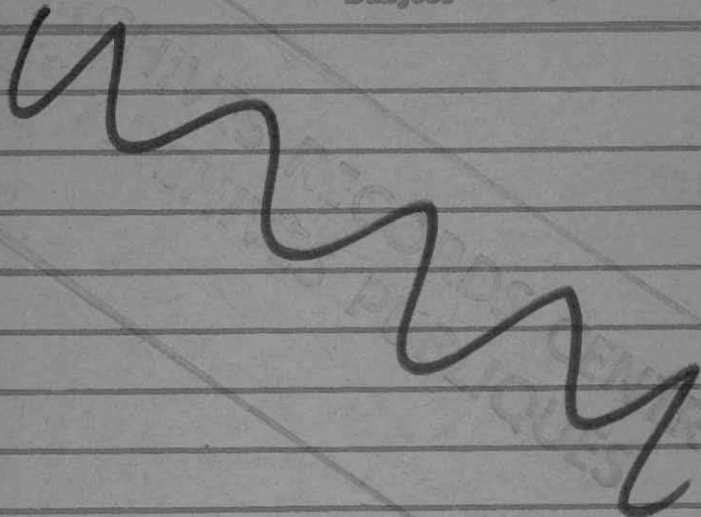
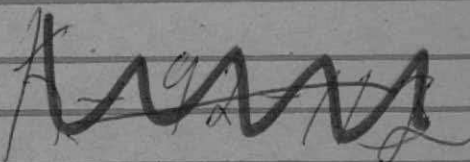


Subject: POLITICAL AFFAIRS -

ILC CODIFICATION PROJECT

Vol. 8  
From JAN/69  
To FEB 10/69

## References to Related Files

File No.	Subject
	
	
	PAC

NOS 68/001 & 69/063

10 Yrs. 2A-8D

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FOR SELECTIVE RETENTION

### DIVISIONAL SYMBOL



DATED FROM JAN 10 69 FILE No. 20-3-1-6  
TO FEB 28 69 VOLUME No. 8

# CLOSED VOLUME

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FILE No. 20-3-1-6 VOLUME No. 9

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20-3-1-6	
14	9AR

ACTION COPY

L

*Copied*  
*Maurice*  
*Stanford*  
*6.11.2*  
*20-3-1-6*  
*9AR*

FM COPEN FEB10/69 CONFD NO/NO STANDARD

TO TT EXTER 66 DE HAGUE

INFO TT ANKRA DE LDN

LAW OF TREATIES ART5

AT WEO MTG IN PARIS FEB6-7 STANFORD AND I HAD TALK WITH TURKISH  
DEL HAYTA. HE IS SENIOR OFFICER OF MFA WHO HAS ONLY NOW BEEN DESIGNATE  
TO HANDLE THIS SUBJ AND HAS NO/NO PREVIOUS EXPERTISE. I KNEW HIM WELL  
IN GENEV AND HE IS VERY FRIENDLY.

2. WE EXPOUNDED CDN VIEWS AND TACTICS AT VIENN. HAYTA PROMISED TO GO  
INTO SUBJ FULLY AND TO DISCUSS WITH GOLDSCHLAG. HE DID NOT/NOT  
KNOW NOR DID WE, JUST WHY TURKEY VOTED TO RETAIN ART5(2) AT 1968  
VIENN COFERENCE BUT GUESSED THAT IT MIGHT BE RELATED TO TURKISH  
HOPE OF CYPRUS BECOMING A FEDERAL STATE. WE ARGUES THAT ABSENCE OF  
PARA(2) OF ART5 FROM CONVENTION WOULD NOT/NOT PREJDUICE IN ANY WAY  
NATURE OF CYPRUS FERALISY.

3. EVEN IF TUK DECIDES BECAUSE OF THIS THAT IT MUST VOTE TO RETAIN  
ART5(2) I THINK THERE IS GOOD CHANCE OF TURK PROMISING TO VOTE FOR  
PROCEDURAL MOTION TO PERMIT SEPARATE VOTE ON 5(2)

WERSHOF

6.11.2

copy To BISSONNETTE

ACTUAL COPY

FM COPEN FEB10/69 CONFD NO/NO STANDARD

TO TT EXTER 67 DE HAGUE

INFO TT BERN DE PARIS

LAW OF TREATIES ART5

AT WEO MTG IN PARIS FEB6-7 STANFORD AND I HAD TALK WITH BINDSCHEDLER  
(SWISS LEGAL ADVISER) AND CUENDET OF FOREIGN MINISTRY. WE EXPOUNDED  
IN DETAIL OBJECTIONS TO ART5(2) AND EXPLAINED PROCEDURE CDA INTENDS  
TO FOLLOW IN VIENN.

2. BINDSCHEDLER UNDERSTANDS OUR VIEWS AND INDICATED THAT THEY WOULD  
BE CONSIDERED. HE IS FRINDLY ENOUGH BUT WE ARE NOT/NOT HOPEFUL.  
ART5(2) FITS SWISS CONSTITUTIONAL POSITION AND HE WOULD THEREFORE  
FIND IT DIFFICULT TO OPPOSE IT. HE SEEMED TO AGREE HOWEVER THAT THERE  
WAS NEVER ANY NEED FOR ILC TO INSERT SUBJ OF FEDERAL STATES INTO  
DRAFT CONVENTION. WE URGED HIM TO DISTINGUISH BETWEEN PROCEDURAL  
MOTIONE TO PERMIT SEPARATE VOTE AND THE SUBSTANTIVE VOTE ON ART5(2)  
; EVEN IF SWISS FEEL BOUND TO VOTE FOR 5(2) WE ASKED THAT THEY HELP  
US BY VOTING FOR (OR AT LEAST ABSTAINING) ON PROCEDURAL MOTION.

3. WHEN STANFORD RETURNS OTT HE WILL DISCUSS WITH YOU DESIRABILITY  
OF ASKING EMB BERN TO GO AFTER POLITICAL SIDE OF SWISS MFA ON POLIT-  
ICAL GROUNDS. DANGER IN THIS IS THAT IT MIGHT MERELY IRRITATE  
BINDSCHEDLER WHO SEEMS TO BE THE MAN IN CHARGE AF ALL ASPECTS  
OF LAW OF TREATIES CONFERENCE

WERSHOF

5.11.2

002880

reply dated 18/2

copy To Mr Bissonnette

ORIGINAL COPY

L. Lapointe  
M. Gauthier  
J. St-Pierre  
OR

Feb 14/2

20-3-1-6  
14 | M R

FM COPEN FEB10/69 CONFD NO/NO STANDARD  
TO TT EXTER 68 DE HAGUE  
INFO TT VIENN DE PARIS  
REF VIENN TEL 73 JAN31  
LAW OF TREATIES ART5

AT PARIS MTG I SAE NETTEL OF AUSTRIAN MFA AND THANKED HIM FOR AUSTRIAN  
INTENTIONS DESCRIBED IN REFTEL PARA2 SUBPARAS(1) AND(2). AS FOR  
SUBPARA(3) NETTEL SAID ONE OF THEIR PURPOSES IN THIS WAS TO BE  
HELPFUL TO CDA. I POINTED OUT THAT RULES OF PROCEDURE WOULD MAKE  
IT IMPOSSIBLE FOR THEM TO REINTRODUCE THEIR AMENDMENT AFTER VOTE  
WAS TAKEN TO RETAIN PARA(2). IF THEY WRE TO FILE THEIR AMENDMENT THEY  
WOULD HAVE TO DO IT BEFORE ANY VOTING ON ART5 AND THE VOTE ON THEIR  
AMENDMENT WOULD COME BEFORE RPT BEFORE ANY VOTE ON PARA(2). I  
SAID THAT ALTHOUGH THEIR AMENDMENT IF SUCCESSFUL WOULD MAKE  
PARA RELATIVELY PALATABLE I DID NOT/NOT THINK THEIR AMENDMENT  
COULD GET NECESSARY MAJORITY AND INTRODUCTION OF IT MIGHT MAKE IT  
MORE DIFFICULT FOR CDA TO OBTAIN(A) PROCEDURAL DECISION TO PERMIT  
SUBPARAS VOTE AND(B) DEFEAT OF PARA(2).

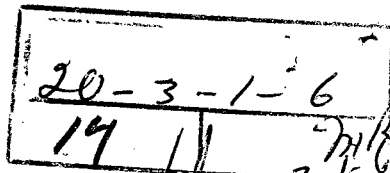
2. NETTEL SAID THAT IF WE STRONGLY PREFER THAT AUSTRIA SHOULD NOT/NOT  
TABLE AMENDMENT, THEY WOULD PROBABLY COMPLY WITH OUR WISHES. I SAID  
I WOULD CONSULT YOU AND YOUR VIEW WOULD BE CONVEYED EITHER THROUGH  
EMB VIENN OR BY LET FROM ME.

3. DISCUSSION WAS VERY AMIABLE AND NETTEL EMPHASIZWD DESIRE NOT/NOT  
TO COMPLICATE CDN TACTICS.

4. STANFORD AGREES WITH ME THAT INTRODUCTION OF AUSTRIAN AMENDMENT  
PRESENTS MORE DANGERS THAN BENEFITS AND SHOULD BE DISCOURAGED.

PLEASE INSTRUCT, WERSHOF.

4.11.2



ACTION COPY

L. *Capitales*  
*Sturges*  
*MacKenzie*  
*Sturges* O.R.

FM DELHI FEB10/69 CONFD NO/NO STD

TO EXTER 477

REF OURTEL 147 JAN14 AND YOURTEL L50 JAN6

DRAFT CONVENTION ON LAW OF TREATIES

SINCE WE HAD STILL NOT/NOT RECEIVED PRELIMINARY NEPALESE REACTION, REECE RAISED THIS SUBJ DURING VISIT TO KATHMANDU LAST WEEK WITH FOREIGN SECRETARY(DEPUTY MINISTER)AND JOINT SECRETARY FOR POLITICAL AFFAIRS OF MFA.THEY DISPLAYED NO/NO KNOWLEDGE OF THE DETAILED NOTE OUTLINING YOUR VIEWS AND BACKGROUND AIDE MEMOIRE WE HAD GIVEN NEPALESEEMB HERE BUT PROMISED TO LOOK INTO MATTER NOW.THEY WOULD FORMULATE THEIR VIEWS AFTER DISCUSSION WITH PANDE WHO WAS NEPALESE REP AT FIRST SESSION OF CONFERENCE AND IS EXPECTED IN KATHMANDU SOON BEFORE TAKING UP HIS DUTIES AS NEW AMBASSADOR TO INDIA.HE IS NOT/NOT EXPECTED TO ATTEND SECOND HALF OF CONFERENCE IN VIENN.

2.REECE FURNISHED MFA WITH NEW COPIES OF NOTE AND AIDE MEMOIRE AND STRESSED YOUR HOPE THAT NEPALESE WOULD AGAIN OPPOSE PARA2 OF ARTICLE 5,SUPPORT SEPARATE VOTE ON PARA2 AND IF NECESSARY VOTE AGAINST WHOLE ARTICLE.REECES GENERAL IMPRESSION WAS THAT NEPALESE WOULD VOTE AS WE SUGGESTED.THEY PROMISED TO LET US KNOW AS SOON AS THEY HAD MADE DECISION.WE WOULD NOT/NOT HOWEVER COUNT ON THIS HAPPENING SINCE NEPALESE ARE NOT/NOT TOO WELL ORGANIZED.

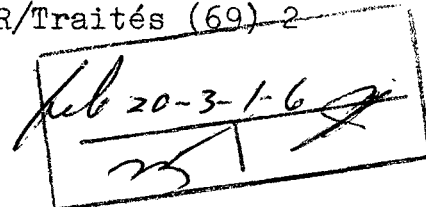
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002882



Paris, le 7 février 1969

GR/Traités (69) 2



COMITE AD HOC SUR LE DROIT DES TRAITES

AD HOC COMMITTEE ON THE LAW OF TREATIES

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FR/Traités (69) 2

- 2 -

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GR/Traités (69) 2

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LONDON, S.W. 1

./.

Traités (69) 2

- 4 -

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./.



- 5 -

GR/Traités (69) 2

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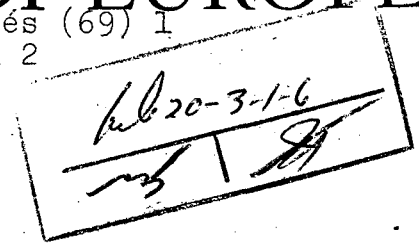
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Conseil de l'Europe,  
STRASBOURG

# CONSEIL DE L'EUROPE COUNCIL OF EUROPE

Paris, le 6 février 1969

GA/Traités (69) 1  
Addendum 2



## COMITE AD HOC SUR LE DROIT DES TRAITES

Règlement des différends en cas de nullité,  
d'extinction, de retrait ou de suspension  
de l'application d'un traité

Proposition présentée par les Etats-Unis d'Amérique

### Article 62 bis (1)

Si les parties n'ont pas été à même, en vertu de l'article 62, de convenir d'un moyen de parvenir à une solution dans les quatre mois qui ont suivi la date à laquelle l'objection a été soulevée, ou si elles sont convenues d'un moyen de règlement autre que le règlement judiciaire ou l'arbitrage et que ce moyen de règlement n'ait pas abouti à une solution acceptée par les parties dans les douze mois qui ont suivi ledit accord, l'une quelconque des parties peut mettre en oeuvre les procédures indiquées à l'annexe I de la présente Convention en soumettant une demande à cet effet au Secrétaire Général des Nations Unies.

./.

(1)

- Nouvelle version de la proposition contenue au document A/CONF.39/C.1/L.352/Rev. 2
- Les changements ont, en général, été soulignés. Toutefois, les phrases et les membres de phrases qui ont été disposés dans un nouvel ordre, ainsi que les modifications d'importance secondaire apportées aux termes individuels, n'ont pas été soulignés.

GR/Traités (69) 1  
Addendum 2

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Annexe I

1) Il sera dressé par le Secrétaire Général des Nations Unies une liste permanente de conciliateurs composée de juristes qualifiés. A cette fin, chaque Etat, Membre de l'ONU ou partie à la présente Convention, sera invité à désigner deux conciliateurs pour une durée de cinq ans renouvelable.

2) Le Secrétaire Général adressera copie de toute demande faite en application de l'article 62 bis à toutes les parties au traité ainsi que notification de la date à laquelle la demande a été reçue. Le Secrétaire Général portera le différend devant une Commission de Conciliation constituée comme suit :

a) Si le différend concerne un traité bilatéral, chacune des parties désigne un conciliateur de sa nationalité choisi soit sur la liste visée au paragraphe 1 ci-dessus, soit en dehors de celle-ci, et un conciliateur n'ayant pas sa nationalité et choisi sur la liste. Un cinquième membre, devant remplir le rôle de Président, est choisi sur la liste à la majorité des voix des quatre autres membres.

b) Si le différend concerne un traité multilatéral, la partie ou les parties de l'un des camps du différend désignent trois conciliateurs dont deux au moins doivent être choisis sur la liste et dont un seul peut être de la nationalité de la partie ou des parties de ce camp. La partie ou les parties de l'autre camp du différend désignent trois conciliateurs de la même manière. Un septième membre, devant remplir le rôle de Président, est choisi sur la liste à la majorité des voix des six autres membres.

Les conciliateurs choisis par les parties doivent être désignés dans un délai de quatre-vingt-dix jours à compter de la date laquelle le Secrétaire Général reçoit la demande.

La désignation du Président par les conciliateurs doit intervenir dans les soixante jours après que toutes leurs propres nominations ont été faites.

Si la nomination de l'un quelconque des conciliateurs ou du Président n'intervient pas dans les délais visés ci-dessus, le soin d'y procéder dans les trente jours après l'expiration de la période applicable appropriée incombe au Secrétaire Général.

L'un quelconque des délais dans lesquels les nominations doivent être faites peut être prorogé sur accord de toutes les parties au différend.

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GR/Traités(69) 1  
Addendum 2

3) La Commission ainsi constituée établira les faits et les questions de fond et présentera des propositions aux parties en vue de parvenir à une solution amiable du différend. La Commission arrêtera elle-même sa procédure. Toute partie au traité peut soumettre ses vues oralement ou par écrit à la Commission. Les décisions et les recommandations de la Commission seront prises à la majorité des voix. Le Secrétaire Général fournira à la Commission l'assistance et les facilités dont elle pourra avoir besoin et élaborera le projet des règles de procédure. Les dépenses de la Commission seront supportées par l'Organisation des Nations Unies conformément au règlement applicable de ladite organisation.

4) A la demande de l'une des parties au différend, la Commission peut étudier si les circonstances du différend justifient que des mesures provisoires soient prises afin de protéger les droits respectifs des parties et de présenter des rapports intérimaires comportant des recommandations à cet effet. La Commission sera tenue de faire rapport dans les douze mois qui suivront la désignation de son Président. Ses rapports, qui contiendront ses conclusions quant aux faits et questions de fond ainsi que ses recommandations en vue du règlement du différend, seront transmis au Secrétaire Général et aux parties.

5) Dans le cas où les parties ne conviennent pas d'accepter les recommandations de la Commission de Conciliation dans les six mois à compter de la date du rapport de la Commission et ne sont pas convenues dans ces délais d'un moyen de règlement judiciaire ou d'une prorogation du délai de six mois, l'une quelconque des parties au différend peut demander au Secrétaire Général de porter le différend devant un tribunal arbitral.

Le Secrétaire Général portera le différend devant un tribunal arbitral composé de trois membres. Un arbitre sera désigné par la partie ou les parties de chacun des camps du différend. Le troisième membre, devant remplir le rôle de Président, sera nommé par les deux autres membres.

Les arbitres doivent être nommés dans un délai de soixante jours à compter de la date de la demande transmise au Secrétaire Général. Le Président doit également

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GR/Traités (69) 1  
Addendum 2

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être nommé dans un délai de soixante jours à compter de la date de nomination des arbitres par les parties. Si la nomination du Président ou de l'un quelconque des arbitres n'intervient pas dans les délais susvisés, le soin d'y procéder dans les trrente jours suivant l'expiration de la période applicable appropriée incombe au Secrétaire Général des Nations Unies. Toute vacance doit être remplie de la façon spécifiée pour la nomination initiale.

Le tribunal arbitral arrêtera lui-même sa procédure. Les décisions du tribunal arbitral seront prises à la majorité des voix. La sentence est obligatoire et définitive.

Dans la mesure où le tribunal aura failli à établir des règles de procédure, les dispositions pertinentes du Chapitre III de la Partie IV de la Convention de La Haye pour le règlement pacifique des conflits internationaux (1907) seront applicables.

Le Secrétaire Général fournira au tribunal arbitral l'assistance et les facilités dont il pourra avoir besoin. Les dépenses du tribunal arbitral seront supportées par l'Organisation des Nations Unies conformément au règlement applicable de ladite organisation.

22

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Mr. J.A. Beesley.

RESTRICTED

TO  
À

SECURITY  
Sécurité

February 6, 1969.

FROM  
De

DATE

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Examination of Recent Articles by Judge Manfred Lachs and Prof. L.C. Green with a View to Ascertaining the Attitude of the Developing Countries Towards International Law.

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

Judge Lachs in his article, "The Law of Treaties, Some General Reflections on the Report of the International Law Commission," discusses the Report of the International Law Commission on the Law of Treaties in connection with the draft articles (commentaries and recommendations) adopted by the ILC in July 1966. In his view, the Commission accepted "a series of basic elements on which the whole structure of the Report rests." Six basic elements or principles of international law (primarily concerned with Treaty Law) are enumerated. Prof. Green's article, "The Impact of the New States on International Law", is a study of the views of the developing countries with regard to certain aspects of traditional and evolving international law.

2. Set out below are each of Judge Lachs' principles with brief commentaries taken from his article, followed by analyses of the attitude to these principles on the part of the LDC's as seen by Prof. Green:

1) Equality Before the Law. This element involves a total rejection of discrimination among states. Lachs declares "Every state possesses a capacity to conclude treaties." There are rules concerning error, fraud, coercion, and corruption of a representative of a state. There is also a new element, "a treaty is void if its conclusion is procured by threat or use of force in violation of the principles of the Charter of the United Nations." Since aggression, war, threat and use of force has been outlawed by the Charter, legal right or title can no longer rely on such actions.

Green indicates that the developing countries have a strong interest in supporting this principle. His discussion of this point deals mainly with the Latin American Republics, with particular reference to the Calvo and Drago Doctrines, which are aimed against intervention in the affairs of Latin American States by European countries attempting to support financial claims of their nationals. Examination of pronouncements by some LDC's on subjects such as sovereignty over national wealth and material resources indicates that in some areas these countries consider themselves more "equal" than the industrial nations. Thus it appears that sovereign equality is accepted as a fundamental

principle when used as a defense to real or anticipated actions on the part of developed countries, but is ignored when the have-not states are exerting pressures for self-serving special rights.

2. Universality. There is one world and therefore one international law. Treaties must be open to accession by all interested states, especially multilateral treaties.

/regional

Green states that the Latin Americans have always been in the forefront of those postulating the existence of regional international law. For example, they have long argued that there is a special Latin American approach to the concept of Asylum. International lawyers from many other areas have resisted accepting this. Furthermore, the claim by some South American countries of jurisdiction over a two hundred mile territorial sea has met with stiff opposition and was tacitly rejected by the 1966 Geneva Conference on the Law of the Sea. (The Territorial Sea Convention set a twelve mile limit.) Green remarks however, that deviations introduced by a single new state on its own is unlikely to receive much sympathy from the international community. Judge Read's dissenting judgment in the Asylum Case indicates that international law, if it is accepted as existing, applies only in the region for and among members of that region. Today Afro-Asian regional international law is developing but the author dismisses the concept of Soviet regional law, since none of the Soviet bloc states are "new".

3. Reservations. Unanimity is now the exception to the majority principle at international Conferences. No state can bar another state from participating in a treaty merely because it has submitted a reservation. The International Law Commission accepted the legality of reservations without the assent of other interested parties. The rules regarding reservations are set out in the Report.

Green does not look into the question of reservations to treaties on the part of new states. He does, however, discuss the related subject of their attitudes to treaties signed by new states with their former colonial powers and treaties signed by those powers with third states which may be binding on the newly independent nations. There is a general practice for the retiring colonial authority to enter into an agreement with the former dependency whereby the latter undertakes liability for treaties relating to the territory, entered into by the ruler with other states. However, governments of new states often have second thoughts about such agreements and soon begin to examine closely by which of these they wish to continue to be bound.

4. Clausula rebus sic stantibus. This is the principle that a fundamental change of circumstances is a valid ground for terminating or withdrawing from a treaty. The International Law Commission Report lays down the following rules:

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- a) The existence of particular circumstances must have been an essential basis of the consent of the parties;
- b) The effect of the change is to radically change the scope of the regulations under the treaty;
- c) Excluded from obligation of the principles are: 1) boundary treaties, and 2) reliance on the *clausula* principle if the fundamental change is the result of a breach, by the party invoking it, either of the treaty or a different international obligation owed to the other party of the treaty.

Developing countries are much concerned with this principle. Many do not accept that present boundaries which were drawn by the colonial powers cannot be changed, even by force if necessary. Thus India (on the question of Goa), Morocco (concerning Spanish possessions in North Africa), Ethiopia (with respect to areas in dispute with Somalia) and others challenge past agreements by which they do not accept to be permanently bound since they were not independent and so were not parties to at the time. There is therefore the basis for a conflict between those countries' views of this principle and the more restricted attitude taken by the ILC as evidenced in Judge Lachs' article.

5. Norms of General International Law (*jus cogens*). The freedom of activity of states is being continually reduced. There is a bar to setting aside, even only *ad casum* or *inter se*, binding principles. *Jus cogens* has no subjective connotations but has become part of the *corpus juris gentium*. The ILC declared "A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and it can be modified only by a subsequent norm of general international law having the same character." According to Lachs, norms accepted today cover, *inter alia*, slavery, piracy, white slave traffic, the right to peace and self-determination. A comprehensive list of these norms does not exist as they are continuously developing and new ones are being created. In this connection the ILC Report sets out two interesting provisions:

- 1) Invalidity, termination or denunciation cannot be invoked to release a state from obligations to which it is subject under any other rule of international law. This particularly concerns treaties confirming or giving greater precision to rules having their source outside the treaties themselves.
- 2) New norms affect not only new treaties but those concluded before. Those in conflict become void.

The developing countries have always accepted the existence of norms of international law such as the concepts of the basic human rights and the right to self-determination. However, in Green's view, there appears to be two different standards applied, for example, by the Afro-Asians on the subject of human rights. The treatment of non-whites by non-whites (e.g. Indonesia's rule in West Irian or inter-tribal strife in Africa) is not looked at in the same way as the treatment of non-whites by whites. The developing countries would certainly support the view that new norms of international law invalidate old ones, now that they have an overwhelming majority in the United Nations General

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- 4 -

Assembly. Because of this majority position, they also argue that instruments such as United Nations Declarations have the force of law, a view not accepted by most of the older states in the international community. Developing countries have even postulated several new norms, for example, emancipation of dependent African territories is a binding obligation under the Charter of the Organization of African Unity. According to Green, the African states and their ideological allies took over the Communist concept of "peaceful co-existence", and renamed it "Principles of Friendly Relations and Co-operation among States." (See Below)

6. Good Faith. A state must not frustrate the object of a treaty prior to its entry into force. "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." A treaty must be interpreted in good faith in accordance with the ordinary meaning of its terms. Interpretation must take into account the historical view; passage of time changes circumstances. Lachs goes on to urge that this same principle be applied to the draft articles on the Law of Treaties, as the framework for the treaties of tomorrow: "They themselves, cannot be freed from the dimensions of time. Thus they too, ought to be read, understood and interpreted with a sense of history."

In this area, while accepting the general application of the principle, the Afro-Asian developing countries maintain that there are some overriding questions such as their attitude to South Africa and Portugal. It is also evident that the African states' defense of the primacy of regional instruments such as the OAU Charter, over the United Nations Charter goes some distance towards militating against the sanctity of the principle of good faith.

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## II

### 3. Additional Comments by Prof. Green on the new states' views of international law

New Norms. One of the great difficulties involved in the approach of the less developed countries, particularly the Afro-Asians, to international law is their attempt to extend principles accepted by them to the whole of the international community. As mentioned above in regard to the Latin American states, regional international law should be restricted in application to the region (if accepted by all or most of the states in the region.) However, the Afro-Asians are seeking (with some measure of success) through their majority in the United Nations General Assembly, to gain universal recognition for many of their cherished ideals in such areas as the rights of colonial peoples and the protection of national resources, so as to bind all nations. While these attempts can still occasionally be resisted by the older states, difficulties will increase and the number of international declarations purporting to impose rights and obligations on all states

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- 5 -

will continue to grow.

Friendly Relations. Turning to the subject of the Principles of Friendly Relations and Co-operation among States, Green examines some of the arguments put forward by the developing countries during the General Assembly's consideration of the matter in 1964 and 1966. (At the same time some of these countries insisted that the World Court be made more representative of the different legal systems of the world, i.e. more judges from the Afro-Asian bloc. No consensus was reached.) On the obligation to refrain from the threat or use of force, many LDC representatives thought full account should be taken of developments in practice during the years since the United Nations Charter was drafted and should fully reflect the new realities of international life. It was also argued that the formulation of this principle should include prohibition of the use of force for the repression of liberation movements as well as for denial of the right to self-determination. Some representatives felt that the right of self-defense, both individual and collective, was enjoyed not only by states but also by peoples defending themselves against colonial domination and struggling for freedom and self-determination. It was contended that the struggle against colonialism was in truth an international struggle since colonial regions constituted illegal de facto occupation and thus outside aid was permissive. (U.N. Doc. A/6547 December 7, 1966). The foregoing indicates the extent of the difference in approach to traditional international law taken by some LDC's and their tendency to try and construct new or varied rules, taking into account Afro-Asian doctrine on "imperialism, colonialism and neo-colonialism."

According to Green, the majority of states on the Friendly Relations Committee refused to acknowledge the supremacy of international law over sovereign equality. The author emphasizes that the Afro-Asians will call upon and pay lip service to various principles when it is to their advantage to do so. However, when these conflict with what they consider to be almost a sacred task - such as the harassment of South Africa and Portugal in all international organizations - they can be put aside or sacrificed to the higher or more important goal: the destruction of colonialism and the self-determination of subordinate peoples who are under the domination of Europeans.

The author does however, hold out the hope that co-operation between the older and newer states in international law will lead to a satisfactory *modus vivendi*. He says "We must all of us try to help these new countries to overcome that suspicion and to get them to understand that the greater part of international law is based on general practice accepted as legally binding because the experience of many countries has proved it to be necessary." He goes on to acknowledge that the international law which will develop in the future as a result of this co-operation may well be very different from that of the past. Nevertheless, it will be a law suited to the needs of the modern world and work for the greater benefit of mankind.

L. S. CLARK

L.S. Clark.

(M. D. CONTROLE)

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L file 18/2

FM PRMNY FEB6/69 CONFD

TO EXTER 278

REF YOURTEL L118 JAN16

LAW OF TREATIES: ARTICLE 5

ACTION NOW COMPLETED ON REQUEST AND AIDE MEMOIRE AND EXPLANATORY  
PIECE OF PAPER LEFT WITH ALL MISSIONS CONCERNED INCLUDING  
MAURITANIA.

2. THE NEW CHARGE D'AFFAIRES OF GUINEA (ML CONDE) WHO IS A LAWYER SEEMED  
TO TAKE OUR POINT WELL AND INDICATED HE WOULD PROBABLY RECOMMEND  
THAT HIS GOVT ALTER ITS POSITION.

5/7/2

20-3-1-6	
17	MR

## MESSAGE

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			NO	PRECEDENCE
INFO			L-190	IMMEDIATE

REFSUB/SUJ

LAW OF TREATIES

PLEASE PASS FOLLOWING TO WERSHOF. UNDER SECRETARY AGREES WITH THE PROPOSAL CONTAINED IN LEGAL DIVISION MEMO OF JANUARY 28 THAT CANADIAN REPRESENTATIVE INDICATE AT WEO MEETINGS THAT WE ARE PREPARED TO CO-SPONSOR ARTICLE ON COMPULSORY SETTLEMENT OF DISPUTES IN DUE COURSE PROVIDED WE ARE IN SUITABLE COMPANY INCLUDING AT LEAST SOME MAJOR AFRO-ASIAN CO-SPONSORS BUT BECAUSE OF OUR OTHER RESPONSIBILITIES WE WILL NOT/REPEAT NOT BE ABLE TO TAKE ACTIVE PART IN LOBBYING ON BEHALF OF PEACEFUL SETTLEMENT ARTICLE PRIOR TO AND DURING DEBATE AT COMMITTEE STAGE.

DISTRIBUTION NO STD.  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... B. MAWHINNEY:ZS	LEGAL	2-9553	SIG..... J. A. BEESLEY



TRANSMITTAL SLIP FROM REGISTRY

TO: The Under-Secretary of State for External

Affairs, Ottawa

FROM: The Canadian Embassy, Cairo, U.A.R.

FEB 14 1969

Security UNCLASSIFIED

FILE CHARGED OUT

Date February 4, 1969

Air or Surface Air

No. of enclosures 1

The documents described below are for your information.

Despatching Authority G. R. Skinner/rf

20-3-1-6

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MR

Copies

Description

Also referred to:

1

Ref: Our Telegram 144 of February 4  
Copy of a note from the Sudanese Embassy  
regarding participation in the United Nations  
Law of Treaties Conference

Received

FEB 14 1969

In Legal Division  
Department of External Affairs

## INSTRUCTIONS

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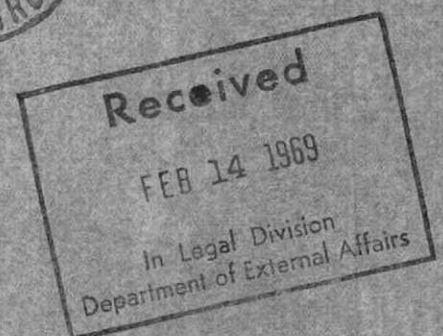
SEC/1.C.62.

The Embassy of the Republic of the Sudan presents its compliments to the Embassy of Canada in Cairo and with reference to the latter's Aide - Memoire dated 20th. August, 1968 has the honour to inform that the Government of the Republic of the Sudan accepts participating the Second Session of the United Nations Conference of the Law of Treaties which will be held in Vienna in April and May of 1969.

The Embassy of the Republic of the Sudan avails itself of this opportunity to renew to the Embassy of Canada the assurances of its highest consideration.

Cairo : 1st. February, 1969.

TO :  
THE EMBASSY OF CANADA,  
CAIRO.



23/14/2



*Griffith*  
*Stanford*  
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*tel 6 Canadiana*  
*18/2*  
*20-3-1-6*  
*14* *19/2* *MR*  
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FM CAIRO FEB4/69 RESTR

TO EXTER 144

REF OURTEL 57 JAN16

PARTICIPATION IN LAW OF TREATIES CONFERENCE-SUDAN

SUDANESE EMB CAIRO INFORMS US SUDAN WILL PARTICIPATE IN VIENN  
CONFERENCE.

2.TEXT OF NOTE BY BAG.

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*No*

*Beesley/Robertson*

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*MR. Stanford*  
*to note*

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DE LDN

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FM LDN FEB4/69 NO/NO STANDARD

TO VIENN 599

INFO EXTER

DE WERSHOF

REF YOURTEL 82 FEB3

LAW OF TREATIES CONFERENCE

STANFORD AND I ARRIVE VIENN MON APR7. OTT WILL PRESUMABLY CONFIRM

TO YOU THAT BEESLEY AND ROBERTSON WILL ALSO ARRIVE THAT DAY.

STENO WILL ARRIVE APR7 OR 8 DEPENDING ON WHO IT IS; THIS SHOULD BE SETTLED SHORTLY.

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with the concept of compulsory independent settlement (Central African Republic, Chile, Iran, Mexico, Nigeria, Portugal, Uruguay); 14 states had given non-committal replies (Argentina, Austria, Bolivia, China, Ghana, Greece, Guatemala, Italy, Kuwait, Malaysia, Panama, Saudi Arabia, Spain, Yemen); 6 states indicated opposition to the U.S. proposal (Barbados, Brazil, India, Malawi, Philippines, Thailand)..

Mr. Salans noted no clear pattern emerged from the replies to date. He reported that, at the Karachi meeting of the AALCC the majority had opposed the western position but adoption of a consensus against the western position was avoided. Half the states at Karachi believed present Article 62 was satisfactory by itself while half thought something more was required. Many favoured an optional protocol or a compulsory settlement procedure with an opting out feature. The majority believed the disputes settlement procedure should apply only to future treaties (i.e. treaties which entered into force after the entry into force of the treaties convention). Virtually all states at Karachi were prepared to accept some form of 62 bis (though not necessarily with a compulsory binding settlement procedure) if they believe this is necessary in order to get a generally acceptable Convention.

Sir Francis Vallat (U.K.) reported on the meeting of Commonwealth officials on peaceful settlement of disputes which took place at the time of the Commonwealth Prime Ministers' meeting. This information is summarized in a report prepared by the U.K. and attached to this report. It is not possible yet to forecast acceptance of a satisfactory disputes article, but reports of both the Commonwealth and Karachi meetings indicate a greater degree of flexibility on the part of Afro-Asian states than was evident at the first session in Vienna. It is necessary to determine (i) what is the acceptable western minimum requirement, and (ii) how this can best be achieved.

Mr. Wershof (Canada) reiterated Canadian support for the compulsory settlement of Part V disputes and indicated Canada would be prepared to co-sponsor an article 62 bis provided the proposal enjoyed significant Afro-Asian support. He enquired, however, how the U.S. proposed to handle its proposal tactically at Vienna in view of the 13-power proposal already on the table. He also enquired whether the U.S. and U.K. would be prepared to settle for compulsory conciliation. Both the U.K. and U.S. indicated that, initially at least, they would be seeking

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CONFIDENTIAL

compulsory arbitration. Mr. Sinclair (U.K.) could not say what the U.K. position would be if only compulsory conciliation were achieved. Mr. Brazil (Australia) said his government would prefer deletion of Part V altogether but would accept it only if there is provision for compulsory settlement.

The general discussion which followed focussed on two related points, (i) the merits of the amendments to the 13-power proposal put forward by the U.S. and (ii) the best means of attaining support for an acceptable 62 bis. A general comment relevant to both points was that the simpler the 62 bis proposal put forward, the more likely it is to achieve support. Complicated procedural provisions could discourage support and provide ammunition for opponents of compulsory settlement. In this connection it was noted that while the U.S. proposal for tightening up the time periods was desirable, the proposal for a special expanded procedure for multilateral treaties was probably an unnecessary complication. The U.S. proposal for recommendations by the conciliation commission for interim measures was favourably regarded. It was considered, however, that drafting changes should be made to make it clear that the conciliation commission may make recommendations during, not just at the end of, the conciliation process. With respect to the two additional proposals set forth in the U.S. Note but not incorporated in its proposed 62 bis, the establishment of a permanent body of conciliators and provision for reference to the ICJ for advisory opinions, it was generally agreed that while both proposals were objectively desirable they might unnecessarily complicate the proposed new article and, in the case of the reference to the ICJ, alienate potential co-sponsors and supporters.

With respect to the tactics of placing the U.S. proposal before Vienna II, it was generally considered that the best procedure would be to start at Vienna II with the 13-power proposal. In the meantime the U.S. would continue to seek support (as opposed to co-sponsorship) for its proposal and, at an appropriate (presumably early) stage in the debate the U.S. and its supporters would join with the 13 powers to put forward a revised 62 bis with considerably broadened sponsorship. Mr. Wershof pointed out the procedural difficulties which could ensue if the 13 power co-sponsors declined to join in co-sponsoring (or at least withdraw their proposal in favour of) the U.S. proposal.

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## 2 - The "All States" question

Sir Francis Vallat stated that the all states problems in Article 5 bis and the final clauses were inextricable. Mr. Sinclair reported that at exploratory meetings at the UNGA the Soviets had hinted they would concede compulsory conciliation in connection with Part V in return for at least an "all states" final clause. German opposition to "all states", in either 5 bis or the final clauses, was as firm as ever.

It was generally agreed Article 5 bis could be defeated but that it would be more difficult to defeat an "all states" final clause, although Mr. Salans reported that at Karachi there had been a consensus in favour of both 5 bis and an all states final clause. Mr. Wershof referred to the difficulty in western countries appearing outraged at an "all states" final clause when it had been accepted in the disarmament treaties and when the difficulties for the Secretary-General as depositary (which had been the major argument for the Vienna formula) could be circumvented by use of multiple depositaries. It was generally agreed to continue opposition to both 5 bis and an "all states" final clause. If it becomes necessary for western states to give way on the final clauses, however, it will be essential that the F.G.R. be convinced that the Vienna formula is unattainable. The bargaining might take place at the Plenary stage after both the proponents and opponents of an "all states" final clause had succeeded in obtaining a blocking third, thus creating the possibility of a convention without an accession clause.

## 3 - Article 5(2) on Federal States

Mr. Wershof reviewed the nature of the Canadian representations to governments and Mr. Stanford reported on the results to date of these representations which indicated that a separate vote could be obtained on paragraph 2 and the paragraph defeated, but that if no separate vote was permitted it was still uncertain whether a blocking third could be mustered against Article 5 as a whole. There were general expressions of support for the Canadian position.

## 4 - Articles 16 and 17 - Reservations and Objections

Mr. Brazil referred to the fact that some delegates considered the formulation of these articles at Vienna I to be deficient in failing to provide a procedure for invalidating incompatible reservations and he wondered whether other governments proposed to seek improvements to the articles. Messrs.

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Salans and Sinclair both indicated that their governments agreed the present texts were not entirely satisfactory but had concluded that the chances of securing improvements to the present texts were slim, that efforts to alter the texts might indeed result in their being worsened and that they had consequently decided to concentrate their efforts in other areas.

#### 5 - Article 41 - Separability

Sir Francis Vallat stated the strong view of the U.K. government that the principle of separability should apply to treaties only parts of which conflict with norms of jus cogens and that, consequently, the reference to Article 50 in Article 41(5) should be deleted. He said that it is the intention of the U.K. delegation to seek a separate vote on the words "and 50" in 41(5). There were general expressions of support for the U.K. position.

#### 6.- Final Clauses

Retroactivity - Mr. Salans stated it is still the U.S. view that the convention should contain an express provision that it does not apply to pre-existing treaties. The U.S. does not propose, however, to take any initiatives of its own in this matter but would support any initiatives in this sense by other delegations. Mr. Wershof said that the Canadian position was similar to that of the U.S. and he drew attention to the relevance of the distinction between those parts of the draft which were mere codification and those which were progressive development. Mr. Brazil said Australia may take an initiative on this question. Mr. Sinclair suggested there was a danger if any such initiative were defeated, since it would create a presumption in favour of retroactivity. He suggested it might be preferable not to have a final article on retroactivity but to leave the question to be governed by Article 24, the general retroactivity article, and seek to interpret that article as confining the operation of the convention to future treaties only.

Reservations - Sir Francis Vallat considered that the likelihood of securing a satisfactory reservations article was very remote and it would therefore be preferable to allow articles 16 and 17 to operate. Mr. Brazil stated that, assuming a satisfactory Article 62 bis were secured, Australia would consider a reservation respecting that article as incompatible with Part V. Mr. Salans said any final article restricting reservations would create difficulties for the treaty in the U.S. Senate.

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CONFIDENTIAL

Entry Into Force - There was general agreement that the number of ratifications required to bring the convention into force should be high. In view of the general law-making nature of the treaty and the recent NPT precedent, a figure approximating one-third of the U.N. membership, i.e. 45, was considered appropriate. Sir Francis Vallat stated that, while he recognized a requirement that the ratifiers include the permanent members of the Security Council was unlikely to be achievable, there would be some merit in seeking a formula which would require participation by the various geographic and political groups.

Article 76 - This is the Swiss proposal that all disputes arising under any provision of the convention (not just Part V) be subject to the compulsory jurisdiction of the ICJ. There was general agreement that the conference does not take the Swiss proposal seriously, that the proposal has no chance of adoption and that western efforts in support of the Swiss proposal would be likely only to jeopardize the possibility of securing an acceptable Article 62 bis.

#### 7 - Tactics at the Paris meeting

The U.S. and U.K. representatives specified two objectives for the Paris meeting; first to determine what measure of agreement existed on the more important issues, especially on the peaceful settlement of disputes and "all states" questions, and second to display a firm position on the necessity of an adequate 62 bis so that reports of the Paris meetings which are passed on to non-participating governments will convince them of the importance which the western group attaches to this question.



(UL 10/9)

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RECORD OF MEETING OF COMMONWEALTH REPRESENTATIVES  
TO DISCUSS THE LAW OF TREATIES CONFERENCE

10 JANUARY, 1969

Sir F. Vallat welcomed those present and briefly outlined the U.K.'s views as set out in the Aide-Mémoire distributed at the meeting. In answer to several questions, he explained that the purpose of the meeting was not to reach a Commonwealth consensus nor to hammer out a draft article on settlement procedures, but merely to exchange views. Each country represented was then invited to give its comments.

2. Australia (Mr. P. Henderson, Australian High Commission) said that they supported the views set out in our paper. They had the gravest reservations about Part V of the draft Convention (containing those articles dealing with the invalidity of treaties) in its present form, and regretted that amendments designed to improve it had not been accepted at the first session. They could only accept the Convention in its present form if it included adequate third party settlement procedures.

3. Canada (Mr. M.H. Wershof, Ambassador in Copenhagen) said that their views were similar to ours. The most difficult issue of the Conference was whether the majority would be willing to stipulate that, after the parties had exhausted all other procedures, there should be some provision for compulsory third party settlement. It was in the interests of all powers, whether large or small, that the Convention should contain the principle of compulsory arbitration for use in the last resort.

4. Ceylon (Mr. C.W. Pinto, Legal Adviser, Ministry of Defence and External Affairs) said that they wanted some form of automatically applicable settlement procedures, particularly in relation to the articles in Part V. They did not wish to take a firm position on individual proposals at this stage, and they thought that any new mechanism should apply only in respect of treaties concluded after the entry into force of the Convention. However, the "13-power" proposal was most in line with their thinking. If such a mechanism were included in the Convention, as it should be, it was unlikely to be used frequently, but it would serve as a watchdog to prevent needless claims of invalidity.

5. Ghana (Mr. V. Owusu, Attorney-General) said that at the first session their delegation had had a flexible mandate. In the end, they had come round to the general Afro-Asian view that Article 62 was adequate in its present form. However, their position was flexible, and they were open to persuasion. The "13-power" proposal had much to commend it, subject to satisfactory arrangements on such issues as the costs of proceedings and the procedures for selecting arbitrators.

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6. Guyana (Sir L. Luckhoo, High Commissioner, who also spoke for Barbados) supported our views. There was a need to have procedural arrangements on which one could rely, instead of leaving a void. Some form of automatic third party settlement procedures should therefore be included.

7. India (Mr. E. Gonsalves, Ministry of External Affairs) said that they had not yet taken a position on this question. (We know from other sources that they are anxious to avoid committing themselves for as long as possible - at least until after the Asian-African Legal Consultative Committee meeting - but that they are reconsidering their position and may be prepared to be a little less inflexible.)

8. Kenya (Mr. I.S. Bhoi, Under Secretary, Ministry of Foreign Affairs) spoke eloquently and forcefully against any change in Article 62, which represented the highest measure of common ground among Governments. Article 33 of the U.N. Charter did not ascribe any priority to the various means of peaceful settlement listed, and did not compel members to use any one rather than another. The world was not ready to move beyond this. The cost of arbitration was high and the history of the use of compulsory arbitration was not very encouraging: there had been few successful cases. If there were compulsory arbitration procedures, what would happen if one party refused to implement the award? The other party could only fall back on the principle pacta sunt servanda - the parties must fulfil their obligations in good faith - which was exactly the present position. It was therefore pointless to impose compulsory arbitration. Moreover, at previous codification conferences, proposals for compulsory settlement procedures had always failed of adoption, and the device of an optional protocol had been the eventual solution.

9. Mauritius (Mr. E. Venchard, Senior Crown Counsel) said that they were not familiar with all the issues involved, as their delegation had not been present for that debate. However, they felt that there should be provisions to safeguard against abuse of the articles relating to invalidity. They found the "13-power" proposal acceptable in principle, but thought it could be improved. They supported procedures for conciliation followed by arbitration, but reserved their position as to whether the arbitral award should be binding.

10. Nigeria (Mr. Adediran) said that as Dr. Elias held the Chairmanship of the Committee of the Whole (and of the African Afro-Asian Groups) it would not be proper for them to state a position. (We have been told, however, that Dr. Elias personally favours compulsory arbitration, although he believes it unrealistic to hope for more than compulsory conciliation leading, if necessary, to arbitration with the consent of the parties.)

11. Pakistan (Mr. M.A. Bhatti, Counsellor, High Commission) said that they shared our views. Both in the context of the Law of Treaties Conference and in general, there was a need to strengthen the machinery of international law. They hoped that others could agree to strengthen Article 62 and that the Conference could accept provisions for compulsory arbitration.

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12. Sierra Leone (Mr. A. Metzger, Parliamentary Counsel) said that their views were well known, although they were open to persuasion. They were opposed in general to compulsory third party settlement procedures, and supported the principle that the parties had complete freedom of choice of the means of settlement.
13. Trinidad and Tobago (Mr. J.A.V. Harper) said that in substance they shared the views expressed by Guyana. While they had considerable sympathy with our views, they needed a little more time to crystallise their position; they might wish to draw a distinction between existing and future treaties as they had a number of problems with respect to treaties inherited on independence.
14. Malaysia (Mr. Sathiah), New Zealand (Miss A. Finlayson, Second Secretary, High Commission) and Swaziland (Mr. M.D. Ntiwane, High Commissioner) all said that they were only present as observers. Botswana and Tanzania had nominated officials to attend, but they did not turn up.

