is obscurantist because the grounds for such determination are not revealed for candid <sup>appraisal</sup> appraisal. Lord McNair puts the matter in a nutshell in noting that the maxim "is constantly employed both by advocates and tribunals, as an argument against seeking to find out what was the intent of the parties in using the words, having regard to the surrounding circumstances." He adds: "It is in truth a

6.

petitio principle because it begs the question whether the words used are, or are not clear--a subjective matter because they may be clear to one man and not clear to another, and frequently to one or more judges and not to their colleagues". (Law of Treaties (1961) 372).

Finally, the restrictions upon the use of preparatory words expressed in Article 28 do not, any more than the restrictions imposed upon the use of other circumstances, represent established practice. The Commentary quite correctly describes these restrictions as "dicta". Even in the Lotus case, which perhaps contains the most famous exposition of the alleged rule that "there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself", the Court did in fact look at the travaux. This would appear to have been equally the case in most other instances in which a similar rule has been announced, and in many recent decisions judges have not bothered to apologize for resort to the travaux. The habitual use of preparatory work by foreign offices needs no emphasis here. It may be recalled also that one of the reasons given by Dr. Jenks for the immunization of international organizations from the Convention was that "ILO practice has involved greater recourse to preparatory work

7.

than was envisaged in Article 28".

In sum, it would thus appear entirely clear that none of the rigidities and restrictions built into Articles 27 and 28 can find justification in the wisdom of past experience.

Why do we say that the rigidities and restrictions of Articles 27 and 28 cannot successfully be made international law even if adopted in this Convention? The answer is: because they are impossible of application. The assumption upon which such rigidities and restrictions are built is that a text has a meaning apart from the circumstances of its framing and can be interpreted barely, as it stands, without reference to extraneous factors.

The fact is that a text is apart from the intentions of its users, as a great English philosopher has said, "but shapes on paper or an agitation in the air". It is generally agreed, in today's age of sophistication, that there are no fixed or natural meanings of words which the parties to an agreement cannot alter. The point was put epigrammatically by our Mr. Justice Holmes, who wrote: "A word is not a crystal, transparent and

8.

unchanged, it is the skein of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used. "

Similarly, even without benefit of modern communicative<sup>ONS</sup> study, common sense informs us that the "plain and ordinary" meanings--the dictionary meanings--of words are multiple and ambiguous, and can be made particular and clear only by reference to the factual circumstance of their use. With characteristic felicity, Lord McNair has described the appropriate function of the "plain and ordinary" meaning rule. This "so-called rule of interpretation", he writes, "like others is merely a starting point, a prima facie guide, and cannot be allowed to obstruct the essential quest in the application of treaties, namely, the search for the real intention of the contracting parties in using the language employed by them". (Law of Treaties (1961) 366).

The difficulties in the draft convention's more preclusionary use of "ordinary" meaning was noted by many members of the International Law Commission. Thus Professor Briggs, speaking as a member ~~ex~~ of the

9.

Commission, urged deletion of the concept of "ordinary meaning", a term "which he found just as objectionable as the former reference to the 'natural' meaning". "Words", he insisted, "have no ordinary or natural meanings in isolation from their context and the other elements of interpretation".

From this broad perspective of the requirements of communication and the necessities of interpretation, it would, therefore, appear that an interpreter could not hope to apply the draft Convention's "general rule" in Article 27 or to invoke the "supplementary means" authorized in Article 28 without at the same time violating the alleged prescription of textuality in Article 27. The "general rule" cannot be applied because a concern for the text alone, apart from the circumstances of its conclusion, can afford no criteria ~~xx~~ for ascribing a meaning to the text. Similarly, without having recourse to "the preparatory work of the treaty and the circumstances of its conclusion", it would appear impossible, as Mr. Rosenne and other members of the Commission suggested, to determine whether an

10.

"interpretation according to Article 27" either "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable". The point was made, with a cogency as direct as <sup>unheeded</sup> by Mr. Yasseen, who said "that the clearness or ambiguity of a provision was a relative matter". "Sometimes", he explained, "one had to refer to the preparatory work or look at the circumstances surrounding the conclusion of a treaty in order to determine whether the text was really clear and whether the seeming clarity was not simply a deceptive appearance. He could not accept an Article which would permit reference to preparatory work only after it had been decided that the text was not clear, that decision itself being often influenced by the same sources". (1964 Yearbook 313). The Commentary adds, in a triumph of understatement: "Sir Humphrey Waldock, Special Rapporteur, noted that it was sometimes impossible to understand clearly even the object and purpose of the treaty without such reference"(Id.).

The ultimate poverty of the textuality approach is, for final illustration, most dramatically documented by the problem of conflicting authenticated texts in several languages, a problem dealt with in Article 29, with respect

II.

to which the Commission is forced to resort albeit somewhat shamefacedly, to the "intentions" of the parties.

In parenthesis, it could be added that the mere presence at this Conference of Sir Humphrey Waldock, in the role of former Special Rapportuer, is the best testimony, not always mute, of the impossibility in application of the textuality approach. Time after time during the course of our deliberations, even with the preparatory work of the Commission before us, we have found it necessary to appeal to Sir Humphrey for enlightenment about the "ordinary" meanings of the simple convention before us. The tremendous clarity he has brought to our deliberations and the enormous influence he has had with us have been due, I submit, not to his skill in flipping the pages of a dictionary or as a logician, but rather to his very special knowledge of all the circumstances attending the framing of our draft Convention.

Why do we urge--to come to our third major point--that the rigidities and restrictions in Articles 27 and 28 should not be made international law--even if in defiance of the requirements of communication and the necessities of interpretation we could so make them? The answer again



12.

can be summarized: because of their authorizing of two different kinds of arbitrariness, such rigidities and restrictions could be employed by interpreters to impose upon the parties to treaties agreements they never made and, hence, might be most disruptive of that stability in the expectations of parties to treaties which is indispensable to peaceful cooperation in the world's work.

The first kind of arbitrariness authorized by Articles 27 and 28 derives from their arrogating to a single set of signs--the text of a document as infused by "ordinary" meaning--the task of serving, save in the most exceptional circumstances, as the exclusive index of the common intent of the parties. The fact is of course that the parties to any particular treaty may have a common intent quite different from that expressed by ordinary meanings and may communicate to each other by many different signs and acts of collaboration. To impose upon such parties certain alleged "ordinary" meanings and an artificial, preclusionary hierarchy in the relevance of modes of communication may amount to a clumsy and arbitrary deformation, completely contrary to the basic policies of a free world order. Just as in our national communities we seek, save for overriding common interest, to

13.

defend the dignity of man by respecting his choices rather than by imposing the choices of others upon him, so also in the large community of states a law of freedom will seek to respect the unique choices of the particular parties to agreements rather than to impose upon them the choices of others. "It should be", as we have said elsewhere, "the task of decision-makers, representing a larger community dedicated to the shaping and sharing of values by persuasion and agreement with a minimum of coercion and violence, to honor and promote individuality, inventiveness and diversity, and to expand the alternatives in cooperation open to as many members of the community as possible on as many occasions as possible. It can only be a debasement of the basic values of such a community to seek to impose upon all parties, whatever their nuances in creativity, the lowest common denomination in conformity". In modest concession to parties of unstandardized demands and expectations, Article 27(4) does provide that "a special meaning shall be given to a term if it is established that the parties so intended". The Commentary emphasizes, however, that "the burden of proof lies on the party invoking the special term", and it is nowhere indicating how, without recourse to the forbidden factors in

14.

Article 28, such a burden is to be discharged and a special meaning established.

The second kind of arbitrariness authorized by Articles 27 and 28 derives from the inherent ambiguities, already noted of the criterion of ordinary meaning. What is one man's "ordinary meaning" may be another man's poison, and reasonable men may reasonably differ as to which of multiple dictionary meanings represents common intent. The license which these inescapable ambiguities accord an interpreter--whose task is conserved as the mere ascription of a meaning to a text rather than as a systematic and disciplined ~~xxxx~~ examination of all potentially relevant indices of common intent--is enormous. Emphasis upon the primacy of the text and the priority of ordinary meanings certainly opens more doors to uncertainty--even to obscurantist manipulation--than does insistence upon a comprehensive, contextual examination of all factors potentially relevant to common intent.

The danger of encouraging arbitrariness in decision by over-emphasis upon the primacy of textuality in interpretation is perhaps best illustrated by the opinion of the International Court of Justice in the most recent of

15.

the South-West Africa cases. (1966) I. C. J. Ref. 4 ,

The proponents of the rigidities and restrictions in the present draft Convention might well ask themselves whether this is the kind of decision and opinion which they wish to authorize and promote. The requirement, in contrast, of a systematic and disciplined examination of all potentially relevant features of the context would certainly make it more difficult for judges to justify arbitrary interpretations; it might even make it more difficult for them to make such decisions.

In not irrelevant footnote it can be added that the hierarchy among criteria for interpretation established by Articles 27 and 28, and made applicable through the vague references to "ambiguous or obscure" meanings and to results "manifestly absurd or unreasonable", could introduce an entirely new element of uncertainty into the stability of treaties. States prejudiced either by the ~~in~~ application or by the non-application of the hierarchy could have a new ground for claims of excès de pouvoir.

It must be recalled that it is proposed to make this vague and illusory hierarchy obligatory international law. The misapplication of relevant law, which could easily occur or be alleged with respect to terms so diffuse,

is one of the traditional grounds for confirming excès de pouvoir.

The fundamental point that the United States delegation would emphasize is that the text of a treaty and the common or public meanings of words can be made economic points of departure for interpretation, as the International Law Commission aspires, without their being made also the end of the voyage of inquiry. The dichotomy the Commission makes when it contraposes "the intention of the parties as a subjective element distinct from the text" and "the text of the treaty as the authentic expression of the intention of the parties" is a non-exhaustive dichotomy. The most important alternative omitted is that the text could be regarded as simply one important index, among many of the common intent of the parties and not as a preclusionary bar to examination of the other indices necessary to the realistic and rational relation of text and common intent. The Convention on Treaties could establish appropriate principles of economic procedure, without imposing an incubus of arbitrary hierarchical weightings.

In its Amendment, L. 156, the United States Delegation, therefore, proposes, as was urged by Professor Briggs within the Commission, the elimination of all the rigidities and restrictions in Articles 27 and 28 and

17.

the merger of these two articles into one open-ended itemization of elements relevant to rational interpretation. Though in the opening words of our amendment we seek to place an economic emphasis upon the terms of the text, we seek to avoid any fixed hierarchy among the elements of interpretation and to make accessible to interpreters whatever elements-- be they "ordinary meaning" or "subsequent practice" or "preparatory work" or other--which may be of significance in any particular set of circumstances. The aspiration of our draft is to encourage an economic, systematic, and disciplined canvass by interpreters of all elements which may aid in the identification and clarification of common intent.

In the formulation of its Amendment, the United States Delegation has sought to preserve as fully as possible the original wording of the International Law Commission, while securing the merge of Articles 27 and 28. Our Delegation is not, however, wedded to any particular words or formulations. If the basic objective of removing all hierarchical weightings and obstacles to <sup>open</sup>pend-ended inquiry can be achieved, our Delegation will regard the particular formula by which this can be secured as a mere matter of drafting.

Feb 20-3-1-69  
ACTION COPY

Mr. L. [unclear]  
Mr. S. [unclear]

FM GRTN APR20/68 CONF

TO EXTER 347 PRIORITY

INFO TT VIENN CRCAS DE OTT

VIENN CONFERENCE ON TREATIES

DURING DISCUSSIONS YESTERDAY WITH RAMPHAL MINISTER OF STATE  
RESPONSIBLE FOR EXTER HE SAID THERE HAS BEEN SOME INDICATION  
FROM BRAZILIAN SOURCE THAT AT ABOVE CONFERENCE VENEZUELA MIGHT  
ATTEMPT TO REVISE CERTAIN CLAUSES OF DRAFT CONVENTION ON  
TREATIES DRAWN UP BY INTERNATL LAW CTTEE. AIM WOULD BE TO  
PROVIDE MEANS OF ABROGATING 1897 TREATY BETWEEN BRIT AND  
VENEZUELA REGARDING SETTLEMENT OF DISPUTED VENEZUELA-GUYANA  
BOUNDARY.

2. AS YOU KNOW VENEZUELA CLAIM TO SOME 50,000 SQ MI OF GUYANAS  
TERRITORY RECENTLY HAS BEEN A QUOTE HOT UNQUOTE ISSUE FOR  
SEVERAL YEARS, AND RAMPHAL WOULD BE GRATEFUL IF WE COULD PROVIDE  
ANY INFO.

3. GUYANA OF COURSE IS NOT/NOT REPRESENTED AT CONFERENCE.

I SAID I ASSUME THAT WE WERE AND WOULD DRAW MATTER TO YOUR ATTN

DOUGAN

20-3-1-69  
23/13

Seen Apr 20/68  
JW

086

BEST COPY AVAILABLE

PART 3

VNA/19

OO OTT OO NYK

DE VNA

O 191122Z

FM VIENN APR19/68

TO EXTER 311 IMMED

INFO PRMNY IMMED

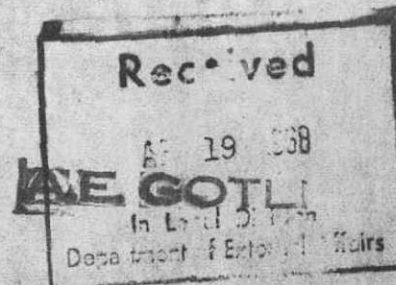
REF OURTELS 302 APR17 AND 307 APR18

LAW OF TREATIES-ARTICLE 5 PARA2-VOTING

HERE IS NOW VOTING WENT YESTERDAY ON PARA2 OF ARTICLE 5.

2. IN FAVOUR OF DELETION: AUSTRALIA, BELGIUM, BRAZIL, CDA, CEYLON, CHILE, CHINA, DENMARK, DOMINICAN REPUBLIC, ETHIOPIA, FGR, GREECE, INDIA, IRELAND, ISRAEL, ITALY, JAMAICA, JPN, MALAYSIA, MAURITIUS, MEXICO, NETHERLANDS, NZ, NORWAY, PERU, PHILIPPINES, PORTUGAL, KOREA, VIETNAM, SANMARINO, SIERRA LEONE, SPORE, SPAIN, SWEDEN, UK, USA, URUGUAY, VENEZUELA, ZAMBIA, TOTAL 39
3. IN FAVOUR OF RETENTION: AFGHANISTAN, ALGERIA, ARGENTINA, AUSTRIA, BULGARIA, BYELORUSSIA, CAMBODIA, CENTRAL AFRICAN REP., CONGO BRAZZAVILLE, CUBA, CZECHO, ECUADOR, FRANCE, GABON, GUATEMALA, GUINEA, HOLYSEE, HUNGARY, INDONESIA, IRAN, IRAQ, IVORYCOAST, JORDAN, KENYA, KUWAIT, LEBANON, LIBERIA, LIECHENSTEIN, MADAGASCAR, MALI, MONACO, MONGOLIA, MOROCCO, NIGERIA, POLAND, ROMANIA, SAUDIARABIA, SENEGAL, SOUTHAFRICA, SWITZERLAND, SYRIA, TUNISIA, TURK, UKRAIN, USSR, UAR, YUGOSLAVIA. TOTAL 47
4. ABSTENTIONS: BOLIVIA, CONGO (DEM REP), FINLAND, GHANA, PAK, THAILAND, TRINIDAD, TANZANIA
5. ABSENT: SOMALIA, UGANDA, YEMEN, COLOMBIA, COSTARICA, CYPRUS, DAHOMEY, HONDURAS, MAURITANIA, NEPAL, PANAMA
6. ACTUAL RESULT OF VOTING ON ARTICLE 5 AS A WHOLE WAS 54-17-22 AND NOT/NOT 55-13-25 AS ANNOUNCED BY CHAIRMAN IMMEDIATELY AFTER VOTING AND AS REPORTED IN OURTEL 307

CANDEL



20-3-1-6

321 -

BEST COPY AVAILABLE



PAGE TWO 201

THE MINISTERS REVIEWED A NUMBER OF STUDIES IN THE FIELD OF NUCLEAR PLANNING CONDUCTED SINCE THEIR LAST MTG, WITH SPECIAL REF TO THE USE OF VARIOUS TYPES OF TACTICAL NUCLEAR WEAPONS IN THE DEFENCE OF THE NORTH ATLANTIC TREATY AREA, AND WELCOMED THE PROGRESS THAT HAS BEEN MADE. THEY GAVE DIRECTIONS FOR THE ELABORATION OF FURTHER GUIDELINES FOR THE NATO MILITARY AUTHORITIES IN RESPECT OF THE TACTICAL USE OF NUCLEAR WEAPONS. THEY ALSO AGREED TO MAKE RECOMMENDATIONS TO THE NUCLEAR DEFENCE AFFAIRS CTTEE FOR INCREASING NATIONAL PARTICIPATION IN MILITARY NUCLEAR PLANNING.

THE MINISTERS AGREED TO HOLD THE GROUPS NEXT MTG IN OCT/68 IN BONN.

Mr. [unclear]  
C.N. [unclear]  
Coordination Div  
of file 9/19/4  
Done 22/4/4

Mr. [unclear]  
Mr. Stanford

20-3-1-6
.32   2/

ACTION COPY

FM VIENN APR19/68 CONFD

TO EXTER 312 PRIORITY

INFO TT PRMNY DE OTT

REF OURTEL 311 APR19

LAW OF TREATIES-ARTICLE 5 PARA2-VOTING

ALTHOUGH OVERALL RESULT OF SECOND VOTE ON PARA2 OF ARTICLE 5 WAS ALMOST IDENTICAL TO THAT OF APR4 THERE WERE A NUMBER OF DIFFERENCES IN MANNER IN WHICH COUNTRIES VOTED.

2.THE MOST IMPORTANT AND MOST DAMAGING CHANGE IN VOTING OCCURRED WHEN ARGENTINA AUSTRIA AND SOUTHAFRICA UNEXPECTEDLY DECIDED AT LAST MOMENT TO VOTE IN FAVOUR OF RETENTION OF PARA2 WHILE THEY HAD VOTED FOR DELETION ON APR4.AS LATE AS APR17 WE HAD SPOKEN WITH REPS OF THESE THREE COUNTRIES AND THEY HAD INDICATED THAT THEY WOULD VOTE FOR DELETION.WE SPOKE WITH THEM AGAIN AFTER VOTE AND THEY GAVE US FOLLOWING EXPLANATIONS FOR CHANGE OF ATTITUDE.IN CASE OF ARGENTINA HEAD OF DEL WHO HAD ASSURED US THAT HE WOULD VOTE AGAINST PARA2 WAS OUT OF CONFERENCE ROOM WHEN VOTE WAS TAKEN.HIS ASSISTANT MISTAKENLY CONCLUDED THAT CTTEE OF WHOLE WAS MERELY APPROVING DRAFTING OF PARA2 AND THEREFORE VOTED FOR IT.SAME THING HAPPENED IN CASE OF SOUTHAFRICA.WITH REGARD TO AUSTRIA,HEAD OF DEL EXPLAINED THAT AFTER VOTE OF APR4 THEIR CONSTITUTIONAL LEGAL ADVISERS IN MINISTRY OF JUSTICE HAD BEEN UNHAPPY BECAUSE AUSTRIA HAD VOTED TO DELETE PARA2.THEY FEARED THAT VOTE WOULD BE MISINTERPRETED AND RESENTED BY LOCAL LANDER AUTHORITIES.ACCORDING TO VEROSTA MFA FINALLY DECIDED TO GIVE IN TO THOSE VIEWS AND TO VOTE IN FAVOUR OF PARA2.GUATEMALA ALSO HAD

...2



PAGE TWO 312 CONF D

LAST MINUTE CHANGE OF HEART AND VOTED FOR RETENTION, WHILE THEY HAD VOTED FOR DELETION ON APR4.

3. SHIFT IN VOTE OF THESE FOUR COUNTRIES WAS PARTICULARLY UNFORTUNATE IN VIEW OF FACT THAT WE HAD GOOD CHANCE OF SUCCESS IN OBTAINING DELETION OF PARA2. IN TALKING WITH A NUMBER OF DELS IN THE LAST FEW DAYS WE AND AUSTRALIANS HAD CONVINCED CHILE, DENMARK, JAMAICA, SIERRA LEONE AND SPAIN TO CHANGE THEIR PREVIOUS VOTE FROM ABSTENTION TO DELETION. ALSO TRINIDAD, TANZANIA, CONGO (DEMREP), FINLAND, PAK AND THAILAND WHO HAD PREVIOUSLY VOTED FOR RETENTION HAD BEEN TALKED INTO SHIFTING THEIR VOTE TO ABSTENTION. PERU, PHILIPPINES AND MAURITIUS WHO WERE ABSENT ON APR4 HAD INDICATED THAT THEY WOULD VOTE IN FAVOUR OF DELETION AND DID. FINALLY FOUR COUNTRIES WHO HAD VOTED FOR RETENTION ON APR4 DAHOMEY, COLOMBIA, HONDURAS, AND SOMALIA WERE ABSENT WHEN VOTE WAS TAKEN YESTERDAY.

4. HOWEVER THESE GAINS WERE PARTLY CANCELLED BY DEFECTION OF ARGENTINA, AUSTRIA GUATEMALA AND SOUTHAFRICA. BOLIVIA WHO HAD VOTED FOR DELETION PREVIOUSLY DECIDED TO ABSTAIN. CYPRUS AND NEPAL WHO HAD VOTED FOR DELETION WERE ABSENT. ECUADOR, CZECHOSLOVAKIA, HOLYSEE, AND LEBANON WHO HAD ABSTAINED ON APR4 VOTED FOR RETENTION. FINALLY, JORDAN. LIECHTENSTEIN, MONACO AND MOROCCO WHO WERE ABSENT ON APR4 VOTED FOR RETENTION.

5. SOMEWHAT HAPAZARD FASHION IN WHICH VOTING WENT YESTERDAY AND APR4 ON PARA2 OF ARTICLE 5 AND OUR CONVERSATIONS WITH A NUMBER OF DELS HERE HAVE REINFORCED OUR CONVICTION THAT CDA SHOULD BE ABLE TO MUSTER

PAGE THREE 312 CONF D

BLOCKING THIRD AT PLENARY NEXT YEAR ON PARA2 OF ARTICLE 5, IF IT  
REMAINS VIEW OF THE CDN GOVT THAT THIS PARA SHOULD GO. ALTERNATIVELY  
CDA WOULD BE IN AN EXCELLENT BARGAINING POSITION TO OBTAIN A SATIS-  
FACTORY COMPROMISE TEXT ON CAPACITY OF MEMBERS OF FEDERAL STATES.  
FURTHER VIEWS WILL FOLLOW LATER.

WERSHOF ' ' '

Diary  
Div. Diary  
File

c.c.: U.N. Division (Warren)

20-3-1-6  
32 | 27

OTTAWA, April 19, 1968

Dear Mr. Sicotte,

Thank you for your letter of April 16 and the documentation attached to it.

Legal Division will be providing comments to U.N. Division concerning the protocol of the trilingual text of the Chicago Convention. In view of your letter, however, I think the following comments and the enclosed material might be of personal interest to you.

Enclosed are photocopies of Article 2 and 11 of both the English and French versions of the International Law Commission Draft Articles on the Law of Treaties. You will note from these that the French equivalent of "acceptance" is "acceptation" and that the French equivalent of "approval" is "approbation". We have had no indication from Vienna of whether these language equivalents have been the subject of discussion in either the Committee of the Whole or the Drafting Committee. I must confess to a certain degree of sympathy with the view expressed by the Lebanese representative (para. 24 of the Minutes of the 12th meeting) that "ratification" would have been more appropriate and that there might therefore be some merit in using "approbation" because it is closer in meaning to the concept of ratification than to the concept of acceptance. Once "acceptance" is decided upon as the appropriate English word however, it would appear that, in the view of the I.L.C. at least, the proper French equivalent is "acceptation".

Yours sincerely,

J.S. STANFORD

J.S. Stanford

Gilles Sicotte, Esq.,  
Assistant Deputy Minister General,  
Department of Transport,  
Hunter Building,  
O'Connor and Queen Streets,  
Ottawa, Ontario.



cc Mr Yalden (0/USSEN)  
U.N. Div.  
Co-ord Div  
1/10/14  
Done 25/4/14

*Secret*

20-3-1-6		
32	1	2)

OTT086

PAR73

VN44/19

00 OTT 00 NYK

DE VNA

O 191122Z

FM VIENN APR19/68

TO EXTER 311 IMMED

INFO PRMNY IMMED

REF OURTELS 302 APR17 AND 307 APR18

LAW OF TREATIES-ARTICLE 5 PARA2-VOTING

HERE IS HOW VOTING WENT YESTERDAY ON PARA2 OF ARTICLE 5.

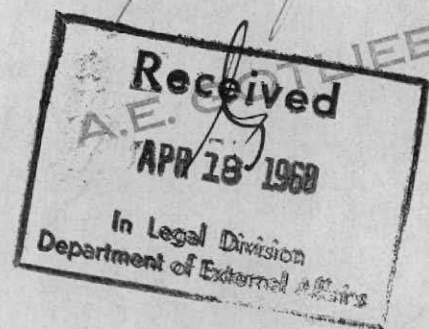
2. IN FAVOUR OF DELETION: AUSTRALIA, BELGIUM, BRAZIL, CDA, CEYLON, CHILE  
CHINA, DENMARK, DOMINICAN REPUBLIC, ETHIOPIA, FGR, GREECE, INDIA, IRELAND  
ISRAEL, ITALY, JAMAICA, JPN, MALAYSIA, MAURITIUS, MXICO, NETHERLANDS, NZ  
NORWAY, PERU, PHILIPPINES, PORTUGAL, KOREA, VIETNAM, SANMARINO, SIERRA  
LEONE, SPORE, SPAIN, SWEDEN, UK, USA, URUGUAY, VENEZUELA, ZAMBIA, TOTAL 39
3. IN FAVOUR OF RETENTION: AFGHANISTAN, ALGERIA, ARGENTINA, AUSTRIA,  
BULGARIA, BYELORUSSIA, CAMBODIA, CENTRAL AFRICAN REP., CONGO(BRAZZAVILLE)  
CUBA, CZECHO, ECUADOR, FRANCE, GABON, GUATEMALA, GUINEA, HOLYSEE, HUNGARY  
INDONESIA, IRAN, IRAQ, IVORYCOAST, JORDAN, KENYA, KUWAIT, LEBANON, LIBERIA,  
LIECHENSTEIN, MADAGASCAR, MALI, MONACO, MONGOLIA, MOROCCO, NIGERIA, POLAND,  
ROMANIA, SAUDIARABIA, SENEGAL, SOUTHAFRICA, SWITZERLAND, SYRIA, TUNISIA,  
TURK, UKRAIN, USSR, UAR, YUGOSLAVIA. TOTAL 47
4. ABSTENTIONS: BOLIVIA, CONGO(DM REP), FINALDN, GHANA, PAK, THAILAND,  
TRINIDAD, TANZANIA
5. ABSENT: SOMALIA, UGANDA, YEMEN, COLOMBIA, COSTARICA, CYPRUS, DAHOMEY,  
HONDURAS, MAURITANIA, NEPAL, PANAMA
6. ACTUAL RESULT OF VOTING ON ARTICLE 5 AS A WHOLE WAS 54-17-22 AND  
NOT/NOT 55-13-25 AS ANNOUNCED BY CHAIRMAN IMMEDIATELY AFTER VOTING AND  
AS REPORTED IN OURTEL 307

CANDEL

PAGE TWO 201

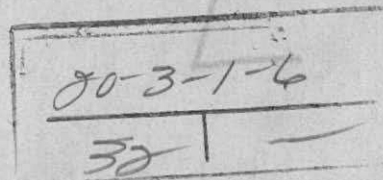
THE MINISTERS REVIEWED A NUMBER OF STUDIES IN THE FIELD OF NUCLEAR PLANNING CONDUCTED SINCE THEIR LAST MTG, WITH SPECIAL REF TO THE USE OF VARIOUS TYPES OF TACTICAL NUCLEAR WEAPONS IN THE DEFENCE OF THE NORTH ATLANTIC TREATY AREA, AND WELCOMED THE PROGRESS THAT HAS BEEN MADE. THEY GAVE DIRECTIONS FOR THE ELABORATION OF FURTHER GUIDELINES FOR THE NATO MILITARY AUTHORITIES IN RESPECT OF THE TACTICAL USE OF NUCLEAR WEAPONS. THEY ALSO AGREED TO MAKE RECOMMENDATIONS TO THE NUCLEAR DEFENCE AFFAIRS CTTEE FOR INCREASING NATIONAL PARTICIPATION IN MILITARY NUCLEAR PLANNING.

THE MINISTERS AGREED TO HOLD THE GROUPS NEXT MTG IN OCT/68 IN BONN.



FM VIENN APR18/68 RESTR  
TO EXTER 307 IMMED  
INFO IT PRMNY IMMED DE OTT  
REF OURTEL 247 APR4  
LAW OF TREATIES ARTICLE 5

N.B.



ARTICLE 5 WAS AGAIN TAKEN UP AND VOTED TODAY IN CTTEE OF WHOLE  
ON BASIS OF TEXT PRESENTED BY DRAFTING CTTEE (SEE OURTEL 302 APR17  
FOR THAT TEXT). UNDER PECULIAR PROCEDURES CONFERENCE IS FOLLOWING  
THE DRAFTING CTTEE TEXTS ARE PRESENTED TO CTTEE OF WHOLE FOR  
SUBSTANTIVE APPROVAL.

2. ON ROLL-CALL PARA2 WAS APPROVED 46-39-3. PARA1 WAS THEN APPROVED  
35-1-6(CDA). ARTICLE 5 AS WHOLE THEN APPROVED 55-13(CDA)-25.

3. FURTHER TELS WILL GIVE DETAILS AND COMMENTS. WE PICKED UP A FEW  
VOTES AS RESULT OF LOBBYING BUT LOST THREE VOTES FOR REASONS NOT/  
NOT YET CLEAR.

4. FACT THAT SUBSTANTIVE VOTES WERE TAKEN AGAIN IN CTTEE OF WHOLE  
WAS NOT/NOT OUT DOING. I WOULD HAVE SEEN ADVANTAGE IN LEAVING REN-  
EWAL OF SUBSTANTIVE STRUGGLE FOR 1969 PLENARY. HOWEVER CHAIRMAN ON  
ADVICE OF SECRETARIAT SEEMS DETERMINED TO GET CTTEE OF WHOLE  
CLEARLY ON THE RECORD AFTER EACH ARTICLE RETURNS FROM DRAFTING  
CTTEE.

WERSHOF



cc Co-Ord. Div  
Mr. Golden O/USSEA  
Done  
Apr 18/68  
JH 18/4

Sub 20-3-1-6  
13

ACTION COPY

Mr. Stanford  
Mr. Bentley to see OR.  
Does this mean we would be a vote next year?  
What about the 2/3 majority rule?  
Another vote next yr in plenary when the 2/3 rule will apply.  
JH 19/4

FM VIENN APR18/68 RESTR  
TO EXTER 307 IMMED  
INFO TT PRMNY IMMED DE OTT  
REF OURTEL 247 APR4  
LAW OF TREATIES ARTICLE 5

ARTICLE 5 WAS AGAIN TAKEN UP AND VOTED TODAY IN CTTEE OF WHOLE ON BASIS OF TEXT PRESENTED BY DRAFTING CTTEE (SEE OURTEL 302 APR17 FOR THAT TEXT). UNDER PECULIAR PROCEDURES CONFERENCE IS FOLLOWING THE DRAFTING CTTEE TEXTS ARE PRESENTED TO CTTEE OF WHOLE FOR SUBSTANTIVE APPROVAL.

2. ON ROLL-CALL PARA2 WAS APPROVED 46-39-8. PARA1 WAS THEN APPROVED 85-1-6(CDA). ARTICLE 5 AS WHOLE THEN APPROVED 55-13(CDA)-25.

3. FURTHER TELS WILL GIVE DETAILS AND COMMENTS. WE PICKED UP A FEW VOTES AS RESULT OF LOBBYING BUT LOST THREE VOTES FOR REASONS NOT/NOT YET CLEAR.

4. FACT THAT SUBSTANTIVE VOTES WERE TAKEN AGAIN IN CTTEE OF WHOLE WAS NOT/NOT OUR DOING. I WOULD HAVE SEEN ADVANTAGE IN LEAVING RENEWAL OF SUBSTANTIVE STRUGGLE FOR 1969 PLENARY. HOWEVER CHAIRMAN ON ADVICE OF SECRETARIAT SEEMS DETERMINED TO GET CTTEE OF WHOLE CLEARLY ON THE RECORD AFTER EACH ARTICLE RETURNS FROM DRAFTING CTTEE.

WERSHOF

OTT 38

PAR24/18

VNA2/18

PP OTT RR NYK

DE VNA

F R 180913Z

FM VIENN APR17/68

TO EXTER 302 PRIORITY

INFO PRMNY

LAW OF TREATIES CONFERENCE-ARTICLES 3, 4 AND 5

FOLLOWING ARE TEXTS ADOPTED BY DRAFTING CTTEE IN DOCU C.1/3

WHICH WILL BE CONSIDERED IN CTTEE OF WHOLE TOMORROW THURS.

REPORT WILL FOLLOW. TEXTS BEGIN:

#### ARTICLE 3

THE FACT THAT THE PRESENT CONVENTION DOES NOT/NOT APPLY TO  
INTERNATL AGREEMENTS CONCLUDED BETWEEN STATES AND OTHER SUBJS OF  
INTERNATL LAW OR BETWEEN SUCH OTHER SUBJS OF INTERNATL LAW, OR TO  
INTERNATL AGREEMENTS NOT/NOT IN WRITTEN FORM, SHALL NOT/NOT AFFECT:

(A) THE LEGAL FORCE OF SUCH AGREEMENTS;

(B) THE APPLICATION TO THEM OF ANY OF THE RULES SET FORTH IN THE  
PRESENT CONVENTION TO WHICH THEY WOULD BE SUBJ, IN ACCORDANCE WITH  
INTERNATL LAW, INDEPENDENTLY OF THE CONVENTION;

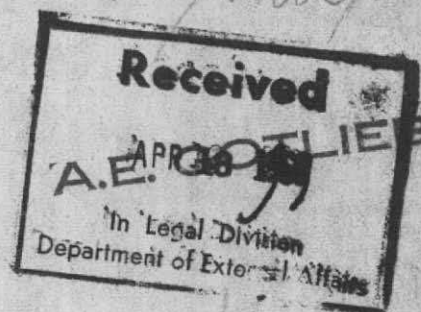
(C) THE APPLICATION OF THE CONVENTION TO THE RELATIONS OF STATES  
AS BETWEEN THEMSELVES UNDER INTERNATL AGREEMENTS TO WHICH OTHER  
SUBJS OF INTERNATL LAW ARE ALSO PARTIES.

#### ARTICLE 4

THE PRESENT CONVENTION APPLIES TO ANY TREATY WHICH IS THE CONST-  
ITUENT INSTRUMENT OF AN INTERNATL ORGANIZATION OR TO ANY TREATY  
ADOPTED WITHIN AN INTERNATL ORGANIZATION, WITHOUT PREJUDICE TO ANY  
RELEVANT RULES OF THE ORGANIZATION.

#### ARTICLE 5

...2



20-3-1-6  
32



PAGE TWO 302

1. EVERY STATE POSSESSES CAPACITY TO CONCLUDE TREATIES.

2. MEMBERS OF A FEDERAL UNION MAY POSSESS CAPACITY TO CONCLUDE  
TREATIES IF SUCH CAPACITY IS ADMITTED BY THE FEDERAL CONSTITUTION  
AND WITHIN THE LIMITS THERE LAID DOWN. TEXTS END

NNNN

001759

OTT038

*2 cc Co-Ord Div  
Mr. Galden O/SSEA  
JH 19/4  
Done  
opm 18/6/8*

*Mr. Busby to see OK.*

*Mr. Stanford*

PAR24/18

VNA2/18

PP OTT RR NYK

DE VNA

P R 180913Z

FM VIENN APR17/68

TO EXTER 302 PRIORITY

INFO PRMNY

LAW OF TREATIES CONFERENCE-ARTICLES 3,4 AND 5

FOLLOWING ARE TEXTS ADOPTED BY DRAFTING CTTEE IN DOCU C.1/3

WHICH WILL BE CONSIDERED IN CTTEE OF WHOLE TOMORROW THURS.

REPORT WILL FOLLOW.TEXTS BEGIN:

#### ARTICLE 3

THE FACT THAT THE PRESENT CONVENTION DOES NOT/NOT APPLY TO  
INTERNATL AGREEMENTS CONCLUDED BETWEEN STATES AND OTHER SUBJS OF  
INTERNATL LAW OR BETWEEN SUCH OTHER SUBJS OF INTERNATL LAW, OR TO  
INTERNATL AGREEMENTS NOT/NOT IN WRITTEN FORM, SHALL NOT/NOT AFFECT:

- (A)THE LEGAL FORCE OF SUCH AGREEMENTS;
- (B)THE APPLICATION TO THEM OF ANY OF THE RULES SET FORTH IN THE  
PRESENT CONVENTION TO WHICH THEY WOULD BE SUBJ, IN ACCORDANCE WITH  
INTERNATL LAW, INDEPENDENTLY OF THE CONVENTION;
- (C)THE APPLICATION OF THE CONVENTION TO THE RELATIONS OF STATES  
AS BETWEEN THEMSELVES UNDER INTERNATL AGREEMENTS TO WHICH OTHER  
SUBJS OF INTERNATL LAW ARE ALSO PARTIES.

#### ARTICLE 4

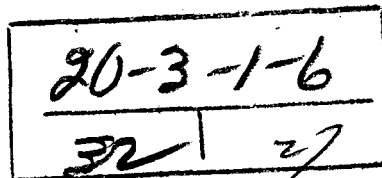
THE PRESENT CONVENTION APPLIES TO ANY TREATY WHICH IS THE CONST-  
ITUENT INSTRUMENT OF AN INTERNATL ORGANIZATION OR TO ANY TREATY  
ADOPTED WITHIN AN INTERNATL ORGANIZATION, WITHOUT PREJUDICE TO ANY  
RELEVANT RULES OF THE ORGANIZATION.

#### ARTICLE 5

...2

*see JH*

**ACTION COPY**



*L*

PAGE TWO 302

1. EVERY STATE POSSESSES CAPACITY TO CONCLUDE TREATIES.
2. MEMBERS OF A FEDERAL UNION MAY POSSESS CAPACITY TO CONCLUDE  
TREATIES IF SUCH CAPACITY IS ADMITTED BY THE FEDERAL CONSTITUTION  
AND WITHIN THE LIMITS THERE LAID DOWN. TEXTS END

NNNN

001761

**ACTION COPY**

20-3-1-6  
25 1/3

INFO TT PRMNY WLGTN DE OTT

REF OURTEL 259 APR7

LAW OF TREATIES CONFERENCE;2ND PROGRESS SUMMARY APR8-11

ARTICLES 10 AND 11 AND 10BIS(L.89)AND 11BIS(L.87)

CW FIRST HELD LENGTHY DEBATE ON QUESTION WHETHER THERE SHOULD BE RESIDUARY RULE AND IF SO WHETHER IN FAVOUR OF SIGNATURE OR IN FAVOUR OF RATIFICATION. LATIN AMERICANS (EXCEPT BRAZIL) ARGUED EMOTIONALLY IN FAVOUR OF RATIFICATION AS EXPRESSED IN L.105. SWEDEN AND CZECHOSLOVAKIA HAD PROPOSED SIGNATURE IN L.38 BUT LATER WITHDREW IT IN FAVOUR OF ILC TEXT IN VIEW OF STRONG FEELINGS OF LATINS AND PROBABILITY THAT ONLY ILC TEXT COULD WIN 2/3 VOTE IN PLENARY. L.105 WAS REJECTED 25-53 (CDA USA UK ETC)-16. YOUR INSTRUCTIONS FAVOURED HAVING A RESIDUARY RULE BUT OUR PRINCIPAL FRIENDS WERE CONVINCED AS WE WERE THAT ONLY ILC TEXT COULD SURVIVE PLENARY. L.107 TO AMEND ARTICLE 10 WAS REJECTED. L.89 TO ESTABLISH ARTICLE 10BIS ADOPTED; IT SEEMS HARMLESS BUT CDA ABSTAINED. L.87 TO ESTABLISH 11BIS FELL AUTOMATICALLY WITH DEFEAT OF L.105. OTHER AMENDMENTS SENT TO DC TO CONSIDER.

## ARTICLE 12

CZECH AMENDMENT L.104 WHICH USES PHRASE QUOTE GENERAL MULTILATERAL  
TREATY UNQUOTE WAS POSTPONED PENDING DECISION ON 5BIS(SEE REFTEL).

SUBJ TO THIS ARTICLE 12 WAS APPROVED AND SENT TO DC.

ARTICLE 12BIS(L.111 BELGIUM)

001762

PAGE TWO 295 RESTR

THIS WAS CONSIDERED ALONG WITH 9BIS(SEE REFTEL).BOTH WERE APPROVED IN PRINCIPLE AND SENT TO DC.

ARTICLE 13

CDN AMENDMENT L.110 WOULD MAKE OPENING WORDS READ QUOTE UNLESS THE TREATY OR INSTRUMENT UNQUOTE.THIS AND POLISH AMENDMENT L.93 WERE REFERRED TO DC WITHOUT DECISION.

ARTICLE 14

ILC TEXT APPROVED AND SENT TO DC.

ARTICLE 15

*good!* THERE WAS LENGTHY DEBATE AND NUMEROUS AMENDMENTS.PROPOSALS(L.61 AND L.72)TO DELETE PARA(A)WERE APPROVED 50(CDA)-33-11.UK HAD PROPOSED IN L.135 DELETION OF WHOLE ARTICLE AND UNWISELY INSISTED ON VOTE AFTER IT WAS APPARENT THAT NO/NO SUPPORT FOR THIS;REJECTED 14-74-6.CDA VOTED FOR UK PROPOSAL NOT/NOT BECAUSE WE WERE CONVINCED OF MERITS BUT OUT OF COURTESY AND IN GRATITUDE FOR PAST AND FUTURE HELP ON ARTICLE 5.

ARTICLE 15 MINUS PARA(A)AND REMAINING AMENDMENTS WERE REFERRED TO DC-SEE DOCU D.C./12 FOR DETAILS.

ARTICLES 16 AND 17

THESE TWO ARTICLES AND VAST NUMBER OF AMENDMENTS WERE DEBATED TOGETHER AND DEBATE WILL BE RESUMED APR16.USA AMENDMENTS TO ARTICLE 17(L.127)ARE NOT/NOT IN FORM ANNEXED TO USA EMB NOTE 193;ONE OF AMENDMENTS IN L.127 WOULD AMEND 17(4)IN MANNER DESIGNED TO PREVENT ACCEPTANCE BY ANYONE OF AN INCOMPATIBLE RESERVATION.JPNSE AMENDMENT ...3

PAGE THREE 295 RESTR

*This appears attractive*  
L.133 TO ARTICLE 16 WOULD GIVE CONTRACTING STATES 3 MONTHS TO  
OBJECT TO INCOMPATIBLE RESERVATION; IF MAJORITY OF CONTRACTING STATES  
OBJECTED THE RESERVATION WOULD BE INVALID. JPNSE AMENDMENT HAS  
ATTRACTED SUPPORT AND MAY BE REVISED WITH CO-SPONSORS; IT SEEMS  
GOOD TO US.

*Right*  
AS FOR SECOND PROBLEM DISCUSSED IN YOUR INSTRUCTIONS IT SEEMS TO  
BE UNDERSTOOD BY ALL THAT 17(4)(B) MEANS THAT OBJECTING STATE CAN  
PRECLUDE ENTRY INTO FORCE OF TREATY AS BETWEEN OBJECTING AND  
RESERVING STATES EXCEPT WHERE THE RESERVATION WAS AUTHORIZED BY  
TREATY WITHIN MEANING OF 17(1); INCIDENTALLY THERE IS FAIR CHANCE  
OF WORDS QUOTE <sup>OR</sup> ~~OF~~ IMPLIEDLY UNQUOTE BEING DELETED FROM 17(1) WHICH  
WOULD BE EVEN BETTER. WE PRESUME THAT YOUR INSTRUCTIONS DO NOT/NOT  
MEAN THAT OBJECTING STATE SHOULD BE ABLE TO PREVENT TREATY ENTER-  
ING INTO FORCE BETWEEN ITSELF AND RESERVING STATE EVEN IN CASE  
WHERE RESERVATION WAS EXPRESSLY AUTHORIZED WITHIN MEANING OF 16(B)  
AND 17(1).

ARTICLE 18

*yes*  
CDA TABLED AMENDMENT L.158 TO SUBSTITUTE QUOTE NEGOTIATING STATES  
AND CONTRACTING STATES UNQUOTE FOR CLOSING PHRASE OF PARA 1. THIS  
AND OTHER AMENDMENTS WERE AFTER DEBATE SENT WITHOUT DECISION TO  
DC. (AS INDICATED IN REFTTEL CHAIRMAN OF CW HAS FUZZY IDEAS ON  
PROCEDURE. CDN AMENDMENT ALTHOUGH SMALL IN NUMBER OF WORDS IS AN  
AMENDMENT OF SUBSTANCE AND NOT/NOT JUST OF DRAFTING. HOWEVER IT IS  
NOT/NOT WORTHWHILE TO CHALLENGE CHAIRMAN EXCEPT ON REALLY VITAL

...4

001764



PAGE FOUR 295 RESTR

MATTERS).

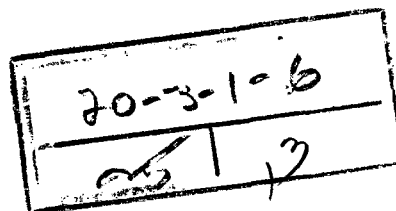
OK. | IN THE LIGHT OF OUR EXCHANGE OF TELS WE DID NOT/NOT TABLE AN AMEND-  
MENT IN SENSE OF SECOND SENTENCE OF FIRST PARA OF YOUR INSTRUCT-  
IONS. AS STATED IN OURTEL 274 APR9 THERE IS LITTLE CHANCE OF GETTING  
SUPPORT FOR DOCTRINE OF CONSTRUCTIVE NOTICE.