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REF YOURTEL 43 JAN27

LAW OF TREATIES CONFERENCE ACCOMMODATION AND EQPT

ARRANGED. PLEASE CONFIRM DELS ARRIVING VIENN APR7

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PAR 63 VVVV

10/3/2

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*14/2* *MR*

*Dutale reply to Herms NY.  
dated 1/18/2*

**J. A. BEESLEY**

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*20, External Affairs  
Ottawa*

UNITED NATIONS



NATIONS UNIES

NEW YORK

CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEW YORK

REFERENCE: LE 113(5-2-1) GOV

Le 31 janvier 1969

TO: *M. R. Ford*  
FROM: *RECEIVED*

FEB 13 1969

FILE CHARGED OUT

TO:

CONFERENCE DES NATIONS UNIES SUR LE DROIT DES TRAITES  
(DEUXIEME SESSION)

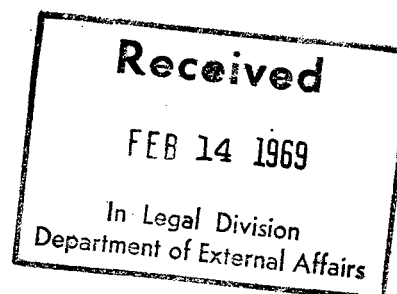
*20-3-1-6*  
*37*

Le Secrétaire général me prie de vous faire savoir que la deuxième session de la Conférence des Nations Unies sur le droit des traités, qui est organisée comme suite aux résolutions 2166 (XXI) et 2287 (XXII) de l'Assemblée générale, en date du 5 décembre 1966 et du 6 décembre 1967, respectivement, s'ouvrira à Vienne, au Centre des conférences de la Hofburg, le mercredi 9 avril 1969 à 15 heures. La date de clôture de la deuxième session a été fixée au mercredi 21 mai 1969.

Par sa résolution 2166 (XXI), l'Assemblée générale a invité les Etats qui doivent participer à la Conférence "à désigner, au nombre de leurs représentants, dans toute la mesure du possible, des experts de la question qui sera examinée". Lors de sa première session, la Conférence a adopté, le 24 mai 1968, une résolution dans laquelle elle signalait "à l'attention des Etats devant participer à la deuxième session de la Conférence qu'il est souhaitable d'y envoyer, dans la mesure du possible, les mêmes représentants qu'à la première session".

L'article 3 du règlement intérieur de la Conférence prévoit que :

"Les pouvoirs des représentants et le nom des suppléants et conseillers seront communiqués au Secrétaire exécutif vingt-quatre



UNITED NATIONS



NATIONS UNIES

- 2 -

heures au plus tard, si possible, après l'ouverture de la Conférence. Toute modification ultérieure de la composition des délégations sera de même communiquée au Secrétaire exécutif. Les pouvoirs doivent émaner, soit du Chef de l'Etat ou du gouvernement, soit du Ministre des affaires étrangères. Sauf indication contraire, les pouvoirs seront valables pour les deux sessions de la Conférence, à moins qu'ils ne soient retirés ou remplacés par de nouveaux pouvoirs."

Le Secrétaire général serait reconnaissant à votre Gouvernement de bien vouloir lui faire savoir s'il compte participer à la Conférence et d'avoir l'obligeance de lui faire parvenir sa réponse le 1er mars 1969 au plus tard, pour que les dispositions nécessaires puissent être prises en temps utile.

Veillez agréer, Monsieur le Ministre,  
les assurances de ma très haute considération.

Le Conseiller juridique

A handwritten signature in dark ink, appearing to read 'C. Stavropoulos', written over a horizontal line.

Constantin A. Stavropoulos

COPY

**ACTION COPY**

*Reilly*  
*L*  
*Let's discuss*  
*JP*

*1/19/2*

*John O/R*

*20-3-1-6*

20-3-1-6	
14	MR

C O R R E C T E D   C O P Y

FM PSPAN JAN31/69 RESTR

TO EXTER 209

REF YOURTEL L33 JAN6

LAW OF TREATIES CONFERENCE: BARBADOS ATTENDANCE

SPOKE TODAY TO JACKMAN, PERMSEC MEA. HE SAID AS RESULT OF INTEREST WE HAD EXPRESSED LAST OCT (OURTEL 1708 OCT22) QUESTION BARBADOS ATTENDANCE WAS NOW AT STAGE OF VERY SERIOUS CONSIDERATION AND HE THOUGHT IT PROBABLE DECISION WOULD BE TAKEN TO SEND DEL.

2. I DO NOT/NOT KNOW WHEN DECISION WILL BE REACHED BUT I EXPECT TO BE SEEING PM BARROW WHEN HE IS HERE FOR COMWEL CARIB HEADS OF GOVT CONFERENCE NEXT WEEK. IN EVENT THAT HE IS IN POSITION TO CONFIRM BAJAN ATTENDANCE, DO YOU WISH ME MAKE FULL FORMAL REPRESENTATIONS DESCRIBED YOUR L-737(M) INCLUDING DELIVERY OF AIDE MEMOIRE

MCKINLEY

*11/3/2*



J. A. BEESLEY

ACTION COPY

file 11/14/2

20-3-1-6
14   MR

Please send  
no file L-38  
ga

SUBJ TO CORRECTION:

FM PSPAN JAN31/69 RESTR

TO EXTER 209

REF YOURTEL L33 JANS

LAW OF TREATIES CONFERENCE: BARBADOS ATTENDANCE

SPOKE TODAY TO JACKMAN, PERMSEC MEA. HE SAID AS RESULT OF INTEREST WE HAD EXPRESSED LAST OCT (OURTEL 1708 OCT22) QUESTION BARBADOS ATTENDANCE WAS NOW AT STAGE OF VERY SERIOUS CONSIDERATION AND HE THOUGHT IT PROBABLE DECISION WOULD BE TAKEN TO SEND DEL.

2. I DO NOT/NOT KNOW WHEN DECISION WILL BE REACHED BUT I EXPECT TO BE SEEING PM BARROW WHEN HE IS HERE FOR COMWEL CARIB HEADS OF GOVT CONFERENCE NEXT WEEK. IN EVENT THAT HE IS IN POSITION TO CONFIRM SAJAN ATTENDANCE, DO YOU WISH ME MAKE FULL FORIAL REPRESENTATIONS DESCRIBED (3 GRPS CRPT) INCLUDING DELIVERY OF AIDE MEMOIR MCKINNEY

11/3/2

ACTION COPY

*Boyle*  
*Mr. [unclear]*  
*Mr. [unclear] 011*  
*(note per 5)*

20-3-1-6  
14 MR

V

FM CRCAS JAN31/69 CONFD CDN EYES ONLY NO/NO STD

TO EXTER 46 PRIORITY

REF YOURLET L737(M) SEP10

LAW OF TREATIES CONFERENCE-ARTICLE 5

MTG MTG WITH DR CARMONA MEMBER OF VENEZUELAN DEL TO FIRST SESSION

PRODUCED LITTLE SUBSTANTIVE HEADWAY.WHILE PERSONALLY SYMPATHETIC

AND APPARENTLY IN FULL AGREEMENT WITH OUR POSITION HE COULD NOT/

NOT SAY WHETHER CALDERA GOVT WOULD ALTER EARLIER VENEZUELAN

POSITION.WHEN PRESSED ON THIS POINT HE WENT ONLY AS FAR AS TO

SUPPOSE THAT RECIPROCITY OF SUPPORT WHICH WAS USUAL IN SUCH

CIRCUMSTANCES MIGHT HAVE SOME BEARING.HE AGREED THAT THERE WERE

DIFFICULTIES ENCOUNTERED BY CDA BY REASON OF FACT THAT HER CON-

STITUTION WAS PARTLY WRITTEN AND PARTLY CONSEQUENCE OF PRACTICE

WHICH WAS NOT/NOT CASE IN VENEZUELA.HOWEVER HE HAD NO/NO DOUBT

TWO THIRDS MAJORITY WOULD NOT/NOT BE ACHIEVED.

2.CONCERNING SECTION TWO ARTICLE FIVE DR CARMONA SAID THAT IN

LATINAMERICAN GROUP AT FIRST SESSION ALL LATINAMERICAN FEDERAL

WERE OPPOSED.GROUP AS WHOLE WAS THEREFORE PREPARED TO

OPPOSE SECTION WITH EXCEPTION OF CHILE WHO APPARENNCY WISHED TO

SPITE ARGENTINA.AS ASIDE HE SAID HE WAS WELL AWARE OF IMPLICA-

TIONS FOR CDA IF SECTION ADOPTED AND MADE DIRECT REF TO PRESENT

FRENCH POLICIES TOWARDS QUEBEC.HE THEN DREW PARALLEL WITH

PRACTICE OF EMPLOYING CONSTITUENT PARTS OF FEDERAL UNION TO

FURTHER NATL POLICY OF HEGEMONY AS WELL KNOWN DEVICE USED BY

USSR AND NAZI GERMANY.THIS BROUGHT US TO QUESTION OF ARTICLE

Received  
FEB 4 1969  
In Legal Division  
Department of External Affairs

...2 3.4.2

002920

PAGE TWO 46 CONFD CDN EYES ONLY NO/NO STD

FIVE BIS WHICH APPEARED TO CONCERN HIM AS MUCH AS PRESENT  
SECTION TWO.

3. CONCERNING QUESTION OF SEPARATE VOTE ON SECTION TWO DR CARMONA  
SAID THAT THIS WOULD BE NATURAL CONSEQUENCE OF PRESENT DISAGREE-  
MENT ON SECTION. HE THOUGHT THERE WOULD BE NO/NO TROUBLE IN GAIN-  
ING SEPARATE VOTE.

4. AS FAR AS SECTION ONE ARTICLE FIVE ALONE WAS CONCERNED HE  
REFERRED TO IT AS QUOTE JOKE UNQUOTE. HOWEVER HE WAS CONVINCED  
THAT SECTION TWO WOULD BE SUBJ TO SEPARATE VOTE AND WOULD NOT/  
NOT BE ADOPTED SO QUESTION OF HAVING TO VOTE AGAINST WHOLE OF  
ARTICLE FIVE WOULD NOT/NOT ARISE (PARA 10 REFLET. HE WENT ON TO  
MUSE HOWEVER THAT IF SECTION ONE WAS NOT/NOT ADOPTED EITHER  
SEPARATELY OR AS PART OF ARTICLE AS BEING REDUNDANT TO DRAFT  
CONVENTION SAME ARGUMENT COULD BE APPLIED TO ARTICLE FIVE BIS.

5. AS YOU WILL NOTE MUCH OF ABOVE COMMENT IS PERSONAL OPINION  
RATHER THAN DEFINED GOVT POLICY SINCE DR CARMONA IS NOT/NOT GOVT  
MEMBER BUT ESTEMMED ACADEMIC (WHOM IT WAS DIFFICULT FOR US TO KEEP  
WITHIN CONFINED AMBIT OF OUR REPRESENTATION AND KNOWLEDGE)

EMPLOYED ON SUCH TECHNICAL INTERNATL QUESTIONS. THEREFORE I

PROPOSE ONCE NEW GOVT IS FORMED IN MAR TO REFER TO MATTER DURING  
CALL ON NEW FOREIGN MINISTER IN ORDER HOPEFULLY TO ELICIT SPECIFIC  
INSTRUCTIONS FAVOURING OUR POSITION BEING SENT TO VENEZUELAN DEL  
TO SECOND SESSION

RANKIN

To: Mr. Gordon E. Cox

J. A. BEESLEY

copy to: External Affairs  
Ottawa  
1/15/2  
RESTRICTED

VIENNA LAW OF TREATIES CONFERENCE

20-3-1-6

Talking points: Canadian démarches regarding Article 5<sup>25</sup>

Canada is particularly concerned with the text of Article 5 of the proposed Convention on the Law of Treaties, as adopted by the Committee of the Whole at the First Session of the Vienna Law of Treaties Conference. This article reads as follows:

- "1.- Every State possesses the 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."

In the above text the word "States" which is in brackets appeared in the original ILC draft but was deleted at the Conference. This change and the text itself were adopted by simple majority at the First Session. At the Second Session of the Conference, when they are taken up in the Plenary Session, articles will have to be adopted by a two-thirds majority.

As Canada's constitution is only partly in written form it is considered that paragraph 2 of Article 5, if adopted by the Conference, could prove embarrassing to us since it might lead to other States (seeking to enter into treaties with provinces, for example) purporting to interpret our constitution (as well as those of other federal States). The Minister has therefore authorized that representations be made to a large number of governments, seeking their support for the deletion of paragraph 2 at the Second Session. To succeed this would require a separate vote on paragraph 2 (which request itself would however require simple majority support) at which we would hope to muster a blocking 1/3 vote. Failing a separate vote on paragraph 2, Canada would prefer the deletion of the whole article rather than the inclusion in the final text of paragraph 2. Paragraph 1, though innocuous, only states the obvious and is not considered strictly necessary, anyway.

Received

FEB 5 1969

In Legal Division  
Department of External Affairs

TO: Mr. Stamps  
FROM REGISTRY

FEB 4 1969

FILE CHARGED OUT

TO:

...../

2.

We are to make representations to Guinea, Korea, Liberia, Mauritania and Sierra Leone, through their Permanent Missions. We are not expected to discuss the legal issues at any length but are asked to leave copies of an Aide-Mémoire and of an explanatory piece of paper with officials at the Permanent Missions of these countries and to ask them to transmit our views to their governments.

The additional points which we should make to the representatives of the respective countries are set out below.

#### Guinea

Guinea voted in favour of the retention of Paragraph 2 both before and after it went to the Drafting Committee at the First Session. While we may ask Guinea to change its vote, or at least to abstain, we should also stress that, if it is not prepared to alter its position, we would nevertheless hope for its support in obtaining a separate vote on paragraph 2 of Article 5.

#### Korea

Korea opposed paragraph 2 at the First Session and voted in favour of the deletion of Article 5 as a whole. We should therefore express our hope that they will maintain this approach at the Second Session.

#### Liberia

Liberia voted both for paragraph 2 and in support of Article 5 at the First Session. We should therefore stress that, if it is not prepared to alter its position, we would nevertheless hope for its support in obtaining a separate vote on paragraph 2 of Article 5.

#### Mauritania

Mauritania was apparently not present for either of the votes on Article 5 at the First Session. We should therefore stress our hope that at the Second Session they will support a separate vote on paragraph 2 and will then oppose its inclusion and, should that not succeed, that they will support the deletion of Article 5 as a whole.

...../

3.

Sierra Leone

Sierra Leone's vote at the First Session was not consistent. It abstained on paragraph 2 when it was sent to the Drafting Committee but voted against paragraph 2 when it was returned to the Committee of the Whole. It abstained in the vote on Article 5 as a whole. We should therefore stress to Sierra Leone our hope that it will: a) support a separate vote on paragraph 2; b) oppose the retention of paragraph 2; c) if that fails, oppose the inclusion of Article 5 as a whole.

ACTION COPY

L

20-3-1-6

FM VIENN JAN31/69 CONF NO/NO STANDARD

TO TT EXTEROTT 73 DE PARIS

INFO TT COPEN DE HAGUE

REF MYTEL 37 JAN17

LAW OF TREATIES: ART 5

HAD DISCUSSION WITH SCHILLER AND NETTL AT MFA YESTERDAY. THEY SAID

✓ 1 AUSTRIANS HAD QUOTE GOOFED UNQUOTE IN THEIR VOTING AT FIRST SESSION  
LAST SPRING (YOURTEL L823 SEP16/68 PARA2) AND THAT AUSTRIAN POSITION  
✓ AT SECOND SESSION WOULD BE PRACTICALLY SAME AS CDN. HOWEVER I BELIEVE  
THERE ARE DIFFERENCES OF EMPHASIS.

2. AUSTRIANS DO NOT/NOT FIND ART 5 ACCEPTABLE AS IT STANDS BUT COULD  
LIVE WITH IT IS AMENDED AS THEY PROPOSED LAST YEAR BY ADDITION

✓ OF THIRD PARA ASSERTING THAT FEDERAL STATES HAD THE SOLE RIGHT TO  
INTERPRET THEIR CONSTITUTIONS. WHILE NO/NO PROMISES WERE MADE I WAS  
GIVEN TO UNDERSTAND THAT ALMOST CERTAIN AUSTRIAN COURSE OF ACTION  
WOULD BE: (1) IF THERE WERE VOTE ON ART 5 AS WHOLE THEY WOULD BE PRE-  
PARED TO VOTE FOR ITS ELIMINATION; (2) IF VOTE WERE BY PARAS THEY ARE  
WILLING TO KEEP PARA1 BUT WOULD VOTE FOR ELIMINATION PARA2; (3) IF  
VOTE WENT IN FAVOUR OF RETAINING PARA2 THEY WOULD REINTRODUCE THEIR  
AMENDMENT VIZ THEIR PARA3 OF LAST SPRING.

3. NETTL WILL BE AT THE MTG OF WESTERN REPS IN PARIS NEXT WEEK AND  
WILL LOOK FORWARD TO DISCUSSING MATTER WITH CDN EXPERTS PRESUMABLY  
WERSHOF

MCCORDICK.

13.31.1



# ACTION REQUEST FICHE DE SERVICE

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TO — À  
*Legal Division*

DATE

*Feb 12 / 69*

LOCATION — ENDROIT

FROM — DE

*Latin American Division*

☒ ACTION  
DONNER SUITE

☐ APPROVAL  
APPROBATION

☐ COMMENTS  
COMMENTAIRES

☐ DRAFT REPLY  
PROJET DE RÉPONSE

☐ MAKE  
FAIRE.....COPIES

☐ NOTE AND FILE  
NOTER ET CLASSER

☐ NOTE & RETURN/OR FORWARD  
NOTER ET RETOURNER/OU FAIRE SUIVRE

☐ P. A. ON FILE  
CLASSER

☐ DRAFT  
RÉPONSE

☐ SEE ME  
ME VOIR

☐ SIGNATURE

☐ TRANSLATION  
TRADUCTION

☐ YOUR REQUEST  
À VOTRE DEMANDE

☐

*Mr. Marchand*

*Subj. Law of Treaties Conference.  
Was there any reason why our  
note of Dec. 120 was sent  
directly to the Govt. of Ecuador  
rather than to the Embassy in  
Ottawa? (Watertall - 6-4568)*

002926

*— I moved this*





# ACTION REQUEST

## FICHE DE SERVICE

TO — À

Latin American Division

DATE

Feb. 10/69

LOCATION — ENDROIT

(Mr. Morton)

FROM — DE

O/SSEA/R.E.Moore/JF

☐ ACTION  
DONNER SUITE

☐ APPROVAL  
APPROBATION

☐ COMMENTS  
COMMENTAIRES

☐ DRAFT REPLY  
PROJET DE RÉPONSE

☐ MAKE  
FAIRE.....COPIES

☐ NOTE AND FILE  
NOTER ET CLASSER

☐ NOTE & RETURN/OR FORWARD  
NOTER ET RETOURNER/OU FAIRE SUIVRE

☐ P. A. ON FILE  
CLASSER

☐ REPLY  
RÉPONSE

☐ SEE ME  
ME VOIR

☐ SIGNATURE

☐ TRANSLATION  
TRADUCTION

☐ YOUR REQUEST  
À VOTRE DEMANDE

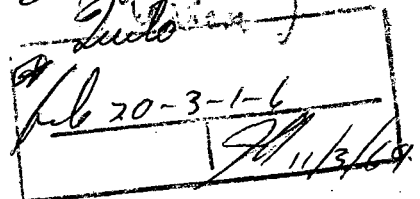
☐

For necessary action.

002927



REPUBLICA DEL ECUADOR  
MINISTERIO DE RELACIONES EXTERIORES



Nº 1 DAO-NU

Quito, a 30 de enero de 1969

Excelentísimo Señor:

Tengo a honra dar respuesta a la atenta nota de 20 de diciembre pasado, por la que Vuestra Excelencia se ha dignado referirse a determinados aspectos del Proyecto de Convención sobre el Derecho de los Tratados, que será considerado por la Conferencia de Plenipotenciarios cuya segunda etapa tendrá lugar en la ciudad de Viena a partir del 9 de abril próximo.

El Gobierno del Ecuador ha tomado nota, con satisfacción, de la posición del Ilustrado Gobierno de Canadá respecto a su vigorosa oposición a la amenaza o uso de la fuerza como medio para conseguir la celebración de tratados, aspecto vital para el mantenimiento de la paz y seguridad internacionales.

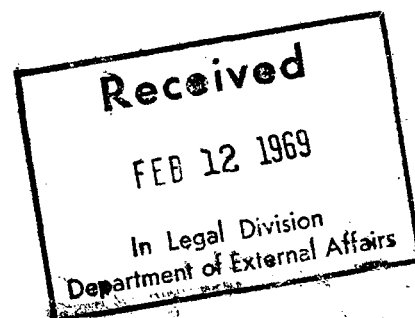
Por otra parte, el Gobierno del Ecuador estudia con toda atención la preocupación de Vuestra Excelencia respecto del párrafo segundo del artículo 5 del Proyecto de Convención, que se refiere a la capacidad de los Estados Federales para celebrar tratados en determinadas circunstancias.

/.....

Al Excelentísimo Señor Don Mitchell Sharp,  
Ministro de Asuntos Exteriores

OTTAWA.-

27/12/2






REPUBLICA DEL ECUADOR  
MINISTERIO DE RELACIONES EXTERIORES

2.  
/.....

Me valgo de esta ocasión para reiterar a Vuestra  
Excelencia los sentimientos de mi más alta y distinguida  
consideración.



Rogelio Valdivieso Eguiguren  
Ministro de Relaciones Exteriores

No. 1-DAO-NU.



EXCELENTISIMO SEÑOR DON MITCHELL SHARP,  
Ministro de Asuntos Exteriores.  
OTTAWA, Canadá.



**AEREO-CERTIFICADO**

002930

6 0 0 4 1





EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

FEB 6 1969

TO: Mr. Stanford  
FROM: Mr. [unclear]  
Confidential 21-2-69

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

SECURITY  
Sécurité

DATE January 30, 1969

FROM  
De The Canadian Embassy, Bogotá, Colombia

NUMBER  
Numéro 59

REFERENCE  
Référence Ourtel No. 54 of January 30, 1969

SUBJECT  
Sujet Law of Treaties Conference

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
27 20-3-1	11

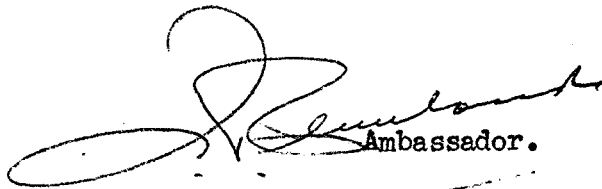
ENCLOSURES  
Annexes

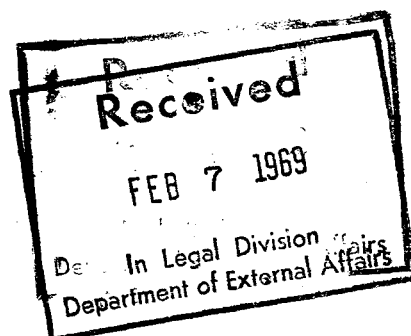
DISTRIBUTION

This afternoon, I discussed the proposal for the deletion of paragraph 2 with Dr. Ruiz for the third time. He said he had given considerable thought to the matter and is well disposed toward the Canadian position.

2. Dr. Ruiz is preparing instructions for the Colombian delegation to the meeting which takes place beginning April 9, 1969. He will submit the draft instructions to the Minister of External Relations sometime within the next two weeks.

3. Dr. Ruiz mentioned that it is usual for the Latin American countries to caucus before international meetings and he expressed the hope that other countries have been approached and will also support the Canadian position. I assured him that a similar approach had been made to other countries in Latin America.

  
Ambassador.



J. A. BEELEY

ACTION COPY

FM BGOTA JAN30/69 CONFD

TO EXTER 54 PRIORITY

REF YOURTEL L42 JAN9

LAW OF TREATIES CONERENCE

LOOKS IF RUIZ WILL INCLUDE IN DRAFT INSTRUCTIONS FOR APPROVAL BY  
MINISTER RECOMMENDATIONS FOR DELETION

CLEVELAND

*ful 7/18/2.*

*L*

*Mr. [signature] O/R*

20-3-1-6	
14	MR

3/3/2

002933

OTT109

ACTION COPY L

LDN168

49/7

PP OTT

DE LDN

P 291547Z

FM LDN JAN29/69 NO/NO STANDARD

TO EXTER 495 PRIORITY

LAW OF TREATIES MTG:MR STANFORDS ARRIVAL AND ACCOMMODATION

GRATEFUL TO KNOW WHAT HOTEL ACCOMMODATION STANFORD REQUIRES

AND WHEN HE WILL ARRIVE.

NNN

VV

13.29.1

002934



cc A. M. E. (The Law).

ACTION COPY

Feb 20-3-1-6  
25 36/1

11

FM CAIRO JAN30/69 CONF NO/NO STANDARD

TO EXTER 122

REF YOURLET L70 JAN8

UN CONFERENCE ON LAW OF TREATIES

GAVE AIDE MEMOIRE ATTACHED YOURLET TO KAMAL HEAD NORTH AMERICAN DEPT, MINISTRY FOREIGN AFFAIRS TODAY. KAMAL HAD ASKED FOR HEAD LEGAL DIV TO BE PRESENT AT DISCUSSION BUT LATTER WAS UNABLE TO ATTEND. ACCORDINGLY KAMLA SAID HE WOULD PASS MEMO TO HEAD LEGAL DEPT AND ARRANGE FOR A FURTHER DISCUSSION BETWEEN THE THREE OF US IN A WEEK OR TWO WHEN POINTS MADE IN OUR MEMO HAD BEEN CONSIDERED.

2. THOUGHT IT DESIRABLE TO INVOLVE HAD NORTH AMERICAN DEPT IN THIS MATTER AND IN HANDING OVER MEMO MADE GENERAL REMARKS ABOUT THE IMPORTANCE OF THE ISSUES INVOLVED TO THE CDN GOVT AND OUR HOPE THAT EGYPTIAN AUTHORITIES WOULD GIVE OUR VIEWS VERY CAREFUL CONSIDERATION

CARTER'''

20.30.1

## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY SECURITE
		29 JAN/69	20-3-1-6	III UNCLASS.
TO/A	LDN		NO	PRECEDENCE
			L-168	PRIORITY
INFO				

REF

YOURTEL 495 JANUARY 29

SUB/SUJ

LAW OF TREATIES MEETINGS

STANFORD WILL ARRIVE LONDON FEBRUARY 3 AS INDICATED IN OURTEL L-83  
JANUARY 10. MR. WERSHOF INFORMED US ~~THAT~~ HE HAD MADE RESERVATIONS  
FOR HIMSELF AND STANFORD AT ROYAL GARDEN HOTEL, KENSINGTON HIGH STREET  
FOR PERIOD FEBRUARY 3-5.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

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

file ✓  
diary  
div. diary

MEMORANDUM

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

The Under-Secretary  
(through the Legal Adviser)

SECURITY  
Sécurité

CONFIDENTIAL

January 28, 1969

FROM  
De

Legal Division

DATE

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties Conference - Preliminary Meetings  
of the Western European and Others Group.

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	15

ENCLOSURES  
Annexes

DISTRIBUTION

One of the major issues to be discussed at the meetings of the Western European and Others Group on the Law of Treaties to take place next week is the matter of the tactics to be followed in securing an acceptable provision on the peaceful settlement of disputes, i.e. an article requiring compulsory independent arbitration of disputes arising from the application of the articles on the invalidity and termination of treaties.

2. All the members of the WEO Group agree there should be such an article; the question to be discussed relates to the tactics to be employed for securing adoption of the article. No such article was adopted at the first session. At present there is before the Conference a proposal by thirteen states, mostly Western European, Latin American and Francophone-African, for a compulsory settlement article. The United States has circulated to over sixty countries a variation of the thirteen-power proposal and has asked all the countries to which it has submitted its draft to agree to co-sponsor an article similar in substance to its draft. The United States proposal does not differ significantly in substance from the thirteen-power proposal and it is believed that the U.S. objective in putting forward its proposal is to broaden extensively the sponsorship of the disputes settlement proposal to be considered by the second session of the Conference. Canada is among the countries which has been asked by the United States to co-sponsor its proposal and the Netherlands, one of the principle sponsors of the thirteen-power proposal, has also asked us orally to lobby in support of its proposal.

3. The question upon which a decision should be taken before next week's meetings is the extent to which Canada is prepared to participate actively in lobbying for support in Vienna for an article on compulsory settlement of disputes. The issue will be discussed in Vienna at the Committee stage before the Plenary debate and vote on Article 5, with its federal states paragraph, takes place. Many Afro-Asian states are opposed to the inclusion of a compulsory disputes article in the treaties convention and consequently active Canadian lobbying on behalf of a compulsory disputes article may alienate support for our position on Article 5.

.. 2



-2- CONFID.

4. For this reason we recommend that, at the WEO meetings next week, the Canadian representatives indicate (a) that Canada would be prepared to co-sponsor an article on the compulsory settlement of disputes in due course provided we are in suitable company, including at least some major Afro-Asian co-sponsors; but (b) the Canadian Delegation, because of its other responsibilities, will not be able to take an active part in lobbying on behalf of the peaceful settlement article prior to and during debate at the Committee stage. Such a position could not be objectionable, to the United States at least, because at the time we requested their support on Article 5(2) the United States informed us that while they would vote with us they would not lobby on our behalf because their lobbying efforts would be concentrated on the disputes article. We would simply be applying the same principle to our own priorities.

5. We should be grateful to know whether you agree with the position proposed in the preceding paragraph.

J. A. BEESLEY

Legal Division.

Legal Div. / J.S. Stanford / zs

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

MEMORANDUM



*File*  
*4/2/69*

TO  
À

The Under-Secretary  
(through the Legal Adviser)

SECURITY  
Sécurité

**CONFIDENTIAL**

FROM  
De

Legal Division

DATE

January 28, 1969

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties Conference - Preliminary Meetings  
of the Western European and Others Group.

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

ENCLOSURES  
Annexes

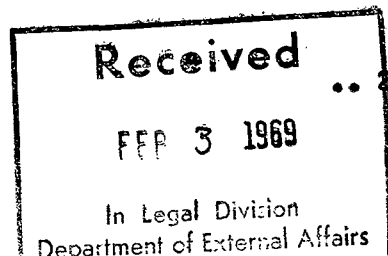
DISTRIBUTION

One of the major issues to be discussed at the meetings of the Western European and Others Group on the Law of Treaties to take place next week is the matter of the tactics to be followed in securing an acceptable provision on the peaceful settlement of disputes, i.e. an article requiring compulsory independent arbitration of disputes arising from the application of the articles on the invalidity and termination of treaties.

2. All the members of the WEO Group agree there should be such an article; the question to be discussed relates to the tactics to be employed for securing adoption of the article. No such article was adopted at the first session. At present there is before the Conference a proposal by thirteen states, mostly Western European, Latin American and Francophone-African, for a compulsory settlement article. The United States has circulated to over sixty countries a variation of the thirteen-power proposal and has asked all the countries to which it has submitted its draft to agree to co-sponsor an article similar in substance to its draft. The United States proposal does not differ significantly in substance from the thirteen-power proposal and it is believed that the U.S. objective in putting forward its proposal is to broaden extensively the sponsorship of the disputes settlement proposal to be considered by the second session of the Conference. Canada is among the countries which has been asked by the United States to co-sponsor its proposal and the Netherlands, one of the principle sponsors of the thirteen-power proposal, has also asked us orally to lobby in support of its proposal.

3. The question upon which a decision should be taken before next week's meetings is the extent to which Canada is prepared to participate actively in lobbying for support in Vienna for an article on compulsory settlement of disputes. The issue will be discussed in Vienna at the Committee stage before the Plenary debate and vote on Article 5, with its federal states paragraph, takes place. Many Afro-Asian states are opposed to the inclusion of a compulsory disputes article in the treaties convention and consequently active Canadian lobbying on behalf of a compulsory disputes article may alienate support for our position on Article 5.

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4. For this reason we recommend that, at the WEO meetings next week, the Canadian representatives indicate (a) that Canada would be prepared to co-sponsor an article on the compulsory settlement of disputes in due course provided we are in suitable company, including at least some major Afro-Asian co-sponsors; but (b) the Canadian Delegation, because of its other responsibilities, will not be able to take an active part in lobbying on behalf of the peaceful settlement article prior to and during debate at the Committee stage. Such a position could not be objectionable, to the United States at least, because at the time we requested their support on Article 5(2) the United States informed us that while they would vote with us they would not lobby on our behalf because their lobbying efforts would be concentrated on the disputes article. We would simply be applying the same principle to our own priorities.

5. We should be grateful to know whether you agree with the position proposed in the preceding paragraph.

*yes hke*

*Alan Beesley*  
Legal Division.

# CONSEIL DE L'EUROPE COUNCIL OF EUROPE

Strasbourg, le 28 janvier 1969

*publ. 19*  
Restricted  
GR/Traités (69) 1  
Addendum

## COMITE AD HOC SUR LE DROIT DES TRAITES

Règlement des différends en cas de nullité,  
d'extinction, de retrait ou de suspension  
de l'application d'un traité

Propositions d'amendement tendant à insérer  
dans le projet de Convention sur le droit  
des traités un nouvel article 62 bis,  
faites à la 1ère Session de  
la Conférence de Vienne, 1968

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- I. Colombie, Côte d'Ivoire, Dahomey, Danemark, Finlande, Gabon, Liban, Madagascar, Pays-Bas, Pérou, République centrafricaine, Suède et Tunisie  
(A/CONF.39/C.1/L.352/Rev.2)

"Insérer un nouvel article 62 bis ayant la teneur suivante:

'62 bis Si les parties n'ont pas été à même, en vertu de l'article 62, de convenir d'un moyen de parvenir à une solution dans les quatre mois qui ont suivi la date à laquelle l'objection a été soulevée, ou si elles sont convenues d'un moyen de règlement autre que le règlement judiciaire ou l'arbitrage et que ce moyen de règlement n'ait pas abouti à une solution dans les douze mois qui ont suivi ledit accord, chacune des parties peut demander au Secrétaire Général des Nations Unies de mettre en oeuvre les procédures indiquées à l'annexe 1 de la présente Convention.

#### Annexe I

(1) Il sera dressé par le Secrétaire Général des Nations Unies une liste permanente de conciliateurs composée de juristes qualifiés. A cette fin, chaque Etat, Membre de l'ONU ou partie à la présente Convention, sera invité à désigner deux conciliateurs pour une durée de cinq ans renouvelable.

(2) En cas de différend, chacune des parties désigne:

- (a) un conciliateur de sa nationalité choisi soit sur la liste visée au paragraphe 1, soit en dehors de celle-ci;
- (b) un conciliateur n'ayant pas sa nationalité et choisi sur la liste.

Le collège ainsi constitué désigne un président choisi sur la liste.

Les conciliateurs choisis par les parties doivent être désignés dans un délai de trois mois à compter de l'ouverture, par la partie demanderesse, de la procédure de conciliation.

La désignation du président par les conciliateurs doit également intervenir dans le délai de deux mois suivant leur propre nomination.

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Si la nomination des conciliateurs ou du président n'intervient pas dans les délais visés ci-dessus, le soin d'y procéder incombe au Secrétaire Général des Nations Unies.

(3) La Commission ainsi constituée établira les faits et fera des propositions aux parties en vue de parvenir à une solution amiable de l'affaire. La Commission arrêtera elle-même sa procédure. Les décisions et les recommandations de la Commission seront prises à la majorité. Le Secrétaire Général fournira à la Commission l'assistance et les facilités dont elle pourra avoir besoin. Les dépenses de la Commission seront supportées par l'Organisation des Nations Unies.

(4) La Commission sera tenue de faire rapport dans les douze mois qui suivront la date de sa constitution. Les rapports seront transmis au Secrétaire Général et aux parties.

(5) En cas d'échec de la procédure de conciliation et si les parties ne sont pas convenues d'un moyen de règlement judiciaire dans un délai de trois mois à compter de la date où est constaté l'échec de la procédure de conciliation, le différend est porté à la requête de l'une des parties devant un tribunal arbitral.

Le Tribunal arbitral est constitué de deux membres désignés par chacune des parties, et d'un président nommé d'un commun accord par les membres.

Les membres du Tribunal arbitral doivent être nommés dans un délai de six mois à compter de la date où est constaté l'échec de la procédure de conciliation.

Le président doit également être nommé dans un délai de six mois à compter de la date de la désignation des membres par les parties.

Si la nomination du président ou des membres du Tribunal arbitral n'intervient pas dans les délais susvisés, le soin d'y procéder incombe au Secrétaire Général des Nations Unies.

(6) Le Tribunal arbitral arrêtera lui-même sa procédure. Les décisions du Tribunal arbitral seront prises à la majorité des voix. La sentence est obligatoire et définitive.

(7) Le Secrétaire Général fournira au Tribunal arbitral l'assistance et les facilités dont il pourra avoir besoin. Les dépenses du Tribunal arbitral seront supportées par l'Organisation des Nations Unies."

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II. Japan (A/CONF.39/C.1/L.339) Amendement à l'article 62  
(reporté sur l'article 62 bis)

"Paragraphe 3"

Remplacer le paragraphe 3 par ce qui suit:

'3. Si une objection a été soulevée par toute autre partie, les parties intéressées devront rechercher le règlement du différend découlant de cette prétention de la manière suivante:

- (a) Au cas où le différend a trait à une demande fondée sur l'article 50 ou l'article 61, le différend devra être soumis à la décision de la Cour internationale de Justice à la demande de l'une ou l'autre des parties au différend;
- (b) Dans tous les autres cas, les parties au différend devront tout d'abord rechercher une solution au différend par les moyens indiqués à l'Article 33 de la Charte des Nations Unies. Si aucune solution n'a été atteinte dans un délai de douze mois, le différend devra être soumis à l'arbitrage du tribunal prévu à l'Annexe à la présente Convention, à moins que les parties au différend ne conviennent de porter celui-ci devant la Cour internationale de Justice.

3 bis

En attendant le règlement du différend conformément au paragraphe 3, le traité demeurera en vigueur; toutefois, son exécution pourra être suspendue:

- (i) par accord des parties, ou
- (ii) par une décision de l'organe devant lequel le différend aura été porté conformément au paragraphe 3'.

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ANNEXE

Tribunal arbitral compétent en vertu de l'article 62 (bis)

1. Le tribunal sera composé de cinq membres. Chacune des parties au différend désignera deux membres, dont l'un devra avoir la nationalité de la partie intéressée, dans un délai de trente jours à compter de la notification par l'une des parties à l'autre de son intention de soumettre le différend à l'arbitrage. Le cinquième membre, qui ne sera pas tenu d'avoir la nationalité de l'une des parties au différend, sera nommé par le Secrétaire Général de l'Organisation des Nations Unies dans les trente jours de la désignation des quatre autres membres par les deux parties.

2. Le membre nommé par le Secrétaire Général de l'Organisation des Nations Unies remplira les fonctions de président du tribunal.

3. Le tribunal fixera lui-même sa procédure.

4. La décision du tribunal sera rendue à la majorité simple, la voix du président étant prépondérante, le cas échéant.

5. Le tribunal statuera en dernier ressort et sa décision sera obligatoire pour les parties au différend."

III. Suisse (A/CONF.39/C.1/L.377)

"Insérer un nouvel article 62 bis ayant la teneur suivante:

1. Si les parties ne sont parvenues à aucun accord sur la procédure de règlement dans un délai de trois mois après l'objection prévue à l'article 62, paragraphe 3, la partie qui a fait la notification peut porter, au plus tard six mois après l'objection, le différend devant la Cour internationale de Justice par simple requête ou devant une commission d'arbitrage conformément aux dispositions du paragraphe 2.

2. A moins que les parties n'en conviennent autrement, la procédure d'arbitrage se déroulera de la manière suivante:

(a) La commission d'arbitrage sera composée de cinq membres. Les parties en nommeront chacune un. Les trois autres arbitres seront désignés d'un commun accord par les parties parmi les ressortissants d'Etats tiers. Ils devront être de nationalités différentes, ne pas avoir leur résidence habituelle sur le territoire des parties ni se trouver à leur service.

(b) Le président de la commission d'arbitrage sera nommé par les parties parmi les arbitres désignés en commun.

(c) Si dans un délai de trois mois, les parties n'ont pu se mettre d'accord sur la désignation des arbitres nommés en commun, le Président de la Cour internationale de Justice procédera à cette désignation. Si l'une des parties n'a pas désigné l'arbitre dont la désignation lui incombe dans un délai de trois mois, le Président de la Cour internationale de Justice procédera à cette désignation.

(d) Si le Président de la Cour internationale de Justice se trouve empêché ou s'il a la nationalité de l'une des parties, c'est le Vice-Président de la Cour internationale de Justice qui procède aux désignations nécessaires. Si le Vice-Président de la Cour internationale de Justice se trouve empêché et s'il a la nationalité de l'une des parties, il est remplacé par le membre le plus ancien de la Cour qui n'a la nationalité d'aucune des parties.

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(e) A moins que les parties n'en conviennent autrement, la commission d'arbitrage fixera elle-même sa procédure. A titre subsidiaire, les dispositions du chapitre III de la Convention de La Haye sur le règlement pacifique des différends internationaux du 18 octobre 1907 seront applicables.

(f) La commission d'arbitrage statuera à la majorité simple sur les questions qui lui auront été soumises et ses décisions seront obligatoires pour les parties.

3. Pendant toute la durée du différend, sauf accord contraire entre les parties ou mesures provisoires ordonnées par la juridiction saisie, le traité reste applicable entre les parties au différend.

4. Si la partie qui a fait la notification ne recourt pas dans le délai prescrit de six mois à l'une des juridictions prévues au paragraphe 1, elle est censée avoir renoncé à la procédure d'annulation ou à la mesure envisagée!."

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IV. Etats-Unis d'Amérique (A/CONF.39/C.1/L.355)  
Amendement à l'article 62 (reporté sur l'article 62 bis)

(Procédure à suivre en cas de nullité d'un traité ou pour y mettre fin, s'en retirer ou suspendre l'application).

"Amendement proposé:

1. Modifier comme suit le paragraphe 2:

'2.

(a) Si, après un délai qui, sauf en cas d'urgence particulière, ne saurait être inférieur à une période de trois mois à compter de la réception de la notification, la partie qui fait la notification n'a reçu d'objection d'aucune autre partie et, dans le cas d'un traité multilatéral, s'est assurée qu'aucune autre partie n'a communiqué d'objection au dépositaire, elle peut prendre, dans les formes prévues à l'article 63, la mesure qu'elle a envisagée,

(b) En cas d'urgence particulière, le délai doit, dans chaque cas, être suffisant pour permettre aux autres parties de faire objection.'

2. Ajouter un nouveau paragraphe 3 bis, ainsi conçu:

'3 bis. Si les parties n'ont pu se mettre d'accord sur un moyen de parvenir à une solution dans les trois mois suivant la date à laquelle l'objection a été soulevée ou si elles sont convenues d'un moyen de règlement (autre que le règlement judiciaire ou l'arbitrage) qui n'a pas abouti à une solution dans les douze mois suivant ledit accord, toute partie pourra soumettre le différend à la Commission chargée des différends relatifs aux traités aux fins de règlement conformément à la procédure décrite à l'Annexe I à la présente Convention.'

3. Renommer les paragraphes 4 et 5 du texte de la Commission du droit international de manière qu'ils deviennent les paragraphes 6 et 7, et insérer les nouveaux paragraphes 4 et 5 ainsi conçus:

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4. Sauf dans le cas prévu au paragraphe 5, lorsqu'une objection a été élevée, la partie qui invoque la nullité d'un traité ou qui allègue un motif pour mettre fin au traité, en suspendre l'application ou s'en retirer, ne peut exécuter la mesure envisagée dans sa notification tant que l'affaire n'est pas réglée, à moins: (a) que les parties ne conviennent qu'une telle mesure peut être prise, ou (b) qu'un tribunal international auquel les parties ont soumis le différend ou, si elles ne l'ont pas soumis à un tel tribunal, la Commission chargée des différends relatifs aux traités instituée par l'Annex I à la présente Convention n'ait rendu une ordonnance fixant les mesures provisoires à prendre pour sauvegarder les droits de chacune des parties.

5. La partie qui allègue une violation substantielle d'un traité peut, à l'expiration du délai applicable en vertu du paragraphe 2 du présent article, suspendre l'application de la totalité du traité au cas où la violation alléguée aurait pour effet de réduire à néant l'objet et le but du traité; sinon, elle peut suspendre l'application des dispositions dont elle allègue la violation ou bien dont l'exécution est directement liée à l'exécution de cette disposition. En cas de différend sur le caractère substantiel de la violation ou sur l'opportunité de suspendre l'application du traité, la partie faisant objection peut s'adresser à tout tribunal international compétent auquel les parties auraient soumis le différend, ou si elles ne l'ont pas soumis à un tel tribunal, à la Commission chargée des différends relatifs aux traités pour obtenir une ordonnance interlocutoire en vue de modifier les mesures prises en vertu du présent paragraphe.'

#### ANNEXE

##### Article premier

- (1) Il sera institué une Commission chargée des différends relatifs aux traités composée de 25 juristes hautement qualifiés, représentants les principaux systèmes juridiques du monde. La composition de la Commission sera fondée sur le principe d'une large répartition géographique.
- (2) Les membres de la Commission seront élus par l'Assemblée générale parmi les candidats désignés par les Etats parties à la présente Convention. Leur mandat sera de neuf ans et ils pourront être réélus.

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- (3) Sous réserve de l'approbation de l'Assemblée générale, la Commission constituera un organe de l'Organisation des Nations Unies et sera autorisée à demander des avis consultatifs à la Cour internationale de Justice dans les conditions prévues à l'article 4 ci-après.

Article 2

- (1) Lorsqu'un différenc sera porté devant la Commission chargée des différends relatifs aux traités et à moins que les parties ne conviennent que le différend devra être examiné par la Commission siégeant au complet, il sera constitué dans les 60 jours une sous-commission composée d'un membre désigné par chacune des parties au différend parmi les membres de la Commission qui n'ont pas la nationalité de ladite partie, d'un membre désigné par chacune des parties et ayant la nationalité de ladite partie (choisi en dehors des membres de la Commission, s'il est nécessaire) et d'un président (ne possédant la nationalité d'aucune des parties) désigné par les autres membres de la sous-commission parmi les membres de la Commission. Si une désignation n'est pas faite dans un délai de 60 jours, le Secrétaire Général de l'Organisation des Nations Unies, ou s'il s'agit du président, la Commission plénière procédera à cette nomination.
- (2) Toute demande de mesures provisoires ou d'examen des mesures prises dans un cas où une violation est alléguée sera soumise à une sous-commission s'il en a été constitué une, sinon la demande sera soumise à la Commission plénière.

Article 3

- (1) La Commission ou toute sous-commission constituée en vertu de l'article 2 établira les faits et fera des propositions aux parties en vue de parvenir à une solution amiable de l'affaire. La Commission ou la sous-commission aura compétence pour ordonner des mesures provisoires destinées à sauvegarder les droits des parties.
- (2) Les décisions de la Commission et de la sous-commission seront prises à la majorité. Sous réserve de ce qui précède, la Commission fixera elle-même sa procédure.
- (3) Le Secrétaire Général fournira à la Commission ou à la sous-commission l'assistance et les facilités dont elle pourra avoir besoin.

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#### Article 4

Si les propositions faites aux parties par la Commission ou la sous-commission ne sont pas acceptées dans les trois mois à compter de la date à laquelle elles ont été faites et qu'il reste des questions juridiques qui n'ont pas été tranchées, ou à tout moment, avec l'accord des parties, la Commission ou la sous-commission pourra demander un avis consultatif à la Cour internationale de Justice. Si les parties en conviennent ainsi, la Commission devra demander à la Cour de constituer une chambre, conformément à l'article 26 de son Statut, pour connaître desdites questions.

#### Article 5

(1) La Commission ou la sous-commission, selon le cas, sera tenue de faire rapport dans les douze mois qui suivront la date à laquelle le différend lui aura été renvoyé, à moins qu'à l'expiration de ce délai, une demande d'avis consultatif ne soit en instance. Dans ce cas, la Commission ou la sous-commission pourra retarder le dépôt de son rapport jusqu'à l'expiration de trois mois à compter du jour où elle aura reçu l'avis consultatif.

(2) Le rapport sera transmis au Secrétaire Général et aux parties. Si la Commission ou la sous-commission a réussi à réaliser une solution amiable, le rapport se limitera à un bref exposé des faits et de la solution obtenue. Si la Commission ou la sous-commission n'a pas réussi à réaliser une solution amiable, son rapport devra contenir un exposé complet des éléments de fait et de droit du différend.

#### Article 6

(1) Si la Commission ou la sous-commission n'est parvenue à aucune solution, les parties pourront décider de soumettre à la Cour internationale de Justice toute question relative à l'interprétation ou à l'application de l'un des articles de la partie V de la présente convention.

(2) Si dans les deux mois qui suivront le dépôt du rapport de la Commission ou de la sous-commission, il n'est pas intervenu d'accord en vue de soumettre la question à la Cour internationale de Justice, ladite question sera soumise, sur la demande de l'une des parties, à la décision d'un tribunal arbitral.

Article 6 (suite)

- (3) Le tribunal arbitral sera composé d'un membre désigné par chacune des parties au différend et d'un président désigné d'un commun accord par les parties. Si l'une de ces désignations n'est pas faite dans les trois mois qui suivront la demande d'arbitrage, le Président de la Cour internationale de Justice nommera lui-même la personne à désigner parmi les membres de la Cour permanente d'arbitrage.
- (4) Le Secrétaire Général fournira au tribunal arbitral l'assistance et les facilités dont il pourra avoir besoin.

Article 7

Si les parties en conviennent ainsi, le tribunal arbitral pourra être a) soit la sous-commission de la Commission chargée des différends relatifs aux traités qui a été saisie du différend, b) soit une autre sous-commission constituée de la manière prévue à l'article 2, c) soit la Commission plénière."

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V. Uruguay (A/CONF.39/C.1/L.343) Amendement à l'article 62  
(reporté sur l'article 62 bis)

(Procédure à suivre en cas de nullité d'un traité ou pour y mettre fin, s'en retirer ou en suspendre l'application)

"Modifier comme suit le texte de l'article 62:

1. La partie qui allègue une violation substantielle d'un traité comme motif pour mettre fin au traité ou en suspendre l'application, conformément aux dispositions de l'article 57, peut suspendre unilatéralement l'exécution du traité, en totalité ou en partie.

2. La partie qui fait valoir la nullité d'un traité, sur la base des articles 43, 44, 45, 46, 47, 48, 49 ou 50, ou qui allègue un motif pour y mettre fin, s'en retirer ou en suspendre l'application, sur la base des articles 53, 56, 59 ou 61, doit notifier sa prétention aux autres parties. La notification doit indiquer la mesure envisagée à l'égard du traité et les motifs à l'appui.

3. Si, après un délai qui, sauf en cas d'urgence particulière, ne saurait être inférieur à une période de trois mois à compter de la réception de la notification, aucune partie n'a fait d'objection, la partie qui fait la notification peut prendre, dans les formes prévues à l'article 63, la mesure qu'elle a envisagée.

4. Si, toutefois, une objection a été soulevée par toute autre partie, les parties devront rechercher une solution par les moyens indiqués aux Articles 33, 35 et 36 de la Charte des Nations Unies. La même obligation naîtra au cas où l'une quelconque des parties formulerait quelque objection touchant l'existence de l'un quelconque des motifs prévus aux articles 51, 54, 55, 57 ou 58 pour suspendre l'application d'un traité ou y mettre fin.

5. Les droits mentionnés dans les paragraphes qui précèdent ne pourront être invoqués ou exercés valablement par la partie qui n'aurait pas préalablement accepté, aux fins du différend qui pourrait surgir conformément au paragraphe 4 du présent article, les obligations de règlement pacifique inscrites dans la Charte des Nations Unies ou qui refuserait d'accepter la résolution de l'organe compétent des Nations Unies recommandant, parmi les procédures énumérées au paragraphe 1 de l'Article 33 de la Charte des Nations Unies, la méthode la plus appropriée pour le règlement pacifique du différend existant.

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6. Les Etats parties à la présente Convention s'engagent à agir, individuellement et au sein des organisations internationales dont ils sont membres, de manière à faciliter et à assurer le règlement des différends découlant de la présente Convention par des moyens pacifiques et conformément aux dispositions de la Charte des Nations Unies.

7. Rien dans les paragraphes qui précèdent ne porte atteinte aux droits ou obligations des parties découlant de toute disposition en vigueur entre elles concernant le règlement des différends'."

# COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 28th January 1969

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Restricted  
Addendum to  
GR/Traités (69) 1

## AD HOC COMMITTEE ON THE LAW OF TREATIES

Settlement of disputes in cases of invalidity,  
termination, withdrawal from or suspension of  
the operation of a treaty

Proposals for amendment seeking to introduce a  
new Article 62 bis in the Draft Convention on  
the law of treaties, made at the 1st Session  
of the Vienna Conference, 1968

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If the appointment of the conciliators or of the Chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General of the United Nations.

(3) The Commission thus constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Decisions and recommendations of the Commission shall be taken by a majority vote. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(4) The Commission shall be required to report within twelve months of its constitution. Its report shall be transmitted to the Secretary-General and to the parties.

(5) In the event of failure of the conciliation procedure and if the parties have not agreed on a means of judicial settlement within three months from the date when it is established that the conciliation procedure has failed, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal.

The arbitral tribunal shall consist of two arbitrators, one appointed by each party, and a Chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months from the date when it is established that the conciliation procedure has failed.

The Chairman shall also be appointed within a period of six months from the date of the appointment of the arbitrators by the parties.

If the Chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

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

(7) The Secretary General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations'."

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II. Japan (A/CONF.39/C.1/L.339) Amendment to Article 62  
(transferred to Article 62 bis)

"Paragraph 3

Replace paragraph 3 by the following:

- '3. If objection has been raised by any other party the parties concerned shall seek the settlement of the dispute arising out of the claim in the following manner:
- (a) In a case where the dispute relates to a claim under Article 50 or Article 61, the dispute shall be referred to the International Court of Justice for decision at the request of either of the parties to the dispute;
  - (b) In all other cases, the parties to the dispute shall first of all seek a solution of the dispute through the means indicated in Article 33 of the Charter of the United Nations. If no solution has been reached within twelve months, the dispute shall be referred to arbitration by a tribunal provided for in the Annex to the present Convention, unless the parties to the dispute agree to refer the dispute to the International Court of Justice.

3 bis

Pending the settlement of the dispute in accordance with paragraph 3, the treaty shall continue in force, provided that the performance of the treaty may be suspended:

- (i) by agreement of the parties, or
- (ii) by a decision of the body to which the dispute has been referred in accordance with paragraph 3'.

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ANNEX

Arbitral Tribunal under Article 62 (bis)

1. The tribunal shall be constituted by five members. Each party to the dispute shall nominate two members, one of whom may possess the nationality of the party concerned, within thirty days of the notification by one party to the other party of its intention to refer the dispute to arbitration. The fifth member, who may not possess the nationality of either party to the dispute, shall be appointed by the Secretary General of the United Nations, within thirty days of the nomination of the four members by both parties.
2. The member appointed by the Secretary General of the United Nations shall act as president of the tribunal.
3. The tribunal shall decide its own procedures.
4. The decision of the tribunal shall be given by a simple majority and the president shall have the casting vote if the necessity arises.
5. The decision of the tribunal shall be final and binding upon the parties to the dispute'."

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III. Switzerland (A/CONF.39/C.1/L.377)

"Insert a new Article 62 bis reading as follows:

- '1. If the parties have been unable to reach any agreement on the settlement procedure within a period of three months after the objection referred to in Article 62, paragraph 3, the party which has made the notification may, not more than six months after the objection, bring the dispute before the International Court of Justice by simple application, or before a commission of arbitration in conformity with the provisions of paragraph 2.
2. Unless the parties otherwise agree, the arbitration procedure shall be as follows:
  - (a) The Commission of arbitration shall be composed of five members.  
Each of the parties shall appoint one member. The other three arbitrators shall be appointed jointly by the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.
  - (b) The president of the commission of arbitration shall be appointed by the parties from among the arbitrators appointed jointly.
  - (c) If, within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator it is responsible for appointing, the President of the International Court of Justice shall make the appointment.
  - (d) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

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(e) Unless the parties otherwise agree, the commission of arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(f) The commission of arbitration shall decide all questions submitted to it by simple majority vote, and its decisions shall be binding on the parties.

3. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

4. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 1, it shall be deemed to have renounced its claim of invalidity or to the measure proposed'."

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IV. United States of America (A/CONF.39/C.1./L.355)  
Amendment to Article 62 (transferred to Article 62 bis)

(Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty).

"Proposed amendment:

1. Amend paragraph 2 to read as follows:

'2.

- (a) If after the expiry of a period, which except in cases of special urgency shall not be less than three months after receipt of the notification, the party making the notification has not received an objection from any other party and, in the case of a multilateral treaty, has ascertained that no other party has communicated any objection to the depositary, it may carry out in the manner provided in Article 63 the measure which it has proposed.
- (b) In cases of special urgency the time period shall, in every case, be sufficient to allow the other parties to make an objection.

2. Insert as a new paragraph 3 bis the following text:

'3 bis. If the parties have been unable to agree upon any means of reaching a solution within three months following the raising of the objection, or if they have agreed upon any means of settlement (other than adjudication or arbitration) which has not led to a solution within 12 months after such agreement, either party may refer the dispute to the Commission on Treaty Disputes for settlement in accordance with the procedures indicated in Annex 1 to the present Convention.'

3. Renumber paragraphs 4 and 5 of the ILC text as paragraphs 6 and 7 and insert new paragraphs 4 and 5 to read as follows:

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'4. Except as provided in paragraph 5, when an objection has been raised, the party claiming the invalidity of a treaty or alleging a ground for termination, suspension or withdrawal from a treaty may not carry out the measure proposed in its notification until the matter is resolved unless: (a) the parties agree that such measure may be taken; or, (b) any international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, the Commission on Treaty Disputes established in Annex I to the present Convention, shall have issued an order laying down provisional measures to be taken to preserve the respective rights of either party.

5. A party alleging material breach of a treaty may, upon the expiry of the applicable period provided in paragraph 2 of this article, suspend operation wholly if effect of the alleged breach would be to frustrate the object and purpose of the treaty; otherwise, operation may be suspended of those provisions which were allegedly breached or the performance of which is directly related to or dependent upon performance of the provision allegedly breached. In the event of a dispute as to the materiality of the breach or the appropriateness of the suspension an objecting party may apply to any competent international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, to the Commission on Treaty Disputes for the issuance of an interlocutory order requiring modification of action taken under this paragraph.'

#### ANNEX

#### Article 1

- (1) A Commission on Treaty Disputes shall be established consisting of 25 highly qualified jurists representing the principal legal systems of the world. The Commission shall reflect a wide geographical distribution.
- (2) Members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the States parties to this Convention. They shall serve for nine years and may be re-elected.

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- (3) Subject to the approval of the General Assembly, the Commission shall be constituted as an organ of the United Nations and authorised to request advisory opinions from the International Court of Justice under the conditions set forth in Article 4 below.

#### Article 2

- (1) When a dispute is referred to the Commission on Treaty Disputes, and unless the parties agree that the full Commission shall consider the dispute, a sub-commission shall be appointed within 60 days consisting of one member appointed by each party to the dispute from among the members of the Commission who do not possess its nationality, one member appointed by each party who possesses its nationality (from outside the membership of the Commission where necessary) and a chairman (not possessing the nationality of either party) appointed by the other members of the sub-commission from among the members of the Commission. If any appointment is not made within the period of 60 days, the appointment shall be made by the Secretary General of the United Nations or in the case of the chairman, by the Commission as a whole.
- (2) An application for provisional measures or for review of the action taken in respect of an alleged breach shall be considered by a sub-commission if one has been selected; otherwise the application shall be considered by the Commission as a whole.

#### Article 3

- (1) The Commission or any sub-commission constituted under Article 2 shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly solution of the question. The Commission or a sub-commission shall have the power to order provisional measures to preserve the rights of the parties.
- (2) Decisions of the Commission and of the sub-commission shall be taken by majority vote. Subject to the foregoing, the Commission shall establish its own procedures.
- (3) The Secretary General shall provide to the Commission or the sub-commission such assistance and facilities as it may require.

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#### Article 4

If the proposals made to the parties by the Commission or sub-commission are not accepted within three months of being made and there remain unresolved legal questions, or at any time with the consent of the parties, the Commission or sub-commission may request an advisory opinion from the International Court of Justice. If the parties agree, the Commission shall request the Court to form a chamber under Article 26 of its Statute to deal with the questions.

#### Article 5

- (1) The Commission or the sub-commission, as the case may be, shall be obliged to report within 12 months after the dispute has been referred to it unless at the end of that time there is outstanding a request for an advisory opinion. In such case, the Commission or sub-commission may delay its report until 3 months after receipt of the opinion.
- (2) The report shall be transmitted to the Secretary General and the parties. If the Commission or the sub-commission has succeeded in effecting a friendly solution, the report shall be confined to a brief statement of the facts and the solution reached. If the Commission or the sub-commission has not succeeded in effecting a friendly solution its report shall deal fully with the factual and legal elements of the disputes.

#### Article 6

- (1) If no solution has been effected by the Commission or sub-commission, the parties may agree to submit any question relating to the interpretation or application of any of the articles contained in Part V of the present Convention to the International Court of Justice.
- (2) If within two months after issuance of the Commission or sub-commission report, no agreement for submission to the International Court of Justice has been reached, any such question shall be submitted, at the request of either party, to an arbitral tribunal for decision.
- (3) The arbitral tribunal shall consist of one member appointed by each party to the dispute and a chairman appointed by common agreement between the parties. If any of these appointments has not been made within a period of 3 months from the request for arbitration, it shall be made from the list of members of the Permanent Court of Arbitration by the President of the International Court of Justice.
- (4) The Secretary General shall provide the arbitration tribunal such assistance and facilities as it may require.

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Article 7

If the parties agree the arbitral tribunal may be (a) the sub-commission of the Commission on Treaty Disputes which has been seized of the dispute, or (b) another sub-commission constituted in the same manner as provided in Article 2, or (c) the full Commission."

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V. Uruguay (A/CONF.39/C.1/L.343) Amendment to Article 62  
(transferred to Article 62 bis)

(Procedure to be followed in cases of invalidity, termination,  
withdrawal from or suspension of the operation of a treaty)

"Amend the present text of the Article to read as follows:

'1. A party which alleges a material breach of a treaty as a ground for terminating the treaty or suspending its operation, pursuant to Article 57, may unilaterally suspend the execution of the treaty, in whole or in part.

2. A party which claims that a treaty is invalid under articles 43, 44, 45, 46, 47, 48, 49 or 50 or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under articles 53, 56, 59 or 61, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefore.

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

4. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Articles 33, 35 and 36 of the Charter of the United Nations. The same obligation will arise in case any party raises an objection as to the existence of any of the grounds provided for in articles 51, 54, 55, 57 or 58 for the suspension or termination of a treaty.

5. The rights referred to in the preceding paragraphs may not be invoked or validly exercised by a party which has not accepted in advance, for the purposes of the dispute arising under paragraph 4 above, the obligations of pacific settlement provided in the

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Charter of the United Nations, or by a party which refuses to accept the resolution of the competent organ of the United Nations recommending, among the procedures enumerated in Article 33 (1) of the Charter of the United Nations, the most appropriate method for the peaceful settlement of the dispute which has arisen.

6. States parties to the present Convention engage themselves to act, individually and within the international organisations in which they are members, in such a way as to facilitate and encourage the settlement of disputes arising under the present Convention, by peaceful means and in accordance with the provisions of the Charter of the United Nations.

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

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

TO  
A
 U.S.S.E.A. Ottawa  
 Attn: Legal Division

J. A. BEESLEY

UNCLASS

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

QUANTITY QUANTITÉ	REFERENCE — RÉFÉRENCE	DESCRIPTION — DESCRIPTION
1		<p>copy Note by the United Kingdom entitled "Law of Treaties Conference"</p> <div data-bbox="662 472 1049 772" style="border: 1px solid black; padding: 5px; margin: 10px;">           TO: <i>Mr Stappard</i>            FROM REGISTRY            JAN 28 1969            FILE CHARGED OUT            TO:         </div> <div data-bbox="1159 404 1549 584" style="border: 1px solid black; padding: 5px; margin: 10px;">           20-3-1-6            1-1-1         </div> <div data-bbox="899 869 1299 1159" style="border: 1px solid black; padding: 10px; margin: 10px; transform: rotate(-5deg);"> <p><b>Received</b>            JAN 28 1969            Legal Division            Department of External Affairs</p> </div>
RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION  DATE _____	RETURN TO / RETOURNER À Legal Division Department of External Affairs  SIGNATURE _____	

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

002968

*Legal Officer*

## LAW OF TREATIES CONFERENCE

### Note by the United Kingdom

The United Nations Conference on the Law of Treaties has been given the task of drawing up a draft Convention on the Law of Treaties which will govern inter alia the conclusion, entry into force, application, interpretation, invalidity and termination of treaties. The basic document before the Conference is a set of draft Articles prepared by the International Law Commission. The first session of the Conference, held in Vienna from 26 March to 24 May, 1968, was almost entirely devoted to consideration of the draft Articles by the Committee of the Whole. At its second session this spring, to be held from 9 April to 21 May (also in Vienna), it will complete the study by the Committee of the Whole of a number of outstanding issues, and will then examine the whole draft in Plenary.

2. In the view of the United Kingdom, the most important outstanding issue (on the solution of which may well depend the success or failure of the Conference) is the provision of adequate procedures for the independent and impartial adjudication of disputes arising out of the application or interpretation of those Articles in the Convention which govern the invalidity of treaties. This is because a number of these Articles would permit States unilaterally to claim, on the basis of largely subjective criteria, that particular treaties are null and void. The effect would be seriously to undermine the stability of treaties and of treaty relationships. In the view of the United Kingdom, it is essential that the proposed Convention on the Law of Treaties should contain machinery enabling any State wishing to assert the invalidity of a treaty, or any State wishing to deny an assertion of invalidity, to have that assertion or that denial subjected to the scrutiny and assessment of an independent and impartial body. The mere existence of such machinery, even if, as might be anticipated, it were used only in rare cases, would serve to discourage States either from invoking spurious grounds of invalidity or termination, or from lightly denying well-founded charges of invalidity. This would be in the interest of all the participants in the Conference, given the importance and significance of treaty relationships in the contemporary world.

3. At present, the only provision in the draft Convention concerning settlement of disputes is Article 62 which, in the view of the United Kingdom, is quite inadequate in the form approved by the Committee of the Whole at the first session of the Conference. Article 62 merely provides that in the event of objection being raised to a claim of invalidity "the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations"; there is no provision for automatic recourse to a particular method of peaceful settlement if the parties cannot agree on a negotiated solution of the dispute.

4. Various proposals were made during the closing stages of the first session of the Conference to add an Article 62 bis which would establish settlement machinery which could be

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invoked by any State party to a dispute concerning the validity of a treaty. Without wishing to enter into the details of any of these proposals, the United Kingdom believe that the very least which should be written into the Convention is a procedure providing for automatic conciliation followed, if necessary, by automatic arbitration. Additionally, it would seem to be highly desirable that, in cases where a dispute relates to a claim of invalidity under Articles 50 and 61 (which deal respectively with jus cogens and emerging jus cogens), the dispute should be referred to the International Court of Justice at the request of any of the parties to the dispute: this would provide a means whereby there could be developed a constant and consistent jurisprudence on the scope of existing and emerging rules of jus cogens.

Foreign and Commonwealth Office,  
London, S.W.1.

10 January, 1969

# COUNCIL OF EUROPE CONSEIL DE L'EUROPE

1670-3-156

Strasbourg, 27th January 1969

Restricted

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Or. Eng.

## AD HOC COMMITTEE ON THE LAW OF TREATIES

Memorandum of the Secretariat (Directorate of Legal Affairs of the Secretariat General of the Council of Europe), containing an outline of the problems to be considered by the ad hoc Committee.

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## INTRODUCTION

The Secretariat suggests organising the discussions of the Committee along the lines set out in this document.

In the first part of the meeting, the Committee might proceed to an exchange of views on the provisions of the draft Convention on the Law of Treaties, decisions on which were deferred to the 2nd Session of the Vienna Conference to be held in Spring 1969. These provisions concern the right of participation in treaties, restricted multilateral treaties, the settlement of disputes under Part V of the Convention (invalidity, termination, etc. of treaties), and the settlement of disputes arising out of the interpretation or application of the Convention.

In the second part of the meeting, the Committee might discuss a certain number of Articles of the draft Convention which were provisionally adopted at the 1st Session of the Vienna Conference in 1968 and which the participants would like to be made the object of a further exchange of views in the Committee. The suggestions so far received by the Secretariat from Governments invited to attend the meeting and concerning these provisionally adopted articles, are grouped together in Part Two of this document. Further Articles will be added to this list following the wishes of other Governments.

The Secretariat has considered it opportune to recall for each item appearing in this document the summary account of the former meeting on the draft Articles on the Law of Treaties, held in Paris on 5th - 7th February 1968, reproduced in document WRO/Traités (68) 1 Revised, and the most important proposals for amendment made at the 1st Session of the Vienna Conference and their fate. Where possible, the text of these amendments has been reproduced in this document with the reference of the respective working documents of the Vienna Conference; the various proposals made at Vienna on the question of settlement of disputes under Part V of the draft Convention appear in the Addendum to this document.

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PART ONE

Provisions of the draft Convention, the decision on which has been deferred to the 2nd Session of the Conference.

I. The right of participation in treaties  
(in connection with the proposals aiming at introducing the category of "general multilateral treaties")

(a) Summary account of the Paris meeting, February 1968

"Articles 10 to 12 were studied together. The Chairman stated that these Articles had been exhaustively discussed at Strasbourg (i.e. at the Council of Europe meeting, January 1968).

On that occasion the delegates had agreed that the participation of States in multilateral treaties was the most important question. The Chairman recalled that an important political problem was raised in this connection and that the Strasbourg Working Party had found Article 12 of the draft satisfactory; it ruled out unilateral accession to a multilateral treaty by any State indiscriminately and confirmed the present practice of inserting in general multilateral treaties, an express clause governing the procedure for accession as well as the category of States entitled to accede.

.....

Some delegations expressly stated that they shared the opinion reached at Strasbourg whose object was to exclude any amendment to Articles 10, 11 and 12 for the very purpose of avoiding the possibility of "unrestricted" accession to multilateral treaties."

(WEO/Traités (68) 1 Rev., paras. 16 and 20).

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(b) Proceedings of the Committee of the Whole, 1st Session  
of the Vienna Conference, 1968

1. Article 5 bis

Amendment proposed by Algeria, Ceylon, Hungary, India, Mali, Mongolia, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/C.1/L.74 and Add. 1 and 2):

"Insert the following new Article between the Articles 5 and 6 :

'The right of participation in treaties

All States have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality'."

2. Article 2, paragraph 1, new sub-paragraph between (a) and (b)

Amendment proposed by Congo (Democratic Republic), Czechoslovakia, Hungary, Poland, Roumania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19, Rev. 1):

"Insert between present sub-paragraphs (a) and (b) the following new sub-paragraph:

"'General multilateral treaty" means a multilateral treaty which deals with matters of general interest for the international community of States'."

3. Article 12

Amendment proposed by Czechoslovakia (A/CONF.39/C.1/L.104):

"Consider the present wording of Article 12 as paragraph 1 and add a paragraph 2 which would read as follows:

'2. The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession a party to a multilateral treaty which affects its legitimate interest'."

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4. See below, under point II, the sub-amendment proposed by Czechoslovakia and the amendment proposed by the Ukrainian Soviet Socialist Republic to Article 8, paragraph 2, and the amendment proposed by Czechoslovakia to Article 7, paragraph 1.

(c) Decision taken by the Committee of the Whole at the 1st Session of the Conference

At the 80th meeting of the Committee of the Whole, (21st May 1968), it was decided to defer to the second session of the Conference decisions on all proposed amendments concerning multilateral treaties, general multilateral treaties, and restricted multilateral treaties, cf. below point II.

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II. Restricted multilateral treaties  
(with respect to adoption, reservations, application, amendment, modification, temporary suspension and consequences of the termination of a treaty)

(a) Summary account of the Paris meeting, February 1968

No mention was made of this question in general. However, with respect to reservations, the following paragraph is to be found in the account:

"As regards paragraph 2 of Article 17, mention was made of the difficulty of defining "limited number of ... States"; it would therefore be preferable to delete this provision. In some quarters, however, emphasis was laid on the need for a provision of this nature provided it were made more flexible by replacing the word "and" by "or"."

(WEO/Traités (68) 1, Rev., para. 30).

(b) Proceedings of the Committee of the Whole, 1st Session of the Vienna Conference, 1968

1. Article 2, paragraph 1, new sub-paragraph between (d) and (e)

Amendment proposed by France (A/CONF.39/C.1/L.24):

"Add the following new sub-paragraph .....

"Restricted multilateral treaty" means a treaty which is intended to be binding only on the States referred to in the treaty and whose entry into force in its entirety with respect to all the negotiating States is an essential condition of the consent to each of them to be bound by it;".

2. Article 8, paragraph 2 (adoption)

Amendment proposed by France (A/CONF.39/C.1/L.30):

"Amend the beginning of paragraph 2 to read as follows:

'2. The adoption of a text of a multilateral treaty other than a restricted multilateral treaty at an international conference ...'."

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Sub-amendment proposed by Czechoslovakia  
(A/CONF.39/C.1/L.102) to the amendment proposed by  
France:

"Amend the beginning of paragraph 2 to read as follows:

'The adoption of the text of a general multilateral  
treaty or a multilateral treaty other than a  
restricted multilateral treaty at an international  
conference ...'."

Amendment proposed by the Ukrainian Soviet Socialist  
Republic (A/CONF.39/C.1/L.51, Rev. 1):

"Amend the first part of paragraph 2 to read as follows:

'The adoption of the text of a general or other  
multilateral treaty, with the exception of limited  
multilateral treaties, at an international conference  
takes place by the vote of two-thirds of the  
States ...'."

3. Article 17, paragraph 1 (reservations)

Amendment proposed by Czechoslovakia (A/CONF.39/C.1/L.84):

"Amend paragraph 1 to read:

'1. A reservation expressly or impliedly authorised  
by a general multilateral treaty or other multi-  
lateral treaty, with the exception of cases provided  
for in paragraphs 2 and 3, does not require any  
subsequent acceptance by the other Contracting States  
unless the treaty so provides'."

4. Article 17, paragraph 2 (reservations)

Amendment proposed by France and Tunisia (A/CONF.39/C.1/L.113):

"Replace paragraph 2 by the following text:

'2. A reservation to a bilateral treaty or to a  
restricted multilateral treaty requires acceptance  
by all the Contracting States'."

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5. Article 26, paragraph 4 (application of successive treaties)

Amendment proposed by France (A/CONF.39/C.1/L.44):

"At the end of paragraph 4 (a) add the following sentence:

'however, when the earlier treaty is a restricted one and the later treaty is concluded between certain of the parties only, the provisions of the earlier treaty shall prevail;'. "

6. Article 36, paragraph 1 (amendment)

Amendment proposed by France (A/CONF.39/C.1/L.45):

"Replace paragraph 1 by the following two paragraphs:

'1. Restricted multilateral treaties can only be amended by agreement between all the parties;

2. Unless the treaty otherwise provides, the amendment of multilateral treaties not covered by the preceding paragraph shall be governed by the following provisions'.

Renumber the other paragraphs accordingly."

7. Article 37, paragraph 1 (modification)

Amendment proposed by France (A/CONF.39/C.1/L.46):

"At the beginning of paragraph 1, before the words 'Two or more' insert the words 'Except in the case of a restricted multilateral treaty'."

Amendment proposed by Australia (A/CONF.39/C.1/L.237):

"At the beginning of paragraph 1, before the words 'Two or more' insert the words 'Except in the case of a treaty of the type referred to in paragraph 2 of Article 17'."

8. Article 55 (temporary suspension)

Amendment proposed by France (A/CONF.39/C.1/L.47):

"At the beginning of Article 55, before the words 'when a multilateral treaty', insert the words 'Except in the case of a restricted multilateral treaty, '."

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Amendment proposed by Australia (A/CONF.39/C.1/L.324):

"At the beginning of the Article, before the words 'When a multilateral treaty', insert the words 'Except in the case of a treaty referred to in paragraph 2 of Article 17'."

9. Article 66, paragraph 2 (consequences of the termination)

Amendment proposed by France (A/CONF.39/C.1/L.49):

"In the second line of paragraph 2, after the words 'multilateral treaty', insert the words 'other than a restricted multilateral treaty'."

(c) Decision taken by the Committee of the Whole at the 1st Session of the Conference

At the 80th meeting of the Committee of the Whole (21st May 1968), it was decided to defer to the second session of the Conference, decisions on all proposed amendments concerning multilateral treaties, general multilateral treaties and restricted multilateral treaties. Cf. above point I.

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III. Settlement of disputes in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty

(a) Summary account of the Paris meeting, February 1968

As regards Article 62, "the participants agreed that this Article was not satisfactory in its present form, since on the one hand it was not clear what would happen to contested treaties, and on the other no compulsory procedure for the settlement of disputes was laid down. It was observed that reference to the United Nations Charter was not an adequate safeguard, since Article 33 of the Charter does not impose a legal obligation to use the means of settlement of disputes to which it refers.

In regard to procedural safeguards, participants unanimously agreed that at the start of the Vienna Conference they should express their firm resolve to obtain a satisfactory procedure for compulsory arbitral or judicial settlement of disputes, at all events so far as Part V of the Commission's Draft was concerned. Such a procedure was a sine qua non, but not necessarily a sufficient condition for their acceptance of the future Vienna Convention.

The procedure for settling disputes, according to one delegation, should comprise two stages. First, the invalidity of the treaty should be established by all the parties jointly - which would be tantamount to an obligation to negotiate.

Secondly, in the event of the failure of negotiations, recourse to a compulsory judicial or arbitral procedure should be stipulated. Other delegations would have preferred settlement procedures directly available to any State which was a party to the treaty in question.

The choice of the means of settlement was discussed at some length. In order to allow for the different situations that might arise, various types of procedure should be envisaged. The following suggestions were made by some delegations:

- (i) Recourse to the simplified procedure laid down in Article 39 of the Statute of the International Court of Justice or the establishment by this Court of a new procedure allowing for quick decisions, less expense and easier means of providing proof.

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- (ii) Use of arbitration either through the procedure of the Permanent Court of Arbitration or on the basis of an Article providing for the appointment of two arbitrators by each of the parties to the dispute, and an umpire who might be chosen by the President of the International Court of Justice from amongst the members of that Court.
- (iii) The institution within the United Nations of a conciliation commission with power to seek advisory opinions from the International Court of Justice. Moreover, such opinions could be accepted in advance as binding.
- (iv) Conciliation.
- (v) Procedures of a political nature for situations with political implications.

In a general way it appeared desirable to seek a just equilibrium between recourse to the jurisdiction of the Court of International Justice and other possible procedures. Although some groups of States not represented at the present meeting had distinct hesitations about submitting to the Court's jurisdiction, it would be unwise to ignore that Court entirely in Article 62 of the future Vienna Convention.

In the event of its not being possible to introduce into Article 62 an obligation to submit to compulsory jurisdiction or arbitration, certain delegations thought that an optional Protocol including such an obligation would be acceptable provided it were possible to formulate a reservation by which Part V of the Convention was accepted as binding only in regard to States bound by that Protocol."

(WEO/Traités (68) 1, Rev., paras. 68-73).

(b) Proceedings of the Committee of the Whole, 1st Session of the Vienna Conference, 1968

Several proposals for amendment were tabled seeking to insert a new provision, possibly as Article 62 bis, concerning the settlement of disputes in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty. Some of these proposals were withdrawn during the proceedings. Those proposals which were maintained are listed below and the full text of them appears in the Addendum to this document.

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1. Amendment proposed by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden, and Tunisia (A/CONF.39/C.1/L.352, Rev.2);
  2. Amendment proposed by Japan (A/CONF.39/C.1/L.339);
  3. Amendment proposed by Switzerland (A/CONF.39/C.1/L.339);
  4. Amendment proposed by the United States of America (A/CONF.39/C.1/L.355);
  5. Amendment proposed by Uruguay (A/CONF.39/C.1/L.343).
- (c) Decisions taken by the Committee of the Whole at the 1st Session of the Conference

At the 80th meeting of the Committee of the Whole (21st May 1968), the authors of the proposed amendments concerning or transferred to new Article 62 bis, agreed to defer consideration of their proposals to the 2nd Session of the Conference.

IV. Disputes arising out of the interpretation or application of the Convention (compulsory jurisdiction of the International Court of Justice)

(a) Summary account of the Paris meeting, February 1968

See above, point III.

(b) Proceedings of the Committee of the Whole, 1st Session of the Vienna Conference, 1968

Amendment proposed by Switzerland concerning a new Article 76 (A/CONF.39/C.1/L.250):

"After Article 75 of the draft, add a new Article 76; reading as follows:

'1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application'."

(c) Decision taken by the Committee of the Whole at the 1st Session of the Conference

At the 80th meeting of the Committee of the Whole (21st May 1968), it was decided to defer consideration of new Article 76 to the 2nd Session of the Conference.

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V. The problem of the retroactive effect of the Convention

(a) Summary account of the Paris meeting, February 1968

"Consideration was also given to the problem of the retroactivity of the instrument which would result from the proceedings of the Vienna Conference, particularly with regard to Part V of the Commission's Draft. Several delegations were not in favour of such retroactivity. In view of the fact that this instrument would codify much existing customary law, other delegations recognised that it was difficult to exclude retroactivity entirely; however, they would accept some limited retroactivity only so far as the provisions of the instrument were formulated in conformity with international law as it stands at present, and did not contain any new stipulation. One delegation proposed to fix a certain limit such as 24th October 1945, the date when the United Nations Charter came into force. Moreover, a general reservation should be provided in favour of customary law governing treaties concluded before that date.

It was observed that a provision on retroactivity in the future Vienna Convention should be placed among the final clauses ...."

(WEO/Traités (68) 1, Rev., paras. 32 and 33).

(b) Proceedings of the Committee of the Whole, 1st Session of the Vienna Conference, 1968

This problem was not dealt with at the 1st Session of the Vienna Conference.

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VI. The possibility of making reservations to the future  
Convention on the Law of Treaties

(a) Summary account of the Paris meeting, February 1968

As regards the "right to make reservations to the provisions of the future Vienna Convention, it was agreed that no reservation should be allowed in respect of the procedure for compulsory settlement of disputes to be included in Article 62. In the event of compulsory settlement being the subject of an optional Protocol, it should be possible to formulate a reservation whereby Part V of the Convention would be accepted as binding only in relations with States which had accepted the optional Protocol" (cf. point III above).

(WEO/Traités (68) 1 Rev., para. 83 (iii)).

(b) Proceedings of the Committee of the Whole, 1st Session  
of the Vienna Conference, 1968

This problem was not dealt with at the 1st Session of the Vienna Conference.

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VII. Final clauses of the future Convention on the Law of  
Treaties (scope and procedure)

(a) Summary account of the Paris meeting, February 1968

"In the unanimous opinion of participants, the final clauses should contain provisions dealing, inter alia, with the ... number of ratifications etc. necessary for the entry into force of the future Vienna Convention. In this connection, it was recognised that, in view of the quasi-constitutional nature of this instrument and the importance of the subject, the number should be very high. One delegation suggested that it should include ratification etc. by the permanent Members of the United Nations Security Council."

(WEO/Traités (68) 1, Rev., para. 83 (i)).

(b) Proceedings of the Committee of the Whole, 1st Session of  
the Vienna Conference, 1968

This problem was not dealt with at the 1st Session of the Vienna Conference.

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PART TWO

Provisions of the draft Convention which have been  
provisionally adopted at the 1st Session of the  
Conference

I. Article 41: Separability of treaty provisions

(a) Summary account of the Paris Meeting, February 1968

"It was pointed out that the rule of the separability of  
treaty provisions should apply to all grounds of  
invalidity."

(WEO/Traités (68) 1, Rev., para. 53).

(b) Proceedings and decision of the Committee of the Whole at  
the 1st Session of the Vienna Conference, 1968

1. Amendment proposed by the United Kingdom  
(A/CONF.39/C.1/L.257 and Corr. 1):

"Replace the present text by the following:

1. A right of a party provided for in a treaty to  
denounce, withdraw from or suspend the operation of  
the treaty may be exercised only with respect to  
the whole treaty unless the treaty otherwise provides  
or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing  
from or suspending the operation of a treaty  
recognised in the present articles may be invoked  
only with respect to the whole treaty except as  
provided in the following paragraphs.

3. Where -

(a) the ground relates solely to a particular  
article or group of articles; and

(b) the remainder of the treaty is capable of being  
applied without that article or group of  
articles; and

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- (c) it appears from the treaty or otherwise from the circumstances that acceptance of the article or group of articles was not an essential basis of the consent of any other party to the treaty as a whole,

the ground may be invoked only with respect to that article or group of articles.

4. In cases falling under articles 46, 47 and 57, the State entitled to invoke the fraud, corruption or material breach may do so with respect either to the whole treaty or, subject to the conditions stated in paragraph 3 of this article, to the particular article or group of articles.

5. In this article, the term "group of articles" means a number of articles or provisions which are interconnected whether they are contained in the same or a separate section, chapter, part or other sub-division of a treaty'."

This amendment was referred to the Drafting Committee, on the understanding that insofar as paragraph 5 of the article was deleted in the re-draft proposed by the United Kingdom, that proposal to delete was withdrawn.

2. Amendments proposed by the United States of America:

(i) As to paragraph 2 (A/CONF.39/C.1/L.350):

"Amend paragraph 2 to read as follows:

'2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognised in the present articles, other than article 57, may only be invoked with respect to the whole treaty except as provided in paragraphs 3, 4 and 5 of this article'."

At the 66th meeting of the Committee of the Whole, this amendment was rejected by 22 votes to 18, with 50 abstentions.

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(ii) As to paragraph 3 (A/CONF.39/C.1/L.260):

"Add new paragraph 3 (c) as follows:

'(c) Continued performance of the remainder of the treaty would not be unjust'."

At the 66th meeting of the Committee of the Whole, this amendment was adopted by 27 votes to 14, with 45 abstentions.

(iii) Proposed new paragraph (A/CONF.39/C.1/L.350):

"Add a new paragraph 6 to read as follows:

'6. A ground for terminating or suspending the operation of a treaty recognised in paragraphs 1 and 2 (b) of article 57 may be invoked to terminate or suspend the operation of the treaty in whole or in part as may be appropriate considering the nature and extent of the breach and the extent to which the parties involved have performed the treaty obligations'."

At the 66th meeting of the Committee of the Whole, this amendment was rejected by 35 votes to 21, with 33 abstentions.

3. Amendment proposed by Finland (A/CONF.39/C.1/L.144):

"Delete in paragraph 5, reference to article 50."

At the 82nd meeting of the Committee of the Whole, this amendment was rejected by 39 votes to 27, with 17 abstentions.

Finally, at the same meeting of the Committee of the Whole, the text of Article 41 as submitted by the Drafting Committee was adopted by 72 votes to none, with 11 abstentions.

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II. Article 42: Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty.

(a) Summary account of the Paris meeting, February 1968

"One delegation announced its intention of proposing an amendment to the text of this Article so as to include in its first paragraph a reference to Articles 47 and 48; it further suggested that a paragraph 2 should be added on the following lines: Any State invoking a ground for invalidity etc. of a treaty in accordance with Articles 43 to 48 should be deemed to have given its tacit consent to the validity of the treaty or its maintenance in force where a period of ten years has elapsed since the date on which such a State exercised rights or secured the performance of obligations under that treaty. Such an amendment would make the whole of Article 42 clearer and would prevent abuses. Another delegation, whilst in favour of such an amendment, asked that Article 42 should also include a reference to Article 49."

(WEO/Traités (68) 1, Rev., para. 54).

(b) Proceedings and decision of the Committee of the Whole at the 1st Session of the Vienna Conference, 1968

Amendment proposed by Switzerland (A/CONF.39/C.1/L.340):

"Replace the words 'under Articles 43 to 47 inclusive' by the words 'under Articles 43 to 49 inclusive'."

At the 67th meeting of the Committee of the Whole, this amendment was rejected by 63 votes to 12, with 16 abstentions.

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III. Article 49: Coercion of a State by the threat or use of force

(a) Summary account of the Paris meeting, February 1968

"A number of delegations convinced that it would be impossible to secure the deletion of this Article at Vienna, emphasised the need to revise the wording very closely. It was stressed that the absence of a definition of the "principles" of the United Nations Charter referred to in the Article constituted a considerable danger to the stability of treaty relations. This danger would be still greater if the intention of some States to add a reference to "unequal treaties" were approved by a majority at Vienna.

In the unanimous opinion of participants, it was therefore essential to furnish Article 49 with adequate control procedures concerning its application. One delegation suggested that the operation of this provision should be supervised by the Security Council; but another delegation thought it very unlikely that agreement to this could be reached at Vienna since a large number of member States of the United Nations would doubtless not be in favour of handing this task over to a political body whose rules of procedure gave preponderant weight to its permanent members. This latter delegation, therefore, emphasised the need for providing a system of compulsory judicial or arbitral procedure."

(WEO/Traités (68) 1, Rev., para. 60).

(b) Proceedings and decision of the Committee of the Whole at the 1st Session of the Vienna Conference, 1968

At its 57th meeting, the Committee of the Whole, rejected by 55 votes to 2, with 27 abstentions, the amendment proposed by Japan and the Republic of Viet-Nam, seeking to add the following at the end of the Article:

"provided that such a threat or use of force had been duly reported to a competent organ of the United Nations and that it had failed to take necessary actions in order to remove or prevent such threat or use of force"  
(A/CONF.39/C.1/L.298 and Add. 1).

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At the same meeting, it adopted by 49 votes to 10 with 33 abstentions, the amendment proposed by Bulgaria and others, to introduce in the Article a reference to the principles of international law embodied in the Charter of the United Nations.  
(A/CONF.39/C.1/L. 289 and Add. 1).

The Committee of the Whole also adopted, without objection, a draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in concluding a Treaty, presented by the Netherlands.  
(A/CONF.39/C.1/L. 323).

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IV. Article 50: Treaties conflicting with a peremptory norm of general international law (jus cogens)

(a) Summary account of the Paris meeting, February 1968

"Articles 50 and 61 gave rise to serious reservations on the part of most delegations, although the exchange of views did not reveal any uniform attitude.

All delegations agreed that the present form of Articles 50 and 61 was dangerous. Some delegations would prefer them to be deleted outright, since the concept of jus cogens was not yet well defined in international law. These delegations thought that neither redrafting nor the introduction of a system for judicial or arbitral supervision would modify their opposition on the principle.

Certain other delegations, however, were in favour of retaining the principle in question, subject to certain textual amendments, with the possibility of providing for a jurisdictional system for settling disputes. Such a system would constitute a sufficient guarantee of impartiality in the determination of the scope of the rules of jus cogens in a particular case.

At the end of the exchange of views on Articles 50 and 61, it was accepted that the problem was vitally important by reason of its repercussions on the whole body of law governing treaty relations. One delegation accordingly emphasised the need for the greatest cohesion within the Working Party on this matter ....".

(WEO/Traités (68) 1 Rev., paras. 61 and 62).

(b) Proceedings and decision of the Committee of the Whole at the 1st Session of the Vienna Conference, 1968

The Committee of the Whole adopted several amendments concerning the definition of jus cogens. Amongst those amendments was one proposed by the United States of America ("at the time of its conclusion", A/CONF.39/C.1/L.302 and corr. 1), and one proposed by Finland, Greece and Spain ("recognised by the international community of States as a whole as a norm", A/CONF.39/C.1/L. 306 and Add. 1 and 2; the words "of States as a whole" were added by the Drafting Committee).

At its 80th meeting, the Committee of the Whole adopted the present text of Article 50 by 72 votes to 3, with 18 abstentions.

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V. Article 57: Termination or suspension of the operation of a treaty as a consequence of its breach

(a) Summary account of the Paris meeting, February 1968

"According to one point of view Article 57 should be amended by introducing the factor of "proportionality" as between the nature or extent of the breach invoked and the scope of the treaty in general and its performance by the parties.

Another delegation was opposed to the principle of "proportionality" in this context."

(WEO/Traités (68) 1 Rev., para. 64).

(b) Proceedings and decision of the Committee of the Whole at the 1st Session of the Vienna Conference, 1968

1. See above, under Point I 2 (iii), the amendment proposed by the United States of America, seeking to add a new paragraph 6 to Article 41.

2. Amendment proposed by Venezuela (A/CONF.39/C.1/L. 318):

"For the present text of Article 57 substitute the following:

1. A material breach of a bilateral treaty by one of the parties entitles the other to terminate the treaty or to suspend its operation in whole or in part in accordance with the provisions of the present Convention.

2. A material breach of a multilateral treaty by one of the parties entitles the other parties, proceeding in accordance with the present Convention, to suspend the operation of the treaty or to terminate it

(a) in the relations between themselves and the defaulting State or as between all the parties, as the case may be;

(b) a party specially affected by the breach, in the relations between itself and the defaulting State;

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(c) any other party with respect to itself if the treaty is of such a character that a breach of its provisions by one party substantially changes the general position or the position of every party with respect to the further performance of the obligations created by the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(a) The unjustified repudiation of the treaty;

(b) The violation of the provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach'."

At the 61st meeting of the Committee of the Whole, these amendments were rejected by varying majorities.

3. Amendment proposed by Finland as to paragraph 3 (A/CONF.39/C.1/L.309):

"At the end of sub-paragraph (b) add the words

'or a violation which in itself is of a serious character'."

At the 61st meeting of the Committee of the Whole, this amendment was rejected by 33 votes to 14, with 41 abstentions.

4. Amendment proposed by Spain (A/CONF.39/C.1/L.326):

"Amend paragraph 3 (b) to read:

'(b) The non-performance of the essential obligation laid down in the treaty'

and add a new sub-paragraph (c) reading:

'(c) The abuse of the rights or faculties granted by the treaty'."

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At the 61st meeting of the Committee of the Whole,  
these amendments were rejected by varying majorities.

Finally, at the 81st meeting of the Committee of the  
Whole, the text of Article 57 as submitted by the  
Drafting Committee was adopted unanimously.