WERSHOF

*Feb 20-3-1-6*  
**ACTION COPY**

OTT079

PAR73



*L*  
*Mr. [unclear]*  
*Mr. Stanford*

VNA9/11

RR OTT

DE VNA

R 111154Z

FM VIENN APR11/68

TO EXTER 289

REF YOURTEL L339 APR9

TREATIES CONFERENCE ARTICLES 27 AND 28

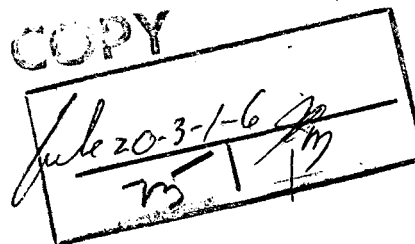
USA AMENDMENT HAS BEEN TABLED WITHOUT CHANGE AS L156

CANDEL

NNNNVVVVV

*Mr. Bayley*  
*Mr. Stanford*

ACTION COPY



L

VVVVV

OTT059

PAR38

VNA2/11

RR OTT

DE VNA

R 110947Z

FM VIENN APR11/68

TO EXTER 283

LAW OF TREATIES-ARTICLE 5 DEBATE

TODAYS PACKAGE OF DOCUS INCLUDES PROVISIONAL SUMMARY RECORDS

OF ELEVENTH AND TWELFTH MTGS AT WHICH ARTICLE 5 WAS DEBATED

CANDEL

*Mr. B. B. B.*  
*Mr. S. S. S.*

VVVVV

ACTION COPY

L

OTT059

PAR38

VNA2/11

RR OTT

DE VNA

R 110947Z

FM VIENN APR11/68

TO EXTER 283

LAW OF TREATIES-ARTICLE 5 DEBATE

TODAYS PACKAGE OF DOCUS INCLUDES PROVISIONAL SUMMARY RECORDS  
OF ELEVENTH AND TWELFTH MTGS AT WHICH ARTICLE 5 WAS DEBATED  
CANDEL

20-3-1-6  
32 L

*ce Pers Ops Div  
Finance Div*

ACTION COPY

OTD76

V

PARS9/9

(1)

12-19/9

RR OTT RR NYK

DE VNA

R 091437Z

FM VIENN APR9/68

TO EXTER 275

INFO PRMUY

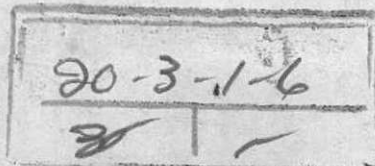
TREATIES CONFERENCE PERS

FOR GOTLIEB AND LEGAL DIV DE WERSHOF

MCKINNON MUST LEAVE HERE SAT APR27 BY AUTO BECAUSE OF MTGS IN  
GENEV. IN VIEW OF PRESSURE AT CONFERENCE HERE IT WOULD HELP IF

*AW.* ROBERTSON AND STANFORD COULD PLAN FLT IN SUCH A WAY AS TO BE  
RESTED UP FOR MON AM MTGS AND ALSO TO BE ABLE TO MEET WITH ME  
SUN AFTERNOON TO REVIEW MATTERS

2. YOUR PAST EFFORTS ARE APPRECIATED AND I HOPE YOU CAN CONSIDER  
THIS



*file  
84*

*Mr. [unclear]  
Mr. Stanford  
Doque (announcing the  
was the original deal agreed  
as to [unclear])*

BEST COPY AVAILABLE

ACTION COPY

Feb 20-3-1-6

L  
Mr. Broderick  
Mr. Stanford

20-3-1-6

25 17

FM VIENN APR9/68 RESTR

TO EXTER 274 IMMED

INFO TT PRMNY DE OTT

LAW OF TREATIES CONFERENCE ARTS 18 20 AND 73

WE HAVE BEEN STUDYING YOUR INSTRS ON THESE ARTS AND WOULD APPRECIATE  
EARLY RECONSIDERATION. SEVERAL SEPARATE POINTS ARE INVOLVED: (A) DOES

DRAFT ART 18 MEAN THAT (IN A MULTILATERAL TREATY OF WHICH THERE IS  
A DEPOSITARY) THE DUTY OF SENDING NOTICE TO THOSE STATES ENTITLED

TO RECEIVE IT RESTS ON THE STATE MAKING THE RESERVATION? YOUR

COMMENTARY SEEMS TO ASSUME ANSWER IS YES. I FEEL CERTAIN THAT ILC  
HAD NO/NO SUCH INTENT AND THAT OPPOSITE IS CLEAR FOR ART 73(A). ARE

THERE ANY MULTILATERAL TREATIES THAT HAVE NO/NO DEPOSITARY? (B) IS

THE PHRASE QUOTE STATES ENTITLED TO BECOME PARTIES TO THE TREATY

UNQUOTE IN ART 18(1) TOO WIDE, ASSUME THAT MULTILATERAL TREATIES

ALWAYS HAVE A DEPOSITARY AND THAT MY VIEW IN PROCEEDING PARA IS

CORRECT? I THINK IT IS NOT/NOT TOO WIDE AND THAT THIS LANGUAGE

ALREADY APPEARS IN SOME UN TREATIES. OF COURSE THE TASK OF THE

DEPOSITARY WOULD BECOME ALMOST IMPOSSIBLE IF THERE WERE AN ALL-  
STATES ACCESSION CLAUSE IN THE PARTICULAR TREATY BUT IT WOULD BE

THE DEPOSITARY AND NOT/NOT THE RESERVING STATE THAT WOULD HAVE

TROUBLE. (C). IF NOTICE IS CORRECTLY SENT BY A STATE TO A DEPOSITARY

AND IF LATTER HAS DUTY TO INFORM CERTAIN STATES, WHEN IS THE

NOTICE EFFECTIVE? I AGREE WITH YOUR COMMENTS AND INSTRS ON ART 73;

IT MAY BE WORTH MENTIONING IN DEBATE BUT THERE IS LITTLE CHANCE

OF GETTING SUPPORT FOR THE DOCTRINE OF CONSTRUCTIVE NOTICE.

The mechanical problem  
wld be for the depositary but  
the legal effect wld be upon  
the reserving state.

yes

...2

001770

PAGE TWO 274 RESTR

2. I SHALL DELAY TABLING ANY AMENDMENT PENDING YOUR REPLY. WE HAVE  
JUST HEARD THAT ARTS 18 AND 20 MAY BE DEBATED TOMORROW OR THUR.  
PLEASE RUSH REPLY

WERSHOF

**ACTION COPY**

*file 70-3-1-6 J*

*L*  
*Mr. Bailey*  
*Mr. Stanford*

*70-3-1-6*  
*ms 113*

FM VIENN APR9/68 CONFD

TO EXTER 270

INFO TT PRMY DE OTT

LAW OF TREATIES CONFERENCE ARTS 27 AND 28

IN STUDYING YOUR INSTRS ON THESE ARTS WHICH ARRIVED END OF LAST  
WEEK WE WONDER WHETHER USA DRAFT AMENDMENT (ATTACHED TO OTT USAEMB  
NOTE 193 MAR14) WAS AVAILABLE WHEN COMMENTARY AND INSTRS WERE PRE-  
PARED.

*2*  
*under*  
*my* 2. KEARNEY OF USADEL SAYS AMENDMENT SUBSTANTIALLY IN FORM ATTACHED  
TO THAT NOTE WILL BE TABLED NEXT WEEK. SHOULD WE INTERPRET YOUR  
INSTRS AS MEANING OPPOSITION TO USA AMENDMENT?

WERSHOF



MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		APR. 9/68	20-3-1-6 32	UNCLAS.
TO/A	VIENNA	NO L-338		PRECEDENCE ROUTINE
INFO	PERMIS N.Y.			

REF YOURTEL 275 APR. 9/68 .

SUB/SUJ TREATIES CONFERENCE - PERS

WE AGREE WITH PROPOSAL IN REPTEL. STANFORD  
WILL PLAN TO LEAVE OTT FRIDAY P.M. APR. 26. WE UNDERSTAND  
ROBERTSON ALSO PLANS TO LEAVE FOR EUROPE APR. 26.

2. FOR PERMIS N.Y. IT WOULD BE USEFUL  
IF ROBERTSON COULD SPEND FRIDAY APR. 26 IN OTTAWA FOR  
DISCUSSIONS IN LEGAL DIVISION PRIOR TO DEPARTURE FOR EUROPE  
FRIDAY EVENING. IF YOU CAN RELEASE ROBERTSON APR. 25 HE  
SHOULD MAKE HIS TRAVEL ARRANGEMENTS ACCORDINGLY.

DISTRIBUTION  
LOCAL/LOCALE

PERS. OPS. DIV.

FINANCE DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

J.S. STANFORD /ts.

LEGAL

2-5406

SIG.....

J.A. REESLEY

- 2 -

HAS BEEN RECEIVED BY ALL STATES REQUIRED BY ARTICLE 18 TO BE NOTIFIED.  
PRESENT TEXT OF ARTICLE 19 IS OPEN TO THIS INTERPRETATION WHICH, IF ACCURATE,  
MAKES NOTIFICATION PROCEDURE REQUIRED BY ARTICLE 18 VITAL TO WHOLE  
RESERVATIONS PROCESS. IF THIS IS NOT INTENDED EFFECT OF ARTICLE 19 THEN  
POSSIBLE HARMFUL CONSEQUENCES OF ARTICLE 18 ARE CONSIDERABLY REDUCED THOUGH  
STILL SIGNIFICANT ENOUGH TO WARRANT AMENDMENT.

4. IF ARTICLE 19 IS NOT INTENDED TO HAVE EFFECT DESCRIBED IN FIRST  
SENTENCE PRECEDING PARA THEN AS A MATTER OF DRAFTING IT COULD USEFULLY BE  
MODIFIED BY OMITTING REFERENCE TO ARTICLE 18 AND ADDING SIMPLY "AND NOTIFIED  
TO THAT PARTY".



DIARY  
DIV. DIARY  
FILE  
FILE

MESSAGE

FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
APR 9 1968	20-3-1-6 32	RESTR

TO/A VIENNA

NO	PRECEDENCE
L-340	IMMED

INFO PERMIS NY (ROUTINE)

REF YOURTEL 274 APR 9/68

SUB/SUJ TREATIES CONFERENCE - ARTICLES 18, 20 AND 73

WHILE ADMINISTRATIVE RESPONSIBILITY FOR COMMUNICATING RESERVATIONS, ETC. TO OTHER STATES MAY, IN CIRCUMSTANCES COVERED BY ARTICLE 73 (A), FALL UPON DEPOSITARY, LEGAL CONSEQUENCES OF FAILURE TO NOTIFY WOULD FALL UPON STATE FORMULATING RESERVATION. FAILURE TO NOTIFY AS REQUIRED BY ARTICLE 18 MAY RESULT IN RESERVATION BEING INVALIDATED BY REQUIREMENT IN ARTICLE 19 THAT RESERVATION BE ESTABLISHED IN ACCORDANCE WITH ARTICLE 18.

2. PRESENT TEXT PLACES ONUS ON RESERVING STATE (OR ON DEPOSITARY, BUT WITHOUT CONSEQUENCES FOR ERROR FALLING UPON RESERVING STATE) TO DETERMINE WHO IS ENTITLED TO BECOME A PARTY TO A TREATY. FOR GENERAL MULTILATERAL TREATIES, THIS GROUP, THOUGH LARGE, IS DEFINABLE (UNLESS ALL STATES FORMULA IS ADOPTED) BUT FOR TREATIES WHICH ARE NOT CLEARLY GENERAL MULTILATERAL TREATIES WHICH MAY NOT BE EASY TO DETERMINE WHICH STATES ARE IN A STRICT LEGAL SENSE ENTITLED TO BECOME PARTIES. FOR THIS REASON, WE PREFER A FORMULATION IN ARTICLE 18(1) WHICH IS DEFINABLE IN ALL CASES.

3. IT WOULD BE HELPFUL TO KNOW WHETHER INTENDED EFFECT OF ARTICLE 19 IS THAT A RESERVATION IS NOT EFFECTIVE VIS-A-VIS ANY STATE UNTIL NOTIFICATION

DISTRIBUTION  
LOCAL/LOCALE NO STD DONE IN DIV.

... 2

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG J.S. STANFORD/JI	LEGAL	2-5406	SIG J.A. DEESLEY DEESLEY

MESSAGE

FM/DE EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
APR. 9/68	20-3-1-6 32	CONF. D.

TO/A VIENNA

NO	PRECEDENCE
L-339	ROUTINE

INFO

REF YOURTEL 270 APR. 9/68

SUB/SUJ TREATIES CONF. ARTS 27 AND 28

U.S. AMENDMENT TO WHICH YOU REFER AND WHICH CORRESPONDS TO AMENDMENT CIRCULATED BY US AT WEO MTG. WAS IN OUR HANDS WHEN INSTRUCTIONS ON THESE ARTICLES WERE PREPARED. IT IS TO THIS AMENDMENT THAT LAST SENTENCE PARA. ONE OF INSTRUCTIONS REFERS. YOUR INTERPRETATION OF INSTRUCTIONS IS CORRECT AND YOU SHOULD OPPOSE ANY U.S. AMENDMENT SUBSTANTIALLY SIMILAR TO THE AMENDMENT REFERRED TO ABOVE.

DISTRIBUTION  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG. J. E. Stanford/ts.

Legal

2-5406

SIG. J. A. DEESLEY

*cc Pers. Ops Div  
Finance Div*

**ACTION COPY**

*Feb 20-3-1-6.  
JH 30/5/68*

*L*  
*Mr. [unclear]  
Mr. Stanford*

*Doque (annexes) has  
was the original deal agreed  
as to [unclear]*

20-3-1-6  
37 |

OTT076

V

PAR89/9

( )

3, -19/9

RR OTT RR NYK

DE VNA

R 091437Z

FM VIENN APR9/68

TO EXTER 275

INFO PRMNY

TREATIES CONFERENCE PERS

FOR GOTLIEB AND LEGAL DIV DE WERSHOF

MCKINNON MUST LEAVE HERE SAT APR27 BY AUTO BECAUSE OF MTGS IN GENEV. IN VIEW OF PRESSURE AT CONFERENCE HERE IT WOULD HELP IF ROBERTSON AND STANFORD COULD PLAN FLT IN SUCH A WAY AS TO BE RESTED UP FOR MON AM MTGS AND ALSO TO BE ABLE TO MEET WITH ME SUN AFTERNOON TO REVIEW MATTERS

2. YOUR PAST EFFORTS ARE APPRECIATED AND I HOPE YOU CAN CONSIDER THIS

CANADIAN EMBASSY



AMBASSADE DU CANADA

file 20-3-1-6  
28/5

VIENNA, April 8, 1968.

20-3-1-6  
321

Dear Joe,

Here is a copy of a letter which we have received here concerning a special publication on the Law of Treaties. If you consider that this publication might be useful to you, you might perhaps obtain the necessary authority and let us know. We would then purchase it here and you thus would have it handy during your stay at the Conference.

Otherwise the pace has been pretty hectic here in the past few days in connection with Article 5. I shall write to you in more detail about this later.

'Bye for now,

*Richard*

Mr. J.S. Stanford,  
Treaty & Economic Section,  
Legal Division,  
Department of External Affairs,  
OTTAWA,  
C A N A D A.



Verlag W. Kohlhammer GmbH · 7 Stuttgart 1  
Postfach 747

The Chief of the Delegation  
of Canada

at the Diplomatic Conference  
on the Law of Treaties

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Vertrieb

Ihr Zeichen  
Ihre Nachricht vom  
Unser Zeichen  
Tag

Sir:

We should like to inform you that we have arranged, for the participants in the Diplomatic Conference on the Law of Treaties, an opportunity to facilitate the obtaining of the special issue 27/3 (Law of Treaties) of the Zeitschrift für ausländisches öffentliches Recht und Völkerrecht with ten critical studies (in English) on the 1966 draft articles adopted by the International Law Commission.

A small stock of this issue has been deposited with the booksellers

L. Heidrich  
Plankengasse 7  
W i e n X

Yours faithfully

Verlag W. Kohlhammer

001779



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

Personnel Operations Division

SECURITY **UNCLASSIFIED**  
Sécurité

FROM  
De

Legal Division

DATE **April 8, 1968**

REFERENCE  
Référence

Your telegram PO-1654 of April 5 to Vienna

NUMBER  
Numéro

SUBJECT  
Sujet

Stenographical Assistance to Law of  
Treaties Delegation

FILE	DOSSIER
OTTAWA	
MISSION	26-3-1-6 32

ENCLOSURES  
Annexes

DISTRIBUTION

In the event it is not possible to provide the necessary assistance from Copenhagen we trust you will be able to arrange assistance from some other post (possibly Disarmdel, Geneva).

2. In any event, arrangements should be made to have a secretary available until the conclusion of the conference May 25, since it is in the last weeks, when sittings become more frequent and the tempo of work increases as the conference seeks to complete an exceedingly heavy agenda, that the need for assistance will be greatest.

J. A. BEESLEY

Legal Division



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM  
De  
The Canadian Delegation to the Law of  
Treaties Conference, VIENNA

REFERENCE  
Référence  
Our telegram 252 of April 5, 1968

SUBJECT  
Sujet  
U.K. Proposals for Settlement of Disputes  
Clauses in Draft Articles

SECURITY  
Sécurité  
CONFIDENTIAL

DATE  
April 8, 1968

NUMBER  
Numéro  
208

FILE	DOSSIER
OTTAWA	
MISSION	20-5-12

ENCLOSURES  
Annexes

1  
DISTRIBUTION

Enclosed is a copy of the U.K. memorandum  
dated April 2 recently circulated to the W.E.O. group.

Permis., N.Y.  
Attn:  
A.W. Robertson

Canadian Delegation.

LEU Apr 3/68

NOTE BY UNITED KINGDOM DELEGATIONSETTLEMENT OF DISPUTES

The United Kingdom delegation have given considerable thought to the issue of the settlement of disputes since the meetings of the Group in Strasbourg and Paris. In order to focus attention on questions both of substance and of tactics which arise in this connection, they have prepared this note to promote discussion in the Group.

2. It may be assumed that there would be no hope for the adoption of a standard provision for the reference to the International Court of Justice of disputes arising out of the Articles of the Convention generally. Nevertheless, it is in principle desirable to secure sound provisions for the settlement of disputes arising out of all the Articles both in Part V and in other Parts of the Convention. Special machinery may be particularly desirable for Part V and for certain other groups of Articles such, for example, as those on reservations. These considerations suggest the advisability of tabling proposals on disputes procedures dealing separately with the Convention as a whole and with Part V (and possibly other groups of Articles).

3. This approach might have some tactical advantage. The provisions relating to the Convention as a whole might draw some of the fire which might otherwise be directed at those relating to Part V and might make it easier for the opposition to accept the latter if, in an ultimate compromise, the former were abandoned.

4. In any event the problem of the settlement of disputes is one which needs to be examined in depth so as to find the best possible and generally acceptable solution. Accordingly, there would seem to be considerable tactical advantage in submitting a variety of proposals for settlement machinery in relation to Part V as well as in relation to the Convention as a whole. Although a multiplicity of proposals for settlement of disputes might lead to some confusion, it would be more difficult for those opposing compulsory settlement machinery to attack a whole range of proposals than a very specific one on Part V and a very specific one on the remainder of the Convention. Besides examination by the Conference of a number of possible solutions is intrinsically more likely to give rise to a satisfactory compromise.

5. The United Kingdom delegation have given careful attention to possible machinery for settlement of Part V disputes. At present they believe that there may be some prospect of obtaining the required majority for something on the following lines:

- (a) Objections to Article 62 notifications should be communicated to the parties to the treaty and also the Secretary-General of the United Nations;

-2-

- (b) After the expiry of a specified period (perhaps two months) and if the dispute relates to the interpretation or application of Articles 43-49 [50] or 57-60 [61], the Secretary-General shall refer the matters in dispute to a Commission of Jurists;
- (c) The Commission of Jurists might consist of 15 or 18 members and, subject to the approval of the General Assembly, could be constituted as an organ of the United Nations and authorised to request advisory opinions from the International Court of Justice;
- (d) The Commission of Jurists, in considering matters referred to it by the Secretary-General, might exercise functions broadly analogous to those of the European Commission on Human Rights under the European Convention of Human Rights;
- (e) The Commission of Jurists might, with the agreement of the parties, perform its functions by means of a Sub-Commission consisting of 5 members of the Commission, two appointed by each of the parties concerned and the fifth member selected by the parties jointly or, in case of need, by the Secretary-General;
- (f) The Commission or Sub-Commission could be obliged to report within six or nine months of a matter being referred to the Commission by the Secretary-General. If the Commission or Sub-Commission has succeeded in effecting a friendly solution, the report might be confined to a brief statement of facts and the solution reached;
- (g) If no solution has been reached within the six/nine months time limit by the Commission or Sub-Commission, the Commission as a whole should meet immediately and decide whether or not to request an advisory opinion from the ICJ on any legal question which may have arisen in the course of their consideration of the matters in dispute.
- (h) If the Commission decides not to request an advisory opinion, it draws up a full report on the factual and legal elements of the case which is then transmitted to the States concerned and to the Secretary-General.
- (i) On receipt of this report, either party may submit to an arbitral tribunal for decision any question relating to the interpretation or application of any of the provisions contained in Articles 43-49 [50] or 57-60 [61] which has remained unresolved. The arbitral tribunal might consist of three members, one appointed by each party to the dispute and the third member chosen



CONFIDENTIAL

-2-

President of the International Court of Justice shall  
fill the remaining vacancy or vacancies.

CONFIDENTIAL

-3-

by common agreement between the parties or, in default of common agreement, by the President of the International Court of Justice.

6. It will be seen that this outline scheme involves a form of automatic conciliation machinery, combined with a possibility of reference to the International Court for an advisory opinion, followed, if need be, by automatic arbitration machinery. It is thus a combination of various means of settlement in which the International Court of Justice may have a part to play.

7. There are, however, other possible solutions for settlement machinery in relation to Part V. The United States delegation has, for example, suggested a settlement machinery which would involve reference to an arbitral tribunal followed by automatic reference to the International Court of Justice at the instance of any party, if the parties cannot agree on arbitration. In his second report, Sir Humphrey Waldock proposed a procedural Article relating to Part V, the effect of which was that any party purporting to invoke a ground for invalidity must offer to refer a dispute arising out of an objection made by another party to one or another form of peaceful settlement before being free to carry out the action specified in the notification. There would seem to be considerable merit in reviving a proposal of this kind even though it was rejected by the Commission.

8. Turning now to the second major issue - namely, a more general provision on the settlement of disputes relating to the interpretation or application of the other provisions of the Convention - the United Kingdom delegation believe that a possible solution would be to provide for automatic reference to the International Court of Justice or to an arbitral tribunal in relation to disputes which cannot be settled by negotiation. But, in order to allay misgivings, it might be desirable to combine this with a provision which enabled any State party to the Convention to declare that it accepted the provisions of the general settlement of disputes Article only in so far as reference to an arbitral tribunal is concerned (in other words excluding automatic reference to the International Court of Justice). Attached is a first draft of a general settlement of disputes Article along these lines.

9. The United Kingdom delegation would welcome comments of other delegations within the Group on the ideas and suggestions set forth in this memorandum.

United Kingdom Delegation

2 April, 1968

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM  
De The Canadian Delegation to the Law of Treaties Conference, VIENNA

REFERENCE  
Référence Our telegram 252 of April 5, 1968

SUBJECT  
Sujet U.K. Proposals for Settlement of Disputes  
Clauses in Draft Articles

SECURITY  
Sécurité

DATE

April 8, 1968

NUMBER  
Numéro

208

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	20-5-12

ENCLOSURES  
Annexes

1

DISTRIBUTION

Permis., N.Y.  
Attn:  
A.W. Robertson

Enclosed is a copy of the U.K. memorandum dated April 2 recently circulated to the W.E.O. group.

*[Signature]*  
Canadian Delegation.

Received

APR 19 1968

In Legal Division  
Department of External Affairs

TO MR STANFORD

FROM REGISTRY

APR 18 1968

FILE CHARGED OUT

TO MR STANFORD

cc U.N. Div (Pearson)  
~~Longman~~  
Note 9/4/68

Feb 20-31-69

ACTION COPY

Handwritten signature

20-3-1-6  
17

FM VIENN APR8/68 CONFD

TO EXTER 266 PRIORITY

INFO TT PRMNY DE OTT

REF OURTELS 248 APR4 252 APR5

LAW OF TREATIES SETTLEMENT OF DISPUTES

UK PROPOSALS CONTAINED IN REFTELS WERE DISCUSSED IN WEO GROUP THIS MORNING. NUMBER OF QUESTIONS WERE RAISED CONCERNING AMBIGUITIES IN PROPOSED TEXT BUT ON THE WHOLE BRIT SUGGESTIONS WERE CONSIDERED INGENIOUS AND WERE WELL RECEIVED.

2. HOWEVER CONSENSUS WAS THAT WEO GROUP SHOULD NOT/NOT CONFINE ITSELF TO PUTTING FORWARD ONE SINGLE SET OF PROPOSALS RE SETTLEMENT OF DISPUTES. IT WAS THEREFORE AGREED TO SET UP WORKING PARTY CONSISTING OF SWITZERLAND NETHERLANDS SWEDEN FRANCE USA UK AND FRG TO STUDY QUESTION IN DEPTH AND TO REPORT BACK TO GROUP ON POSSIBLE ALTERNATIVES WHICH MIGHT BE ACCEPTABLE TO WESTERN COUNTRIES AS MTG THEIR MINIMUM REQUIREMENTS ESPECIALLY WITH REGARD TO PART V. THEN SOME OF THESE ALTERNATIVE PROPOSALS MIGHT IN DUE COURSE BE SUBMITTED TO CONFERENCE TOGETHER WITH THAT OF BRIT IN HOPE THAT COMPROMISE AGREEMENT MIGHT ULTIMATELY BE REACHED ON SOLUTION INCORPORATING ELEMENTS OF VARIOUS SUGGESTIONS.

3. MAIN QUESTIONS RAISED ABOUT UK PROPOSAL CONCERNED (1) WHETHER OPINION OF ICJ PROVIDED FOR IN PARA G WOULD BE COMPULSORY. IF NOT/NOT, WHAT WOULD HAPPEN AFTER OPINION OF COURT HAD BEEN RENDERED? BRIT HAVE MADE CLEAR TO US THEIR INTENTION THAT OPINION OF COURT SHOULD BE ADVISORY ONLY. (2) REASON FOR INVOLVING UN SEC GEN IN PROCEDURE

...2



PAGE TWO 266 CONFD

AS PROVIDED FOR IN PARA B. IT WAS SUGGESTED THAT INITIATIVE MIGHT BEST BE LEFT TO PARTIES CONCERNED TO REFER MATTER TO COMMISSION OF JURISTS. (3) COMPOSITION OF COMMISSION OF JURISTS: SINCE ITS COMPOSITION WOULD LIKELY BE ALONG LINES OF THAT OF ILC IT WAS WONDERED WHETHER RESULTS COULD BE EXPECTED TO BE MORE SATISFACTORY THAN THOSE REACHED BY ILC IN DRAFT ARTS. (4) EFFECT OF UK PROPOSALS ON SETTLEMENT OF DISPUTES PROVISIONS CONTAINED IN OTHER TREATIES.

4. UK CHAIRMAN INDICATED THAT FROM INFORMAL CONSULTATIONS TAKING PLACE HERE ON PART V, IT IS BECOMING INCREASINGLY OBVIOUS THAT IT WILL PROVE STUMBLING BLOCK TO SUCCESS OF CODIFICATION UNLESS GENERALLY SATISFACTORY SETTLEMENT PROCEDURE IS AGREED UPON. THIS REALIZATION, IT IS HOPED, MAY HELP IN MAKING ULTIMATE COMPROMISE POSSIBLE. HOWEVER IT IS NOT/NOT NOW CERTAIN THAT CONFERENCE WILL IN FACT BE ABLE TO DISCUSS PART V DURING THIS YEAR'S SESSION. AT RATE WE ARE GOING, IT IS ALREADY SUGGESTED THAT NEXT YEAR'S SESSION WILL HAVE TO BE EXTENDED AND THAT CTTEE OF WHOLE MAY NOT/NOT GO BEYOND ART 38 THIS YEAR.

5. SENSE OF MTG WAS THAT QUESTION OF SETTING UP WORKING GROUP OF CTTEE OF WHOLE ON PART V AS SUGGESTED BY SEC GEN IN PARA 15 OF A/CONF/39/3 MIGHT BEST BE HELD IN ABEYANCE FOR NEXT 2 OR 3 WEEKS UNTIL PRESENT PICTURE BECOMES SOMEWHAT CLEARER. SHOULD IT DEVELOP THAT THE CONFERENCE WILL NOT/NOT REACH PART V THIS YEAR, THEN WORKING GROUP MIGHT BE CONSTITUTED TO SIT BETWEEN 2 SESSIONS OF CONFERENCE UNQUOTE ENDS.

ACTION COPY

20-3-1-6

L

Mr. [unclear]  
Mr. [unclear]  
[unclear]

FM VIENN APR7/68 RESTR  
TO EXTER 260  
INFO TT WLGTN DE OTT  
REF YOURTEL L324 APR2  
LAW OF TREATIES

20-3-1-6  
32 | 32

SMALL OF NZ WOULD LIKE US TO RPT SOME TELS TO WLGTN FOR NZDEA. WE  
ARE STARTING THIS WITH OUR LENGTHY TEL 259 OF TODAY

WERSHOF

cc U.N. Div (Person).  
J.S.S.

Done 9/4/68

Feb 20-3-1-6  
m 8 13  
Reedley  
H. Stenford

ACTION COPY

2

FM VIENN APR 7/68 RESTR

TO EXTER 259

INFO TT PRMNY WLGTN DE OTT

LAW OF TREATIES CONFERENCE 1ST PROGRESS SUMMARY

THIS IS FIRST OF SERIES OF PERIODIC SUMMARY REPORTS ON PROGRESS OF ARTS. IT IS NOT/NOT FEASIBLE FOR US TO SEND FULLER ROUND-UP REPORTS BUT WE WILL CONTINUE TO SEND ADHOC REPORTS BY TEL ON PARTICULAR POINTS OF SPECIAL INTEREST. WE WILL USE CW FOR CTTEE OF WHOLE AND DC FOR DRAFTING CTTEE IN THESE AND OTHER TELS.

ART 1

OURTEL 21 MAR 29 REPORTED CONCLUSION OF MAIN DEBATE IN CW. ON APR 3 DC PRESENTED ITS REDRAFT QUOTE THE PRESET CONVENTION APPLIES TO TREATIES CONCLUDED BETWEEN STATES UNQUOTE. AS THIS REDRAFT DID NOT/NOT CLARIFY QUESTION OF APPLICATION TO RELATIONS BETWEEN STATE PARTIES TO A TREATY TO WHICH AN INTERNATL ORGANIZATION IS ALSO PARTY I ASKED CHAIRMAN OF DC PRIVATELY WHY DC HAD NOT/NOT AT LEAST AUTHORIZED HIM TO SAY WHAT THE ART MEANS IN THIS RESPECT. CHAIRMAN SAID DC WAS STRUGGLING WITH OUR QUESTION AND HOPED TO PRODUCE ANSWER WHEN THEY REPORT ON ART 3. DC VERSION OF ART 1 WAS ADOPTED APR 3 IN CW WITHOUT FURTHER DEBATE BY 63-0-1. HAVE SINCE HEARD THAT DC IS HAVING A TERRIBLE TIME PRODUCING A CLEAR ANSWER TO OUR QUESTION. MOST MEMBERS THINK DRAFT CONVENTION HAS NO/NO APPLICATION WHATEVER TO TYPE OF TREATIES WE HAVE IN MIND EVEN AS BETWEEN STATES PARTIES. DC ALSO RECOMMENDED AND CW APPROVED WITHOUT VOTE DRAFT RESLN ASKING UNGA TO ASK ILC TO QUOTE STUDY QUESTION OF TREATIES CONCLUDED

...2

PAGE TWO 259 RESTR

BETWEEN STATES AND INTERNATL ORGANIZATIONS OR BETWEEN 2 OR MORE INTER-  
NATL ORGANIZATIONS UNQUOTE.

ART 2

THERE WERE NUMEROUS AMENDMENTS AND LENGTHY DEBATE IN CW. AMENDMENT  
L19/RE1 SPONSORED BY COMUNISTS AND AFRICANS WOULD ADD A DEFINIT-  
ION OF QUOTE GENERAL MULTILATERAL TREATY UNQUOTE A PHRASE WHICH  
WILL APEAR IN DRAFT CONVENTION IF ALL-STATES PROPOSAL SUCCEEDS.  
FRANCE IN L24 WOULD ADD A DEFINITION OF QUOTE RESTR MULTILATERAL  
TREATY UNQUOTE; THIS SURPRISING PROPOSAL SEEMS TO ME TO PLAY INTO  
HANDS OF COMMUNISTS IN CONNECTION WITH ALL-STATES QUESTION ALTHOUGH  
THIS IS NOT/NOT FRENCH INTENTION. IN THE END CW ACCEPTED CDN PRO-  
CEDURAL MOTION THAT ART 2 AND ALL AMENDMENTS BE HELD IN COLD-STORAGE  
BY DC UNTIL RELEVANT SUBSTANTIVE ARTS AND PROPOSALS ARE SETTLED,  
AFTER WHICH DC WILL REPORT ON ART 2 TO CW.

ART 3

THIS ART AND AMENDMENTS WERE DEBATED IN CW APR1 BUT NO/NO DECISION  
TAKEN. INSTEAD THEY WERE REFERRED TO DC FOR STUDY AND REPORT BACK.  
SEE ABOVE UNDER ART 1 FOR CDN QUESTION.

ART 4

DEBATED APR3. SEVERAL COUNTRIES HAD PROPOSED DELETION; SWEDEN IN L52;  
CONGOBRAZAVILLE IN L76 AND USA IN L21. USA HOWEVER HAD PROPOSED  
THAT DELETION BE COUPLED WITH INSERTION OF EXCEPTIONS IN FAVOR OF  
INTERATL ORGANIZATIONS IN NUMEROUS OTHER ARTS. THESE 3 PROPOSLS  
TO DELETE WERE PUT TO THE VOTE TOGETHER AND REJECTED 10-84(CDA)-2.

...3

PAGE THREE 259 RESTR

OTHER AMENDMENTS L53,L75,L12 AND L55 WERE REJECTED BY VOTE;CDA VOTED NO/NO IN EACH CASE.SPAIN WITHDREW L35/REV1.REMAINING DRAFTING AMENDMENTS WERE REFERRED TO DC WHICH WILL REPORT BACK.REPS OF INTERNATL ORGANIZATIONS PRESENT MADE LONG SPEECHES IN FAVOR OF ART 4. I DID NOT/NOT MAKE STATEMENT ABOUT GATT DISCUSSED IN YOUR INSTRS BUT INSTEAD HAVE EXPLAINED THIS POINT IN A LET TO DC WHO HAVE PROMISED TO EXAMINE IT.I THINK THIS PROCEDURE MAY GET MORE ATTN THAN MAKING A STATEMENT IN CW.

ART 5

WE HAVE REPORTED DISAPPOINTING RESULTS IN OURTELS 247 APR4 AND 251 APR5.THERE IS CONFUSION AND UNCERTAINTY AS TO WHAT SHOULD OR MAY HAPPEN WHEN DC REPORTS BACK CLEAN TEXT TO CW.UNLIKE PROCEDURE AT EARLIER CODIFICATION CONFERENCES WHERE I BELIEVE CW TOOK SUBSTANTIVE DECISIONS AND THEN PASSED TO DC WHO REPORTED TO PLENARY,WE HAVE DRIFTED INTO A PROCEDURE WHEREBY DC REPORTS BACK TO CW.FURTHERMORE CW SO FAR DOES NOT/NOT ALWAYS TAKE SUBSTANTIVE DECISION BEFORE PASSING AN ART TO DC.ALSO I REGRET TO SAY THAT CHAIRMAN OF CW (ELIAS)IS VERY FUZZY AND INPRECISE AT LEAST ON PROCEDURE AND MOST OF THE TIME WE DO NOT/NOT KNOW JUST WHAT STAGE WE ARE AT OR WHAT WE ARE DECIDING.MAIN SUBSTANTIVE VOTES WERE TAKEN ON AMENDMENTS TO ART 5 BUT THEN ELIAS DID NOT/NOT PUT ART AS A WHOLE TO THE VOTE.WITHIN GROUP OF WESTERN FRIENDS THERE ARE CONFLICTING VIEWS AS TO WHAT SHOULD HAPPEN WHEN ART 5 COMES BACK FROM DC.PERSONALLY I THINK IT UNWISE TO TRY FOR A SECOND ROUND OF SUBSTANTIVE VOTES IN CW ON

...4

PAGE FOUR 259 RESTR

RETENTION OF ART 5 OR PART THEREOF. PRIVATE DISCUSSIONS ARE CONTINUING.

ART 5 BIS

THIS IS NEW ART PROPOSED IN L74 BY HUNGARY AND FRIENDS QUOTE ALL-STATES HAVE THE RIGHT TO PARTICIPATE IN GENERAL MULTILATERAL TREATIES IN ACCORDANCE WITH THE PRINCIPLE OF SOVEREIGN EQUALITY UNQUOTE. OPENING OF DEBATE HAS BEEN POSTPONED AT REQUEST OF SPONSORS. IT WILL BE LENGTHY AND ROUGH. I FEAR THAT IT WILL BE MORE DIFFICULT TO DEFEAT THAN HAS BEEN THE CASE IN THE PAST WITH ALL-STATES PROPOSALS IN UNGA RESLNS SETTING UP INVITATIONS TO CONFERENCES OR IN FINAL CLAUSES OF UN TREATIES OF WHICH SEC GEN IS TO BE DEPOSITARY. DIFFERENCE IS THAT ART 5 BIS IS ABSTRACT AND DOES NOT/NOT REQUIRE SEC GEN OR ANY DEFINITE PERSON TO TAKE ANY PARTICULAR STEP AT PRESENT. ALSO EROSION OF SEC GEN'S MONOPOLY POSITION AS DEPOSITARY OF UN TREATIES AS A RESULT OF USE OF MULTIPLE DEPOSITARIES IN TEST-BAN TREATY AND OUTERSPACE TREATY LESSENS CREDIBILITY OF SOME OF WEST'S ARGUMENTS.

ART 6

THIS WAS DEBATED IN CW APR4. WE SPOKE TO RAISE POINTS IN YOUR INSTRS. SWEDISH PROPOSAL L68/REV1 TO DELETE SUBPARA(B) WAS REJECTED 13-51(CDA)-23. OTHER NON-WITHDRAWN AMENDMENTS (L36 L78 L83 AND L90) WERE REFERRED WITH THE ART ITSELF TO DC TO REPORT BACK.

ART 7

DEBATED APR5. VENEZUELA AMENDMENT L69 TO INSERT QUOTE EXPRESSLY

...5

PAGE FIVE 259 RESTR

UNQUOTE BEFORE QUOTE CONFIRMED UNQUOTE WAS REJECTED 22-51(CDA USA UK)-13.USA AMENDMENT L56 WAS REJECTED AS WAS MALAYSIA L99.OTHER AMENDMENTS OF DRAFTING NATURE WERE REFERRED TO DC TO REPORT BACK.

ART 8

DEBATED APR5.SOME OF THE AMENDMENTS WERE NOT/MERELY OF DRAFTING CHARACTER AS THEY INVOLVED INTRODUCTION OF DANGEROUS PHRASES QUOTE GENERAL MULTILATERAL TREATY UNQUOTE AND QUOTE RESTR MULTILATERAL TREATY UNQUOTE.HOWEVER USA UK FRANCE AND USSR ALL WANTED DEBATE ON ALL-STATES TO BE SETTLED FIRST;ACCORDINGLY IT WAS AGREED THAT ART 8 AND AMENDMENTS WOULD GO TO DC TO HOLD IN STORAGE FOR THE PRESENT.

ART 9

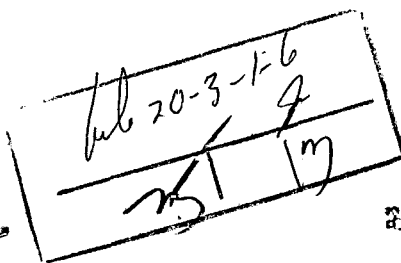
NO/NO AMENDMENTS AND NO/NO DEBATE.APPROVED APR5 IN CW AMID CHEERS.

ART 9 BIS

THIS IS A PROPOSED NEW ART;L88 SPONSORED BY POLAND AND SUPPORTED BY USA.AS ITS UTILITY AND WORDING DEPEND ON ARTS 10 11 12 AND 13, IT WAS DECIDED AFTER SOME SUBSTANTIVE DEBATE TO SUSPEND DEBATE UNTIL AFTER LISTED ARTS ARE SETTLED

WERSHOF

NN



*Curry*  
*Stanger*

DESK OFFICER

OTT025

TEL REFERRED TO IN ATTACHED SVC WILL NOT RPT NOT BE  
REDISTRIBUTED AS AMENDED COPY UNLESS COMCENTRE DUPLICATING  
SECTION AT 2-6877 REQUESTED BY YOU TO DO SO.

PAR43/05

VNA2/05

OO OTT RR NYK

DE VNA

OR050944Z

FM VIENN APR5/68

TO EXTER SVC12 IMMED

INFO PRMNY

REF OURTEL 248 APR4

LAW OF TREATIES DISPUTES

PLEASE INSERT FOLLOWING MISSING LINE. IN PARA3 SECOND SENTENCE AFTER  
WORDS QUOTE EACH TO THE DISPUTE SHALL UNQUOTE INSERT QUOTE APPOINT  
ONE MEMBER TO THE TRIBUNAL, WHILE THE THIRD MEMBER, WHO SHALL UNQUOTE

**ACTION COPY.**

*L*

*S/m*

*cc: V.N. Do (Pearson)*  
*Done 4/4/77*

NNNN

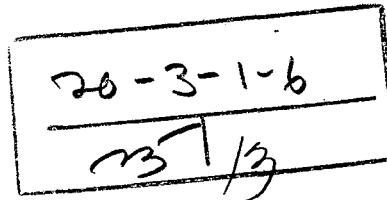
001796



*Jul 20-3-1-6*

*Beesley*  
*Stoneman*

OTT026



PAR44/05

VNA3/05

**ACTION COPY**

OO OTT RR NYK

DE VNA

OR050944Z

FM VIENN APR5/68

TO EXTER 251 IMMED

INFO PRMNY

REF OURTEL 247 APR4

LAW OF TREATIES ART 5

*STATES in para 2.*

REFTEL OMITTED FATE OF NZ AMENDMENT L59. THAT AMENDMENT AND OTHERS  
REGARDED BY CHAIRMAN AS DRAFTING POINTS WERE REFERRED TO DRAFTING  
CTTEE WITHOUT ANY DECISION BEING TAKEN ON THEM BY CTTEE OF WHOLE.  
TEXT SUGGESTED BY DRAFTING CTTEE WILL COME BACK IN FEW DAYS TO  
CTTEE OF WHOLE FOR APPROVAL PURELY FROM DRAFTING VIEWPOINT

NNNN

001797

U.N. Dis (Person)  
Date 9/4/72

Feb 20-3-1-6  
Beasley  
Harford

It's much too complex in my view  
JB

FM VIENN APR5/68 CONFID

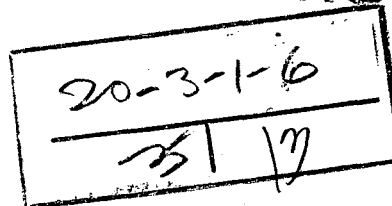
TO EXTER 252 PRIORITY

INFO TT PRMNY DE OTT

LEGAL DIV DE WERSHOF

REF OURTEL 248 APR4

ACTION COPY



It's too long.  
We require further  
settlement provision.

LAW OF TREATIES SETTLEMENT OF DISPUTES

WHEN I HASTILY SENT REFTEL I HAD JUST RECEIVED AND NOT/CAREFULLY  
READ COVERING UK MEMO. I NOW FIND THAT DRAFT ART QUOTED IN REFTEL IS  
SUGGESTED BY UK NOT/NOT IN RELATION TO PART V DISPUTES BUT IN  
RELATION TO DISPUTES ARISING FROM OTHER RPT OTHER PARTS OF DRAFT  
CONVENTION. SORRY.

2. AS FOR PART V DISPUTES UK HAS NOT/NOT YET DRAFTED AN ART BUT  
MEMO OUTLINES PLAN FOR SUCH AN ART IN FOLLOWING TERMS: BEGINS: QUOTE

(A) OBJECTIONS TO ART 62 NOTIFICATIONS SHOULD BE COMMUNICATED TO  
THE PARTIES TO THE TREATY AND ALSO THE SEC GEN OF UN; (B) AFTER THE  
EXPIRY OF A SPECIFIED PERIOD (PERHAPS 2 MONTHS) AND IF THE DISPUTE  
RELATES TO THE INTERPRETATION OR APPLICATION OF ARTS 43-49(50) OR  
57-60(61), THE SEC GEN SHALL REFER THE MATTERS IN DISPUTE TO A  
COMMISSION OF JURISTS; (C) THE COMMISSION OF JURISTS MIGHT CONSIST  
OF 15 OR 18 MEMBERS AND, SUBJ TO THE APPROVAL OF THE GENERAL  
ASSEMBLY, COULD BE CONSTITUTED AS AN ORGAN OF UN AND AUTHORIZED  
TO REQUEST ADVISORY OPINIONS FROM THE INTERNATL COURT OF JUSTICE;  
(D) THE COMMISSIONS OF JURISTS, IN CONSIDERING MATTERS REFERRED TO  
IT BY THE SEC GEN, MIGHT EXERCISE FUNCTIONS BROADLY ANALOGOUS TO  
THOSE OF EUROPEAN COMMISSION ON HUMAN RIGHTS UNDER EUROPEAN

...2

PAGE TWO 252 CONFD

CONVENTION OF HUMAN RIGHTS;(E)THE COMMISSION OF JURISTS MIGHT,WITH THE AGREEMENT OF THE PARTIES,PERFORM ITS FUNCTIONS BY MEANS OF A SUB-COMMISSION CONSISTING OF 5 MEMBERS OF THE COMMISSION,2 APPOINTED BY EACH OF THE PARTIES CONCERNED AND THE FIFTH MEMBER SELECTED BY THE PARTIES JOINTLY OR,IN CASE OF NEED,BY THE SECGEN;(F)THE COMMISSION OR SUB-COMMISSION COULD BE OBLIGED TO REPORT WITHIN 6 OR 9 MONTHS OF A MATTER BEING REFERRED TO THE COMMISSION BY THE SECGEN.IF THE COMMISSION OR SUB-COMMISSION HAS SUCCEEDED IN EFFECT-ING A FRIENDLY SOLUTION,THE REPORT MIGHT BE CONFINED TO A BRIEF STATEMENT OF FACTS AND THE SOLUTION REACHED;(G)IF NO/NO SOLUTION HAS BEEN REACHED WITHIN THE 6/9 MONTHS TIME LIMIT BY THE COMMISSION OR SUB-COMMISSION,THE COMMISSION AS A WHOLE SHOULD MEET IMMEDLY AND DECIDE WHETHER OR NOT/NOT TO REQUEST AN ADVISORY OPINION FROM ICJ ON ANY LEGAL QUESTION WHICH MAY HAVE ARISEN IN THE COURSE OF THEIR CONSIDERATION OF THE MATTERS IN DISPUTE;(H)IF THE COMMISSION DECIDES NOT/NOT TO REQUEST AN ADVISORY OPINION,IT DRAWS UP A FULL REPORT ON THE FACTUAL AND LEGAL ELEMENTS OF THE CASE WHICH IS THEN TRANSMITTED TO THE STATES CONCERNED AND TO THE SECGEN;(I)ON RECEIPT OF THIS REPORT,EITHER PARTY MAY SUBMIT TO AN ARBITRAL TRIBUNAL FOR DECISION ANY QUESTION RELATING TO THE INTERPRETATION OR APPLICATION OF ANY OF THE PROVISIONS CONTAINED IN ARTS 43-49(50) OR 57-60(61)WHICH HAS REMAINED UNRESOLVED.THE ARBITRAL TRIBUNAL MIGHT CONSIST OF 3 MEMBERS,ONE APPOINTED BY EACH PARTY TO THE DISPUTE AND THE THIRD MEMBER CHOSEN BY COMMON AGREEMENT BETWEEN

...3

PAGE THREE 252 CONFD

THE PARTIES OR, IN DEFAULT OF COMMON AGREEMENT, BY THE PRESIDENT  
OF THE INTERNATIONAL COURT OF JUSTICE. UNQUOTE.