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VI. Article 65: Consequences of the invalidity of a treaty

(a) Summary account of the Paris meeting, February 1968

"With regard to paragraph 2 (of Article 65 of the International Law Commission's Draft), it was asked whether it would not be preferable, for practical reasons, to maintain the position resulting from performance of a treaty which was subsequently annulled.

The opinion was also expressed that it was difficult to see reasons for the exceptions which appear in paragraph 3."

(WEO/Traités (68) 1, Rev., paras. 75 and 76).

(b) Proceedings and decisions of the Committee of the Whole at the 1st Session of the Vienna Conference, 1968

Amendment proposed by the United States concerning paragraph 2 of Article 65 (A/CONF.39/C.1/L.360):

"...

2. Acts performed in good faith in reliance upon such provisions of a treaty before nullity was established are not rendered unlawful by reason only of the nullity.

..."

This amendment was rejected by the Committee of the Whole, at its 74th meeting, by 39 votes to 28 with 20 abstentions.

The proposal by the United States of America (A/CONF.39/C.1/L.360) and by Switzerland (A/CONF.39/C.1/L.358) seeking to delete paragraph 3 was also rejected at the same meeting by 46 votes to 24, with 17 abstentions.

# CONSEIL DE L'EUROPE COUNCIL OF EUROPE

20-3-1-67

Strasbourg, le 27 janvier 1969

Restricted  
GR/Traités (69) 1

Or. angl.

## COMITE AD HOC SUR LE DROIT DES TRAITES

Note du Secrétariat (Direction des Affaires juridiques  
du Secrétariat Général du Conseil de l'Europe) contenant  
un exposé des problèmes susceptibles d'être examinés  
par le Comité ad hoc.

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## INTRODUCTION

Le Secrétariat suggère d'organiser l'échange de vues au sein du Comité sur la base du présent document.

Lors de la première partie de la réunion, le Comité pourrait procéder à un échange de vues sur les dispositions du projet de Convention sur le droit des traités, dont l'examen final a été renvoyé à la 2ème Session de la Conférence de Vienne qui se tiendra au printemps 1969. Ces dispositions concernent le droit d'être partie aux traités, les traités multilatéraux restreints, le règlement des différends concernant la Partie V de la Convention (nullité, fin, etc. de traités), et le règlement des différends résultant de l'interprétation ou de l'application de la Convention.

Au cours de la deuxième partie de la réunion, le Comité pourrait examiner un certain nombre d'articles du projet de Convention qui ont été adoptés provisoirement à la 1ère Session de la Conférence de Vienne de 1968 et que les participants aimeraient voir discuter à nouveau par le Comité. Les suggestions reçues à présent par le Secrétariat de la part de Gouvernements invités à la réunion, relatives à ces articles adoptés provisoirement, font l'objet de la Partie II de ce document. D'autres articles seront ajoutés à cette liste à la demande d'autres Gouvernements.

Le Secrétariat a estimé opportun de rappeler, au sujet de chaque point particulier de ce document, le résumé des discussions de la réunion antérieure sur le droit des traités, tenue à Paris du 5 au 7 février 1968 (cf. document WEO/Traités (68) 1, révisé), de même que les propositions d'amendement les plus importantes faites à la 1ère Session de la Conférence de Vienne et les suites y réservées. Le texte de ces amendements a été reproduit, dans les limites possibles, dans ce document avec la référence des documents de travail respectifs de la Conférence de Vienne ; les diverses propositions faites à Vienne au sujet du règlement des différends concernant la Partie V du projet de Convention figurent à l'Addendum I du présent document.

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PARTIE I

Dispositions du projet de Convention dont  
l'examen final a été renvoyé à la 2ème Session  
de la Conférence

- I. Le droit d'être partie aux traités  
(en liaison avec les propositions tendant à introduire  
la catégorie des "traités multilatéraux généraux")
- (a) Résumé des discussions de la réunion de Paris, février 1968

"Les articles 10 à 12 ont été examinés conjointement. Le  
Président a déclaré que ces articles avaient fait l'objet d'un  
large échange de vues à Strasbourg (à savoir, lors de la  
réunion du Conseil de l'Europe, janvier 1968).

A cette occasion, les délégués étaient d'accord pour  
considérer la participation des Etats aux traités multi-  
latéraux comme la question la plus importante. Le Président  
a rappelé qu'un problème politique important se pose à ce  
sujet et que, de l'avis du Groupe de Strasbourg, l'article 12  
du projet semblait satisfaisant ; il exclut, en effet,  
l'adhésion unilatérale par n'importe quel Etat à un traité  
multilatéral et consacre, en outre, la pratique actuelle  
concernant l'insertion dans les traités multilatéraux généraux  
d'une clause expresse réglant les modalités de l'adhésion,  
en même temps que la catégorie des Etats ayant la faculté  
d'y adhérer.

....

Plusieurs délégations ont déclaré expressément partager  
l'opinion qui s'est formée à Strasbourg et qui a pour objet  
d'exclure tout amendement aux articles 10, 11 et 12, en vue  
d'éviter précisément la possibilité d'une adhésion "illimitée"  
à des traités multilatéraux."

(WEO/Traités (68) 1 rév. par. 16 et 20).

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(b) Procédure de la Commission plénière, 1ère Session de la Conférence de Vienne, 1968

1. Article 5 bis

Amendement proposé par : Algérie, Ceylan, Hongrie, Inde, Mali, Mongolie, République Arabe Unie, République socialiste soviétique d'Ukraine, Syrie et Yougoslavie (A/CONF. 39/C. 1/L. 74 et Add. 1 et 2) :

"Insérer entre les articles 5 et 6 le nouvel article suivant :

'Droit d'être partie aux traités

Tout Etat a le droit d'être partie à des traités multilatéraux généraux conformément au principe de l'égalité souveraine'."

2. Article 2, paragraphe 1, nouvel alinéa entre (a) et (b)

Amendement proposé par : Congo (République démocratique du), Hongrie, Pologne, République Arabe Unie, République socialiste soviétique d'Ukraine, République Unie de Tanzanie, Roumanie et Tchécoslovaquie (A/CONF. 39/C.1/L.19, Rév. 1) :

"... insérer entre les alinéas (a) et (b) le nouvel alinéa suivant :

'L'expression "traité multilatéral général" s'entend d'un traité multilatéral consacré à des questions d'intérêt général pour la communauté internationale des Etats'."

3. Article 12

Amendement proposé par la Tchécoslovaquie (A/CONF.39/C.1/L.104):

"Considérer le texte actuel de l'article 12 comme constituant le paragraphe 1 et ajouter un paragraphe 2 ainsi conçu :

'2. Tout Etat peut exprimer par l'adhésion son consentement à être lié par un traité multilatéral général. Tout Etat a aussi le droit de devenir, par l'adhésion, partie à un traité multilatéral qui touche à ses intérêts légitimes'."

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4. Voir ci-dessous, sous point II, le sous-amendement proposé par la Tchécoslovaquie et l'amendement proposé par la République socialiste soviétique d'Ukraine au sujet de l'article 8, paragraphe 2, et l'amendement proposé par la Tchécoslovaquie au sujet de l'article 7, paragraphe 1.

(c) Décision prise par la Commission plénière lors de la 1ère Session de la Conférence

A la 80ème séance de la Commission plénière (21 mai 1968), il a été décidé de renvoyer à la 2ème Session de la Conférence les décisions sur tous les amendements concernant les traités multilatéraux, les traités multilatéraux généraux et les traités multilatéraux restreints, cf. ci-dessous, point II.

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II. Traités multilatéraux restreints

(par rapport à l'adoption, aux réserves, à l'application, à l'amendement, à la modification, à la suspension temporaire et aux conséquences de l'extinction d'un traité).

(a) Résumé des discussions de la réunion de Paris, février 1968

Cette question n'a pas été soulevée d'une manière générale. Toutefois, en ce qui concerne les réserves, le résumé contient le paragraphe suivant :

"Quant au paragraphe 2 de l'article 17, on a mentionné la difficulté de déterminer le "nombre restreint des Etats" ; il serait partant préférable de supprimer cette disposition. D'un autre côté, on a insisté sur l'utilité d'une disposition de cette nature, quitte à l'assouplir en remplaçant les termes "ainsi que" par "ou"."

(WEO/Traités (68) 1 rév., par. 30).

(b) Procédure de la Commission plénière, 1ère Session de la Conférence de Vienne, 1968

1. Article 2, paragraphe 1, nouvel alinéa entre (d) et (e)

Amendement proposé par la France (A/CONF.39/C.1/L.24) :

"Ajouter un nouvel alinéa ... ainsi conçu :

"L'expression "traité multilatéral restreint" s'entend d'un traité destiné à lier les seuls Etats visés dans le traité et dont l'entrée en vigueur dans son intégralité à l'égard de tous les Etats ayant participé à la négociation est une condition essentielle du consentement de chacun d'eux à être lié par lui ;".

2. Article 8, paragraphe 2 (adoption)

Amendement proposé par la France (A/CONF.39/C.1/L.30) :

"Modifier comme suit le début du paragraphe 2 :

"2. L'adoption du texte d'un traité multilatéral autre qu'un traité multilatéral restreint au sein d'une conférence internationale ...".

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Sous-amendement proposé par la Tchécoslovaquie  
(A/CONF.39/C.1/L.102) à l'amendement de la France :

"Modifier comme suit le début du paragraphe 2 :

'L'adoption du texte d'un traité multilatéral  
général ou d'un traité multilatéral autre qu'un  
traité multilatéral restreint lors d'une conférence  
internationale ....'."

Amendement proposé par la République socialiste soviétique  
d'Ukraine (A/CONF.39/C.1/L.51, rév. 1) :

"Modifier comme suit le début du paragraphe 2 :

'L'adoption, lors d'une conférence internationale,  
du texte d'un traité multilatéral général ou autre,  
à l'exclusion des traités multilatéraux restreints,  
s'effectue à la majorité des deux tiers des Etats ....'."

3. Article 17, paragraphe 1 (réserves)

Amendement proposé par la Tchécoslovaquie (A/CONF.39/C.1/L. 84) :

"Modifier comme suit le paragraphe 1 :

'1. Exception faite des cas prévus aux paragraphes 2 et  
3, une réserve autorisée explicitement ou implicitement  
par un traité multilatéral général ou par un autre  
traité multilatéral n'a pas à être ultérieurement  
acceptée par les autres Etats Contractants, à moins  
que le traité ne le prévoit'."

4. Article 17, paragraphe 2 (réserves)

Amendement proposé par la France et la Tunisie  
(A/CONF.39/C.1/L.113) :

"Remplacer le paragraphe 2 par le texte suivant :

'2. Une réserve à un traité bilatéral ou à un traité  
multilatéral restreint doit être acceptée par tous  
les Etats Contractants'."

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5. Article 26, paragraphe 4 (application de traités successifs)

Amendement proposé par la France (A/CONF.39/C.1/L.44) :

"A la fin de l'alinéa a) du paragraphe 4, ... ajouter le membre de phrase suivant :

'toutefois, lorsque le premier traité est un traité multilatéral restreint ou que le second a été conclu entre certaines parties seulement, les dispositions du premier l'emportent;'. "

6. Article 36, paragraphe 1 (Amendement)

Amendement proposé par la France (A/CONF.39/C.1/L.45) :

"Remplacer le paragraphe 1 par les deux paragraphes suivants :

'1. Les traités multilatéraux restreints ne peuvent être amendés que par accord entre toutes les parties ;

2. A moins que le traité n'en dispose autrement, l'amendement des traités multilatéraux non visés au paragraphe précédent est régi par les dispositions suivantes'.

Changer en conséquence la numérotation des autres paragraphes."

7. Article 37, paragraphe 1 (modification)

Amendement proposé par la France (A/CONF.39/C.1/L.46) :

"Insérer au début du paragraphe 1, avant les mots 'Deux ou plusieurs', les mots suivants : 'Sauf s'il s'agit d'un traité multilatéral restreint'."

Amendement proposé par l'Australie (A/CONF.39/C.1/L.237) :

"Au début du paragraphe 1, avant les mots 'Deux ou plusieurs parties', insérer ce qui suit : 'Sauf dans le cas d'un traité de la catégorie visée au paragraphe 2 de l'article 17'."

8. Article 55 (Suspension temporaire)

Amendement proposé par la France (A/CONF.39/C.1/L.47) :

"Insérer au début de l'article 55, avant les mots 'Lorsqu'un traité', les mots suivants : 'Sauf s'il s'agit d'un traité multilatéral restreint, '."

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Amendement proposé par l'Australie (A/CONF.39/C.1/L.324) :

"Au début de l'article, avant les mots 'Lorsqu'un traité multilatéral', insérer les mots 'Sauf dans le cas d'un traité du type visé au paragraphe 2 de l'article 17, '."

9. Article 66, paragraphe 2 (conséquences de l'extinction)

Amendement proposé par la France (A/CONF.39/C.1/L.49) :

"A la deuxième ligne du paragraphe 2, insérer les mots 'autre qu'un traité multilatéral restreint' après 'traité multilatéral'."

(c) Décision prise par la Commission plénière lors de la 1ère Session de la Conférence

A la 80ème séance de la Commission plénière (21 mai 1968), il a été décidé de renvoyer à la 2ème Session de la Conférence les décisions sur tous les amendements concernant les traités multilatéraux, les traités multilatéraux généraux et les traités multilatéraux restreints. Cf. ci-dessus, point I.

1. Amendement proposé par : Colombie, Côte d'Ivoire, Dahomey, Danemark, Finlande, Gabon, Liban, Madagascar, Pays-Bas, Pérou, République Centrafricaine, Suède et Tunisie (A/CONF.39/C.1/L.352/Rév.2) ;
2. Amendement proposé par le Japon (A/CONF.39/C.1/L.339) ;
3. Amendement proposé par la Suisse (A/CONF.39/C.1/L.377) ;
4. Amendement proposé par les Etats-Unis d'Amérique (A/CONF.39/C.1/L.355) ;
5. Amendement proposé par Uruguay (A/CONF.39/C.1/L.343).

(c) Décision prise par la Commission plénière lors de la 1ère Session de la Conférence

A la 80ème séance de la Commission plénière (21 mai 1968), les auteurs des propositions d'amendement concernant le nouvel article 62 bis ou reportées sur cet article, ont accepté que l'examen de leurs propositions soit renvoyé à la 2ème Session de la Conférence.

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IV. Différends résultant de l'interprétation ou de l'application de la Convention (juridiction obligatoire de la Cour Internationale de Justice)

(a) Résumé des discussions de la réunion de Paris, février 1968

Voir ci-dessus, point III.

(b) Procédure de la Commission plénière, 1ère Session de la Conférence de Vienne, 1968

Amendement proposé par la Suisse concernant un nouvel article 76 (A/CONF.39/C.1/L.250) :

"Après l'article 75 ajouter un nouvel article 76 :

1. Les différends relatifs à l'interprétation ou à l'application de la convention relèvent de la compétence obligatoire de la Cour Internationale de Justice, qui, à ce titre, pourra être saisie par une requête de toute partie au différend qui sera elle-même partie à la présente convention.

2. Les parties peuvent convenir dans un délai de deux mois après notification par une partie à l'autre qu'il existe à son avis un litige, d'adopter d'un commun accord, au lieu du recours à la Cour Internationale de Justice, une procédure devant un tribunal d'arbitrage. Ce délai étant écoulé, chaque partie peut, par voie de requête, saisir la Cour du différend.

3. Les parties peuvent également convenir d'un commun accord, dans le même délai de deux mois, de recourir à une procédure de conciliation avant d'en appeler à la Cour Internationale de Justice. La Commission de conciliation devra formuler ses recommandations dans les cinq mois suivant sa constitution. Si celles-ci ne sont pas acceptées par les parties au litige dans l'espace de deux mois après leur énoncé, chaque partie sera libre de saisir la Cour du différend par voie de requête."

(c) Décision prise par la Commission plénière lors de la 1ère Session de la Conférence

A la 80ème séance de la Commission plénière (21 mai 1968), il a été décidé de renvoyer l'examen du nouvel article 76 à la 2ème Session de la Conférence.

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V. Le problème de l'effet rétroactif de la Convention

(a) Résumé des discussions de la réunion de Paris, février 1968

"On a, en outre, pris en considération le problème de la rétroactivité de l'instrument auquel aboutiront les travaux de la Conférence de Vienne, notamment en ce qui concerne la Partie V du projet de la Commission. Plusieurs délégations se sont prononcées contre toute rétroactivité dudit instrument. Compte tenu du fait que cet instrument est destiné à codifier dans une large mesure le droit coutumier existant, d'autres délégations ont reconnu difficile d'exclure toute rétroactivité ; toutefois, elles n'accepteraient éventuellement une rétroactivité limitée que dans la mesure où les dispositions de l'instrument seraient formulées d'une manière conforme au droit international en vigueur et ne comporteraient aucune stipulation novatoire. Dans cet ordre d'idées, une délégation a proposé de fixer une certaine date limite, tel le 24 octobre 1945, date de l'entrée en vigueur de la Charte des Nations Unies. En outre, il y aurait lieu, de l'avis d'une autre délégation, de prévoir une réserve générale en faveur du droit coutumier régissant les traités conclus antérieurement à cette date.

Il a été souligné qu'une disposition sur la rétroactivité de la future Convention de Vienne devrait trouver sa place dans les clauses finales de cette convention ...".

(WEO/Traités (68) 1, rév., par. 32 et 33).

(b) Procédure de la Commission plénière, 1ère Session de la Conférence de Vienne, 1968

Le problème n'a pas été examiné à la 1ère Session de la Conférence de Vienne.

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VI. La faculté de faire des réserves à la Convention sur le droit des traités

(a) Résumé des discussions de la réunion de Paris, février 1968

En ce qui concerne la "faculté de formuler des réserves au sujet des dispositions de la future Convention de Vienne, ... il a été admis que toute réserve devrait être interdite en ce qui concerne la procédure de règlement obligatoire des différends, qui sera prévue à l'article 62. Au cas où un tel règlement obligatoire ferait l'objet d'un Protocole facultatif, il devrait être possible de formuler une réserve selon laquelle la Partie V de la convention sera acceptée comme obligatoire uniquement dans les relations avec les Etats qui auront accepté ce Protocole facultatif" (cf. point III ci-dessus).

(WEO/Traités (68) 1, rév., par. 83 (iii)).

(b) Procédure de la Commission plénière, 1ère Session de la Conférence de Vienne, 1968

Ce problème n'a pas été examiné à la 1ère Session de la Conférence de Vienne.

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VII. Clauses finales de la Convention sur le droit des traités  
(portée et procédures)

(a) Résumé des discussions de la réunion de Paris, février 1968

"Les clauses finales devraient, de l'avis unanime des participants, contenir des dispositions portant, entre autres, sur le ... nombre de ratifications etc. nécessaire pour l'entrée en vigueur de la future Convention de Vienne. A ce sujet, il a été reconnu que, compte tenu du caractère quasi constitutionnel de cet instrument et de l'importance de la matière, ce nombre devrait être très élevé. Une délégation a suggéré qu'il devrait comprendre les ratifications etc. des Membres permanents du Conseil de Sécurité des Nations Unies."

(WEO/Traités (68) 1, rév., par. 83 (i)).

(b) Procédure de la Commission plénière, 1ère Session de la  
Conférence de Vienne, 1968

Ce problème n'a pas été examiné à la 1ère Session de la Conférence de Vienne.

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PARTIE II.

Dispositions du projet de Convention  
qui ont été adoptées provisoirement à la  
1ère Session de la Conférence.

I. Article 41 : Divisibilité des dispositions d'un traité

(a) Résumé des discussions de la réunion de Paris, février 1968

"En ce qui concerne cet article, il a été observé que la règle de la divisibilité des dispositions d'un traité devrait s'appliquer à toutes les causes de nullité."

(WEO/Traités (68) 1, rév., par. 53).

(b) Procédure et décision de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

1. Amendement proposé par le Royaume-Uni (A/CONF.39/C.1/L.257 et Corr. 1) :

"Remplacer le texte actuel par ce qui suit :

1. Le droit prévu dans un traité, pour une partie, de le dénoncer, de s'en retirer ou d'en suspendre l'application ne peut être exercé qu'à l'égard de l'ensemble du traité, à moins que ce dernier n'en dispose ou que les parties n'en conviennent autrement.

2. Une cause de nullité, d'extinction, de retrait ou de suspension de l'application d'un traité reconnue aux termes des présents articles ne peut être invoquée qu'à l'égard de l'ensemble du traité, sauf dans les conditions prévues aux paragraphes suivants.

3. Lorsque :

(a) la cause ne vise qu'un article ou un groupe d'articles déterminé, que

(b) le reste du traité peut être appliqué sans cet article ou groupe d'articles et que

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- (c) il ressort du traité ou des circonstances que l'acceptation de l'article ou du groupe d'articles n'a pas constitué pour une autre partie une base essentielle de son consentement au traité dans son ensemble,

la cause ne peut être invoquée qu'à l'égard de cet article ou groupe d'articles.

4. Dans les cas prévus aux articles 46, 47 et 57, l'Etat qui a le droit d'invoquer le dol, la corruption ou la violation substantielle peut le faire à l'égard soit de l'ensemble du traité, soit, sous réserve des conditions énoncées au paragraphe 3 du présent article, à l'égard de l'article ou du groupe d'articles en question.

5. Au sens du présent article, l'expression "groupe d'articles" s'entend d'un certain nombre d'articles ou de dispositions qui sont liés entre eux, qu'ils se trouvent ou non dans les mêmes section, chapitre, partie ou autre subdivision d'un traité!."

Cet amendement a été renvoyé au Comité de rédaction, sous réserve que, dans la mesure où le paragraphe 5 de l'article a été supprimé dans la nouvelle rédaction proposée par le Royaume-Uni, la proposition tendant à la suppression dudit paragraphe a été retirée.

2. Amendements proposés par les Etats-Unis d'Amérique :

- (i) en ce qui concerne le paragraphe 2 (A/CONF.39/C.1/L.350) :

"Modifier le paragraphe 2 comme suit :

'2. Une cause de nullité, d'extinction, de retrait ou de suspension de l'application d'un traité reconnue aux termes des présents articles, autres que l'article 57, ne peut être invoquée qu'à l'égard de l'ensemble du traité, sauf dans les conditions prévues aux paragraphes 3, 4 et 5 du présent article!."

A la 66ème séance de la Commission plénière, cet amendement a été rejeté par 22 voix contre 18, avec 50 abstentions.

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(ii) en ce qui concerne le paragraphe 3 (A/CONF.39/C.1/L.260) :

"Ajouter au paragraphe 3 un nouvel alinéa c) ainsi conçu :

'(c) Il ne serait pas injuste de continuer à exécuter le reste du traité'."

A la 66ème séance de la Commission plénière, cet amendement a été adopté par 27 voix contre 14, avec 45 abstentions.

(iii) nouveau paragraphe proposé (A/CONF.39/C.1/L. 350) :

"Ajouter un nouveau paragraphe 6 ainsi conçu :

'6. Une cause d'extinction ou de suspension de l'application d'un traité reconnue aux termes des paragraphes 1 et 2 b) de l'article 57 peut être invoquée pour mettre fin au traité ou en suspendre l'application, en totalité ou en partie, selon qu'il conviendra compte tenu de la nature et de l'importance de la violation et de la mesure dans laquelle les parties intéressées ont exécuté les obligations nées du traité'."

A la 66ème séance de la Commission plénière, cet amendement a été rejeté par 35 voix contre 21, avec 33 abstentions.

3. Amendement proposé par la Finlande (A/CONF.39/C.1/C.144) :

"Au paragraphe 5, supprimer la mention de l'article 50."

A la 82ème séance de la Commission plénière, cet amendement a été rejeté par 39 voix contre 27, avec 17 abstentions.

En conclusion, à la même séance de la Commission plénière, le texte de l'article 41 tel que présenté par le Comité de rédaction a été adopté par 72 voix contre zéro, avec 11 abstentions.

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II. Article 42 : Perte du droit d'invoquer une cause de nullité d'un traité, un motif d'y mettre fin, de s'en retirer ou d'en suspendre l'application.

(a) Résumé des discussions de la réunion de Paris, février 1968

"Une délégation a fait part de son intention de proposer un amendement du texte de cet article aux fins d'inclure au paragraphe 1er de celui-ci une référence aux articles 47 et 48 ; elle suggère en outre d'ajouter un paragraphe 2 ayant le sens suivant : Tout Etat qui invoquerait une cause d'invalidité, etc. d'un traité, conformément aux articles 43 à 48, devrait être considéré comme ayant donné son consentement tacite à la validité du traité ou à son maintien en vigueur, si une période de dix ans s'est écoulée depuis la date à laquelle cet Etat a exercé des droits ou a obtenu l'exécution des obligations en vertu de ce traité. Un tel amendement donnerait à l'ensemble de l'article 42 une plus grande clarté et éviterait des abus. Une autre délégation, tout en se prononçant en faveur d'un tel amendement, a demandé que l'article 42 comporte aussi une référence à l'article 49."

(WEO/Traités (68) 1, rév., par. 54).

(b) Procédure et décision de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

Amendement proposé par la Suisse (A/CONF.39/C.1/L.340) :

"Remplacer les mots 'en vertu des articles 43 à 47' par les mots 'en vertu des articles 43 à 49 inclus'."

A la 67ème séance de la Commission plénière, cet amendement a été rejeté par 63 voix contre 12, avec 16 abstentions.

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III. Article 49 : Contrainte exercée sur un Etat par la menace ou l'emploi de la force

(a) Résumé des discussions de la réunion de Paris, février 1968

"En ce qui concerne cet article, plusieurs délégations, convaincues de l'impossibilité d'obtenir sa suppression à Vienne, ont insisté sur la nécessité de revoir très soigneusement sa rédaction. Il a été souligné, à ce sujet, que l'absence d'une définition des "principes" de la Charte des Nations Unies, auxquels se réfère cette disposition, constitue un danger considérable pour la stabilité des relations conventionnelles. Ce danger serait encore aggravé si l'intention d'un certain nombre d'Etats d'y ajouter une référence aux "traités inégaux" réunissait l'accord d'une majorité à Vienne.

De l'avis unanime des participants, il convient dès lors d'insister sur la nécessité de faire assortir l'article 49 de procédures de contrôle adéquates en ce qui concerne son application. L'une des délégations a avancé l'idée de soumettre l'application de cette disposition au contrôle du Conseil de Sécurité, alors qu'une autre délégation a estimé qu'il était peu probable d'obtenir un accord en ce sens à Vienne, un grand nombre d'Etats membres de l'O.N.U. n'étant sans doute pas en faveur d'une solution confiant cette tâche à un organe politique dont les règles de procédure donnent à ses membres permanents une position prépondérante. Cette dernière délégation a donc souligné la nécessité d'obtenir un système obligatoire de procédure juridictionnelle ou arbitrale."

(WE0/Traités (68) 1, rév., par. 60).

(b) Procédure et décision de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

A sa 57ème séance, la Commission plénière a rejeté, par 55 voix contre 2, avec 27 abstentions, un amendement proposé par le Japon et la République du Viet-Nam et tendant à ajouter à la fin de l'article ce qui suit :

"à condition que cette menace ou cet emploi de la force ait été dûment signalé à un organe compétent de l'Organisation des Nations Unies et que celui-ci n'ait pas pris les mesures nécessaires pour supprimer ou prévenir cette menace ou cet emploi de la force." (A/CONF.39/C.1/L.298 et Add.1).

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A la même séance, elle a adopté, par 49 voix contre 10, avec 33 abstentions, l'amendement proposé par la Bulgarie et autres en vue d'insérer dans cet article une référence aux principes de droit international incorporés dans la Charte des Nations Unies (A/CONF.39/C.1/L.289 et Add. 1).

La Commission plénière a également adopté, sans objection, un projet de Déclaration sur l'interdiction du recours à la menace ou à l'emploi de la contrainte économique ou politique lors de la conclusion d'un traité, présenté par les Pays-Bas (A/CONF.39/C.1/L.323).

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IV. Article 50 : Traités en conflit avec une norme impérative du droit international général (jus cogens)

(a) Résumé des discussions de la réunion de Paris, février 1968

"Les articles 50 et 61 ont suscité les plus grandes réserves de la plupart des délégations, bien que l'échange de vues n'ait pas fait ressortir une attitude uniforme à ce sujet.

Toutes les délégations ont, en effet, été d'accord pour considérer que la forme actuelle des articles 50 et 61 était dangereuse. Plusieurs délégations préférèrent leur suppression pure et simple, la notion de jus cogens n'étant pas encore élaborée en droit international. Ces délégations ont été d'avis que ni une modification rédactionnelle, ni l'institution d'un système de contrôle juridictionnel ou arbitral ne modifieraient leur opposition de principe.

En revanche, d'autres délégations se sont prononcées, sous réserve de quelques modifications d'ordre rédactionnel, en faveur du maintien du principe en question, quitte à prévoir un système de règlement juridictionnel des différends. Un tel système constituerait une garantie suffisante dans la détermination impartiale de la portée de la règle de jus cogens dans un cas d'espèce.

Il a été reconnu, au terme de l'échange de vues sur les articles 50 et 61, que le problème était d'une importance capitale en raison de sa répercussion sur l'ensemble du droit régissant les relations conventionnelles. Pour cette raison, une des délégations a insisté sur la nécessité d'une cohésion très forte du Groupe à ce sujet ....".

(WEO/Traités (68) 1, rév., par. 61 et 62).

(b) Procédure et décision de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

La Commission plénière a adopté plusieurs amendements concernant la définition du jus cogens. Parmi eux figurent un amendement proposé par les Etats-Unis d'Amérique ("au moment de sa conclusion", A/CONF.39/C.1/L.302 et Corr. 1), et un autre, proposé par la Finlande, la Grèce et l'Espagne ("reconnue par la communauté internationale / des Etats dans son ensemble / en tant que norme", A/CONF.39/C.1/L.306 et Add. 1 et 2 ; les mots "des Etats dans son ensemble" ont été ajoutés par le Comité de rédaction).

A sa 80ème séance, la Commission plénière a adopté le présent texte de l'article 50 par 72 voix contre 3, avec 18 abstentions.

V. Article 57 : Fin d'un traité ou suspension de son application comme conséquence de sa violation.

(a) Résumé des discussions de la réunion de Paris, février 1968

"Selon un point de vue, l'article 57 devrait être amendé pour y introduire l'élément de "proportionnalité" au sujet de la nature et l'étendue de la violation invoquée par rapport à la portée du traité en général et son application par les Parties.

Une autre délégation s'est exprimée contre le principe de "proportionnalité" dans ce contexte."

(WEO/Traités (68) 1, rév., par. 64)

(b) Procédure et décision de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

1. Voir ci-dessus, sous point I; 2 (iii), l'amendement proposé par les Etats-Unis d'Amérique, tendant à ajouter un nouveau paragraphe 6 à l'article 41.

2. Amendement proposé par le Venezuela (A/CONF.39/C.1/L.318) :

"Remplacer le texte actuel de l'article 57 par ce qui suit :

1. Une violation substantielle d'un traité bilatéral par l'une des parties autorise l'autre partie à mettre fin au traité ou à en suspendre l'application, en totalité ou en partie, conformément aux dispositions de la présente Convention.

2. Une violation substantielle d'un traité multilatéral par l'une des parties autorise les autres parties, agissant conformément à la présente Convention, à suspendre l'application du traité ou à y mettre fin :

(a) dans les relations entre elles-mêmes et l'Etat auteur de la violation ou entre toutes les parties, selon le cas ;

(b) lorsqu'il s'agit d'une partie spécialement atteinte par la violation, dans les relations entre elle-même et l'Etat auteur de la violation ;

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(c) lorsqu'il s'agit de toute autre partie, en ce qui la concerne si le traité est d'une nature telle qu'une violation de ses dispositions par une partie modifie profondément la situation générale ou la situation de chacune des parties quant à l'exécution ultérieure des obligations créées par le traité.

3. Aux fins du présent article, il y a violation substantielle d'un traité en cas :

(a) de rejet injustifié du traité ;

(b) de violation d'une disposition essentielle pour la réalisation de l'objet ou du but du traité.

4. Les paragraphes qui précèdent ne portent atteinte à aucune disposition du traité applicable en cas de violation'."

A la 61ème séance de la Commission plénière, ces amendements ont été rejetés par diverses majorités.

3. Amendement proposé par la Finlande en ce qui concerne le paragraphe 3 (A/CONF.39/C.1/L.309) :

"A la fin de l'alinéa b), ajouter les mots

'ou d'une violation qui est en soi de nature grave'."

A la 61ème séance de la Commission plénière, cet amendement a été rejeté par 33 voix contre 14, avec 41 abstentions.

4. Amendement proposé par l'Espagne en ce qui concerne le paragraphe 3 (A/CONF.39/C.1/L.326) :

"Modifier comme suit l'alinéa b) de ce paragraphe :

'(b) Du défaut d'exécution des obligations essentielles établies dans le traité'

et ajouter un nouvel alinéa c), ainsi conçu :

'(c) De l'exercice abusif des droits ou facultés conférés par le traité'."

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A la 61ème séance de la Commission plénière, ces amendements ont été rejetés par diverses majorités.

En conclusion, à la 81ème séance de la Commission plénière, le texte de l'article 57 tel que présenté par le Comité de rédaction a été adopté à l'unanimité.

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VI. Article 65 : Conséquences de la nullité d'un traité

(a) Résumé des discussions de la réunion de Paris, février 1968

"En ce qui concerne le paragraphe 2 (de l'article 65 du projet établi par la Commission du Droit international), la question a été posée de savoir s'il ne serait pas préférable, pour des raisons pratiques, de maintenir la situation telle qu'elle résulte de l'exécution du traité qui a été annulé ultérieurement.

En outre, l'opinion a été exprimée qu'il était difficile de comprendre les raisons des exceptions figurant au paragraphe 3.

(WEO/Traités (68) 1, rév., par. 75 et 76).

(b) Procédure et décisions de la Commission plénière à la 1ère Session de la Conférence de Vienne, 1968

Amendement proposé par les Etats-Unis d'Amérique concernant le paragraphe 2 de l'article 65 (A/CONF.39/C.1/L.360) :

"...

2. Les actes accomplis de bonne foi sur la base de telles dispositions d'un traité avant que la nullité ait été établie ne sont pas rendus illicites du seul fait de la nullité.

...".

Cet amendement a été rejeté par la Commission plénière (74ème séance) par 39 voix contre 28, avec 20 abstentions.

La proposition des Etats-Unis d'Amérique (A/CONF.39/C.1/L.360) et de la Suisse (A/CONF.39/C.1/L.358), visant la suppression du paragraphe 3, a également été rejetée, par 46 voix contre 24, avec 17 abstentions.

21

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FM COPEL JAN27/69

TO VIETN. 43

INFO EXTER(LEGAL DIV)

REF YOURLET 49 JAN24

LAW OF TREATIES CONFERENCE-HOTEL RRORS

UNLESS OTT ADVISES YOU OTHERWISE I THINK WE WOULD NOT/NOT BE  
JUSTIFIED IN PAYING LARGE EXTRA CHARGE TO HAVE THE ADJOINING DOUBLE  
ROOM FOR SECRETARY. IF YOU CAN RENT A SMALL RPT SMALL TYPEWRITER  
TABLE ON CASTERS SECRETARY WILL BE ABLE AT TIMES TO DO TYPING IN  
HER SINGLE BEDROOM WHICH I TRUST IS NEARBY ON SAME FLOOR

WERSHOF

NNNNVVVV

8/27/1

file ✓  
diary  
div,diary

Legal Div./J.S.Stanford/ss

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
À

Finance Division

FROM  
De

Legal Division

REFERENCE  
Référence

SUBJECT  
Sujet

U. N. Conference on the Law of Treaties - Second  
Session - Vienna, April 9 - May 21, 1969.

SECURITY  
Sécurité

UNCLASSIFIED

DATE

January 27, 1969

NUMBER  
Numéro

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

ENCLOSURES  
Annexes

DISTRIBUTION

You will have received a copy of our memorandum of December 4, 1968 to the Under-Secretary bearing the Under-Secretary's notation of approval of the composition of the Canadian Delegation to this Conference as proposed therein.

2. In view of the size of the Delegation and the large number of documents necessarily carried over from the first session of the Conference in the spring of 1968, two filing cabinets will be required for the Delegation. One of these must be capable of being locked with a combination lock, while the other will be used only for various documents and need not be locked.

3. The Embassy in Vienna has informed us that it can provide one filing cabinet from its present furnishings. We should be grateful if you could authorize our Embassy in Vienna to rent, for the use of the Delegation,

- a) a second filing cabinet, and
- b) a small typewriter table.

 J. A. BEESLEY

Legal Division.

Diary copy  
Div. diary  
file copy  
Mr. Stanford

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

The Under-Secretary  
(through the Legal Adviser)

FROM  
De

Legal Division

REFERENCE  
Référence

Letter of November 11 from Judge Lachs

SUBJECT  
Sujet

LAW OF TREATIES

SECURITY  
Sécurité

RESTRICTED

DATE

January 24, 1969

NUMBER  
Numéro

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

ENCLOSURES  
Annexes

DISTRIBUTION

Attached for your signature, if you approve,  
is a reply to Judge Lachs' letter to you of November 11,  
also attached.

2. Because Judge Lach's article expresses  
views directly contrary to those of Canada, particularly  
with respect to the scope of the rule against the threat  
or use of force and on the "all States" question, we have  
refrained from including in the reply any reference to  
the substance of the article. Nothing in the Report of  
the ICJ would appear to warrant comment.

J. A. BEESLEY

Legal Division

Ottawa, le 27 janvier 1969

Monsieur le Juge et cher ami,

Je vous remercie de m'avoir envoyé votre article sur le droit des traités ainsi que le rapport de la Cour internationale de Justice, documents que j'ai lus avec grand intérêt. Je partage entièrement votre avis que le succès de la conférence internationale sur le droit des traités constituerait un événement de première importance dans l'histoire du droit international.

Veillez agréer, Monsieur le Juge et cher ami, l'expression de mes sentiments très distingués.

M. CADIEUX  
M. Cadieux

Monsieur le Juge Manfred Lachs,  
Cour Internationale de Justice,  
Palais de la Paix,  
LA HAYE, PAYS-BAS.

Diary copy  
Div. diary  
file copy  
Mr. Stanford

EXTERNAL AFFAIRS



AFFAIRES ÉTÉRIEURES

TO  
À

The Under-Secretary  
(through the Legal Advisor)

SECURITY  
Sécurité

RESTRICTED

FROM  
De

Legal Division

DATE

January 24, 1969

REFERENCE  
Référence

Letter of November 11 from Judge Lachs

NUMBER  
Numéro

SUBJECT  
Sujet

LAW OF TREATIES

FILE	DOSSIER
OTTAWA	
	20-3-1-6
MISSION	28

ENCLOSURES  
Annexes

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J. A. BRESLEY

Legal Division



- Journal  
Journal de la division  
dossier  
M. Stanford

Ottawa le 24 janvier 1969

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Palais de la Paix,  
LA HAYE, PAYS-BAS.

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Palais de la Paix,  
LA HAYE, PAYS-BAS.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*file 20-3-1-6 JH/11*

TO  
À  
The Under-Secretary  
(through the Legal Adviser)

FROM  
De  
Legal Division

REFERENCE  
Référence  
Letter of November 11 from Judge Lachs

SUBJECT  
Sujet  
LAW OF TREATIES

SECURITY  
Sécurité

RESTRICTED

DATE  
January 24, 1969

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	
<i>20-3-1-6</i>	
MISSION	<i>25</i>

ENCLOSURES  
Annexes

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the substance of the article. Nothing in the Report of  
the ICJ would appear to warrant comment.

*Alan Beasley*  
Legal Division

Diary copy  
Div. diary  
file copy  
- Mr. Stanford  
EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
The Under-Secretary  
(through the Legal Advisor)  
FROM  
De  
Legal Division  
REFERENCE  
Référence  
Letter of November 11 from Judge Lachs  
SUBJECT  
Sujet  
LAW OF TREATIES

SECURITY  
Sécurité  
RESTRICTED  
DATE  
January 24, 1969  
NUMBER  
Numéro

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

ENCLOSURES  
Annexes

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2. A BRES-1-1

Legal Division

Journal  
Journal de la division  
dossier  
M. Stanford

Ottawa le 24 janvier 1969

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Je vous prie, Monsieur le Juge et cher ami,  
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M. Cadieux,

Monsieur le Juge Manfred Lachs,  
Cour Internationale de Justice,  
Palais de la Paix,  
LA HAYE, PAYS-BAS.

Ottawa, le 27 janvier 1969

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M. CADIEUX

M. Cadieux

Monsieur le Juge Manfred Lachs,  
Cour Internationale de Justice,  
Palais de la Paix,  
LA HAYE, PAYS-BAS.

FM KNSHA JAN24/69 CONF D

TO EXTER 89

REF YOURLET L737(M) SEP10 AND YOURTEL L791 SEP13/68

LAW OF TREATIES CONFERENCE-ARTICLE 5

LEFT AIDE MEMOIRE WITH PHOBA IN LEGAL DIV CONGOLESE MFA AND  
RAISED POINTS MENTIONED YOUR REFLET WITH HIM AND HIS SUPERIOR  
IN SECRETARIAT BULAMBO. CONGOLESE POSITION STILL UNDER DIS-  
CUSSION BUT ARTICLES 5 REGARDED IRE AS IMPORTANT BECAUSE  
CONGOLESE GOVT TRYING TO ESTABLISH STRONG CENTRAL POWERS OVER  
EIGHT PROVINCES WHICH IN TERMS OF ETHNIC AND LINGUISTIC  
DIFFERENCES ALMOST NATIONS IN THEMSELVES. POSITION AT THIS  
MOMENT HOVERING BETWEEN ABSTENTION AND VOTE AGAINST ON PARA 2.  
THEY HAVE NOT/NOT YET DISCUSSED QUESTION OF SEPARATE VOTE FOR  
PARA 2 OR ARTICLE 5 AS A WHOLE IF SEPARATE VOTE DENIED. WE  
GAINED IMPRESSION FROM BULAMBO THAT QUESTION OF KATANGA (BOTH  
1961 SECESSION AND CLOSE TRIBAL RELATIONS WITH ZAMBIA) WILL HAVE  
IMPORTANT INFLUENCE ON EVENTUAL CONGOLESE POSITION. SHALL KEEP  
IN TOUCH WITH BULAMBO AND PHOBA WHO EXPECT CONGOLESE POSITION  
WILL BE ESTABLISHED IN MAR OR APR 1969.

S. 27.1

003035

**ACTION COPY**

L

*July 27/1*

20-3-1-6		
37	1	11

FM RIO JAN24/69 CONFD

TO EXTER 48 PRIORITY

REF YOURLET L41 JAN6

LAW OF TREATIES CONFERENCE-ART 5

HEAD OF LEGAL DIV WILL GIVE FORMAL REPLY AIDE MEMOIRE SOONEST.

HIS INTERIM OBSERVATION IS BRAZIL WILL CONTINUE OPPOSE PARA2

ART 5.

23.24.1



EXTERNAL AFFAIRS



AFFAIRES ÉTRANGÈRES

10 M. It. Gaid  
FROM REGISTRY  
FEB 5 1969  
UNCLASSIFIED  
L

TO  
A

Canadian Embassy,  
Copenhagen, Denmark

SECURITY  
Sécurité

FROM  
De

Canadian Embassy,  
Vienna

DATE

January 24, 1969.

REFERENCE  
Référence

Copenhagen letter of January 17, 1969 to  
Mr. J.S. Stanford - Legal Division

NUMBER  
Numéro

49

SUBJECT  
Sujet

Law of Treaties Conference in Vienna - office  
equipment and accommodation.

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	20-5-12 2nd Session.

ENCLOSURES  
Annexes

DISTRIBUTION

USSEA Ottawa

We have discussed the possibility of securing the additional adjoining room to the suite with the Reservation Manager at the Bristol Hotel. However, he informed us that this is a double room and unfortunately double room rates would have to be charged as their accommodation is fully rented during the month of May and a considerable loss of revenue would otherwise be experienced. This is somewhat more expensive than the single room rates arranged for other members of the delegation and you may therefore wish to compare costs before making a firm decision. The following costs are the established room rates which will be in effect throughout the entire period even though the summer rates, which are considerably higher, go into effect on May 1:

(a) Reservations arranged in accordance with Ottawa telegrams No. L 973 of October 24 and L 1167 of December 11, 1968:

- (i) Suite - presumably to be occupied by Ambassador Wershof with the sitting room used as a work room for the Canadian Delegation - for the period April 7 to May 24 inclusive - 48 days at A.S. 1200 - plus 15% service charge per day (A.S. 1380)..... A.S. 66,040
  - (ii) Two single rooms with bath - for the period April 7 to May 24 inclusive - 48 days at A.S. 280. - plus 15% service charge per day (A.S. 322. - per day for each room)..... A.S. 30,912
  - (iii) One single room with bath - for the period April 7 to May 3 inclusive - 27 days at A.S. 280. - plus 15% service charge per day (A.S. 322.) ..... A.S. 8,694
- Sub-total ..... A.S. 105,646

And

(b) Alternative room arrangements to accommodate Conference Secretary as required:

- (i) One single room with bath - for the period April 7 to

19.6.2

Received  
FEB 6 1969  
In Legal Division  
Department of External Affairs

2.

May 24 inclusive - 48 days at A.S. 280.  
plus 15% service charge per day (A.S. 322.) .... A.S. 15,456.

Or

(ii) Double room adjoining suite as suggested in  
Mr. Wershof's letter under reference - for  
the period April 7 to May 24 inclusive -  
48 days at

- April 7 to 30 (24 days) at A.S. 350.  
per day plus 15% service charge (A.S. 402.50) A.S. 9,660.
- May 1 to 24 inclusive (24 days at A.S. 650.  
per day plus 15% service charge  
(A.S. 747.50)..... A.S. 17,940.

Cost for adjoining double room ..... A.S. 27,600.

(c) Total accommodation costs using:

- (i) Alternative (b) (i) ..... A.S. 121,102.
- (ii) Alternative (b) (ii) ..... A.S. 133,246.

2. Please note that both the single and adjoining double rooms  
have been tentatively reserved pending your decision. We should be grate-  
ful if you would review this matter and inform us of your decision as  
soon as possible in order that we may confirm our arrangements.

(SGD.) K. M. BROWN

The Embassy.

# COUNCIL OF EUROPE CONSEIL DE L'EUROPE

20-5-1-6

Strasbourg, 23rd January 1968

Gr/Traités (68) 2

Or. Fr.

## WORKING PARTY ON THE LAW OF TREATIES

Observations of the Secretariat General on the draft  
articles on the law of treaties prepared by the  
International Law Commission of the United Nations

(Memorandum prepared by the Directorate of Legal Affairs)

This memorandum contains the observations of the Secretariat General of the Council of Europe on a certain number of articles of the draft on the law of treaties. This draft, which has been drawn up by the International Law Commission of the United Nations has been reproduced in the "Reports of the International Law Commission on the second part of its 17th Session, 3 - 28 January 1966, and on its 18th Session 4 May - 19 July 1966" /United Nations General Assembly, Official Records: Twenty-first Session, Supplement No.9 (A/6309/Rev.1)/. The observations take into account both the practice of the Council of Europe concerning the elaboration of Conventions and Agreements between its member States and the practice of the Secretariat General of the Council of Europe as depositary of the said Conventions and Agreements.

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Gr/Traités (68) 2

- 2 -

Article 4 Treaties which are constituent instruments of international organisations or which are adopted within international organisations

1. As regards the Council of Europe, it is evident that its Statute, constituent instrument of this Organisation, falls within the scope of Article 4 of the draft prepared by the International Law Commission.

However, an examination must be carried out as to whether the Conventions and Agreements concluded within the Council of Europe, numbering at present fifty-four, are to be considered as "treaties adopted within the Organisation". The International Law Commission declares in point 3 of its commentary ad Article 4, that these terms are intended "to exclude treaties merely drawn up under the auspices of an organisation or through use of its facilities and to confine the reservation to treaties the text of which is drawn up and adopted within an organ of the organisation". Nevertheless, neither Article 4 nor Article 8 of the draft, which lays down voting rules applicable to the adoption of a text of a treaty, contain a definition of the term "adopted". The commentary of the Commission concerning Article 8 specifies that it concerns a decision "by which the form and content of the proposed treaty are settled", without implying the consent of the States concerned to be bound by the treaty (cf. Observations ad Article 8 below).

Supposing that the terms employed in Article 4 of the draft clearly express the meaning attributed to them by the commentary of the Commission, it has therefore to be determined whether the Conventions and Agreements concluded within the Council of Europe are drawn up and adopted within an organ of the Council. These instruments are in general elaborated by Committees of experts established by the Committee of Ministers by virtue of Article 17 of the Statute of the Council of Europe, and are the subject of a decision taken by the Committee of Ministers and aiming at settling the text ne varietur of the instrument and at opening it to the signature by member States of the Council. Thus, these Conventions and Agreements are certainly elaborated within organs of the Council of Europe; however, the final decision taken by the Committee of Ministers is not expressly termed "adoption". The application of Article 4 to the Conventions and Agreements concluded within the Council of Europe might therefore be questioned, and it would be advisable to clarify this point by a more flexible wording of the said Article 4.

./.

Nevertheless, as the scope of the meaning of the above-mentioned decision of the Committee of Ministers seems to correspond exactly to the definition given by the International Law Commission to the term "adoption" (cf. Observations ad Article 8 below), the observations of the Secretariat General concerning the following draft articles of the Commission are based on the hypothesis that the said decision can be assimilated to an "adoption" in the meaning of the draft.

2. The present wording of Article 4 limits its application to treaties adopted within the organisation and excludes treaties which have been elaborated under the auspices of the organisation without being drawn up and adopted by an organ of the organisation, for instance, by an international conference convoked by the organisation. According to the commentary of the International Law Commission (point 3, ad Article 4), this limitation aims at excluding the treaties which have only been drawn up within an international organisation because of the convenience of using the services and facilities provided by the organisation. But it seems to be difficult to delimit precisely the treaties distinguished in this way by the Commission. Furthermore, this distinction has some drawbacks, particularly as regards the rules applicable to the carrying out of the work of the said international conference, rules which it should be possible to establish by the competent organ of the organisation which has convoked the conference; similarly, the functions of the depositary should be governed by the same rules, to be established by the competent organ of the organisation, whether the treaty has been elaborated within the organisation or only deposited therewith. As to this question, reference should be made to the observations of the Secretary General of the United Nations Organisation, Document of the UN: A/6827/Add.1, pp.11 et seq., which, mutatis mutandis, are equally valid for the Council of Europe.

3. Under the terms of Article 4, the application of the draft articles of the International Law Commission is subject "to any relevant rules of the organisation".

As regards the Council of Europe, it seems that the following rules come into consideration:

- (i) Statute of the Council of Europe, Chapter IV (Committee of Ministers: composition, powers, voting rules);

./.

Gr/Traités (68) 2

- 4 -

- (ii) Resolutions of a statutory character, adopted by the Committee of Ministers in May and August 1951 (powers of the Committee of Ministers, Partial Agreements);
- (iii) Rules of Procedure of the Committee of Ministers and for meetings of the Ministers' Deputies (voting rules), in the light of the subsequent practice of the Committee of Ministers.

Furthermore, it is advisable to mention the "Model Final Clauses of Agreements and Conventions elaborated within the Council of Europe", approved by the Committee of Ministers at the 113th meeting of the Ministers' Deputies and containing the texts of the final clauses of the Agreements, which can be signed without reservation as to ratification or acceptance, and of the Conventions requiring ratification or acceptance. As these clauses are destined to be incorporated within the Conventions and Agreements concluded within the Council of Europe, they will rule out by this fact the application of contrary provisions of the draft of the International Law Commission. Therefore, the model clauses are not, properly speaking, "pertinent rules of the organisation". However, they might give an indication of an established practice of the Council of Europe, which in certain respects is not in conformity with the solutions proposed by the draft of the Commission.

In addition to the above-mentioned statutory rules and regulations, the Council of Europe applies a certain number of rules and practices which, without being laid down in a legal instrument, have guided, in the past, the activity of its organs in elaborating, administering and implementing the Conventions and Agreements concluded within its framework. Rules of this nature have particularly been applied by the Secretary General as depositary of the European Treaties. However, the terms of Article 4 seem only to apply to legally binding rules which are adopted and applied in conformity with the constitutional texts of the organisation (cf. Observations of the Secretary General of the United Nations Organisation, document of the UN: A/6827/Add.1, page 16). Consequently, unqualified practices which are, for instance, observed by the depositary in administering the treaties cannot prevail over the rules laid down in a future Convention on the law of treaties.

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4. Finally, Article 4 provides that the application of the draft articles of the International Law Commission is "subject to any pertinent rules of the organisation". This wording implies a subsidiary application of the draft articles of the Commission in all cases which are not covered by a rule of the organisation. However, one might suppose that the "pertinent rules of the organisation" comprise both the already existent rules and those which might be established in the future, (cf. Observations of the FAO, document of the UN: A/6827/Add.1, p.23).

Article 6 Full powers to represent the State in the conclusion of treaties

1. Under the terms of this Article, full powers are necessary, amongst others, "for the purpose of expressing the consent of the State to be bound by a treaty". As regards ratification, acceptance, approval and accession, mentioned in Articles 11 and 12 as means of expressing this consent, it has to be taken into account that these acts do not signify the deposit of the instrument in which they are contained, but mean, in conformity with paragraph 1 (b) of Article 2, "the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty". If this act has been signed by the Head of State, the Head of Government or the Minister for Foreign Affairs, no confirmation of their capacity to represent the State is necessary [Article 6, paragraph 2 (a)]. Consequently, the person who deposits the above-mentioned instrument does not need to be invested with full powers. This rule is in conformity with the practice of the Secretary General of the Council of Europe as depositary of the European Treaties.

2. As regards the signature of a treaty, Article 6 contains rules on full powers only with regard to the expression of the consent to be bound by the treaty (Article 10), and to the authentication of the text of the treaty (Article 9). The signatures which have neither of these two meanings, that is to say, deferred signatures with reservation in respect of ratification, and which make up the large majority of the cases within the practice of the Council of Europe, are not covered by the said Article 6. This lacuna is the consequence of the decision taken by the International Law Commission, not to deal separately with the institution of the signature with reservation in respect of ratification etc. (cf. Commentary of the Commission ad Article 10, point 2, in fine). It might be advisable to review this decision in the light of the fact that this practice, especially in the case of deferred signature, might not be assimilated to the authentication of the text of the treaty (cf. Observations ad Article 9 below).

./.

3. The rule laid down in paragraph 2 (c) of Article 6 corresponds to the practice of the Council of Europe, according to which the Permanent Representatives to the Committee of Ministers need not show full powers for the decision relating to "adoption" (and authentication) of the Conventions and Agreements concluded within the Council of Europe.

#### Article 8 Adoption of the text

1. According to the commentary of the International Law Commission, the term "adoption" signifies "settling the form and content of the proposed treaty"; it is specified that "at this stage, the negotiating States are concerned only with drawing up the text of the treaty as a document setting out the provisions of the proposed treaty and their votes, even when cast at the end of the negotiations in favour of adopting the text as a whole, relate solely to this process. A vote cast at this stage, therefore, is not in any sense an expression of the State's agreement to be bound by the provisions of the text, which can only become binding upon it by a further expression of its consent (signature, ratification, accession or acceptance)".

Taking into account this definition, it seems possible to regard as an "adoption of the text" the decision taken by the Committee of Ministers of the Council concerning the draft Conventions and Agreements elaborated and submitted by the Committees of experts. Indeed, this decision is the outcome of an examination of the text proposed by a Committee of experts; in authorising the text to be opened for signature by the member States of the Council and in fixing, as a general rule, the date of this opening for signature, it implies the agreement of the Committee of Ministers to consider the text of the instrument concerned as definitive with regard to its form and contents, without, however, entailing the consent of the member States to be bound by the treaty.

2. In accordance with Article 4 of the draft of the International Law Commission, the decision so defined of the Committee of Ministers of the Council of Europe is governed not by the voting rules laid down in Article 8 of the draft, but rather by those which the Committee of Ministers apply in this matter and which are determined by the provisions of the Statute of the Council of Europe (Article 20) and of the Rules of Procedure for meetings of the Ministers' Deputies (Article 8), as they are interpreted by the subsequent practice of the Committee in their application.

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Article 9 Authentication of the text

1. In the practice of the Council of Europe in treaty matters, there is no special procedure for the authentication of the text of a Convention or an Agreement concluded within its framework. When the text of a treaty has been positively decided upon by the Committee of Ministers, in conformity with the observations on Article 8 above, it is considered as the text ne varietur. This decision being the last stage in the procedure of the elaboration of the European Treaties, the authentication of the text is identical to its "adoption". Considering that this practice is not peculiar to the Council of Europe, but is followed by other international organisations and in international conferences, it might be advisable to include "adoption" amongst the means of authentication of the text of a treaty.

2. Nevertheless, the discovery of an error in the text as approved by the Committee of Ministers of the Council of Europe, before the signature of the treaty, does not give rise to the procedure of correction provided for in Article 74 of the draft of the International Law Commission. The correction of such an error before the signature of the text is accomplished by a decision of the Committee of Ministers under the same conditions as the decision concerning the "adoption" of the text of the treaty. Thus, the "adoption" does not have the consequences attached by the Commission to the authentication of the text with regard to the correction of errors.

3. Paragraph 2 of Article 9 mentions signature as a means of authenticating the text of a treaty. In the case of multilateral treaties, the signature does not have this meaning unless all the representatives having participated in the negotiation have signed the text, immediately or shortly after its adoption. A multilateral treaty which provides for deferred signatures could not be authenticated by this means, because it might enter into force even before signature by all the negotiating States.

On the other hand, as a deferred signature cannot imply authentication of the text, it is not covered by any provision of the draft of the International Law Commission, unless it is made without reservation in respect of ratification etc. and falls for this reason within the scope of Article 10 of the draft. The signature subject to reservation in respect of ratification etc. has, however, a proper legal meaning (for instance:

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obligations in contrahendo of signatories; rights of signatories; provisional entry into force of a treaty which has been signed but not yet ratified etc.), which it would be worthwhile to cover by a special provision of an international Convention on the law of treaties (cf. Observations ad Article 6, point 2 above).

Article 10 Consent to be bound by a treaty expressed by signature.

Article 11 Consent to be bound by a treaty expressed by ratification, acceptance or approval.

Article 12 Consent to be bound by a treaty expressed by accession.

1. In the practice of the Council of Europe in treaty matters a distinction is made between Agreements which can be signed with or without reservation as to ratification or acceptance, and Conventions requiring ratification or acceptance (cf. "Model Final Clauses"). Furthermore, ratification and acceptance (or approval) must always be preceded by signature. As this practice is expressly provided for by clauses included in the Conventions and Agreements, no problem will arise in this respect from the draft of the International Law Commission.

Nevertheless, in contradiction to the draft of the Commission where no distinction is made between the different means of expressing the consent to be bound by a treaty with regard to the qualification of a State to become a party to the treaty, the practice of the Council of Europe confines the signature and consequently ratification and acceptance (and approval) to the member States of the Council, whereas accession after the entry into force of the treaty is, in general, open only to non-member States of the Council. According to the terminology used in the draft of the Commission, this means that signature and ratification are confined to "negotiating States"; this expression means by virtue of paragraph 1 (e) of Article 2 of the draft, the States "which took part in the drawing up and adoption of the text of the treaty". Indeed, "the adoption" of Conventions and Agreements concluded within the Council of Europe is decided by the Committee of Ministers of the Council in which only member States are represented; other States which might have taken part in the work of committees called upon to draw up the draft Conventions and Agreements, do not take part in this "adoption" and are consequently not to be considered as "negotiating States".

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Furthermore, with the exception of a small number of treaties which are opened only to the signature by member States of the Council of Europe (Convention for the Protection of Human Rights and Fundamental Freedoms and Additional Protocols, European Social Charter, European Convention on Establishment, European Convention for the Peaceful Settlement of Disputes, European Convention on the Establishment of Companies), the possibility of becoming a party by way of accession to a Convention or an Agreement concluded within the Council of Europe is in general determined by provisions contained in the final clauses of the said instruments which lay down the conditions and procedures of such an accession. According to these provisions the Conventions and Agreements concluded within the Council of Europe might be classified in the following way:

- (i) Conventions and Agreements which are open to accession by non-member States which are invited to accede by the Committee of Ministers, or which have obtained the previous agreement of this Committee. In certain cases this possibility is limited to European non-member States, in other cases it is extended to all the non-member States whatever their geographic situation may be. In the latter case some instruments, however, raise a supplementary condition, such as the participation of the State concerned to another instrument.  
- The decision of the Committee of Ministers is, in principle, taken by a two-thirds majority; in some cases it has to be taken by a unanimous vote by the Committee or requires the unanimous agreement of the member States which are already parties to the Convention or Agreement concerned.
- (ii) Conventions and Agreements which are open to the accession of the non-member States which comply with certain material criteria (European States, participation in another treaty or in another international organisation, etc.), without requiring a decision of the Committee of Ministers.

Finally, it should be noted that in all cases accession is possible only after the entry into force of the Convention or Agreement in conformity with its provisions concerning the number of ratifications or signatures without reservation required to this effect. Therefore, the accession of third States cannot influence the entry into force of the treaties concerned.

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2. It results from the preceeding considerations that the practice of the Council of Europe has established a complete system of rules governing the possibility for States to become parties to Conventions and Agreements concluded within its framework and the extension of this possibility to States other than those which have taken part in the negotiation of the said texts. The draft of the International Law Commission does not contain any rule to this end (cf. Commentary of the Commission ad Article 12: Question of participation in a treaty), with the exception of Article 12 relating to accession, which, without limiting this procedure to States having not taken part in the negotiation of the treaty concerned, requires, however, that accession by a given State has to be provided for as regards "that State" either by the treaty or the negotiating States or the parties to the treaty. Thus, Articles 10 and 11 relating to signature and to ratification, acceptance or approval do not contain any definition of the States which have the possibility of becoming parties to a treaty by means of signature, ratification, acceptance or approval. Nevertheless, it is not likely that one might set up this lacuna against the express terms of the Conventions and Agreements concluded within the Council of Europe which are only open to signature by member States of the Council. Moreover, this lacuna could easily be eliminated either by an analogous formula to that used in Article 12 or by adding the term "negotiating" to the word "State" in the first sentence of Articles 10 and 11.

3. Under the terms of paragraph (c) of Article 12 of the draft of the International Law Commission, "the consent of a State to be bound by a treaty is expressed by accession when ... all the parties have subsequently agreed that such consent may be expressed by that State by means of accession". This provision might conflict with the clauses of some Conventions and Agreements concluded within the Council of Europe governing the procedure of accession. The question is thus raised whether the provision quoted above has an independent value besides the pertinent clauses of the treaties [paragraph (a)]. A positive answer to that question would enable the parties to over-rule a negative decision of the organ which by virtue of the treaty is competent to decide upon accession. Therefore, it should be emphasised that paragraph (c) applies only in the absence of a clause of the treaty governing accession.

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Article 14 Consent relating to a part of a treaty and choice of differing provisions

The practice of the Council of Europe in treaty matters does not contain examples of Conventions which permit a choice between differing provisions (paragraph 2), i.e. between alternative provisions which are mutually exclusive. However, in the case of three Conventions concluded within the Council certain parts only of their provisions need be accepted obligatorily (paragraph 1), that is to say, the European Convention for the Peaceful Settlement of Disputes, the European Code of Social Security and the European Social Charter. The provisions of Article 14 of the draft of the International Law Commission are not therefore of direct relevance so far as concerns the practice of the Council of Europe in treaty matters.

Article 16 Formulation of reservations

The practice of the Council of Europe in treaty matters does not differ from the rules contained in this provision. It contains examples to be found in each of the three items stated in the article proposed by the International Law Commission.

- (i) Certain Conventions and Agreements concluded within the Council of Europe expressly provide that reservations are not permitted or that ratification, acceptance or adhesion, or signature without reservation as to ratification, implies the legal acceptance of all the provisions of the treaty (item a); that is, for example, the case of the European Agreement for the Prevention of Broadcasts Transmitted from Stations outside national territories and of the European Agreement concerning Programme Exchanges by means of Television Films.
- (ii) In other cases, specified reservations are expressly authorised by the text of the treaty (item b), for example the European Convention for the Peaceful Settlement of Disputes. Certain Conventions such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention on Establishment only permit a reservation to the extent that a law in force in the territory of a party at the moment of signature or of the deposit of the instrument of ratification is not in conformity with a particular

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provision of the Convention. In this context it should be stressed that the recent practice of the Council of Europe is in the direction of a system of reservation known as "negotiated reservation": the texts of the reservation which are alone to be permitted are drawn up during the drafting of the Convention or the Agreement. These reservations appear either in the actual text of the Convention or Agreement or more often in an Annex thereto, and each Contracting Party may declare that it will make use of one or other of these reservations. This is the case, for example, of the European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles, of the European Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, and of the European Convention providing a uniform Law on Arbitration. This system of negotiated reservation is also provided for in the "Model Final Clauses" [cf. Article (e) relating to Agreements, and (d) relating to Conventions].

- (iii) When the text of the Convention is silent on the question of reservations (item c), it is accepted that they may be made with respect to any of the provisions of the Convention or of the Agreement on condition, however, that these reservations are not incompatible with the object and purpose of the treaty. In order to clarify the matter in each particular case, the reservation is brought to the attention of the other Contracting Parties.

#### Article 17 Acceptance of and objection to reservations

In the practice of the Council of Europe, a reservation expressly or impliedly authorised by the text of a Convention does not have to be specially accepted by the other parties to it.

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## Article 18 Procedure regarding reservations

1. As regards the communication of reservations and objections thereto, it would be desirable to take into account, in the text of Article 18, the treaties for which a depositary other than the Government of a State entitled to become a party to the treaty has been provided for. In these cases, the communication should be transmitted to the depositary who shall forward it to the other interested States.

2. By virtue of paragraph 1 of Article 18, the communication shall be transmitted to "the other States entitled to become parties to the treaty". This expression has not been defined in Article 2 of the Draft of the International Law Commission. In many cases, it seems that it would be very difficult to delimit the set of States belonging to this category. Under these conditions it might be preferable to mention the negotiating States only and the other parties to the treaty. This is also the practice of the Council of Europe in this matter [cf. "Model Final Clauses", Article (f) relating to Conventions: "The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention....."] .

3. In the practice of the Council of Europe and in contradiction to paragraph 2 of Article 18, a reservation made when signing a treaty need not be confirmed when ratifying, accepting or approving the treaty.

## Article 19 Legal effects of reservations

Under the terms of the "Model Final Clauses" of the Conventions and Agreements concluded within the Council of Europe, a party which has made a reservation in respect of a provision of the Convention or Agreement concerned "may not claim the application of that provision by another party" [Article (d) 3, relating to Conventions]. Nevertheless, the other parties have the possibility, in their relations with the party which has formulated the reservation, not to rely on the modification resulting from this reservation. According to the present practice of the Council of Europe, the application of a reservation does not thereby entail the automatic intervention of the rule of reciprocity, but only deprives the State which has formulated the reservation of the right to claim on the international level and in relation to the other parties the application of the provision to which the reservation refers, and the other parties of the right to raise against this State the treaty obligation covered by the said reservation.

Article 20 Withdrawal of reservations

According to the practice of the Council of Europe, any party may at any moment wholly or partly withdraw, by means of a declaration addressed to the Secretary General, a reservation it has made. This declaration becomes effective as from the date of its receipt by the Secretary General [cf. "Model Final Clauses", Article (d) 2, relating to Conventions].

Article 21 Entry into force

The entry into force of the Conventions and Agreements concluded within the Council of Europe is determined by the dispositions contained in these instruments. Thus, according to the "Model Final Clauses", Article (a) 2, relating to Conventions, "the Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance".

Article 22 Entry into force provisionally

The provisional application is at present provided for by three instruments drawn up within the Council of Europe - i.e. the General Agreement on Privileges and Immunities of the Council of Europe (Article 22), the Third Protocol to this General Agreement (Article 16) and the Convention on the elaboration of a European Pharmacopoeia (Article 11). The first two of these instruments have been put into provisional application following signature, in conformity with the constitutional requirements of the signatory States, whereas the Convention on the elaboration of a European Pharmacopoeia has been put into provisional application after signature by all the States which have taken part in the negotiation following the procedure applicable to Partial Agreements, such as provided for by the Statutory Resolution of August 1951.

Article 25 Application of treaties to territories

1. According to the practice of the Council of Europe, any party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the Convention or Agreement shall apply. In some cases, it is explicitly laid down that the treaty shall apply to the metropolitan territory of each party.

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Moreover, any party may, when depositing its instrument of ratification, acceptance or accession or, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the treaty to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. Furthermore, such a declaration may, in respect of any territory mentioned therein, be withdrawn by declaration addressed to the Secretary General which shall take effect six months after the date of its receipt by the Secretary General [cf. "Model Final Clauses", Article (c) relating to Conventions].

2. Compared with this practice of the Council of Europe, the provision proposed by the International Law Commission is not clear. Indeed, the definition of "the entire territory of each party" might encounter some difficulty in the case of a territory for whose international relations the State concerned is responsible, etc. Furthermore, it is not fully clear whether the terms "unless a different intention ... is otherwise established" cover also unilateral declarations by the interested parties.

Article 35 General rule regarding the amendment of treaties

Article 36 Amendment of multilateral treaties

1. It seems that the general rule according to which "a treaty may be amended between the parties" (Article 35) has been worded too absolutely. Indeed, under the terms of special provisions of some treaties, the amendment shall be the subject of a decision in which not only the parties to the treaty, but also other States shall take part. In cases where the agreement of these other States is necessary for the adoption of the amendment, the agreement of the parties may not have the effect attributed to it by the general rule of Article 35, if these other States refuse to support the decision concerned.

In the practice of the Council of Europe, a similar situation might occur concerning the European Social Charter, Article 36 of which provides that "any amendments ... proposed ... shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary General of their acceptance...".

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2. As regards the Statute of the Council of Europe (Art. 41), no problem arises from the draft of the International Law Commission, for the special provisions relating to the amendment of this Statute fall within the scope of the general reservation laid down in Article 4 of the draft.

The same applies to the European Convention on Establishment (Article 24) and to the European Convention on the International Classification of Patents for Invention (Article 2). Indeed, these provisions only concern special amendment procedures, which are covered by the reservation laid down at the beginning of Article 36.

3. Under the terms of Article 36, paragraph 2, "any proposal to amend a multilateral treaty ..... must be notified to every party, each one of which shall have the right to take part in ...". As regards this point, it should be noted that in case the treaty has been drawn up within an organ of an international organisation, not only the parties to the treaty but also the other member States of the organisation might have a legitimate interest in being informed about the propositions to amend the treaty and in taking part in the decisions thereon, without it being necessarily stipulated in the treaty concerned. Consequently, it might be advisable to mention in this context either the negotiating States or the organ within which the treaty has been drawn up.

4. Article 36, paragraph 4, which refers to Article 26, paragraph 4 b), concerning the maintenance of the unamended treaty, raises the problem of the advisability of the survival of the former treaty in cases where a very small number of States remain parties only to this unamended treaty, forcing the parties to the amended treaty to maintain between themselves treaty relations which they consider out of date. The problem is particularly pressing if it arises out of a treaty having instituted organs and procedures for its implementation, which have been the subject of the amendments made in the new treaty. In this context, it must also be taken into account that under the terms of Article 52 of the draft of the International Law Commission a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

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Article 37 Agreements to modify multilateral treaties between certain of the parties only.

1. The notification provided for in paragraph 2 of Article 37 should also be addressed, as the case may be, to the depositary of the treaty, if he is not a party thereto.

2. An example of a treaty falling under Article 37 of the draft of the International Law Commission is given by the Agreement relating to Application of the European Convention on International Commercial Arbitration. This Convention, which had been concluded under the auspices of the United Nations Economic Commission for Europe, provides in Article X, paragraph 7, that its provisions do not affect the validity of multilateral or bilateral agreements concluded, or to be concluded, by the contracting parties in matters concerning arbitration. On the basis of this provision of Article X, paragraph 7, the above mentioned Agreement has been concluded within the Council of Europe. It derogates, in the relations between its parties, from the provisions of Article IV, paragraphs 2 - 7, of the European Convention on International Commercial Arbitration.

Article 44 Specific restrictions on authority to express the consent of the State.

The communication of the specific restrictions on the authority to express the consent of the State should also be addressed, as the case may be, to the depositary of the treaty, if this function is entrusted neither to a state organ nor to a negotiating State.

Article 52 Reduction of the parties to a multilateral treaty below the number necessary for its entry into force.

Amongst the Conventions and Agreements concluded within the Council of Europe, only the European Social Charter (Article 37) and the European Code of Social Security (Article 81) determine the number of parties necessary for their remaining in force (5 and 3 respectively). Cf. also observations ad Article 36, point 2, above.

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Article 55 Temporary suspension of the operation of a multi-lateral treaty by consent between certain of the parties only.

Because of the analogy with the subject of Article 37 above, the intention to suspend temporarily the operation of a multilateral treaty as between certain parties only should be communicated to the other parties and, as the case may be, to the depositary of the treaty (cf. observations ad Article 37, above).

Article 62 Procedure to be followed in cases of invalidity, termination, withdrawal from, or suspension of the operation of a treaty.

1. The draft of the International Law Commission contains no reservation concerning the provisions of the treaty itself relating to the procedure of denunciation etc. It seems that this lacuna should be rectified, possibly by adding the words "unless the treaty otherwise provides". As regards the Statute of the Council of Europe, Article 7 relating to withdrawal, and Article 8 concerning suspension and expulsion of a member from the organisation might be mentioned in this context. It is indeed true that the application of these provisions is covered by the general reservation of Article 4 of the draft of the Commission regarding "any relevant rules of the organisation". However, this might not apply to provisions relating to denunciation, which are inserted in the Conventions and Agreements concluded within the Council of Europe and under the terms of which the denunciation has to be notified to the Secretary General of the Council and shall take effect six months after the date of its receipt by the Secretary General, who in turn shall communicate the denunciation to all member States of the Council and to any State which has acceded to the treaty concerned [Cf. "Model Final Clauses", Articles (e) and (f) relating to Conventions.]

2. Furthermore, it seems desirable to take into account the treaties for which a depositary other than the Government of a party shall address the notification required by Article 62, paragraph 1, also to this depositary (cf. also Article 63, paragraph 1).

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Article 66 Consequences of the termination of a treaty

It is not without reason that, in contradiction to the preceding Article concerning the invalidity of a treaty, Article 66 contains a reservation in favour of the provisions of the treaty itself governing the consequences of its termination. Thus, some Conventions and Agreements concluded within the Council of Europe provide that the denunciation shall not have the effect of releasing the party concerned from its obligations under the treaty in respect of any situation or fact constituted or performed before the date at which the denunciation becomes effective and falling within the scope of application of the treaty [Convention for the Protection of Human Rights and Fundamental Freedoms (Article 65, 2), European Convention on Establishment (Article 33, 3), European Convention for the Peaceful Settlement of Disputes Article 40, 2) 7. In some other instruments of the Council of Europe, it is stipulated that in case of denunciation by any of the parties, all rights acquired by virtue of the provisions of the treaty shall be maintained [European Interim Agreements on Social Security Schemes (Article 12) 7.

Article 71 Depositaries of treaties

The depositary of the Conventions and Agreement concluded within the Council of Europe is the Secretary General of this organisation. Thus, the depositary is neither a State nor an "international organisation" properly speaking. Article 71 of the draft of the International Law Commission should therefore be completed by the words "or the head of the secretariat of this organisation" (cf. observations of the Secretary General of the United Nations Organisation, Document of the UN: A/6827/Add.1, p.20).

Article 72 Functions of depositaries

1. The draft drawn up by the International Law Commission imposes upon the depositary the obligation to communicate to the States entitled to become parties to the treaty the texts of the treaty [Article 72, paragraph 1 (b) 7 and to inform the same States of certain acts relating to the treaty

[paragraph 1 (e) and (f)]<sup>7</sup>. According to the observation ad Article 18 (point 2) above, it is often difficult to delimit the set of the States belonging to the category of "States entitled to become parties to the treaty"; in other cases, this set might be so large that the obligation of the depositary would be too heavy in comparison with the interest of these States to be informed of the situation of the treaty concerned. It would therefore be preferable to limit this obligation to the negotiating States, to the contracting States and to the parties, within the meaning of the definitions given in Article 2 of the draft of the Commission.

In the case of the Conventions and Agreements concluded within the Council of Europe, the notifications shall, as a general rule, be addressed to the member States of the Council and to any State which has acceded to the Convention or Agreement [cf. "Model Final Clauses", Article (f) relating to Conventions]<sup>7</sup>, which is in conformity with the solution proposed above.

It goes without saying that a State entitled to become a party to the treaty and which is not comprised within the States enumerated above, has at any moment the possibility of applying to the depositary with a view of obtaining any information on the treaty to which it can become a party.

2. As concerns the differences which might appear between a State and the depositary (Article 72, paragraph 2), it seems advisable to restrict even more the set of States which the depositary must inform of the difference. Thus, this obligation of the depositary might be limited to the "interested States"; this expression could be interpreted, in the case of a treaty which has already entered into force, as meaning only the parties to the treaty and the signatories, excluding the States which although having taken part in the negotiation have not shown their intention to become parties to the treaty.

#### Article 73 Notifications and communications

The draft of the International Law Commission does not lay down any general rule as to the date on which a notification becomes effective. It only indicates the dates on which the notification shall be considered as having been made or as having been received. As regards the date on which it becomes effective, reference has to be made to the specific dispositions relating to the notification concerned (Article 17, paragraph 5: reservations; Article 62, paragraph 1: invalidity, termination and suspension), which determine this date as a general rule according to the receipt of the notification by the State for which it was intended, were it transmitted or not by a depositary.

Under these circumstances, one might question whether the provisions of Article 73 have a proper value which justifies their being retained in a Convention on the law of treaties.

As regards the practice of the Council of Europe, the date on which a notification becomes effective is in general determined according to its receipt by the Secretary General of the Council [cf. "Model Final Clauses", Article (d) 2, relating to Conventions: withdrawal of reservations; Article (e) 3; denunciation].

Article 74 Corrections of errors in texts or in certified copies of treaties.

As regards the Conventions and Agreements concluded within the Council of Europe, the practice in matters of correction of errors is as follows: whenever the text of a Convention or Agreement contains an error, the Committee of Ministers rectifies this error and authorises the Secretary General to certify this rectification. The Secretary General, invested with this authorisation, draws up and signs a procès-verbal of rectification, copy of which will be communicated to each member State of the Council and to any State which has acceded to the treaty concerned. The procès-verbal of rectification will also be communicated to the Secretariat of the United Nations Organisation for registration, cf. also the observations ad Article 9, point 2, above.

Article 75 Registration and publication of treaties

It might be advisable to provide for an obligation of the depositary to have registered with the Secretariat of the United Nations Organisation the treaties which are deposited with him. Thus, the Secretary General of the Council of Europe, acting as mandatory of the member States of the Council parties to the Conventions and Agreements concluded within this organisation is authorised to have registered the said Conventions and Agreements with the Secretariat of the United Nations Organisation.

2ND COPY TO *LA BISSE*

*Mr. Keating  
Encl. attached as requested  
1241*

*Bessley Stanford*  
*Feb 20-3-1-6*  
*13*  
*L*

FM LDN JAN23/69 CONFD NO/NO STANDARD  
TO EXTER 415  
INFO PRMNY COPEN(WERSHOF)  
REF OURTEL 197 JAN13

**ACTION COPY**

LAW OF TREATIES MTG IN LDN FEB4-5  
MTG WILL BE HELD IN INDIA COUNCIL CHAMBER OF FCO COMMENCING AT  
12 NOON FEB4. MISS ANNETTE FINLAYSON OF NZ HIGHCOM HAS ASKED WHETHER  
SHE COULD MEET WITH WERSHOF AND/OR STANFORD SOMETIME ON FEB3-4  
PRIOR TO MTG AT FCO TO DISCUSS SEVERAL POINTS WLGTN HAS RAISED  
CONCERNING DRAFT CONVENTION.

2. BRITS PLAN AT FIRST SESSION ON FEB4 TO DISCUSS THOSE PROBLEMS  
RELATING TO DRAFT CONVENTION THAT OTHER REPS MIGHT WISH TO RAISE  
BEFORE CONSIDERING DIFFICULTIES CAUSED BY ART 62 AND ART 62BIS.  
FOR EXAMPLE, BRITS WOULD LIKE TO DISCUSS UNSATISFACTORY DRAFTING  
OF ART17 AND 57 AND EXAMINE USA REDRAFT OF ART57. THEY WOULD ALSO  
HOPE TO DISCUSS APPLICATION OF ART41 TO CASES FALLING UNDER ART50.  
FCO OFFICIALS ALSO EXPECT THAT CDN AND AUSTRALIAN REPS (BRAZEAU  
WILL BE ATTENDING FROM CNBRA) WILL WISH TO DISCUSS ART5(2).

*Joe  
Chad I  
see there  
of*

3. MYLES MACDOUGALL WILL BE ATTENDING KARACHI MTG OF AFRO-ASIAN  
LEGA CONSULTATIVE CTTEE AND WILL BE MTG WITH KEARNY BEFORE LATTERS  
TRIP TO LDN. BRITS HOPE THAT MACDOUGALL WILL BE ABLE TO GIVE  
KEARNY A FULL REPORT ON PROBABLE ATTITUDES OF...2

*1.24.1*



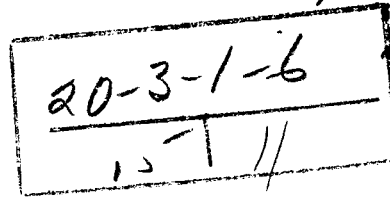
PAGE TWO 415 CONFD NO/NO STANDARD

AFRO-ASIAN GOVTS TO ART 62 AND 62BIS AS REVEALED AT KARACHI MTG.

4.FCO HAVE LEARNED FROM AMERICANS THAT ATTORNEY-GEN OF NIGERIA PERSONALLY AGREES THAT PROCEDURE FOR COMPULSORY ARBITRATION SHOULD BE INCORPORATED IN DRAFT CONVENTION BUT THAT HE DOUBTS IF THIS PROPOSAL COULD OBTAIN APPROVAL OF CONFERENCE AND THAT WE SHALL HAVE TO SETTLE FOR PROCEDURE FOR COMPULSORY CONCILIATION ONLY.BRITS BELIEVE RAO OF INDIA IS ALSO SHOWING SIGNS OF GREATER FLEXIBILITY TOWARD SETTLEMENT OF DISPUTES ISSUE IN RELATION TO PART FIVE OF DRAFT CONVENTION.

**L ACTION COPY.**

FM COPEN JAN23/69 CONFID NO/NO STANDURD  
TO TT EXTER 37 DE HAGUE  
LEGEAL DIV DE WERSHOF.



LAW OF TREATIES-FEB MTGS IN LDN AND PARIS-SETTLEMENT OF DISPUTES  
HAVE JUST RECEIVED FROM USA EMB HERE LET OF DEC27/63 ADDRESSED TO  
ME BY KEARNEY SUPPLEMENTING VIEWS ON DISPUTES ISSUE SET FORTH IN  
NOTE 431 OF DEC16/63 FROM USA EMB OTT. KEARNEY SAYS COPY OF HIS LET  
WAS GIVEN TO ROBERTSON IN NY AND I TRUST STANFORD THEREFORE HAS  
COPY.

2. I AM SURE THAT KEARNEY EXPECTS OR AT LEAST HOPES THAT CDA WILL  
GIVE HIM STRONG SUPPORT BOTH IN LDN AND PARIS IN PRESSING FOR A  
STRONG ART 62 BIS (BASED ON 13 POWER VERSION ALREADY TABLED).

KEARNEYS LET ALSO MAKES CLEARER WHAT WAS IMPLICIT IN NOTE 431 IE  
THAT USA HOPES THAT A REVISED VERSION OF ART 62 BIS WILL BE TABLED  
NOT/NOT BY 13 POWERS OR ANY OTHER FEEBLE COLLECTION OF THAT KIND  
BUT BY USA AND MANY OTHER WESTERN GOVTS INCLUDING CDA PLUS PRESUMABLY  
AS MANY NON-WESTERN GOVTS AS POSSIBLE. I WONDER HOW THIS IS TO BE  
ACHIEVED PROCEDURALLY UNLESS 13 POWERS COOPERATE; IT IS NOT/NOT CLEAR  
THAT NEW VERSIONS OF ART 62 BIS CAN LAWFULLY BE TABLED PURSUANT TO  
RULES OF PROCEDURE AND TO CURIOUS CONFUSED DECISION TAKEN BY CTTEE  
OF WHOLE AT 32TH MTG. IF YOU HAVE SUMMARY RECORD OF THAT MTG PLEASE  
BRING COPY TO LDN.

3. AS WE DISCUSSED WHEN I WAS IN OTT LAST MONTH I THINK USA ALIEN-  
MENTS ARE GOOD ONES ALTHOUGH I AM NOT/NOT CONVINCED OF IMPORTANCE  
OF DEALING HERE WITH MULTILATERAL TREATIES. I ALSO FAVOUR

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PAGE TWO 37 CONF NO/NO STANDARD

TWO ADDITIONAL POSSIBLE AMENDMENTS DISCUSSED IN NOTE 481 BEGINNING  
PAGE4.

4.ROLE OF CDA IN THIS EXERCISE PRESENTS SPECIAL DIFFICULTIES.  
SETTLEMENT OF DISPUTES WILL PRESUMABLY BE FOUGHT OUT AT VIENNA IN  
COTTEE OF WHOLE PRIOR TO CONSIDERATION BY PLENNARY OF ART 5.WE DO  
NOT/NOT WANT TO ANTAGONIZE POSSIBLE AFRO-ASIAN ALLIES ON ART 5  
BY OUR BEING OUT IN FRONT WITH USA IN FIGHT FOR REASONABLE DISPUTES  
CLAUSE.ON OTHER HAND WE AGREE WITH USA-UK ON IMPORTANCE OF THEIR  
EFFORTS RE DISPUTES CLAUSE AND IN ADDITION WE PREFER TO HELP OUR  
FRIENDS WHENEVER POSSIBLE JUST AS THEY TRY TO HELP US.I HOPE THIS  
ASPECT OF PROBLEM WILL BE CONSIDERED BY USSEA IF AT ALL POSSIBLE  
BEFORE STANFORD LEAVES FOR LDN.

J. A. DEESLEY  
TRANSMITTAL SLIP

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

FROM REGISTRY

FEB 4 1969

Security ..... UNCLASSIFIED .....  
FILE CHARGED OUT

Date ..... January 22, 1969....

TO:.....The Under-Secretary of State.....

.....for External Affairs, OTTAWA.....

FROM:.....The Canadian Embassy.....

.....DJAKARTA, Indonesia.....

Air or Surface ..... Air.....

No. of enclosures .... One.....

The documents described below are for your information.

Despatching Authority... R.E. Branscombe/bb.....

20-3-1-6

37

Copies

Description

Also referred to:

1

Copy of unofficial translation of note,  
dated January 20, 1969, from the Indone-  
sian Dept. of Foreign Affairs acknowledg-  
ing receipt of the Embassy's Aide-Memoire  
of October 9, 1968, concerning the Law of  
Treaties Conference.

Ref: our telegram 26 of Jan17/69

Received

FEB 5 1969

In Legal Division  
Department of External Affairs

## INSTRUCTIONS

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4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

TRANSMITTAL SLIP

To: ..... The Under-Secretary of State ..... Security ..... UNCLASSIFIED .....  
..... for External Affairs, OTTAWA ..... Date ..... January 22, 1969 .....  
FROM: ..... The Canadian Embassy ..... Air or Surface ..... Air .....  
..... JAKARTA, Indonesia ..... No. of enclosures .... One .....

The documents described below are for your information.

R. E. Branscombe

Despatching Authority .... R.E.Branscombe/bb .....

Copies	Description	Also referred to:
1	<p>Copy of unofficial translation of note, dated January 20, 1969, from the Indonesian Dept. of Foreign Affairs acknowledging receipt of the Embassy's Aide-Memoire of October 9, 1968, concerning the Law of Treaties Conference.</p> <p>Ref: our telegram 26 of Jan17/69</p>	

## INSTRUCTIONS

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2ND COPY TO

P.A. BISSENETTE

Feb 20-3-1-6  
14 23/1  
MR

L

point

FM TUNIS JAN22/69 CONFD

TO IT EXTER 42 PRIORITY DE PARIS

REF MYTEL 27 JAN13

LAW OF TREATIES CONFERENCE,ARTICLE5

MESSAOUDA SAID TODAY THAT IF CDA REQUESTS MODIFICATION OF PARA2  
TUNISIA WILL SUPPORT.IF CDA PROPOSES SUPPRESSION OF PARA2 TUNISIA  
WILL ABSTAIN.TUNISIA WILL SUPPORT REQUEST FOR SEPARATE VOTE ON  
PARA2.LET FOLLOWS.

ACTION COPY



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

JAN 28 1969

FROM REGISTRY

FILE CHARGED OUT

TO:

CONFIDENTIEL

TO  
À  
Sous-Secrétaire d'Etat aux Affaires extérieures  
Ottawa

FROM  
De  
l'Ambassade du Canada, Tunis

REFERENCE  
Référence  
Notre télégramme 42 du 22 janvier 1969

SUBJECT  
Sujet  
Conférence sur le Droit des Traités - Article 5

SECURITY  
Sécurité

DATE  
le 22 janvier 1969

NUMBER  
Numéro  
12

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 12	11 Mr

ENCLOSURES  
Annexes

DISTRIBUTION

A l'invitation de Monsieur Messaouda, le Conseiller juridique, je me suis rendu ce matin au Secrétariat d'Etat aux Affaires Etrangères. Monsieur Messaouda m'a dit qu'il avait discuté la demande du Canada avec Monsieur Abed de la Présidence et Monsieur Khelil, le Secrétaire Général aux Affaires Etrangères. Ils étaient arrivés à la position suivante:

L'attitude tunisienne se base sur deux principes:

- 1) La Tunisie ne veut s'ingérer dans les affaires internes d'aucun pays;
- 2) La conférence en question a pour objet la codification du droit international. De ce deuxième principe suit la nécessité de reproduire dans le traité tout ce qui existe en fait dans le droit international; or, il ne faudrait pas passer sous silence certaines pratiques internationales.

A la prochaine conférence la position tunisienne dépendra de celle du Canada. Si le Canada demande une rédaction claire de l'alinéa 2, pour empêcher toute ingérence dans les affaires internes du Canada, la Tunisie votera en faveur de cette modification. Si le Canada maintient sa position de vouloir faire supprimer l'alinéa 2, la Tunisie sera en principe opposée; cependant, compte tenu de la demande qui lui a été adressée par le Canada, la Tunisie s'abstiendra.

En ce qui concerne un vote séparé sur l'alinéa 2, la Tunisie n'a aucune objection et votera en faveur d'une demande canadienne à cet effet.

Le Chargé d'affaires a.i.,

*Louis de Salaberry*  
Louis de Salaberry

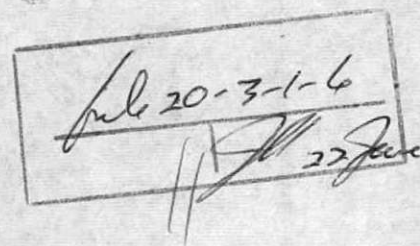
Received

JAN 30 1969

In Legal Division  
Department of External Affairs

ACTION COPY

L



FM KLMPR JAN22/69 CONFD NO/NO STANDARD

TO EXTER 83 PRIORITY

REF OURTEL 68 JAN20

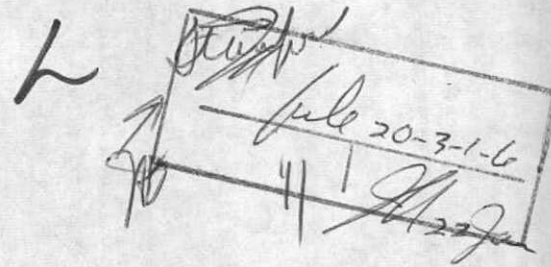
LAW OF TREATIES ARTICLE 5

WEST GERMAN EMB HERE, UPON INSTRUCTIONS FROM BONN, HAS ALSO MADE REPRESENTATIONS TO MFA EXPRESSING CONCERN THAT AALCC MTG, ISBAD MAY DISCUSS ARTICLE 5(2). THRUST OF WEST GERMAN REPRESENTATIONS IS SAME AS OURS IN THAT GERMANY HOPES MALAYSIA WILL OPPOSE ARTICLE 5(2) ON ALL POSSIBLE OCCASIONS. GERMANS ARE DISAPPOINTED THAT MALAYSIA HAS NO/NO REP IN ISBAD FOR MTG.

6. 22.1

003070

ACTION COPY.



FM TOKYO JAN22/69 CONFD NO/NO STANDARD

TO EXTEROTT 98

REF OURTEL 68 JAN17 YOURTEL L128 JAN20

LAW OF TREATIES ART 5

WE PUT IN AIDE MEMOIRE ON MON AND FOLLOWED UP AGAIN YESTERDAY WITH  
INFO THAT INDIA HAD AGREED TO PUT FORWARD OBJECTIONS TO PARA2. OTSUKA  
TOLD US THAT TEL HAD BEEN SENT REMINDING DEL OF JPNSE POSITION AT  
FIRST LAW OF TREATIES CONFERENCE AND INSTRUCTING IT TO PRESS  
OBJECTIONS TO ART 5 PARA2 SHOULD MATTER BE RAISED'''

14.22.1

003071



P.A. DISSONNETTE

FM PRMNY JAN21/69 RESTR NO/NO STANDARD

TO EXTER 118

INFO TT COPEN DE HAGUE

REF YOURTEL L112

UN CONFERENCE ON LAW OF TREATIES

ROBERTSON AVAILABLE TO ATTEND SECOND SESSION OF LAW OF TREATIES  
CONFERENCE IN VIENN.

2. THIS MEANS THAT ROBERTSON WILL BE ABSENT FROM NY FOR MOST OF  
APR AND MAY. USUALLY HE AND TURNER COVER OTHERS WORK DURING ABSENCE.  
TURNERS POSTING AND LEASE HOWEVER TERMINATE APR30. PERS OPS SHOULD  
THEREFORE ENSURE TURNERS REPLACEMENT ARRIVES NO/NO LATER THAN APR30  
AND PREFERABLY EARLY ENOUGH TO PERMIT SOME OVERLAP

COX

8, 22, 1

003072

*Mr. Stearns*  
*Slappo*

ACTION COPY

*File*  
20-3-1-6  
*[Signature]*

*L*

01 58

IBA3/21

PP OTT

DE IBA

P 210905Z

FFM ISBAD JAN21/69NO/NO STD

TO EXTEROTT 63 PRIORITY

REF YOURTEL L117 JAN16

LAW OF TREATIES-ART5

ASIAN-AFRICAN LEGAL CONSULTATIVE CTTEE MTG WILL BE HELD FROM

JAN21 TO JAN31 IN KRCHI.