3. WEO GROUP MEETS MON AM FOR FIRST DISCUSSION OF THIS. WE DO NOT/NOT  
EXPECT YOUR COMMENTS IN TIME FOR THAT AND WILL REPORT AFTER THAT

MTG

*Jul 20-3-1-6*

*Yeldin  
Co. Ord. Dis.  
Every Day  
Comm. Dis.  
Done 8/4/65  
JK*

*There is a pretty  
fine outcome  
get copies of all this  
Belley  
Stallford*

**ACTION COPY**

FM VIENN APR5/68 CONF D

TO EXTER 256 IMMED

INFO TT PRMNY DE OTT

REF OURTEL 247 APR4

LAW OF TREATIES ART 5 DEBATE

WE WILL BE SENDING YOU AIRMAIL SUMMARY RECORDS OF DEBATE ON ART 5 AS SOON AS THEY BECOME AVAILABLE. HERE ARE MAIN POINTS OF INTEREST WHICH EMERGED FROM SPEECHES:

*good*  
2. ALL DELS WHICH INTERVENED IN DEBATE EXPRESSED VIEW THAT INDEPENDENT CAPACITY TO CONCLUDE TREATIES UNDER INTERNATL LAW WAS AN ATTRIBUTE OF SOVEREIGNTY. HOWEVER SOVEREIGN STATES WHICH HAD FEDERAL STRUCTURE COULD IN THEIR FEDERAL CONSTITUTION DELEGATE PART OF THEIR CAPACITY TO THEIR CONSTITUENT MEMBERS. THUS CAPACITY OF FEDERAL UNITS AND ITS EXTENT WAS A MATTER OF INTERNAL LAW NOT/NOT INTERNATL LAW. EVEN USSR REP EMPHASIZED THIS POINT.

*good*  
3. SPEAKERS WERE ALSO UNANIMOUS IN THEIR VIEW THAT INTERPRETATION OF FEDERAL CONSTITUTION IN THIS REGARD WAS EXCLUSIVE RESPONSIBILITY OF APPROPRIATE ORGANS OF FEDERAL STATE CONCERNED. USSR REP MADE THIS POINT IN PARTICULARLY TELLING FASHION AND LEFT NO/NO DOUBT THAT ANY ATTEMPT BY FOREIGN STATE TO INTERPRET CONSTITUTION OF ANY FEDERAL STATE WOULD CONSTITUTE AN INTOLERABLE INTERFERENCE IN INTERNAL AFFAIRS OF A SOVEREIGN STATE.

4. WHERE OPINIONS DIFFERED OF FEDERAL STATES TO CONTINUE TO HAVE CAPACITY TO CONCLUDE TREATIES AND ON WHETHER THIS PARA COULD BE RETAINED WITHOUT INVITING STATES TO INTERFERE IN INTERNAL AFFAIRS

...2

*The Summary Records of this debate shd constitute most useful travail in the proper (as opposed to the recent US) sense.*

PAGE TWO 256 CONFD

OF FEDERAL STATES. THOSE IN FAVOR OF DELETION OF PARA2 ARGUED THAT SINCE THERE WAS GENERAL AGREEMENT THAT CAPACITY OF FEDERAL UNITS WAS CONFERRED BY FEDERAL CONSTITUTION SUCH CAPACITY WOULD NOT/NOT BE AFFECTED IF IT WERE NOT/NOT MENTIONED IN CONVENTION ON LAW OF TREATIES. USSR AND OTHERS FAVORING RETENTION ARGUED STRONGLY

THAT PARA2 ONLY RECOGNIZED SITUATION OF FACTS AND IMPLIED THAT POSITION OF BYELORUSSIA AND UKRAINE MIGHT BE PREJUDICED IF PARA2 WERE NOT/NOT RETAINED IN CONVENTION. THIS WE KNOW IS ALSO MAIN ARGUMENT WHICH USSR DEL USED WITH OTHER DELS IN THEIR LOBBYING TO EMPHASIZE IMPORTANCE WHICH THEY ATTACHED TO RETENTION OF PARA2.

5. WITH REGARD TO RISK OF INTERFERENCE IN INTERNAL AFFAIRS WHICH PARA2 INVOLVED, THOSE IN FAVOR OF DELETION ARGUED THAT IT WAS SO GREAT AND SUCH A POSSIBLE SOURCE OF SERIOUS PROBLEMS AS TO OUTWEIGH ANY POSSIBLE ADVANTAGES WHICH MIGHT BE GAINED BY RETENTION OF PARA2. IN VIEW OF THESE DELS AND OF OTHERS SUCH AS TANZANIAN JAMAICAN AND SWISS IF PARA2 WERE TO BE RETAINED, RISK OF INTERFERENCE IN INTERNAL AFFAIRS SHOULD AT LEAST BE MINIMIZED BY INCLUSION OF LTD SAFEGUARD PROVIDED BY AUSTRIAN AMENDMENT. EVEN USSR DEL AGREED THAT INDEED ONLY WAY TO ENSURE THAT FOREIGN STATES DID NOT/NOT INTERFERE IN INTERNAL AFFAIRS OF FEDERAL STATES WITH REGARD TO CAPACITY OF FEDERAL UNITS TO CONCLUDE TREATY WAS TO ASCERTAIN EXTENT OF SUCH CAPACITY FROM COMPETENT FEDERAL AUTHORITIES. IF FEDERAL AUTHORITIES EXPRESSED VIEW THAT COMPONENT UNITS DID NOT/NOT POSSESS SUCH CAPACITY THEN FOREIGN STATES HAD NO/NO ALTERNATIVE

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PAGE THREE 256 CONFD

BUT TO REFRAIN FROM SEEKING TO ENTER INTO AGREEMENT WITH MEMBER OF  
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6.WE FOUND PARTICULARLY USEFUL STATEMENTS MADE BY AUSTRIA NZ  
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Do let  
make  
USSR  
leave  
new  
international  
law

PAGE FOUR 256 CONFD

7. WITH REGARD TO NZ AMENDMENT, SINCE MANY SPEAKERS COMMENTED DURING  
DEBATE ON CONFUSION GENERATED BY USE OF TERM QUOTE STATE UNQUOTE,  
WE ARE HOPEFUL THAT AT LEAST THIS ASPECT OF ART WILL BE REMEDIED



FM VIENN APR5/68 CONFD

TO EXTER 256 INMED

INFO TT PRHNY DE OTT

REF OURTEL 247 APR4

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PAGE TWO 256 CONFD

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PAGE THREE 256 CONF

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...4

PAGE FOUR 256 CONFD

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VVVVV

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cc Yalden 5/4  
Bessley  
Stanford

OTT026

PAR44/05

VNA3/05

OO OTT RR NYK

DE VNA

OR050944Z

FM VIENN APR5/68

TO EXTER 251 IMMED

INFO PRMNY

REF OURTEL 247 APR4

LAW OF TREATIES ART 5

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20-3-1-6  
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ACTION COPY

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STATES in para 2.

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PAR110/04

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FM VIENN APR4/68

TO EXTER 250 IMMED

INFO PRMNY

REF OURTEL 247 APR4

LAW OF TREATIES-ART 5

FOLLOWING IS LIST OF VOTES ON AUSTRALIAN AMENDMENT TO DELETE PARA2

2. IN FAVOUR OF DELETION ARGENTINA AUSTRALIA AUSTRIA BELGIUM

BOLIVIA BRAZIL CDA CEYLON CHINA CYPRUS DOMINICAN REPUBLIC ETHIOPIA

FEDERAL REPUBLIC GERMANY(FRG)GREECE QUATEMALA INDIA IRELAND ISRAEL

ITALY JPN MALAYSIA MXICO NEPAL NETHERLANDS NZ NORWAY PORTUGAL

KOREA VIETNAM SANMARINO SPORE SOUTHAFRICA SWEDEN UK USA URUGUAY

VENEZUALA ZAMBIA

3. AGAINST DELETION: AFGHANISTAN ALGERIA BULGARIA BYELORUSSIA

CAMBODIA CENTRAL AFRICAN REPUBLIC COLUMBIA CONGO(BRAZZAVILLE)

CONGO (DEMOCRATIC REPUBLIC)CUBA DAHOMEY FINLAND FRANCE GABON

GUINEA HONDURAS HUNGARY INDONESIA IRAN IRAQ IVORY COAST KENYA

KUWAIT LIBERIA MADAGASCAR MALI MONGOLIA NIGERIA PAK POLAND RUMANIA

SAUDIARABIA SENAGAL SOMALIA SWITZERLAND SYRIA THAILAND TRINADAD

AND TOBAGGO TUNISIA TURK UKRAINE USSR UAR TANZANIA YUGOSLAVIA

4. EXTENSIONS: SIERRA LEONE SPAIN CHILE CZECHOSLOVAKIA DENMARK

EQUADOR GHANA HOLYSEE LEBANON JAMAICA

5. ABSENT: COSTARICA JORDAN LIECHTENSTEIN LUXEMBOURG MALAWI MAURET-

ANIA MONACO MORROCO PANAMA PERU PHILIPPINES

ACTION COPY

*2*  
*Mr. St. John*  
*Please send*  
*Mr. Galden CC of*  
*all letters the subject*  
*- had to be reviewed*  
*JP*

*File:*  
*We are in new*  
*suspectable company. Let*  
*do our own count with*  
*existing police state pro*  
*1 com*  
*JP*

20-3-1-6  
32 | -

*See European Div  
U.K. Div.  
Coord Div.  
4/3/68 J 4/4*

*Reedley  
Stanford*

**ACTION COPY**

*Here have a  
difficult time getting  
2/3 with increased  
at 5  
JPS*

FM VIENN APR4/68 CONFD  
TO EXTER 247 FLASH\*\*\*  
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OURTEL 245 APR3

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32

LAW OF TREATIES-ART 5-VOTING RESULTS

ART 5 WAS UPHELD AND AUSTRIAN AMENDMENT DEFEATED.FIRST VOTE WAS  
ON PROPOSAL TO DELETE PARA1;19(INCLUDING CDA)-70-7.ONLY REASON  
WE VOTED FOR DELETION PARA1 WAS THAT INSTRUCTIONS AND OUR STATEMENT  
BOTH CALLED FOR DELETION.

2.SECOND VOTE BY ROLL-CALL ON AUSTRALIAN PROPOSAL TO DELETE  
PARA2;38-45-10.FULL LIST FOLLOWS IN SEPARATE TEL.THOSE FOR DELETION  
INCLUDED MOST LATIN AMERICANS LED BY ARGENTINE,URUGUAY AND BRAZIL;  
INDIA AND CEYLON;BELGIUM AND OF COURSE UK AND USA.THOSE AGAINST  
DELETION INCLUDED,APART FROM COMMUNISTS AND CLIENT-STATES,ALL  
FRENCH AFRICA AND NIGERIA AND SWITZERLAND.CZECHOSLOVAKIA ABSTAINED  
RPT ABSTAINED.

3.THIRD VOTE WAS ON ORAL BYELORUSSIAN SUB-AMENDMENT TO AUSTRIAN  
AMENDMENT WHICH WOULD ADD FOLLOWING WORDS AT END OF AUSTRIAN NEW  
PARA QUOTE IF THIS IS REQUIRED BY THE CONSTITUTION OF THE FEDERAL  
STATE OR/OR BY THE CONSTITUTION OF THE MEMBER STATE OF THE FEDERAL  
UNION UNQUOTE.THIS WAS REJECTED 17-42-28

4.FOURTH VOTE WAS ON AUSTRIAN AMENDMENT WHICH WAS DEFEATED 29-35-21.  
TANZANIC AND JAMAICA(BOTH OF WHOM WE HAD TALKED TO)VOTED FOR THIS  
AMENDMENT ALTHOUGH WE COULD NOT/NOT PERSUADE THEM TO VOTE FOR

...2

PAGE TWO 247 CONFD

DELETION OF PARA2.

5. FURTHER TEL AND LET WILL ANALYSE DEBATE AND RESULTS. WE THINK  
MAIN REASONS FOR DEFEAT WERE AS FOLLOWS: (1) RUSSIANS MOUNTED A POWERFUL LOBBY BOTH IN VIENNA AND IN AT LEAST SOME CAPITALS EG FINLAND.

*Mr. Oppenheimer  
scraped  
on to myself*  
(2) FRANCE (ALTHOUGH ITS SPEECH TODAY WAS RELATIVELY OBJECTIVE IN TONE) MADE CLEAR ITS OPPOSITION TO DELETION AND TO AUSTRIAN AMENDMENT AND WE KNOW THAT THEY BROUGHT ALL FRENCH AFRICAN STATES INTO LINE. FOR EXAMPLE, CENTRAL AFRICAN REPUBLIC DEL TOLD US YESTERDAY HE WOULD VOTE TO DELETE PARA2; TODAY HE APOLOGETICALLY TOLD US HE HAD BEEN QUOTE INSTRUCTED UNQUOTE TO VOTE AGAINST DELETION.

*Capitals  
again*  
(3) THERE WAS INADEQUATE TIME FOR CDN LOBBYING HERE AND NO/NO TIME FOR NECESSARILY LENGTHY REPRESENTATIONS IN SOME CAPITALS. FOR EXAMPLE, NIGERIAN VOTES SEEM IRRATIONAL; I AM SURE THAT DR ELIAS DECIDED FOR REASONS BEYOND OUR COMPREHENSION THAT NIGERIA OF ALL PLACES COULD BENEFIT FROM PARA2. IT WAS IMPOSSIBLE FOR ME TO GET A PRIVATE TALK WITH ELIAS DURING LAST FEW DAYS; HIS ASSOCIATE TOLD US PRIVATELY THAT ELIAS INSISTED ON THESE VOTES ALTHOUGH ASSOCIATE SEEMED TO AGREE WITH AUSTRALIAN AND CDN VIEWS.

6. NEXT YEARS PLENARY IS LONG WAY OFF. IF CDN GOVT DECIDES TO PURSUE EFFORTS FOR DELETION IT MAY BE POSSIBLE TO PRODUCE A BLOCKING ONE-THIRD IN PLENARY WHERE 2/3 MAJORITY IS REQUIRED.

*yo*  
THIS CAN BE STUDIED AT LEISURE

WERSHOF. . . .



*cc Goldstein 3/10*  
*GM*  
*Stamps*  
**ACTION COPY**

FM VIENN APR4/68 RESTR

TO EXTER SVC10 IMMED

INFO TT PRMNY DE OTT

REF OURTEL 245 APR3

LAW OF TREATIES ART 5

LAST SENTENCE OF PARA6 SHOULD HAVE READ QUOTE WE HAVE NOT/NOT OF  
COURSE APPROACHED FRANCE AND HAVE NO/NO IDEA WHAT THEY WILL SAY  
UNQUOTE

DISK OFFICER

TEL REFERRED TO IN ATTACHED SVC WILL NOT RPT NOT BE  
REDISTRIBUTED & ACCURATE COPY UNLESS CONCENTRIC DUPLICATING  
SECTION AT 2-6477 REQUESTED BY YOU TO DO SO.

20-3-1-6
12

**ACTION COPY**

FM VIENN APR4/68 RESTR

TO EXTER SVC10 IMMED

INFO TT PRMNY DE OTT

REF OURTEL 245 APR3

LAW OF TREATIES ART 5

LAST SENTENCE OF PARA6 SHOULD HAVE READ QUOTE WE HAVE NOT/NOT OF  
COURSE APPROACHED FRANCE AND HAVE NO/NO IDEA WHAT THEY WILL SAY  
UNQUOTE

DESK OFFICER

TEL REFERRED TO IN ATTACHED SVC WILL NOT RPT NOT BE  
REDISTRIBUTED AS AMENDED COPY UNLESS COMCENTRE DUPLICATING  
SECTION AT 2-6877 REQUESTED BY YOU TO DO SO.

PAGE TWO 248

NOTIFICATION SUBMITTING THE DISPUTE TO THE ARBITRAL TRIBUNAL, THE  
3RD MEMBER SHALL BE APPOINTED BY THE PRESIDENT OF THE INTERNATL  
COURT OF JUSTICE. IN CASE ANY OF THE PARTIES FAIL TO MAKE AN  
APPOINTMENT WITHIN SUCH PERIOD OF 60 DAYS, THE PRESIDENT OF THE  
INTERNATL COURT OF JUSTICE SHALL FILL THE REMAINING VACANCY OR  
VACANCIES. TEXT ENDS.

2. WE WILL SEND COMMENTS SOONEST AND WOULD APPRECIATE YOUR FIRST  
REACTIONS

WERSHOF

cc U.N. Sec (Pearson)  
Done 9/4/74

M. Bellet  
Stanford

Feb 20-3-1-6

ACTION COPY

20-3-1-6
25 1 17

FM VIENN APR4/68 CONFD

TO EXTER 248

INFO TT PRMNY DE OTT

CONFERENCE ON LAW OF TREATIES PART V SETTLEMENT OF DISPUTES

UK DEL HAS JUST CIRCULATED TO WEO MEMO DATED APR2 AND DRAFT ART.

BECAUSE OF LENGTH OF MEMO IT MUST WAIT FOR NEXT BAG LEAVING 1 WEEK

HENCE. HOWEVER FOLLOWING IS TEXT OF DRAFT ART BEGINS: EXCEPT WHERE

ANOTHER PROCEDURE IS PROVIDED IN THE PRESENT CONVENTION, ANY DISPUTE

BETWEEN 2 OR MORE STATES PARTIES TO THE CONVENTION RELATING TO THE

INTERPRETATION OR APPLICATION OF THE CONVENTION WHICH CANNOT/NOT

BE SETTLED (WITHIN A REASONABLE TIME BY NEGOTIATION OR ANY OF THE

OTHER MEANS OF SETTLEMENT MENTIONED IN ART 33 OF UN CHARTER) SHALL,

ON THE APPLICATION OF ANY STATE CONCERNED IN THE DISAGREEMENT, BE

REFERRED TO <sup>(1)</sup>THE INTERNATL COURT OF JUSTICE OR TO <sup>(2)</sup>AN ARBITRAL

TRIBUNAL FOR DECISION.

who decides  
presumably the  
applicant state

2. ANY STATE PARTY TO THE PRESENT CONVENTION MAY, IN ITS INSTRUMENT

OF RATIFICATION, OR ACCESSION, OR AT ANY TIME THEREAFTER, DECLARE, BY

NOTICE GIVEN IN WRITING TO (BLANK), THAT IT ACCEPTS THE PROVISIONS

OF PARA 1 OF THIS ART, EITHER GENERALLY OR IN RELATION TO A PARTICULAR

DISPUTE, ONLY IN SO FAR AS REF TO AN ARBITRAL TRIBUNAL IS CONCERNED.

3. ANY ARBITRAL TRIBUNAL CONSTITUTED FOR THE PURPOSES OF THIS ART

SHALL BE COMPOSED OF 3 MEMBERS. EACH PARTY TO THE DISPUTE SHALL

BE THE CHAIRMAN, SHALL BE CHOSEN IN COMMON AGREEMENT BETWEEN THE

PARTIES. IF THE PARTIES FAIL TO AGREE ON THE DESIGNATION OF THE 3RD

MEMBER WITHIN A PERIOD OF 60 DAYS FROM THE DATE OF RECEIPT OF THE

...2

*cc European Div  
U.N. Div.  
Coord. Div.  
Done 4/3/68 JH/4*

*Reese*  
*Stanger*  
**ACTION COPY**

*Jul 20 3-1-6*  
*20-3-1-6*  
*ms 13*

*They have a  
different time getting  
2/3 with amendments  
Art 5  
JH*

FM VIENN APR4/68 CONF  
TO EXTER 247 FLASH\*\*\*  
INFO TT PRMNY DE OTT  
OURTEL 245 APR3

LAW OF TREATIES-ART 5-VOTING RESULTS

ART 5 WAS UPHELD AND AUSTRIAN AMENDMENT DEFEATED. FIRST VOTE WAS ON PROPOSAL TO DELETE PARA1;19(INCLUDING CDA)-70-7. ONLY REASON WE VOTED FOR DELETION PARA1 WAS THAT INSTRUCTIONS AND OUR STATEMENT BOTH CALLED FOR DELETION.

2. SECOND VOTE BY ROLL-CALL ON AUSTRALIAN PROPOSAL TO DELETE PARA2;38-45-10. FULL LIST FOLLOWS IN SEPARATE TEL. THOSE FOR DELETION INCLUDED MOST LATIN AMERICANS LED BY ARGENTINE, URUGUAY AND BRAZIL; INDIA AND CEYLON; BELGIUM AND OF COURSE UK AND USA. THOSE AGAINST DELETION INCLUDED, APART FROM COMMUNISTS AND CLIENT-STATES, ALL FRENCH AFRICA AND NIGERIA AND SWITZERLAND. CZECHOSLOVAKIA ABSTAINED RPT ABSTAINED.

3. THIRD VOTE WAS ON ORAL BYELORUSSIAN SUB-AMENDMENT TO AUSTRIAN AMENDMENT WHICH WOULD ADD FOLLOWING WORDS AT END OF AUSTRIAN NEW PARA QUOTE IF THIS IS REQUIRED BY THE CONSTITUTION OF THE FEDERAL STATE OR/OR BY THE CONSTITUTION OF THE MEMBER STATE OF THE FEDERAL UNION UNQUOTE. THIS WAS REJECTED 17-42-28

4. FOURTH VOTE WAS ON AUSTRIAN AMENDMENT WHICH WAS DEFEATED 29-35-21. TANZANIC AND JAMAICA (BOTH OF WHOM WE HAD TALKED TO) VOTED FOR THIS AMENDMENT ALTHOUGH WE COULD NOT/NOT PERSUADE THEM TO VOTE FOR

...2



OTT124

PAR110/04

VNA16/4

OO OTT RR NYK

DE VNA

O R 041520Z

FM VIENN APR4/68

TO EXTER 250 IMMED

INFO PRMNY

REF OURTEL 247 APR4

LAW OF TREATIES-ART 5

FOLLOWING IS LIST OF VOTES ON AUSTRALIAN AMENDMENT TO DELETE PARA2

2. IN FAVOUR OF DELETION ARGENTINA AUSTRALIA AUSTRIA BELGIUM

BOLIVIA BRAZIL CDA CEYLON CHINA CYPRUS DOMINICAN REPUBLIC ETHIOPIA

FEDERAL REPUBLIC GERMANY(FRG)GREECE GUATEMALA INDIA IRELAND ISRAEL

ITALY JPN MALAYSIA MEXICO NEPAL NETHERLANDS NZ NORWAY PORTUGAL

KOREA VIETNAM SANMARINO SPORE SOUTHAFRICA SWEDEN UK USA URUGUAY

VENEZUELA ZAMBIA

3. AGAINST DELETION: AFGHANISTAN ALGERIA BULGARIA BYELORUSSIA

CAMBODIA CENTRAL AFRICAN REPUBLIC COLUMBIA CONGO(BRAZZAVILLE)

CONGO (DEMOCRATIC REPUBLIC)CUBA DAHOMEY FINLAND FRANCE GABON

GUINEA HONDURAS HUNGARY INDONESIA IRAN IRAQ IVORY COAST KENYA

KUWAIT LIBERIA MADAGASCAR MALI MONGOLIA NIGERIA PAK POLAND RUMANIA

SAUDIARABIA SENAGAL SOMALIA SWITZERLAND SYRIA THAILAND TRINADAD

AND TOBAGGO TUNISIA TURK UKRAINE USSR UAR TANZANIA YUGOSLAVIA

4. EXTENSIONS: SIERRA LEONE SPAIN CHILE CZECHOSLOVAKIA DENMARK

EQUADOR GHANA HOLYSEE LEBANON JAMAICA

5. ABSENT: COSTARICA JORDAN LIECHTENSTEIN LUXEMBOURG MALAWI MAURET-

ANIA MONACO MORROCO PANAMA PERU PHILIPPINES

ACTION COPY

File 20-3-1-6

Joe: We are in new  
respectable company. Let's  
do our own country with  
having federal state pro  
+ com  
PS

*Atkinson*  
**ACTION COPY**

20-3-1-6

25 / 13

*file 20-3-1-64*

FM VIENN APR3/68 RESTR

TO EXTER 245 FLASH

INFO TT PRMNY DE OTT

LAW OF TREATIES ART 5

I CONSIDER IT NECESSARY TO DELIVER AND DID DELIVER STATEMENT IN  
YOURTEL L310 MAR29 OMITTING HOWEVER LAST SENTENCE OF PARA5.WE  
CONSIDERED THAT SENTENCE DANGEROUS IN THIS FORM DESPITE PARA6  
YOURTEL L320 APR1.

2.DELETION OF WHOLE ART WAS SUPPORTED BY AUSTRIA NZ AUSTRALIA  
MXICO VIETNAM GERMANY UK AND GREECE.

3.DELETION OF PARA 2 BUT NOT/NOT(PARA1?)WAS SUPPORTED BY CEYLON  
INDIA SWEDEN.

4.AUSTRIAN AMENDMENT WAS SUPPORTED BY NZ AUSTRALIA GERMANY TANZANIA  
CEYLON UK GREECE SWITZERLAND AND JAMAICA.

5.USSR AND ALLIES OF COURSE OPPOSED ANY DELETION AND ALSO OPPOSED  
AUSTRIA AMENDMENT AS INCOMPATIBLE WITH SOVIET CONSTITUTION.

6.DEBATE CONTINUES TOMORROW AND LIST INCLUDES ITALY USA ARGENTINA  
NIGERIA URUGUAY UAR FRANCE AND ETHIOPIA.WE HAVE NO/NO IDEA WHAT  
THEY WILL SAY

WERSHOF



BEST COPY AVAILABLE

FM VIETNAM APR 5/68 PESTR

TO EXTER 245 FLASH

INFO TT PRANY DE OTT

LAW OF TREATIES ART 5

20-3-1-6	
32	—

I CONSIDER IT NECESSARY TO DELIVER AND DID DELIVER STATEMENT IN  
YOURTEL L316 MAR29 OMITTING HOWEVER LAST SENTENCE OF PARAG. WE  
CONSIDERED THAT SENTENCE DANGEROUS IN THIS FORM DESPITE PARAG  
YOURTEL L327 APR1.

2. DELETION OF WHOLE ART WAS SUPPORTED BY AUSTRIA NZ AUSTRALIA  
MEXICO VIETNAM GERMANY UK AND GREECE.

3. DELETION OF PARA 2 BUT NOT/NOT(PARA1?) WAS SUPPORTED BY CEYLON  
INDIA SWEDEN.

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CEYLON UK GREECE SWITZERLAND AND JAMAICA.

5. USSR AND ALLIES OF COURSE OPPOSED ANY DELETION AND ALSO OPPOSED  
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NIGERIA URUGUAY UAR FRANCE AND ETHIOPIA. WE HAVE NO/NO IDEA WHAT  
THEY WILL SAY

WERSHOF

BEST COPY AVAILABLE

OTT'

PAR 16

VN A3/3

PP OTT

DE VNA

P 030832Z

FM VIENN APR3 68

TO EXTER 241 PRIORITY

FOR LEGAL DIV

CONFERENCE ON LAW OF TREATIES-STAFF

I FIND THAT LACK OF A CDN STENO WHO COULD ALSO FUNCTION AS CLERK AND AS MESSENGER BETWEEN HOTEL AND CHANCERY AND HOFBURG IS OUR MOST SERIOUS PERS PROBLEM. EMB IS VERY HELPFUL TO US BUT MCKINNON AND I HAVE TO SPEND MUCH TIME SORTING AND FILING CONFERENCE DOCUS; WRITING NOTES AND TELS LONGHAND; TAKING TAXIS TO CHANCERY TO GET THEM TYPED; AND TAKING TAXIS TO CHANCERY TO COLLECT INCOMING TELS

2. PLEASE ASK APPROPRIATE AUTHORITIES TO REVIEW THIS PERS NEED. PERSON WOULD HAVE TO COME FROM SOME OTHER POST. AS CONFERENCE WILL NOT/NOT WORK EASTER WEEKEND IT WOULD BE ADEQUATE IF STENO CAME HERE APR15 OR 16. THAT WOULD STILL LEAVE SIX WEEKS OF CONFERENCE WERSHOF

**ACTION COPY**

Nancy Walsh  
2-3496

2-5-11  
Spoke to Mary am 3/4  
she will make necessary  
arrangements - sent copy  
of tel to her JH. 3/4

COPY - Mr. B. B. Bley  
filed 30/5/69. Mr. Stanford

9 volunteer - Jean!

We:  
 Let by  
 do something  
 General Desautels  
 may be a possibility

20-3-1-6  
T Jg

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM  
De The Canadian Delegation to the Law of  
Treaties Conference, VIENNA

REFERENCE  
Référence

SUBJECT  
Sujet Articles 3 and 4 of the Draft Articles  
- Speech by Mr. Jenks of I.L.O.

SECURITY  
Sécurité UNCLASSIFIED

DATE April 3, 1968

NUMBER  
Numéro 204

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32 20-15-12 27

ENCLOSURES  
Annexes

1

DISTRIBUTION

Permis.,  
New York

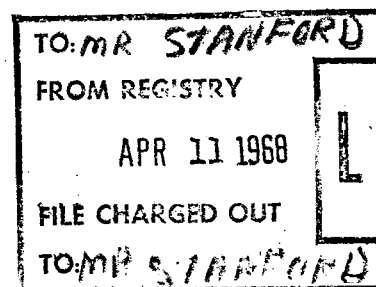
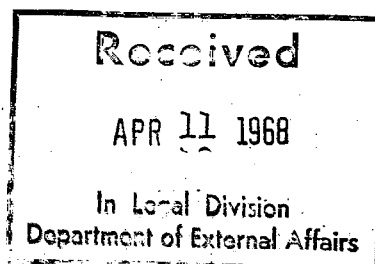
Permis.,  
Geneva

Enclosed is a copy of an interesting and  
useful speech by Mr. Jenks given to the Conference on  
April 1. It discusses in a clear manner some of the  
treaty procedures of the I.L.O. and the differences  
between these procedures and some of the provisions of  
the Draft Articles on the Law of Treaties.

cc Prof Hugh Stanford  
Faculty of Law  
Queen's University  
Kingston  
(enclosure omitted)

apf  
Done 16/4/68

M. H. Stanford  
Canadian Delegation.



Statement to be made at the United Nations Conference  
on the Law of Treaties, Vienna 1968,  
by Mr. C. Wilfred Jenks, Principal Deputy Director-General  
of the International Labour Office.

1 April 1968.

I am grateful to the Conference for allowing me to make at this stage of the proceedings a statement expressing the views of the International Labour Organisation concerning the Draft Articles on the Law of Treaties.

What I have to say relates primarily to Articles 3 and 4 of the Draft Articles but necessarily involves the relationship between these Articles and the draft as a whole.

In our view Articles 3 and 4 state principles which are of great practical importance in the present stage of development of international organisation and of vital significance (and I venture to stress the words 'vital significance') for the long-term development of both international organisation and international law.

Article 4 provides that the application of the Articles to treaties which are constituent instruments of an international organisation or are adopted within an international organisation shall be subject to any relevant rules of the organisation. So formulated the Article states both a rule and an exception. The rule is that treaties adopted within an international organisation are subject in principle to the general law of treaties. The exception is that the rule is not applicable in respect of matters for which a lex specialis exists by virtue of any relevant rules (necessarily including the established practice) of the organisation concerned; the exception is not a new but a classical concept, applied to new circumstances but sanctioned no less fully and clearly by Grotius and Vattel than by Gaius and Justinian.

In our judgment the rule and the exception are equally important.

The rule is important because you cannot, without creating utter confusion, have a different law of treaties for the instruments adopted within each of some forty different international and regional organisations, a number which may continue to increase; this is the more so as only a limited number of these organisations are, or can be expected to be, equipped to evolve or maintain consistently a distinctive body of practice corresponding to some genuinely special problem, structure, procedure or opportunity, and none of these organisations can reasonably claim that its practice or needs are genuinely special in respect of the whole of the law of treaties. No sane man will contest this position, and the wisdom of the rule as such is therefore, in our judgment, not in issue.

- 2 -

But the exception is no less important. There are cases in which an organisation has special rules and a well-established body of practice governing an important group of conventions which create a body of international obligations in respect of these conventions more coherent, more stable and, in certain respects, better adapted to the requirements of the situation than would or could be secured by applying the necessarily more flexible provisions of the general law. Our special interest in the matter in the International Labour Organisation is that we have responsibilities in connection with 128 international labour Conventions which have now received over 3,340 ratifications distributed over 115 member States and some further 1,200 declarations of application in respect of other territories. This widespread network of obligations is governed by the provisions of the Constitution of the International Labour Organisation and by a well-established body of practice which has been tested by almost fifty years of experience and has created a solid foundation for the discharge by the International Labour Organisation of the responsibilities entrusted to it by its member States.

The I.L.O. is, of course, by no means the only international organisation with a distinctive body of treaty practice; a number of other specialised agencies and some of the regional organisations have equally distinctive problems and traditions, but only the League of Nations and the United Nations, taken together, have had a body of treaty experience comparable to our own in both duration and scale, variety and effectiveness of action. The Conference is therefore entitled to know how the Draft Articles which constitute its basis of discussion would affect the continued discharge by the I.L.O. of its responsibility to embody progressively in binding international obligations the principle that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". The I.L.O. is no less entitled to expect that the Conference in reaching its conclusions will have full regard to the obligations of Members of the United Nations as Members of the I.L.O., and to the procedures which they have established or accepted as Members of the I.L.O. for the fulfilment of these obligations in pursuit of this paramount central aim of national and international policy - the freedom and dignity of man on a basis of economic security and equal opportunity.

In some cases there is a clear incompatibility between I.L.O. rules and practice and the provisions of the Draft Articles, and a change in our rules and practice (which could not in any case operate retroactively in respect of Conventions to which member States have already become parties on the basis of our existing rules and practice) would be inconsistent with the fundamental constitutional structure of the Organisation, would be incompatible with the object and purpose of international labour Conventions, or would be neither reasonable nor convenient. In other cases our rules and practice and the provisions of the Draft Articles could be regarded as, or made, compatible only by some strained interpretation of the one or the other, or by some artificial modification of or accretion to our existing rules and practice for which there is no particular need. In still other cases it would be necessary to read the Draft Articles in the light of established I.L.O. rules and practice to get a reasonable and equitable result. In some

- 3 -

cases it would be a matter of unprofitable debate to which of these categories it belonged and whether, and if so how, an apparent incompatibility could be eliminated.

May I venture, without discussing the matter exhaustively, to give specific illustrations in respect of each of the substantive parts of the Draft Articles.

Article 8 provides that the adoption of the text of a treaty at an international conference takes place by a vote of two-thirds of the States participating in the conference, unless by the same majority they decide to apply a different rule. Historically this restatement of contemporary practice represents the transposition to general international relations of the practice of adoption by a two-thirds majority vote originally introduced by the Constitution of the I.L.O. in 1919. But the I.L.O. rule is quite different, and necessarily quite different, from this reformulation of it for more general purposes by reason of the fundamental constitutional structure of the International Labour Organisation. The two-thirds majority required by our Constitution is a two-thirds majority of the votes cast by the delegates present and half of the delegates eligible to vote do not represent governments.

Article 9 provides that the text of a treaty is established as authentic and definitive by such procedure as may be provided for in the text or agreed upon by the States participating in drawing it up, or failing such procedure by authentication by the representatives of those States. I.L.O. Conventions are authenticated by the signatures of the President of the Conference and the Director-General in virtue of a provision contained in the Constitution of the Organisation.

Article 12 deals with accession to the treaties. I.L.O. Conventions are concluded within the framework of the constitutional obligations relating to their application contained in the Constitution itself and an accession which did not include the relevant provisions of the Constitution as well as of the Convention would therefore be inconceivable.

Articles 16 to 20 deal with reservations. I.L.O. practice concerning reservations is based on the principle recognised in Article 16 that reservations incompatible with the object and purpose of the treaty are inadmissible. Reservations to international labour Conventions are incompatible with the object and purpose of these Conventions; this principle has been maintained and acted on consistently throughout the history of the Organisation and 3,340 ratifications unaccompanied by any reservation have been registered by 115 States on the basis of it. The procedural arrangements concerning reservations embodied in the Draft Articles are entirely inapplicable to the I.L.O. by reason of its tripartite character as an organisation in which, in the language of our Constitution, "representatives of employers and workers" enjoy "equal status with those of governments". Great flexibility is of course necessary in the application of certain international labour Conventions to widely varying circumstances, but the provisions regarded by the collective judgment of the International Labour Conference as wise and necessary for

- 4 -

this purpose are embodied in the terms of the Conventions and, if they prove inadequate for the purpose, are subject to revision by the Conference at any time in accordance with its regular procedures. Any other approach would destroy the international labour code as a code of common standards.

Concerning the Articles of the Draft relating to interpretation I will say only that the I.L.O. practice has somewhat freer and more generous recourse to the preparatory work than is envisaged by Article 28 and that the criterion of intent to be deduced from the context in which terms are used and the object and purposes of the Convention relates to the intent of the International Labour Conference, in which government, employer and worker delegates have equal status, rather than exclusively to the intent of the parties or their subsequent agreement or practice.

Articles 26 and 37 of the Draft deal with the relationship between successive treaties on the same subjects and the amendment and modification of treaties. This is a matter on which we have much experience and a substantial body of law and practice.

Our rules governing the procedure for the revision of Conventions, and the legal consequences of revision, differ from, and are better adapted to our needs than, the provisions of Article 36 of the Draft. That Article contains the saving clause "unless the treaty otherwise provides", but under our practice only some of the relevant rules are contained in the Conventions concerned: some of them derive directly from the Constitution and some of the procedural rules take the form of Standing Orders adopted in virtue of the provisions of the Constitution. The details are complex and I will not burden the Conference with them.

A few international labour Conventions specifically permit the modification or variation of certain of their provisions by inter se agreements, generally on the conditions that the rights of other parties are not affected and that the inter se agreement provides equivalent protection, but these are exceptional cases. In the case of the majority of international labour Conventions an agreement to modify between certain of the parties only would be regarded, in the language of Article 37, as "incompatible with the effective execution of the object and purpose of the treaty as a whole". One cannot conceive of an international labour Convention relating to one of the fundamental human rights proclaimed in the Universal Declaration of Human Rights or the United Nations Covenants on Human Rights being modified in respect of the mutual relations of some of the parties thereto by an inter se agreement among them. Nor could any question concerning any such case be conveniently dealt with on the basis of Article 37 of the Draft. The Constitution of the I.L.O. confers rights to initiate proceedings relating to the application of a Convention upon interested parties other than the governments which are parties to the Convention and these rights, which flow directly from the provisions of the Constitution, would not be affected by any inter se arrangements.

Article 57 defines the consequences of a material breach of a multilateral treaty by one of the parties; Articles 62 to 64 define the procedure applicable when such a breach is alleged. Articles 24 to 34 of the

- 5 -

Constitution of the I.L.O. define the procedures applicable in the event of any failure by a Member to secure the effective observance of an international labour Convention which it has ratified; they include provision for the appointment by the Governing Body of the International Labour Office in appropriate cases of a Commission of Enquiry to examine the alleged failure; these Articles of the Constitution of the I.L.O. clearly constitute a lex specialis more appropriate and effective in respect of matters relating to the application of international labour Conventions than the necessarily general provisions of Articles 62 to 64.

In respect of none of these matters do we suggest, or regard as necessary to cover our position, any modification of the general law as it is proposed to state it in the Draft Articles; all that is necessary is a clear recognition that within an international organisation there may be a lex specialis the scope and content of which may vary from one organisation to another and be modified by a responsible and regular procedure from time to time in accordance with the established constitutional processes of the organisation concerned; any such lex specialis can no more be frozen in the past than the general law but in any case in which it may be desired to modify it the questions at issue must be faced squarely on their merits in the proper forum.

It will be apparent from what I have said that the questions at issue are in our judgment much too complex and varied to be conveniently dealt with by cumbersome detailed amendments to particular provisions of the Draft Articles defining the lex specialis applicable in particular contexts. They can be dealt with effectively only, as the International Law Commission has proposed to deal with them, by a broad and comprehensive provision.

The practical importance of these considerations to member States depends, of course, on the extent to which they are parties to international labour Conventions. For States which ratify few international labour Conventions they may be of secondary importance, but for the vast majority of the Members of the International Labour Organisation the ratification of Conventions at frequent intervals is a normal incident of membership; for States which are already parties to sixty or more Conventions and envisage a substantial number of further ratifications these matters are clearly of substantial practical importance.

These practical considerations must of course be evaluated in the light of broader and long-range considerations of general international policy. These in our judgment lead to the same result. The principle that conventions adopted within an international organisation may be subject to a lex specialis is of fundamental long-term as well as immediate practical importance. International legislative technique remains so defective, and both the need to improve it and the difficulty of doing so remain so great, that it is vital to leave the way open for the development of varied specialised international legislative procedures for special purposes as opportunities present themselves. This matter does not arise here and now; it lies beyond the purposes and purview of this Conference, but the decisions of this and next year's Conference may either create or circumscribe opportunities for future progress and the value of their contribution to the long-term development of



- 6 -

the law of treaties may be greatly affected by the extent to which they create or circumscribe such opportunities. One of the primary questions of policy presented by the codification of international law has always been the importance of ensuring that codification does not operate as a bar rather than a stimulus to the progressive development of the law. If the law of treaties had been codified a generation ago much of the present draft would have found no place in it. The codification of the law of treaties has now become a matter of great and urgent practical importance, but whatever may be achieved here will represent only a stage in a much longer historical process; in codifying the law now we must be scrupulous to leave proper scope for future developments in both international law and international organisation which can no more be foreseen today than the wisest of us could have foreseen a generation ago the contents of the present draft. Article 4 provides the flexibility necessary for the progressive attainment of the long-term purposes of the Charter of the United Nations. Our immediate preoccupations in the I.L.O. in this matter therefore coincide with the larger interests of international society. Practical convenience and broad policy call for the same conclusion. It is on these grounds that we venture to urge that the Conference will be well advised to adopt Article 4 in substantially its present form.

20-3-1-6  
32

A.E. GOTLIEB

FM VIENN APR2/68 CONFD

TO EXTER 240 IMMED

REF OURTEL 239 APR2

LAW OF TREATIES ART 5

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20-3-1-6  
32

PAGE TWO 240 IMMED

KHLESTOV THE MERITS OF AUSTRIAN AMENDMENT; HE SAID IT DID NOT/NOT  
REFLECT USSR PROCEDURE BUT PROMISED TO REEXAMINE AMENDMENT

VERS OF

001831

div diary file tel file

# MESSAGE

2

FM/DE

EXT OTT

Apr 2/68

DATE

FILE/DOSSIER

SECURITY  
SECURITE

20-3-1-6

32

NO

PRECEDENCE

TO/A

VIENNA

L-324

PRIORITY

INFO

WLGTH

REF

SUB/SUJ

LAW OF TREATIES

IN DISCUSSIONS WITH THIS DEPT WHILE EN ROUTE FROM WLGTH TO VIENNA ANTHONY SMALL, NZ DELEGATE TO LAW OF TREATIES CONFERENCE, INQUIRED WHETHER IT WOULD BE POSSIBLE FOR YOUR GENERAL REPORTS TO US ON DEVELOPMENTS AT THE CONFERENCE TO BE COPIED TO WLGTH FOR TRANSMISSION TO THE NZ DEA. THIS REQUEST WAS MADE BECAUSE OF THE DIFFICULTIES WHICH WE UNDERSTAND MR. SMALL FACES IN COMMUNICATING FROM VIENNA TO WLGTH.

2. PLS DISCUSS THIS MATTER WITH MR. SMALL. IF HE CONTINUES TO WISH THIS PROCEDURE TO BE ADOPTED YOU MAY COPY TO WLGTH DE OTT REPORTS ON DEVELOPMENTS AT THE CONFERENCE WHICH YOU BELIEVE COULD BE SAFELY TRANSMITTED TO NZ DEA.

DISTRIBUTION  
LOCAL/LOCALE

NO STD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

J.B. STANFORD/JF

LEGAL

2-5406

SIG

J. A. DEESLEY



Diary copy  
Div. diary  
file copy

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

FROM  
De

REFERENCE  
Référence

SUBJECT  
Sujet

CANADIAN DELEGATION TO THE U.N.  
CONFERENCE ON THE LAW OF TREATIES  
VIENNA, AUSTRIA.  
THE UNDER-SECRETARY OF STATE FOR  
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Our letter L-294 of March 26, 1968

LAW OF TREATIES - COMMENTARY AND  
INSTRUCTIONS

SECURITY  
Sécurité

CONFIDENTIAL

DATE April 2nd, 1968

NUMBER  
Numéro L-325

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32

ENCLOSURES  
Annexes

2

DISTRIBUTION

Enclosed are two sets of the Commentary and  
Instructions respecting Articles 27 to 75 and the Final  
Articles.

Permis, N.Y.  
(Mr.  
Robertson)

J. S. STANFORD

Under-Secretary of State  
for External Affairs.

BEST COPY AVAILABLE

File  
Diary  
Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

Memorandum for file 20-3-1-6

SECURITY  
Sécurité

CONFIDENTIAL

DATE

April 2, 1968

FROM  
De

J.S. Stanford

NUMBER  
Numéro

REFERENCE  
Référence

Law of Treaties - Article 5.

SUBJECT  
Sujet

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. A. E. Gotlieb

Mr. J. A. Heesley

Mr. Wershof called Legal Division at five p.m. April 1 in reply to our flash telegram L-320 of April 1 suggesting the possibility of approaches through capitals for support for the deletion or amendment of Article 5.

2. Mr. Wershof began by reporting on the following developments:

- 1- Mexico has formally proposed the deletion of Article 5. It is not known yet to what extent the Mexican position reflects the views of other Latin American countries.
- 2- Australia has proposed the deletion of paragraph 2 of Article 5. Many delegations which favoured paragraph 1 would be quite willing to accept the deletion of paragraph 2.
- 3- Many delegations had reacted favourably to the Austrian amendment and, if it were not possible to secure deletion there was a fair chance the Austrian amendment would carry.
- 4- The Committee had just finished Article 3 today (Monday). It was hoped that Article 4 would be dealt with Tuesday morning and Article 5 Tuesday afternoon, but there was a strong possibility Article 5 would not be reached until Wednesday.
- 5- The Hungarian delegation indicated it would deal with the "all States" question by means of a separate Article, and would not seek to amend present Article 5.
- 6- The Tanzanian representative had been sympathetic to the Canadian view and, while he would not agree to deletion, he would support the Austrian and New Zealand amendments. He had informed Mr. Wershof that Article 5 had not been discussed in the African group and was unlikely to be discussed by the group before being considered by the Committee. There was no common African approach on this Article.