NNNNVVVVV

4.22.1

003073

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
Personnel Operations Division

SECURITY  
Sécurité

UNCLASSIFIED

FROM  
De  
Legal Division

DATE  
January 21, 1969

REFERENCE  
Référence  
Copenhagen Telegram 23 of January 17, 1969

NUMBER  
Numéro

SUBJECT  
Sujet  
U.N. CONFERENCE ON THE LAW OF TREATIES

FILE	DOSSIER
OTTAWA	
20-3-1-4	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

Finance Div.  
(Inter-  
national  
Conf.  
Section)

The services of a stenographer will be required for the Canadian Delegation to the second session of the U.N. Conference on the Law of Treaties for the full period of the session, April 9 to May 21, 1969.

2. Because the session will last for more than a month, a single stenographer assigned for the full session would forfeit substantial allowances. Consequently it will be necessary, as was the case last year for the first session of this Conference, to arrange to have two stenographers serve the delegation during successive periods.

3. In the telegram under reference Mr. Wershof, who will be head of the Canadian Delegation, indicates that his secretary, Miss Taylor, would be available for the conference. Miss Taylor assisted the delegation during a portion of the first session and we concur in Mr. Wershof's suggestion that she be designated to assist during the second session.

4. You may also wish to consider designating Miss Joan Yorke of the Disarmament Delegation, Geneva, as the second stenographer to assist the delegation. Miss Yorke also assisted during the first session of the conference and is familiar with its methods and procedures.

5. Whether Miss Taylor is to be present for the first or last 29 days of the session will presumably depend upon when Miss Yorke or some other second stenographer could be available. You may wish to consult the Disarmament Delegation about this.

... 2



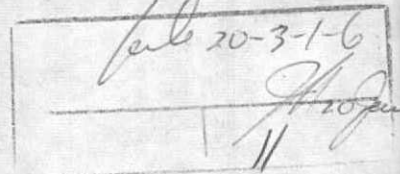
- 2 -

6. We should be grateful if you could make the necessary arrangements for stenographic assistance for the Delegation and inform us so that we in turn may reply to Mr. Wershof.

J. A. BEESLEY

Legal Division

ACTION COPY



FM KLMPR JAN20/69 CONFD NO/NO STD

TO EXTER 68 IMMED

INFO TT ISBAD DELHI TOKYO DE OTT

REF YOURTEL L115 JAN16

LAW OF TREATIES ART 5

GHAZALI IN EUROPE WITH TUNKU BUT SAW RAMANI THIS MORNING AND MADE REPRESENTATIONS ALONG LINE YOUR REFTEL.

2.RAMANI CHECKED AS HE HAD NOT/NOT BEEN AWARE THAT AALCC MTG WAS ABOUT TO CONVENE AND DISCOVERED THAT MALAYSIA IS LISTED ONLY AS AN OBSERVER AT MTG AND WILL NOT/NOT BE PARTICIPATING IN DELIBERATIONS OF AALCC.RAMANI ADDED THAT IT IS HIS UNDERSTANDING THAT EVEN THOUGH MALAYSIA IS LISTED AS OBSERVER IN FACT NO/NO ONE WILL BE ATTENDING SESSION OF MTG.

3.RAMANI EXPRESSED PERSONAL REGRET THAT MALAYSIA WILL NOT/NOT BE REPRESENTED AT MTG QUOTE FOR BUDGETARY REASONS UNQUOTE AS HE CONSIDERS THAT IT IS PREMATURE TO DISCUSS PARA2 OF ART 5 AT AALCC MTG AND HIS INITIAL REACTION WAS THAT MALAYUIA IF PARTICIPATING WOULD HAVE ATTEMPTED TO RESIST INTRODUCTION OF FEDERAL STATES ISSUE OR WOULD HAVE REGISTERED OBJECTIONS TO ART 5(2)IF ISSUE WERE INTRODUCED;UNFORTUNATELY HE ADDED THERE IS NO/NO WAY IN WHICH MALAYSIA CAN DO THIS.

4.HOWEVER RAMANI AGAIN EXPRESSED MALAYSIAN WILLINGNESS TO WORK CLOSELY WITH CDA ON THIS ISSUE IN OTHER FORUMS WHERE MALAYSIA IS A PARTICIPANT

SHORTLIFFE



# MESSAGE

Diary copy  
Div. diary  
file copy  
Tel. file

FM/DE

EXTERNAL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
JAN. 20 1969	20-3-1-6 37	CONF.

TO/A

TOKYO

NO

L-128

PRECEDENCE  
IMMEDIATE

INFO

REF

YOURTEL 68 OF JAN. 17/69

SUB/SUJ

LAW OF TREATIES - Article 5

IN ANY FURTHER DISCUSSIONS WITH JAPANESE  
ON THIS POINT YOU MAY WISH TO MENTION THAT INDIA HAS  
AGREED TO PUT FORWARD OBJECTIONS TO PARAGRAPH 2 SHOULD  
MATTER BE RAISED AT AALCC MEETING. MALAYSIA, WHICH  
HAS OFFERED TO HELP US IN LOBBYING FOR DELETION OF  
PARA. 2 INFORMS US THAT IT HAS ONLY OBSERVER STATUS  
AT AALCC MTG AND WILL NOT, IN ANY CASE, BE SENDING  
REP TO MTG.

DISTRIBUTION  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

LEGAL

2-5406

SIG

TO: Le Sous-Secrétaire d'Etat aux

Affaires Extérieures - OTTAWA

FROM: Ambassade du Canada - PARIS

JAN 20 1969

Security SANS COTE

FILE CHARGED OUT

TO: Date Le 15 janvier 1969

Air or Surface

No. of enclosures une

The documents described below are for your information.

Despatching Authority

*[Signature]*  
(*[Signature]*)

20-3-1-6

37

Copies

Description

Also referred to:

1

Lettre à M. H. Golsong, Directeur des Aff. jur., Conseil de l'Europe, en date du 15 janvier 1969, acceptant invitation faite au Gouvernement - re: représentation canadienne à la réunion du Bureau du Conseil de l'Europe à Paris du 6 au 8 février 1969.

Votre tel L84 du 13/1/69

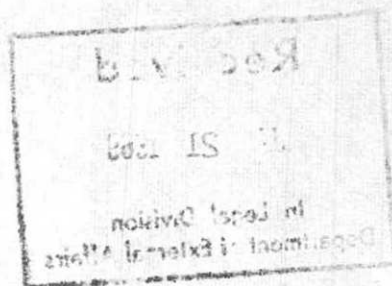
Received

JAN 21 1969

In Legal Division  
Department of External Affairs

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35, avenue Montaigne,  
Paris (8e).

Le 15 janvier 1969.

Monsieur,

Le Gouvernement canadien nous a priés d'accepter l'aimable invitation que vous lui faisiez parvenir par lettre le 19 décembre 1968 de se faire représenter à la réunion qui aura lieu au Bureau du Conseil de l'Europe à Paris, du 6 au 8 février 1969, aux fins de préparer la 21ème session de la Conférence diplomatique de Vienne sur le droit des traités.

La représentation canadienne à cette réunion sera composée de Monsieur Max H. Werahof, Conseiller de la Reine, Ambassadeur du Canada à Copenhague et Chef de la Délégation canadienne à la Conférence diplomatique sur le droit des traités, ainsi que de Monsieur J.B. Stanford de la Direction juridique du Ministère canadien des Affaires extérieures.

Veuillez agréer, Monsieur, l'assurance de notre très haute considération.

Le Conseiller

[J. DUPUIS

Jacques Dupuis

Monsieur H. Golsong,  
Directeur des Affaires juridiques,  
Conseil de l'Europe (Secrétariat général),  
STRASBOURG.

OTT131

BUA01/20

RR OTT

DE BUA

R 201300Z

FM BAIRS JAN20/69

TO EXTEROTT 95

REF OURTEL 62 JAN10

LAW OF TREATIES CONFERENCE

PARAGUAYAN MINISTRY OF FOREIGN AFFAIRS NOTE STATES THAT THEY  
QUOTE AS YET HAVE NOT/NOT DECIDED DEFINITELY ON PARTICIPATION,  
BUT DUE TO THE PROBLEMS THAT PREVENTED PARTICIPATION AT FIRST  
SESSION LAST YEAR, POSSIBLEY(they) WILL ALSO NOT/NOT BE ABLE TO  
PARTICIPATE THIS YEAR UNQUOTE.

2. FROM NATURE OF THIS REPLY WE CONCLUDE THAT THEY PROBABLY WILL  
NOT/NOT PARTICIPATE.

NNNN

17.20.1

ACTION COPY

L

Feb 20-3-1-6  
11-21-69

003081



File ✓  
Diary  
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

The Canadian Embassy,  
TUNIS, Tunisia.

FROM  
De

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

REFERENCE  
Référence

Your telegram No. 27 of January 13, 1969

SUBJECT  
Sujet

Law of Treaties - Article 5

SECURITY  
Sécurité

CONFIDENTIAL

DATE

January 20, 1969

NUMBER  
Numéro

L-127

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

ENCLOSURES  
Annexes

DISTRIBUTION

We are grateful for the information contained in your telegram. We appreciate the fact that Messaouda would like the proposed convention, in the interests of completeness to deal with the problem of treaty making by members of a federal state and for that reason would prefer the revision of paragraph 2 to its deletion. We also, of course, would prefer an acceptable provision on the federal states question to none at all. However, at the first session an Austrian amendment which would have gone a long way to meet our concern failed to obtain even a simple majority. At the second session all articles, whether in the form adopted in Committee of the Whole at the first session or in some amended form, must receive a two-thirds majority to be adopted. Thus any amendment we propose would require the support of two thirds of the representatives, a result which the Austrian experience indicates we are unlikely to achieve.

2. The probable reason for the inability of the conference to reach a consensus (assuming paragraph 2 is deleted) on the question of treaty making by members of a federal state is that state practice in this area is not yet sufficiently developed to enable agreement to be reached either on what the law is or what it should be. Only three federal states have experience in this field, Switzerland, West Germany and the USSR, and in each case the practice developed as a result of unique historical or political circumstances. The absence of a provision dealing with this question will not represent a significant defect in the new convention for the draft, even in its present form, does not attempt to deal exhaustively with the law of treaties. Such major elements of treaty law as state succession in respect of treaties, treaty-making by international organizations and the effect of war on treaty obligations are expressly excluded from the scope of the draft convention.

3. You may wish to draw these points to Messaouda's attention so that he will have them in mind when considering the Tunisian position on Article 5. We shall look forward to receiving from you in due course an indication of the Tunisian decision on this question.

J. A. BEESLEY

Under-Secretary of State  
for External Affairs.

File ✓  
Diary  
Div. Diary  
EXTERNAL AFFAIRS



Legal Div./J.S.Stanford/ss  
AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
A The Under-Secretary (through the Legal Adviser)

FROM  
De Legal Division

REFERENCE  
Référence Our memorandum of January 6, 1969

SUBJECT  
Sujet Law of Treaties - Article 5(2)  
Western European and Others Preliminary Meetings.

SECURITY  
Sécurité CONFIDENTIAL

DATE January 17, 1969

NUMBER  
Numéro

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

ENCLOSURES  
Annexes

DISTRIBUTION

Our memorandum under reference referred to discussions with Mr. Wershof concerning the forthcoming preliminary meetings on the Law of Treaties. One of the suggestions contained in that memorandum was that, at the forthcoming preliminary meetings in Paris, Messrs. Wershof and Stanford would conduct active private lobbying in support of our position on the federal states paragraph but would make no statement on this subject in the general discussion unless it became necessary to reply to a statement by France.

2. Mr. Wershof has now sent a telegram noting that the Council of Europe has invited participants in the Paris meetings to indicate whether they wish to raise any particular points during these discussions. Mr. Wershof goes on to say that "my inclination is to raise Article 5 question and briefly to explain Canadian intentions despite the fact that the French delegate will preside."

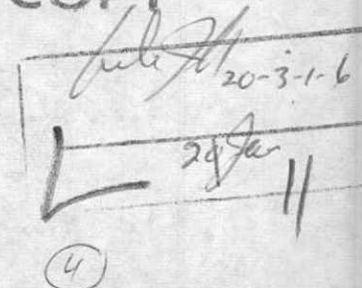
3. While there are arguments for and against raising the federal states issue in the general discussion in Paris, it is our view that it would not be in the Canadian interest to provoke a general discussion of the federal states question at Paris. Such a discussion is unlikely to obtain for us any support which we cannot get through bilateral representations and private lobbying. Moreover, a general discussion in Paris would provide an opportunity for the French Government to influence those delegations which are undecided. If, for instance, a general discussion were to be held and Switzerland were to adopt a position contrary to our own, this could be an unfortunate blow to a campaign for support which, so far at least, is going well.

4. Our recommendation therefore is that Canada not take the initiative in raising the federal states issue in the general discussion at Paris. We should be grateful to know whether you concur.

J. A. BEESLEY

Legal Division.

ACTION COPY



FM MANIL JAN17/69 CONFD NO/NO STANDARD

TO EXTER EX10

REF YOULET L737(M)SEP10/68 YOURTEL L56 JAN7

LAW OF TREATIES CONFERENCE

SAW UNDERSECY INGLES AND PLANA OF MFA TODAY.MFA CTTEE(COM-  
PRISING MEMBERS OF PHIL DEL TO VIENN CONF LAST YEAR AND ONE  
OR TWO OTHERS)HAS NOT/NOT YET DISCUSSED COMPOSITION OF  
DEL TO THIS YEARS CONF OR PHIL POSITION ON ARTICLES TO BE  
REVIEWED.HOWEVER CTTEE WILL BE CONVENED SHORTLY WITH PROSPECT  
THAT FIRM INDICATION PHIL POSITION ON ARTICLE 5 CAN  
BE GIVEN TO ME ABOUT MID-FEB.MEANTIME PRELIMINARY  
REACTION TO MY REPRESENTATIONS SUGGESTS PHIL POSITION ON  
PARA TWO AS REFLECTED ON SECOND VOTE LAST YEAR WILL NOT/NOT  
CHANGE AT FORTHCOMING SESSION.



*in Reply*  
*Stamped*

## ACTION COPY

*Feb 20-3-1-6*  
*20 Jan 11*

OTT191

WD076FROM SJOSE JAN17/69

TO EXTERNAL OTT 29

REF YOURLET L-1233 DEC27/68 AND OURTEL 13 JAN10/69

LAW OF TREATIES CONFERENCE - ARTICLE FIVE

A NOTE ASKING ABOUT NICARAGUAN INTENTIONS RE REPRESENTATION AT  
FORTHCOMING MEETING WAS LEFT WITH FM IN MANAGUA JAN13. AIDE MEMOIRE  
IDENTICAL IN TERMS TO ONE DELIVERED HERE LIKEWISE DELIVERED TO FM  
JAN13. WILL SEMD FOLLOW UP AFTER REASONABLE DELAY.

NNNN KVVVVV

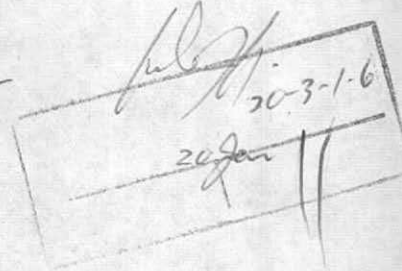
5.20.1

003085

**ACTION COPY**

*Sounds like  
the Indonesian del  
will write its own  
instructions*

*M. Presley  
Stamped*



FM JKRTA JAN17/69 CONFID

TO TT EXTEROTT 26 PRIORITY DE TOKYO

INFO TT ISBAD DE OTT

REF YOURTEL L51 JAN9

WE SPOKE TO MISS LAURENS MFA BUT SHE WAS NOT/NOT PREPARED TO GO  
BEYOND ASSURING US THAT CAREFUL CONSIDERATION WAS BEING GIVEN TO  
OUR REPRESENTATION AT HIGHEST LEVEL. SHE DID NOT/NOT EXPECT  
INDONESIAN GOVT WOULD TAKE DECISION ON POINT RAISED BY US NOV16  
(GROUP CORUPT) ON OTHER SUBSTANTIATIVE MATTERS COMING BEFORE CON-  
FERENCE UNTIL SECOND SESSION STARTED. SHE IMPLIED INDONESIAN DEL  
WOULD PROBABLY HAVE LATITUDE IN VOTING ON SOME ISSUES.

2. MISS LAURENS WILL BE INDONESIAN DEL TO AFRO-ASIAN LEGAL CONSULT-  
ATIVE GROUP IN KRCHI JAN1-31. LAW TREATY CONFERENCE SHE SAID WAS KEY  
ITEM ON AGENDA. WE SHALL CALL ON HER AFTER CONFERENCE TO SOUND HER  
AGAIN ON OUR REPRESENTATIONS'''

ACTION COPY

L

20-3-1-6
37

20-3-1-6  
JLH  
me in  
good if no

ours?

FM VIENN JAN17/69 CONFD NO/NO STANDARD

TO EXTEROTT 37

REF MYTEL 12 JAN7

LAW OF TREATIES CONFERENCE-ART 5

VEROSLA PHONED THAT AUSTRIAN POSITION NOW SUPPORTS OURU. HE SAID  
NETTL OF MFA (WHO WAS CHAIRMAN THIRD CTTEE UNGA) WILL CONTACT ME TO  
GIVE ELABORATION.

MCCORDICK

16.17.1



Stanford

L ACTION COPY

Feb 2, 1969

20-3-1-6

37

11

FM DELHI JAN17/69 CONFD NO/NO STANDARD

TO EXTER 196 PRIORITY

REF YOURTEL L116 JAN16

LAW OF TREATIES-ARTICLE 5

SINCE KRISHNA RAO HAD FLU WE SPOKE AS INSTRUCTED TODAY TO DEPUTY DIRECTOR OF LEGAL DIV, DR JAGOTA, WHO WILL PROBABLY BE INDIAN REP AT CONSULTIVE CTTEE MTG. IT BEGINS ON JAN21. JAGOTA READILY AGREED TO PUT FORWARD OBJECTIONS TO ARTICLE 5(2) WHICH CDN AND INDIAN GOVTS SHARE, IF ISSUE IS DISCUSSED IN MTG. JAGOTA DOUBTED THAT IT WOULD BE BROUGHT UP AS SPECIAL ISSUE BUT MIGHT POSSIBLY BE INCLUDED IN GENERAL REVIEW OF FIRST SESSION OF LAW OF TREATIES CONFERENCE.

2. JAGOTA REAFFIRMED THAT GOI WOULD ALSO AT SECOND SESSION OF CONFERENCE SUPPORT SEPARATE VOTE ON PARA2 BUT HE WAS NOT/NOT SO SURE ABOUT INDIAN ATTITUDE ON OPPOSING ARTICLE 5 AS A WHOLE IF SEPARATE VOTE WAS NOT/NOT ACHIEVED. WE TOLD HIM OF KRISHNA RAO'S VIEWS ON THIS (OURTEL 3176) WHICH WILL PRESUMABLY PREVAIL. FOR GOOD MEASURE WE REHEARSED YOUR ARGUMENTS ON THIS POINT.

3. JAGOTA SAID INDIAN ASSESSMENT WAS THAT ARTICLE 5(2) WAS UNLIKELY TO RECEIVE TWO THIRDS MAJORITY AT SECOND SESSION.

11.17.1

OTT038

LDN031

BRU012

HAG2/17

COP1/17

RR OTT

DE COP

R 170915Z

FM COPEN JAN17/69

TO EXTER 23

LEGAL DIV DE WERSHOF

LAW OF TREATIES CONFERENCE VIENN APR9 TO MAY21-STENO FOR CDN DEL

IT IS INTENDED TO HAVE ONE STENO FOR CDN DEL AS WE FOUND LAST

YEAR THAT THIS WAS ESSENTIAL. IF PERS DIV WOULD LIKE TO

DESIGNATE MY SECRETARY MISS TAYLOR FOR THIS PURPOSE, SHE WOULD

BE AVAILABLE AND IS OF COURSE FAMILIAR WITH WORK OF THIS

CONFERENCE. ONLY PROBLEM IS THAT UNDER PRESENT FINANCIAL REGS

SHE CANNOT/NOT BE EXPECTED TO BE ABSENT FROM COPEN FOR MORE THAN

30 DAYS. ACCORDINGLY, ANOTHER STENO WOULD HAVE TO BE BORROWED

FROM SOMEWHERE FOR REMAINING TWO WEEKS. MISS TAYLOR COULD COME

EITHER FOR FIRST 29 DAYS BEGINNING APR7 OR 8 OR FOR LAST 29

DAYS.

2. IN LDN LAST WEEK I CONSULTED MCCORDICK ABOUT THIS PROBLEM.

HE WISHES TO BE HELPFUL BUT IT IS CLEAR THAT HE COULD NOT/NOT

SPARE ONE OF HIS TWO STENOS FOR TWO WEEKS. FOR THE STENO

TO BE REALLY USEFUL TO THE DEL SHE MUST BE AVAILABLE IN THE HOTEL

THROUGHOUT THE DAY. PLEASE ADVISE.

*Handwritten notes and stamps:*  
- Stamp: **ACTION COPY**  
- Stamp: **Feb 20-3-1-6**  
- Stamp: **21 Jan**  
- Stamp: **L**  
- Stamp: **Mr B.**  
- Stamp: **If you agree,**  
- Stamp: **I propose a memo**  
- Stamp: **to Pers Div asking**  
- Stamp: **for Joan for the last**  
- Stamp: **del. Geneva for the last**  
- Stamp: **two weeks. She helped**  
- Stamp: **us out last year**  
- Stamp: **Jan**  
- Stamp: **Joan**  
- Stamp: **Did return it**  
- Stamp: **I have told her**  
- Stamp: **the money is**  
- Stamp: **they go to**  
- Stamp: **crash in Gen**  
- Stamp: **when EWA (v**  
- Stamp: **in return**  
- Stamp: **but at all**  
- Stamp: **depends on Gen**  
- Stamp: **who would have to**  
- Stamp: **be committed**

10.17.1



ACTION COPY

L

20-3-1-6  
37 11

no should  
tell her  
7 members  
Malayan  
radio

FM TOKYO JAN17/69 CONFD NO/NO STANDARD

TO EXTEROTT 68

REF YOURTEL L114

LAW OF TREATIES-ART V

BECAUSE OTSUKA CANNOT/NOT RECEIVE US UNTIL MON, WE PUT THE POINTS OF YOUR REFTEL TO HIM ON THE PHONE. HE UNDERTOOK TO PASS REPRESENTATIONS TO JPNSE DEL IMMEDIATELY. WE WILL FOLLOW UP MON WITH AIDE-MEMOIRE.

2. OTSUKA SAID HANDLING OF ART 62 AT KRCHI MTG CONTINUED TO GIVE JPNSE CONSIDERABLE WORRY. HE FEARED THAT JPN WOULD BE ISOLATED IN A CONFERENCE DOMINATED BY RADICALS SUCH AS UAR, INDIA AND IRAQ. IN ORDER TO COUNTER THIS, JPNSE DEL (MADE UP OF FORMER AMB TO FRANCE NISHIMURA, JPN UNDEL LEGAL ADVISER OWADA AND MEMBER OF OTSUKAS DIV) WAS MAKING PRE-CONFERENCE TOUR OF THAILAND, PAKISTAN AND CYLON (WHERE, THOUGHT OTSUKA, THEY NOW WERE) TO DRUM UP SUPPORT FOR JPNSE VIEWS. OTSUKA WAS PESSIMISTIC THIS EFFORT WOULD PROVE EFFECTIVE; HE THOUGHT BEST TO BE HOPED FOR WAS THAT REPORT OF MTG NOT/NOT SINGLE OUT JPN AS BEING ONLY STATE OPPOSED TO RADICALS VIEWS.

3. IN ANSWER TO OUR REPRESENTATIONS, OTSUKA SAID JPNSE VIEWS ON ART V HAD NOT/NOT CHANGED. THEY WOULD THUS OPPOSE ART V PARA 2 IF MATTER WAS RAISED. OTSUKA WAS INTERESTED TO LEARN OUR INFO THAT ART V WOULD BE DISCUSSED; HE HAD ASSUMED THAT KRCHI MTG WOULD NOT/NOT BE ABLE TO DEAL WITH MATTERS VOTED ON AT FIRST SESSION UNLESS ARTS QUOTE LEFT OVER UNQUOTE WERE CLEARED OUT OF THE WAY MUCH FASTER THAN EXPECTED.

4. ALTHOUGH OTSUKA THUS ASSURED US THAT JPNSE VIEWS ON ART V REMAIN AS WE WOULD WANT THEM TO BE, OUR IMPRESSION WAS THAT HE AT LEAST

...2

25/17/11

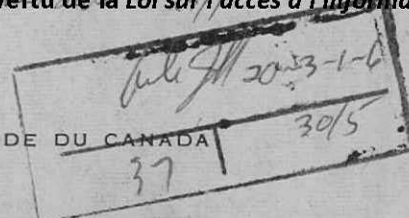
PAGE TWO 68 CONFD NO/NO STANDARD

WAS RESIGNED TO JPN NOT/NOT BEING ABLE TO HAVE ITS VIEWS CARRIED  
AT KRCHI.THIS PESSIMISM,IF IT HAS INFECTED MEMBERS OF JPNSE DEL,  
MIGHT AFFECT FORCE WITH WHICH JPN WOULD BE PREPARED TO ARGUE  
AGAINST ART V PARA2.WE WILL BE IN A BETTER POSITION TO JUDGE AFTER  
OUR MTG ON MON\*\*\*

CANADIAN EMBASSY



AMBASSADE DU CANADA



Prinsesse Maries Allé 2,  
1908 COPENHAGEN V, Denmark,  
January 17, 1969.

Dear Joe,

Re: Law of Treaties Conference in Vienna  
April 9 to May 21, 1969; Office Equip-  
ment for Canadian Delegation.

When I met Mr. McCordick in London last week, I asked him to make some enquiries on this subject.

He has since confirmed that his Embassy can again lend a typewriter to the delegation and one filing cabinet.

*memo to  
Suzanne  
AW*

In view of the increased size of the delegation this year and the large number of documents necessarily carried over from last year, I think that we need two filing cabinets. One of these must be capable of being locked with a combination lock, whereas the other will not be locked and will be used solely for conference documents. As the Vienna Embassy can lend us one filing cabinet, I suggest that you arrange for authority to be sent to the Embassy to rent a second cabinet for the use of the delegation. Also authorize them to rent a small typewriter table (preferably on casters).

The sitting room of the suite at the hotel is going to be pretty crowded but we will be able to manage. I do not feel justified in asking for authority to rent an additional single room for use solely as an office.

Yours sincerely,

*M.H. Wershof*  
M.H. Wershof

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

cc: Canadian Embassy, Vienna,  
Attn: Ambassador McCordick

P.S. for Embassy Vienna

Although we will not ask for an additional hotel bedroom to be used as an office, the following has occurred to me, and Miss Taylor thinks that it would make sense from the viewpoint

.../2

003092



2.

of the stenographer. Assuming that we are getting the same suite as last year, the sitting room not only connects with my bedroom but also connects on the other side with another bedroom which we did not rent last year. If that bedroom could be reserved as the bedroom for whoever will be the stenographer of the delegation, a small typewriter table and typewriter could be in her bedroom instead of being in the sitting room. Other equipment such as filing cabinets of course would be in the sitting room. Such an arrangement would reduce the crowding in the sitting room, and would also make it feasible for the stenographer to do typing while members of the delegation are carrying on discussions. Would Vienna please let me know whether this makes sense and if this room is available.

M.H.W.

Legal Div./J.S.Stanford/zs

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



MEMORANDUM

TO  
À

The Under-Secretary (through the Legal Adviser)

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De

Legal Division

DATE

January 17, 1969

REFERENCE  
Référence

Our memorandum of January 6, 1969

NUMBER  
Numéro

SUBJECT  
Sujet

Law of Treaties - Article 5(2)  
Western European and Others Preliminary Meetings.

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

ENCLOSURES  
Annexes

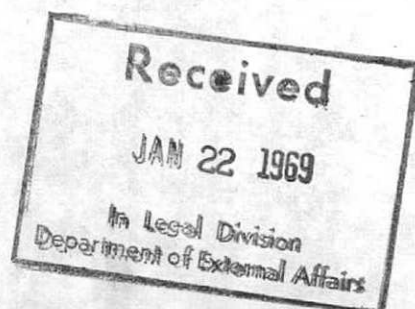
DISTRIBUTION

Our memorandum under reference referred to discussions with Mr. Wershof concerning the forthcoming preliminary meetings on the Law of Treaties. One of the suggestions contained in that memorandum was that, at the forthcoming preliminary meetings in Paris, Messrs. Wershof and Stanford would conduct active private lobbying in support of our position on the federal states paragraph but would make no statement on this subject in the general discussion unless it became necessary to reply to a statement by France.

2. Mr. Wershof has now sent a telegram noting that the Council of Europe has invited participants in the Paris meetings to indicate whether they wish to raise any particular points during these discussions. Mr. Wershof goes on to say that "my inclination is to raise Article 5 question and briefly to explain Canadian intentions despite the fact that the French delegate will preside."

3. While there are arguments for and against raising the federal states issue in the general discussion in Paris, it is our view that it would not be in the Canadian interest to provoke a general discussion of the federal states question at Paris. Such a discussion is unlikely to obtain for us any support which we cannot get through bilateral representations and private lobbying. Moreover, a general discussion in Paris would provide an opportunity for the French Government to influence those delegations which are undecided. If, for instance, a general discussion were to be held and Switzerland were to adopt a position contrary to our own, this could be an unfortunate blow to a campaign for support which, so far at least, is going well.

4. Our recommendation therefore is that Canada not take the initiative in raising the federal states issue in the general discussion at Paris. We should be grateful to know whether you concur.



*Healey*  
Legal Division.

17.1.32(05)

File   
Diary  
Dig. Diary  
EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Office of the High Commissioner for Canada  
ACCRA, Ghana

TO  
À

FROM  
De

REFERENCE  
Référence

SUBJECT  
Sujet

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

Our telegram L-48 of January 7, 1969  
and Copenhagen telegram 17 of January 15, 1969

Law of Treaties conference - Article 5

SECURITY  
Sécurité

CONFIDENTIAL

DATE

16 January 1969

NUMBER  
Numéro

L-122

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

ENCLOSURES  
Annexes

DISTRIBUTION

We should be grateful if you could follow up Mr. Wershof's discussions in London with Mr. Owusu, the Attorney General of Ghana, by making representations to the Ghanaian Ministry of Foreign Affairs as suggested in the final paragraph of Copenhagen's telegram.

2. We would hope that it will be possible for you to obtain from the Ministry of Foreign Affairs confirmation of the assurances given by Mr. Owusu to Mr. Wershof concerning the Ghanaian position on Article 5(2).

J. A. BEESLEY

Under-Secretary of State  
for External Affairs.



## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		16 JAN/69	20-3-1-6 37	UNCLASS.
TO/A	ISLAMABAD	NO		PRECEDENCE
		L-117		IMMEDIATE
INFO	TOKYO, KUALA LUMPUR, DELHI			

REF YOURTEL 37-JANUARY 14

SUB/SUJ LAW OF TREATIES - ARTICLE 5

PLEASE INFORM US SOONEST DATE OF COMMENCEMENT OF FORTHCOMING MEETING OF  
ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
JSSTANFORD:ZS

LEGAL

2-5406

SIG.....  
J. A. BEESLEY

## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		16 JAN/69	20-3-1-6	CONFID.
TO/A	DELHI		NO	PRECEDENCE
			L-116	IMMEDIATE
INFO				

REF YOURTEL 3176 SEPT.23/68

SUB/SUJ LAW OF TREATIES -ARTICLE 5

PAKISTAN MFA HAS INFORMED OUR HIGH COMMISSION IN ISBAD OF EXPECTATION THAT ARTICLE 5 OF DRAFT ARTICLES ON THE LAW OF TREATIES WILL BE DISCUSSED AT FORTH-COMING MEETING OF AFRICAN-ASIAN LEGAL CONSULTATIVE COMMITTEE.

2. AS WAS INDICATED IN PARA 11 OF OURLET L-737(M) SEPT.10/68, WE WOULD PREFER THAT THE FEDERAL STATES ISSUE (PARA 2 OF ARTICLE 5) NOT BE RAISED AT AALCC MEETING. IN VIEW OF THE FACT THAT IT MAY BE RAISED HOWEVER, WE WISH TO ASSURE THAT OBJECTIONS TO PARA 2 OF ARTICLE 5 ARE GIVEN CONSIDERATION DURING THE AALCC'S DISCUSSIONS OF THIS ISSUE.

3. IN VIEW OF THE FACT THAT INDIA'S VIEWS ON ARTICLE 5(2) CORRESPOND LARGELY TO OUR OWN, WE SHOULD BE GRATEFUL IF YOU COULD SEEK APPOINTMENT WITH RAO FOR THE SPECIFIC PURPOSE OF EXPRESSING THE HOPE THAT, IF THE FEDERAL STATES ISSUE IS DISCUSSED IN THE AALCC MEETING, INDIA WILL PUT FORWARD THE OBJECTIONS TO ARTICLE 5(2) WHICH OUR TWO GOVTS. SHARE.

4. YOU MAY INFORM RAO THAT WE ARE MAKING SIMILAR REQUEST TO JAPAN AND MALAYSIA.

5. AS WE UNDERSTAND AALCC MEETING BEGINS JAN.20, PLEASE MAKE REPRESENTATIONS SOONEST.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. SEAMFORD/xx	LEGAL	2-5406	SIG..... J. A. BEESLEY .....J. A. BEESLEY



# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE	
		16 JAN/69	20-3-1-6	CONFID.	
TO/A	TOKYO	NO		PRECEDENCE	
		L-114		IMMEDIATE	
INFO					

REF YOURTEL 1252-SEPT.21/68

SUB/SUJ LAW OF TREATIES \* ARTICLE 5

PAKISTAN MFA HAS INFORMED OUR HIGH COMMISSION IN ISBAD OF EXPECTATION THAT ARTICLE 5 OF DRAFT ARTICLES ON THE LAW OF TREATIES WILL BE DISCUSSED AT FORTHCOMING MEETING OF AFRICAN-ASIAN LEGAL CONSULTATIVE COMMITTEE.

2. AS WAS INDICATED IN PARA 11 OF OURLET L-737(M) SEPT.10/68, WE WOULD PREFER THAT THE FEDERAL STATES ISSUE (PARA 2, ART.5) NOT BE RAISED AT AALCC MEETING. IN VIEW OF THE FACT THAT IT MAY BE RAISED HOWEVER, WE WISH TO ~~XXX~~ ASSURE THAT OBJECTIONS TO PARA 2 OF ARTICLE 5 ARE GIVEN CONSIDERATION DURING THE AALCC'S DISCUSSIONS OF THIS ISSUE.

3. IN VIEW OF THE FACT THAT JAPAN'S VIEWS ON ARTICLE 5(2) CORRESPOND LARGELY TO OUR OWN, WE SHOULD BE GRATEFUL IF YOU COULD SEEK APPOINTMENT WITH OTSUKA FOR THE SPECIFIC PURPOSE OF EXPRESSING THE HOPE THAT, IF THE FEDERAL STATES ISSUE IS DISCUSSED IN THE AALCC MEETING, JAPAN WILL PUT FORWARD THE OBJECTIONS TO ARTICLE 5(2) WHICH OUR TWO GOVTS. SHARE.

4. YOU MAY INFORM OTSUKA THAT WE ARE MAKING SIMILAR REQUEST TO MALAYSIA AND INDIA.

5. AS WE UNDERSTAND AALCC MEETING BEGINS JAN 20, PLS MAKE REPRESENTATIONS SOONEST.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... JSSSTANFORD/zs	LEGAL	2-5406	SIG..... J. A. BEESLEY J. A. BEESLEY

## MESSAGE

FM/DE	EXTERNAL OPT	DATE	FILE / DOSSIER	SECURITY SECURITE
		16 JAN/69	20-3-1-6 37	CONF.
TO/A	KUALA LUMPUR	NO		PRECEDENCE
		L-115		IMMEDIATE
INFO				

REF YOURTEL 1119-SEPT. 30/68

SUB/SUJ LAW OF TREATIES - ARTICLE 5

PAKISTAN MFA HAS INFORMED OUR HIGH COMMISSION IN ISBAD OF EXPECTATION THAT ARTICLE 5 OF DRAFT ARTICLES ON THE LAW OF TREATIES WILL BE DISCUSSED AT FORTH-COMING MEETING OF AFRICAN-ASIAN LEGAL CONSULTATIVE COMMITTEE.

2. AS WAS INDICATED IN PARA 11 OF OURLET L-737(M) SEPT.10/68, WE WOULD PREFER THAT THE FEDERAL STATES ISSUE (PARA 2 OF ART.5) NOT BE RAISED AT AALCC MEETING. IN VIEW OF THE FACT THAT IT MAY BE RAISED HOWEVER, WE WISH TO ASSURE THAT OBJECTIONS TO PARA 2 OF ARTICLE 5 ARE GIVEN CONSIDERATION DURING THE AALCC'S DISCUSSIONS OF THIS ISSUE.

3. IN VIEW OF THE FACT THAT MALAYSIA'S VIEWS ON ARTICLE 5(2) CORRESPOND *and Ghazali suggests our two depts might work closely on this issue,* LARGELY TO OUR OWN, WE SHOULD BE GRATEFUL IF YOU COULD SEEK APPOINTMENT WITH GHAZALI OR RAMANI FOR THE SPECIFIC PURPOSE OF EXPRESSING THE HOPE THAT, IF THE FEDERAL STATES ISSUE IS DISCUSSED IN THE AALCC MEETING, MALAYSIA WILL PUT FORWARD THE OBJECTIONS TO ARTICLE 5(2) WHICH OUR TWO GOVTS. SHARE.

4. YOU MAY INFORM MFA THAT WE ARE MAKING SIMILAR REQUEST TO JAPAN AND INDIA.

5. AS WE UNDERSTAND AALCC MEETING BEGINS JAN. 20, PLS.MAKE REPRESENTATIONS SOONEST.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... JSSSTANFORD/zs	LEGAL	2-5406	SIG..... J.A. BEESLEY



File, diary, div.diary, tel. file  
J.S.S.

# MESSAGE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 JAN. 76	20-3-1-6	CONF.

FM/DE

PERMISNY

NO	PRECEDENCE
L-118	ROUTINE

TO/A

BY BAG - TOKYO AND LAGOS

INFO

~~STANFORD-ROBERTSON TELCON~~

REF

LAW OF TREATIES - ARTICLE 5

SUB/SUJ

IN ADDITION TO REPRESENTATIONS TO GUINEA AND LIBERIA REQUESTED IN OURTEL L-803 OF 16 SEPT./68, PLEASE SUBMIT AIDE-MEMOIRE TO REPRESENTATIVES OF SIERRA LEONE AND KOREA, WITH REQUEST THAT THEY NOTIFY THEIR GOVERNMENTS OF CANADIAN POSITION AND REQUEST FOR SUPPORT. WE WOULD NOT EXPECT YOU TO DISCUSS THE ISSUES IN DETAIL WITH SIERRA LEONE AND KOREAN REPS. PURPOSE OF YOUR REPRESENTATIONS WOULD BE SIMPLY TO SUPPLEMENT EFFORTS BEING MADE BY OUR POSTS IN LAGOS AND TOKYO AND TO PREPARE GROUND FOR CANADIAN LOBBYING IN VIENNA.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....JSSSTANFORD:ZS.....

LEGAL

2-5406

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



ACTION COPY

20-3-1-6  
16 Jan 11

L

FM CAIRO JAN16/69 RESTR

TO EXTER 57

REF YOURTEL L60 JAN7

UN LAW OF TREATIES CONFERENCE-SUDAN PARTICIPATION

WE MADE ENQUIRY AND LEFT AIDE MEMOIRE ON THIS SUBJ WITH SUDANESE  
EMB CAIRO LAST AUG, UPON RECEIPT OF YOURTEL L675 AUG19/68. IN SPITE  
OF SUBSEQUENT PHONE CALLS TO COUNSELLOR OF EMB, WE HAVE STILL RE-  
CEIVED NO/NO REPLY. WE WERE ASSURED BY COUNSELLOR TODAY THAT CABLE  
WILL BE SENT TO KHARTOUM AND THAT REPLY CAN BE EXPECTED SHORTLY.

\*\*\*

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25.16.1

003101

MESSAGE

DATE		FILE / DOSSIER		SECURITY SECURITE
Jan. 16/69		20-3-1-6		RESTD.
		37		
FM/DE	EXTERNAL OTT			
TO/A	PERMIS N.Y.			PRECEDENCE ROUTINE
INFO	COPEN (BY BAG)			

REF

SUB/SUJ

U.N. CONFERENCE ON LAW OF TREATIES

PLEASE CONFIRM ROBERTSON WILL BE  
AVAILABLE TO ATTEND SECOND SESSION LAW OF TREATIES  
CONFERENCE VIENNA APRIL 9 TO MAY 21.

2. ROBERTSON SHOULD PLAN TO ARRIVE VIENNA  
MONDAY APR. 7.

Received

JAN 17 1969

In Legal Division  
Department of External Affairs

DISTRIBUTION  
LOCAL/LOCALE

PERS. OPS. DIV.  
FINANCE DIVISION (TRAVEL SECTION: MR. McCORD)

(DONE IN LEGAL

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

LEGAL

2-5406

SIG P.A. BISCONNETTE  
P.A. BISCONNETTE



EXTERNAL AFFAIRS



16.24.1  
AFFAIRES EXTÉRIEURES JAN 24 1969

FROM RASTRY

FILE CHARGED OUT

TO: Mr. Stanford  
CONFIDENTIAL

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

FROM  
De The Embassy, Quito, Ecuador.

REFERENCE  
Référence Your Letter No. L-1221 of December 23, 1968

SUBJECT  
Sujet Law of Treaties - Article 5

SECURITY  
Sécurité

DATE January 16, 1969

NUMBER  
Numéro 16

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

ENCLOSURES  
Annexes

DISTRIBUTION

Bogota ✓

In the temporary absence of the Minister of External Relations I yesterday spoke with the Under Secretary, Dr. Alfonso Barrera Valverde. I explained that our views on Article 5 had already been discussed on several occasions with the legal advisors of the Ministry, but that in order to emphasize the importance which Canada attaches to the matter Mr. Sharp had wished to write personally to the Minister about it. Dr. Barrera carefully read the Minister's letter, and seemed pleased with it. He said that Ecuador considers legal matters to be most important, and that as a matter of urgency he would bring Mr. Sharp's letter to the attention of the Minister and of the legal department. He hoped that he would be able to give us an answer soon.

2. I should like to thank you for providing this letter as I had requested. Like other small countries Ecuador is very touchy on matters relating to sovereignty, deference to national dignity, protocol and precedence and the like. Had we not provided the letter, once it had been requested, it would very likely have been regarded as an affront and as a result our chances of support on Article 5 would have been minimal.

*G. C. Cook*  
G. C. Cook,  
Chargé d'Affaires a.i.

Received

JAN 24 1969

In Legal Division  
Department of External Affairs

*Deputy, Stanford-*

ACTION COPY

L

*I think my must  
raise this witnessed*  
Feb 20-3-1-6  
JH 23/1

FM COPEN JAN16/69 CONFD NO/NO STANDARD

TO TT EXTER 18 DE HAGUE

LAW OF TREATIES-ARTICLE 5-WEO MTG IN PARIS FEB6-8

LET OF DEC19 FROM COUNCIL OF EUROPE INVITING CDA TO THIS MTG ASKS  
WHETHER WE WISH TO RAISE ANY PARTICULAR POINT.MY INCLINATION IS TO

RAISE ARTICLE 5 QUESTION AND BRIEFLY TO EXPLAIN CDN INTENTIONS

DESPITE FACT THAT FRENCH DEL ILL PRESIDE.IF YOU AGREE,PLEASE INSTRUCT

CDN EMB PARIS TO ANSWER GOLSONG

WERSHOF

26.16.1

003104



*Boyley, Stamp*  
*17 Jan*  
*20-3-1-6*  
*37*

L

ACTION COPY

FM COPEN JAN15/69 CONFD NO/NO STANDARD

TO TT EXTER 17 DE HAGUE

INFO BAG ACCRA DE LDN

LAW OF TREATIES ART5(2)-VIEWS OF GHANA

I HAD A TALK IN LDN JAN14 WITH OWUSU(ATTORNEY GEN OF GHANA) WHO WAS PRESENT AT MTG OF COMWEL LEGAL OFFICIALS ORGANIZED BY UK ON JAN10 TO DISCUSS THE DISPUTES SETTLEMENT ASPECT OF DRAFT LAW OF TREATIES CONVENTION.OWUSU WAS HEAD OF GHANA DEL AT 1968 VIENN CONFERENCE ALTHOUGH OF TIME DADZIE WAS ACTING HEAD;SAME WILL HAPPEN AT 1969 CONFERENCE.

2.OWUSU SAID HE HAD NOT/NOT SEEN CDN AIDE MEMOIRE RE ART5 WHICH I PRESUME WAS GIVEN TO DEA IN ACCRA.I TOLD HIM THE CONTENTS AND ALSO THE SUPPLEMENTARY ARGUMENTS GIVEN IN YOURLET L737(M)SEP10/68

3.AT 1968 CONFERENCE GHANA ABSTAINED ON BOTH VOTES RELATING TO DELETION OF PARA(2)AND ON VOTE FOR ART5 AS A WHOLE.THESE VOTES WERE OF COURSE IN CTTEE OF WHOLE.

4.AFTER DISCUSSING CDN ARGUMENTS OWUSU SAID HE WAS CONVINCED AND THAT IN 1969 GHANA WOULD VOTE IN FAVOUR OF SEPARATE VOTE ON PARA(2)AND THAT GHANA WOULD VOTE AGAINST RETENTION OF PARA(2). HE SAID HE IS THE MEMBER OF GOVT WHO DECIDES THE INSTRUCTIONS FOR THIS CONFERENCE.

5.I SUGGEST YOU ADVISE CDN MISSION ACCRA TO APPROACH IN A COUPLE OF WEEKS THE DEA AND TO TELL THEM IN GENERAL TERMS OF MY TALK WITH OWUSU.HOPEFULLY DEA WILL BE TOLD BY OWUSU TO GIVE MISSION A FAVOURABLE REPLY TO AIDE MEMOIRE

*12.15.1*

WERSHOF

003106

40/14/1

~~cc Insurance Ring  
(Grand Theft)~~

L

0 Feb 20-3-1-6 JH 14 Jan

**ACTION COPY**

20-3-1-6

37



# ACTION COPY

*pub. JH 17 Jan*  
*[Signature]*  
*[Signature]*  
20-3-1-6  
37 | 11

FM LDN JAN14/69 CONFD NO/NO STANDARD

TO EXTER 205

INFO BAG NROBI DE OTT

LAW OF TREATIES ART 5(2)-ATTITUDE OF KENYA

I HAD A LUNCHEON TALK WITH BHOI YESTERDAY HAVING PREVIOUSLY TOLD HIM OF WISH TO DISCUSS THIS POINT. HE IS NOW DEPUTY UNDERSEC AS WELL AS TOP LAWYER OF KENYA DEPT OF EXTER AFFAIRS. WHEN TALK BEGAN BHOI SAID THAT HE HAD DISCUSSED SUBJ WITH KENYA ATTORNEYGEN WHO IS ALSO IN LDN AND BOTH HAD DECIDED TO CHANGE KENYAS VOTING POSITION AS FOLLOWS. AT VIENN 1968 KENYA VOTED BOTH TIMES TO RETAIN PARA(2). AT NEXT SESSION KENYA WILL ABSTAIN ON SUCH A VOTE AND WILL ALSO ABSTAIN ON ANY PROCEDURAL VOTE ON QUESTION OF PERMITTING SEPARATE VOTE ON PARA(2). BHOI INDICATED THAT THIS CHANGE WAS MADE OUT OF FRIENDSHIP FOR CDA.