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.../2

- 2 -

7- Sweden would support the Australian (delete para 2) and New Zealand (2. Political subdivisions of Federal States...) amendments.

8- Switzerland and Austria had difficulty with the phrase "political subdivisions" in the New Zealand proposal. These words might offend the cantons. Mr. Wershof informed them that, on this point, we would accept any formula which avoided calling component units "States"

3. While the foregoing by no means assured a successful result on Article 5, it was encouraging. For this reason and because of the little time remaining before discussion of Article 5 in Geneva, Mr. Wershof doubted the usefulness of making approaches to capitals. He pointed out that in any event, of the capitals we mentioned, Washington and London favoured deletion or, failing this, adoption of the Austrian amendment. Australia, New Zealand and Germany held views similar to ours.

4. At this point the line was cut off. When communications were reestablished Mr. Beesley spoke to Mr. Wershof. He is doing a separate memorandum on his conversation.

J.S. STANFORD  
J.S. Stanford

*Golden*  
*Mr. [unclear]*  
**ACTION COPY**

2  
FH VIENN APR2/68 CONF D

TO EXTER 240 IMMED

REF OURTEL 239 APR2

LAW OF TREATIES ART 5

80-3-1-6  
82 | —

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PAGE TWO 240 IMMED

KHLESTOV THE MERITS OF AUSTRIAN AMENDMENT; HE SAID IT DID NOT/NOT  
REFLECT USSR PROCEDURE BUT PROMISED TO REEXAMINE AMENDMENT

WERSH OF

001837

*copy sent to Mr. Beesley  
Mr. S. J. [unclear]*  
**ACTION COPY**

FM VIENN APR2/68 CONFD  
TO EXTER 239 PRIORITY  
REF YOURTEL L320 APR1  
LAW OF TREATIES ART 5

20-3-1-6  
321

L

CONFIRMING TELECON YESTERDAY WERSHOF-BEESLEY I DO NOT/NOT CONSIDER IT FEASIBLE FOR YOU TO MAKE APPROACHES IN CAPITALS SUGGESTED PARA4 REFTEL MAINLY BECAUSE OF TIME FACTOR. ART 5 SCHEDULED FOR THIS AFTERNOON AND WILL SURELY BE DEBATED AT LATEST TOMORROW MORNING. VOTING PROCEDURES NOT/NOT CLEAR.

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3. HUNGARY TOLD ME THAT THEIR ALL-STATES AMENDMENT WOULD BE FOR A SEPARATE ART FOLLOWING ART 5; THIS HAS NOW BEEN FILED AS L74. I HOPE THAT THE TWO DEBATES WILL NOT/NOT GET MIXED TOGETHER.

4. TANZANIA SAYS AFRICAN GROUP HAS NOT/NOT ADOPTED POSITION ON ART 5(2) AND IS NOT/NOT LIKELY TO. HE WAS SYMPATHETIC TO OUR EXPLANATIONS AND TO AUSTRIAN AMENDMENT BUT WAS DOUBTFUL ABOUT SUPPORTING DELETION.

5. OUR NEXT REPORT WILL GO TOMORROW UNLESS THERE ARE SIGNIFICANT DEVELOPMENTS TODAY. THIS TEL IS WRITTEN EARLY TUE

WERSHOF

Feb 20-3-1-6 Copy sent to Mr. B. [unclear]  
Mr. S. [unclear]

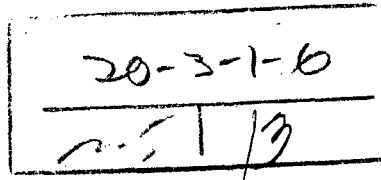
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FM VIENN APR2/68 CONFD

TO EXTER 239 PRIORITY

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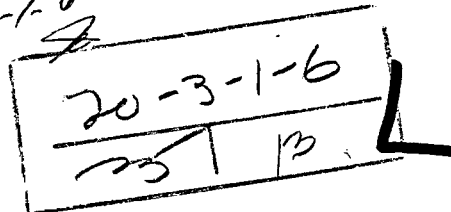
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WERSHOF

*cc Golden 5/6*  
**ACTION COPY**

*File 20-3-1-6*



FM VIENN APR2/68 CONFD

TO EXTER 240 IMMED

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WERSH OF

001841

Legal Division/J.S.Stanford/mb

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*sub 20-3-1-6*

TO  
A Memorandum for file 20-3-1-6

FROM  
De J.S. Stanford

REFERENCE  
Référence Law of Treaties - Article 5.

SUBJECT  
Sujet

SECURITY  
Sécurité

CONFIDENTIAL

DATE April 2, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

Mr.A.E.Gotlieb

Mr.J.A.Beasley

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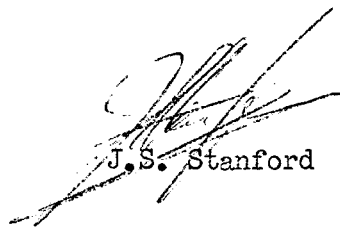
- 2 -

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J.S. Stanford

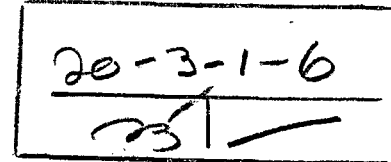
file 20-3-1-64

CONFIDENTIAL

April 1, 1968

MEMORANDUM

TO: Mr. Stanford  
FROM: Mr. Beesley  
SUBJ: Article 5, Law of Treaties



Would you please draft a flash telegram to Mr. Wershof referring to his latest telegrams and making the following points:

1. We are aware of the lack of general interest in, or support for, our particular preoccupations with Article 5, but we are surprised and encouraged at the nature and extent of the opposition to the Article which has developed, e.g.

U.S.A. desire to delete it, made known at Western consultations (Paris and London);

Australia's and New Zealand's willingness to support our position, made known to us locally;

Austrian proposal to amend Article to a form suitable to us;

Finnish proposal to delete the Article.

2. We are aware however of difficulties of lobbying extensively and effectively in the time available, and we are particularly concerned about the danger of the African group adopting a firm position in line with the Gabon approach.
3. We are aware also that the Hungarian amendment may blur the issue and, perhaps, confuse some delegates into voting on the question on the basis of "all States" considerations. While this may have some advantages for us vis-à-vis Western support, it probably has overall disadvantages in terms of members for and against the Article.
4. In these circumstances we are considering desirability of making approaches, requesting support for our position, in selected capitals, namely Washington, London, Canberra, Wellington, Bonn, Vienna, Helsinki, Berne and Brussels. The purpose of such approaches will be basically to co-ordinate opposition to the Article and, at least, make clear that it did not embody rules of international law as now drafted. Approaches might also be made in other capitals such as New Delhi, Lagos, Yaoundi, ~~Nia~~ and Brazilia.



-2-

CONFIDENTIAL

(Wentoff)  
5. Grateful for your views by flash telegram on desirability of  
approaches in capitals, as suggested above.

*JAB*  
J.A. Beesley

*Joe:*  
In your absence (obviously this I believe)  
I've talked to Allen. He's agreeable to a  
bit asking W's views on approaches  
in capitals. The rest is my contribution  
*JAB*

file 20-3-1-6  
251

CONFIDENTIAL  
CANADIAN EYES ONLY

April 1, 1968

*Mr. Wershof to me  
file  
JP*

RECORD OF TELEPHONE CONVERSATION BETWEEN  
MR. WERSHOF AND MR. BEESLEY APRIL 1

Law of Treaties Conference - Article 5

Mr. Wershof telephoned again from Vienna (having previously spoken to Mr. Stanford). He said that he had been speaking to Stanford already and asked why was it that he was now speaking to me. I explained that Mr. Stanford had told me of their conversation and was in my office. He said that he had been cut off. I said yes, Mr. Stanford had so informed me. He said he did not know at what point he had been cut off. I asked Mr. Stanford and he said it had been at the point where Mr. Wershof was listing off the various capitals mentioned in our telegram and saying they were all countries friendly to Canada's position on Article 5. I so informed Mr. Wershof.

2. Mr. Wershof said that he knew we had problems in Ottawa but he had problems in Vienna too. I said yes I realized that. He said it was too late to make representations to capitals at this stage. He was trying to do everything we had asked but it simply was not possible to see so many delegations in the time available. I said yes, that this was why we had offered to make approaches in capitals to help him. He said it was not necessary since the countries we had mentioned were already sympathetic to our side. I replied that this was reassuring. Mr. Wershof said not to be reassured as we might not have the necessary votes. I said I understood this but that I was pleased that there was more support for our position than we had expected.

3. Mr. Wershof said that he realized that we had encountered difficulty in obtaining the approval for our instructions but the delay had created problems for him. He realized that we had problems in Ottawa but he had problems too. I said yes I understood this. Mr. Wershof said it was not like New York or any ordinary conference. The conference had to give first reading to 75 articles in 9 weeks. I confirmed that I understood this. He said that the rooms were different in New York and it was harder to move about to speak to delegations, as it looked very obvious. I expressed sympathy. Mr. Wershof said no it was not too bad but there was only so much he could do when he had to be present in committee every day and from 10:30 - 1 p.m. and from 3 p.m. - 5 p.m. I said that I could see that this presented problems but perhaps we could leave the earlier articles to other delegations and concentrate on Article 5 provided there were other delegations to talk to who were not in the meeting. Mr. Wershof said no, that was the very problem. Other delegations, or at least all heads of delegations, were also tied up from 10:30 - 1 pm and 3 - 5 pm. I repeated that this was why we had offered to make approaches in capitals. Mr. Wershof said again it was too late and any way it could not be done and he recommended against it. I said that we had already passed on his point of view to Mr. Gotlieb who had agreed with Mr. Wershof.

...2

- 2 -

4. Mr. Wershof repeated that there was no point in making approaches any way when the instructions had come so late. It was very difficult to see everyone we had asked him to see. I said that I understood that the Africans had not decided against us, nor the Latins. Mr. Wershof mentioned that he had seen the Tanzanian, who had said that the Africans had not taken a group position on the question and he doubted that they would. He said I was wrong about the Latins, however, as Mexico had proposed deletion of the Article. I explained that Mr. Stanford already had so informed me. Mr. Wershof said again that he did not think approaches in capitals were useful and I confirmed that I agreed.

5. I said that there had been more support for our position than we had expected. He said on the contrary that there were probably not enough votes to delete the Article. I said at least we would be able to say afterwards that there was no general agreement on the article and that it could not be argued that it reflected an already existing rule of law. Mr. Wershof said that we need not be confident about the article being deleted. I explained that I understood this although I hoped that there might be enough support to pass the Austrian amendment. Mr. Wershof said that we were wrong if we thought we had the African votes just because there was no group position. I confirmed that I understood this.

6. Mr. Wershof said that there was little chance that the article would be deleted but there was a fighting chance that the Austrian amendment would be accepted. I said this was good. Mr. Wershof said we could not count on it. I said I understood this.

7. Mr. Wershof said that in the light of the economy drive he would say good-bye and we both did so.

JB

file  
Tel. file  
✓Diary  
Div. diary

# MESSAGE

FM/DE EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
APRIL 1/ 68	20-3-1-6 32	CONF. D.

TO/A VIENNA

NO  
L-320  
PRECEDENCE  
FLASH

INFO BEST COPY AVAILABLE

REF YOURTEL 235 MARCH 31/68  
SUB/SUJ LAW OF TREATIES - ARTICLE 5

WE APPRECIATE THAT THERE IS GENERAL LACK OF INTEREST IN FEDERAL STATES PROBLEM RAISED BY ARTICLE 5. ON THE OTHER HAND WE ARE ENCOURAGED BY OPPOSITION TO ARTICLE IN PRESENT FORM WHICH HAS ALREADY BECOME APPARENT, E.G. U.S. DESIRE TO DELETE ARTICLE EXPRESSED IN LONDON AND PARIS, AUSTRALIAN AND NEW ZEALAND WILLINGNESS TO SUPPORT OUR POSITION, AMENDMENT PROPOSED BY AUSTRIA AND FINNISH PROPOSAL TO DELETE.

2. WE REALIZE TIME AND RESOURCES AVAILABLE TO YOU MAKE EFFECTIVE LOBBYING DIFFICULT. OUR PRINCIPAL CONCERN IS TO PREVENT, IF POSSIBLE, UNITED AFRICAN SUPPORT FOR PRESENT TEXT. YOU MAY FIND IT HELPFUL TO CONVENE MEETING OF OTHER DELEGATIONS OPPOSED TO ARTICLE TO DISCUSS TACTICS ON DELETION OR AMENDMENT OF ARTICLE.

3. HUNGARIAN AMENDMENT INTRODUCING THE ALL STATES QUESTION INTO THIS ARTICLE, CANNOT FAIL TO MUDDY THE WATERS. WHILE HUNGARIAN AMENDMENT MAY INCREASE WESTERN SUPPORT

DISTRIBUTION  
LOCAL/LOCALE

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



- 2 -

FOR DELETION OF ARTICLE, DANGER IS THAT NON-WESTERN DELEGATIONS MAY FOCUS ONLY ON ALL-STATES QUESTION, REGARDING EFFORTS FOR DELETION AS SIMPLY TRADITIONAL WESTERN OPPOSITION TO ALL STATES FORMULA AND ACCEPT PRESENT ARTICLE WITH ONLY HUNGARIAN AMENDMENT. DANGER WILL BE LESSENERED, OF COURSE, IF HUNGARIANS PROCEED BY WAY OF NEW ARTICLE, AS THEY AT PRESENT PROPOSE TO DO, RATHER THAN BY AMENDMENT TO ARTICLE 5 AS WEO BELS FEAR.

4. IN VIEW OF SITUATION WHICH IS DEVELOPING OVER ARTICLE 5, WE ARE CONSIDERING DESIRABILITY OF MAKING REQUESTS FOR SUPPORT FOR OUR POSITION IN CERTAIN CAPITALS, NAMELY WASH. D.C., LDN, CABNERRA, WELLINGTON, BONN, VIENNA, HELSINKI, BERNE AND BRUSSELS. OBJECT OF APPROACHES WOULD BE TO CO-ORDINATE OPPOSITION TO ARTICLE 5 AND MAKE CLEAR OUR VIEW THAT PRESENT DRAFT DOES NOT EMBODY EXISTING INTERNATIONAL LAW. WE MAY IN ADDITION MAKE SIMILAR APPROACHES IN NEW DELHI, LAGOS, YAOUNDE AND BRAZILIA.

5. GRATEFUL FOR YOUR VIEWS BY FLASH TELEGRAM REPLY ON DESIRABILITY AND USEFULNESS OF SUCH APPROACHES PARTICULARLY IN VIEW OF LIMITED TIME APPARENTLY AVAILABLE BEFORE THIS ARTICLE IS CONSIDERED AND POSSIBLY VOTED UPON.

6. RE PARA. 5 OF REPTL, SENTENCE IN QUESTION WAS INCLUDED BECAUSE OF REFERENCE TO "ALL OTHER FORMS OF INTERFERENCE - AGAINST PERSONALITY OF STATE" WHICH WE BELIEVE IS RELEVANT TO FEDERAL STATES QUESTION.

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✓ file  
Tel. file  
Diary  
Div. diary

# MESSAGE

FM/DE EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
APRIL 1/ 68	20-3-1-6 32	CONFED.

TO/A VIENNA

NO	PRECEDENCE
L-320	FLASH

INFO

REF YOURTEL 235 MARCH 31/68  
SUB/SUJ LAW OF TREATIES - ARTICLE 5

WE APPRECIATE THAT THERE IS GENERAL LACK OF INTEREST IN FEDERAL STATES PROBLEM RAISED BY ARTICLE 5. ON THE OTHER HAND WE ARE ENCOURAGED BY OPPOSITION TO ARTICLE IN PRESENT FORM WHICH HAS ALREADY BECOME APPARENT, E.G. U.S. DESIRE TO DELETE ARTICLE EXPRESSED IN LONDON AND PARIS, AUSTRALIAN AND NEW ZEALAND WILLINGNESS TO SUPPORT OUR POSITION, AMENDMENT PROPOSED BY AUSTRIA AND FINNISH PROPOSAL TO DELETE.

2. WE REALIZE TIME AND RESOURCES AVAILABLE TO YOU MAKE EFFECTIVE LOBBYING DIFFICULT. OUR PRINCIPAL CONCERN IS TO PREVENT, IF POSSIBLE, UNITED AFRICAN SUPPORT FOR PRESENT TEXT. YOU MAY FIND IT HELPFUL TO CONVENE MEETING OF OTHER DELEGATIONS OPPOSED TO ARTICLE TO DISCUSS TACTICS ON DELETION OR AMENDMENT OF ARTICLE.

3. HUNGARIAN AMENDMENT INTRODUCING THE ALL STATES QUESTION INTO THIS ARTICLE, CANNOT FAIL TO MUDDY THE WATERS. WHILE HUNGARIAN AMENDMENT MAY INCREASE WESTERN SUPPORT

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TELEPHONE

APPROVED/AUTORISE

SIG..... J. S. STANFORD...../ts.

LEGAL

2-5406

SIG..... M. CADIEUX.....  
..... M. CADIEUX.....



- 2 -

FOR DELETION OF ARTICLE, DANGER IS THAT NON-WESTERN DELEGATIONS MAY FOCUS ONLY ON ALL-STATES QUESTION, REGARDING EFFORTS FOR DELETION AS SIMPLY TRADITIONAL WESTERN OPPOSITION TO ALL STATES FORMULA AND ACCEPT PRESENT ARTICLE WITH ONLY HUNGARIAN AMENDMENT. DANGER WILL BE LESSENERED, OF COURSE, IF HUNGARIANS PROCEED BY WAY OF NEW ARTICLE, AS THEY AT PRESENT PROPOSE TO DO, RATHER THAN BY AMENDMENT TO ARTICLE 5 AS WEO DELS FEAR.

4. IN VIEW OF SITUATION WHICH IS DEVELOPING OVER ARTICLE 5, WE ARE CONSIDERING DESIRABILITY OF MAKING REQUESTS FOR SUPPORT FOR OUR POSITION IN CERTAIN CAPITALS, NAMELY WASH. D.C., LDN, CABNERRA, WELLINGTON, BONN, VIENNA, HELSINKI, BERNE AND BRUSSELS. OBJECT OF APPROACHES WOULD BE TO CO-ORDINATE OPPOSITION TO ARTICLE 5 AND MAKE CLEAR OUR VIEW THAT PRESENT DRAFT DOES NOT EMBODY EXISTING INTERNATIONAL LAW. WE MAY IN ADDITION MAKE SIMILAR APPROACHES IN NEW DELHI, LAGOS, YAOUNDE AND BRAZILIA.

5. GRATEFUL FOR YOUR VIEWS BY FLASH TELEGRAM REPLY ON DESIRABILITY AND USEFULNESS OF SUCH APPROACHES PARTICULARLY IN VIEW OF LIMITED TIME APPARENTLY AVAILABLE BEFORE THIS ARTICLE IS CONSIDERED AND POSSIBLY VOTED UPON.

6. RE PARA. 5 OF REPTTEL, SENTENCE IN QUESTION WAS INCLUDED BECAUSE OF REFERENCE TO "ALL OTHER FORMS OF INTERFERENCE - AGAINST PERSONALITY OF STATE" WHICH WE BELIEVE IS RELEVANT TO FEDERAL STATES QUESTION.

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ACTION COPY

FM VIENN MAR31/68 CONFD

TO EXTER 235 IMMED

INFO TT PRMNY DE OTT

REF YOURTELS L310 L311 MAR29 OURTEL 223 MAR30

LAW OF TREATIES ART 5

YOURTELS CROSSED OURS. PRESENT TEL REPORTS STATE OF PLAY. MAY I SAY FIRST AND NOT/NOT IN ANY SPIRIT OF COMPLAINT THAT UNAVOIDABLE DELAY IN SENDING US INSTRS PLUS PROBLEM OF FINDING OTHER DELS ON A SUNNY WEEKEND WILL MAKE IT DIFFICULT FOR US TO HAVE ALL THE PRIVATE TALKS WITH OTHER DELS THAT YOU AND WE DESIRE PRIOR TO PROBABLE DEBATE ON TUE.

2. A FURTHER TROUBLESOME COMPLAINT HAS ARISEN IN CONSEQUENCE OF NOTICE BY HUNGARY THIS WEEK IN THEIR WRITTEN COMMENTS(A/CONF39/6/ADD2) THAT THEY INTEND TO PROPOSE A NEW ART 5A AS FOLLOWS QUOTE EVERY STATE MAY BECOME A PARTY TO GENERAL MULTILATERAL TREATIES UNQUOTE. HUNGARIAN FORMAL PROPOSAL HAS NOT/NOT YET BEEN TABLED AND NO/NO ONE IS SURE WHETHER IT WILL BE A NEW ART OR AN ADDITION TO ART 5. AT WEO MTG YESTERDAY SAT CALLED TO DISCUSS ALL-STATES PROBLEM MANY DELS THOUGHT HUNGARIANS MIGHT MAKE IT AN AMENDMENT TO ART 5.

AT SAME MTG FINLAND SAID THAT THEY HAD JUST FILED AN AMENDMENT TO DELETE ART 5; THIS HAS NOT/NOT YET BEEN CIRCULATED TO CONFERENCE. SEVERAL WESTERN DELS (WHO ARE UNDERSTANDABLY MORE CONCERNED WITH FIGHTING ALL-STATES PROPOSAL THAN WITH PROBLEM OF FEDERAL STATES) SAID THAT PROPOSAL TO DELETE ART 5 MIGHT MAKE MORE DIFFICULT THE TASK OF LOBBYING AGAINST THE PENDING HUNGARIAN AMENDMENT. ALTHOUGH

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PAGE TWO 235 CONFD

WE HAD NOT/NOT INTENDED TO RAISE OUR OWN PROBLEM IN THIS LARGE  
MTG WITH FRANCE PRESENT WE FELT IT ESSENTIAL TO SAY SIMPLY THAT  
WE HOPED FINLAND WOULD NOT/NOT WITHDRAW ITS AMENDMENT AS CDA WOULD  
PREFER DELETION PARTICULARLY OF PARA2. WE HAVE TALKED FURTHER WITH

FINNS AND THEIR PRESENT INTENTION IS TO MAINTAIN THEIR AMENDMENT.

3. AT THE MOMENT I AM NOT/NOT TOO HOPEFUL THAT ART 5 WILL BE DELETED  
OR THAT AUSTRIAN AMENDMENT WILL CARRY. LEADER OF AUSTRIAN DEL HAS  
NO/NO INFO YET OR DEGREE OF SUPPORT. IT IS LIKELY THEREFORE THAT  
I WILL HAVE TO DECIDE AS THE DEBATE PROGRESSES TO DELIVERY STATE-  
MENT; IN THAT EVENT WE WILL INFORM YOU AS SOON AS IT IS DELIVERED.

4. ONE PROBLEM IS THAT, HOWEVER INCOMPLETE OR AMBIGUOUS PARA2 OF ART  
5 MAY BE, IT DOES NOT/NOT CREATE PRACTICAL DIFFICULTIES FOR OTHER  
FEDERAL STATES WHOSE WRITTEN <sup>CONSTITUTIONS</sup> ~~CONTRIBUTIONS~~ AMPLY PROTECT THEIR  
CENTRAL GOVTS; ONLY IN USSR IS THIS CONSTITUTIONAL PROTECTION LACKING  
AND OF COURSE POLITICAL REALITIES THERE GIVE PROTECTION ENOUGH  
TO MOSCO. AS FOR DELS FROM UNITARRY STATES SOME CONSIDER 5(2) POORLY  
DRAFTED OR EVEN INAPPROPRIATE BUT THEY ARE NOT/NOT HURT BY THE  
PROVISION AND IT IS DIFFICULT TO WORK UP ACTIVE OPPOSITION.

5. REVERTING TO TEXT OF CDN STATEMENT WE DOUBT NECESSITY OF QUOTING  
SECOND SENTENCE OF UN RESLN BEGINNING QUOTE CONSEQUENTLY <sup>ARRIVED</sup> ~~AMEND~~  
INTERVENTION UNQUOTE AND TRUST THAT WE MAY OMIT THIS SENTENCE.

6. AT OUR REQUEST NZ DEL HAS PROMISED TO TABLE AMENDMENT TO ART 5  
PARA2 TO SUBSTITUTE QUOTE POLITICAL SUBDIVS UNQUOTE FOR QUOTE STATES  
MEMBERS UNQUOTE

WERSHOF

FM VIENN MAR30/68 CONFD

TO EXTER 223 IMMED

INFO TT PRMNY DE OTT

LAW OF TREATIES CONFERENCE ART5

REF YOURLET L294 MAR26

YOURLET ARRIVED YESTERDAY AND INSTRS ARE APPRECIATED AND ARE BEING  
ACTED UPON. IT NOW SEEMS ART5 WILL COME UP TUE AND NOT/NOT MON. PLEASE  
CONFIRM BY RETURN IMMED TEL THAT CDN STATEMENT FOR DELIVERY IN  
THIS DEBATE WILL ARRIVE BY MON.

2. WE INTERPRET INSTRS IN YOURLET TO MEAN WE SHOULD SUPPORT AUSTRIAN  
AMENDMENT (C1/L2) REPORTED IN OURTEL 213 MAR28. UNLESS OTHERWISE  
INSTRUCTED WE WILL VOTE FOR IT.

3. AT SAME TIME WE CALL YOUR ATTN TO FOLLOWING AMENDMENT TO ART3  
TABLED YESTERDAY BY GABON (DOCU L41) WHICH WOULD AMEND ART 3 TO READ  
AS FOLLOWS: QUOTE THE PRESENT ARTS SHALL NOT/NOT AFFECT THE LEGAL  
FORCE OF INTERNATL AGREEMENTS NOT/NOT IN WRITTEN FORM OR OF AGREE-  
MENTS CONCLUDED BETWEEN STATES AND OTHER SUBJS OF INTERNATL LAW  
OR BETWEEN SUCH OTHER SUBJS OF INTERNATL LAW, <sup>or</sup> OR THE APPLICATION TO  
SUCH AGREEMENTS OF THE RULES SET FORTH IN THE PRESENT CONVENTION. /  
UNQUOTE. CONSIDERING THE SPONSOR WE WONDER WHETHER THIS WORDING IS  
RELATED TO ART5. ART3 SHOULD COME UP MON AND IN THE ABSENCE OF  
INSTRS WE WILL NOT/NOT SPEAK ON THIS AMENDMENT BUT WILL VOTE  
AGAINST IT IF A VOTE IS TAKEN

WERSHOF



PM VIENN MAR30/68 CONFD

TO EXTER 223 IMMED

INFO TT PRMNY DE OTT

LAW OF TREATIES CONFERENCE ART5

REF YOURLET L294 MAR26

*Mr. Slattery  
be that way to spell  
as desired from him & lobby  
how to speak  
in writing group*

50-3-1-6  
32-1-

YOURLET ARRIVED YESTERDAY AND INSTRS ARE APPRECIATED AND ARE BEING  
ACTED UPON. IT NOW SEEMS ART5 WILL COME UP TUE AND NOT/NOT MON. PLEASE  
CONFIRM BY RETURN IMMED TEL THAT CDN STATEMENT FOR DELIVERY IN  
THIS DEBATE WILL ARRIVE BY MON.

2. WE INTERPRET INSTRS IN YOURLET TO MEAN WE SHOULD SUPPORT AUSTRIAN  
AMENDMENT (C1/L2) REPORTED IN OURTEL 213 MAR28. UNLESS OTHERWISE  
INSTRUCTED WE WILL VOTE FOR IT.

3. AT SAME TIME WE CALL YOUR ATTN TO FOLLOWING AMENDMENT TO ART3  
TABLED YESTERDAY BY GABON (DOCU L41) WHICH WOULD AMEND WRT 3 TO READ  
AS FOLLOWS: QUOTE THE PRESENT ARTS SHALL NOT/NOT AFFECT THE LEGAL  
FORCE OF INTERNATL AGREEMENTS NOT/NOT IN WRITTEN FORM OR OF AGREE-  
MENTS CONCLUDED BETWEEN STATES AND OTHER SUBJS OF INTERNATL LAW  
OR BETWEEN SUCH OTHER SUBJS OF INTERNATL LAW, OR THE APPLICATION TO  
SUCH AGREEMENTS OF THE RULES SET FORTH IN THE PRESENT CONVENTION.  
UNQUOTE. CONSIDERING THE SPONSOR WE WONDER WHETHER THIS WORDING IS  
RELATED TO ART5. ART3 SHOULD COME UP MON AND IN THE ABSENCE OF  
INSTRS WE WILL NOT/NOT SPEAK ON THIS AMENDMENT BUT WILL VOTE  
AGAINST IT IF A VOTE IS TAKEN

WERSHOF

13B

File  
Diary  
Div. Diary  
Telegramfile

## CANADIAN STATEMENT ON ARTICLE 5

Mr. Chairman,

The Canadian Delegation recognizes that the present draft Article 5 is a serious and sincere attempt by the I.L.C. to deal with a difficult problem. My delegation considers, however, that in its present form this Article is unsatisfactory for the reasons which follow.

2. There are three basic problems with the present draft. One is a question of terminology, the inconsistent and contradictory use of the word "State". The second is a matter of the interpretation and application of paragraph two, in particular its reference to the constitution of a federal state. The third is the omission from the article of certain additional legal considerations relevant to the treaty making power as it is exercised in federal states.

3. First, on the drafting point, "State" is used in Article 1 and in paragraph 1 of this article to refer to the fully sovereign international person. It is used in a quite different sense in paragraph 2 of this article. Consistency of drafting requires that it be the federal union rather than the political subdivision which is designated a State.

4. On the matter of the interpretation and application of the draft article, paragraph 2 provides that the extent, if any, to which a political subdivision may enjoy treaty-making capacity is dependent upon the federal constitution. My delegation wishes

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- 2 -

to emphasize that the federal constitution is an internal law of the federal State. Its interpretation therefore falls within the exclusive jurisdiction of the internal tribunal of the federal state having jurisdiction in constitutional matters. No sovereign State could accept that an outside body may have the power to interpret its constitution.

5. The United Nations Charter clearly recognizes that nothing contained in the Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state. It is noteworthy that the General Assembly has declared in its Resolution 2131 (XX) that:

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention as well as all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned;"

6. The I.L.C. commentary to Article 43 of the draft articles notes that "any questioning on constitutional grounds of the internal handling of the treaty by another Government would certainly be regarded as an inadmissible interference in its affairs". It is not clear, however, that the same view of a State's constitution reflected in that passage is embodied in the present Article. Yet outside states ought not to purport to interpret a federal State's constitution and it would be most unfortunate if this Article were interpreted as an invitation for them to do so.

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- 3 -

7. From a practical point of view, the result of this Article would be to place States dealing with federal States in a very awkward position in many cases. The legal capacity of the political subdivisions of federal States may be fairly clear in the case of federal states with written constitutions, but much less readily ascertainable to outsiders in the case of federal States whose constitutions are unwritten, or partly written and partly unwritten. In order to avoid confusion and uncertainty in situations in which other States and depositaries could be placed in the invidious position of concerning themselves with the interpretation of the constitutions of federal States, it would be desirable to recognize that, if the proposed rule is to be adopted as an article of the Convention, consideration should be given to adding clarity and precision to the scope and application of the article. In the circumstances the Canadian delegation sees great merit in the amendment formally submitted by the Austrian delegation.

8. The fact is that the constitution and practice of every federal state reflects the concept contained in the Austrian amendment, namely that the extent of any treaty-making capacity of a component unit of a federal state must be confirmed by an authority of the federal union.

9. Turning to the third point, the omission from the article of certain essential legal elements, it has been pointed out that paragraph 2 of the present Article recognizes a

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- 4 -

practice which already exists, at least in certain federal States. But the precise legal implications of the practice are not adequately reflected in the present articles. Specifically, the practice of political subdivisions entering into treaty relationships raises important questions of international personality, State responsibility and recognition which are not clearly spelled out in this article and which cannot be dealt with in the Convention now under discussion. Yet without these provisions we would have a very incomplete rule, embodying only some of the many elements to be considered. If we are concerned, as we are, to ensure that the draft convention contributes to stability of treaty relations between states, it is necessary to ensure that, if a rule is formulated, it must be clear, accurate and complete. It must not give rise to any uncertainties in dealings between states. In the circumstances, the simplest and best solution would be to delete the article. Failing this, the article could be made generally acceptable only if amended as proposed by the Austrian delegation.



EXTERNAL AFFAIRS OTTAWA

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
29/3/68	20-3-1-6 30	CONFIDENTIAL

TO/A

VIENNA

NO  
L-311PRECEDENCE  
PRECEDENCE

INFO

REF

YOURTEL 213 MAR. 28 AND OURTEL L-310 MAR. 28

SUB/SUJ

LAW OF TREATIES - ARTICLE 5

AS YOU KNOW WE ATTACH CONSIDERABLE IMPORTANCE TO THIS ARTICLE BEING EITHER SATISFACTORILY MODIFIED OR DELETED ENTIRELY FROM PROPOSED CONVENTION. THIS ATTITUDE REFLECTS POSITION TAKEN BY USSEA IN ILC DISCUSSION OF THIS ARTICLE. SET OUT BELOW IS TEXT OF STATEMENT PREPARED FOR YOUR USE, IF APPROPRIATE, IN COMMITTEE. THIS STATEMENT DEALS WITH DRAFT ARTICLE 5 ON LARGELY TECHNICAL GROUNDS AND SEEKS TO AVOID DEALING WITH ARTICLE IN A SPECIFICALLY CDN CONTEXT. OTHER REPRESENTATIVES WILL REALIZE, OF COURSE, THAT CANADIAN APPROACH TO ARTICLE 5 IS NOT DISINTERESTED AND THERE IS AS A CONSEQUENCE THE DANGER THAT OUR CRITICISM OF ARTICLE MAY BE CONSTRUED AS AN EFFORT TO OBTAIN INTERNATIONAL SUPPORT (POSSIBLY EVEN ALTERATION OF EXISTING INTERNATIONAL LAW IF PRESENT DRAFT IS CONSIDERED AS MERE CODIFICATION) TO DEAL WITH THE INTERNAL PROBLEM OF QUEBEC'S EFFORTS TO GAIN INTERNATIONAL STATUS. IF RECEIVED BY CONFERENCE IN THIS LIGHT, CANADIAN INTERVENTION MAY BE COUNTERPRODUCTIVE.

2. SIGNIFICANCE OF THIS ARTICLE FOR CANADA AND FEDERAL GOVT'S POSITION ON THIS ISSUE ARE WELL KNOWN, HOWEVER, AND THERE IS THEREFORE DANGER THAT

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DIVISION

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APPROVED/AUTORISE

SIO.....  
J.S. Stanford/mb

Legal

2-5406

SIO.....  
J.A. Beesley

- 2 -

CANADIAN SILENCE MAY BE TAKEN AS ACQUIESCENCE IN PRESENT DRAFT. WE LEAVE IT TO YOUR JUDGMENT, THEREFORE, TO DETERMINE WHETHER OR NOT TO DELIVER DRAFT STATEMENT, SUBJECT ONLY TO THE CONSIDERATION THAT NO STATEMENT SHOULD BE MADE IF IT APPEARS ARTICLE WILL BE DELETED OR AMENDED IN A SATISFACTORY WAY (E.G. AS PROPOSED BY AUSTRIANS) WITHOUT CANADIAN INTERVENTION.

3. IN DISCUSSING CANADIAN POSITION OUTSIDE CONFERENCE, IT COULD BE PARTICULARLY HELPFUL IF YOU WERE TO MAKE INFORMAL CONTACT WITH BOTH FRANCOPHONE AND COMMONWEALTH AFRICANS BEFORE THEY ADOPT A GROUP POSITION ON THIS QUESTION. YOUR APPROACH SHOULD BE TO INFORM THEM OF CANADIAN VIEWS AND SUPPORTING REASONS WITHOUT, OF COURSE, EXERTING PRESSURE OR GIVING APPEARANCE OF CDN CAMPAIGN AGAINST ARTICLE 5. YOU SHOULD ALSO CONSULT WITH OTHER FEDERAL STATE REPS ( SWISS, GERMANS, ETC.) AS INDICATED IN REFTTEL. YOU MAY ALSO FIND IT USEFUL TO TOUCH BASE WITH YUGOSLAVS AND PERHAPS WITH SOVIET DEL ON POSSIBLE AMENDMENTS. ( ALTHOUGH TUNKIN ACTIVELY SUPPORTED PRESENT DRAFT ARTICLE IN ILC, WE ARE NOT CERTAIN OF SOVIET POSITION ON FEDERAL STATE QUESTION).

4. TEXT OF STATEMENT BEGINS:

(COMCENTRE: PLEASE TRANSMIT ATTACHED TEXT).

ENDS



# MESSAGE

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

FM/DE	OTT/EXT	DATE	FILE/DOSSIER	SECURITY SECURITE
		MAR. 30/68	20-3-1-6	CONFID
TO/A	VIENNA	MAR 30 16 28 '68	NO	IMMED
	1/34/43		L-1	
INFO				

REF YOURTEL 223 MAR 30  
SUB/SIL LAW OF TREATIES CONF

OURTEL L295 OF MAR 26 CONTAINING TEXT OF PROPOSED STATEMENT SHOULD HAVE REACHED YOU BY NOW.

2. THIS WILL CONFIRM THAT YOU SHOULD VOTE IN FAVOUR OF AUSTRIAN AMENDMENT AND OTHERWISE SUPPORT IT IN ACCORDANCE WITH INSTRUCTIONS OUTLINED IN OURTELS L-295 AND L-296.

3. THE GABON AMENDMENT, IN ITS FIRST PART, MIGHT APPEAR AT FIRST SIGHT, TO RESTATE ILC ARTICLE BUT IN SO DOING IT CREATES AMBIGUITY AS IT FAILS TO MAKE CLEAR THAT ARTICLES OF CONVENTION DO NOT APPLY TO ORAL AGREEMENTS OR AGREEMENTS INVOLVING SUBJECTS OF INTL LAW OTHER THAN STATES. THE SECOND PART OF THE AMENDMENT IS EITHER NONSENSICAL OR ENTIRELY CONTRADICTORY THE ILC ARTICLE 3. THIS IS BECAUSE IT SAYS IN EFFECT THAT THE PRESENT ARTICLES DO NOT AFFECT THE APPLICATION OF THE RULES SET OUT IN THE ARTICLES

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LOCAL/LOCALE

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SIG JA BEESLEY/AEGOTLIEB	LEGAL DIV.	22728	SIG A. G. G. BEESLEY

EXT 18/81L (REV 5/64)  
(COMMUNICATIONS DIV)

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- 2 -

4. IT IS CLEAR THAT UNDER ILC VERSION OF ARTICLE 3, AGREEMENTS CONCLUDED BETWEEN FOREIGN STATES AND CANADIAN PROVINCES WOULD NOT/NOT BE COVERED BY THE ARTICLE (ALTHOUGH THIS FACT WOULD NOT/NOT <sup>if any</sup> AFFECT THEIR LEGAL FORCE). THE INTENTION AND THE <sup>the</sup> AFFECT OF THE GABON AMENDMENT MIGHT WELL BE TO REVERSE ~~THE~~ INTENSION AND AFFECT OF THE ILC VERSION OF ARTICLE 3 THUS BRINGING SUCH AGREEMENTS WITHIN THE AMBIT OF THE DRAFT CONVENTION. YOU SHOULD THEREFORE CON<sup>C</sup>ERT <sup>WITH</sup> ~~THE~~ OTHERS TO MAINTAIN ORIGINAL LANGUAGE ON GROUNDS THAT THE CONF <sup>have</sup> OUGHT NOT TO REVERSE THE ILC APPROACH ON THIS KFUNDAMENTAL QUESTION.

1 OTT114

PAR118/29

VNA15/29

RR OTT RR COP RR GVA

DE VNA

R291544Z

FM VIENN MAR29/68

TO EXTER 222

INFO COPEN PERMISGENEV

REF PRMNY TEL 831 MAR26

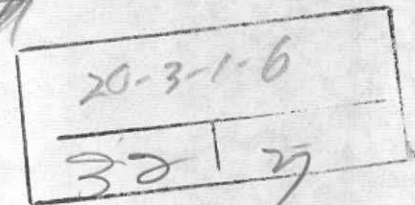
COPEN LAW OF TREATIES

NO/NO REASON TO RPT TELS TO COPEN UNTIL AFTER MY RETURN THERE AT  
CLOSE OF CONFERENCE. UNLESS HEAD OF POST GENEV HAS DIFFERENT VIEW  
MCKINNON AGREES NO/NO NEED TO RPT FURTHER TELS TO GENEV

WERSHOF

ACTION COPY  
L

Feb 28/5  
JH





File  
Diary  
Div. Diary  
Telegramfile

CANADIAN STATEMENT ON ARTICLE 5

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Mr. Chairman,

The Canadian Delegation recognizes that the present draft Article 5 is a serious and sincere attempt by the I.L.C. to deal with a difficult problem. My delegation considers, however, that in its present form this Article is unsatisfactory for the reasons which follow.

2. There are three basic problems with the present draft. One is a question of terminology, the inconsistent and contradictory use of the word "State". The second is a matter of the interpretation and application of paragraph two, in particular its reference to the constitution of a federal state. The third is the omission from the article of certain additional legal considerations relevant to the treaty making power as it is exercised in federal states.

3. First, on the drafting point, "State" is used in Article 1 and in paragraph 1 of this article to refer to the fully sovereign international person. It is used in a quite different sense in paragraph 2 of this article. Consistency of drafting requires that it be the federal union rather than the political subdivision which is designated a State.

4. On the matter of the interpretation and application of the draft article, paragraph 2 provides that the extent, if any, to which a political subdivision may enjoy treaty-making capacity is dependent upon the federal constitution. My delegation wishes

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- 2 -

to emphasize that the federal constitution is an internal law of the federal State. Its interpretation therefore falls within the exclusive jurisdiction of the internal tribunal of the federal state having jurisdiction in constitutional matters. No sovereign State could accept that an outside body may have the power to interpret its constitution.

5. The United Nations Charter clearly recognizes that nothing contained in the Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state. It is noteworthy that the General Assembly has declared in its Resolution 2131 (XX) that:

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention as well as all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned;"

6. The I.L.C. commentary to Article 43 of the draft articles notes that "any questioning on constitutional grounds of the internal handling of the treaty by another Government would certainly be regarded as an inadmissible interference in its affairs". It is not clear, however, that the same view of a State's constitution reflected in that passage is embodied in the present Article. Yet outside states ought not to purport to interpret a federal State's constitution and it would be most unfortunate if this Article were interpreted as an invitation for them to do so.

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- 3 -

7. From a practical point of view, the result of this Article would be to place States dealing with federal States in a very awkward position in many cases. The legal capacity of the political subdivisions of federal States may be fairly clear in the case of federal states with written constitutions, but much less readily ascertainable to outsiders in the case of federal States whose constitutions are unwritten, or partly written and partly unwritten. In order to avoid confusion and uncertainty in situations in which other States and depositaries could be placed in the invidious position of concerning themselves with the interpretation of the constitutions of federal States, it would be desirable to recognize that, if the proposed rule is to be adopted as an article of the Convention, consideration should be given to adding clarity and precision to the scope and application of the article. In the circumstances the Canadian delegation sees great merit in the amendment formally submitted by the Austrian delegation.

8. The fact is that the constitution and practice of every federal state reflects the concept contained in the Austrian amendment, namely that the extent of any treaty-making capacity of a component unit of a federal state must be confirmed by an authority of the federal union.

9. Turning to the third point, the omission from the article of certain essential legal elements, it has been pointed out that paragraph 2 of the present Article recognizes a

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- 4 -

practice which already exists, at least in certain federal States. But the precise legal implications of the practice are not adequately reflected in the present articles. Specifically, the practice of political subdivisions entering into treaty relationships raises important questions of international personality, State responsibility and recognition which are not clearly spelled out in this article and which cannot be dealt with in the Convention now under discussion. Yet without these provisions we would have a very incomplete rule, embodying only some of the many elements to be considered. If we are concerned, as we are, to ensure that the draft convention contributes to stability of treaty relations between states, it is necessary to ensure that, if a rule is formulated, it must be clear, accurate and complete. It must not give rise to any uncertainties in dealings between states. In the circumstances, the simplest and best solution would be to delete the article. Failing this, the article could be made generally acceptable only if amended as proposed by the Austrian delegation.



## MESSAGE

FM/DE

EXTERNAL AFFAIRS OTTAWA

DATE

29/3/68

FILE/DOSSIER

20-3-1-6

32

SECURITY  
SECURITE

CONFIDENTIAL

TO/A

VIENNA

NO

L-311

PRECEDENCE

PRECEDENCE

INFO

REF

YOURTEL 213 MAR. 28 AND OURTEL L-310 MAR. 28

SUB/SUJ

LAW OF TREATIES - ARTICLE 5

In Legal Division  
Department of External Affairs

AS YOU KNOW WE ATTACH CONSIDERABLE IMPORTANCE TO THIS ARTICLE BEING EITHER SATISFACTORILY MODIFIED OR DELETED ENTIRELY FROM PROPOSED CONVENTION. THIS ATTITUDE REFLECTS POSITION TAKEN BY USSEA IN ILC DISCUSSION OF THIS ARTICLE. SET OUT BELOW IS TEXT OF STATEMENT PREPARED FOR YOUR USE, IF APPROPRIATE, IN COMMITTEE. THIS STATEMENT DEALS WITH DRAFT ARTICLE 5 ON LARGELY TECHNICAL GROUNDS AND SEEKS TO AVOID DEALING WITH ARTICLE IN A SPECIFICALLY CDN CONTEXT. OTHER REPRESENTATIVES WILL REALIZE, OF COURSE, THAT CANADIAN APPROACH TO ARTICLE 5 IS NOT DISINTERESTED AND THERE IS AS A CONSEQUENCE THE DANGER THAT OUR CRITICISM OF ARTICLE MAY BE CONSTRUED AS AN EFFORT TO OBTAIN INTERNATIONAL SUPPORT (POSSIBLY EVEN ALTERATION OF EXISTING INTERNATIONAL LAW IF PRESENT DRAFT IS CONSIDERED AS MERE CODIFICATION) TO DEAL WITH THE INTERNAL PROBLEM OF QUEBEC'S EFFORTS TO GAIN INTERNATIONAL STATUS. IF RECEIVED BY CONFERENCE IN THIS LIGHT, CANADIAN INTERVENTION MAY BE COUNTERPRODUCTIVE.

2. SIGNIFICANCE OF THIS ARTICLE FOR CANADA AND FEDERAL GOVT'S POSITION ON THIS ISSUE ARE WELL KNOWN, HOWEVER, AND THERE IS THEREFORE DANGER THAT

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

cc to be sent to Lalonde,  
Betz, Baudouin, Fother.

.../2

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

Legal

2-5406

SIG

J. A. DEESLEY

J. A. Deesley

- 2 -

CANADIAN SILENCE MAY BE TAKEN AS ACQUIESCENCE IN PRESENT DRAFT. WE LEAVE IT TO YOUR JUDGMENT, THEREFORE, TO DETERMINE WHETHER OR NOT TO DELIVER DRAFT STATEMENT, SUBJECT ONLY TO THE CONSIDERATION THAT NO STATEMENT SHOULD BE MADE IF IT APPEARS ARTICLE WILL BE DELETED OR AMENDED IN A SATISFACTORY WAY (E.G. AS PROPOSED BY AUSTRIANS) WITHOUT CANADIAN INTERVENTION.

3. IN DISCUSSING CANADIAN POSITION OUTSIDE CONFERENCE, IT COULD BE PARTICULARLY HELPFUL IF YOU WERE TO MAKE INFORMAL CONTACT WITH BOTH FRANCOPHONE AND COMMONWEALTH AFRICANS BEFORE THEY ADOPT A GROUP POSITION ON THIS QUESTION. YOUR APPROACH SHOULD BE TO INFORM THEM OF CANADIAN VIEWS AND SUPPORTING REASONS WITHOUT, OF COURSE, EXERTING PRESSURE OR GIVING APPEARANCE OF CDN CAMPAIGN AGAINST ARTICLE 5. YOU SHOULD ALSO CONSULT WITH OTHER FEDERAL STATE REPS ( SWISS, GERMANS, ETC.) AS INDICATED IN REPTTEL. YOU MAY ALSO FIND IT USEFUL TO TOUCH BASE WITH YUGOSLAVS AND PERHAPS WITH SOVIET DEL ON POSSIBLE AMENDMENTS. ( ALTHOUGH TUNKIN ACTIVELY SUPPORTED PRESENT DRAFT ARTICLE IN ILC, WE ARE NOT CERTAIN OF SOVIET POSITION ON FEDERAL STATE QUESTION).

4. TEXT OF STATEMENT BEGINS:

(COMCENTRE: PLEASE TRANSMIT ATTACHED TEXT).

ENDS



Jul 20-3-1-6  
M

Mr. Stanford

ACTION COPY

20-3-1-6  
ms 1 13

FM VIENN MAR29/68 RESTR

TO EXTER 221

INFO TT PRMNY DE OTT

CONFERENCE ON LAW OF TREATIES ART1

USA AMENDMENT TO EXTEND DRAFT ARTS TO INTERNATL ORGANIZATIONS WAS WITHDRAWN AFTER LONG DEBATE IN WHICH THIS AMENDMENT HAD LITTLE SUPPORT. LIKEWISE USA PROPOSAL TO SET UP WORKING GROUP ON THIS SUBJ WAS WITHDRAWN FOR LACK OF SUPPORT. HOWEVER CTTEE APPROVED IN PRINCIPLE SWEDISH PROPOSAL THAT CONFERENCE RESOLVE TO ASK UNGA TO DIRECT ILC TO STUDY AND PREPARE SEPARATE DRAFT ARTS DEALING WITH TREATIES TO WHICH INTERNATL ORGANIZATIONS ARE PARTIES.

2. WE SPOKE ON LINES OF PARA2 YOURTEL L276 MAR22 BUT SO FAR HAVE NOT/ NOT SUCCEEDED IN GETTING SATISFACTORY ANSWERS OR SUPPORT FOR IDEA OF AMENDING THE ART IN ORDER TO REMOVE AMBIGUITY ONE WAY OR THE OTHER. WALDOCK SAYS INTENT OF ILC WAS THAT DRAFT ARTS SHOULD NOT/NOT APPLY TO RELATIONS BETWEEN STATES PARTIES TO A TREATY TO WHICH AN INTERNATL ORGANIZATION IS ALSO A PARTY; HE PROMISED TO LOOK AGAIN IN DRAFTING CTTEE AT QUESTION WHETHER PRESENT WORKING ACHIEVES THIS INTENT. I DOUBT THAT WE COULD FIND MUCH SUPPORT IN CONFERENCE FOR THE CONTRARY INTENT WHICH YOU REFER. MOST DELS SEEM CONTENT TO CONFINE DRAFT ART TO TREATIES WHICH ARE EXCLUSIVELY BETWEEN STATES.

3. CTTEE OF WHOLE CONCLUDED DISCUSSION OF ART1 BY PASSING IT TO DRAFTING CTTEE

WERSHOF

OTT092

P 2/28

VNA13/28

RR OTT RR NYK

DE VNA

R281416Z

FM VIENN MAR28/68

TO EXTER 215

INFO PRMNY

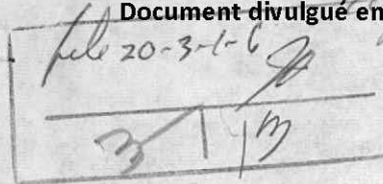
LAW OF TREATIES CONFERENCE

FOLLOWING OFFICERS WERE ELECTED YESTERDAY: VICEPRESIDENTS OF THE  
CONFERENCE: REPS OF AFGHANISTAN ALGERIA AUSTRIA CHILE CHINA SPAIN  
USA ETHIOPIA FINLAND FRANCE GINEA HUNGARY INDIA MEXICO PERU  
PHILIPPINES UAR ROMANIA UK SIERRA LEONE USSR VENEZUELA AND YUGOS-  
LAVIA. CHAIRMAN OF THE CTTEE OF THE WHOLE: DR TASLIM OLAWALE ELIAS  
OF NIGERIA. CHAIRMAN OF THE DRAFTING CTTEE: MUSTAFA KAMIL YASSEEN OF  
IRAQ. OTHER MEMBERS OF THE DRAFTING CTTEE ARE REPOS OF ARGENTINA  
CHINA CONGO (BRAZZAVILLE) FRANCE GHANA JPN KENYA NETHERLANDS POLAND  
SWEDEN UK USSR AND USA. VICECHAIRMAN OF THE CTTEE OF THE WHOLE: DR  
JOSEF SMEJKO OF CZECHOSLOVAKIA. RAPPOREUR OF THE CTTEE OF THE WHOLE:  
EDUARDO JIMENEZ DE ARECHAGA OF URUGUAY

ACTION COPY

L

20-3-1-6  
25 | 13



Mr. [Signature]  
Mr. Stanford

FM VIENN MAR28/68 RESTR

**ACTION COPY**

TO EXTER 213 IMMED

INFO TT PRMNY DE OTT

L

LAW OF TREATIES CONFERENCE

HERE IS TEXT OF AMENDMENT TO ARTICLE 5 PROPOSED BY AUSTRIA AND  
CIRCULATED THIS MORNING. TEXT BEGINS: QUOTE PARA2 RENUMBER PARA2 AS  
2A.

2. ADD NEW PARA2(B) UNQUOTE. QUOTE FOR THE PURPOSE OF CONCLUDING THE  
TREATY THE EXTENT OF SUCH CAPACITY HAS TO BE CONFIRMED BY AN  
AUTHORITY OF THE FEDERAL UNION COMPETENT UNDER ARTICLE 6 UNQUOTE  
TEXT ENDS.

3. GRATEFUL FOR INSTRS SOONEST ON MANNER IN WHICH YOU WILL WANT US  
TO REACT TO THIS AUSTRIAN AMENDMENT. AT TIME OF WRITING THIS YOUR  
INSTRS ON ARTICLE 5 HAVE NOT/NOT ARRIVED

WERSHOF



DIARY  
DIV. DIARY  
FILE  
FILE

# MESSAGE

FM/DE EXT OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
MARCH 28 1968	20-3-1-6 3D	CONF

TO/A VIENNA

NO	PRECEDENCE
L-310	IMED

INFO PERMISNY

REF YOURTEL 213 MARCH 28

SUB/SUJ LAW OF TREATIES - ARTICLE 5

WE REGARD AMENDMENT PROPOSED BY AUSTRIA AS MOST HELPFUL. WHILE WE WOULD NOT WISH YOU TO BE OUT IN FRONT IN PUBLIC SUPPORT FOR AMENDMENT AT LEAST AT THIS STAGE, YOU SHOULD INDICATE STRONG CDN SUPPORT IN PRIVATE DISCUSSIONS WITH AUSTRIA AND OTHER DELEGATIONS. WHILE TEXT OF DRAFT STATEMENT IS SET OUT IN IMMEDIATELY FOLLOWING TEL TIMING OF ITS DELIVERY SHOULD, IF POSSIBLE, BE CO-ORDINATED WITH OTHER DEL'S SUPPORTING AUSTRIAN PROPOSAL. AT PRESENT TIME OUR VIEW IS THAT IF IT BECOMES CLEAR THAT ARTICLE 5 WILL BE DELETED OR ADOPTED AS AMENDED BY AUSTRIAN PROPOSAL WITHOUT STATEMENT BY CANADA, THEN NONE SHOULD BE MADE. IF, HOWEVER, OUR STATEMENT IS NEEDED TO ACHIEVE EITHER OF THESE ALTERNATIVES, IT SHOULD BE DELIVERED.

2. IT WOULD BE HELPFUL, IN ASSESSING DEVELOPMENTS ON ART 5, TO HAVE AS SOON AS POSSIBLE INDICATION OF REACTIONS OF OTHER FEDERAL STATES: (E.G. USA, GERMANY, SWITZERLAND, AUSTRALIA, INDIA, NIGERIA) TO AUSTRIAN PROPOSAL. ALREADY, IN INFORMAL DISCUSSIONS IN OTTAWA, NEW ZEALAND AND AUSTRALIANS HAVE

DISTRIBUTION  
LOCAL/LOCALE NO STANDARD DONE IN DIVISION

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG J.S. STANFORD J.A. BERSLEY/IB	LEGAL	2-5406	M. CADIEUX SIG M. CADIEUX

- 2 -

INDICATED WILLINGNESS TO SUPPORT GENERAL COM POSITION FOR DELETION OF ARTICLE 5 IN ITS PRESENT FORM. YOU SHOULD THEREFORE KEEP IN CLOSE TOUCH WITH THESE DELS CONCERNING DEVELOPMENTS ON THIS ARTICLE.

3. COMMENTARY AND INSTRUCTIONS ON ARTICLES 1 TO 26 FORWARDED IN BAG ARRIVING VIENNA MARCH 29. COMMENTARY AND INSTRUCTIONS ON REMAINING ARTICLES FOLLOW IN NEXT WEEK'S BAG. *Cadieux*



80-3-1-6

32 | —

*Mr. [unclear]  
Mr. Stanford*

## ACTION COPY

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FM VIENN MAR28/68 RESTR

TO EXTER 213 IMMED

INFO IT PRMNY DE OTT

LAW OF TREATIES CONFERENCE

HERE IS TEXT OF AMENDMENT TO ARTICLE 5 PROPOSED BY AUSTRIA AND  
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TEXT ENDS.

3.GRATEFUL FOR INSTRS SOONEST ON MANNER IN WHICH YOU WILL WANT US  
TO REACT TO THIS AUSTRIAN AMENDMENT.AT TIME OF WRITING THIS YOUR  
INSTRS ON ARTICLE 5 HAVE NOT/NOT ARRIVED

WERSHOF

*Mr. Beasley to retain*

*Mr. Beasley  
Mr. Stanford*

FM VIENN MAR28/68 RESTR

**ACTION COPY**

TO EXTER 213 IMMED

INFO TT PRMNY DE OTT

*L*

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WERSHOF

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MESSAGE

FM/DE EXT OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
MARCH 28 1968	20-3-1-6 30	CONF

TO/A VIENNA

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NO  
1-310

PRECEDENCE  
DUE

INFO PERMISNY

REF YOURTEL 213 MARCH 28  
SUB/SUJ LAW OF TREATIES - ARTICLE 5

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LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG J.S. STANFORD J.A. JENKINS/BR	LEGAL	2-5406	SIG M. CADIEUX M. CADIEUX

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ARTICLES FOLLOW IN NEXT WEEK'S BAG.

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EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

SECURITY UNCLASSIFIED  
Sécurité

FROM Canadian Delegation  
De to the Law of Treaties Conference, Vienna  
REFERENCE Your telegram No. L-254 March 18, para 2  
Référence

DATE March 27, 1968

NUMBER  
Numéro

188

SUBJECT CONFERENCE DOCUMENTS  
Sujet

FILE	DOSSIER
OTTAWA	26-3-1-6
MISSION	3.2-20-5-12

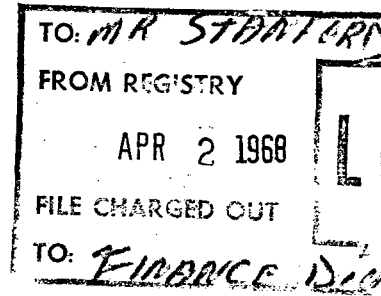
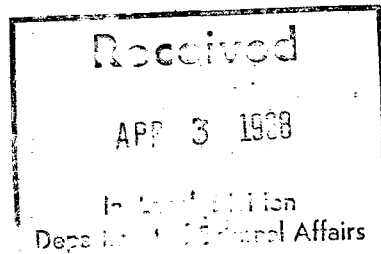
ENCLOSURES  
Annexes

DISTRIBUTION

The first batch of Conference documents are bulky and you already have copies of them from New York. Therefore we are sending two sets of them by surface mail whereas future documents will be despatched by air. The documents being sent by surface mail are all in the A/Conf.39/ series:

- | No. |  |
|-----|--|
| 1   | Provisional Agenda                             |
| 2   | Provisional Rules of Procedure                 |
| 3   | Methods of Work                                |
| 4   | Selected Bibliography                          |
| 5   | Analytical Compilation of Comments (2 volumes) |
| 6   | Further comments from four countries.          |

*for the Canadian Delegation.*



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

SECURITY UNCLASSIFIED  
Sécurité

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De to the Law of Treaties Conference, Vienna  
REFERENCE Your telegram No. L-254 March 18, para 2  
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  - 6 Further comments from four countries.

Canadian Delegation.

cc O.N. Des ✓  
European Des ✓  
Dh(1) Des ✓  
AHE Des ✓  
Comm Des ✓  
14/68  
CNR  
Feb 20-3-1-6 JH/14

20-3-1-6  
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FM VIENN MAR27/68 RESTR

TO TT EXTER 211 DE PARIS

INFO TT PRMNY BONN DE PARIS

LAW OF TREATIES CONFERENCE

AT OPENING OF CONFERENCE YESTERDAY SUBSTANTIAL NUMBER OF REPS, MAINLY FROM COMMUNIST BLOC BUT ALSO FROM COUNTRIES SUCH AS INDIA CEYLON UAR TANZANIA GUINEA SYRIA AND CONGO(BRAZ), INSISTED ON RECORDING THEIR QUOTE REGRETS THAT EASTGERMANY MAINLANDCHINA NORTHVIETNAM AND NORTHKOREA WOULD NOT/NOT BE PARTICIPATING. THEY DID NOT/NOT HOWEVER TAKE ANY ACTION TO MAKE POSSIBLE PARTICIPATION OF THESE COUNTRIES IN CONFERENCE. MAIN POINTS OF INTEREST WHICH EMERGED FROM SPEECHES WAS PARTICULAR EMPHASIS PLACED BY ALL SPEAKERS ON EASTGERMANY AND ALSO FACT THAT INDIAN REP MADE IT CLEAR THAT IN DUE COURSE HIS DEL WOULD ACTIVELY SUPPORT INCLUSION OF QUOTE ALL STATES UNQUOTE CLAUSE IN DRAFT TREATY.

2. AS EXPECTED AGO WAS UNANIMOUSLY ELECTED CHAIRMAN OF CONFERENCE. AGENDA AND RULES OF PROCEDURE WERE ADOPTED AS PROPOSED WITHOUT DISCUSSION

WERSHOF

cc UN Div ✓  
European Div ✓  
D.L.(1) Dist ✓  
1/4/68  
L  
file 20-3-1-6  
26/3/68

FM PRMNY MAR26/68 CONF D

TO EXTER 830

INFO GENEV

TT COPEN DE HAGUE VIENN DE PARIS

REFYOURTEL L-269 MAR25

UN CONFERENCE ON LAW OF TREATIES-ALL STATES QUESTION

EVEN IF EASTERNEUROPEANS PROPOSE TO RAISE QUESTION OF EASTGERMAN

PARTICIPATION IN LAW OF TREATIES CONFERENCE AT RESUMED SESSION

OF UNGA IT IS UNLIKELY THAT KNOWLEDGE OF THEIR INTENTIONS WOULD BE

LEAKED TO WESTERN DELS.WE WILL LET YOU KNOW IF WE HEAR OF ANY SUCH

PROPOSAL BUT IN VIEW OF FACT THAT TREATY CONFERENCE WILL HAVE

BEEN IN SESSION FOR A MONTH BY TIME UNGA RESUMES ON APR24(SEE

OURTEL329 MAR26)WE RATHER DOUBT THAT ANY SUCH MOVE WOULD BE OF MUCH

BENEFIT TO THAT GROUP.

**ACTION COPY**

Diary  
Div. Diary  
File

Legal Information Service

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A Canadian Delegation to the U.N.  
Conference on the Law of Treaties,  
Vienna, AUSTRIA

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

REFERENCE  
Référence

SUBJECT  
Sujet Commentary and Instructions

SECURITY  
Sécurité CONFIDENTIAL

DATE March 26, 1968

NUMBER  
Numéro L-294

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32

ENCLOSURES  
Annexes

2

DISTRIBUTION

Enclosed are two copies of the commentary and instructions for the Canadian Delegation on the first twenty-six articles of the I.L.C. draft which is the basic proposal before the Conference.

2. Commentary and Instructions on the remaining articles, to be inserted in the enclosed folders, will be forwarded in next week's bag.

J. A. BEESLEY

Under-Secretary of State  
for External Affairs

BEST COPY AVAILABLE

Diary  
Div. Diary  
File

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À Mr. J.A. Beesley

FROM  
De J.S. Stanford

REFERENCE  
Référence

SUBJECT  
Sujet Law of Treaties - Article 5

SECURITY  
Sécurité

CONFIDENTIAL

DATE March 26, 1967

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	32

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Wershof has asked, and we have agreed, that any statement he is to make in Committee of the Whole on Article 5 be drafted in Ottawa. Attached for your approval is a draft statement for this purpose.

2. Our basic instruction is to support deletion of the Article, but not to lead opposition or appear too negative. The best way of achieving our objective within these limitations would appear to be to put forward an interpretation of the Article likely to arouse opposition to it, more specifically to press our view of the supremacy of the constitution, as interpreted by internal law, as a governing factor in the question of treaty-making capacity of political subdivisions of a federal state. The attached draft has been prepared from this viewpoint, and with the thought that brevity is a virtue if we wish to avoid the impression of attaching undue importance to this Article.

3. I would also propose that the instructions to Wershof be that he make no intervention at all if it appears the Article is likely to be deleted. The attached statement would be made, therefore, only if the ultimate fate of the Article is in doubt and with the hope that at best it will provoke undecided delegations to vote against the Article or, failing deletion, will at least lead to desirable changes in the text.

BEST COPY AVAILABLE

J.S. STANFORD

J.S. Stanford



NNNNVVVV

ACTION COPY

*Seeley  
Stanford  
Probably not  
of*

*L  
file 11/28/5*

OTT006

EN8

27/6

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RR OTT RR COP RR VNA RR GVA

DE NYK

R 262330Z

FM PRMNY MAR26/68

TO EXTER 831

INFO COPEN VIENN GENEV

UN CONFERENCE OF LAW OF TREATIES

IN VIEW OF WERSHOFS ABSENCE FROM COPEN(PRESUMABLY FOR DURATION  
OF TREATY CONFERENCE)WE WONDER WHETHER IT IS NECESSARY TO CONTINUE  
TO SEND INFO COPIES OF TELS ON THIS SUBJ TO THAT POST.

2. GRATEFUL VIEWS.

BEST COPY AVAILABLE

Diary  
Div. Diary  
File

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A Canadian Delegation to the U.N.  
Conference on the Law of Treaties,  
Vienna, AUSTRIA

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

REFERENCE  
Référence

SUBJECT  
Sujet Commentary and Instructions

SECURITY  
Sécurité **CONFIDENTIAL**

DATE March 26, 1968

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FILE	DOSSIER
OTTAWA	
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ENCLOSURES  
Annexes

2

DISTRIBUTION

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J. A. BEESLEY

Under-Secretary of State  
for External Affairs

MESSAGE

*gill*

FM/DE	EXTERNL OTT	DATE	FILE/DOSSIER	SECURITY
		MAR 22 1968	20-3-1-6	SECURITE
TO/A	VIENNA	32	NO	PRECEDENCE
			L-282	PRIORITY
INFO				

REF OURTEL L-254 MARCH 18/68

SUB/SUJ LAW OF TREATIES - ARTICLE 4 - INSTRUCTIONS

*Following is text of instructions on Article four - begins*

THE U.S. WISHES TO DELETE THIS GENERAL ARTICLE AND REPLACE IT WITH EXCEPTIONS IN FAVOUR OF INTERNATIONAL ORGANIZATIONS IN ARTICLES 6, 8, 9, 13, 16, 17, 37, 55, 57 and 72. OTHER WESTERN EUROPEAN STATES HAVE INDICATED A DESIRE TO BROADEN THE EXCEPTION PROVIDED FOR BY THE ARTICLE TO MAKE THE CONVENTION SUBJECT TO THE PRACTICE AS WELL AS THE RULES OF INTERNATIONAL ORGANIZATIONS AND THE U.N. SECRETARY GENERAL HAS PROPOSED THAT ARTICLE 4 BE EXTENDED TO INCLUDE ANY TREATY DEPOSITED WITH AN INTERNATIONAL ORGANIZATION.

2. THE VARYING APPROACHES TO THIS ARTICLE REFLECT TWO LEGITIMATE INTERESTS. THE FIRST IS THAT THE CONVENTION HAVE AS WIDE A FIELD OF APPLICATION AS POSSIBLE. THUS, THE PROPOSAL OF THE SECRETARY GENERAL THAT THE EXCEPTION UNDER ARTICLE 4 FROM THE APPLICATION OF THE ARTICLE BE EXTENDED TO INCLUDE ANY TREATY DEPOSITED WITH AN INTERNATIONAL ORGANIZATION APPEARS UNNECESSARILY BROAD AND SHOULD BE RESISTED. THE SECOND INTEREST IS THAT THE CONVENTION NOT UPSET THE ESTABLISHED PROCEDURES OF INTERNATIONAL ORGANIZATIONS AND IN THIS RESPECT THE SUGGESTION THAT THE ARTICLE BE BROADENED TO INCLUDE

DISTRIBUTION  
LOCAL/LOCALE

*NO STANDARD*

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. DANFORD	LEGAL	25406	SIG..... J. A. BEESLEY

CONF

- 2 -

PRACTICES AS WELL AS RULES IS A VALID POINT. (MUCH OF THE OPERATIONS OF THE BERNE AND PARIS UNIONS, PARTICULARLY RELATING TO SUCCESSIVE TREATIES, IS NOT GOVERNED BY FORMAL RULES). WHERE THESE TWO INTERESTS CONFLICT, IT WOULD APPEAR PREFERABLE FOR PRACTICAL REASONS TO GIVE PRECEDENCE TO THE SECOND. THUS THE DELEGATION SHOULD NOT SUPPORT A VERSION OF ARTICLE 4 WHICH APPEARS LIKELY TO DISRUPT THE ESTABLISHED PROCEDURES OF INTERNATIONAL ORGANIZATIONS.

3. PARAGRAPH 4.01 OF THE CANADIAN COMMENTARY REFERS TO A DIFFICULTY WHICH MAY RESULT FROM THE RESTRICTION OF ARTICLE 4 TO FORMALLY CONSTITUTED INTERNATIONAL ORGANIZATIONS ONLY BECAUSE CERTAIN BODIES (THE EXAMPLE OF GATT IS GIVEN) MAY NOT BE PROPERLY CONSIDERED AS ORGANIZATIONS IN THAT SENSE. ARTICLE 2(1)(1) PROVIDES THAT QUOTE INTERNATIONAL ORGANIZATION MEANS AN INTERGOVERNMENTAL ORGANIZATION UNQUOTE. THIS HELPS CLARIFY THE MEANING OF INTERNATIONAL, BUT NOT THE MEANING OF ORGANIZATION. THE ISSUE HERE IS WHETHER QUOTE ORGANIZATION UNQUOTE REFERS ONLY TO AN ORGANIZATION FORMALLY CONSTITUTED BY AN INTERNATIONAL AGREEMENT OR MAY REFER ALSO TO AN ORGANIZATION SUCH AS THE GATT, NOT FORMALLY CONSTITUTED. THE LATTER MAY BE AN QUOTE ORGANIZATION UNQUOTE NO LESS THAN THE FORMER, AND CERTAINLY THE GATT IS AN ORGANIZATION THE PROCEDURES AND PRACTICES OF WHICH SHOULD NOT BE DISRUPTED BY THE PRESENT CONVENTION.

4. THE QUESTION IS ESSENTIALLY ONE OF INTERPRETATION. IT WOULD APPEAR DESIRABLE FOR THE DELEGATION, IN DISCUSSION OF THIS ARTICLE, TO QUOTE FLAG UNQUOTE THE QUESTION BY EXPRESSING ITS UNDERSTANDING THAT THE WORD QUOTE ORGANIZATION UNQUOTE IN THE ARTICLE IS NOT INTENDED TO BE INTERPRETED IN A NARROW WAY TO REFER ONLY TO ORGANIZATIONS FORMALLY CONSTITUTED BY INTERNATIONAL AGREEMENT BUT INCLUDES ORGANIZATIONS SUCH AS THE GATT.

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5. IN THE EVENT A WORKING GROUP SHOULD BE ESTABLISHED TO CONSIDER THE APPLICATION OF THE ARTICLES TO INTERNATIONAL ORGANIZATIONS, THE DELEGATION MAY SUPPORT A MOVE TO REFER ARTICLE 4 TO THAT GROUP. *End*



MESSAGE

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	DATE	FILE / DOSSIER	SECURITY SECURITE
	March 22	20-3-1-6	
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TO/A	VIENNA	L-274	PRIORITY
INFO			

REF OURTEL L-254 - 18 MARCH 1968

SUB/SUJ LAW OF TREATIES - INSTRUCTIONS - PRELIMINARY ISSUES

INSTRUCTIONS *Following is text of instructions on preliminary issues - begins*

CODE OR CONVENTION

THIS ISSUE MUST BE REGARDED AS SETTLED IN FAVOUR OF A CONVENTION, HOWEVER SHOULD DISCUSSION ARISE, THE DELEGATION MAY EXPRESS SUPPORT FOR A CONVENTION AS BEING IN ACCORD WITH THE WISHES OF THE LARGE MAJORITY OF U.N. MEMBERS AND ON THE GROUND THAT, BECAUSE A CONVENTION BINDS THE PARTIES TO IT, IT IS OF GREATER JURIDICAL VALUE.

MORE THAN ONE CONVENTION

THIS QUESTION IS LIKELY TO ARISE, IF AT ALL, ONLY IN THE LATTER PART OF THE SESSION, WHEN IT APPEARS THAT A PART V SATISFACTORY TO ALL MAJOR GROUPS CANNOT BE OBTAINED. WHILE THE INITIAL POSITION OF THE CANADIAN DELEGATION SHOULD BE IN FAVOUR OF A SINGLE CONVENTION, PROPOSALS TO DIVIDE THE DRAFT ARTICLES INTO TWO OR MORE CONVENTIONS WILL HAVE TO BE CONSIDERED IN THE LIGHT OF THE CIRCUMSTANCES EXISTING AT THE TIME THE PROPOSAL IS CONSIDERED. *Ends*

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REF OURTEL L-254 - 18 MARCH 1968

SUB/SUJ LAW OF TREATIES - COMMENTARY - PRELIMINARY ISSUES

COMMENTARY *Following is text of commentary on preliminary issues, Begins:*  
0.01 CODE OR CONVENTION

THIS ISSUE, WHICH WAS DISCUSSED AT LENGTH IN THE INTERNATIONAL LAW COMMISSION, IN THE SIXTH COMMITTEE AND IN THE COMMENTS OF GOVERNMENTS, APPEARS TO HAVE BEEN RESOLVED IN FAVOUR OF A CONVENTION BY THE DECISION TO PLACE DRAFT ARTICLES BEFORE THE CONFERENCE. UNLIKE THE THIRD AND IMMEDIATELY PREVIOUS I.L.C. SPECIAL RAPPOREUR, SIR GERALD FITZMAURICE, THE FINAL I.L.C. SPECIAL RAPPOREUR, SIR HUMPHREY WALDOCK, PREFERRED A CONVENTION RATHER THAN A CODE.

COMMENTS BY DELEGATES TO THE SIXTH COMMITTEE INDICATED SUPPORT FOR A CONVENTION RATHER THAN A CODE. DELEGATES SPEAKING IN SUPPORT OF A CONVENTION INCLUDED HUNGARY (843RD MEETING), IRAQ (849TH MEETING), JORDAN (842ND MEETING), LEBANON (852ND MEETING), ROMANIA (848TH MEETING), YUGOSLAVIA (842ND MEETING), BOLIVIA (909TH MEETING), CZECHOSLOVAKIA (906TH MEETING), DAHOMEY (912TH MEETING), HUNGARY (907TH MEETING), KUWAIT (911TH MEETING), LIBERIA (912TH MEETING) AND PERHAPS GHANA (905TH MEETING).

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CANADA PREFERS THE RELATIVE CERTAINTY OF A BINDING CONVENTION AS CONTRASTED WITH A CODE, WHICH WOULD MERELY OFFER GUIDELINES.

#### 0.02 SINGLE CONVENTION OR SEVERAL CONVENTIONS

ALTHOUGH THE EASTERN EUROPEAN DELEGATIONS ALL EXPLICITLY INSISTED ON A SINGLE CONVENTION (WITH THE POSSIBLE EXCEPTION OF HUNGARY WHICH AT THE 843RD MEETING OF THE SIXTH COMMITTEE HEDGED BY URGING A CONVENTION IN THREE PARTS), THERE MIGHT BE SUBSTANTIAL ADVANTAGES IN SPLITTING THE DRAFT ARTICLES INTO THREE OR MORE CONVENTIONS. CERTAIN PARTS OF THE DRAFT ARTICLES SEEM MUCH LESS CONTROVERSIAL THAN OTHERS AND MIGHT BE PRESERVED FROM BEING REJECTED ALONG WITH THE MORE EXTREME ARTICLES. MORE PARTICULARLY, CONTROVERSY MAY PREVENT ANY AGREEMENT ON THE DRAFT ARTICLES DEALING WITH PEREMPTORY NORMS, ON TERMINATION AS THE CONSEQUENCE OF A BREACH AND ON FUNDAMENTAL CHANGE IN CIRCUMSTANCES. IF SOME FORM OF ADJUDICATION IS NOT GENERALLY ACCEPTABLE, IT IS QUITE LIKELY THAT A SINGLE CONVENTION, EVEN IF IT IS ACCEPTED BY THE VIENNA CONFERENCE, CANNOT OBTAIN THE APPROVAL OF THE U.S. SENATE AND BE RATIFIED BY THE U.S. SINCE THE UNITED STATES IS CANADA'S LEADING TREATY PARTNER, A DOMESTIC CONTROVERSY IN THE UNITED STATES OVER THE LAW OF TREATIES WOULD NOT BE TO CANADA'S BENEFIT.

#### 0.03 A QUESTION OF STYLE

IF NUMBERS OF PARAGRAPHS WITHIN ARTICLES WERE PLACED WITHIN PARENTHESES IN THE FINAL TEXT, THIS WOULD SIMPLIFY THE CITATION OF A PROVISION. THUS ARTICLE 2, PARAGRAPH 1, SUBPARAGRAPH (A) SHOULD BE ABLE TO BE CITED AS ARTICLE 2(1)(A) IN LESS FORMAL COMMUNICATIONS. *Ends*

MESSAGE

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SUB/SUJ LAW OF TREATIES - INTRODUCTORY INSTRUCTIONS

INTRODUCTION FOLLOWING IS TEXT OF INTRODUCTORY INSTRUCTIONS - BEGINS

IN ITS WORK DURING THE CONFERENCE THE CANADIAN DELEGATION SHOULD PAY PARTICULAR ATTENTION TO THREE ISSUES OF POLITICAL SIGNIFICANCE TO CANADA. THE FIRST OF THESE IS THE QUESTION OF COMPULSORY SETTLEMENT OF DISPUTES. PRELIMINARY MEETINGS IN LONDON AND PARIS AMONG THE OLD COMMONWEALTH-U.S.A. AND THE WESTERN EUROPEAN AND OTHER STATES GROUPS SERVED TO UNDERLINE THE IMPORTANCE WHICH THE MAJOR WESTERN POWERS ATTACH TO COMPULSORY ADJUDICATION OF DISPUTES ARISING OUT OF THE APPLICATION OF PART V OF THE DRAFT ARTICLES. IT IS A MAJOR OBJECTIVE OF THE WESTERN GROUP TO SECURE A SATISFACTORY DISPUTES ARTICLE. THE DRAFT ARTICLES, PARTICULARLY THOSE CONCERNING ENTRY INTO FORCE AND TERMINATION, CONTAIN A NUMBER OF PROVISIONS WHICH ARE SUSCEPTIBLE OF HIGHLY SUBJECTIVE INTERPRETATION, E.G. FUNDAMENTAL CHANGE OF CIRCUMSTANCES, NORMS OF JUS COGENS, COMPATIBILITY WITH THE OBJECT AND PURPOSE OF A TREATY, COERCION, MATERIAL BREACH AND ERROR CONCERNING A FACT WHICH FORMED AN ESSENTIAL BASIS OF A STATE'S CONSENT TO BE BOUND. IF EACH STATE PARTY TO A TREATY IS LEFT WITH AN UNFETTERED RIGHT TO INTERPRET FOR ITSELF THESE LARGELY SUBJECTIVE CRITERIA,

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THE SECURITY OF TREATY RELATIONS COULD BE SERIOUSLY IMPAIRED. CANADA AGREES THEREFORE THAT A SATISFACTORY DISPUTES PROVISION IS AN IMPORTANT ELEMENT IF THE PROPOSED CONVENTION IS TO CONTRIBUTE TO STABLE TREATY RELATIONS AND SECURE THE ADHERENCE OF THE WORLD'S MAJOR TREATY-MAKING STATES. IT IS PARTICULARLY IMPORTANT THAT THE CANADIAN POSITION ON THIS QUESTION BE CAREFULLY COORDINATED WITH OTHER MEMBERS OF THE WESTERN GROUP.

2. THE SECOND MAJOR POLITICAL ISSUE, THIS ONE OF PARTICULAR SIGNIFICANCE TO CANADA, IS ARTICLE 5 ON THE TREATY-MAKING POWERS OF COMPONENT MEMBERS OF FEDERAL STATES. IT MUST BE ASSUMED THAT THE CANADIAN POSITION ON THIS QUESTION WILL BE REPORTED BACK ~~TO QUEBEC~~ <sup>IN CANADA</sup> AND PERHAPS MADE PUBLIC <sup>IN CANADA</sup> IN THE CONTEXT OF THE PRESENT CONSTITUTIONAL CONTROVERSY ~~IN CANADA~~. THE INSTRUCTIONS ON ARTICLE 5 HAVE BEEN PREPARED WITH THIS POSSIBILITY IN MIND ~~AND HAVE BEEN APPROVED BY THE MINISTER~~. IN VIEW OF THE SENSITIVITY OF THIS ISSUE IN CANADA, IT IS PARTICULARLY IMPORTANT THAT THE DELEGATION OPERATE WITHIN ITS INSTRUCTIONS ON THIS POINT AND EXERCISE PARTICULAR CARE EVEN IN PRIVATE DISCUSSIONS WITH OTHER DELEGATIONS.

3. THE THIRD IMPORTANT POLITICAL ISSUE WHICH WILL ARISE AT THE CONFERENCE IS THE QUOTE ALL-STATES UNQUOTE QUESTION. AN EARLIER VERSION OF THE DRAFT ARTICLES CONTAINED ~~AN~~ ARTICLE 8 WHICH RAISED A PRESUMPTION THAT QUOTE EVERY STATE UNQUOTE WAS ENTITLED TO ACCEDE TO EVERY GENERAL MULTILATERAL CONVENTION. WESTERN REPRESENTATIVES ON THE I.L.C. WERE SUCCESSFUL IN HAVING THIS ARTICLE DELETED FROM THE FINAL DRAFT AND <sup>USSEA</sup> ~~THE CANADIAN REPRESENTATIVE, MR. MARCEL GADIEUX,~~ PLAYED AN IMPORTANT PART IN THESE EFFORTS. THE QUESTION IS EXPECTED TO BE RAISED AGAIN BY EASTERN EUROPEAN STATES AT THE CONFERENCE, PROBABLY IN THE DISCUSSION ON ARTICLE 12 DEALING WITH ACCESSION. THE CANADIAN DELEGATION <sup>not get out in front on this question but should</sup> SHOULD COORDINATE CLOSELY WITH OTHER MEMBERS OF THE W.E.O. GROUP IN DETERMINING THE TACTICS TO BE FOLLOWED IN OPPOSING THE REINSERTION INTO THE ARTICLES OF AN QUOTE ALL-STATES UNQUOTE FORMULA. ENDS.

**ACTION COPY**

SECOND COPY TO MR GOTLIEB

20-3-1-6

32/27

FM PRMNY MAR22/68 CONFID

TO EXTER 786 IMMED

WEO GROUP:ELECTIONS TO BUREAU OF UNGA XXIII

A MTG OF WEO GROUP TOOK PLACE FRI MAR22 PRIMARILY TO DISCUSS LAW  
OF TREATIES(OURTEL785).MTG ALSO EXAMINED QUESTION OF RESUMED UNGA  
XXII(OURTEL784).

2.ONLY OTHER ITEM OF BUSINESS WAS ANNOUNCEMENT THAT NETHERLANDS  
WHICH HAD EARLIER INDICATED THAT IT WOULD LIKE TO SERVE AS RAPPOREUR  
OF SIXTH CTTEE HAS NOW WITHDRAWN ITS CANDIDATURE.MEMBERS OF GROUP  
WERE ASKED TO INDICATE AS SOON AS POSSIBLE IF THEY ARE INTERESTED  
IN FILLING THAT POSITION.

UN Dissem  
& file  
26/3/68  
26/3/68

**ACTION COPY**

Jul 20-3-1-6

V

FM PRMNY MAR22/68 RESTR

TO EXTER 790 IMMED

INFO GENEV

TT VIENN DE PARIS COPEN DE HAGUE

REFOURTEL 744 MAR20

LAW OF TREATIES CONFERENCE: WESTERN CONSULTATIONS IN VIENN.

IN REFTL WE REPORTED 11:30AM TUES MAR26 AS TIME OF MTG FOR WESTERN  
CONSULTATIONS (AS GIVEN TO US BY BRITS). WE HAVE NOW RECEIVED A NOTE  
FROM AUSTRIAN MISSION INDICATING THAT MTG WILL TAKE PLACE AT 11:00AM.  
PRESUMABLY WERSHOF WILL WISH TO CLEAR UP THIS DISCREPANCY WITH  
DR LANG ON ARRIVAL VIENN.



DIARY  
DIV. DIARY  
FILE ✓  
TEL FILE

# MESSAGE

FM/DE EXTERNL OTT

DATE MAR 22 1968	FILE/DOSSIER 20-3-1-6	SECURITY SECURITE CONF
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TO/A VIENNA

NO L-275	PRECEDENCE PRIORITY
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INFO

REF OURTEL L-254 MAR 18/68

## SUB/SUJ LAW OF TREATIES - ARTICLE 1 - COMMENTARY

*Following is text of commentary on Article one - begins*

1.01 ALTHOUGH THE GUIDE TO DRAFT ARTICLES (U.N. DOC. A/C.6/376) REFERS TO A CANADIAN COMMENT ON THIS ARTICLE, THE RELEVANCE OF THE CANADIAN COMMENT IS ONLY MARGINAL. IN FACT THE CANADIAN REPLY OF 17 JANUARY 1950 CONSISTED ONLY OF COPIES OF EXTRACTS FROM THE CANADIAN ABRIDGMENT, OF A COPY OF THE PRIVY COUNCIL JUDGMENT IN THE LABOUR CONVENTIONS CASE, OF A COPY OF THE HOUSE OF COMMONS RESOLUTION OF 21 JUNE 1926, AND OF EXTRACTS FROM A 1928 STATEMENT IN THE HOUSE BY PRIME MINISTER MACKENZIE KING. THE 1926 RESOLUTION DISTINGUISHES HEADS OF STATE TREATIES FROM INTERGOVERNMENTAL AGREEMENTS.

1.02 ARTICLE 1 MUST BE CONSIDERED TOGETHER WITH ARTICLE 2, PARAGRAPH 1, SUBPARAGRAPH (2), AND PARAGRAPH 2 AND WITH ARTICLE 3.

1.03 THE MOST IMPORTANT EFFECT OF ARTICLE 1 IS THAT THE DRAFT ARTICLES ARE NOT TO APPLY TO TREATIES OF INTERNATIONAL ORGANIZATIONS. ARTICLE 3 SAVES THE LEGAL FORCE WHICH TREATIES OF INTERNATIONAL ORGANIZATIONS WOULD HAVE INDEPENDENTLY OF THE DRAFT ARTICLES BUT THIS HAS NO EFFECT ON THE EXCLUSION OF THE USE OF THE PROPOSED CONVENTION IN DEALING WITH TREATIES OF INTERNATIONAL ORGANIZATIONS.

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1.04 THE MAGNITUDE OF THIS EXCLUSION MAY BE JUDGED BY NOTING THAT, ACCORDING TO ROHN'S ANALYSIS OF VOLUMES 1 TO 453 OF THE UNITED NATIONS TREATY SERIES, "14 PER CENT OF ALL U.N.T.S. TREATIES SHOW AN INTERNATIONAL ORGANIZATION AS A SIGNATORY, THAT 23 PER CENT OF ALL TREATY-MAKING ENTITIES IN THE U.N.T.S. ARE INTERNATIONAL ORGANIZATIONS, AND THAT 38 PERCENT OF ALL U.N.T.S. TREATIES HAVE AT LEAST ONE REFERENCE TO AN INTERNATIONAL ORGANIZATION IN THE TREATY TEXT ITSELF." (ROHN, "CANADA IN THE UNITED NATIONS TREATY SERIES" (1966) 4 CAN. Y.B. OF I.L. 102 AT 118.) IN HIS EXAMINATION OF 7129 TREATIES, ROHN FOUND THAT AMONG THE TOP 20 TREATY-MAKING PARTIES THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT STOOD 6TH WITH 323 TREATIES, THE U.N. STOOD 19TH WITH 175 TREATIES AND WHO STOOD 20TH WITH 162 TREATIES (IBID., 128). GOTLIEB'S STATISTICAL SUMMARY RESPECTING CANADA'S TREATY PARTNERS, 1946-1965 SHOWS THAT OF 519 BILATERAL TREATIES, ONLY 9 WERE WITH INTERNATIONAL ORGANIZATIONS (GOTLIEB, "THE METHOD OF CANADIAN TREATY-MAKING" (1967), CAN. LEGAL STUDIES 181 AT 208). THOUGH IT IS LIKELY THAT INTERNATIONAL ORGANIZATIONS WERE PARTIES TO A HIGHER PERCENTAGE OF THE 236 MULTILATERAL TREATIES TO WHICH CANADA BECAME A PARTY DURING THE SAME PERIOD, NO STATISTICS FOR MULTILATERAL TREATIES HAVE BEEN PUBLISHED. HOWEVER, IT IS LIKELY THAT A SIGNIFICANT PERCENTAGE OF CANADIAN TREATIES WILL BE TREATIES TO WHICH AN INTERNATIONAL ORGANIZATION IS A PARTY.

1.05 AT ITS 481st MEETING (22 APRIL 1959), THE INTERNATIONAL LAW COMMISSION DECIDED TO DEAL FIRST WITH TREATIES AMONG STATES AND THEN TO EXAMINE TO WHAT EXTENT THE ARTICLES ARE APPLICABLE TO TREATIES CONCLUDED BETWEEN INTERNATIONAL ORGANIZATIONS AND BETWEEN THEM AND STATES. IN THE DRAFT PROVISIONALLY ADOPTED IN 1962, THE DEFINITION OF TREATIES REFERRED TO TREATIES "CONCLUDED BETWEEN TWO OR MORE STATES OR OTHER SUBJECTS OF INTERNATIONAL LAW". THE COMMENTS

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BY GOVERNMENTS IN THE SIXTH COMMITTEE INDICATED A DIVISION OF OPINION WHETHER TREATIES OF INTERNATIONAL ORGANIZATIONS SHOULD BE COVERED. CEYLON (850TH AND 908TH MEETINGS), JORDAN (842ND MEETING), YUGOSLAVIA (842ND MEETING), DAHONEY (912TH MEETING), KUWAIT (911TH MEETING), LIBERIA (912TH MEETING) AND SIERRE LEONE (911TH MEETING) AND PERHAPS GHANA (905TH MEETING) AND TANZANIA (912TH MEETING) ALL SEEMED TO WANT SOME PROVISIONS COVERING TREATIES BY SUBJECTS OF INTERNATIONAL LAW OTHER THAN STATES. HUNGARY (843RD MEETING), IRAQ (849TH MEETING), LEBANON (852ND MEETING), ROMANIA (848TH MEETING), BOLIVIA (909TH MEETING), CZECHOSLOVAKIA (906TH MEETING) AND HUNGARY (907TH MEETING) SUPPORTED THE EXCLUSION OF TREATIES OF INTERNATIONAL ORGANIZATIONS. PROBABLY, ONE SHOULD EXPECT A PROPOSAL TO EXTEND THE DRAFT ARTICLES TO INCLUDE INTERNATIONAL ORGANIZATIONS' TREATIES.

1.06 IT IS UNCERTAIN WHETHER ARTICLE 1 PRECLUDES THE APPLICATION OF THE DRAFT ARTICLES BETWEEN TWO STATES PARTIES TO A MULTILATERAL TREATY IF AN INTERNATIONAL ORGANIZATION IS ALSO A PARTY. IT WOULD BE INCONGRUOUS IF THE ARTICLES SHOULD AT ONE MOMENT BE APPLICABLE BETWEEN THE PARTIES TO A MULTILATERAL TREATY, BUT ON THE ACCESSION OF AN INTERNATIONAL ORGANIZATION TO THE TREATY, CEASE TO BE APPLICABLE BETWEEN THOSE ORIGINAL PARTIES.