2. I EXPOUNDED BOTH OBJECTIVE AND SUBJECTIVE REASONS FOR GOING FURTHER AND VOTING TO DELETE PARA(2) AND ESPECIALLY FOR VOTING POSITIVELY ON PROCEDURAL QUESTION. BHOI MADE NO/NO EFFORT TO REBUT ARGUMENTS BUT ADHERED TO STATEMENT THAT SWITCH TO ABSTENTION WOULD BE OF HELP TO CDA (WHICH IS OF COURSE CORRECT) AND THAT THIS WAS THE DECISION.

3. BHOI REITERATED KENYAS STRONG PREFERENCE IN PRINCIPLE FOR KEEPING WHATEVER ILC HAD RECOMMENDED ON ANY POINT IN DRAFT CONV. ALTHOUGH HIS UNWILLINGNESS TO DISCUSS OUR SUBSTANTIVE ARGUMENTS IS EXASPERATING I THINK WE HAD BETTER BE THANKFUL FOR MEDIUM-SIZED MERCIES. ABSTENTION IS A GREAT IMPROVEMENT ON PREVIOUS KENYA VOTES WERSHOF' ✓

*2/15/13*



20-3-1-6  
ACTION COPY 371

M

FM ISBAD JAN14/69 CONFD NO/NO STD

TO EXTER 37

REF YOURTEL L53 JAN7

LAW OF TREATIES-ARTICLE 5

MFA NOT/NOT YET ABLE TO GIVE INDICATION OF PAK ATTITUDE ON PARA2, OR OF WHETHER THEY WILL SUPPORT REQUEST FOR SEPARATE VOTE ON PARA2. 2.MFA LEGAL SERVICES ARE PREPARING FOR FORTHCOMING MTG OF ASIAN-AFRICAN LEGAL CONSULTATIVE CTTEE, AT WHICH THEY EXPECT ARTICLE 5 OF UNILC DRAFT TO BE DISCUSSED. THEY EXPECT, HOWEVER, THAT DISCUSSION WILL NOT/NOT BE ON ARTICLE 5(2), BUT ON ARTICLE 5(BIS) PERTAINING TO ACCESSION OF ALL STATES TO MULTILATERAL TREATIES OF GENERAL INTEREST. THEY HOPE TO GIVE US CLEAR IDEA OF PAK INTENTIONS ON ARTICLE 5(2) AFTER AALCC MTG, BUT FOR MOMENT CAN NOT/NOT GO BEYOND SAYING THAT THEIR PRELIMINARY REACTION TO YOUR ARGUMENTS, AS PRESENTED TO THEM BY ME IN AIDE-MEMOIRE 3027/68, WAS FAVOURABLE.

3. AS SOON AS POSSIBLE AFTER AALCC MTG, THEY HOPE NOT/NOT ONLY TO GIVE US THEIR POSITION ON ARTICLE 5(2), BUT TO RAISE WITH US OTHER POINTS ON WHICH THEY EXPECT THAT CDA AND PAK MAY HAVE SIMILAR VIEWS, AND ON WHICH THEY WOULD BE REQUESTING OUR SUPPORT.

4. TRADITIONALLY THE PAKS ARE HORSE-TRADERS

MCGAUGHTY

20-3-1-6  
Perhaps we might ask Malaysian to carry the ball for us at this meeting  
Please discuss  
Mr. B. Malaysian,  
Indians & Japanese are all favourable to our position & can be expected to protect our interest, but I might be just as well, from our side, to ask them specifically.  
If you agree, I will pass this to X L, Delhi & Tokyo.  
1/15 Jan

**ACTION COPY**

*Rappley/Karford*

*file* 20-3-1-6  
23/1

FM DELHI JAN14/69 CONFD NO/NO STANDARD

TO EXTER 147 PRIORITY

REF YOURTEL L50 JAN6

LAW OF TREATIES CONFERENCE-ARTICLE 5-NEPAL

NEPALESE EMB HAVE NOT/NOT YET RECEIVED PRELIMINARY REACTION

FROM MFA. REECE IS SCHEDULED TO VISIT KATHMANDU EARLY FEB  
ON ANOTHER MATTER AND WILL RAISE QUESTION IF NO/NO REACTION

RECEIVED BY THEN.

*3/15/11*

EXTERNAL AFFAIRS



AFFAIRES EXTERIEURES

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

FROM  
De The Canadian Embassy  
CARACAS

REFERENCE  
Référence Your Telegram L-65 of January 7, 1969

SUBJECT  
Sujet Law of Treaties Conference - Article Five

SECURITY  
Sécurité

DATE January 14, 1969

NUMBER  
Numéro 13

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

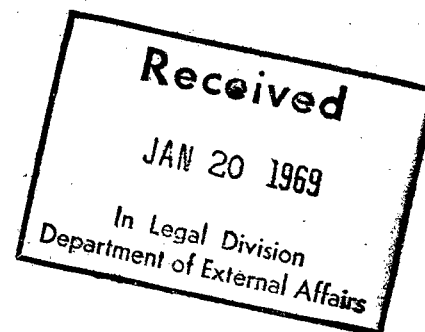
ENCLOSURES  
Annexes

DISTRIBUTION

We have continued to press Venezuelan authorities for some indication of their thinking on this subject but without result. This is due we believe to the fact that those persons closely associated with the matter within the Legal Department of the Ministry of External Relations have been absent from Venezuela almost continuously since early fall 1968 attending to other matters including the XXIII General Assembly.

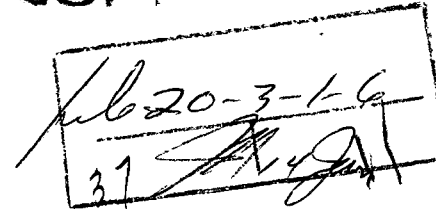
2. We have once again made our presentation and are hopeful that now the elections and the festive season are over, a reply will not be long in coming. While the changeover in government may delay matters, at our last meeting the lapse of four months without reply seemed embarrassing even to the Venezuelans. We will continue to press and inform you immediately of the Venezuelan reply.

*Bruce Rankin*  
Bruce Rankin  
Ambassador



*M. Baffley*  
*Stanford*  
**ACTION COPY**

L



FM ANKRA JAN13/69 CONFD NO/NO STANDARD

TO EXTER 37 PRIORITY

REF YOURTEL L63 JAN7

LAW OF TREATIES CONFERENCE ART 5

SEC-GEN OF MFA HAS UNDERTAKEN TO MEET WITH AMBASSADOR ON THIS

SUBJ NEXT WEEK, AFTER AMBASSADORS RETURN FROM STAFEUR MTG IN LDN.

ACTION COPY

Feb 20-3-1-6  
37 710 Joffe

Stanford

Mr. Stanford  
Legal Dir

FM LDN JAN13/69 CONFD NO/NO STANDARD

TO EXTER 197

INFO PRMNY

REF OURTEL 94 JAN8

COMWEL LAW OF TREATIES MTG IN LDN

MTG HELD JAN10 WITH 16 COUNTRIES REPRESENTED. SIX OF REPS WERE VERY FAMILIAR WITH SETTLEMENT OF DISPUTES ISSUE IN RELATION TO PART V OF DRAFT CONVENTION; OTHERS WERE NOT/NOT. NEVERTHELESS MTG WAS USEFUL. UK EXPOUNDED IN GENERAL TERMS THE NEED FOR AND IMPORTANCE OF A SETTLEMENT PROCEDURE INCORPORATING COMPULSORY THIRD PARTY ADJUDICATION. IN ADDITION TO CDA AND AUSTRALIA THE FOLLOWING SUPPORTED THIS CONCEPT AT LEAST IN PRINCIPLE-CEYLON PAK BARBADOS GUYANA TRINIDAD AND MAURITIUS.

2. BHOI OF KENYA GAVE A REASONED AND UNEQUIVOCAL REJECTION OF UK VIEW (ALTHOUGH MOST OF HIS REASONS SOUNDED TO ME AS WEAK AS THEY HAD IN VIENN). ATTORNEYGEN OF GHANA (OWUSU) SAID THAT GHANA ADHERED TO ITS VIENN POSITION OF REJECTION BUT THEN (PERHAPS TO BE POLITE) ADDED THAT GHANA RETAINED AN OPEN MIND. SIERRALEONE BRIEFLY ENDORSED REJECTION. THE REPS OF INDIA MALAYSIA NIGERIA AND SWAZILAND SAID NOTHING.

3. IN THE COURSE OF DISCUSSION UK MENTIONED THAT THE UN CONVENTION ON TRANSIT TRADE OF LAND-LOCKED COUNTRIES OF 1965 CONTAINED PROVISION FOR COMPULSORY ARBITRATION OF DISPUTES AND THAT AFRO-ASIAN COUNTRIES HAD BEEN PROMINENT IN THE TWO-THIRDS MAJORITY THAT VOTED IN FAVOUR OF THIS PROVISION AGAINST SOVIET OPPOSITION. PLEASE AIRMAIL COPY TO ME IN COPEN

WERSHOF

Sent 14 Jan 69  
Joffe

# MESSAGE

*file 7/20 Jan*

*20-3-1-6*  
*20-3-1-6*  
*20-3-1-6*

DATE	FILE / DOSSIER	SECURITY SECURITE
JAN 13/69	20-3-1-6	CONFED

FM/DE TUNIS

TO/A EXTERNAL

NO

PRECEDENCE

27

IMMEDIATE

INFO

Received

JAN 17 1969

In Legal Division  
Department of External Affairs

REF YOURTEL L-62 JAN 7

SUB/SUJ LAW OF TREATIES CONFERENCE, ARTICLE 5

SPOKE TODAY WITH MESSAOUDA, HEAD OF LEGAL DIVISION MFA. HE HAD REPORT FROM KHELIL ON OUR PREVIOUS APPROACH BUT HAD NOT STUDIED MATTER FULLY. HE PLANS MEETING IN NEXT FEW DAYS WITH ABED OF PRESIDENCE WHO WAS MEMBER OF TUNISIAN DELEGATION AT FIRST SESSION IN ORDER PREPARE TUNISIAN POSITION FOR SECOND SESSION.

2. MESSAOUDA ASSURED US TUNISIA WOULD NOT WISH INTERFERE IN AFFAIRS OF ANY FEDERAL STATE PARTICULARLY CANADA. SPEAKING PERSONALLY, HE WONDERED WHETHER SUPPRESSING PARAGRAPH 2 WOULD BE PREFERABLE FROM CANADIAN POINT OF VIEW TO REVISING IT IN CLEARER TERMS ACCEPTABLE TO US. HE OBVIOUSLY WOULD PREFER REVISION, BECAUSE OBJECT OF LAW OF TREATIES IS TO CODIFY EXISTING PRACTICE AND TREATY-MAKING POWERS OF MEMBERS OF FEDERATIONS OUGHT NOT TO BE IGNORED. AS TO TACTICS, MESSAOUDA BELIEVES WE WOULD REQUIRE TWO-THIRDS MAJORITY TO OBTAIN ANY CHANGE IN DRAFT ARTICLES ADOPTED AT FIRST SESSION; HE THINKS SUPPORT FOR ACCEPTABLE REVISION EASIER TO OBTAIN THAN FOR SUPPRESSION WE SEEK. IN REPLY WE DREW HIS ATTENTION TO PENULTIMATE PARAGRAPH OF AIDE-MEMOIRE WE PRESENTED IN OCTOBER. WE ALSO UNDERTOOK TO SEEK YOUR REACTION.

DISTRIBUTION  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG L. de Salaberry/mc

SIG L. de Salaberry

*Pratt / Mayford*  
*Feb 20-3-1-6*  
**ACTION COPY** *2*

*1*

FM LDN JAN13/69 CONFD NO/NO STANDARD

TO EXTER 198

INFO PRMNY

REF OURLET 19 JAN8

LAW OF TREATIES-TALK WITH SINCLAIR OF FCO LEGAL ADVISERS OFFICE  
A FURTHER TALK WITH SINCLAIR JAN9 COVERED FOLLOWING POINTS.

SETTLEMENT OF DISPUTES

2. UK DOES NOT/NOT KNOW WHAT KIND OF SPONSORSHIP USA WAS TALKING  
ABOUT IN LATTERS NOTE OF DEC16 (SENT TO MOST COUNTRIES) AND UK HAS  
TAKEN NO/NO DECISION. I GAVE HIM YOUR VIEWS AS IN PARA3 YOURTEL  
L29 JAN3.

3. AS FOR SEC GEN DRAFT ON DISPUTES SETTLEMENT (OURLET 19) SINCLAIR  
SAID THAT IT WOULD BE ACCEPTABLE IF ALTERNATIVE A WERE USED AND  
SUBJ TO DRAFTING IMPROVEMENTS. *Had 13 of them*

ALL-STATES QUESTION

4. UK CONTINUES TO OPPOSE ANY KIND OF ALL-STATES FORMULA AND WOULD  
NOT/NOT BARGAIN THIS FOR A COMPULSORY ARBITRATION CLAUSE. THIS  
OPPOSITION APPLIES ALSO TO INGENIOUS NEW KIND OF ALL-STATES CLAUSE  
DEvised BY SEC GEN (OURLET 19). SINCLAIR SAID THAT WEST GERMAN GOVT  
POSITION WAS MOST IMPORTANT REASON FOR UK FIRMNESS. *in what  
sense?*

RESERVATIONS TO DRAFT CONV

5. SINCLAIR DOUBTS NEED FOR A SPECIAL ARTICLE ON THIS SUBJ TO BE  
INCLUDED IN FINAL CLAUSES AND PREFERS LEAVING THE QUESTION TO  
BE DECIDED BY APPLICATION OF THE SUBSTANTIVE RESERVATIONS ARTICLES  
IN THE BODY OF THIS CONV *If we say  
nothing, assuming  
as we agree. If  
we say something,  
all the reservations are  
included*

WERSHOF

*32/13/1*



ACTION COPY

20-3-1-6  
13 Jan 11  
L

I

FM CLMBO JAN11/69 CONFD NO/NO STANDARD

TO EXTER 17

REF YOURTEL L40 JAN6

LAW OF TREATIES

CEYLON WILL SUPPORT CDN POSITION (OURLET 1 JAN5, DUE OTT  
BY BAG JAN21).

3.131  
003116

(UL 10/9)

**CONFIDENTIAL**

*Feb 20-3-1-6 JH*  
*ST*

*Mr. Beatty*  
*Mr. Stanford*  
*JP*

RECORD OF MEETING OF COMMONWEALTH REPRESENTATIVES  
TO DISCUSS THE LAW OF TREATIES CONFERENCE

*at time of Council P.H.'s Conf*

10 JANUARY, 1969

Sir F. Vallat welcomed those present and briefly outlined the U.K.'s views as set out in the Aide-Mémoire distributed at the meeting. In answer to several questions, he explained that the purpose of the meeting was not to reach a Commonwealth consensus nor to hammer out a draft article on settlement procedures, but merely to exchange views. Each country represented was then invited to give its comments.

2. Australia (Mr. P. Henderson, Australian High Commission) said that they supported the views set out in our paper. They had the gravest reservations about Part V of the draft Convention (containing those articles dealing with the invalidity of treaties) in its present form, and regretted that amendments designed to improve it had not been accepted at the first session. They could only accept the Convention in its present form if it included adequate third party settlement procedures.

3. Canada (Mr. M.H. Wershof, Ambassador in Copenhagen) said that their views were similar to ours. The most difficult issue of the Conference was whether the majority would be willing to stipulate that, after the parties had exhausted all other procedures, there should be some provision for compulsory third party settlement. It was in the interests of all powers, whether large or small, that the Convention should contain the principle of compulsory arbitration for use in the last resort.

4. Ceylon (Mr. C.W. Pinto, Legal Adviser, Ministry of Defence and External Affairs) said that they wanted some form of automatically applicable settlement procedures, particularly in relation to the articles in Part V. They did not wish to take a firm position on individual proposals at this stage, and they thought that any new mechanism should apply only in respect of treaties concluded after the entry into force of the Convention. However, the "13-power" proposal was most in line with their thinking. If such a mechanism were included in the Convention, as it should be, it was unlikely to be used frequently, but it would serve as a watchdog to prevent needless claims of invalidity.

5. Ghana (Mr. V. Owusu, Attorney-General) said that at the first session their delegation had had a flexible mandate. In the end, they had come round to the general Afro-Asian view that Article 62 was adequate in its present form. However, their position was flexible, and they were open to persuasion. The "13-power" proposal had much to commend it, subject to satisfactory arrangements on such issues as the costs of proceedings and the procedures for selecting arbitrators.

.. / 6 ..

**CONFIDENTIAL**

003117

CONFIDENTIAL

6. Guyana (Sir L. Luckhoo, High Commissioner, who also spoke for Barbados) supported our views. There was a need to have procedural arrangements on which one could rely, instead of leaving a void. Some form of automatic third party settlement procedures should therefore be included.
7. India (Mr. E. Gonsalves, Ministry of External Affairs) said that they had not yet taken a position on this question. (We know from other sources that they are anxious to avoid committing themselves for as long as possible - at least until after the Asian-African Legal Consultative Committee meeting - but that they are reconsidering their position and may be prepared to be a little less inflexible.)
8. Kenya (Mr. I.S. Bhoi, Under Secretary, Ministry of Foreign Affairs) spoke eloquently and forcefully against any change in Article 62, which represented the highest measure of common ground among Governments. Article 33 of the U.N. Charter did not ascribe any priority to the various means of peaceful settlement listed, and did not compel members to use any one rather than another. The world was not ready to move beyond this. The cost of arbitration was high and the history of the use of compulsory arbitration was not very encouraging: there had been few successful cases. If there were compulsory arbitration procedures, what would happen if one party refused to implement the award? The other party could only fall back on the principle pacta sunt servanda - the parties must fulfil their obligations in good faith - which was exactly the present position. It was therefore pointless to impose compulsory arbitration. Moreover, at previous codification conferences, proposals for compulsory settlement procedures had always failed of adoption, and the device of an optional protocol had been the eventual solution.
9. Mauritius (Mr. E. Venchard, Senior Crown Counsel) said that they were not familiar with all the issues involved, as their delegation had not been present for that debate. However, they felt that there should be provisions to safeguard against abuse of the articles relating to invalidity. They found the "13-power" proposal acceptable in principle, but thought it could be improved. They supported procedures for conciliation followed by arbitration, but reserved their position as to whether the arbitral award should be binding.
10. Nigeria (Mr. Adediran) said that as Dr. Elias held the Chairmanship of the Committee of the Whole (and of the African Afro-Asian Groups) it would not be proper for them to state a position. (We have been told, however, that Dr. Elias personally favours compulsory arbitration, although he believes it unrealistic to hope for more than compulsory conciliation leading, if necessary, to arbitration with the consent of the parties.)
11. Pakistan (Mr. M.A. Bhatti, Counsellor, High Commission) said that they shared our views. Both in the context of the Law of Treaties Conference and in general, there was a need to strengthen the machinery of international law. They hoped that others could agree to strengthen Article 62 and that the Conference could accept provisions for compulsory arbitration.

**CONFIDENTIAL**

12. Sierra Leone (Mr. A. Metzger, Parliamentary Counsel) said that their views were well known, although they were open to persuasion. They were opposed in general to compulsory third party settlement procedures, and supported the principle that the parties had complete freedom of choice of the means of settlement.
13. Trinidad and Tobago (Mr. J.A.V. Harper) said that in substance they shared the views expressed by Guyana. While they had considerable sympathy with our views, they needed a little more time to crystallise their position; they might wish to draw a distinction between existing and future treaties as they had a number of problems with respect to treaties inherited on independence.
14. Malaysia (Mr. Sathiah), New Zealand (Miss A. Finlayson, Second Secretary, High Commission) and Swaziland (Mr. M.D. Ntiwane, High Commissioner) all said that they were only present as observers. Botswana and Tanzania had nominated officials to attend, but they did not turn up.

OTT173

WD078

C.C. TO L. ONE  
~~Buckley, Starke~~  
COPY TO P.A. BISSONNETTE

ACTION COPY

20-3-1-6
47

FROM SJOSE JAN10/69 NO STD

TO EXTERNAL OTT 13

REF YOURLET L1233 DEC27/68

LAW OF TREATIES CONFERENCE - ARTICLE 5

ACTION BEING TAKEN MON JAN13. MAY HAVE TO LEAVE LAST REMAINING  
COPY DOCUMENT REFERRED TO IN PARA 8 YOURLET L-737(M) SEPI0/68.

WOULD BE GRATEFUL THEREFORE FOR AT LEAST FIVE ADDITIONAL COPIES  
PLUS SAME NUMBER OF COMPANION VOLUMES, FIFTEEN BROCHURES IN ALL,  
IN SPANISH IF POSSIBLE, OTHERWISE IN ENGLISH.

~~2 to~~  
Pls send five copies in English  
of Sec 8 of Act to San Jose  
under transmittal slip of this tel.  
done Jan 13/69  
JH 13/Jan

1. 13. 1

003120

TRANSMITTAL SLIP

TO: ..... The Canadian Embassy .....  
..... SAN JOSE, Costa Rica .....  
FROM: ..... Under-Secretary of State for External .....  
..... Affairs, OTTAWA, Canada .....

UNCLASSIFIED

Security.....

Date..... 13 January, 1969 .....

Air or Surface..... Air .....

No. of enclosures..... Five .....

The documents described below are for your information.

Despatching Authority... J.S. Stanford, Legal Division .....

Copies	Description	Also referred to:
5	English version: Federalism and International Relations, as per yourtel 13 of Jan.10/69 Law of Treaties Conference, Article 5.	

## INSTRUCTIONS

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



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37 *W. J. Jan*

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FM LIMA JAN10/69 CONF NO/NO STANDARD

TO EXTER 22 PRIORITY

INFO TT WSHDC DE OTT

REF YOURTEL L39 JAN6

LAW OF TREATIES CONFERENCE ARTICLE 5

I QUESTIONED AGAIN THE SECGEN OF FOREIGN MINISTRY, DR PEREZ,

ABOUT PERUS POSITION AND HE SAID OFF-HAND THAT QUOTE

OF COURSE WE WILL SUPPORT CDAS POSITION UNQUOTE. HOWEVER,

FINAL INSTRUCTIONS DO NOT/NOT SEEM TO HAVE BEEN

PREPARED. DR PEREZ HAS PROMISED TO LET US KNOW AS SOON

AS POSSIBLE ABOUT THEIR DECISION. PERUVIAN DEL TO CONFERENCE

WILL BE, AS INDICATED EARLIER, DR LUIS ALVARADO, AT PRESENT

REP TO THE OAS IN WSHDC.

2. I PROPOSE TO GO TO LAPAZ LATER IN JAN AND WILL THEN DISCUSS

MATTER WITH FOREIGN MINISTRY

HOUDE

10/10/1

FILE ✓  
Diary  
Div. <sup>Diary</sup>  
Tel le  
JSS

# MESSAGE

DATE		FILE/DOSSIER		SECURITY SECURITE
10 JAN/69		20-3-1-6 37		UNCLASSIFIED PRECEDENCE
FM/DE	EXTERNAL OTT	NO		
TO/A	IDN	L-83		ROUTINE
INFO				COPENHAGEN

## REF

YourTEL 94 - JANUARY 8

## SUB/SUJ

LAW OF TREATIES MEETINGS

STANFORD WILL ARRIVE LONDON FEBRUARY THIRD.

## DISTRIBUTION

LOCAL/LOCALE

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

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. STANFORD/20	LEGAL	2-5406	J. A. BEESLEY

File ✓  
Diary  
Div. Diary USS  
1. File

# MESSAGE

EXTERNL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
10 JAN/69	20-3-1-6 37	

RESTRICTED

TO/A

PARIS

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PRECEDENCE

L-84

PRIORITY

INFO

COPENHAGEN - LONDON

REF YOURTEL 4678 DECEMBER 19/68

SUB/SUJ LAW OF TREATIES CONFERENCE - PRELIMINARY MEETINGS

PLEASE INFORM COUNCIL OF EUROPE, IN REPLY TO THEIR LETTER OF DECEMBER 19, THAT CANADA IS PLEASED TO ACCEPT THEIR INVITATION TO ATTEND PRELIMINARY MEETINGS ON THE LAW OF TREATIES TO BE HELD IN PARIS FEBRUARY 8-10. CANADA WILL BE REPRESENTED BY MAX H. WERSHOF, Q.C., CANADIAN AMBASSADOR TO DENMARK AND HEAD OF THE CANADIAN DELEGATION TO THE LAW OF TREATIES CONFERENCE AND BY J. S. STANFORD, LEGAL DIVISION, DEPT. OF EXTERNAL AFFAIRS.

FOR LONDON: PLEASE INFORM FCO THAT CANADA WILL BE REPRESENTED BY WERSHOF AND STANFORD AT MEETINGS PROPOSED FOR FEBRUARY 4 and 5.

DISTRIBUTION  
LOCAL/LOCALE

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ORIGINATOR/REDACTEUR

DIVISION

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

LEGAL

2-5406

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

File, Diary, Div. Diary  
Tel File & JSS

# MESSAGE

EXTERNAL OTT

FM/DE

LAGOS

TO/A

INFO

DATE	20-3 FILE/DOSSIER	SECURITY
10 JAN/69	20-3-1-6	SECURITE
	37	CONFID.

NO  
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PRECEDENCE  
ROUTINE

~~YOUTEL 56 JANUARY 10~~

REF

LAW OF TREATIES CONFERENCE - ARTICLE 5- SIERRA LEONE

SUB/SUJ

WE APPRECIATE THAT THE DIFFICULTIES TO WHICH YOUTEL REFERS MAKE IT  
DIFFICULT OR IMPOSSIBLE FOR YOU TO MAKE EFFECTIVE REPRESENTATIONS  
TO SIERRA LEONE. HOWEVER PLEASE AT LEAST SUBMIT AIDE-MEMOIRE TO  
SIERRA LEONE, BY MAIL IF NECESSARY, SO THAT GOVERNMENT WILL BE AWARE  
OF OUR INTEREST AND GROUND WILL BE PREPARED FOR LOBBYING IN VIENNA.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....J.S. STANFORD/zo.....

LEGAL

2-5406

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

*Brady. Stedford*

*Feb 20-3-1-6*  
*J. 17 Jan*

NNNNKVV

## ACTION COPY

OTT061

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DE BUA

R 102000Z

FM BAIRS JAN10/69

TO EXTEROTT 62

REF YOURTEL L54 JAN7

LAW OF TREATIES ARTICLE 5

HAVE SENT NOTE TO PARAGUAYAN MFA REQUESTING EARLY REPLY TO OUR  
FIRST ENQUIRY. COMMUNICZTION WITH PARAGUAYAN MFA VERY POOR.

IF WE DO NOT/NOT RECEIVE REPLY WITHIN 10 DAYS WE WILL CABLE DIRECT  
TO ASUNCION.

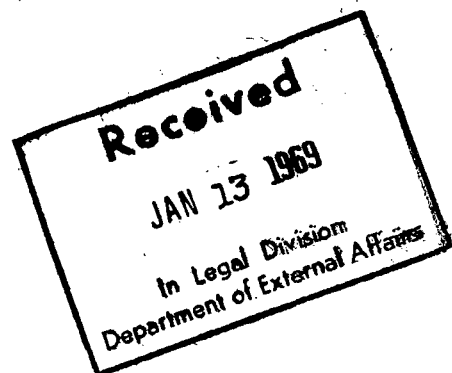
NNNN IVVVVV

*15.13.1*

*Reedy/Harford* ~~Mr. Perry~~  
→ Legal Division

20-3-1-6		
37	1	1

NNNNVVVVV



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FM WSHDC JAN10/69 NO/NO STANDARD

TO EXTER 84 IMMED

REF OURTEL 73 JAN9

UN LAW OF TREATIES CONFERENCE

RWANDA EMB INFORMED US TODAY THAT SINCE THEY WERE NOT/NOT

REPRESENTED AT FIRST SESSION IT IS VERY UNLIKELY THAT THEY WOULD

ATTEND SECOND ONE IN VIENN NEXT APR.

V

ACTION COPY

20/13/1

*Reaffirming / Noted*  
*Jul 21, 1979*

FM BNGKK JAN10/69 CONF

TO EXTEROTT 25

REF YOURTEL L61 JAN7

LAW TREATIES CONFERENCE ART5

1. CDN LEGATION DISCUSSION OF ART 5 WE FIND TREATY AND LEGAL DEPT  
MINISTRY OF FOREIGN AFFAIRS SYMPATHETIC TO CDNS POSITION (PARTICUL-  
ARLY AT DESK LEVEL ON THE PART OF MESSRS PRAJIT AND MONTRI WHO ATT-  
ENDED 1968 CONFERENCE). WE WERE TOLD DEC 50 THAT RTG WOULD LIKELY  
FAVOUR SEPARATE NOTE PARA 2 BUT WERE NOT/NOT TOLD IF RTG WOULD OPPOSE  
THE ADOPTION OF PARA 2 OR ABSTAIN AS AT 1968 CONFERENCE.

2. WE ENQUIRED AS TO RTG POSITION TODAY EXPEDITED ADVISED WE COULD  
EXPECT REPLY QUOTE SHORTLY UNQUOTE.

**EC** **L**

20-3-1-6  
37 11

14/13/1



*Handwritten:* This very good. Perhaps an approved M.Y. or wait should be  
**ACTION COPY**

**L**  
FM LAGOS JAN12/69 CONFD NO/NO STANDARD  
TO EXTEROTT 56  
REF YOURTEL L59 JAN7

LAW OF TREATIES CONFERENCE-REPRESENTATIONS TO SIERRA LEONE  
WE REGRET THAT PRESSURE OF DEVELOPMENTS IN NIGERIA AND OTHER  
COUNTRIES OF ACCREDITATION HAVE PREVENTED US FROM TAKING UP  
THIS QUESTION WITH SIERRA LEONE AUTHORITIES SINCE WE HAVE  
NOT/NOT BEEN ABLE TO FIT IN VISIT TO FREETOWN. WE ARE  
DOUBTFUL WHETHER SIERRA LEONE GOVT GIVEN CONTINUING  
POLITICAL UNREST IN COUNTRY WOULD IN ANY EVENT HAVE FOCUSED  
SUFFICIENT ATN ON THIS MATTER TO PRODUCE ANY MEANINGFUL  
REA TION.

3/10/1



P. A. BISSONNETTE

M

FM DSLAM JAN9/69 CONFED NO/NO STANDARD

TO EXTER 22

REF YOURTEL L64 JAN7

LAW OF TREATIES CONFERENCE-ARTICLE 5

WE CONSULTED JAN9 TANZANIAN AUTHORITIES CONCERNING THEIR POSITION  
ON THIS MATTER AND WERE INFORMED THAT THEY EXPECTED TO BE ABLE TO  
GIVE US REACTION IN TWO WEEKS TIME.

2. HIGHCOM PRESENTED AIDE MEMOIRE ON THIS SUBJ TO ZAMBIAN CHIEF  
OF PROTOCOL DEC9/68 DURING HIGHCOM'S RECENT VISIT TO LUSAKA. CHIEF  
OF PROTOCOL WHO IS ALSO RESPONSIBLE FOR TREATY MATTERS WAS FULLY  
ACQUAINTED WITH PROBLEM BUT DID NOT/NOT GIVE PRELIMINARY INDICATION  
ZAMBIAN REACTION TO OUR REPRESENTATION. WE ARE PRESSING FOR REPLY  
THROUGH ZAMBIAN HIGHCOM HERE.

5/9/11

*file 13 Jan*

20-3-1-6  
371

OTT069

LDN122

BRU050

HAGS/10

OSL1/10

RR OTT

DE OSL

R 101130Z

FM OSLO JAN9/69 NO/NO STANDARD

TO EXTER 17

REF YOURTEL L49 JAN7

UN LAW OF TREATIES CONFERENCE

OURTEL 282 SEP9/68 INFORMED YOU THAT ICELANDIC FOREIGN MINISTRY

SEGGEN HAD INFORMED US THAT ICELAND WOULD NOT/NOT SEND REP TO

SECOND SESSION. DO YOU WISH US TO APPROACH ICELANDIC FOREIGN

MINISTRY AGAIN ON THIS MATTER? WE VERY MUCH DOUBT ICELANDIC AUTHO-

RITIES HAVE CHANGED THEIR MINDS SINCE ICELAND WAS NOT/NOT REPRESENTED

AT FIRST SESSION EITHER.

**L ACTION COPY**

*It might be  
worth a casual  
enquiry of the D. Seairt  
(through Oslo)*

4/10/1

NNNNVVVVVV

003132

*[Handwritten signature]*

file 20-3-1-6	
37	1

L ACTION COPY

OTT148

WD355

RR OTT

DE WDC

R 091949Z

FM WSHDC JAN9/69 NO/NO STANDARD

TO EXTER 73

REF YOURTEL L58 JAN7

UN LAW OF TREATIES CONFERENCE

RWANDA EMB HAS NOT/NOT RECEIVED REPLY FROM KIGALI. THEY WILL  
ENQUIRE AGAIN.

NNNN

KVV



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Memo to file

TO  
À

A.W. Robertson

FROM  
De

REFERENCE  
Référence

SUBJECT  
Sujet

Law of Treaties Conference: Second Session

SECURITY  
Sécurité

DATE

NUMBER  
Numéro

January 9, 1969

FILE	DOSSIER
OTTAWA	
MISSION	

20-3-1-6  
37

ENCLOSURES  
Annexes

J.S. DISTRIBUTION  
Stanford  
Legal Div.

Further to an enquiry from Mr. J.S. Stanford of Legal Division, I spoke with Mr. Taki Ould Sidi, the Counsellor of the Permanent Mission of Mauritania, to ask whether Mauritania would be attending the Second Session of the Law of Treaties Conference.

2. Mr. Ould Sidi informed me that he did not know what his government's plans were. He understood however that Mauritania had been represented at the First Session and he expected they would also be represented at the Second Session. If so, their representative would probably be from their Embassy in Paris.

3. He will let me know as soon as he can ascertain definitely what is planned.

A.W. Robertson

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FROM REGISTRY

JAN 7 1969

FILE CHARGED

SECURITY  
Sécurité

TO: ma. St. 13-1-69  
CONFIDENTIAL  
CANADIAN EYES ONLY

DATE

January 9, 1969

NUMBER  
Numéro

9

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

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

FROM  
De The Canadian Embassy,  
Pretoria.

REFERENCE  
Référence Our telegram 368 of September 20, 1968

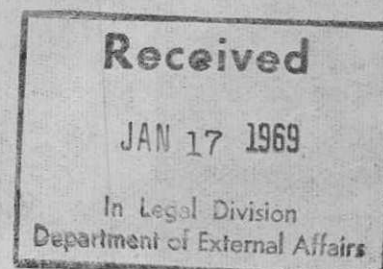
SUBJECT  
Sujet LAW OF TREATIES

ENCLOSURES  
Annexes

DISTRIBUTION

We spoke again to Mr. C. W. Fincham, Under-Secretary of the Department of Foreign Affairs here, who told us that the question of Article 5, paragraph 2, had been sent for comment to the various departments concerned and that he had a thick dossier on his desk which he was about to tackle. He repeated that his Division had recommended that South Africa, which had no national interests to defend, should go along with countries like Canada and Australia which had. Like "most civil services" the answers he had received argued all around the question. However, he hoped to be able to put up a firm recommendation within the next few weeks.

*Darby Goss*  
Embassy.





EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO: M. Wershof  
FROM: REGISTRY  
JAN 13 1969  
FILE CHARGED OUT  
TO: CONFIDENTIAL

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

SECURITY  
Sécurité

FROM: M. H. Wershof, c/o Canada House, London

DATE: January 8, 1969

REFERENCE  
Référence

NUMBER  
Numéro 19

SUBJECT: Law of Treaties - Informal Proposals made by U.N. Secretariat

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

ENCLOSURES  
Annexes

1

DISTRIBUTION

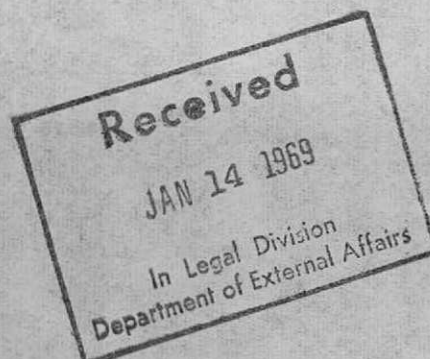
Permis,  
New York  
(without  
encl.)

When I called yesterday on Mr. Sinclair of the Foreign and Commonwealth Office, he told me that the Secretariat had informally and very privately given two papers (copy enclosed courtesy of Mr. Sinclair) at the end of October to a few delegations in New York (United Kingdom, U.S.A., France, U.S.S.R., India, Iraq, Argentina, Ghana, Nigeria, Sweden and possibly Japan).

2. One paper is a draft of some of the "final clauses" which the Secretariat is supposed to circulate officially to all delegations well before the second session of the Conference opens in April next. The second paper is a try at a settlement of disputes article. You will note that the first paper includes an "all States" clause.

3. Mr. Sinclair says that an unsuccessful meeting was held in New York in December between the named delegations and the Secretariat to discuss the drafts. Apparently no progress was made and Mr. Sinclair does not know what the Secretariat plans to do next.

4. Mr. Sinclair asks that we do not indicate to the Secretariat or to any other delegation that the United Kingdom has given us these papers. Of course Mr. Robertson of Permis could talk about them to Mr. Darwin of the U.K. Mission in New York if you think it useful. As I received only two photocopies I am keeping one and sending the other to you herewith. Mr. Robertson could, if instructed, get a copy from Mr. Darwin.



M. H. Wershof.

cc: Finance Div

(Special Section: Mr. McLeod)

COPY TO

P.A. BISSONNETTE

OT1014

done  
Jan 9/69  
38

M. G. Jan

20-3-1-6
37

L

Info tel.

PAR007

RR LDN RR OTT

DE PAR

R 081714Z

FM PARIS JAN8/69

TO LDN(WERSHOF)71

INFO EXTER

REF YOURTEL93 JAN8

LAW OF TREATIES: WEO MTG

CONFIRM RESERVATIONS AS REQUESTED AT PRINCE DE GALLES.

2. UPON CONFIRMATION OF ETA WILL GLADLY ARRANGE VEHICLE TO MEET  
M ET MRS WERSHOF AND M STANDORD.

3/9/11

003137

NNNN

MMVV

(TO -L- DIV ONLY)

ACTION COPY

Mr. B. J. J. J.

Mr. J. J. J.

L  
Feb 20-3-1-6  
37 J. J. J.

FM PRMNY JAN8/69 RESTR

TO EXTER 40

INFO LDN WSHDC PARIS TT VIENN DE PARIS COPEN DE HAGUE

VIENN LAW OF TREATIES CONFERENCE:CONSULTATIONS

WE ARE SENDING BY BAG A COPY OF NOTE 14/2/342 DATED JAN6 FROM  
HENRY DARWIN OF UK PERMIS CONCERNING PROPOSED OLD COMWEL AND  
USA CONSULTATIONS.

2.FOREIGN AND COMWEL OFFICE PROPOSE A MTG IN LDN ON FEB4 AND  
POSSIBLY FEB5 PRIOR TO PROPOSED WESTERN CONSULTATIONS IN PARIS.  
THIS WOULD FOLLOW AFROASIAN LEGAL CONSULTATIVE CTTEE MTG IN  
KRCHI(WHICH THEY CONSIDER DESIRABLE.)

3.EITHER DARWIN OR SINCLAIR IN LDN WOULD IN DUE COURSE BE  
INFORMED OF CDN REPRESENTATION.

2/9/11



*20-3-1-6*  
37

L INFO ONLY

FM LDN JAN8/69 RESTR

TO PARIS 93

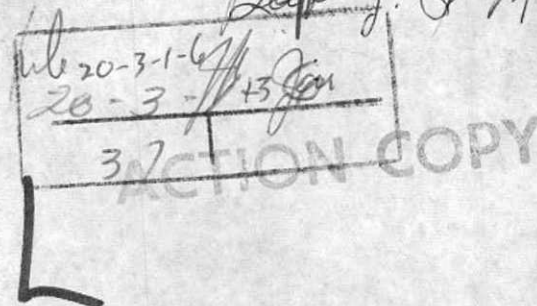
INFO EXTER

LAW OF TREATIES; WEO MTG IN PARIS FEB6-8

DEPT IS SENDING ME AND STANFORD OF LEGAL DIV TO THIS MTG AND TO  
IMMEDLY PRECEDING ONE IN LDN. WE EXPECT TO FLY TO PARIS FROM LDN  
WED FEB5 AND DEPART PARIS FEB9. MY WIFE WILL ACCOMPANY ME. PLEASE  
RESERVE AT HOTEL PRINCE DE GALLES DOUBLE FOR WERSHOF AND SINGLE  
FOR STANFORD FEB5 TO 9. I WILL BE IN LDN UNTIL JAN15; PLEASE SEND  
CONFIRMATION TO LDN FOR ME WITH COPY TO OTT.

WERSHOF

12.8.1



FM LDN JAN8/69 CONF NO/NO STANDARD  
TO EXTER 94

REF YOURTEL L29 JAN3

LAW OF TREATIES MTG

SINCLAIR OF FCO LEGAL ADVISERS OFFICE SAYS THAT IT HAS BEEN NECESSARY TO DELAY MTG TO FRI JAN10 BECAUSE OF CONFLICTING DEMANDS OF PMS CONFERENCE ON SOME LEGAL OFFICERS FROM OTHER COUNTRIES.

LEGAL MTG WILL BE LTD TO GENERAL RPT GENERAL DISCUSSION OF DISPUTES SETTLEMENT QUESTION. I WILL ENDEAVOUR TO USE INTERVENING TIME(A) TO DISCUSS WITH FCO THEIR ATTITUDE TO USA PROPOSAL AND (B) TO TALK PRIVATELY TO LEGAL REPS OF A FEW COUNTRIES ABOUT ART 5.

2. WEO MTG IS SET FOR PARIS FEB6 AND 7 WITH POSSIBLE MORNING OF FEB8. LDN MTG OF OLD COMVEL AND USA WILL NOT/NOT START FEB3 AS PREVIOUSLY PROPOSED. UK THINKS SHORTER SESSION WILL BE ADEQUATE AND SUGGESTS TUE FEB4 WITH POSSIBLE CONTINUATION MORNING OF FEB5.

THIS WOULD PERMIT ALL CONCERNED TO FLY TO PARIS AFTERNOON OF FEB5; I PLAN TO FLY AF821 LDN TO PARIS LEAVING 1520.

3. I WILL MAKE LDN AND PARIS HOTEL RESERVATIONS FOR STANFORD AS WELL AS SELF DURING PRESENT STAY IN LDN. PLEASE ADVISE WHETHER STANFORD WILL ARRIVE LDN FEB2 OR 3

WERSHOF

reply details  
10 Jan

File

Diary

Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*Through Legal  
Adviser through  
UN, AFME DIV*

TO  
A  
The Canadian Embassy,  
Cairo, United Arab Republic.  
The Under-Secretary of State for External Affairs  
OTTAWA, Canada.

FROM  
De  
REFERENCE  
Référence  
SUBJECT  
Sujet  
U.N. Conference on the Law of Treaties - Article 5

SECURITY  
Sécurité  
CONFIDENTIAL  
January 8, 1969  
DATE  
NUMBER  
Numéro  
L-70

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

ENCLOSURES  
Annexes

-3-

DISTRIBUTION

Enclosed is a copy of multiple numbered letter L-737(M) of September 10, 1968 in which we request a number of posts to make representations to governments concerning an article in the proposed U.N. Convention on the Law of Treaties.

2. We should be grateful if you could make representations to the UAR Ministry of Foreign Affairs in accordance with the instructions contained in the attached multiple numbered letter. The following is the supplementary information referred to in that letter.

3. The UAR voted for paragraph 2 on both occasions on which it came to a vote at the first session. We are therefore seeking to persuade the UAR to change its vote. You should indicate that abstention, while not providing the support we seek, would be preferable to a vote in favour of paragraph 2. We will be particularly interested to know whether the UAR would agree to a separate vote on paragraph 2.

3. In representations which have already been made to other governments, interest has frequently been expressed in the position taken by other federal states in respect of paragraph 2 at the first session of the Law of Treaties Conference. It may therefore be helpful for you to have this information available for your discussions with UAR authorities. There were two roll call votes on paragraph 2 at the first session, one before it was referred to the Drafting Committee, and one after it had been considered by the Drafting Committee. On the first vote the paragraph was retained by 45 votes to 38 with 10 abstentions. On the second vote the paragraph was retained by 46 votes to 39 with 8 abstentions. Of the federal states represented at the first session, 9 (Australia, Brazil, Canada, Germany, India, Malaysia, Mexico, the USA and Venezuela) voted against paragraph 2 on both occasions. Two others (Argentina and Austria) voted against the paragraph on the first vote and voted for it on the second vote. Only 4 federal states (Nigeria, Switzerland, the USSR and Yugoslavia) voted for the paragraph on both occasions. Thus the majority of federal states present at the first session opposed paragraph 2 and on both votes the paragraph received the support of less than half of the representatives present.

Received

JAN 13 1969

In Legal Division  
Department of External Affairs

Ext. 407D/BIL.

(Admin. Services Div.)

442

003141



-2-

CONFIDENTIAL

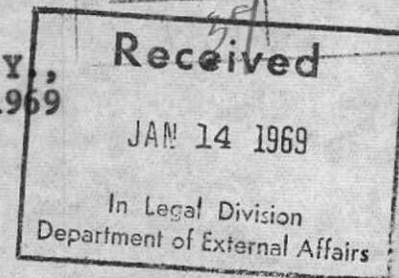
4. The Head of the UAR Delegation at the first session was Dr. El Erian, Director of the Legal and Treaty Department of the Ministry of Foreign Affairs. You may make your representations to him if you consider it appropriate, however you may consider that your representations would receive a more favourable reception if made to a senior political official in the Foreign Ministry.
- .. 5. We enclose a copy in English and French of the white paper on "Federalism and International Relations" which you may wish to leave with officials of the Foreign Ministry when you call upon them.

*Sgd: J.A. Beesley*  
Under-Secretary of State  
for External Affairs.

20

*Beuf*  
cc: Mr. J.S. Stanford  
Legal Division

NEW YORK, N.Y.,  
January 8, 1969



Many thanks for your two letters of December 19  
from Copenhagen.

Given your usual mistrust of the manner in which  
the paper is handled in our service, it will not surprise you  
to learn that despite the clear instructions to the contrary  
on the envelope in which you sent your letters, they were not  
opened in my absence and instead had to await my return from  
Canada on January 6.

I have ordered the text of the resolutions and the  
reports of the Rapporteurs of the Sixth Committee for you and  
will send them as soon as possible. I have also spoken to  
the Secretariat about the draft final clauses. Gurden Wattles  
is preparing the draft final clauses and hopes to submit them  
to Stavropoulos for his approval by the end of this month.  
It is therefore unlikely that they will be issued until some-  
time in February. I will see that you get a copy as soon as  
they are available.