1.07 DRAFT ARTICLE 1 MAY LEAD TO DISAGREEMENTS ABOUT WHAT CONSTITUTES A TREATY CONCLUDED BETWEEN STATES. THERE ARE MANY INTERNATIONAL COMMITMENTS MADE BETWEEN CANADIAN AGENCIES, GOVERNMENT DEPARTMENTS, MINISTERS OR OTHER OFFICIALS ON THE ONE HAND AND COMPARABLE FOREIGN AUTHORITIES. IS AN AGREEMENT WITH A STATE TRADING CORPORATION AN INTERNATIONAL AGREEMENT WITH THAT STATE? IS THE AGREEMENT OF DECEMBER 16, 1963 BETWEEN ATOMIC ENERGY OF CANADA LIMITED AND THE PRESIDENT OF INDIA RESPECTING AN EXCHANGE OF INFORMATION RESPECTING DEVELOPMENT OF HEAVY WATER MODERATED REACTOR SYSTEMS A TREATY TO WHICH THE DRAFT ARTICLES WILL APPLY? IS AN AGREEMENT SUCH AS

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THE LONG TERM WHEAT AGREEMENT OF APRIL 22, 1961 BETWEEN THE CANADIAN WHEAT BOARD AND CHINA NATIONAL CEREALS, OILS AND FOODSTUFFS IMPORT AND EXPORT CORPORATION? IS THE AGREED STATEMENT OF JULY 31, 1963 BETWEEN REPRESENTATIVES OF CANADA AND THE UNITED STATES RESPECTING THE U.S. INTEREST EQUALIZATION TAX? IS THE UNDERSTANDING BETWEEN JUSTICE MINISTER FULTON AND ATTORNEY GENERAL ROBERT KENNEDY RESPECTING CONSULTATION PRIOR TO ANTITRUST PROSECUTIONS? ARE THE AGREEMENTS BETWEEN THE F.B.I. AND THE R.C.M.P. CONCERNING RECIPROCAL ARRANGEMENTS FOR INVESTIGATIONS WITHIN EACH OTHER'S JURISDICTION? IS THE AGREED STATEMENT OF JULY 31, 1963 BETWEEN REPRESENTATIVES OF CANADA AND THE UNITED STATES RESPECTING THE U.S. INTEREST EQUALIZATION TAX?

1.08 THE INTERNATIONAL LAW COMMISSION, AFTER DISCUSSION, ACCEPTED THE VIEW THAT THE TERM "TREATIES" SHOULD BE USED GENERICALLY TO COVER A BROAD GROUP RATHER THAN SPECIFICALLY TO COVER A NARROW CLASS OF FORMAL AGREEMENTS. OF AGREEMENTS, THIS IS INDICATED BY THE GENERIC DEFINITION IN ARTICLE 2, PARAGRAPH 1, SUBPARAGRAPH (2). THUS THE TERM "TREATIES" IN ARTICLE 1 SHOULD BE INTERPRETED WIDELY AND THE CANADIAN DELEGATION SHOULD RESIST ANY ATTEMPT TO SUBSTITUTE A CUMBERSOME TERM SUCH AS "INTERNATIONAL AGREEMENTS".

1.09 THE RESTRICTIVE SCOPE OF ARTICLE 1 PREVENTS THE APPLICATION OF THE ARTICLES TO CONCORDATS OR TO OTHER AGREEMENTS TO WHICH THE HOLY SEE (WHICH IS NOT A STATE) IS A PARTY. ALTHOUGH THIS PROBLEM WAS DISCUSSED BY THE INTERNATIONAL LAW COMMISSION, AND ALTHOUGH ARTICLE 3, PARAGRAPH 1, SUBPARA (2) WAS ADDED, THIS HAS NOT SOLVED THE DIFFICULTY. TAKEN LITERALLY, ARTICLE 1 STILL MAY BE INTERPRETED AS MEANING THAT THE DRAFT ARTICLES CANNOT BE INVOKED UNLESS ALL PARTIES TO A TREATY ARE STATES. IF SO, A VERY SUBSTANTIAL NUMBER OF MULTILATERAL TREATIES TO WHICH THE HOLY SEE IS A PARTY ARE OUTSIDE THE ARTICLES. FOR EXAMPLE, THE HOLY SEE IS A PARTY TO POSTAL AGREEMENTS.

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1.10 A SIMILAR PROBLEM EXISTS RESPECTING CERTAIN SMALL PRINCIPALITIES. IS SAN MARINO, FOR EXAMPLE, A STATE WITHIN ARTICLE 1? IF NOT, ARE THE DRAFT ARTICLES INAPPLICABLE TO BILATERAL AGREEMENTS WITH SUCH PRINCIPALITIES (SUCH AS THE EXTRADITION TREATY OF 16 OCTOBER 1899 WITH SAN MARINO)? DOES AN ACCESSION BY SAN MARINO TO A MULTILATERAL TREATY TAKE THAT TREATY OUTSIDE THE DRAFT ARTICLES?

1.11 ARTICLE 1 PRESUMABLY PRECLUDES THE APPLICATION OF THE DRAFT ARTICLES TO AGREEMENTS MADE BY INSURGENTS. ARE THE DRAFT ARTICLES INAPPLICABLE TO AN AGREEMENT SUCH AS THE CEASE-FIRE AGREEMENT OF 1954 BETWEEN THE COMMANDER-IN-CHIEF OF THE PEOPLES' ARMY OF VIET-NAM AND THE FRENCH UNION FORCES IN INDOCHINA? *Ende*

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SUB/SUJ LAW OF TREATIES - ARTICLE 2 - COMMENTARY

*Following is text of commentary on Article two - begins*

2.01 SUBPARAGRAPH (A) MUST BE CONSIDERED TOGETHER WITH ARTICLE 1 AND

ARTICLE 3. MANY OF THE COMMENTS MADE RESPECTING ARTICLE 1 ARE RELEVANT HERE TOO.

2.02 PROBABLY THE MOST IMPORTANT PROBLEM IN DEFINING A QUOTE TREATY UNQUOTE IS DISTINGUISHING AN INTERNATIONAL AGREEMENT TO WHICH THE DRAFT ARTICLES SHOULD APPLY FROM AGREEMENTS AKIN TO PRIVATE LAW CONTRACTS. THE DEFINITION IN THE DRAFT ARTICLE ATTEMPTS TO DO THIS BY CONFINING THE TERM TO AGREEMENTS QUOTE GOVERNED BY INTERNATIONAL LAW UNQUOTE. HIS RESTRICTION MAY BE INADEQUATE AS A TEST. IT ASSUMES THAT THE AGREEMENTS IN THE NATURE OF CONTRACTS ARE MADE WITH REFERENCE TO A NATIONAL SYSTEM OF LAW RATHER THAN INTERNATIONAL LAW, WHICH NEED NOT BE THE CASE. INDEED, EVEN AN AGREEMENT MADE WITH REFERENCE TO A PARTICULAR NATIONAL SYSTEM OF LAW MAY BE QUOTE GOVERNED BY INTERNATIONAL LAW UNQUOTE IN THE SENSE THAT INTERNATIONAL LAW MAY FORBID THE MAKING BY STATES OF CERTAIN TYPES OF PRIVATE CONTRACTS, MAY GOVERN SUCH MATTERS AS THE RESPONSIBILITY OF ONE STATE TO ANOTHER UNDER A PRIVATE AGREEMENT, OR MAY DETERMINE WHICH SYSTEM OF NATIONAL LAW MAY ASSERT JURISDICTION OVER THE TRANSACTION. THUS,

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QUOTE GOVERNED BY INTERNATIONAL LAW UNQUOTE MAY BE AN UNSATISFACTORY TEST BECAUSE ALL RELATIONS BETWEEN STATES ARE IN A BROAD SENSE GOVERNED BY INTERNATIONAL LAW.

2.03 THE ALTERNATIVE FORM, QUOTE INTENDED TO BE GOVERNED BY INTERNATIONAL LAW UNQUOTE, SUFFERS FROM THE SAME DEFECTS. THIS SUGGESTION IS PROBABLY BASED ON A QUESTIONABLE ANALOGY BETWEEN THIS ISSUE AND THE PRIVATE LAW REQUIREMENT OF QUOTE INTENTION TO ENTER A CONTRACTUAL RELATIONSHIP UNQUOTE. A MORE ADEQUATE USE OF THIS ANALOGY WOULD BE TO DEFINE A QUOTE TREATY UNQUOTE AS AN AGREEMENT INTENDED TO BE GOVERNED BY TREATY LAW. ALTERNATELY, A QUOTE TREATY UNQUOTE AS AN AGREEMENT SHOULD BE DEFINED SO AS TO EXCLUDE AGREEMENTS MADE WITHOUT A REASONABLE EXPECTATION OF ENTERING TREATY RELATIONS. ALTHOUGH THIS TYPE OF DEFINITION MAY AT FIRST GLANCE APPEAR CIRCULAR, IN PRACTICE IT IS NOT. ONCE THERE IS AN EXISTING BODY OF ARTICLES STATING THE LAW OF TREATIES, IT IS QUITE CONCEIVABLE THAT THERE MAY BE AGREEMENTS SO INFORMAL THAT NEITHER PARTY SHOULD REASONABLY ANTICIPATE THAT THEY WOULD BE MADE SUBJECT TO THAT CORPUS OF TREATY LAW.

2.04 THE RESTRICTION OF THE DEFINITION OF QUOTE TREATY UNQUOTE TO AN AGREEMENT QUOTE IN WRITTEN FORM UNQUOTE IS NOT PRESENTLY OF GREAT SIGNIFICANCE, ALTHOUGH IT IS POSSIBLE THAT THE DEVELOPMENT OF NEW TECHNIQUES OF TRANSMITTING INFORMATION MAY MAKE VERBAL OR OTHER NON-WRITTEN FORMS OF AGREEMENT MORE COMMON AT SOME FUTURE DATE. AT PRESENT, MOST DISCUSSION SEEMS TO REVOLVE AROUND ONE INCIDENT - THE QUOTE IHLEN DECLARATION UNQUOTE. GOTLIEB STATES THAT NO EXAMPLES ARE KNOWN OF VERBAL AGREEMENTS IN CANADIAN PRACTICE: (GOTLIEB QUOTE THE METHOD OF CANADIAN TREATY-MAKING UNQUOTE (1967) 1 CAN. LEGAL STUDIES 181 AT 191).

2.05 SOME QUESTION MAY ARISE WHETHER UNILATERAL DECLARATIONS CAN BE QUOTE RELATED INSTRUMENTS UNQUOTE WITHIN THE DEFINITION OF QUOTE TREATY UNQUOTE. THE MOST OBVIOUS EXAMPLE AROUND WHICH SUCH A DISCUSSION MIGHT RESOLVE IS A DECLARATION MADE UNDER ARTICLE 36(2) OF THE STATUTE OF THE INTERNATIONAL COURT OF

- 3 -

JUSTICE. OPINION DIFFERS AS TO WHETHER SUCH A DECLARATION IS COMPARABLE TO AN ACCESSION OR WHETHER IT IS A UNILATERAL DECLARATION. OTHER EXAMPLES ARE THE U.S. DECLARATION CONCERNING THE 1954 GENEVA AGREEMENTS ON INDO-CHINA AND THE 16 NATION DECLARATION ON KOREA.

2.06 SUBPARAGRAPH (B) APPEARS SATISFACTORY AS DRAFTED.

2.07 SUBPARAGRAPH (C) IS ACCEPTABLE, ALTHOUGH THE FINAL PHRASE QUOTE OR FOR ACCOMPLISHING ANY OTHER ACT WITH RESPECT TO A TREATY UNQUOTE MAY BE TOO GENERAL. THE WORDING MIGHT BE IMPROVED BY SUBSTITUTING QUOTE OR FOR EXPRESSING THE DESIRE OF THE STATE TO TERMINATE, DENOUNCE OR WITHDRAW FROM A TREATY UNQUOTE. SINCE THE DEFINITION IS ONLY QUOTE FOR THE PURPOSES OF THE PRESENT ARTICLES UNQUOTE, IT SEEMS UNNECESSARY TO PROVIDE A GENERAL TERM TO COVER POSSIBLE USAGES OF QUOTE FULL POWERS UNQUOTE NOT CONSIDERED WITHIN THE ARTICLES.

2.08 ALTHOUGH SUBPARAGRAPH (D) STILL LEAVES GREAT SCOPE FOR ARGUMENT WHETHER A PARTICULAR DECLARATION IS OR IS NOT A RESERVATION, IT IS PROBABLY AS GOOD A DEFINITION AS CAN BE ACHIEVED.

2.09 THE DEFINITIONS IN SUBPARAGRAPHS (E), (F), (G) AND (H) APPEAR TO BE ACCEPTABLE.

2.10 THERE ARE INTERNATIONAL ORGANIZATIONS TO WHICH NOT ONLY GOVERNMENTS, BUT ALSO OTHER INTERNATIONAL ORGANIZATIONS AND INDIVIDUAL CORPORATIONS OR THE LIKE BELONG. ARE SUCH ORGANIZATIONS TOTALLY OUTSIDE THE DRAFT ARTICLES, OR WITHIN THE DRAFT ARTICLES VIS-A-VIS RELATIONS BETWEEN THE STATE MEMBERS?

2.11 SINCE MUNICIPAL SYSTEMS OF LAW AND INTERNATIONAL LAW ARE DISTINCT SYSTEMS, PARAGRAPH 2 SEEMS SUPERFLUOUS. THIS IS PARTICULARLY THE CASE WHERE, AS HERE, PARAGRAPH 1 DEFINES THE TERMS ONLY QUOTE FOR THE PURPOSES OF THE PRESENT ARTICLES UNQUOTE. *Ends*

MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER		SECURITY SECURITE
		MAR 22 1968	20-3-1-6		CONFID
			NO	PRECEDENCE	
TO/A VIENNA			L-276	PRIORITY	
INFO					

REF OURTEL L-254 MARCH 18/68

SUB/SUJ LAW OF TREATIES - ARTICLE 1 - INSTRUCTIONS

*Following is text of instructions on article one - begins*

1. THE U.S. PROPOSES TO SUBMIT AN AMENDMENT TO EXTEND THE DRAFT ARTICLES TO ALL SUBJECTS OF INTERNATIONAL LAW, NOT JUST STATES. THERE WAS LITTLE SUPPORT FOR THE SUBSTANCE OF THIS PROPOSAL AMONG THE W.E.O. GROUP, HOWEVER IT WAS RECOGNIZED THAT THE INTRODUCTION OF THE PROPOSAL AND POSSIBLY ITS REFERENCE TO A WORKING GROUP MIGHT OFFER CERTAIN TACTICAL ADVANTAGES SHOULD IT APPEAR DESIRABLE, AT A LATER STAGE, TO PROLONG THE WORK OF THE CONFERENCE. THE CANADIAN DELEGATION, WHILE IT SHOULD NOT SUPPORT THE SUBSTANCE OF THE PROPOSED AMENDMENT, SHOULD NOT OPPOSE ITS INTRODUCTION AND POSSIBLE REFERENCE TO A WORKING GROUP.
2. THE DELEGATION SHOULD PRESS FOR CLARIFICATION OF THE QUESTION WHETHER THE PROPOSED CONVENTION IS TO APPLY TO RELATIONS BETWEEN STATES PARTIES TO A MULTILATERAL CONVENTION TO WHICH AN INTERNATIONAL ORGANIZATION IS ALSO A PARTY, E.G. WILL IT APPLY TO THE RELATIONS BETWEEN CANADA AND JAPAN UNDER THE CANADA-JAPAN-IAEA AGREEMENT OF JUNE 20, 1966 ON NUCLEAR SAFEGUARDS. THERE WAS NO AGREEMENT AT LONDON OR PARIS ON WHETHER ARTICLES 1 AND 3(a) HAD THE EFFECT OF INCLUDING OR EXCLUDING SUCH RELATIONS. IT WOULD PROBABLY

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CONFID

- 2 -

BE PREFERABLE THAT THE CONVENTION APPLY TO STATES' RELATIONS INTER SE.  
HOWEVER, THE DELEGATION NEED NOT PRESS FOR A PARTICULAR SOLUTION TO THE  
AMBIGUITY BUT RATHER TO REMOVE THE AMBIGUITY BY AMENDING ARTICLE 1, AND  
PERHAPS 3(a) AS WELL. DEPENDING UPON THE INTERPRETATION AGREED UPON, ARTICLE  
1 MIGHT READ "THE PRESENT ARTICLES RELATE TO ALL TREATY RELATIONS BETWEEN  
STATES." OR "THE PRESENT ARTICLES RELATE TO TREATIES TO WHICH STATES ONLY  
ARE PARTIES." *ends*

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MESSAGE

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FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
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TO/A VIENNA

NO  
PRECEDENCE  
L-280  
PRIORITY

INFO

REF OURTEL L-254 MARCH 18/68

SUB/SUJ LAW OF TREATIES - ARTICLE 3 - INSTRUCTIONS

*Following is text of instructions on Article three - begins*

PROVIDED ARTICLE 1 IS REDRAFTED TO CLARIFY THE QUESTION WHETHER THE CONVENTION IS TO APPLY TO THE RELATIONS BETWEEN STATES PARTIES TO A TREATY TO WHICH AN INTERNATIONAL ORGANIZATION IS ALSO A PARTY, ARTICLE 3 (THOUGH PROBABLY UNNECESSARY) IS ACCEPTABLE AS DRAFTED. *ends*

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TO/A VIENNA

NO	PRECEDENCE
L-281	PRIORITY

INFO

REF OURTEL L-254 - 18 MARCH 1968

SUB/SUJ LAW OF TREATIES - ARTICLE 4 - COMMENTARY

*Following is text of commentary on article four - begins*

4.01 IN ONE IMPORTANT CASE, ARTICLE 4 MAY BE TOO NARROW. BECAUSE OF THE PECULIAR DERIVATION OF GATT, IT IS DOUBTFUL WHETHER EITHER THE GENERAL AGREEMENT ITSELF OR ANY PROTOCOL OR OTHER AGREEMENT MADE AT A ROUND OF NEGOTIATIONS OF THE CONTRACTING PARTIES CAN SATISFY THE TEST OF THIS ARTICLE. STRICTLY SPEAKING, FOR GATT, THERE IS NO INTERNATIONAL ORGANIZATION AND HENCE NEITHER ANY CONSTITUENT INSTRUMENT OF THE ORGANIZATION NOR ANY TREATIES ADOPTED WITHIN AN ORGANIZATION. YET THERE MAY WELL BE RULES ADOPTED AT A ROUND OF NEGOTIATIONS - PARTICULARLY CONCERNING RESERVATIONS, ACCESSIONS AND REMEDIES FOR BREACHES OF AN AGREEMENT - WHICH WILL BE INCONSISTENT WITH THE DRAFT ARTICLES.

4.02 IN ANOTHER RESPECT, ARTICLE 4 MAY BE TOO BROAD. AN EXAMINATION OF THE DISCUSSION WITHIN THE I.L.C. INDICATES THAT THE QUOTE RULES UNQUOTE OF AN ORGANIZATION WERE CONSIDERED AS MATTERS GOVERNING VOTING ARRANGEMENTS AND SIMILAR PROCEDURAL QUESTIONS. YET THE TERM QUOTE RULES UNQUOTE MAY BE SUFFICIENTLY BROAD TO ENABLE THIS ARTICLE TO BE USED TO EVADE ANY PROVISIONS OF THE DRAFT ARTICLES. UNLESS QUOTE INTERNATIONAL ORGANIZATION UNQUOTE IS DEFINED MORE PRECISELY THAN IN SUBPARAGRAPH (I) OF PARA 1 OF ARTICLE 2, ANY

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



- 2 -

GROUP OF STATES WHICH FORM AN QUOTE INTERGOVERNMENTAL ORGANIZATION UNQUOTE MAY, BY AGREEING UPON SUITABLE RULES, PROCEED TO MAKE TREATIES WITH PROVISIONS INCONSISTENT WITH THE REQUIREMENT OF THE DRAFT ARTICLES. THE LANGUAGE OF ARTICLE 4 WOULD PERMIT AN INTERNATIONAL ORGANIZATION TO ENACT RULES INCONSISTENT WITH ARTICLES 35 AND 36 RESPECTING THE AMENDMENT OF MULTILATERAL TREATIES, THUS BINDING STATES TO AN AMENDMENT PROCEDURE INCONSISTENT WITH THAT AGREED UPON IN THE CONSTITUENT INSTRUMENT OF THE INTERNATIONAL ORGANIZATION ITSELF. *ends*

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FILE ✓  
TEL FILE ✓

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NO  
L-279  
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PRIORITY

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REF OURTEL L-254 MARCH 18/68

SUB/SUJ LAW OF TREATIES - ARTICLE 3 - COMMENTARY

*Following is text of commentary on Article three - begins*

3.01 THIS ARTICLE IS INTENDED TO PREVENT TWO ARGUMENTS BASED ON EXPRESSIO  
UNIUS OR A CONTRARIO REASONING. IT IS INTENDED TO PRESERVE THE DOCTRINE  
THAT INTERNATIONAL ORGANIZATIONS HAVE TREATY-MAKING POWER, AND TO PRESERVE  
THE LEGAL FORCE OF ORAL OR OTHER UNWRITTEN AGREEMENTS. SINCE ARTICLE 1  
CONFINES THE SCOPE OF THE PRESENT ARTICLES TO TREATIES BETWEEN STATES AND  
SINCE THE DEFINITION OF "TREATY" IN ARTICLE 2 IS ONLY "FOR THE PURPOSE OF  
THE PRESENT ARTICLES", THERE IS PROBABLY NO NEED FOR ARTICLE 3. IT SHOULD  
BE POINTED OUT THAT THERE ARE OTHER OBLIGATIONS TO WHICH THE PRESENT  
ARTICLES DO NOT RELATE BESIDES THE TWO LISTED IN PARAGRAPHS (a) AND (b).  
FOR EXAMPLE, THE PRESENT ARTICLES PRESUMABLY WOULD NOT RELATE TO A  
CONCESSIONARY AGREEMENT BETWEEN A CORPORATION AND TWO STATES. IT IS ASSUMED,  
HOWEVER, THAT THE FACT THAT THE PRESENT ARTICLES DO NOT RELATE TO ANY TOPIC  
BY DEFINITION PREVENTS THE ARTICLES FROM AFFECTING ANY LEGAL QUESTION  
RESPECTING THAT TOPIC. *ends*

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TO/A VIENNA				NO L-278	
				PRIORITY	
INFO					

REF COURTEL L-254 - 18 MARCH 1968

SUB/SUJ LAW OF TREATIES - ARTICLE 2 - INSTRUCTIONS

*Following is text of instructions on Article 2 - begins*

THE DEFINITION OF QUOTE TREATY UNQUOTE IN ARTICLE 2(1)(A) HAS BEEN THE SUBJECT OF CONSIDERABLE DISCUSSION WITHIN THE I.L.C., PARTICULARLY IN RESPECT OF THE ELEMENT OF INTENTION. SHOULD DISCUSSION ON THIS POINT ARISE AT THE CONFERENCE, THE DELEGATION MAY INDICATE THAT ARTICLE 2(1)(A) CLEARLY CONTEMPLATES THE EXISTENCE OF AGREEMENTS BETWEEN STATES WHICH ARE NOT GOVERNED BY INTERNATIONAL LAW AND IT WOULD BE DESIRABLE FOR THE ARTICLE TO LAY DOWN A CRITERION FOR DETERMINING INTO WHICH CATEGORY (I.E. GOVERNED OR NOT GOVERNED BY INTERNATIONAL LAW) A PARTICULAR AGREEMENT FALLS.

THE DELEGATION MAY RAISE, IN DISCUSSION, THE CRITERION REFERRED TO IN PARA 2.03 OF THE CANADIAN COMMENTARY. THE DELEGATION NEED NOT PRESS FOR A PARTICULAR AMENDMENT, HOWEVER, AND THE WHOLE OF ARTICLE 2 IS ACCEPTABLE AS DRAFTED. *ends*

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2-5406

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

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Feb 20-3-1-6

ACTION COPY

*M. B. [unclear]  
[unclear]*

FM PRMNY MAR22/68 RESTR

TO EXTER 785 PRIORITY

INFO GENEV

20-3-1-6  
ms 1 17

L

TT COPEN DE HAGUE VIENN DE PARIS

LAW OF TREATIES CONFERENCE: BUREAU: WESTERN CONSULTATIONS

A MTG OF WEO GROUP WAS CALLED FRI MAR22 BY THIS MONTHS CHAIRMAN (PARDO OF MALTA) PRIMARILY TO DISCUSS MATTER OF FLOATING VICEPRESIDENCY OF LAW OF TREATIES CONFERENCE BUREAU.

2. CHAIRMAN ANNOUNCED THAT FOLLOWING LAST WEO MTG ON MAR11 HE HAD WRITTEN TO LATINAMERICAN GROUP CHAIRMAN TO ASK WHETHER THAT GROUP WOULD AGREE TO FLOATING SEAT GOING TO A WEO COUNTRY FOR FIRST SESSION OF CONFERENCE. HE HAD JUST RECEIVED A REPLY INDICATING LATIN AMERICAN AGREEMENT. HE ANNOUNCED FURTHER THAT FOLLOWING CONSULTATIONS AMONG AUSTRIA FINLAND AND SPAIN (THREE WEO CANDIDATES FOR THREE VICEPRESIDENCIES AVAILABLE ONE OF WHICH IS FLOATING ONE) IT HAD BEEN AGREED THAT A FINAL DECISION ON WHICH OF CANDIDATES SHOULD GET FLOATING SEAT WOULD BE DEFERRED UNTIL WESTERN GROUP MTG SCHEDULED TO TAKE PLACE TUES MORN MAR26 IN VIENN. IN MEANTIME AS CHAIRMAN OF GROUP HE WOULD MERELY INFORM OTHER GROUPS THAT ALL THREE CANDIDATURES HAD A GROUP ENDORSEMENT.

3. IN ENSUING DISCUSSIONS SPAIN POINTED OUT THAT ALTHOUGH IT HAD WITHDRAWN ITS CANDIDATURE FOR SEAT ON DRAFTING CTTEE IT WOULD RENEW IT SHOULD DRAFTING GROUP LATER BE ENLARGED. AUSTRALIA POINTED OUT THAT IT WAS INTERESTED IN SECURING A SEAT ON WORKING GROUP WHICH IT UNDERSTOOD WOULD BE ESTABLISHED TO DISCUSS PART V OF DRAFT LAW OF TREATIES. APPARENTLY AUSTRIA WOULD ALSO BE INTERESTED IN SERVING ON THIS BODY.

*July 20-3-1-6*

**ACTION COPY**

SECOND COPY TO MR. GOTTLOB

20-3-1-6  
205 | 12

*The Secretary  
The Secretary  
I guess need  
better discuss this in  
the light of our  
conference with the  
Danish Government*

FM PRMNY MAR22/68 CONFD

TO EXTER 796

(BEESLEY FROM ROBERTSON)

INFO GENEV

TT COPEN DE HAGUE VIENN(WERSHOF)DE PARIS

VIENN CONFERENCE ON LAW OF TREATIES:PROPOSED USA AMENDMENTS TO  
DRAFT ARTICLES

I HAVE FINALLY BEEN ABLE TO STUDY PROPOSED USA AMENDMENTS TO  
DRAFT ARTICLES ON LAW OF TREATIES AS SET OUT IN USA EMB OTTS  
NOTE 193 OF MAR14.ALTHOUGH I CONSIDER MANY OF THEM TO BE CONSIDER-  
ABLE IMPROVEMENTS OVER PRESENT TEXTS(I SHALL NOT/NOT COMMENT ON  
THEM IN DETAIL SINCE CDN POSITION MUST ALREADY HAVE BEEN ESTABLISH-  
ED.

2.I WOULD HOWEVER LIKE TO REFER BRIEFLY TO PROPOSED AMENDMENT TO  
ARTICLE ONE AND TO USA WISH TO EXTEND APPLICABILITY OF DRAFT  
ARTICLES TO COVER AGREEMENTS TO WHICH QUOTE OTHER SUBJS OF  
INTERNATL LAW UNQUOTE ARE PARTIES.AS INDICATED IN USA COMMENTS  
THIS PROPOSAL WOULD REQUIRE AN EXTENSIVE REWRITING OF MANY  
ARTICLES OF DRAFT AND I AM NOT/NOT SURE THAT SUCH A MOVE WOULD  
PROVE GENERALLY ACCEPTABLE.IN MY OPINION CHIEF DIFFICULTY WITH USA  
PROPOSAL LIES IN FACT THAT ALTHOUGH INTERNATL ORGINIZATIONS  
SUCH AS IAEA ARE INDEED QUOTE OTHER SUBJS OF INTERNATL LAW  
UNQUOTE THEY DO NOT/NOT POSSESS SAME SORT OF CAPACITY AS DO STATES  
AND ARE INSTEAD RESTR IN THEIR FREEDOM OF ACTION BY NATURE OF  
PARTICULAR CONSTITUENT INTERNATL AGREEMENTS WHICH HAVE CREATED

...2

PAGE TWO 796 CONF D

THEM. THUS THERE ARE FUNDAMENTAL DISTINCTIONS BETWEEN THEIR ABILITY TO ACT IN INTERNATL SPHERE AND ABILITY OF STATES SO TO DO. THIS IN TURN EFFECTS BOTH EXTENT TO WHICH THEY CAN ASSUME AND CARRY OUT THEIR INTERNATL OBLIGATIONS AND NATURE OF THEIR RESPONSIBILITY FOR FAILING TO DO SO. THEREFORE DRAWING UP OF A SEPARATE AND SUBSEQUENT TREATY TO DEAL WITH THEM MIGHT BE BETTER IDEA.

3. NEVERTHELESS IT DOES REMAIN FACT THAT IN THEIR PRESENT FORM ARTICLES WOULD NOT/NOT SEEM TO HAVE APPLICABILITY TO TREATIES SUCH AS THOSE REFERRED TO IN PARA ONE OF USA RATIONALE FOR PROPOSED AMENDMENT TO ARTICLE ONE (EG ESPECIALLY TRILATERAL SAFEGUARDS AGREEMENTS TO WHICH IAEA IS ALSO A PARTY). ONCE LAW OF TREATIES COMES INTO EFFECT A STATE PARTY TO SUCH TRILATERAL AGREEMENT MIGHT THEREFORE CONCEIVABLY TRY TO WRIGGLE OUT OF ITS OBLIGATIONS BY ALLUDING TO THIS FACT. IF DRAFT ARTICLES COULD THEREFORE BE AMENDED IN COMPROMISE FASHION SO AS TO MAKE THAT POSSIBILITY MORE DIFFICULT (WITHOUT HOWEVER GOING AS FAR AS USA PROPOSE) THIS WOULD SEEM DESIRABLE.

4. I WONDER WHETHER A DIFFERENT AMENDMENT TO DRAFT ARTICLE ONE MIGHT NOT/NOT MEET THIS REQUIREMENT. THIS MIGHT BE DONE BY TAKING PROPOSED USA WORDING UP TO QUOTE TWO OR MORE STATES UNQUOTE; CONCLUDING SENTENCE AT THAT POINT; AND ADDING NEW SENTENCE (OR SUBARTICLE (2)) ALONG FOLLOWING LINES: QUOTE WHERE IN ADDITION TO TWO OR MORE STATES ANOTHER SUBJ OF INTERNATL LAW IS ALSO PARTY TO A TREATY THAT FACT SHALL NOT/NOT EFFECT APPLICABILITY OF THESE ARTICLES



PAGE THREE 496 CONFD

AS BETWEEN STATES CONCERNED UNQUOTE. THIS OR SIMILAR WORDING WOULD  
NOT/NOT HAVE EFFECT OF EXTENDING ALL ARTICLES TO INTERNATL  
ORGANIZATIONS PARTIES TO TREATIES BUT WOULD HOPEFULLY PRECLUDE  
STATES PARTIES TO SUCH TREATIES FROM SEEKING TO AVOID THEIR OWN  
RESPONSIBILITIES.

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FM PRMNY MAR22/68

TO EXTER 778

INFO GENEV VIENN COPEN

LAW OF TREATIES CONFERENCE: BUREAU

NOTES( TO WHICH WE HAVE REPLIED IN USUAL FASHION) HAVE BEEN RECEIVED  
FROM PERMIS OF VENEZUELA AND HUNGARY SEEKING CDN SUPPORT FOR CAND-  
IDATURES FOR VICEPRESIDENCIES OF CONFERENCE.

NNNN

VVVVV

*Feb 20-3-1-69*  
**ACTION COPY**  
*Mr. Stanley*  
*Mr. Stanford*  
*[Signature]*  
*[Signature]*

20-3-1-6  
CS | 13

Parl. Sec.  
SSEA  
SSEA  
P. & L. Div.

Jul 20-3-1-6

not sent

March 22, 1968.

20-3-1-6
115

MEMORANDUM FOR THE PRIME MINISTER

Treaty Making Capacity of the Provinces:  
U.N. Conference on the Law of Treaties

The forthcoming (March 26 to May 25) first session of the U.N. Conference on the Law of Treaties will have as its basic document draft articles prepared by the International Law Commission. Article 5 of the ILC draft provides:

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

2. Advocates of a treaty making power for Quebec have already seized on this draft article and the ILC commentary on it to support their thesis. It must be assumed that the Canadian position on this Article at the Conference will be reported back to interested persons in Quebec and perhaps publicized in the context of the present constitutional discussion in Canada.

3. Paragraph 2 of Article 5 is open to several objections, the most serious being that it refers to political subdivisions of a federal State as themselves States and fails to take account of the fact that a power conferred by the constitution must be recognized by other States before it has validity on the international plane. (Gabon could conceivably try to justify its recent actions on the basis of the article).

4. A number of States, including the U.S., propose to urge the deletion of this Article at the Conference. Its deletion would be of advantage to Canada in that the Article, if accepted, may provide the appearance of legal justification for those who claim that the provinces may conclude treaties. On the other hand there would be presentational disadvantages if Canada were to appear to be initiating or leading opposition to the Article, particularly if such opposition were to fail.

5. If you agree, the Canadian delegation to this conference will be instructed:

- 2 -

- a) to support (but not to initiate) any move to delete the Article;
- b) if the Article cannot be deleted,
  - (i) to support amendments to paragraph 2 so that political subdivisions are not termed "States"; (the delegation should work for such an amendment but avoid any formal initiatives)
  - (ii) to support amendments intended to take account of the need for recognition by States before treaty-power can be said to exist;
  - (iii) to affirm in its statement at the Conference that the constitution is an internal law of the federal State and can be interpreted only by the competent internal judicial body. It cannot be interpreted by any international tribunal or by outside States.

M.C.

- 2 -

- a) to support (but not to initiate) any move to delete the Article;
- b) if the Article cannot be deleted,
  - (i) <sup>to support</sup> to ~~press for~~ an amendment to paragraph 2 so that political subdivisions are not termed "States"; <sup>(the delegation should work for such an amendment but avoid any formal initiatives)</sup>
  - (ii) <sup>support</sup> to ~~press for~~ amendments intended to take account of the need for recognition by States <sup>before</sup> ~~that~~ <sup>total</sup> power can be said to exist;
  - (iii) to affirm in its statement at the Conference that the constitution is an internal law of the federal State and can be interpreted only by the competent internal judicial body. It cannot be interpreted by any international tribunal or by outside States.

M.C.

O/SEEA  
O/USSEA  
Parl. Sect.  
P & L Div.  
Diary  
Div. Diary  
File

RETURN TO LEGAL DIV. DCO

*Phoned Venturi 15/3  
SSER hasn't looked at the  
Diary will try to get I before him early next week*

CONFIDENTIAL

February 29, 1968.

MEMORANDUM FOR THE MINISTER

U.N. Conference on the Law of Treaties  
Instructions for the Canadian Delegation

The forthcoming (March 26 to May 25) first session of the U.N. Conference on the Law of Treaties will have as its basic document the International Law Commission draft articles on the law of treaties. While the subject-matter of the draft is essentially legal in scope and content the articles raise two questions of considerable political significance, on which it will be necessary to have your guidance in the preparation of instructions for the Canadian delegation.

Treaty-making powers of the members of a Federal State

Article 3 of the I.L.C. draft reads:

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

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Advocates of treaty-making power on the part of the Province of Quebec have already seized upon this draft article and the I.L.C. commentary on it to support their thesis. It must be assumed that the Canadian position on this article at the Conference will be reported back to interested persons in Quebec and perhaps given some publicity in the context of the present constitutional discussion in Canada. The position of the Canadian delegation must therefore be prepared with this possibility in mind.

From an academic viewpoint there are, as you will recognize, a number of objections to the present text. First, it uses the word "State" in two different senses and the second paragraph should



- 2 -

therefore properly begin, "Component units of a federal state may possess...". Second, it fails to take account of the element of recognition, and paragraph 2 might therefore be amended to read "if, and to the extent that, such capacity is admitted by the federal constitution and recognised by other States." The draft text also fails to deal with the question of state responsibility, i.e. whether the component unit, when entering into a treaty, engages its own responsibility only or that of the federal State. However, the draft articles expressly exclude certain aspects of treaty law, including questions of state responsibility, which will be the subject for separate I.L.C. study. It would not be appropriate, therefore to seek to amend the article to cover state responsibility.

Subject to the proposed drafting changes, the article may be of some value to Canada to the extent that it asserts the primacy of the federal constitution in this area. This is on the assumption, of course, that interpretation of the constitution is a matter internal to the federal state and is not within the jurisdiction of the other treaty party in question.

Certain states, including the U.S. and Australia, have already indicated that they would like to see Article 3 deleted from the draft. Should this article be formulated in a manner which Canada finds undesirable, therefore, it may not be necessary for Canada to lead opposition to the Article, but merely to support already existing opposition.

If you agree, therefore, the following instructions might be given to the Canadian delegation with respect to this Article:

1. to seek amendments to the article along the lines described above;
2. in discussion of the article, to assert the position that interpretation of the constitution is a matter to be determined solely by the federal state since any other approach would be contrary to the principles of sovereignty of state and of non-intervention;
3. to support the Article provided:
  - (a) it is amended at least to the extent of not describing a member of a federal State as itself a State; and
  - (b) the Canadian view of jurisdiction over interpretation of the constitution is generally accepted in discussion;
4. if these two conditions are not met, to support any proposal within the conference to delete the article.

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### Compulsory Adjudication of Disputes

There are a number of articles embodying relatively new and inadequately defined concepts which contain highly subjective criteria for the determination by states of the validity of treaties. These concepts could detract from, rather than add to, the stability of treaties in the absence of some form of third party procedure for interpreting and applying them. There are indeed differences of view even among western lawyers over whether the substantive articles accurately formulate the law as it is or as it should be, but preliminary discussions among the old Commonwealth, the U.S.A. and western European governments have revealed a unanimity of view that, notwithstanding possible objections from eastern European and some Afro-Asian countries, the western governments should insist upon a provision for compulsory independent settlement of disputes arising over the application of Part V as an essential condition of western support for any eventual international convention on the law of treaties. The United States, Britain and France, as major treaty-making powers, all attach particular importance to the necessity for compulsory arbitration and they would doubtless be quite unhappy were Canada to adopt a contrary position.

If you agree, therefore, the Canadian delegation will be instructed to support the general western effort to secure a provision for the compulsory independent adjudication of disputes relating to the application of the articles dealing with invalidity, termination and suspension.

You may wish to discuss these questions, particularly Article 3, with one or more of your Cabinet colleagues, though there would appear to be no need to raise the matter formally in Cabinet.

M. CHADBOURNE

H. C.

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O.C. External Ottawa



*W*  
*HWR, a file*  
*R*

With the compliments  
of the  
Permanent Representative of Malta  
to the  
United Nations

Received

APR 3 1968

In Legal Division  
Department of External Affairs

*Copy of letter sent  
to Chairmen of  
regional groups*

✓

001925





MAR 27 9 10 AM '68

UN POL 1/1/03

PERMANENT MISSION OF MALTA  
TO THE UNITED NATIONS

22 March 1968

MISSION OF CANADA				
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Excellency,

SIRS

I refer to our telephone conversation of today's date and I have the honour to confirm to you in your capacity as Chairman of the that the Western European and Other States Group has unanimously endorsed the following candidatures for the Conference on the Law of Treaties which will open in Vienna on 26 March 1968.

President - Italy  
Vice-Presidents - Austria, Finland, Spain

In this connexion I have the honour to confirm that an understanding has been reached between the Latin American Group and the Western European and Other States Group by which it has been agreed that the Western European and Other States Group will hold the rotating seat of vice-president in 1968 and the Latin American Group will hold that seat in 1969. Before the official opening of the Conference the Western European and Other States Group will consult as to which of its three candidates for vice-president will receive the group's support for the rotating seat.

I have also the honour to inform you that the Government of Austria has withdrawn its candidature for membership of the Drafting Committee of the Conference on the Law of Treaties on the understanding that it will receive the support of the Western European and Other States Group for a seat on any working group that may be established by the Conference. The Government of Spain has also withdrawn its candidature for membership of the Drafting Committee unless a decision is taken by the Conference that membership of this Committee should be enlarged. Consequently the candidatures of Sweden and the Netherlands for membership in the Drafting committee have been unanimously endorsed by the Western European and Other States Group.

Finally I have the honour to inform you that the Government of Australia has expressed its desire for membership of any working group that may be created by the Conference on the Law of Treaties to examine Part 5 of the Draft prepared by the International Law Commission.

The Group of Western European and Other States expresses the hope that the Group will find it possible to lend its support to these candidatures.

Please accept, Excellency, the assurances of my highest consideration.

TO: MR STANFORD
FROM REGISTRY
APR 2 1968
FILE CHARGED OUT
TO: FINANCE DIV

Sd.A. Pardo  
Permanent Representative of Malta  
Chairman of the Group of Western  
European and Other States

c.c. External Ottawa  
Vienna

Ref: PRMNY tel. no. 778 of Mar.22/68

20-3-1-6

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Feb 20-3-1-6 J

Mr. Stanley  
Stanford

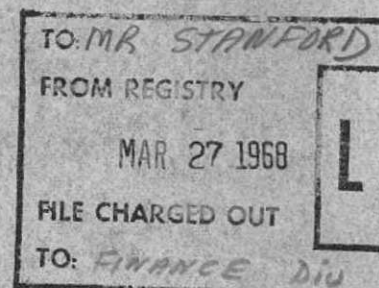
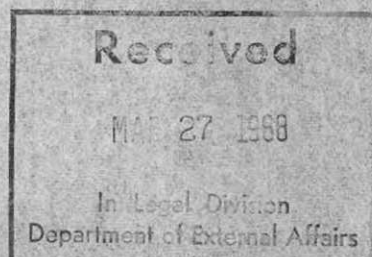
The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Delegation of Venezuela to the United Nations and has the honour to refer to Note No. 00515 of March 18, 1968, informing that the Government of Venezuela has decided to present its candidature to one of the Vice-Presidencies allocated to the Latin American States in the United Nations Conference on the Law of Treaties, which will be convened in Vienna, during the present month.

This information has been forwarded to the appropriate authorities in the Canadian Government where it will be given careful consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Delegation of Venezuela the assurances of its highest consideration.

[R. B.]

New York, March 22, 1968.



REPUBLICA DE VENEZUELA  
DELEGACION A LAS NACIONES UNIDAS

MAR 21 11 34 AM '68

MISSION OF CANADA				
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N° 00515

The Permanent Delegation of Venezuela to the United Nations presents its compliments to the Permanent Missions to the Organization and has the honour to inform that the Government of Venezuela has decided to present its candidature to one of the Vice-Presidencies allocated to the Latin American States in the United Nations Conference on the Law of Treaties, which will be convened in Vienna, during the present month.

The Permanent Delegation of Venezuela earnestly hopes that the Governments of the Permanent Missions to the United Nations will view favourably the interest of the Venezuelan Government to obtain the above mentioned candidature.

The Permanent Delegation of Venezuela avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

New York, March 18th, 1968





c.c. External Ottawa  
Vienna

Ref: PRMNY tel. no. 778 of March 22, 1968

20-3-1-6	
32	Mr. Stanley Mr. Stanford

*file 20-3-1-6*

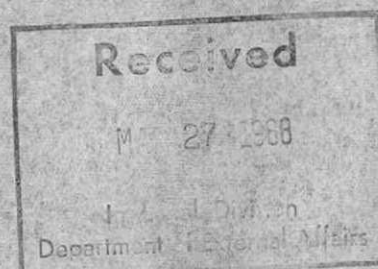
The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Mission of the Hungarian People's Republic to the United Nations and has the honour to refer to Note No. 175 of March 20, 1968, informing that the Government of Hungary has decided to present the candidature of Hungary for election to the post of Vice-President of the United Nations Conference on the Law of Treaties which will be convened in Vienna on March 26, 1968.

This information has been forwarded to the appropriate authorities in the Canadian Government where it will be given careful consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Mission of the Hungarian People's Republic the assurances of its highest consideration.

New York, March 22, 1968.

P. B.



TO: MR STANFORD
FROM REGISTRY
MAR 27 1968
FILE CHARGED OUT
TO: FINANCE DIV

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MAR 21 11 34 AM '68

MISSION OF CANADA				
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PERMANENT MISSION OF THE HUNGARIAN  
PEOPLE'S REPUBLIC TO THE UNITED NATIONS  
10 East 75th Street  
New York 21, N.Y.

No. 175

The Permanent Mission of the Hungarian People's Republic to the United Nations presents its compliments to the Permanent Mission of

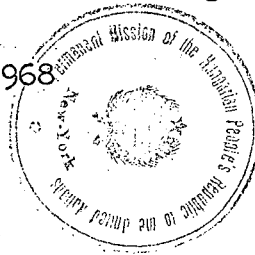
Canada to the United Nations and has the honour to inform that the Government of Hungary has decided to present the candidature of Hungary for election to the post of Vice-President of the UN Conference on the Law of Treaties which will be convened in Vienna on 26 March 1968.

The Permanent Mission of Hungary would greatly appreciate the support of the Government of Canada.

The Permanent Mission of the Hungarian People's Republic to the United Nations avails itself of this opportunity to renew to the Permanent Mission of

Canada to the United Nations the assurances of its highest consideration.

New York, March 20, 1968



Permanent Mission of Canada  
to the United Nations  
New York

Feb 20-3-1-67

**ACTION COPY**

20-3-1-67
751 13

*Mr. Stanford*

FM COPEN MAR22/68 CONFD

TO TT EXTER 139 DE HAGUE

INFO TT PRMNY GENEV LDN WSHDC DE HAGUE VIENN DE PARIS

REF PRMNY TEL 708 MAR15

UN CONFERENCE ON LAW OF TREATIES-ALL STATES PROBLEM

I DISCUSSED QUESTION WITH OFFICIALS OF MFA INCLUDING DEL TO  
CONFERENCE.OFFICIALS HAVE RECOMMENDED TO MINISTER THAT DANISH  
POSITION ON SOUTHAFRICA(OR PORTUGAL)AND EASTGERMANY BE LIKE  
OURS AND ASSUME HE WILL AGREE.THEY WILL VOTE AGAINST EXCLUSION  
OF SOUTHAFRICA(OR PORTUGAL)AND AGAINST SEATING EASTGERMANY.THEY  
DO NOT/NOT THINK MANY AFRICAN STATES WILL SUPPORT SEATING OF  
EASTGERMANY IN VIEW OF FORMERS RELATIONS WITH WESTGERMANY.

2.ON CHINA THE WELL-KNOWN POSITION OF DENMARK IN ALL UN  
ORGANIZATIONS AND CONFERENCES IS THAT THEY WOULD VOTE FOR  
EXCLUSION OF FORMOSA DEL FROM CHINA SEAT AND OR SEATING OF  
(OR INVITING PRESENCE OF)PEKING DEL IN THAT SEAT.HOWEVER THEY  
WILL NOT/NOT STIR UP THIS ISSUE AND PERHAPS IT WILL NOT/NOT  
ARISE IN A FORM REQUIRING A VOTE.THEY DO NOT/NOT ACCEPT ARGUMENT  
THAT ISSUE SHOULD BE SETTLED FIRST IN UNGA WHICH IS THE PARENT  
OF THE CONFERENCE.OFFICIAL SAID DANES WOULD VOTE AS INDICATED  
ABOVE WHENEVER MATTER COMES TO A VOTE IN A UN SUBSIDIARY BODY  
OR CONFERENCE

WERSHOF . . . .

# MESSAGE

FM/DE EXTERNAL OTTAWA

TO/A COPENHAGEN

INFO PERMISNY - VIENNA - GENEVA

DATE March 21 1968	FILE/DOSSIER 20-3-1-6 32	SECURITY SECURITE CONFIDENTIAL
NO L-269		PRECEDENCE PRIORITY
		PRIORITY

## REF

SUB/SUJ UN CONFERENCE ON LAW OF TREATIES - THE ALL STATES QUESTION.

FIRST SECRETARY GERMAN EMBASSY CALLED TODAY TO DELIVER <sup>AIDE</sup> MEMOIRS REQUESTING CANADIAN SUPPORT FOR EXCLUSION OF QUOTE ALL STATES UNQUOTE ARTICLE FROM LAW OF TREATIES CONVENTION. DURING DISCUSSION WE REMINDED HIM OF IMPORTANT ROLE PLAYED BY <sup>USSEA</sup> ~~CANADA~~ IN DELETION OF QUOTE ALL STATES UNQUOTE ARTICLE FROM FINAL ILC DRAFT AND ASSURED HIM THAT, WHILE CANADA WOULD NOT EXPECT TO TAKE AS MUCH <sup>USSEA</sup> ~~OF AN~~ INITIATIVE ON THIS MATTER AT FORTHCOMING CONFERENCE AS ~~CANADA~~ HAD TAKEN IN ILC, CANADA WOULD NEVERTHELESS SUPPORT GENERAL WESTERN OPPOSITION TO QUOTE ALL STATES UNQUOTE FORMULA.

2. FOLLOWING FOR PERMISNY. GRATEFUL FOR ANY INDICATION WHETHER EASTERN EUROPEANS PROPOSE TO <sup>RAISE</sup> ~~REIN~~, AT RESUMED SESSION OF UNGA, <sup>QUESTION OF</sup> ~~THEIR EFFORTS TO~~ ~~OPPOSE~~ EAST GERMAN PARTICIPATION IN FORTHCOMING LAW OF TREATIES CONFERENCE.

DISTRIBUTION  
LOCAL/LOCALE

U.N. Div. - European Div.

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DIVISION

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J. S. STANFORD/242

Legal

2-5406

SIG

J. A. REESLEY  
J. A. REESLEY

Feb 20-3-1-6

Mr. Stanford

ACTION COPY

20-3-1-6  
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FM PRMNY MAR20/68 RESTR

TO EXTER 744 PRIORITY

INFO GENEV

TT VIENN DE PARIS COPEN DE HAGUE

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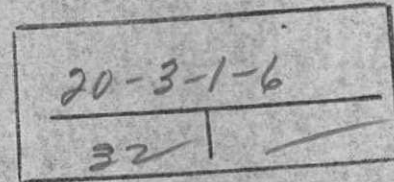
LAW OF TREATIES CONFERENCE:WESTERN CONSULTATIONS

LOCAL BRITS INFORM US VALLAT HAS WRITTEN TO VEROSTA PROPOSING  
WESTERN CONSULTATIONS AT 1130AM TUE MAR26.MTG WILL PROBABLY TAKE  
PLACE AT KAPELLENSAAL AT WALLNERSTRASSE 6A(FIRST FLOOR).IF WESTERN  
DELS TO CONFERENCE WISH TO MAKE ENQUIRY ABOUT MTG AFTER ARRIVAL IN  
VIENN THEY SHOULD CONTACT DR LANG SECRETARY OF AUSTRIAN DEL AT  
AUSTRIAN FOREIGN MINISTRY PHONE EXTENSION 474.



c.c. External Ottawa  
Vienna

Ref: PERMIS NY Tel. no. 742 of March 20, 1968



The Permanent Representative of Canada to the United Nations presents his compliments to the Permanent Representative of the Czechoslovak Socialist Republic to the United Nations and has the honour to refer to Note No. 1545/68 of March 5, 1968, advising that the Government of the Czechoslovak Socialist Republic has decided to present the candidature of H.E. Dr. Josef Smejkal, Ambassador Extraordinary and Plenipotentiary, Head of the Legal Department of the Ministry of Foreign Affairs, for the post of Vice-Chairman of the Main Committee of the United Nations Conference on the Law of Treaties, to be convened in Vienna on March 26, 1968.

This information has been forwarded to the appropriate authorities in the Canadian Government where it will be given careful consideration.

The Permanent Representative of Canada avails himself of this opportunity to renew to the Permanent Representative of the Czechoslovak Socialist Republic the assurances of his highest consideration.

G. I.

New York, March 20, 1968.

TO: MR STANFORD  
FROM REGISTRY  
MAR 25 1968  
FILE CHARGED OUT  
TO: MR STANFORD

001934



TÁLA MISE ČESKOSLOVENSKÉ SOCIALISTICKÉ REPUBLIKY  
U SPOJENÝCH NÁRODŮ

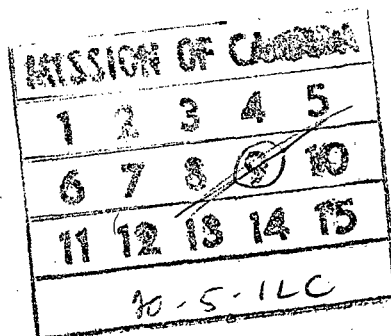
PERMANENT MISSION OF CZECHOSLOVAK SOCIALIST REPUBLIC

MAR 18 10 51 AM '68 UNITED NATIONS  
1109-1111 Madison Avenue New York, N. Y. 10028

V odpovědi uveďte číslo:

In reply please quote No.:

1545/68



Telephone: LEhigh 5-8814

The Permanent Representative of the Czechoslovak Socialist Republic to the United Nations presents his compliments to the Permanent Representative of Canada

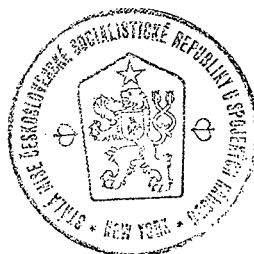
to the United Nations and has the honour to advise that the Government of the Czechoslovak Socialist Republic has decided to present the candidature of H.E. Dr. Josef Šmejkal, Ambassador Extraordinary and Plenipotentiary, Head of the Legal Department of the Ministry of Foreign Affairs, for the post of Vice-Chairman of the Main Committee of the United Nations Conference on the Law of Treaties, to be convened in Vienna, on 26th March, 1968.

Dr. Josef Šmejkal has been active in the field of international law since 1952 and took part as Head or member of Czechoslovak delegations to many bilateral negotiations and international conferences, especially to the Diplomatic Conference on the Law of Sea in Brussels in 1961 and to the Conference of Transit Trade of Land-Locked Countries in 1965. He was delegate in the Sixth Committee at the Twenty-Second Session of the General Assembly and Head of Czechoslovak delegation to the First Session of the United Nations Commission on International Trade Law. Since 1960 until 1963 he served as Counsellor of Czechoslovak Embassy in Paris.

The Permanent Representative of the Czechoslovak Socialist Republic to the United Nations earnestly hopes that the Government of Canada will lend its valuable support to this candidature which is supported by the group of East-European States.

The Permanent Representative of the Czechoslovak Socialist Republic to the United Nations avails himself of this opportunity to renew to the Permanent Representative of Canada to the United Nations the assurances of his highest consideration.

New York, 5 March 1968



DEPARTMENT OF EXTERNAL AFFAIRS

MINUTE SHEET

not remove from correspondence

SECURITY CLASSIFICATION

FILE NUMBER

20-3-1-6

DATED

March 20/68

REFERENCE

MIN.  
NO.

REFERRED TO

REMARKS

(Sign in full showing Division, Telephone Number and Date)

Mr. Stanford

184-7220 "All states" & Treaties

You might have a word  
Robertson as to whether  
there is anything afoot  
for the resumed session of the  
U.N.

Then we might draft a  
tel to Aershop, if it appears  
necessary, on this aspect of the  
All states question (attendance  
at the conference)

JF

## Aide-Mémoire

In view of the forthcoming Codification Conference of the United Nations regarding the international law of treaties, the demand has repeatedly been made to insert in the Draft Convention prepared by the International Law Commission, a provision to the effect that general multi-lateral treaties must be open to "all States" for unilateral accession. In substantiation of this demand the necessity of the universality of such treaties has been pointed out. Demands in this connexion have already been made on previous occasions in the International Law Commission.

The German Government has been following attentively and with some concern the discussions on the possibilities of accession to general multilateral treaties. It shares the opinion of many other States that such treaties should as far as possible be universal and open to the entire community of States. Since, however, there is no authority capable of making a generally binding decision in doubtful cases on the claim to statehood of a territorial entity while, on the other hand, there are territorial entities whose status under international law is open to dispute, and there is the possibility of the repetition of such cases in the future, the German Government would consider it to be most dangerous if with the reference to "all States", unilateral accession possibilities were created for every territorial entity calling itself a State and even be rendered compulsory for certain types of treaties. For such a ruling, constituting as it would a departure from the currently valid principle of the freedom of States in

- 2 -

formulating treaties, would provide an opportunity for the political disputes that usually accompany the emergence in international life of territorial entities not generally recognized, to pervade international multilateral cooperation in all its phases. The arguing out of such patently violent political disputes cannot but impede all harmonious and beneficial international cooperation.

Furthermore, the introduction of such a ruling and the concomitant departure from the principle of the freedom of States in the formulation of their treaties, would not be at all necessary, as international treaty practice has shown, to ensure the universality of general multilateral treaties. In fact, the possibility of accession can also be provided by means of voluntary agreement for all the members of the community of States, while avoiding the political controversies connected with the creation of unilateral accession possibilities for all territorial entities calling themselves States. In concluding major multilateral treaties, the States make regular use of this possibility. This is shown particularly in the procedure constantly practised by the United Nations with regard to treaties. The accession clause regularly applied there provides all the members of the community of States with the possibility of accession by virtue of their membership of the United Nations, one of its Specialized Agencies and pursuant to the Statute of the International Court of Justice or of the International Atomic Energy Agency. In conjunction with an invitation on the part of the United Nations General Assembly, it also makes possible the inclusion of such territorial entities whose status under international law is disputed and whose statehood is not generally recognized but whose inclusion in a

- 3 -

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specific case is advocated by the majority of States. Once a majority decision has been taken by the States, however, there is no further room for the political disputes connected with the emergence of such territorial entities.

Nor does the relegation of the territorial entities in question to the ad hoc invitation by the majority of the States concerned imply any discrimination under international law of those entities, since they are not generally recognized as members of the community of States.

The German Government therefore considers that the International Law Commission was right not to have included in the Draft Convention on International Law of Treaties a provision concerning the mandatory opening of certain multilateral treaties to unilateral accession of "all States", especially considering that the definition of what a "general multilateral treaty" actually is, may still provoke heated discussions. The German Government also feels that the solution found by the International Law Commission should be adhered to and that the Draft Articles should not be amended by including a mandatory unilateral accession possibility for "all States".

Ottawa, March 20, 1968



Botschaft

der

Bundesrepublik Deutschland

Permes N.Y. (Robertson)

U.N. Sec.

European Div.

Gene - 3/21/68

R

### Aide-Mémoire

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- 2 -

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Ottawa, March 20, 1968

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TO EXTER 742 PRIORITY

INFO COPEN GENEV VIENN

LAW OF TREATIES CONFERENCE

WE HAVE RECEIVED A NOTE FROM CZECH MISSION( TO WHICH WE HAVE REPLIED  
IN A ROUTINE NONCOMMITTAL MANNER) PROPOSING CANDIDATURE OF HE DR  
JOSEF SMEJKAL( HEAD LEGAL DEPT MFA) FOR POST OF VICECHAIRMAN OF  
MAIN CTTEE OF UN LAW OF TREATIES CONFERENCE AND SEEKING CDN SUPPORT.

NNNNQ

001944

c.c. External Ottawa  
Canadian Embassy, Copenhagen  
Canadian Embassy, Vienna

20-3-1-6  
32

BEST COPY AVAILABLE

The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Mission of Ghana to the United Nations and has the honour to refer to the note of March 13, 1968, in which the Permanent Mission of Canada is informed that the Government of Ghana has decided to seek the election of Ghana to the membership of the Drafting Committee of the United Nations Conference on the Law of Treaties which will commence its first session in Vienna on March 26, 1968.

This information has been forwarded to the appropriate authorities in the Canadian Government where it will be given careful consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Mission of Ghana the assurances of its highest consideration.

New York, March 18, 1968.

BEST COPY AVAILABLE

Received  
MAR 21 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
MAR 22 1968  
FILE CHARGED OUT  
TO: MR STANFORD

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MAR 15 10 47 AM '68



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PERMANENT MISSION OF GHANA TO THE UNITED NATIONS

144 EAST 44TH STREET

NEW YORK 17, N. Y.

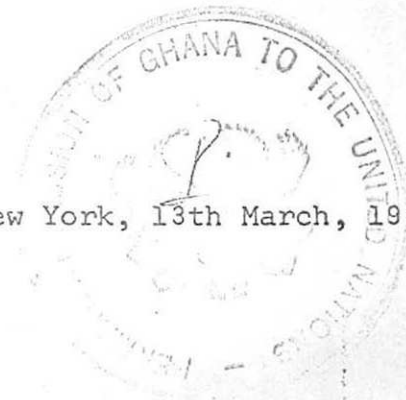
MURRAY HILL 2-1635

The Permanent Mission of Ghana to the United Nations presents its compliments to the Permanent Missions to the United Nations and has the honour to inform the Permanent Missions that the Government of Ghana has decided to seek the election of Ghana to the membership of the Drafting Committee of the United Nations Conference on the Law of Treaties which will commence its first session in Vienna on 26 March, 1968.

The Permanent Mission of Ghana expresses the hope that the Permanent Missions will lend their valuable support to the candidature of Ghana.

The Permanent Mission of Ghana to the United Nations avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

New York, 13th March, 1968.





# MESSAGE

FM/DE	EXTERNAL AFFAIRS OTTAWA	DATE	FILE / DOSSIER	SECURITY
		18/3/68	20-3-1-6	SECURITE
TO/A	COPENHAGEN	32	NO	PRECEDENCE
			L-254	PRIORITY
INFO	PERMISNY, GENEVA, VIENNA			

REF YOURTEL 113 MARCH 8  
SUB/SUJ LAW OF TREATIES CONFERENCE

BEST COPY AVAILABLE

WE ARE HOPEFUL THAT THOSE PORTIONS OF INSTRUCTIONS REQUIRING MINISTERIAL APPROVAL WILL RECEIVE SUCH APPROVAL THIS WEEK. IT APPEARS CLEAR, HOWEVER, THAT FULL COMMENTARY AND INSTRUCTIONS WILL NOT BE PREPARED IN FINAL FORM IN TIME TO REACH YOU IN VIENNA PRIOR TO OPENING OF CONFERENCE. WE SHALL THEREFORE TELEGRAPH GENERAL GUIDLINE INSTRUCTIONS TOGETHER WITH COMMENTARY AND INSTRUCTIONS OF FIRST ARTICLES, INCLUDING ARTICLE 5, AS SOON AS THEY ARE APPROVED. WE ARE PREPARING DRAFT STATEMENT FOR YOUR USE IN DISCUSSION ON ARTICLE 5.

2. RE YOUR PARA 2, GRATEFUL IF YOU COULD PROVIDE US WITH 2 COPIES OF CONFERENCE DOCUMENTS AND SUMMARY RECORDS AS THEY ARE PUBLISHED DURING CONFERENCE.

DISTRIBUTION  
LOCAL/LOCALE CC.: U.N. DIVISION

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. Stanford	Legal	2-5406	SIG..... J. A. BEESLEY

MESSAGE

file  
FM/DE

EXTERNAL OTT

DATE  
Mar. 15/68

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20-3-1-6

SECURITY  
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LONDON

INFO

PERMIS N.Y.

COPENHAGEN

GENEVA

VIENNA

REF

PERMIS N.Y. TEL. 689 MARCH 14/68

SUB/SUJ

U.N. CONFERENCE ON THE LAW OF TREATIES - CHAIRMANSHIP  
W.E.O. GROUP

PLEASE INFORM VALLAT WE HAVE NO OBJECTION  
IN PRINCIPLE TO BRITISH PROPOSAL THAT VEROSTA ACT  
AS CHAIRMAN OF W.E.O. GROUP AND WE AGREE THAT  
AUSTRIAN CHAIRMANSHIP WOULD BE APPROPRIATE IN THE  
CIRCUMSTANCES. HOWEVER SHOULD SOME OTHER MEMBER  
OF W.E.O. GROUP SEEK CHAIRMANSHIP WE WOULD OF  
COURSE HAVE TO RECONSIDER OUR POSITION IN LIGHT OF  
OTHER REQUESTS.

DISTRIBUTION  
LOCAL/LOCALE

U.N. DIV.

EUROPEAN DIV.

MR. MILLER

(DONE IN DIV.)

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

LEGAL

2-5406

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

ACTION COPY

cc U.N. Sec  
European Sec  
D.L. (V) Sec  
A.O. E. Sec  
Comvel Sec

file 20-3-1-6  
18/3

Joe:  
I learned all this  
in Wash. last week.  
The question was involved  
in knowing is whether there  
will be a move in the reversed  
sense of the UN in N.Y. to  
curb the revolution in question.

20-3-1-6  
32 | 27

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TO EXTER 708 IMMED

INFO GENEV LDN WSHDC

TT VIENN DE PARIS COPEN DE HAG

REF ROBERTSON/BEESELEY TELECON MAR15

UN CONFERENCE ON LAW OF TREATIES: ALL STATES PROBLEM

FROM CONVERSATIONS WHICH WE HELD WITH BRITS AMERICANS DANES

STAVROPOULOS OF SECRETARIAT AND OTHERS ON MAR14 DURING 5 HOUR

WAIT FOR SECURITY COUNCIL TO CONVENE IT BECAME CLEAR THAT EASTERN

EUROPEANS HAVE IN MIND MAKING AN EFFORT TO SEAT AT LEAST EASTGERMANY

(IF NOT/NOT IN ADDITION SOME OF DIVIDED STATES AND POSSIBLY MAINLAND

CHINA) AT FORTHCOMING TREATIES CONFERENCE. IT SEEMS THAT THEIR TACTIC

WOULD BE TO ATTEMPT TO LINK SEATING OF EASTGERMANY WITH EXPULSION

OF SOUTHAFRICA ON A QUID PRO QUO BASIS.

2. CONSENSUS OF THOSE WITH WHOM WE DISCUSSED MATTER WAS THAT AS A

POLITICAL MANOEUVRE THIS PLAN THOUGH IT MIGHT BE SUPERFICIALLY

ATTRACTIVE TO AFROASIANS SUFFERS FROM DEFECT THAT POSITIONS OF TWO

COUNTRIES CONCERNED ARE NOT/NOT IN FACT AT ALL CLOSELY RELATED.

THAT IS TO SAY GETTING EASTGERMANY INTO CONFERENCE WOULD DEPEND ON

MANOEUVRES VERY DIFFERENT FROM THOSE THAT MIGHT BE REQUIRED TO UNSEAT

SOUTHAFRICA. MOREOVER THERE WOULD IN FACT SEEM TO BE LITTLE

JUSTIFICATION FOR RUSSIANS SEEKING TO TRADE THEIR SUPPORT FOR

EXPULSION OF SOUTHAFRICA AGAINST NONALIGNED SUPPORT FOR SEATING

EASTGERMANY BECAUSE WHILE EASTERNEUROPEANS CERTAINLY WOULD REQUIRE

NONALIGNED SUPPORT IN LATTER CASE NONALIGNED PROBABLY WOULD NOT/

PAGE TWO 708 CONFD

NOT REQUIRE EASTERN EUROPEAN SUPPORT TO ANYTHING LIKE SAME EXTENT.

3. FROM A LEGAL POINT OF VIEW IT IS GENERAL OPINION (INCLUDING THAT OF STAVROPOULOS) THAT MATTER OF WHO SHOULD ATTEND CONFERENCE WAS CLEARLY ESTABLISHED IN UNGA RESLN 2166 (XXI) AND THIS COULD NOT/NOT BE ALTERED EXCEPT BY UNGA ITSELF. IF IT CAME TO A FIGHT HOWEVER ONLY SANCTION WHICH SECRETARIAT COULD IMPOSE WOULD SEEM TO BE THREAT OF WITHDRAWING ITS SERVICES AND IT IS NOT/NOT AT ALL CLEAR WHETHER SEC GEN WOULD IN FACT BE PREPARED TO DO THIS. ONE SANCTION OPEN TO WEST WOULD OF COURSE BE TO BOYCOTT CONFERENCE ITSELF.

4. WE WILL KEEP YOU INFORMED. KNOWLEDGE OF EASTERN EUROPEANS PLANS AND OF SECRETARIATS GENERAL REACTION TO THEM IS ALREADY BROADLY KNOWN HERE IN NY.



cc U.N. Div. - some *March 15/68*  
European files.  
file 20-3-1-6  
JA 18/3

ACTION COPY

*Handwritten signature*  
L

*Let's not get  
too involved  
in this*

20-3-1-6
32   2

FM LDN MAR15/68 RESTR

TO EXTER 1379 IMMED

INFO GENEV PRMNY

TT VIENN DE PARIS COPEN DE HAGUE

REF PRMNY TEL689 MAR14

UN CONFERENCE ON LAW OF TREATIES

ADDITIONAL REASON WHY FO BELIEVE VEROSTA SHOULD BE ASKED TO ACT AS CHAIRMAN OF WESTERN GROUP AT THIS CONFERENCE IS THAT IT WOULD BE USEFUL FOR PRESENTATIONAL REASONS FOR WESTERN GROUP TO BE CHAIRED BY A REP FROM A NEUTRAL COUNTRY IN VIEW OF RATHER NEGATIVE POSITION WESTERN COUNTRIES WILL HAVE TO ADOPT WITH AFROASIANS OVER SOME PARTS OF DRAFT CONVENTION.

2. BRITS ARE HOPEFUL THAT ITALIANS WILL NOT/NOT OBJECT TO PROPOSAL THAT VEROSTA ACT AS CHAIRMAN OF WESTERN GROUP SINCE ITALIANS HAVE PRESIDENCY OF CONFERENCE.

3. VALLAT PROPOSES TO TRANSMIT LETTER TO VEROSTA ON MON MORNING UNLESSE HEARS FROM YOU BEFORE THEN THAT YOU HAVE ANY OBJECTION.

OTT164

PAR 139

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DE VNA

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FM VIENN MAR15/68

TO EXTER 178

INFO COPEN

REF YOURTEL L1218 DEC29/67

UN CONFERENCE ON LAW OF TREATIES-FINANCIAL ARRANGEMENTS

PLEASE CONFIRM THAT SPECIAL FUNDS FORTHCOMING TO COVER EXPENSES

OF TREATIES CONFERENCE AND/OR THE FINANCIAL PROCEDURE TO BE

FOLLOWED WE ASSUME ARRANGEMENTS SIMILAR TO PAST EXPERIENCE IN THAT

CONFERENCE FUNDS WILL BE TRANSFERRED AND A SEPARATE FINANCIAL

STATEMENT MAINTAINED?

2. PLEASE ENSURE TELEGRAPHIC TRANSFER OF FUNDS AVAILABLE ON A

MONTHLY BASIS TO SUPPORT APPROX 6 TO 8000 DOLLARS LIVING EXPENSES

FOR PERIOD MAR24 TO MAY26

ACTION COPY

A.E. GOTLIEB

Received

MAR 18 1968

In Legal Division  
Department of External Affairs

BEST COPY AVAILABLE

NNNNVVVVV

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March 14/68 version

J.SS

Jul 20-3-1-69

Amendment Proposed by the United States

Article 1

Present text:

*The scope of the present articles*

The present articles relate to treaties concluded between States.

Proposed amendment:

The present articles apply to treaties concluded between two or more States or other subjects of international law. ✓

Rationale for amendment:

1. Because of the number and importance of agreements being entered into between States and other international persons, such as international organizations, which are generally conceded to have treaty-making capacity, the proposed convention on the law of treaties should be broadened to govern such agreements. This class of treaties is now substantial and will increase in size. Some of the treaties concerned are of considerable importance, such as the trilateral safeguards agreements in the atomic energy field to which the International Atomic Energy Agency is a party. In general, such treaties have the same characteristics as treaties between States and should therefore be governed by the same body of law. A broadening of the scope of the present articles to cover them would assure much greater stability in international relationships.

2. Acceptance of this amendment will require a number of changes throughout the Articles. It may be desirable to set up a working group to consider these changes which would include representatives of selected international organizations.

3. The word apply is substituted for relate because it is a more precise term which is commonly employed in describing the scope of treaties.

*du Commentaire*  
*for use at*

*17(2) - Art 30-57*

## Amendments Proposed by the United States

### Article 2

#### Present text:

##### *Use of terms*

1. For the purposes of the present articles:
  - (a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
  - (b) "Ratification", "Acceptance", "Approval", and "Accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.
  - (c) "Full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.
  - (d) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.
  - (e) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.
  - (f) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.
  - (g) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.
  - (h) "Third State" means a State not a party to the treaty.
  - (i) "International organization" means an inter-governmental organization.
2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

#### Proposed amendments:

1. For the purposes of the present articles:

(a) "Treaty" means an international agreement concluded between two or more States or other subjects of international law in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(b) "Ratification" or "Accession" means an international act whereby a State establishes on the international plane its consent to be bound by a treaty.

(c) (No change)

(d) "Reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, or acceding to a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(e) (No change)

(f) (No change)

(g) (No change)

(h) (No change)

(i) (No change)

2. (No change)

Rationale for amendments:

1 (a). See rationale for amending Article 1.

1 (b). The terms "acceptance" and "approval" are not sanctioned by traditional usage and are unnecessary here and elsewhere in the articles. Their deletion would simplify the drafting of numerous articles. (The United States will propose a new Article 9 bis to make clear that signature, ratification, and accession are not exhaustive of the means which States may agree upon for indicating consent to be bound.)

The substitution of "an" for "the" before "international act" is proposed in recognition of the other acts (e.g., signature) by which a State can indicate its consent to be bound. The words "in each case" and "so named" should be deleted as unnecessary.

1 (c). The words "for the purpose of" are unnecessary. The word "purpose" is too broad for a definition of "act". The word "purpose" is too broad for a definition of "act". The word "purpose" is too broad for a definition of "act".

Amendments Proposed by the United States

Article 4

Present text:

*Treaties which are constituent instruments of international organizations or are adopted within international organizations*

The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization.

Proposed amendment:

Delete the article. Substitute instead exceptions in favor of the rules of international organizations in Articles 6, 8, 9, 13, 16, 17, 37, 55, 57, and 72.

Rationale for amendment:

The present text could be construed as permitting any international organization, no matter how restricted in membership or limited in purpose, to exclude the application of the proposed convention to its own constituent instrument and to any or all treaties adopted within the organization. The number of multilateral treaties adopted within international organizations is continually increasing. To confer upon these organizations the power to modify or set aside those rules of the draft convention which are intended to have general applicability could be justified only on the basis of a very strong case of necessity.

International organizations, it is true, need some flexibility in procedural matters. This can be built into the appropriate articles without undermining the character of the proposed convention. The views of interested international organizations might be sought regarding the completeness of the list of articles set forth above and the most desirable method for framing any necessary exceptions.

Amendments Proposed by the United States

Article 6

Proposed text:

*Full powers to represent the State in the conclusion of treaties*

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

- (a) He produces appropriate full powers; or
- (b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

Proposed amendment:

1. A person is considered as representing a State for the purpose of expressing the consent of the State to be bound by a treaty only if:

(a) (No change)

(b) (No change)

2. Full powers shall not be required for the purpose of adopting or authenticating the text of a treaty unless the negotiating States agree to this requirement or the rules of an international organization so provide. (New paragraph)

3. (Renumbered) In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) (No change)

(b) Heads of diplomatic missions, for the purpose of performing all acts relating to the conclusion of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international organization or one of its organs, for the purpose of performing all acts relating to the conclusion of a treaty in that organization or organ, subject to the rules of the organization.

(d) Representatives accredited by States to an international conference, for the purpose of the adoption of the text of a treaty in that conference.



Rationale for amendment:

1. As full powers for adopting or authenticating the text of a treaty are seldom required, the article should make clear that there is no such requirement unless the parties agree to it.
2. Both the proposed new paragraph 2 and the present paragraph 2 (c) should include a provision regarding the rules of an international organization.
3. Paragraphs 2 (b) and 2 (c) do not reflect current state practice. Treaties in the form of exchange of notes are habitually entered into with the Ambassador of one contracting Party expressing its consent to be bound and only in the most exceptional case is the Ambassador required to present full powers. The same practice is followed with respect to Ambassadors accredited to international organizations or their organs. To reflect this practice the limitations in paragraphs 2 (b) and (c) regarding "adoption of the text of a treaty" have been deleted. Further, paragraph 2 (c) of the present text omits mention of representatives accredited to an organization as such, although heads of permanent missions are normally so accredited and this omission has been rectified.

The limitation as to "adoption of the text of a treaty" is thus restricted to representatives to an international conference which is in accord with current practice.

Article 9 (bis) omitted

Article 15 omitted

Amendments Proposed by the United States  
Articles 16 and 17

Present text:

**Article 16**

*Formulation of reservations*

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation.. unless:

- (a) The reservation is prohibited by the treaty;
- (b) The treaty authorizes specified reservations which do not include the reservation in question; or
- (c) In cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.

**Article 17**

*Acceptance of and objection to reservations*

1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization, the reservation requires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.

Proposed amendment:

Combine Articles 16 and 17  
into a single article, as follows:

Reservations

1. A State, when signing or expressing its consent to be bound by a treaty, may do so subject to a reservation unless

(a) The reservation is prohibited by the treaty;

(b) The reservation is incompatible with the character or purpose of the treaty; or

(c) The reservation is contrary to the rules or practice of an international organization within which the treaty was concluded.

2. A reservation expressly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

3. When the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

Present text:

4. Cases not falling under the preceding paragraph of this article:

(a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;

(b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(c) An act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Proposed amendment:

4. When a treaty is a constituent instrument of an international organization and unless the treaty otherwise provides, a reservation is subject to acceptance by the competent organ of that organization, but such acceptance shall not preclude any contracting State from objecting to the reservation.

5. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides, an act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation, and such acceptance constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force.

6. An objection by another contracting State to a reservation that is not expressly authorized by the treaty precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State.

7. For the purposes of paragraphs 3 and 5 a reservation is considered to have been accepted by a State, unless the treaty otherwise provides, if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

### Rationale for amendment

1. In the present text the relationship between Articles 16 and 17 is confusing, particularly in view of the opening phrase of paragraph 4 of Article 17, which refers only to the preceding paragraphs of that article. That limited reference and the wording of Article 17 as a whole give rise to a question whether the prohibitions in Article 16 are applicable to the provisions of Article 17, especially paragraphs 4 (a) and 4 (c) of the latter. In view of this situation it seems desirable to combine the major requirements of Articles 16 and 17 in a single article.

2. The rule in present subparagraph (b) of Article 16 -- that where a treaty authorizes specified reservations no other reservations can be made -- is too rigid. It is difficult -- if not impossible -- for negotiators to anticipate all the reservations that may be necessary for particular States to become parties to a treaty. The essential purpose of including a provision authorizing reservations to particular provisions is to facilitate reservations to these provisions, but not to exclude reservations to other provisions unless specifically so stated. The rule of subparagraph (b) of Article 16 is therefore omitted from the proposed amended version.

3. The words "object and purpose" in subparagraph (c) of Article 16 and in paragraph 2 of Article 17 are, as the Commission recognized, highly subjective. Reliance solely on these words is especially inadvisable because it is uncertain whether they encompass the "nature and character" of the treaty. The commentary on paragraph 4 (d) of Article 16 cites the advisory opinion of the International Court of Justice on the Genocide Convention, in which the Court stressed the importance of the character of the treaty involved. The United States proposes, accordingly, that the phrase "object and purpose" be replaced by "character or purpose" in the compatibility rule and has done this in paragraph 1 (b) of its proposed amendment.

4. The "limited number" criterion in present paragraph 2 of Article 17 seems to ignore the character of the treaty involved. A treaty may involve a large number of States and still be of such a character that a reservation would be permissible only if accepted by all of the parties. The reference to the limited number of negotiating States has therefore been omitted from paragraph 3 of the proposed amendment.

5. Certain provisions of present Article 17 seem to inhibit negotiators from specifying other procedures or requirements regarding the acceptability of reservations. Subparagraphs (a) and (c) of paragraph 4 seem to prevent the inclusion in a treaty of a provision specifying that any reservation or a specified reservation would be effective only after it had been accepted by a given number of contracting States. Paragraph 5 of Article 17 seems to inhibit the negotiating States from providing in the treaty itself for a period shorter or longer than twelve months. Needed flexibility has therefore been provided in corresponding paragraphs 5 and 7 of the amended version by including the phrase "unless the treaty otherwise provides".

6. The rule in paragraph 1 (c) of the proposed amendment is provided in view of the U.S. proposal to delete Article 4.

7. The words "or impliedly" contained in paragraph 1 of the draft article have been omitted from paragraph 2 of the proposed amendment because of their uncertain meaning and difficulty of interpretation in this context.

8. Paragraph 4 of the proposed amendment provides a right to any contracting State to object to a reservation to a constituent instrument of an organization, even though the reservation may be accepted by the competent organ of that organization. Although some reservations to constituent instruments may be of such character as to require application by all parties in their relations with the reserving State, others may be of a kind to make such procedure unnecessary or even intolerable for an objecting State.

8. Paragraph 5 of the proposed amendment combines former paragraphs 4 (a) and 4 (c) of Article 17 in view of their close relationship.

9. Paragraph 6 of the proposed amendment omits any reference to "cases not falling under the preceding paragraphs of the article". This insures an objecting State's freedom to refuse treaty relations with a State making a reservation deemed unacceptable by the objecting State unless the reservation has been expressly authorized by the treaty.

*Article 24 omitted*



Amendments proposed by the United States

Articles 27 and 28

Present text:

Article 27

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty;

(b) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Proposed amendment:

1. A treaty shall be interpreted in good faith in order to determine the meaning to be given to its terms in the light of all relevant factors, including in particular:

(a) the context of the treaty;

(b) its objects and purposes;

(c) any agreement between the parties regarding the interpretation of the treaty;

(d) any instrument made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty;

(e) any subsequent practice in the application of the treaty which establishes the common understanding of the meaning of the terms as between the parties generally;

(f) the preparatory work of the treaty;

(g) the circumstances of its conclusion;

(h) any relevant rules of international law applicable in the relations between the parties;

(i) the special meaning to be given to a term if the parties intended such term to have a special meaning.

Article 28

Delete

*Supplementary means of interpretation*

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27:

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.

Rationale for amendment:

1. The basic problem raised by Articles 27 and 28 is the establishment of a hierarchy between a general rule of interpretation and supplementary interpretation. Only when an attempt at interpretation in accordance with Article 27 has failed by leaving a meaning which is "ambiguous or obscure" or which leads to a result which is "manifestly absurd or unreasonable" can one consult the preparatory work and the circumstances of the conclusion of a treaty. Under the rules in the present text of Article 27 a meaning might be arrived at that would be neither ambiguous nor obscure, nor manifestly absurd or unreasonable but might still be far from the meaning the parties actually intended. The meaning actually intended would be more likely to be reached if the preparatory work and circumstances of the conclusion of the treaty, referred to in Article 28, were considered along with the rules set forth in Article 27.

2. The use of the term "ordinary meaning" in paragraph 1 of Article 27 gives rise to a further problem. The criterion of interpretation "in accordance with the ordinary meaning to be given to the terms of the treaty" is accorded primacy over all other criteria. However, as Lord McMillair succinctly states, "... this so-called rule of interpretation like others is merely a starting point, a prima facie guide, and cannot be allowed to obstruct the essential quest in the

application of treaties, namely, to search for the real intention of the contracting parties in using the language employed by them." (McNair, Law of Treaties, Oxford, 1961, p. 366.) The present text of Articles 27 and 28 actually obstructs the consideration of the essential factors that give evidence of the common intent of the parties in using particular language.

3. A third problem arises in paragraph 2, in which the term "context" is given a very restricted meaning. It clearly excludes the circumstances of the conclusion of the treaty, which are included in Article 28 but which in the view of many scholars are properly part of the context.

4. The official records of the negotiations in which the language was agreed and the relevant documents submitted or produced in the course of negotiations, as well as other circumstances of the conclusion of the treaty are most helpful guides in deciding the effect of a particular clause in a treaty. These are the materials upon which Foreign Offices almost invariably rely in the interpretation and application of treaties.

Article 29

Present text:

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text. Except in the case mentioned in paragraph 1, when a comparison of the texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which as far as possible reconciles the texts shall be adopted.

Proposed amendment:

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular language version shall prevail.

2. No change.

3. The terms of the treaty are presumed to have the same meaning in each authentic language version.

4. Except in the case mentioned in paragraph 1, when a comparison of the several language versions discloses a difference in meaning which the application of Article 27 does not remove, a meaning shall be adopted which is most consonant with the objects and purposes of the treaty.

Rationale for amendment:

1. The word "text" is used in the present draft in two different senses: in the first instance in paragraph 1 it refers to the entire text of the treaty in all the languages in which it is authenticated; in the second instance in that paragraph, it refers to one of the language versions of the treaty. In order to avoid this dual use of the word "text" in Article 29, the words "language version", "authentic language version", and "language versions" are substituted in the proposed amendment.

2. Paragraphs 1 and 2 lay down residual rules which are acceptable.

However, the present text of paragraph 3 is unsatisfactory. The presumption in the first sentence of paragraph 3 seems to carry out the thought that if a term has one and only one identical meaning in the various language versions of the treaty, then that meaning is governing over other meanings which the term may have in any one of the languages. There is some percentage of error inherent in the application of this principle, but, given the limited scope of its application, the formulation is not unacceptable.

The basic difficulty in paragraph 3 arises in the second sentence, which lays down two rules for disposing of differences between terms in different language versions:

(a) resort to the means of interpretation provided in Articles 27 and 28, and if that fails,

(b) adoption of a meaning which reconciles the texts as far as possible.

The need to resort to supplementary methods of interpretation in resolving this type of conflict are so obvious that step (a) can be accepted without change. Step (b), however, is a formula singularly devoid of content. A rule calling for reconciliation "as far as possible", after recourse to available means of interpretation has been exhausted, is merely a direction to effect some sort of compromise without any indication of the basis for a compromise. Moreover, in many cases, there is no room for reconciliation--as illustrated by the terms "public control" and "controle public" in the Mavrommatis Case. The same type of problem could easily arise in the increasing number of treaties in which "public policy" in the English version is juxtaposed to "ordre public" in the French. The situation here is clearly one in which the achievement of the objects and purposes of the treaty is the only realistic touchstone, and the sentence has been modified to make this the test. The

sentence has been made a separate paragraph in the proposed amendment of the  
article because it is considered to be of equal importance with the preceding  
paragraphs 1 and 2.



Amendments Proposed by the United States

Article 38

Present text:

*Modification of treaties by subsequent practice*

A treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions.

Proposed amendment:

Subsequent practice modifying application of a treaty

The application of a treaty may be modified by subsequent practice clearly establishing the agreement of the parties to such modification.

Rationale for amendment:

1. The present text of Article 38 might be read as suggesting the possibility of a change in the actual text of a treaty. However, according to the Commission's comment, it is the application of the treaty in a manner not envisaged by its provisions that is contemplated.

2. The word "clearly" has been added to the article to indicate the quantum of evidence required to establish the agreement of the parties to modify the application of the treaty by subsequent practice.

c.c.: Mr. Wershof (Copen)  
Mr. McKinnon (Geneva)  
Mr. Robertson (N.Y.)  
Mr. Beesley  
(with enclosures)

*Done 14/3/68*

*file 20-3-1-64*

*me: P. de la...  
rendez me a copy  
1 attached  
JP*

**Received**

MAR 14 1968

In Legal Division  
Department of External Affairs

No. 193

20-3-1-6  
25 | 13

The Embassy of the United States of America submits for the consideration of the Government of Canada suggested amendments to certain of the draft articles on the Law of Treaties prepared by the International Law Commission. It is the intention of the Government of the United States to submit these amendments to the Diplomatic Conference on the Law of Treaties which is to open in Vienna on March 26, 1968. Consequently, it would be most appreciated if the Government of Canada could give consideration to these proposed amendments in preparing its positions for the Conference.

Each of the proposed amendments is accompanied by an explanation of the reasons for the proposal.

It will be noted that the proposed amendments relate only to certain articles in the first half of the Commission's set of seventy-five articles. The United

States Government will undoubtedly propose at the Conference the amendment or deletion of certain other articles; however the Embassy was asked to bring to the attention of the Government of Canada the more important suggestions for amendment which the United States Government is able to circulate at this time even though it is not in a position to include proposals with respect to a number of other important issues. Of these latter, among the most important and the most complicated is the problem of establishing procedures for settling disputes which may arise in the application of the provisions of the proposed Convention. The United States Government hopes that the Government of Canada will give special consideration to this problem.

Enclosures:

Amendments proposed by the United States Government to certain of the draft articles on the Law of Treaties prepared by the International Law Commission.

Embassy of the United States of America,

Ottawa, March 14, 1968.



No. 193

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**Enclosures:**

Amendments proposed by the United States Government to certain of the draft articles on the Law of Treaties prepared by the International Law Commission.

Embassy of the United States of America,

Ottawa, March 14, 1968.

Legal Division/J.S. Stanford/jl

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
À Mr. J.A. Beesley

FROM  
De J.S. Stanford

REFERENCE  
Référence

SUBJECT  
Sujet Law of Treaties Conference - Chairmanship  
of W.E.O. Group

SECURITY CONFIDENTIAL  
Sécurité

DATE March 14, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Gotlieb  
Mr. Miller

Ron Robertson telephoned me from New York this morning to say that the British are proposing that Mr. Verosta, Legal Adviser to the Austrian Foreign Ministry, be named Chairman of the W.E.O. Group at Vienna. The nomination would take place at the meeting of the W.E.O. scheduled for Tuesday afternoon March 26; however, the British apparently plan to put the suggestion around next week and have asked for our reaction.

2. Robertson is sending me a telegram informing us of the British proposal. When it arrives I will prepare, if you agree, a reply saying that we have no objection in principle to Verosta acting as Chairman of the W.E.O. Group, that his chairmanship would appear appropriate since the Conference is being held in Vienna, but that, should other representatives seek the chairmanship of the W.E.O. Group we would of course have to reconsider our position in the light of other requests.

  
J.S. Stanford

Diary  
Div. Diary  
File

Legal Division (J.S. Stanford)

EXTERNAL AFFAIRS



2  
AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
A Mr. J.A. Boesley

FROM  
De J.S. Stanford

REFERENCE  
Référence

SUBJECT  
Sujet Law of Treaties Conference - Chairmanship  
of W.E.O. Group

SECURITY CONFIDENTIAL  
Sécurité

DATE March 14, 1968

NUMBER  
Numéro

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

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J.S. STANFORD  
J.S. Stanford



cc U.N. Sec

European Sec

of file 15/13

Dated Mar 15/68  
J.P.

2

Legal Sec

FM PRMNY MAR14/68 RESTR

TO EXTER 689 IMMED

INFO GENEV LDN

TT VIENN DE PARIS COPEN DE HAGUE

REF ROBERTSON/STANFORD TELECON MAR14

UN CONFERENCE ON LAW OF TREATIES

DARWIN OF BRIT PERMIS UNDER INSTRUCTIONS PHONED US THUR MORNING

MAR14 TO ASK WHETHER CDA WOULD HAVE ANY OBJECTION TO BRIT PRO-

POSAL THAT DR S VEROSTA(AUSTRIA)BE ASKED TO ACT AS CHAIRMAN OF

WESTERN GROUP FOR GROUP MTGS AT FORTHCOMING CONFERENCE. APPARENTLY

BRITS HAVE IN MIND THAT SIR FRANCIS VALLAT SHOULD WRITE VEROSTA

EARLY NEXT WEEK TO ASK HIM TO CONVENE WESTERN GROUP MTG WHICH IS

TO BE HELD IN VIENN JUST BEFORE OPENING OF CONFERENCE. IN HIS LET SIR

FRANCIS WOULD INDICATE TO VEROSTA THAT BRIT WOULD BE HAPPY IF HE

WAS AGREEABLE TO SERVE AS CHAIRMAN AND THAT THEY HAD HAD INDICATIONS

FROM OTHER GROUP MEMBERS THAT THIS WOULD BE GENERALLY ACCEPTABLE.

BRIT ARE ALSO CONSULTING USA AND CERTAIN OTHER WESTERN GROUP

MEMBERS ON THIS IDEA.

2. WE INFORMED DARWIN THAT WHILE WE DID NOT/NOT ANTICIPATE THAT

THERE WOULD BE ANY OBJECTION FROM A CDN POINT OF VIEW TO VEROSTA

(AND INDEED THAT THIS MIGHT BE A USEFUL GESTURE IN VIEW OF AUSTRIAS

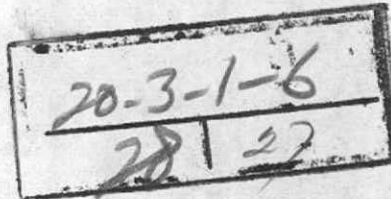
ROLE AS HOST OF CONFERENCE AND IN LIGHT OF REGRETTABLE DISPUTE

OVER MEMBERSHIP ON DRAFTING CTTEE) NEVERTHELESS WE WOULD PREFER

TO GIVE YOU AN OPPORTUNITY TO COMMENT. IT WAS AGREED THAT IF THERE

ARE ANY OBJECTIONS TO VEROSTA WYOU WILL COMMUNICATE THESE DIRECT

TO LDN FOR TRANSMISSION TO VALLAT NO/NO LATER THAN MON MAR18. ...2



mem  
at  
to  
me  
91

PAGE TWO 689 RESTR

3. IN OUR OPINION VEROSTA WOULD MAKE AN ADEQUATE CHAIRMAN THOUGH  
BY NO/NO MEANS A BRILLIANT ONE. ONLY POSSIBLE OBJECTION WE  
COULD SEE MIGHT BE FROM ITALIANS AND WE SUGGESTED THAT DARWIN ENSURE  
THAT BRITS KEEP THEM IN PICTURE. PRESUMABLY WHAT WOULD HAPPEN IS THAT  
AT OPENING OF FIRST WESTERN GROUP MTG IN VIENN EITHER BRITS OR  
POSSIBLY SOME OTHER PRESELECTED WESTERN GROUP MEMBER WOULD NOM-  
INATE VEROSTA FOR POSITION OF CHAIRMAN AND THIS WOULD BE ENDORSED  
BY GROUP. NATURALLY IF SOME OTHER COUNTRY PUTS FORWARD A NOMIN-  
ATION IT WOULD BE NECESSARY THAT IT BE DISCUSSED AT THAT TIME.