I understand that when you were in Ottawa recently  
you had ~~the~~ discussions concerning Canadian representation at  
the Conference. I expect Ottawa will decide to have me attend  
and certainly would be happy to do so. I understand, however,  
that this matter has yet to be settled.

Rochelle and I were in Ottawa with the baby during  
the week of New Year's. We only learned that you were staying  
with your brother-in-law just before we left. We were sorry  
to have missed you.

With best wishes.

Yours sincerely,

A. W. Robertson.

*l*  
H. E. Mr. M. H. Wershof,  
Canadian Embassy,  
Princesse Maries Allé 2,  
1908 COPENHAGEN V, Denmark.

*4.14.1*



*We could, in the  
meantime, make an  
approval in NY.  
or Wash. or  
else*

J. A. BEEBLEY

*Handwritten signature*

*Handwritten signature*

FM TOKYO JAN8/69 CONF NO/NO STANDARD

TO EXTEROTT 12 IMMED

REF YOURTEL F57 JAN7

LAW OF TREATIES-ART 5-KOREA

SINCE YOURTEL WAS RECEIVED TWO SCHEDULED TRIPS TO SEOUL HAVE HAD BE  
BE POSTPONED DUE TO PRESSURE OF WORK HERE. UNLESS YOU WISH US TO  
ACCELERATE PRESENT PLANS, WE NOW EXPECT THAT OFFICER WILL BE MAKING  
TRIP TO KOREA BEFORE END OF FEB'

20-3-1-6  
31

*Handwritten note:*  
These notes with us last  
year, so it is just a matter of  
keeping them in line. Personal  
representations in Seoul as probably  
the most effective way of dealing  
with them and since they  
have in NY may  
just lead to  
confusion.  
I suggest we  
wait till Feb.  
J. A. Beebley

*Phone from NY - have  
been taken and Memoir  
to speak to  
from 16 Jan*

*OK but  
Jim warned the  
they way to show  
the same we  
begin to better  
Also, we have a  
better chance of heading  
off contrary decisions*

4/8/1



MESSAGE

File R.T. Jan

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER		SECURITY SECURITE
		7 JAN/69	20-3-1-6	25	UNCLASSIFIED
TO/A	OSLO	NO		PRECEDENCE	
		L-49		ROUTINE	
INFO					

REF OURTEL L-698 AUGUST 19/68

SUB/SUJ UN LAW OF TREATIES CONFERENCE

PLEASE ENQUIRE AND INFORM US WHETHER ICELAND WILL SEND REP TO SECOND  
SESSION LAW OF TREATIES CONFERENCE, VIENNA, APRIL-MAY, 1969.

DISTRIBUTION  
LOCAL/LOCALE EUROPEAN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
J. G. STANFORD-ZS

LEGAL

2/5406

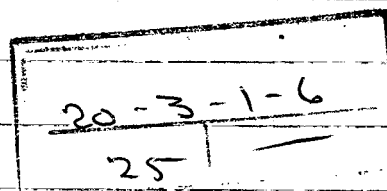
SIG.....  
J. A. BEESLEY

003147

for signature by USSEA  
draft

to B 23/1

Monsieur le Juge Manfred Lachs  
Cour Internationale de Justice  
Palais de la Paix  
La Haye  
Pays-Bas



Cher ami,

Je vous remercie infiniment de m'avoir  
envoyé votre article sur le droit des traités ainsi  
que le rapport de la Cour internationale de Justice,  
documents que j'ai lus avec grand intérêt.

Je partage entièrement votre avis ~~positif~~ que  
le succès de la conférence internationale sur le droit des  
traités, qui terminera son travail d'ici quelques mois,  
constituera un événement de première importance dans l'histoire  
du droit international.

Je vous prie, Monsieur le Juge et cher ami,  
d'accepter mes sentiments les meilleurs.

Res. 1

Memorandum to the Under-Secretary (through the Legal Division)  
from Legal Division  
Ref. Letter of November 11 from Judge Lachs  
Subj. Law of Treaties

Attached for your signature, if you approve, is  
a reply to Judge Lachs letter to you of November 11, also  
attached.

Because the Judge Lachs article contains expressions  
views, ~~which~~ directly contrary to those of Canada, particularly  
with respect to the scope of the rule against the threat or use  
of force and on the "all states" question, we have refrained  
from including in the reply any reference to the substance  
of the article. Nothing in the Report of the ICJ would appear  
to warrant comment.

Legal Division

7-  
3843

J. A. BEESLEY

20-3-1-6  
37 J. A. Beesley Jan 69

L  
ACTION COPY

8. VIENNA JAN 7/69 COMPS AC/AC STANDARD

10 EXTRACT 12

REF YOGATEL L37 JAN 6

LAW OF TREATIES CONFERENCE-AM 9

PROF VEROSTA INFORMED 2 THAT AUSTRIAN POSITION IS STILL BEING WORKED  
OUT BUT SHOULD BE SUFFICIENTLY ADVANCED BY AROUND JAN 22 FOR HIM TO  
MEET USEFULLY WITH ME. HE SAYS HE IS FULLY AWARE OF OUT PROBLEM.

HOCCORDICK

8/7/11

J. A. BEESLEY

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES JAN 6 1968

FILED IN THE OUT

TO: *M. D. 20/2*  
CONFIDENTIAL

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

SECURITY  
Sécurité

FROM  
De The Canadian Embassy, Bangkok

DATE December 30, 1968

REFERENCE  
Référence Your Letter L-737(M) of September 10

NUMBER  
Numéro 482

SUBJECT  
Sujet Law of Treaties Conference - Article 5

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

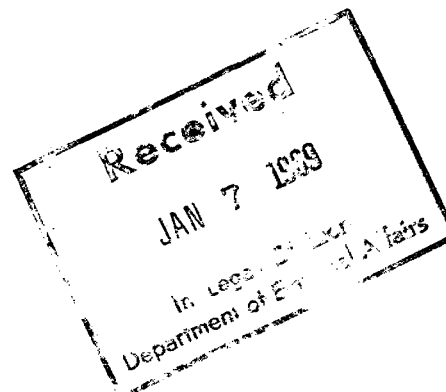
ENCLOSURES  
Annexes

DISTRIBUTION

We were asked today by the Treaty and Legal Department,  
Ministry of Foreign Affairs, if additional copies are available  
of the white paper on Federalism and International Relations.  
If the document is available, we should appreciate receiving four  
copies by airmail: three for the Ministry and one for our own  
library.

*done  
Jan 7/69  
JF*

*Ken H. Spitzmuller*  
EMBASSY



*L 6/7/1*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM  
De  
The Canadian Embassy, Bangkok

REFERENCE  
Référence  
Your Letter L-737(M) of September 10

SUBJECT  
Sujet  
Law of Treaties Conference - Article 5

SECURITY  
Sécurité

CONFIDENTIAL

DATE

December 30, 1968

NUMBER  
Numéro

482

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

We were asked today by the Treaty and Legal Department,  
Ministry of Foreign Affairs, if additional copies are available  
of the white paper on Federalism and International Relations.  
If the document is available, we should appreciate receiving four  
copies by airmail: three for the Ministry and one for our own  
library.

EMBASSY



TRANSMITTAL SLIP

TO:..... **The Canadian Embassy,**  
..... **BANGKOK**  
.....  
FROM:..... **The Under-Secretary of State for External**  
..... **Affairs, OTTAWA, Canada**  
.....

**UNCLASSIFIED**

Security.....

Date..... **7 January, 1969**

Air or Surface..... **Air**

No. of enclosures..... **Four**

The documents described below are for your information.

Despatching Authority..... **J.A.Beasley, Legal Division**.....

20-3-1-6  
37

Copies

Description

Also referred to:

**Four**

**English Version: Federalism & International  
Relations, as per your  
request in letter No.482  
of December 30, 1968;  
Our Ref:20-3-1-6,  
Your Ref: 37 -20-3.**

## INSTRUCTIONS

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

## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER		SECURITY SECURITE
		7 JAN/69	20-3-1-6	CONF.	
			37		
		NO		PRECEDENCE	
TO/A	CARACAS	L-65		ROUTINE	
INFO					

REF OURLET L-737(M) SEPT.10/68 AND OURTEL L-772 SEPT.12/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL FOR EARLY INDICATION, EVEN IF ONLY TENTATIVE, OF VENEZUELAN  
REACTION TO YOUR REPRESENTATIONS ON ARTICLE 5.

DISTRIBUTION  
LOCAL/LOCALE

LATIN AM. DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
.....J.S. STANFORD/25.....

LEGAL

2-5406

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

File, Diary, Div. Diary  
Tel. File & JSS

# MESSAGE

FM/DE

EXTERNAL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
7 JAN/69	2-3-1-6 37	CONFID.

TO/A

DAR ES SALAAM

NO	PRECEDENCE
L-64	ROUTINE

INFO

REF YOURLET 445 OCTOBER 7, 1968

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY  
REACTION OF TANZANIANS TO YOUR REPRESENTATIONS ON ARTICLE 5.  
WE ARE PARTICULARLY INTERESTED IN TANZANIAN POSITION ON SEPARATE  
VOTE FOR PARA 2.

2. GRATEFUL ALSO FOR PRELIMINARY INDICATION OF ZAMBIAN  
REACTION TO YOUR REPRESENTATIONS.

DISTRIBUTION  
LOCAL/LOCALE

A&ME DIV. (DONE IN DIVISION)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
J. S. STANTFORD/2

LEGAL

2-5406

SIG.....  
J. A. BEESLEY

## MESSAGE

FM/DE	EXTERNAL OTT ANKARA	DATE	FILE/DOSSIER	SECURITY SECURITE
		7 JAN/69	20-3-1-6 37	CONF.
TO/A			NO	PRECEDENCE
			L-63	ROUTINE
INFO				

REF YOURTEL 924- OCTOBER 1, 1968

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AT LEAST PRELIMINARY INDICATION OF TURKISH  
REACTION TO YOUR REPRESENTATIONS ON ARTICLE 5. WE ARE PARTICULARLY  
INTERESTED IN TURKISH POSITION ON SEPARATE VOTE FOR PARA 2.

DISTRIBUTION  
LOCAL/LOCALE

EUROPEAN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

LEGAL

2-5406

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



## MESSAGE

EXTERNAL CTT

FM/DE

TUNIS

DATE  
7 Oct 6920-3-1-6  
FILE/DOSSIERSECURITY  
C. SECURITE

L-C NO

PRECEDENCE

TO/A

INFO

OURTEL L-924 - OCTOBER 10, 1968

REF

LAW OF TREATIES CONFERENCE - ARTICLE 5

SUB/SUJ

PLEASE OBTAIN FOR US AT LEAST PRELIMINARY INDICATION OF TUNISIAN REACTION TO YOUR REPRESENTATIONS ON ARTICLE 5. WE ARE PARTICULARLY INTERESTED IN KNOWING WHETHER TUNISIA WILL SUPPORT REQUEST FOR SEPARATE VOTE ON PARA 2.

DISTRIBUTION  
LOCAL/LOCALE

AGRE DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

J.S. STANFORD/zs

DIVISION

LEGAL

TELEPHONE

2/5406

APPROVED/AUTORISE

J.A. BEESLEY

SIG.....

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

File, Diary, Div. Diary, Tel. File & JSS

# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
7 JAN/69	20-3-1-6	CONF.
	37	

TO/A

BANGKOK

NO

PRECEDENCE

1-61

ROUTINE

INFO

REF RELET L-737(M) SEPT.10/68 and OURTEL L-764 SEPT.12/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY INDICATION  
OF THAI REACTION TO YOUR REPRESENTATIONS CONCERNING ARTICLE 5. WE ARE  
PARTICULARLY INTERESTED IN THAI POSITION ON SEPARATE VOTE ON PARA 2.

DISTRIBUTION  
LOCAL / LOCALE

FAR EASTERN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG. J.S. Stanford/rs

LEGAL

2-5406

SIG. J.A. BEESLEY



# MESSAGE

EXX  
EXTERNL OTT

FM/DE

CAIRO

TO/A

INFO

DATE	FILE / DOSSIER	SECURITY SECURITE
7 JAN/69	20-3-1-6 37	UNCLASSIFIED

NO

PRECEDENCE

L-60

ROUTINE

REF

CORTEL 1-675 AUGUST 19/68

SUB/SUJ

U.N. LAW OF TREATIES CONFERENCE - ARTICLE 5 - SUDAN

GRATEFUL FOR REPLY TO REFTEL CONCERNING SUDANESE ATTENDANCE  
AT SECOND SESSION LAW OF TREATIES CONFERENCE, APRIL-MAY, 1969.

DISTRIBUTION AAME DIV. (DONE IN DIV.)  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

LEGAL

2-5406

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

File, Diary, Div. Diary, Tel. File  
JSS

# MESSAGE

FM/DE

EXTERNL OTT

TO/A

BEIRUT

INFO

DATE	FILE/DOSSIER	SECURITY SECURITE
7 JAN./69	2-3-1-6	CONF.
	37	

NO

PRECEDENCE

L-52

ROUTINE

REF

YOURTEL 665 AUGUST 26/68

SUB/SUJ

U.N. LAW OF TREATIES CONFERENCE - SECOND SESSION - ARTICLE 5

GRATEFUL IF YOU COULD MAKE REPRESENTATIONS TO JORDAN ALONG LINES  
SET OUT IN OURLET L-737(M) OF SEPT.10/68. IF YOU EXPECT TO BE IN  
AMMAN IN THE NEAR FUTURE AIDE-MEMOIRE AND ORAL PRESENTATION MIGHT  
BE MADE AT THAT TIME. OTHERWISE YOU MAY WISH TO TRANSMIT AIDE-MEMOIRE  
NOW AND FOLLOW IT UP WITH ORAL REPRESENTATIONS WHEN YOU NEXT VISIT JORDAN.

2. RE YOURTEL 734 SEPTEMBER 25/68 GRATEFUL IF YOU COULD OBTAIN FOR US  
AS SOON AS POSSIBLE AT LEAST PRELIMINARY INDICATION OF LEBANESE REACTION  
TO YOUR REPRESENTATIONS ON ARTICLE 5. WE ARE PARTICULARLY INTERESTED  
IN LEARNING WHETHER LEBANON WOULD SUPPORT REQUEST FOR SEPARATE VOTE ON  
PARA 2.

DISTRIBUTION  
LOCAL/LOCALE

ASME DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

J.S. STANFORD:ZS

LEGAL

2-5406

SIG

J.A. BEESELEY



MESSAGE

*Mr. Rane*

*Do you*

*know about I am in the far  
this? els.*

*File*

FM/DE

EXTERNAL OTT

TO/A

BEIRUT

INFO

DATE

7 JAN./69

FILE/DOSSIER

2-3 -1-6

SECURITY  
SECURITE

CONFID.

NO

L-52

PRECEDENCE

ROUTINE

REF YOURTEL 665 AUGUST 26/68

SUB/SUJ U.N.LAW OF TREATIES CONFERENCE - SECOND SESSION - ARTICLE 5

GRATEFUL IF YOU COULD MAKE REPRESENTATIONS TO JORDAN ALONG LINES  
SET OUT IN OURLET L-737(M) OF SEPT.10/68, IF YOU EXPECT TO BE IN  
AMMAN IN THE NEAR FUTURE AIDE-MEMOIRE AND ORAL PRESENTATION MIGHT  
BE MADE AT THAT TIME. OTHERWISE YOU MAY WISH TO TRANSMIT AIDE-MEMOIRE  
NOW AND FOLLOW IT UP WITH ORAL REPRESENTATIONS WHEN YOU NEXT VISIT JORDAN.

2. RE YOURTEL 734 SEPTEMBER 25/68 GRATEFUL IF YOU COULD OBTAIN FOR US  
AS SOON AS POSSIBLE AT LEAST PRELIMINARY INDICATION OF LEBANESE REACTION  
TO YOUR REPRESENTATIONS ON ARTICLE 5. WE ARE PARTICULARLY INTERESTED  
IN LEARNING WHETHER LEBANON WOULD SUPPORT REQUEST FOR SEPARATE VOTE ON  
PARA 2.

DISTRIBUTION  
LOCAL/LOCALE

*A&ME DIV. (DONE IN DIV.)*

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

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

LEGAL

2-5406

SIG.....  
J.A. BEESLEY:STP

MESSAGE

*file*

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
7 JAN/69	<del>20-3-1-6</del> Thai 20-3-1-6	CONFID.

TO/A

BANGKOK

NO  
L-61

PRECEDENCE  
ROUTINE

INFO

REF RELET L-737(M) SEPT.10/68 and OURTEL L-764 SEPT.12/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY INDICATION  
OF THAI REACTION TO YOUR REPRESENTATIONS CONCERNING ARTICLE 5. WE ARE  
PARTICULARLY INTERESTED IN THAI POSITION ON SEPARATE VOTE ON PARA 2.

DISTRIBUTION  
LOCAL/LOCALE → FAR EASTERN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J. S. Stanford/ee

LEGAL

2-5406

SIG..... J. A. BEESLEY



# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE	
		7 JAN./69	20-3-1-6 37	CONFID.	
TO/A	DJAKARTA	NO L-51		PRECEDENCE ROUTINE	
INFO					

REF OURLET 992 - OCTOBER 29/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL IF YOU COULD OBTAIN FOR US AT LEAST PRELIMINARY INDICATION OF  
INDONESIAN RESPONSE TO REPRESENTATIONS ~~MA~~ YOU MADE ON ARTICLE 5. WE  
ARE PARTICULARLY INTERESTED IN KNOWING WHETHER INDONESIA WOULD SEEK TO  
PREVENT A SEPARATE VOTE ON PARA. 2.

DISTRIBUTION  
LOCAL/LOCALE

FAR EASTERN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG. J.S. STANFORD/28

LEGAL

2-5406

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

## MESSAGE

EMERL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 JAN./69	20-3-1-6 37	CONF.

ISLAMABAD

TO/A

NO  
L-53PRECEDENCE  
ROUTINE

INFO

REF YOURTEL 1053 OCTOBER 25/68SUB/SUJ LAW OF TREATIES - ARTICLE 5

*PLEASE*  
~~GRATEFUL IF YOU COULD~~ OBTAIN FROM PAKS SOME FIRM INDICATION OF POSITION  
 THEY ARE LIKELY TO TAKE ON PARA 2 AT SECOND SESSION. WE ARE PARTICULARLY  
 INTERESTED IN KNOWING WHETHER PAKS WILL SUPPORT REQUEST FOR SEPARATE VOTE  
 ON PARA 2.

DISTRIBUTION  
LOCAL/LOCALE

COMMONWEALTH DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.

J. S. STANFORD:ZS

LEGAL

2-5406

SIG.

J. A. BEESLEY

J. A. BEESLEY



## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY SECURITE
		7 JAN./69	20-3-3-6	UNCLASSIFIED
TO/A	BUENOS AIRES	NO	PRECEDENCE	
		2-54	ROUTINE	
INFO				

REF CORTTEL L-763 AUG. 19/68

SUB/SUJ LAW OF TREATIES - ARTICLE 5

GRATEFUL FOR EARLY REPLY TO REPTTEL CONCERNING PARAGUAYAN PARTICIPATION  
IN SECOND SESSION U.N. LAW OF TREATIES CONFERENCE.

DISTRIBUTION  
LOCAL/LOCALE

LATIN AM. DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

LEGAL

2-5406

SIG..... J. A. BEESLEY



## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		7 JAN./69	20-3-1-6	CONF.
TO/A	LIMA	NO		PRECEDENCE
		L-55		ROUTINE
INFO				

REF YOURTEL 448 - SEPT. 25/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY INDICATION  
OF PERUVIAN REACTION TO YOUR REPRESENTATIONS CONCERNING ARTICLE 5.

DISTRIBUTION  
LOCAL/LOCALE

LATIN AM. DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
J. S. STANFORD-ZS

LEGAL

2-5406

SIG.....  
J. A. BEESLEY

## MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		7 JAN/69	20-3-1-6	CONF.
TO/A	MANILA	NO		PRECEDENCE
		1-56		ROUTINE
INFO				

REF YOURTEL 306 - SEPT. 30/68SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY PHILIPPINE  
REACTION TO YOUR REPRESENTATIONS CONCERNING ARTICLE 5.

DISTRIBUTION  
LOCAL/LOCALE

FAR EASTERN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
J. S. STAMPARD-ZS

LEGAL

2-5406

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



# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE			
		7 JAN/69	20-3-J-6	CONF.			
TO/A	TOKYO	NO		PRECEDENCE			
		1-57		ROUTINE			
INFO							

REF OURTEL I-821 - 16 SEPT./68

SUB/SUJ LAW OF TREATIES - ARTICLE 5 - KOREA

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY <sup>KOREAN</sup> REACTION  
OF KOREAN GOVERNMENT TO REPRESENTATIONS MADE PURSUANT TO REPTEL.

DISTRIBUTION  
LOCAL/LOCALE

FAR EASTERN DIV. (DONE IN DIV.)

NO STANDARD

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

# MESSAGE

EXTERNAL OTT

FM/DE

TO/A

INFO

DATE	FILE / DOSSIER	SECURITY SECURITE
7 JAN/69	20-3-1-6	CONF. D.
	NO	PRECEDENCE
	L-59	ROUTINE

REF OURTEL L-793 SEPT.13/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5 - SIERRA LEONE

PLEASE OBTAIN AT LEAST PRELIMINARY REACTION OF GOVERNMENT OF  
SIERRA LEONE TO YOUR REPRESENTATIONS CONCERNING ARTICLE 5.

DISTRIBUTION  
LOCAL / LOCALE

A&ME DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG.....  
J. S. STANFORD JS

LEGAL

2-5406

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



# MESSAGE

EXTERNAL OPT

FM/DE

TO/A

INFO

DATE	FILE/DOSSIER	SECURITY SECURITE
7 JAN/69	20-3-1-6	UNCLASSIFIED
	NO	PRECEDENCE
	L-58	ROUTINE

REF YOURTEL 3098 AUGUST 23/68

SUB/SUJ U.N. LAW OF TREATIES CONFERENCE - SECOND SESSION - *RWANDA*

GRATEFUL IF YOU COULD FOLLOW UP ENQUIRIES CONCERNING ATTENDANCE  
BY RWANDA AT SECOND SESSION OF LAW OF TREATIES CONFERENCE.

DISTRIBUTION  
LOCAL/LOCALE

A&ME DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD 123

LEGAL

2-5406

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

## MESSAGE

FM/DE

EXTERNL OTT

DATE

7 JAN./69

FILE/DOSSIER

20-3-1-6

SECURITY  
SECURITE

CONFID.

NO

PRECEDENCE

L-50

ROUTINE

TO/A

DELHI

INFO

REF OURTEL L-776 - SEPT. 12/68SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5 - NEPAL

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY REACTION  
OF NEPALESE TO REPRESENTATIONS MADE BY YOU CONCERNING ARTICLE 5. WE  
WILL BE PARTICULARLY INTERESTED IN KNOWING WHETHER NEPAL WILL SUPPORT  
REQUEST FOR SEPARATE VOTE ON PARA. 2.

DISTRIBUTION  
LOCAL/LOCALE

COMMONWEALTH DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG

J.S. STANFORD:ZS

LEGAL

2-5406

SIG

J. A. BEESLEY  
J. A. BEESLEY



# MESSAGE

FM/DE

EXTERNAL OTT

OSLO

TO/A

INFO

DATE

7 JAN/69

FILE/DOSSIER

20-3-1-6

37

SECURITY  
SECURITE

UNCLASSIFIED

NO

PRECEDENCE

1-49

ROUTINE

REF      CURTEL L-698 AUGUST 19/68

SUB/SUJ    UN LAW OF TREATIES CONFERENCE

PLEASE ENQUIRE AND INFORM US WHETHER ICELAND WILL SEND REP TO SECOND  
SESSION LAW OF TREATIES CONFERENCE, VIENNA, APRIL-MAY, 1969.

DISTRIBUTION  
LOCAL/LOCALE

EUROPEAN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....

J. S. STANFORD-ZS

LEGAL

2/5406

SIG.....

J. A. BEESLEY

J. A. BEESLEY



# MESSAGE

FM/DE

EXTERNL OTT

DATE

7 JAN/69

FILE / DOSSIER

20-3-1-6

SECURITY  
SECURITE

CONFID.

NO

PRECEDENCE

7-48

ROUTINE

TO/A

ACCRA

INFO

REF OURLET L-737(M) SEPT.10/68 AND OURTEL 815 SEPT.16/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN FOR US AS SOON AS POSSIBLE AT LEAST PRELIMINARY  
GHANIAN REACTION TO REPRESENTATIONS YOU MADE PURSUANT TO  
INSTRUCTIONS IN REFLET AND REFTTEL. WE ARE PARTICULARLY  
INTERESTED IN KNOWING WHETHER GHANA WOULD SUPPORT REQUEST  
FOR SEPARATE VOTE ON PARA 2.

DISTRIBUTION  
LOCAL / LOCALE

A&ME DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG..... J.S. STANFORD/zs

LEGAL

2-5406

SIG..... J. A. BEESLEY

# MESSAGE

FM/DE

EXTERNL OTT

TO/A

NICOSIA

INFO

DATE

FILE / DOSSIER

SECURITY  
SECURITE

7 JAN/69

20-3-1-6

CONF.

NO

PRECEDENCE

L-47

ROUTINE

REF

YOURLET 237 SEPTEMBER 25/68

SUB/SUJ

LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL IF YOU COULD FOLLOW UP YOUR EARLIER DISCUSSIONS WITH CYPRUS  
AUTHORITIES IN EFFORT TO OBTAIN FIRM INDICATION OF THEIR POSITION ON  
ARTICLE 5 AT SECOND SESSION. WE ARE PARTICULARLY INTERESTED IN  
KNOWING WHETHER ~~EXPRIM~~ CYPRUS WILL SUPPORT REQUEST FOR SEPARATE VOTE  
ON PARA 2.

DISTRIBUTION  
LOCAL / LOCALE

COMMONWEALTH DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG.....  
J. S. STANFORD/za

LEGAL

2-5406

SIG.....  
J. A. BEESLEY



File ✓  
Diary  
Div. Diary  
Tel. File  
JS

# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
7 JAN./69	20-3-1-6	CONF.

TO/A

SAN JOSE

NO	PRECEDENCE
1-46	ROUTINE

INFO

REF NK YOURLET 296 - OCT.15/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL IF YOU COULD OBTAIN FOR US AS SOON AS POSSIBLE  
AT LEAST PRELIMINARY REACTION TO REPRESENTATIONS YOU  
MADE TO COSTA RICANS ON THIS SUBJECT.

2. WE SHOULD BE GRATEFUL FOR SIMILAR INFORMATION  
CONCERNING POSITION OF HONDURAS (YOURLET 315  
OCTOBER 29/68 REFERS).

DISTRIBUTION  
LOCAL/LOCALE

LATIN AMERICAN DIV.(DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J. S. STANFORD/aa

LEGAL

2-5406

SIG..... J. A. BEESLEY

RESTRICTED



FROM REGISTRY

JAN 13 1969

FILE CHARGED OUT

TO:

UNITED KINGDOM MISSION TO THE UNITED NATIONS

845 THIRD AVENUE, NEW YORK, N. Y.

IMMEDIATE

(14/2/342)

6 January, 1969.

20-3-1-6  
37

Law of Treaties Consultations

You will recall that I approached you or your Sixth Committee colleague during the General Assembly about the possibility of consultations between the Old Commonwealth countries and the United States before the resumed session of the Vienna Conference on the Law of Treaties.

In the light of the answers received, the Foreign and Commonwealth Office have asked me to propose to you that such a meeting should be held in London on 4 February and to express the hope that your Government will be represented. This date would give one clear day with the possibility of carrying over to the morning of 5 February before those attending the Western Group meeting must leave for Paris. It is suggested that the meeting should begin at 11 a.m. in the Foreign Office; those attending may wish to ask for Ian Sinclair, as we do not yet know the room where the meeting will be held, unless some other indication is given to your diplomatic mission in London.

We realise that the date proposed may not be ideal for all concerned; but it has the great advantage of enabling us to take account of the outcome of the meeting of the Afro-Asian Legal Consultative Committee in Karachi.

I should be grateful if either Ian Sinclair in London or I could be informed of the names of representatives.

A letter in similar terms is being sent to Mr. D. Evans (Australian Mission), Mr. A.W.J. Robertson (Canadian Mission), Mr. C.D. Beeby (New Zealand Mission) and Mr. J.L. Hargrove (United States Mission).

(H. G. Darwin)

Mr. A.W.J. Robertson,  
Permanent Mission of Canada to the United Nations.

RESTRICTED

003177

INSTRUCTIONS: FOR USE WHEN SIGNATURE ACKNOWLEDGING RECEIPT OF DOCUMENTS IS NEEDED.  
À UTILISER LORSQU'ON EXIGE UN ACCUSÉ DE RÉCEPTION.

EXTERNAL AFFAIRS — AFFAIRES EXTÉRIEURES

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

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

Attention: Legal Division

SECURITY — SÉCURITÉ
WITH ATTACHMENT(S) / AVEC ANNEXE(S)
WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)
UNCLASSIFIED

NO.

QUANTITY QUANTITÉ	REFERENCE — RÉFÉRENCE	DESCRIPTION — DESCRIPTION
1		letter from Mr. Darwin, U.K. Mission to the U.N., re: Law of Treaties Consultations

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

RETURN TO / RETOURNER À

A.W.J. Robertson  
Permanent Mission of Canada  
to the United Nations, NEW YORK

DATE

SIGNATURE

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

003178

File ✓ JSS  
Diary Tel.File  
Div. Diary

# MESSAGE

EXTERNAL OTT.

140X21-1-03

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
JAN. 6/69	20-3-1-6	CONF.

TO/A COLOMBO

NO

PRECEDENCE

1-40

ROUTINE

INFO

REF YOURTEL 625 NOVEMBER 5/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5 - CEYLON

AS PINTO HAS PRESUMABLY NOW RETURNED TO CEYLON, GRATEFUL IF YOU COULD  
SEEK EARLY OPPORTUNITY TO FOLLOW UP REPRESENTATIONS MADE EARLIER CONCERNING  
ARTICLE 5, AND SEEK CONFIRMATION OF CEYLON'S SUPPORT FOR OUR POSITION.

DISTRIBUTION  
LOCAL/LOCALE

COMMONWEALTH DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
.....J.S. STANFORD/zo.....

LEGAL

2-5406

SIG.....  
.....J.A. PEEBLES.....



File ✓  
Diary  
Div. Diary  
Tel. File  
JSS

# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
JAN. 6/69	20-3-1-6 37	CONF.

TO/A

CONGO (KINSHASA)

NO

PRECEDENCE

L-43

ROUTINE

INFO

REF

OURLET L-737(M) SEPT. 10/68 AND OURTEL L/791-SEPT. 13/68

SUB/SUJ

LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN AND <sup>report</sup>FORWARD TO US AS SOON AS POSSIBLE AT LEAST  
PRELIMINARY CONGOLESE REACTION TO REPRESENTATIONS MADE PURSUANT  
TO INSTRUCTIONS IN REFLET AND REFTEL. WE ARE PARTICULARLY  
INTERESTED IN KNOWING WHETHER CONGOLESE WILL SUPPORT REQUEST  
FOR SEPARATE VOTE ON PARA 2.

DISTRIBUTION  
LOCAL / LOCALE

A&ME DIV.  
PAYS FRANCOPHONE DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG.....

LEGAL

2-5406

SIG.....

File ✓  
Diary  
Div. Diary  
Tel. File  
JSS

# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
JAN. 6/69	20-3-1-6 m7	<i>Unclass</i> CONF.

TO/A

PORT OF SPAIN

NO

PRECEDENCE

L-38

ROUTINE

INFO

REF YOURTEL 1708 OCTOBER 22, 1968

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5 - BARBADOS

GRATEFUL IF YOU COULD DETERMINE WHETHER BARBADOS AT PRESENT PLANS TO  
ATTEND ALL OR PART OF SECOND SESSION OF LAW OF TREATIES CONFERENCE.

DISTRIBUTION  
LOCAL / LOCALE

COMMONWEALTH DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG

J. S. STANFORD / *no*

LEGAL

2-5406

SIG

J. A. BRESLEY / *yes*



File ✓  
Diary  
Tel. File  
Div. Diary  
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# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
JAN. 6/69	20-3-1-6	CONFID.
	37	

TO/A

LIMA

NO  
L-39

PRECEDENCE  
ROUTINE

INFO

REF YOURTEL 448 SEPTEMBER 25/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL IF YOU COULD OBTAIN AT LEAST PRELIMINARY INDICATION OF POSITIONS  
TO BE ADOPTED BY BOLIVIA AND PERU ON ARTICLE 5 AT SECOND SESSION OF CONFERENCE.

DISTRIBUTION  
LOCAL/LOCALE

LATIN AMERICAN DIV. (DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/za .....

LEGAL

2-5406

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

File ✓  
Diary  
Tel. File  
Div. Diary  
JSS

# MESSAGE

EXTERNL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
JAN.6/69	20-3-1-6 37	CONFID.

TO/A

BOGOTA

NO  
L-42

PRECEDENCE  
ROUTINE

INFO

REF OURLET L-737(M) SEPT.10/68 AND OURTEL 767 SEPTEMBER 12/68

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

PLEASE OBTAIN AND <sup>report</sup>FORWARD TO US AS SOON AS POSSIBLE AT LEAST  
PRELIMINARY COLUMBIAN REACTION TO REPRESENTATIONS MADE IN  
ACCORDANCE WITH REFLET AND REFTTEL. WE ARE PARTICULARLY INTERESTED  
IN KNOWING WHETHER COLUMBIANS WILL SUPPORT REQUEST FOR SEPARATE  
VOTE ON PARA. 2.

DISTRIBUTION  
LOCAL/LOCALE

LATIN AMERICAN DIV.(DONE IN DIV.)

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
J.S. STANFORD/za

LEGAL

2-5406

SIG.....  
J.A. BEESLEY



File ✓  
Diary  
Div. Diary  
Tel. File  
J.S.S.

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

## MESSAGE

FM/DE	EXTERNAL OPT	DATE	FILE/DOSSIER	SECURITY
		JAN. 6/69	20-3-1-6	SECURITE
TO/A	VIENNA		37	CONFID.
		NO	PRECEDENCE	
INFO		L- 37	ROUTINE	

REF YOURTEL 949 OCTOBER 3, 1968

SUB/SUJ LAW OF TREATIES CONFERENCE - ARTICLE 5

GRATEFUL IF YOU COULD OBTAIN FROM AUSTRIANS AT LEAST A PRELIMINARY INDICATION OF THE POSITION TO BE TAKEN BY AUSTRIA ON ARTICLE 5 AT SECOND SESSION. WE SHOULD, IN PARTICULAR, APPRECIATE CONFIRMATION AUSTRIA WILL SUPPORT REQUEST FOR SEPARATE VOTE ON PARA. 2.

DISTRIBUTION EUROPEAN DIV. (DONE IN DIVISION)  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD/zs	legal	2-5406	SIG..... J.A. BEESLEY

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*how to treat*  
*file*

TO  
À

The Under-Secretary  
(through the Legal Adviser)

SECURITY  
Sécurité

FROM  
De

Legal Division

DATE January 6, 1969

REFERENCE  
Référence

NUMBER  
Numéro

*PARC*

SUBJECT  
Sujet

LAW OF TREATIES - Discussions with  
Mr. Wershof

FILE	DOSSIER
OTTAWA	
<i>NON-BLANK</i>	<i>20-3-1-6</i>
MISSION	<i>16</i>

ENCLOSURES  
Annexes

DISTRIBUTION

Mr. Wershof met with Messrs. Beesley and Stanford of this Division on January 2 to discuss the forthcoming preliminary meetings on the Law of Treaties Conference. Discussions related in particular to the peaceful settlement of disputes procedure and the federal states article.

2. With respect to peaceful settlement, it was agreed that Mr. Wershof would attempt, during the meetings to be held this week in London, to sound out Afro-Asian Commonwealth reaction to the U.S. proposed disputes article (communicated to a number of Commonwealth and other countries by the U.S.A.) in order that a decision could be reached as soon as possible, preferably before the February meetings in Paris, on whether Canada would accede to the U.S. request to co-sponsor a disputes article along the lines of the U.S. proposal. Our general and initial reaction was to favour Canadian co-sponsorship provided we are in suitable company, including at least some major Afro-Asians.

3. The question also arose whether, at the Paris meeting in February, we would be prepared to take as strong a line as some western representatives, e.g. the U.K., France and the U.S., who would reject the proposed convention if a compulsory disputes article were not included. Our initial view was to avoid taking a position at Paris on what our ultimate attitude would be to treaties convention without a satisfactory disputes article. Our reasoning is that we should direct our main efforts towards a solution of the Article 5 problem, and do nothing on the peaceful settlements issue which might prejudice potential support for our position on Article 5.

4. On the federal states article, while Mr. Wershof will approach privately certain key Africans in London (Kenya, Nigeria, Tanzania), we would seek to avoid formal discussion of the article at the London meeting,

*2.1.7/051*

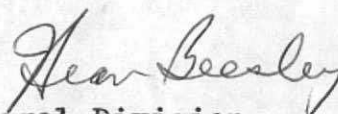


- 2 -

so as to avoid possible adverse consequences domestically which could ensue if we were to raise the Quebec problem in a Commonwealth context. We have since asked Canada House to inform the British that we would prefer Article 5 not be on the agenda for the London talks. The purpose of this is to avoid the impression that Canada is using the Commonwealth as a weapon in a matter which may be characterized as a dispute between Ottawa and Quebec.

5. We have already suggested to you that Messrs. Wershof and Stanford conduct active private lobbying on Article 5 in Paris in February. The question remains whether we wish to make a statement on Article 5 during the general discussions in Paris and, if so, how strong it should be. Our view is: (a) that we should be very forceful in private conversations and (b) that in the general discussion we should not make a statement unless it becomes necessary to reply to one from France.

6. We should be grateful for any comments you may wish to make on the foregoing.

  
Legal Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

The Canadian Embassy,  
RIO DE JANEIRO, Brazil.

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De

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

DATE

January 6, 1969

REFERENCE  
Référence

NUMBER  
Numéro

L-41

SUBJECT  
Sujet

Law of Treaties Conference - Article 5

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

ENCLOSURES  
Annexes

-1-

DISTRIBUTION

Latin Am. Div.

.. We enclose a copy of our letter No. L-737(M) of September 10, 1968 concerning the U.N. Conference on the Law of Treaties. Through an oversight, this letter was not addressed to your post at the time it was sent to other posts in September. We should be grateful if you could make the representations requested in the enclosed letter to the Brazilian Foreign Ministry as soon as possible. The following paragraph contains the supplementary information referred to in the enclosed letter.

2. Brazil opposed paragraph 2 on both occasions on which it came to a vote at the first session. You should therefore express appreciation and should not discuss the question of possible abstention unless it is raised by the Brazilians. The Head of the Brazilian Delegation to the first session was Mr. Gilberto Amado. You may wish to make your representations to him if he is in Rio and if you consider him to be sufficiently senior.

J. A. BEESLEY

Under-Secretary of State  
for External Affairs.

Diary copy  
Div. diary  
file copy  
Mr. Stanford

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
The Under-Secretary  
(through the Legal Adviser)

FROM  
De  
Legal Division

REFERENCE  
Référence

SUBJECT  
Sujet  
LAW OF TREATIES - Discussions with  
Mr. Wershof

SECURITY  
Sécurité

DATE  
January 6, 1969

NUMBER  
Numéro

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

ENCLOSURES  
Annexes

DISTRIBUTION

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- 2 -

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6. We should be grateful for any comments you may wish to make on the foregoing.

J. A. BEESLEY

Legal Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FROM REGISTRY

JAN 17 1969

FILE CHARGED OUT

CONFIDENTIAL

13-1-69

January 5, 1969

SECURITY  
Sécurité

DATE

NUMBER  
Numéro

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

FROM Office of the High Commissioner for Canada,  
De COLOMBO.

REFERENCE Your letter L-737(M) of September 10, 1968  
Référence

SUBJECT LAW OF TREATIES CONFERENCE - ARTICLE 5  
Sujet

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

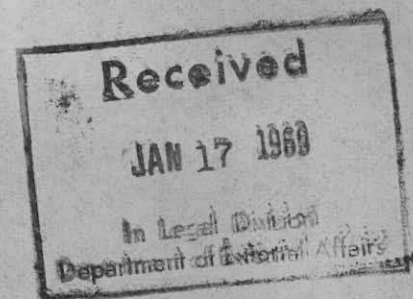
ENCLOSURES  
Annexes

DISTRIBUTION

Attached is a copy of a letter dated January 4 received from Mr. N.M.M.I. Hussain, Assistant Secretary in the Ministry of Defence and External Affairs to whom, in the absence of the Ministry's Legal Adviser, Mr. Christopher Pinto, we presented an Aide Memoire explaining the position of the Canadian Government on paragraph 2 of Article 5 of the proposed International Convention on the Law of Treaties.

2. The letter notes that the Government of Ceylon intends to support the omission of paragraph 2 of Article 5 from the text of the draft Convention.

Office of the High Commissioner



පිටුව 1  
පිටුව 2  
P. O. Box  
දුරකථන  
දුරකථන  
Telephone } 5257



පිටුව 1  
පිටුව 2  
My No. } UN/GA/36/2  
ඔබේ අංකය  
Your No. }

රාජ්‍ය හා විදේශ කටයුතු අමාත්‍යාංශය  
பாதுகாப்பு வெளிநாட்டு விவகார அமைச்சு  
MINISTRY OF DEFENCE & EXTERNAL AFFAIRS

සෙනේට් මන්දිරය  
சேனேற் கட்டிடம்  
Senate Building

කොළඹ 1 }  
කොළඹ 1 } 4th January, 1969.  
Colombo 1 }  
(Ceylon)

Dear Mr. Seymour,

I write with reference to your letter of 1st November, 1968, with which you enclosed an Aide Memoire explaining the position of your Government on paragraph 2 of Article 5 of the proposed International Convention on the Law of Treaties.

The Government of Ceylon intends to support the omission of paragraph 2 of Article 5 from the text of the draft Convention when it is considered at the Second Session of the Conference on the Law of Treaties.

Yours sincerely,

(N.M.M.I. Hussain)  
Assistant Secretary.

Mr. George W. Seymour,  
First Secretary,  
Canadian High Commission,  
P.O. Box 1006,  
Colombo 7.



OT 1

LDN105 GGGR

15 UO

RR OTT

DE LDN

R 021305 Z

FM LDN JAN2/69

TO EXTER 4

REF YOURTEL G299 DEC31

MTG OF LEGAL OFFICIALS JAN3-10

PLEASE INFORM WERSHOF THAT APPOINTMENT ARRANGED FOR HIM TO SEE  
SINCLAIR AT 4PM JAN7.

file 20-3-1-6

JA 3/1/69

ACTION COPY

20-3-1-6		
37	1	11

To  
G

Mr. Stafford  
Legal Division  
Mr. Wershof

Received

JAN 3 1969

In Legal Division  
Department of External Affairs

8.3.1

003192

EXTERNAL AFFAIRS



AFFAIRES ÉTRANGÈRES

FROM REGISTRY

JAN 17 1969

FILE CHARGED

**CONFIDENTIAL**

SECURITY  
Sécurité

DATE

January 3, 1969

NUMBER  
Numéro

3

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

FROM  
De The Canadian Embassy, PRETORIA

REFERENCE  
Référence Your Letter L.737(M) of September 10, 1968

SUBJECT  
Sujet Law of Treaties Convention

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

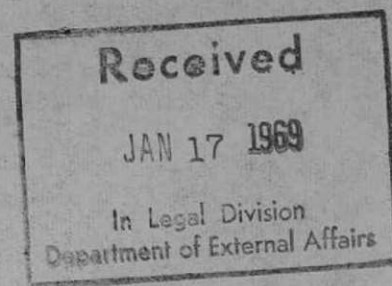
ENCLOSURES  
Annexes

1

DISTRIBUTION

.... We enclose a copy of the reply received from the  
Government of Lesotho.

*Dawley*  
Embassy



CONFIDENTIAL

FRGN/TREATY/7



Foreign  
MINISTRY OF ~~EXTERNAL~~ AFFAIRS  
P.O. BOX 527  
MASERU  
LESOTHO

16th December 1968

*My Dear High Commissioner*

Re: Law of Treaties Convention

I received your letter dated September 24 1968 together with the attached aide-memoire asking for the Government of Lesotho's support in relation to the deletion of paragraph two of Article 5.

It is the Government's intention to be represented at the Second Session of the Law of Treaties Conference to be held at Vienna in April 1969.

✓ In relation to the question of the support Lesotho may give to Canada's amendment to Article 5, careful consideration has been given to the various courses of action suggested by Canada. Lesotho, generally, favours your proposal for the deletion of Article 5.2. Accordingly in the event of a separate vote on paragraph two of Article five, our representative at the Conference will be instructed to vote for the deletion of paragraph two.

*Yours sincerely*

*Leabua Jonathan*

Leabua Jonathan  
Prime Minister and Minister of Foreign  
Affairs.

H.E. Mr. C.J. Woodsworth,  
High Commissioner for Canada,  
P.O. Box 2181,  
PRETORIA



File Div. Diary Diary  
Tel File

# MESSAGE

FM/DE EXTERNALOTT

TO/A LDN

INFO

DATE	FILE/DOSSIER	SECURITY SECURITE
JAN/2/69	20-3-1-6 37	CONF
NO		PRECEDENCE
L-29		IMMED

## REF

SUB/SUJ COMWEL PM'S MTG: PEACEFUL SETTLEMENT OF DISPUTES: LAW OF TREATIES.

USA HAS SUBMITTED TO US AND WE UNDERSTAND, TO UK AND APPROX 60 OTHER GOVTS, PROPOSED ARTICLE ON PEACEFUL SETTLEMENT FOR TREATIES CONVENTION. PROPOSAL TAKES FORM OF AMENDED VERSION OF ARTICLE 62 BIS TABLED AT FIRST SESSION BY THIRTEEN WESTERN EUROPEAN, LATIN AMERICAN AND FRENCH AFRICAN STATES. USA HAS REQUESTED COMMENTS ON PROPOSAL AND HAS ASKED WHETHER OTHER GOVTS WOULD JOIN IN CO-SPONSORING DRAFT ARTICLE ALONG LINES OF USA PROPOSAL.

2. GRATEFUL TO KNOW WHETHER BRITS INTEND TO RAISE USA PROPOSAL AT MTGS JAN8-10. WE ASSUME THEY DO NOT AND THAT DISCUSSION WILL BE IN MORE GENERAL TERMS OF PRINCIPLE OF ULTIMATE COMPULSORY THIRD PARTY SETTLEMENT PROCEDURE.

3. FOR YOUR OWN INFO AND THAT OF BRITS ONLY, VIEW OF OFFICIALS HERE IS THAT WE WOULD BE PREPARED TO CO-SPONSOR ARTICLE ALONG LINES OF USA PROPOSAL PROVIDED WE ARE IN SUITABLE COMPANY (INCLUDING AT LEAST SOME MAJOR MEMBERS OF AFRO-ASIAN GROUP.)

4. WE ASSUME BRITS DO NOT INTEND TO PUT ARTICLE 5 (FEDERAL STATES) QUESTION ON AGENDA FOR JAN8-10 MTGS AND WOULD PREFER THEY NOT/NOT DO SO, ALTHOUGH MR. WERSHOF WILL, OF COURSE, TAKE OPPORTUNITY FOR PRIVATE DISCUSSIONS WITH CERTAIN KEY DELEGATES.

## DISTRIBUTION

LOCAL/LOCALE UN AND COMWEL DIVS (DONE IN DIV) NO STD

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