Diary  
Div. Diary  
File

Legal Division/J.S. Stanford/jl

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO Protocol Division  
A

FROM Legal Division  
De

REFERENCE Ladouceur-Stanford Telephone Conversation  
Référence

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

SECURITY UNCLASSIFIED  
Sécurité

DATE March 13, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
MISSION	20-3-1-6
	32

ENCLOSURES  
Annexes

DISTRIBUTION

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

The first session of the United Nations Conference on the Law of Treaties is to take place in Vienna from March 26 to May 25. It will be necessary for the Canadian delegation to produce, at the opening of the Conference, credentials issued by the Secretary of State for External Affairs.

2. The Head of the delegation will be Max H. Wershof, Q.C., Canadian Ambassador to Denmark. The members of the delegation will be Mr. A.W.R. Robertson, Mr. R.J. McKinnon and Mr. J.S. Stanford. Mr. McKinnon will attend the first five weeks of the Conference and Messrs. Robertson and Stanford the last four weeks. Mr. Wershof will be present for the entire Conference.

3. We should be grateful if you could arrange for credentials to be issued for the delegation. We regret the short notice being given to you concerning this delegation, however the composition of the delegation was agreed upon only this week.

M. D. COPITHORNE

Legal Division



NNNN

VVVV

20-3-1-6
30   ✓

Mr Beatty  
Stanford

file 20-3-1-6  
28/5

OTT073

PAR79

ACTION COPY

GVE41/14

RR VNA RR OTT RR COP RR NYK

DE GVA

R 141234Z

FM GENEV MAR13/68

TO VIENA 256

INFO EXTER COPEN PRMNY

UN CONFERENCE ON LAW OF TREATIES

MCKINNON WILL BE ARRIVING VIENA BY CAR SUN EVENING MAR24.

L

NNNN VVV

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1620-3-1-6  
75



FACULTY OF LAW

QUEEN'S UNIVERSITY  
KINGSTON, ONTARIO

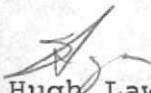
March 13, 1968.

Mr. J. S. Stanford,  
Head of Treaty Section,  
Legal Division,  
Department of External Affairs,  
Daly Building,  
Ottawa, Ontario.

Dear Joe:

I enclose the final section  
of the commentary on the law treaties.

Yours sincerely,

  
Hugh Lawford,  
Professor.

HL/gc  
Enclosure.

MESSAGE

FM/DE **EXTERNAL OTT**

DATE	FILE/DOSSIER	SECURITY SECURITE
Mar. 12/ 68	20-3-1-6 20-3-1-0	UNCLAS.

TO/A **VIENNA,**

52	NO	PRECEDENCE
		PRIORITY

INFO **COPENHAGEN**

L-239

REF

OURTELS L-211 MAR. 7 AND L-228 MAR. 11/68.

SUB/SUJ

LAW OF TREATIES CONFERENCE -HOTEL ACCOMMODATION

PLEASE CANCEL RESERVATION OF A FURTHER  
SINGLE ROOM FOR PERIOD MARCH 25 TO 26, RETAINING SUITE  
PLUS ONE SINGLE ROOM FOR PERIOD MARCH 24 TO MAY 26  
AND ADDITIONAL SINGLE ROOM FOR PERIOD APRIL 27 TO  
MAY 26.

DISTRIBUTION  
LOCAL/LOCALE

FINANCE DIVISION

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

SIG..... J.S. STANFORD

J.S. STANFORD/TS.

LEGAL

2-5406

J.S. STANFORD



c.c. External Ottawa  
Copenhagen  
Vienna

Tel. 7-8787

Telegraphic Address

"MALTADELUN NEWYORK"

Your Ref.

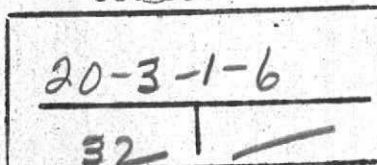
Our Ref.

No.

(Rec'd. by PERMNY  
under compliment slip  
from PERMREP of  
Malta)

UN 1/1/03

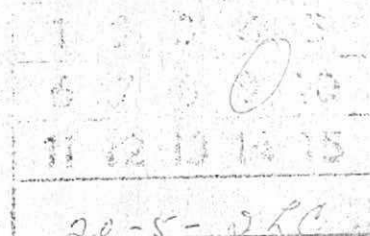
6498



13 March 1968

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

PERMANENT MISSION OF MALTA  
TO THE UNITED NATIONS  
155 East 44th Street  
New York 10017,  
New York



Excellency,

I have the honour to refer to our conversation yesterday regarding the questions of the officers and the membership of committees at the United Nations Conference on the Law of Treaties, which will begin in Vienna on 26th March, 1968.

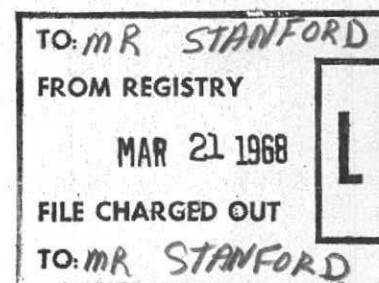
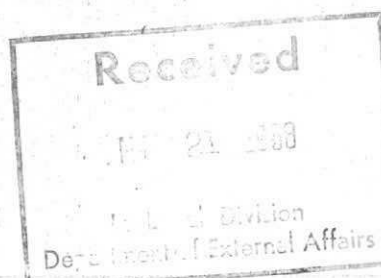
In accordance with the pattern already established for the General Committee of the General Assembly, one of the seats will rotate between the Latin American Group and the Western European and Others Group.

At the meeting of the Western European and Others Group on 11th March, 1968, it was the hope of the group that for 1968 the seat of the rotating Vice-Presidency would be held by the Western European and Others Group, and by the Latin American Group in 1969. I should be most grateful if I could be informed at an early date whether this understanding is agreed to by the Latin American Group.

Please accept, Excellency, the assurances of my highest consideration.

*for A. Pardo*  
Permanent Representative of Malta  
Chairman of the Western European  
and Others Group

H.E. Sr. Guillermo Lang,  
Deputy Permanent Representative of Nicaragua  
to the United Nations,  
Chairman of the Latin American Group





DIARY  
DIV. DIARY  
FILE  
TEL FILE

# MESSAGE

FM/DE EXTERNL OTT

TO/A COPENHAGEN

INFO GENEVA, VIENNA, PERMIS NY

DATE	FILE/DOSSIER	SECURITY
MAR 11 1968	20-3-1-6	SECURITE
	32	RESTR

NO	PRECEDENCE
L-228	IMMED

REF YOURTEL 116 MAR 11

SUB/SUJ U.N. CONFERENCE ON LAW OF TREATIES

FOR WERSHOF FROM CADIEUX:

MCKINNON WILL ASSIST YOU DURING PERIOD MARCH 26 TO APRIL 26. ROBERTSON AND STANFORD WILL ARRIVE IN VIENNA WEEKEND OF APRIL 27-28 AND WILL ASSIST YOU DURING REMAINING FOUR WEEKS OF THE FIRST SESSION.

2. WHILE I REALIZE THAT THIS IS LESS THAN IDEAL ARRANGEMENT FOR THIS LONG AND COMPLEX CONFERENCE, IT IS BEST THAT CAN BE ARRANGED IN VIEW OF BUDGETARY AND PERSONNEL RESTRICTIONS FACING US.

CADIEUX

DISTRIBUTION NO STD DONE IN DIV. FINANCE DIV. U.N. DIV.  
LOCAL/LOCALE PERS. OPS. DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG J.S. STANFORD/J1

LEGAL

2-5406

SIG M. CADIEUX  
H. CADIEUX

13

DIARY  
DIV. DIARY  
FILE  
TEL FILE

# MESSAGE

FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY
MAR 11 1968	20-3-1-6	SECURITE
	32	RESTR

TO/A PERMIS NY

NO  
L-227

PRECEDENCE  
IMMEDIATE

INFO VIENNA, COPENHAGEN, GENEVA

REF YOURTEL 600 MAR 8

SUB/SUJ U.N. CONFERENCE ON LAW OF TREATIES

WE ARE MOST APPRECIATIVE OF YOUR ASSISTANCE IN THIS DIFFICULT SITUATION.  
ROBERTSON SHOULD ARRANGE TO ATTEND SECOND HALF OF CONFERENCE APRIL 29 TO  
MAY 25.

CADIEUX

Received

MAR 12 1968

Internal Division  
Department of External Affairs

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LOCAL/LOCALE PERS. OPS. DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....J.S. STAMFORD/31.....

LEGAL

2-5406

SIG.....M. CADIEUX.....

20-3-1-6	
32	/

*m. Keesley  
Stanford*

cc *✓* External  
Tehran

*cc Copenhagen  
Geneva  
file 9/14/3  
Done 19/3  
JZ*

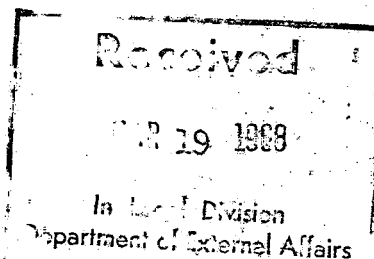
(with attachment)

BEST COPY AVAILABLE

The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Mission of Iran to the United Nations and has the honour to refer to the note of March 4, 1968, stating that further to its note of 23 February, 1968, the Government of Iran has designated H.E. Senator Ahmed Matine-Daftary as its nominee for one of the posts of Vice-President of the Conference on the Law of Treaties to be held this month in Vienna.

This information, together with Senator Matine-Daftary's curriculum vitae, has been forwarded to the appropriate Canadian authorities who will give it careful consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Mission of Iran the assurances of its highest consideration.



New York, March 11, 1968.

P.B.

TO: <i>MR STANFORD</i>
FROM REGISTRY
MAR 18 1968
FILE CHARGED OUT
TO: <i>MR STANFORD</i>

**L**

cc (with enclosures)  
Copenhagen,  
Geneva  
of file 7/10/3

MAR 8 11 33 AM '68

PERMANENT MISSION OF IRAN  
TO THE UNITED NATIONS  
777 THIRD AVENUE  
NEW YORK, N. Y. 10017

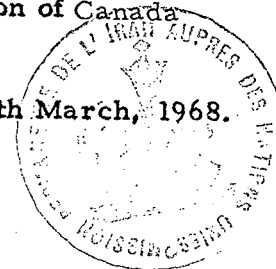
MISSION OF CANADA				
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6	7	8	9	10
11	12	13	14	15
Jo-5-1LC				

The Permanent Mission of Iran to the United Nations presents its compliments to the Permanent Mission of Canada to the United Nations and further to its note of 23rd February has the honour to inform that the Government of Iran has designated H. E. Senator Ahmed Matine-Daftary as its nominee for one of the posts of Vice-President of the Conference on the Law of Treaties to be held this month in Vienna. His curriculum vitae is enclosed.

It is the earnest hope of the Government of Iran that the Government of Canada will see fit to lend its valuable support to this candidature.

The Permanent Mission of Iran avails itself of this opportunity to renew to the Permanent Mission of Canada the assurances of its highest consideration.

New York, 4th March, 1968.



## NOTICE BIOGRAPHIQUE

**Dr. Ahmad MATINE-DAFTARY, Professeur à la Faculté de  
Droit de l'Université de Téhéran.**

**Etudes de droit et de sciences politiques aux Universités de  
Téhéran, Paris, Lausanne et Berlin.**

**Carrière diplomatique d'abord, judiciaire ensuite et politique enfin.  
Conseiller juridique de la délégation de l'Iran à la Société des  
Nations (sessions de 1930 et 1931).**

**Sous-Secrétaire d'Etat à la Justice 1932-1936.**

**Ministre de la Justice 1936-1939 (pendant cette période auteur  
d'une grande partie de la législation judiciaire moderne de  
l'Iran).**

**Premier Ministre 1939-1940.**

**Député d'abord et Sénateur ensuite depuis 1947. Président  
de la Commission de la Justice au Sénat.**

**Membre de l'Académie de l'Iran depuis 1938.**

**Membre de la Cour permanente d'Arbitrage de la Haye depuis 1937.**

**Secrétaire général de l'Association iranienne pour la S. D. N. et  
Président de l'Association iranienne pour les Nations Unies.**

**Chef de la Délégation de l'Iran:**

**a) avant la 2<sup>e</sup> guerre mondiale:**

- 1. au Congrès international de Droit pénal et pénitentiaire  
à Berlin, 1935.**
- 2. à la Conférence de l'Unification du Droit pénal à Copenhague,  
1935.**

**b) après la guerre:**

- 1. aux Conférence de l'Union interparlementaire à Berne,  
Rio de Janeiro, Varsovie, Tokyo, Bruxelles, Belgrade,  
Copenhague et Ottawa.**
- 2. aux deux Conférence des N. U. sur le Droit de la Mer à  
Genève, 1958 et 1960.**
- 3. à la Conférence des N. U. sur les Privilèges et Immunités  
diplomatiques à Vienne, 1961.**
- 4. à la 16<sup>e</sup> Assemblée générale des Nations Unies - New York -  
1961.**

**Membre de la Commission du Droit international des Nations Unies,  
1957 à 1961. Doctor "Honoris causa" in "Civil Law" de l'Université  
de New Delhi, 1953.**



Cours-Conférences faits dans plusieurs Universités de l'Inde (1953) et du Pakistan (1950), à Heidelberg (1957) à l'Université libre de Berlin (1960), à l'Institut universitaire des Hautes Etudes internationales de Genève (1961).  
Président du Comité directeur du Centre des Hautes Etudes internationales de la Faculté de Droit de Téhéran.  
Président du Groupe interparlementaire iranien.

-----

#### PUBLICATIONS

Indépendance économique de la Perse (1925)  
Suppression des Capitulations en Perse (Paris 1931).  
La Politique Pénale (1935)  
La Procédure des Référés (1937)  
La Société des Nations (1936)  
Le Droit pénal spécial (Cours de Droit à la Faculté)  
Traité de Procédure civile et commerciale (3 volumes)  
Les Relations internationales depuis l'Antiquité (l'évolution du Droit international, le commentaire de la Charte des Nations Unies, etc.) - 1957.  
Le Droit international de la Mer

cc V.K. Dev

Res. Off. Dev.

Signature Dev

for return 11/3

file 20-3-1-6

Jul 10/5/64 m Jot last 20

Legal Dir

ACTION COPY

FM COPEN MARI11/68) RESTR

TO TT EXTER 116 IMMED DE HAGUE

FOR USSEA AND LEGAL ADVISER DE WERSHOF

REF PRMNY TEL 600 MAR8

20-3-1-6 6  
371 26

UN CONFERENCE ON LAW OF TREATIES

AM CONTENT TO LEAVE ENTIRELY TO YOU QUESTION OF COMPOSITION OF  
DEL REALIZING THE PERS AND OTHER PROBLEMS INVOLVED. IF YOU DECIDE  
THAT ROBERTSON SHOULD ATTEND FOR ONLY HALF IN VIEW OF PRESSURES  
ON PRMNY I AGREE THAT SECOND HALF WOULD BE BETTER THAN FIRST.  
WITH MCKINNON IN VIENN FIRST HALF AND BOTH ROBERTSON AND HOPE-  
FULLY STANFORD SECOND HALF I SHALL FEEL WELL SUPPORTED IN CIR-  
CUMSTANCES. OF COURSE IT WOULD BE BETTER IF ONE OFFICER WERE THERE  
FOR ENTIRE CONFERENCE BUT THAT DOES NOT/NOT APPEAR FEASIBLE''''

Received  
MAR 11 1968  
In Legal Division  
Department of External Affairs

11.3.7(us)

V.N. Div  
Gen. Div  
Pers. Div  
Ret. Div  
J/11/3

**ACTION COPY**

Received  
MAR 11 1968  
In Legal Division  
Department of External Affairs

pub 20-3-1-6  
30/5  
20-3-1-6  
37  
Stanford  
L guess we shd appt  
half period  
agg

FM PRMNY MAR8/68 RESTR  
TO EXTER(FOR CADIEUX)600 IMMED  
INFO GENEV

TT VIENN DE PARIS COPEN DE HAGUE  
REFYOURTEL L213 MAR7  
UN CONFERENCE ON LAW OF TREATIES

WHILE REALIZING IMPORTANCE OF CONFERENCE AND NEED FOR OUR DEL TO BE  
STAFFED WITH OFFICERS FULLY FAMILIAR WITH SUBJ MATTER I WOULD LIKE  
TO MENTION THAT ABSENCE OF ANOTHER OFFICER FOR A TWO MONTH PERIOD  
COMES AT PECULIARLY AWKWARD TIME FROM STANDPOINT OF MISSION.COX IS  
NOT/NOT EXPECTED TO RETURN TO NY BEFORE END OF MAR;MACLAREN IS  
ATTENDING UNCTAD CONFERENCE IN DELHI;BEAULIEU WILL ATTEND HUMAN  
RIGHTS CONFERENCE;MISS MACPHERSON AND COL TRIMBLE WILL BE LEAVING  
MISSION END OF MAY.AT SAME TIME ACCOUNT MUST ALSO BE TAKEN OF FACT  
THAT DISCUSSION OF SEABED QUESTION WILL BEGIN PROBABLY THIS MONTH  
AND THAT RESUMPTION OF 22ND UNGA IS LIKELY TO TAKE PLACE ON APR24  
AND WILL CONTINUE THROUGH MAY.NOT/NOT ONLY NPT BUT PROBABLY SOUTH  
WESTAFRICA AND PROBLEMS IN MIDEAST MAY ALSO BE DISCUSSED IN UNGA.  
THIS IN ADDITION TO MTGS OF SECURITY COUNCIL.

2.I MENTION THESE FACTS SO THAT DEPT BE FULLY AWARE OF PROBLEMS  
WHICH THIS MISSION WILL HAVE TO FACE IN NEXT FEW MONTHS.HOWEVER IF  
AFTER HAVING TAKEN INTO CONSIDERATION ABOVE FACTORS IT IS VIEW  
OF DEPT THAT ROBERTSON PARTICIPATION IS REQUIRED COULD WE NOT/NOT  
AT LEAST CONTEMPLATE THAT HE WOULD ATTEND ONLY HALF OF CONFERENCE  
ON UNDERSTANDING THAT REINFORCEMENT WILL BE MADE AVAILABLE TO THIS  
MISSION FROM OTT IF NEEDED. ...2

8.3.55/051

PAGE TWO 600 RESTR

IF THIS SUGGESTION WERE AGREEABLE TO YOU I SHALL MAKE NECESSARY  
REALLOCATION OF DUTIES AMONG OTHER OFFICERS AND RELEASE ROBERTSON  
FOR SECOND HALF OF CONFERENCE APPROX APR26 THUS REPLACING MCKINNON  
WHO I UNDERSTAND WILL ATTEND CONFERENCE FOR PERIOD MAR26 TO  
APR26

IGNATIEFF

*file 20-3-1-6*  
*JH 12/3*  
*Beesley*  
*Stanford*  
**ACTION COPY**

L

FM PRMNY MAR8/68 RESTR

TO EXTER 598 PRIORITY

INFO WSHDC LDN PARIS GENEV BRU

TT NATO DE LDN COPEN DE HAGUE CNBRA DE OTT

BAG WLGTN DE CNBRA

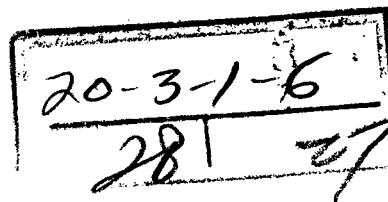
REFOURTEL 582 MAR7

LAW OF TREATIES CONFERENCE:DRAFTING CTTEE

AUSTRALIAN PERMIS HAS CALLED US TO SAY THAT THEY HAVE NOW  
RECEIVED INSTRUCTIONS FROM CNBRA TO EFFECT THAT IF IT WERE  
DECIDED TO EXPAND DRAFTING CTTEE TO 25 OR MORE AND IF WEO GROUP  
AS A RESULT HAD FOUR SEATS THEN AUSTRALIA WOUL PUT FORWARD A  
CANDIDATE FOR ONE OF THESE SEATS.

2.AUSTRALIAN MISSION IS AWARE OF INFO IN OURTEL 582 MAR7.

THEY HAVE IMPRESSION THAT OTHER REGIONAL GROUPS WILL NOT/NOT  
PRESS FOR ENLARGEMENT OF DRAFTING CTTEE.



DIRAY  
DIVL DIARY  
FILE ✓  
TEL FILE

# MESSAGE

4

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
MARCH 8 1968	20-3-1-6 28	RESTR

TO/A

PERMIS NY

NO  
L-221

PRECEDENCE  
IMMED

INFO

WASH, LDN, PARIS, GENEVA, BRUSSELS, COPEN

REF YOURTEL 581, 582 MARCH 7 AND 598 MARCH 8

SUB/SUJ LAW OF TREATIES DRAFTING COMMITTEE

WE SEE NO OBJECTION TO UN LEGAL COUNSEL ADDRESSING WEO GROUP MARCH 11 IF  
OTHER MEMBERS AGREE.

2. AUSTRALIANS HERE HAVE TODAY APPROACHED US CONCERNING THEIR CANDIDATURE  
FOR EXPANDED DRAFTING COMMITTEE. IF IT WERE DECIDED TO EXPAND DRAFTING  
COMMITTEE AND SWEDES AND AUSTRIANS MAINTAIN AGREEMENT REFERRED TO IN YOURTEL  
582 PARA 2, WE WOULD BE PREPARED TO SUPPORT AUSTRALIAN CANDIDATURE ON  
DRAFTING COMMITTEE. OTHERWISE OUR ORDER OF PREFERENCE WOULD BE  
(1) DENMARK (2) AUSTRALIA (3) SWEDEN (4) AUSTRIA, AND (5) SPAIN.

DISTRIBUTION  
LOCAL/LOCALE

NO STD DONE IN DIV.

EUROPEAN DIV.  
U.N. DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....J.S. STANFORD/j1.....

LEGAL

2-5406

SIG.....A.E. GOTTLIEB.....





20-3-1-6  
251

FACULTY OF LAW

QUEEN'S UNIVERSITY  
KINGSTON, ONTARIO

March 8, 1968.

Mr. J. S. Stanford,  
Heady of Treaty Section,  
Legal Division,  
Department of External Affairs,  
Daly Building,  
Ottawa, Ontario.

Dear Joe:

I enclose a further section of the  
commentary.

Best regards.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Hugh'.

Hugh Lawford,  
Professor.

HL/gc  
Enclosure.

Feb 20-3-1-6  
MB 17

*Stanford*

ACTION COPY

L

FM COPEN MAR8/68 CONFD

TO TT EXTER 113 DE HAGUE

LEGAL DIV DE WERSHOF

VIENA CONFERENCE ON LAW OF TREATIES

I KNOW YOU ARE SEEKING MINISTERIAL GUIDANCE ON A FEW IMPORTANT  
SUBSTANTIVE QUESTIONS. AM ANXIOUS TO RECEIVE INSTRUCTIONS ON ART5  
(FEDERAL STATES) WHICH MAY BE REACHED AND VOTED APR FIRST. SOME  
WESTERN DELS MAY PROPOSE DELETION; WE MUST DECIDE WHETHER WE  
PREFER RETENTION DESPITE ITS AMBIGUITIES. IF I AM TO SPEAK ON  
THIS ART, I SUGGEST STATEMENT BE DRAFTED IN OTT.

*change 1  
leadership  
date?*

2. WHAT ARE YOUR WISHES RE SENDING COPIES OF VOLUMINOUS CONFERENCE  
DOCUS AND SUMMARY RECORDS? DO YOU WANT ONE (OR MORE) COPIES OF — *yes - 2 copies*  
ALL DOCUS TO BE SENT MORE OR LESS CONTINUOUSLY OR SHALL WE BE  
VERY SELECTIVE DURING CONFERENCE AND SEND YOU (HOW MANY) COMPLETE  
SETS AT CLOSE OF CONFERENCE? I GO TO VIENA MAR24 ....

*Informed Mrs Means,  
Finance Div, by phone 2/11/3*

Feb 20-3-1-68  
ms



QUEEN'S UNIVERSITY  
KINGSTON, ONTARIO

March 7, 1968.

FACULTY OF LAW

Mr. J. S. Stanford,  
Head of Treaty Section,  
Legal Division,  
Department of External Affairs,  
Daly Building,  
Ottawa, Ontario.

Dear Joe:

I enclose yet another section  
of the commentary on the U.N. draft articles.

Best regards.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'H. Lawford'.

Hugh Lawford,  
Professor.

HL/gc  
Enclosure.

Received
MAR 12 1968
In Legal Division Department of External Affairs.

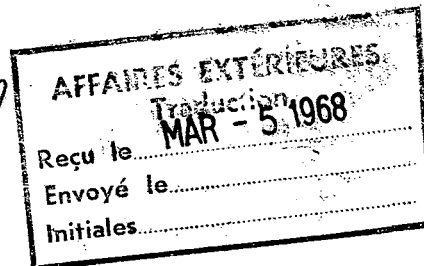
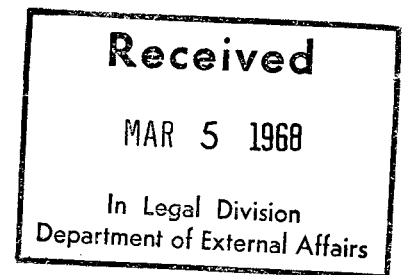
*Feb 20-3-1-6*  
*Embajada del Ecuador*  
*Ottawa*

No. 4-2-5/68

La Embajada del Ecuador saluda muy atentamente al Departamento de Asuntos Externos y tiene a honra avisarle recibo de la nota número L-181 de 23 de febrero último, concerniente al criterio del Canadá en relación con lo determinado por el "Proyecto de Artículos sobre el Derecho de los Tratados", redactado por la Comisión de Derecho Internacional de las Naciones Unidas, sobre invalidez, terminación y suspensión de los Tratados Internacionales.

Al agradecer la indicada comunicación, cuyo texto fue transmitido a su Cancillería, la Embajada del Ecuador reitera al Departamento de Asuntos Externos, las seguridades de su más alta consideración.

Ottawa, a 4 de marzo de 1968



*cc - European Council  
U.N. Secy  
4/18/7  
Done 4/3*

*Stansford*  
20-3-1-6  
**ACTION COPY**

FM PRMNY MAR7/68 RESTR

TO EXTER 582 IMMED

INFO WSHDC LDN PARIS GENEV BRU

IT NATO DE LDN COPEN DE HAGUE CNBRA DE OTT

BAG WLGTN DE CNBRA

REFYOURTEL L190 FEB26 AND OURTEL581 MAR7

LAW OF TREATIES CONFERENCE:DRAFTING CTTEE

SINCE REFTEL WAS DICTATED WE HAVE HAD CONVERSATION WITH DARWIN OF UK PERMIS WHO SAID THAT HE UNDERSTANDS STAVROPOULOS WHO HAS ALREADY SPOKEN TO ALL OTHER GROUPS WILL SPEAK STRONGLY AGAINST ENLARGEMENT OF DRAFTING CTTEE OF WEO MTG ON MAR11.

2.DARWIN ALSO INFORMED US THAT HE UNDERSTOOD THAT AUSTRIANS AND SWEDES HAD MADE DEAL UNDER SHICH SWEDEN WOULD GET SEAT ON DRAFTING CTTEE AND AUSTRIA WOULD BE A VICEPRESIDENT OF CONFERENCE AND WOULD ALSO BE A MEMBER OF FIRST WORKING GROUP IF ANY SET UP BY CONFERENCE. AUSTRIANS THEREFORE WILL NOT/NOT NOW ACTIVELY PURSUE ENLARGEMENT BUT IF IN EVENT DRAFTING CTTEE IS ENLARGED AS RESULT OF PRESSURE FROM OTHER REGIONAL GROUPS THEN AUSTRIAN CLAIM TO SEAT ON DRAFTING CTTEE WILL BE REVIVED.

3.DARWIN COMMENTED THAT THIS STILL LEFT SPANISH CANDIDACY UNRESOLVED BUT HE UNDERSTOOD THAT ITALIANS MIGHT TRY TO PERSUADE SPANIARDS TO ACCEPT SPLIT VICEPRESIDENCY TO BE SHARED BETWEEN LATINS AND WEO GROUP.

DEPARTMENT OF THE SECRETARY OF STATE

TRANSLATION BUREAU  
FOREIGN LANGUAGES DIVISION

CANADA

20-3-68  
SECRETARIAT D'ÉTATBUREAU DES TRADUCTIONS  
DIVISION DES LANGUES ÉTRANGÈRES

20-3-1-6

YOUR NO.  
VOTRE NO

Note 5-3-68

DEPARTMENT  
MINISTÈRE

External Affairs

DIVISION/BRANCH  
DIVISION/DIRECTION

Legal - J.S.Stanford

CITY  
VILLE

Ottawa

OUR NO.  
NOTRE NO

1096

LANGUAGE  
LANGUE

Spanish

TRANSLATOR (INITIALS)  
TRADUCTEUR (INITIALES)

C. K.

DATE

7-3-68

Embassy of Ecuador  
O t t a w a

Note No. 4-2-5/68

The Embassy of Ecuador presents its compliments to the Department of External Affairs and has the honour to acknowledge Note L-181 of February 23, 1968, concerning Canada's criterion with respect to "The Draft Articles on the Law of Treaties" prepared by the United National Commission on International Law, with reference to the invalidity, termination and suspension of International Treaties.

The Embassy of Ecuador is grateful for this communication, text of which has been submitted to its Foreign Ministry, and wishes to renew to the Department of External Affairs the assurances of its highest consideration.

Ottawa, March 4, 1968

Seal: Embassy of Ecuador, Ottawa.



Legal/0.3. Stanford/0.3.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

20-3-1-6

TO  
A

Mr. Beesley

SECURITY  
Sécurité

RESTRICTED

FROM  
De

J.S. Stanford

DATE

March 7, 1968.

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties Conference -  
Preparation of Commentary and  
Instructions

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Gotlieb

Now that the draft commentary is beginning to arrive from Lawford, I will prepare the instructions. What I propose to do, if you agree, is to submit to you for comments or approval article by article (or groups of articles where appropriate, e.g. 16 and 17 on reservations and objections), Lawford's commentary together with my suggested alterations to his commentary and my draft instructions. As the material on each article is approved by you, in consultation with Mr. Gotlieb and Mr. Cadieux as you consider appropriate, I will have it typed in final form. [The instructions on the federal states article and the question of independent arbitration are now before the Minister for approval, as you know]

2. Mr. Wershof suggested in Paris that we provide instructions (as distinct from a commentary) only on those articles which raise significant and controversial issues, or on which we wish to suggest changes or on which we know amendments are to be tabled. He expected this would amount to about one half of the articles. This procedure would avoid the necessity of formulating instructions on routine articles just for the sake of saying something. Do you agree?

*Yes or no.  
I think we need to know  
our position on every article.  
That by no means suggests  
we have to speak on every article.*

J.S. Stanford

# MESSAGE

DATE MAR. 7/68		FILE/DOSSIER 20-3-1-6 32		SECURITY SECURITE
FM/DE	EXTERNAL OTT			RESTRICTED
TO/A	GENEVA			PRECEDENCE
INFO	COPENHAGEN, PERMIS N.Y., VIENNA			PRIORITY
				L-212

REF

YOURTEL 208 FEB. 29/68

SUB/SUJ

U.N. CONFERENCE ON LAW OF TREATIES

WE ARE MOST GRATEFUL FOR YOUR OFFER TO  
MAKE MCKINNON AVAILABLE FOR FIRST MONTH OF CONFERENCE.  
THIS ARRANGEMENT WILL BE USEFUL AND MCKINNON SHOULD  
THEREFORE ARRANGE TO ATTEND CONFERENCE FOR PERIOD MARCH  
26 TO APRIL 26. NECESSARY BACKGROUND DOCUMENTATION BEING  
SENT TO MCKINNON IMMEDIATELY. *Cadieux*

DISTRIBUTION  
LOCAL/LOCALE

FINANCE DIVISION, PERS. OPS. DIV.

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

# MESSAGE

RETURN TO LEGAL DIV. DCO

FM/DE

EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY
MAR. 7/68	20-3-1-6	SECURITE
	3 2	CONFID.

TO/A

PERMIS N.Y.

NO

PRECEDENCE

L-213

IMMED.

INFO

COPENHAGEN, GENEVA, VIENNA

REF YOURTEL 505 FEB. 28/68

SUB/SUJ U.N. CONFERENCE ON LAW OF TREATIES

FOLLOWING FOR IGNATIEFF FROM CADIEUX

I FULLY APPRECIATE DIFFICULTIES PRESENTED FOR YOUR MISSION BY PERSONNEL TRANSFERS AND MEETINGS OF U.N.G.A. AND SECURITY COUNCIL. HOWEVER IN AN ATTEMPT TO STAFF CDN DEL. TO VIENNA CONFERENCE WE ARE ALREADY USING McKINNON FROM GENEVA FOR FIRST HALF OF CONFERENCE. HE WILL BE REPLACED BY OFFICER FROM OTTAWA FOR SECOND HALF OF CONFERENCE. WE ARE UNABLE TO PROVIDE FROM OTTAWA OR ELSEWHERE, NECESSARY THIRD MEMBER OF DELEGATION. IN THE CIRCUMSTANCES ASSIGNMENT OF ROBERTSON, WHO IS ONE OF FEW OFFICERS IN DEPARTMENT FULLY FAMILIAR WITH SUBJECT MATTER, TO CDN DEL. BECOMES EXCEEDINGLY IMPORTANT. GRATEFUL IF, IN THE LIGHT OF FOREGOING, YOU COULD AGREE TO RELEASE ROBERTSON FOR CONFERENCE. *Cadieux*

DISTRIBUTION  
LOCAL/LOCALE

FINANCE DIVISION

PERS. OPS. DIV.

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.

J.S. STANFORD/TS

Legal

2-5406

SIG.

M. CADIEUX





EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

Mr. Beesley

SECURITY  
Sécurité

RESTRICTED

FROM  
De

J.S. Stanford

DATE March 7, 1968.

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties Conference -  
Preparation of Commentary and  
Instructions

FILE	DOSSIER
OTTAWA	
MISSION	

20-3-1-6  
28

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Gotlieb

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J.S. STANFORD

J.S. Stanford

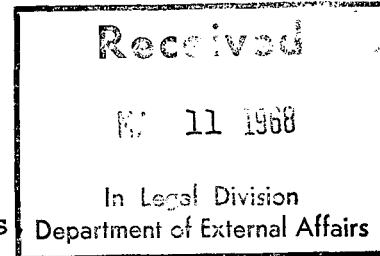
file 20-3-1-6  
ms |



FACULTY OF LAW

QUEEN'S UNIVERSITY  
KINGSTON, ONTARIO

March 6, 1968.




Mr. J. S. Stanford,  
Head of Treaty Section,  
Legal Division,  
Department of External Affairs,  
Daly Building,  
Ottawa, Ontario.

Dear Joe:

I enclose a further section  
of the commentary for you on the U.N.  
draft articles. I will continue send-  
ing parts as quickly as they are typed.

Best regards.

Yours sincerely,

  
Hugh Lawford,  
Professor.

HL/gc  
Enclosure.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*File 30/5/69*

TO  
À

The Under-Secretary  
(through the Legal Adviser)

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De

Legal Division

DATE

March 5, 1968

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties Conference - Canadian Delegation

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

ENCLOSURES  
Annexes

DISTRIBUTION

You will recall the Minister requested that not more than two officers, in addition to Mr. Wershof, be assigned to this Conference and that, as far as possible, they be drawn from European posts.

2. We have asked London and Geneva whether Messrs. Lee and McKinnon respectively could be made available for all or part of the Conference. London has replied that it would be exceedingly difficult to spare Lee for any portion of the Conference. Geneva has replied that McKinnon can be spared for the first half of the Conference only, from March 26 to April 26. The period of greatest need, however, will be the latter half of the Conference when evening and weekend sessions will be held. Our Permanent Mission in New York, to which we also directed an enquiry, replied that Robertson could not be released.

3. To provide Mr. Wershof with the assistance of at least one officer of the Department, it would appear desirable to accept Geneva's offer of McKinnon for the first half of the Conference and plan on replacing him, for the second half of the Conference, by an officer from Ottawa. We could go back to London and ask that Lee be made available for the second half of the Conference, but this would mean bringing in an officer unfamiliar with the subject matter half way through the session, a step we should try to avoid if possible.

4. With respect to the second additional member of the delegation, there would appear to be three possibilities. One is to inform Mr. Ignatieff that, notwithstanding the transfers of personnel, the special UNGA and the Security Council, Mr. Robertson must be released for Vienna. The second possibility is to assign Prof. Lawford to the delegation. It is not certain that we could secure Lawford's services at this late date and it is difficult to assess his potential contribution to the delegation as we have not yet received the commentary which he is to prepare for the delegation. A third possibility would be to assign a second officer from Ottawa.

...2

*6.3.22(55)*

- 2 -

5. We should be grateful for your comments on the foregoing proposals, in particular whether we should

(a) Inform Geneva that McKinnon will be assigned to the Conference for the first month;

(b) arrange for an officer from Ottawa to attend the second month of the Conference; (Stanford)

(c) (i) inform Mr. Ignatieff that Robertson must be released or

(ii) seek to obtain Lawford's services for the delegation or

(iii) send the second officer from Ottawa.

I would favour  
this, if we  
can manage it  
aps

yes/k

*Stanley*  
Legal Division



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Under-Secretary  
(through the Legal Adviser)

FROM  
De Legal Division

REFERENCE  
Référence

SUBJECT  
Sujet Law of Treaties Conference - Canadian Delegation

SECURITY  
Sécurité CONFIDENTIAL

DATE March 5, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA 20 - 3 - 1 - 6	
MISSION	57

ENCLOSURES  
Annexes

DISTRIBUTION

You will recall the Minister requested that not more than two officers, in addition to Mr. Wershof, be assigned to this Conference and that, as far as possible, they be drawn from European posts.

2. We have asked London and Geneva whether Messrs. Lee and McKinnon respectively could be made available for all or part of the Conference. London has replied that it would be exceedingly difficult to spare Lee for any portion of the Conference. Geneva has replied that McKinnon can be spared for the first half of the Conference only, from March 26 to April 26. The period of greatest need, however, will be the latter half of the Conference when evening and weekend sessions will be held. Our Permanent Mission in New York, to which we also directed an enquiry, replied that Robertson could not be released.

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...2

- 2 -

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- (b) arrange for an officer from Ottawa to attend the second month of the Conference;
- (c)
  - (i) inform Mr. Ignatieff that Robertson must be released or
  - (ii) seek to obtain Lawford's services for the delegation or
  - (iii) send the second officer from Ottawa.

J. A. REESLEY

Legal Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Under-Secretary  
(through the Legal Adviser)

FROM  
De Legal Division

REFERENCE  
Référence

SUBJECT  
Sujet Law of Treaties Conference - Canadian Delegation

SECURITY  
Sécurité

CONFIDENTIAL

DATE

March 5, 1968

BEST COPY AVAILABLE

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
MISSION	

20-3-1-6  
28

ENCLOSURES  
Annexes

DISTRIBUTION

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...2

BEST COPY AVAILABLE

- 2 -

BEST COPY AVAILABLE

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- (b) arrange for an officer from Ottawa to attend the second month of the Conference;
- (c) (i) inform Mr. Ignatieff that Robertson must be released or  
(ii) seek to obtain Lawford's services for the delegation or  
(iii) send the second officer from Ottawa.

A. A. BEEBLEY

Legal Division

BEST COPY AVAILABLE

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Confidentiel

TO  
À

SECURITY  
Sécurité

Le 4 mars 1968

FROM  
De

DATE

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Direction Juridique

Direction d'Europe

Votre mémoire du 20 février

Conférence du Droit des Traités: participation au  
Comité de Rédaction.

FILE	DOSSIER
OTTAWA	L-20-3-1-6
MISSION	28

ENCLOSURES  
Annexes

DISTRIBUTION

Dir.N.U

Nous avons étudié soigneusement votre mémoire et les télégrammes 387 du 13 février de notre mission permanente à New York et no. 74 du 14 février de Copenhague. Le problème de concurrence soulevé entre les différents pays européens qui postulent deux fauteuils au comité de rédaction nous paraît trop épineux pour que le Canada prenne position en faveur de l'une ou l'autre partie. C'est pourquoi nous préférons nous rallier à la thèse de M. Wershof et nous abstenir de voter pour quiconque des pays membres qui s'opposent dans ce cas. Par exemple, en appuyant les Hollandais nous déplairons sans doute aux Autrichiens; en écartant complètement les Espagnols nous leur déplairons parce qu'ils nous ont spécifiquement demandé d'appuyer leur candidature dans d'autres commissions et nous n'avons pas encore pris de décision. D'autre part, les Autrichiens pourraient nous en vouloir de leur avoir préféré les Suédois et vice versa. Il y a parmi les concurrents deux qui sont membres de l'OTAN (Pays-Bas et Danemark) tandis que nous tenons beaucoup à l'amitié des trois autres neutres. C'est pourquoi le Canada qui ne fera pas partie de cette commission n'a pas à s'engager d'une façon immédiate à propos des candidatures du groupe européen de l'ouest. Dans les circonstances nous devrions, si nous sommes forcés de voter au sein du groupe, signifier notre abstention.

J. G. H. HALSTEAD

Direction d'Europe



QUEEN'S UNIVERSITY  
KINGSTON, ONTARIO

FACULTY OF LAW

March 4, 1968

Received

MAR 6 1968

In Legal Division  
Department of External Affairs


Mr. J. S. Stanford,  
Head of Treaty Section,  
Legal Division,  
Department of External Affairs,  
Daly Building,  
Ottawa, Ontario.

Dear Joe:

I enclose the first part of the  
commentary by you on the U.N. draft articles.  
The rest will follow as quickly as it is  
typed.

Best regards.

Yours sincerely,

  
Hugh Lawford,  
Professor.

HL/GC  
Enclosure.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM  
De The Office of the High Commissioner for Canada,  
ACCRA, Ghana.

REFERENCE  
Référence

SUBJECT  
Sujet First Session of the United Nations Conference on  
the Law of Treaties - Vienna, March 26 to May 24,  
1968.

SECURITY  
Sécurité UNCLASSIFIED

DATE March 4, 1968

NUMBER  
Numéro 82

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES  
Annexes

1

DISTRIBUTION

--- We attach a copy of Note No. LE/IL.VOL.3 of March 1, 1968 from the Ghanaian Ministry of External Affairs about Ghanaian attendance at the above-mentioned conference. As you will see, the Note indicates that Ghana will present its candidature for election to one of the 22 Vice-Presidencies as well as to membership of the Drafting Committee of the Conference. The Ghanaian Government requests the Canadian Government's support for Ghanaian candidature to these two positions.

A. F. HART

Office of the High Commissioner



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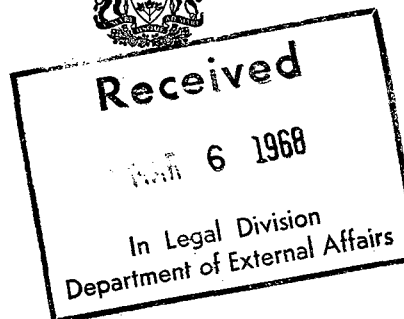
*Mr. Lester*  
*Mr. Stanford*

TO Direction Juridique  
A

FROM Direction d'Europe  
De

REFERENCE Votre mémoire du 20 février  
Référence

SUBJECT Conférence du Droit des Traités: participation au  
Sujet Comité de Rédaction.



SECURITY Confidential  
Sécurité

DATE Le 4 mars 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	15

ENCLOSURES  
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DISTRIBUTION

Dir.N.U

Nous avons étudié soigneusement votre mémoire et les télégrammes 387 du 13 février de notre mission permanente à New York et no. 74 du 14 février de Copenhague. Le problème de concurrence soulevé entre les différents pays européens qui postulent deux fauteuils au comité de rédaction nous paraît trop épineux pour que le Canada prenne position en faveur de l'une ou l'autre partie. C'est pourquoi nous préférons nous rallier à la thèse de M. Wershof et nous abstenir de voter pour quiconque des pays membres qui s'opposent dans ce cas. Par exemple, en appuyant les Hollandais nous déplairons sans doute aux Autrichiens; en écartant complètement les Espagnols nous leur déplairons parce qu'ils nous ont spécifiquement demandé d'appuyer leur candidature dans d'autres commissions et nous n'avons pas encore pris de décision. D'autre part, les Autrichiens pourraient nous en vouloir de leur avoir préféré les Suédois et vice versa. Il y a parmi les concurrents deux qui sont membres de l'OTAN (Pays-Bas et Danemark) tandis que nous tenons beaucoup à l'amitié des trois autres neutres. C'est pourquoi le Canada qui ne fera pas partie de cette commission n'a pas à s'engager d'une façon immédiate à propos des candidatures du groupe européen de l'ouest. Dans les circonstances nous devrions, si nous sommes forcés de voter au sein du groupe, signifier notre abstention.

*J.H. Halstead*  
Direction d'Europe

LE/IL.VOL.3

The Ministry of External Affairs presents its compliments to the Chiefs of Diplomatic Missions accredited to Ghana and has the honour to refer to the forthcoming First Session of the United Nations Conference on the Law of Treaties which will be held in Vienna from 26th March to 24th May, 1968.

The following delegates are expected to represent Ghana:

- (i) Mr. Victor Owusu, - Leader.  
Commissioner for Justice  
and Attorney-General.
- (ii) Mr. E.K. Dadzie, - Deputy Leader.  
Supervising Principal  
Secretary, Ministry of  
External Affairs.
- (iii) Mr. K. Gyeke-Darko, - Adviser.  
Principal State Attorney,  
Ministry of Justice.
- (iv) Mr. W.W.K. Vanderpuye, - "  
Counsellor, Ghana Embassy,  
Copenhagen.
- (v) Mr. G.K. Ofosu-Amaah, - "  
Lecturer in Law, University  
of Ghana and honorary  
Legal Adviser to the  
Ministry of External Affairs.
- (vi) Mr. G.O. Lamptey, - Adviser and Secretary  
Director/Research Division, to the Delegation.  
Ministry of External Affairs.

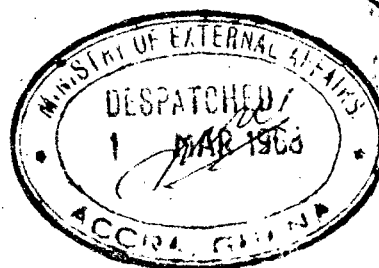
Ghana will present its candidature for election to one of the 22-Vice Presidencies as well as to membership of the Drafting Committee of the Conference.

The Government of Ghana will very much appreciate if the Chiefs of Diplomatic Missions will convey its request for support of their respective delegations for Ghana's candidature to the two positions noted above.

The Ministry of External Affairs avails itself of this opportunity to renew to the Chiefs of Diplomatic Missions accredited to Ghana the assurances of its highest consideration.

Ministry of External Affairs,  
A c c r a .

1st March, 1968.



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Office of the High Commissioner

